Texas Register

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In This Issue...

CONTENTS CONTINUED INSIDE

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 Sections - sections adopted by state agencies on an emergency basis.

Proposed Sections - sections proposed for adoption.

Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Sections - 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 18 (1993) is cited as follows: 18 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 "18 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 18 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 22, April 16, July 13, and October 12, 1993). 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.

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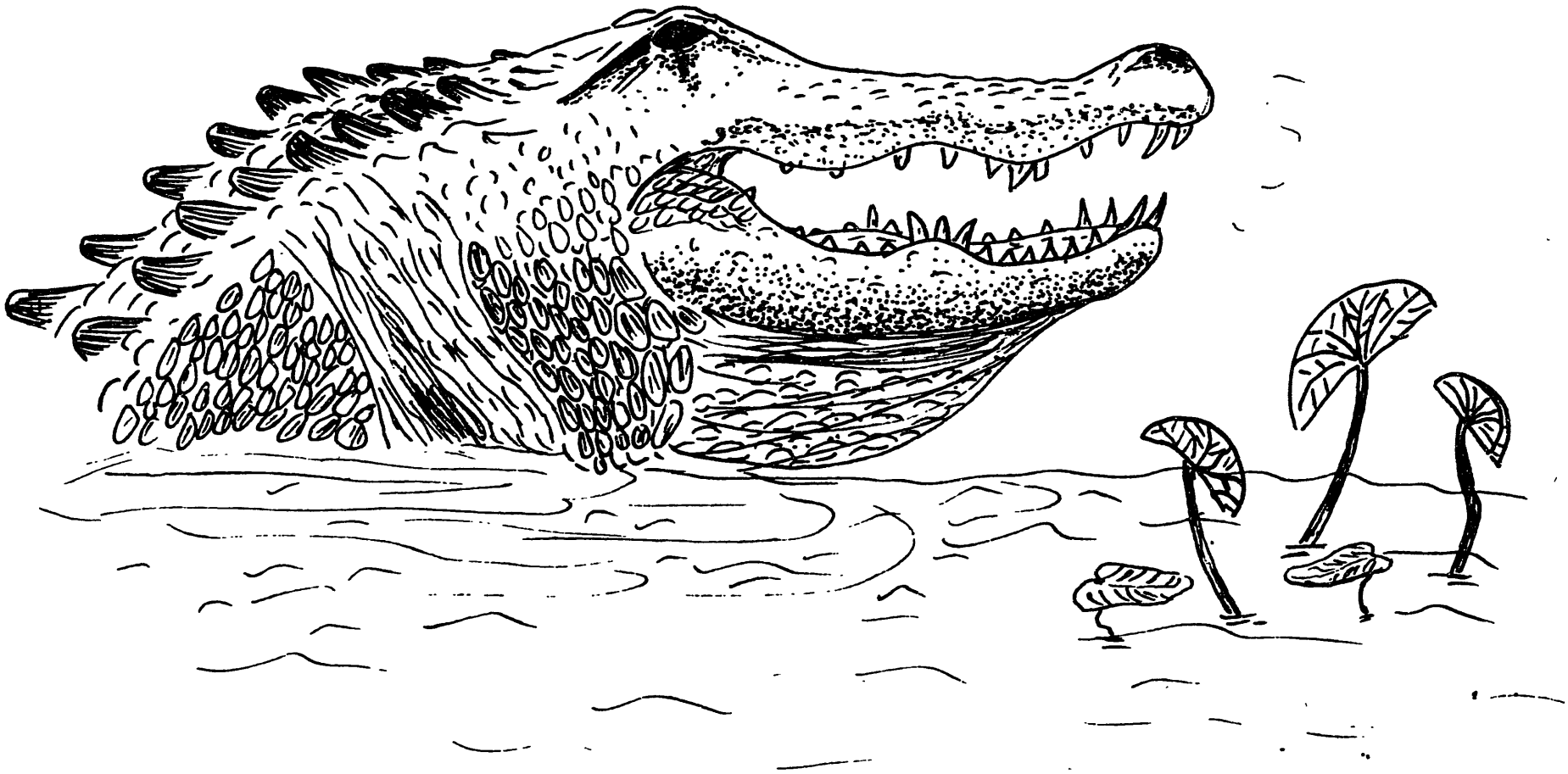


The Governor

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 November 3, 1993

To be Commissioner of Insurance for a term to expire February 1, 1995: J. Robert Hunter, P.O. Box 149104, Austin, Texas 78714. Mr. Hunter is being appointed to a new position pursuant to Chapter One, Insurance Code, 1. 33A.

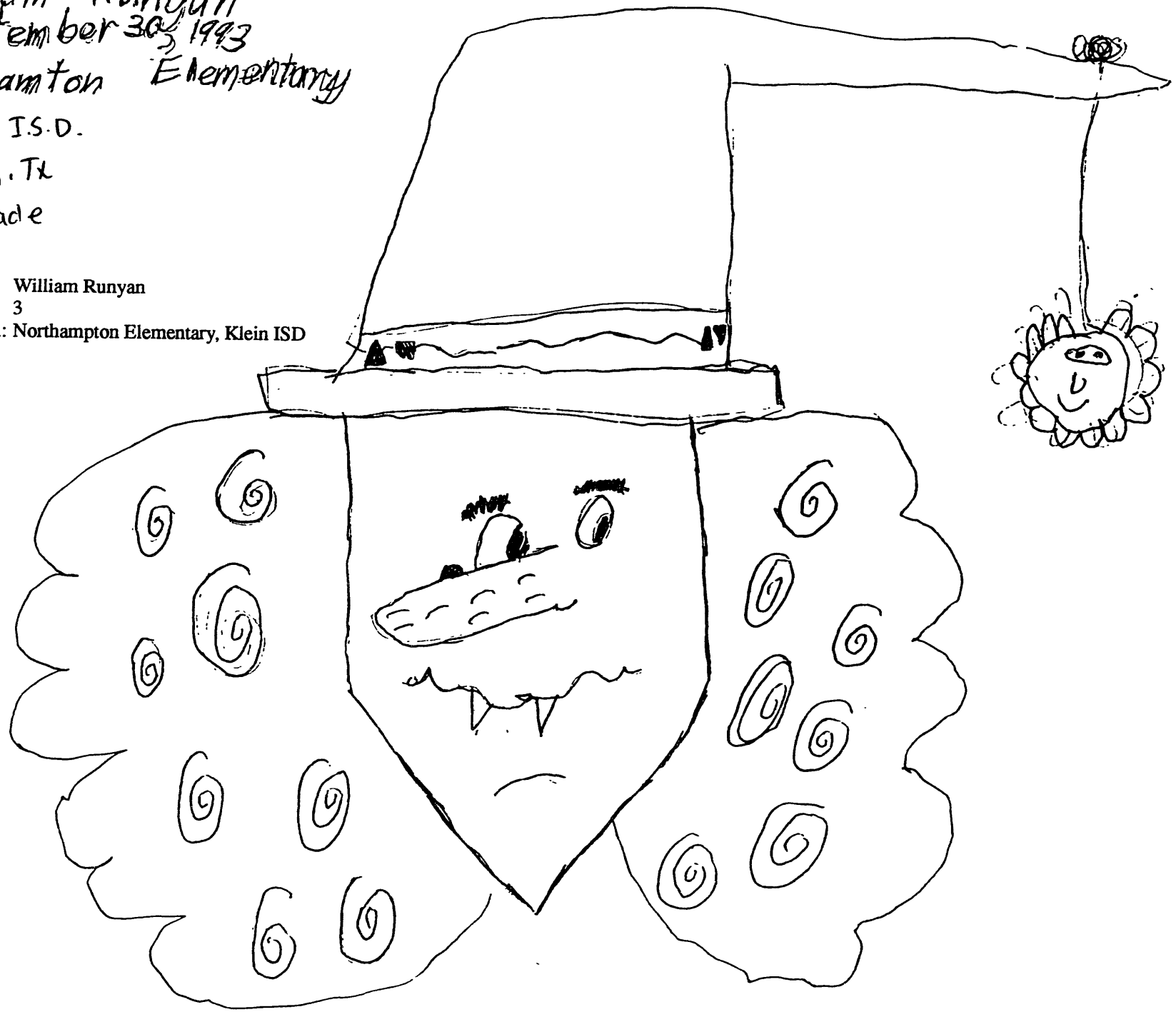
Issued in Austin, Texas, on November 12, 1993.

TRD-9332162 Ann W. Richards
Governor of Texas

♦ ♦ ♦

William Runyan
September 30, 1993
Northampton Elementary
Klein I.S.D.
Spring, Tx
3rd grade

Name: William Runyan
Grade: 3
School: Northampton Elementary, Klein ISD



Proposed Sections

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 any action may be 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 sections, 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 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 30. Young Farmer Loan Guarantee Program

Subchapter A. General Procedures

• 4 TAC §30.6

The Board of Directors of the Texas Department of Agriculture Finance Authority (TAFA) of the Texas Department of Agriculture proposes an amendment to §30.6, concerning the consideration of applications for loan guarantees Section 30 6(f) currently provides for an appeals process whereby applicants may seek review of denials of loan guarantee applications. The amendment deletes the references to an appeals process. The amendment is proposed to make the applications process more efficient.

Robert Kennedy, deputy assistant commissioner for agricultural finance, 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. Kennedy 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 functioning of the loan guarantee applications process. 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 Robert Kennedy, Deputy Assistant Commissioner for Agricultural Finance, Texas Department of Agriculture, P O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposed amendment in the *Texas Register*

The amendment is proposed under the Texas Agriculture Code (the Code), §253.007(e), which provides the Board of Directors of the Texas Agricultural Finance Authority with the same authority in administering the Young Farmer Loan Guarantee Program as it has in administering programs established by the board under the Code, Chapter 58, and the Code, §58.022, which provides the board with the authority to adopt rules and procedures for administration of its programs.

The sections which will be affected by the amendment include Chapter 253 of the Code.

§30.6. Filing Requirements and Consideration of Applications.

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

(f) Denial of application. If the qualified application is denied by the board, the Authority will notify the eligible applicant and the lender in writing, identifying the reasons for denial. [In the event of a denial, the lender and eligible applicant may petition the board for review of the denial by filing a written request with the official of the department designated by the Commissioner of Agriculture as being responsible for the department's agricultural finance programs, within 30 days after the date of the denial. An appeal must address the reasons for denial and set forth any cure of the reasons for denial. The board may grant or deny the appeal at any time and take such further action as the board deems appropriate. The board's review on appeal is limited to a review of the reasons for denial as stated in the notification letter of denial to the eligible applicant and the lender. The board's decision upon appeal will be final.]

(g)-(h) (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 November 15, 1993.

TRD-9332161 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Proposed date of adoption: December 24, 1993

For further information, please call: (512) 463-7583

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TITLE 16. ECONOMIC REGULATION

Part III. Texas Alcoholic Beverage Commission

Chapter 50. Alcohol Awareness and Education-Program Administration

• 16 TAC §§50.11-50.21

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

The Texas Alcoholic Beverage Commission proposes the repeal of §§50 11-50.21 concerning alcohol awareness and education program content, requirements for program approval, revocation of program approval, eligibility of program, and application and revocation of trainee and trainee certification and/or approval.

Kristin Sprague, coordinator of the Seller-Server certification of the Enforcement Division, T.A.B.C., 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

Ms. Sprague 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 and subsequent replacement by clearer better organized rules will be a reduction in confusion and increased ease of conformance with the rules by those affected. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Kristin Sprague, Coordinator Seller-Server Training Enforcement Division, P.O Box 13127, Austin, Texas 78711, (512) 206-3420.

The repeals are proposed under the Alcoholic Beverage Code, §106.14 and §5.31, which authorizes the Commission to adopt rules relating to the Enforcement and Administration of the Seller-Server training program.

The following statute is affected by this repeal. Texas Civil Statutes, Alcoholic Beverage Code, §106.14.

§50.11. Intervention Pertaining to Minors.

§50.12. Intervention Pertaining to Intoxication.

§50.13. Additional Program Content.

§50.14. Application for Program Approval.

§50.15. Revocation of Program Approval.

§50.16. Eligibility of Program.

§50.17. Application for Trainer Certification.

§50.18. Revocation of Trainer Approval.

§50.19. Application for Trainee Certification.

§50.20. Trainee Certification.

§50.21. Revocation of Trainee Certification.

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

Issued in Austin, Texas, on November 16, 1993.

TRD-9332211 Gayle Gordon
General Counsel
Texas Alcoholic Beverage Commission

Earliest possible date of adoption: December 24, 1993

For further information, please call: (512) 206-3204

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 305. Consolidated Permits

The Texas Natural Resource Conservation Commission (TNRCC) proposes amendments to §305.2 and §305.69, concerning General Provisions and Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits. The amendments are proposed in order to conform with certain federal regulations promulgated by the United States Environmental Protection Agency (EPA) relating to corrective action under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The proposed amendments relate specifically to two types of waste management units that would be used for remedial purposes under corrective action authorities: corrective action management units (CAMUs) and temporary units (TUs). It should be noted that the federal CAMU rule is currently being challenged in the federal courts, and that if the federal rule were to be vacated by the federal court, the TNRCC CAMU rule adopting the federal regulation by reference would no longer be effective.

The proposed amendments (and the standards regarding corrective action management units discussed in the preamble to the amendments to Chapter 335 of this title (relating Industrial Solid Waste and Municipal Hazardous Waste)) are set forth with the intention of providing decision-makers with some degree of additional flexibility in order to expedite and improve remedial decisions. However, it should be pointed out that even with this proposed extra flexibility, the commission does not intend for proposed amendments, if adopted, to replace existing standards that define the necessary level of protection to human health and the environment for remedial actions. For example, the applicable requirements contained in the risk reduction standards of Chapter 335 of this title, Subchapter S, and related rules, such as §335. 8 (relating to Closure), would still be in force.

Section 305.2 (relating to Definitions) is amended to add definitions for the terms "corrective action management unit or CAMU," "disposal facility," and "remediation waste," and to amend the definition of the term "facility." A corrective action management unit or CAMU is proposed to be defined as an area within a facility that is designated by the commission under Title 40, Code of Federal Regulations (CFR), Part 264, Subpart S, for the purpose of implementing corrective action requirements pursuant to §336.167 of this title, and the Texas Health and Safety Code, §361.303. The 40 CFR, Part 264, Subpart S standards are proposed to be adopted by reference under Chapter 335, Subchapter F, of this title, as discussed later in this preamble. The proposed definition for a CAMU requires that only remediation wastes can be managed in the CAMU pursuant to implementing such corrective action requirements.

The term "disposal facility" is a facility or part thereof where solid waste is intentionally placed into or on any land or water, and at which waste will remain after closure, but does not include a corrective action management unit into which remediation wastes are placed. Since the placement of remediation wastes into a CAMU does not lead to the facility being defined as a "disposal facility" under this proposal, the land disposal restrictions of 40 CFR, Part 268 would not be invoked by such placement. It should be noted that the "non-inclusion" of a CAMU in the proposed definition of the term "disposal facility" does not necessarily mean that a CAMU is a unit where solid waste has not been intentionally placed into or on the land, at which waste will remain after closure. In this regard, this proposed definition merely excludes CAMUs from the definition of "disposal facility" so that the land disposal restrictions will not apply. The idea here is to create a new class of units called corrective action management units, not bound to the land disposal restrictions which are placed on other classes of units in which hazardous waste disposal takes place.

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

It should be noted that the proposed definition of remediation waste does not include "new" or as-generated wastes that are generated by ongoing industrial or other non-corrective action related processes at the facility, nor does it include corrective action related wastes that are excavated, transported to an off-site facility, and then returned to the originating facility. However, the term is intended to encompass corrective action-related wastes managed under the appropriate statutory and regulatory corrective action authorities at commercial waste management facilities, even though they initially originated outside the facility boundaries, having been accepted from off-site. For the purposes of this proposal, such commercial facility remediation wastes would be considered to have "originated" from the commercial facility. The proposed definition of remediation waste is also intended to include wastes such as those generated, under the appropriate statutory and regulatory corrective action authorities, as a result of site investigations relating to corrective actions (e.g., drilling muds).

The term "facility" is amended to include, for the purposes of implementing corrective action pursuant to §335.167 of this title or the Texas Health and Safety Code, §361.303, that a facility includes all contiguous property under the control of an owner or operator seeking a permit for the management of hazardous waste. Thus, the definition of the term "facility" is proposed to be broader in scope in certain cases, for the purpose of implementing properly authorized corrective action, than the existing definition. Property under the control of an owner or operator seeking a hazardous waste permit that is separated only by a public right-of-way is intended to be included in this proposed amendment to the definition of facility.

Other possible interpretations of the proposed amendment to the definition of facility are

illustrated by the following examples. Consider an owner of a contiguous parcel of land consisting of 200 acres, 50 acres of which are leased to another company, and the owner of the 200 acres is seeking a hazardous waste permit. Under the proposed amendment, for the purpose of conducting properly authorized corrective action (by the owner of the 200 acres), the facility would include the entire 200-acre parcel. If, on the other hand, the lessee of the 50 acres is seeking a hazardous waste permit and the owner is not, and the lessee wishes to properly conduct corrective action activities, then the facility in this example would be limited to the 50 leased acres. The key portion of the proposed amended definition upon which this interpretation is based is the phrase "...contiguous property under the control of the owner or operator seeking a permit for the storage, processing, and/or disposal of hazardous waste." Since the person seeking a hazardous waste permit controls only the 50-acre plot, then the definition of facility in this example is limited to the 50 acres.

Section 305.69 (relating to Solid Waste Permit Modification at the Request of the Permittee) is proposed to be amended to include entries under subsection (h), Appendix I, which specify that solid waste permit modifications for approval of a corrective action management unit pursuant to 40 CFR, §264.552 are classified as Class 3 modifications, and permit modifications of approval of temporary units pursuant to 40 CFR, §264.553 are Class 2 modifications.

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. There are no significant effects anticipated for state government. The rules may result in some shift in workload requirements related to submission of additional permit modification requests and the execution of additional formal compliance orders by the commission. Any actual increases in workload are anticipated to be small and will be satisfied within existing resources. There are no anticipated effects on local governments.

Under the proposed rules, persons cleaning up hazardous waste facilities with releases of hazardous constituents are allowed to request that certain contaminated areas be designated as corrective action management units not subject to certain stringent restrictions on land disposal. Statewide cost savings to the affected regulated community over the first five years of implementing the rule are estimated to total from $1.0 billion to $1.67 billion or an average of between $200 million and $334 million per year. These savings are primarily attributable to avoided costs during remediation activities of off-site incineration and disposal of clean-up residues.

Mr. Minick has also determined that for the first five years these rules are in effect the public benefits anticipated as a result of enforcement of or compliance with the rules will be increased economic stability of businesses engaged in clean-up of on-site contamination; stimulation of remediation technology and related business activities; increased levels of remediation activity and resulting decreases in the number of contaminated sites; and reduction in the amounts of hazardous waste transported to and disposed at off-site facilities. There are no direct effects on small businesses anticipated. Generally, only large businesses would be affected by the proposed rules. The affected businesses are mostly large industrial or manufacturing concerns that have practiced hazardous waste disposal on-site. Virtually no small businesses are engaged in operation of on-site hazardous waste land disposal facilities and would not be affected by these proposed rules. There are no known costs anticipated for any individual required to comply with these rules as proposed.

Comments on the proposed sections may be submitted to Raymond Austin, Manager, Rules Development Section, Waste Policy Division, Texas Natural Resource Conservation Commission, P. O Box 13087, Austin, Texas 78711-3087, (512) 908-6814.

Subchapter A. General Provisions

• 30 TAC §305.2

The amended section is proposed under the Texas Water Code, §5.103 and §5.105, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

The implementation of the Texas Solid Waste Disposal Act, the Texas Health and Safety Code, §361.303 (relating to Corrective Action) is affected by the proposed amendments.

§305.2. Definitions. The definitions contained in the Texas Water Code §§26.001, 27.002, and 28.001, and the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §2, shall apply to this chapter. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Application–A formal written request for commission action relative to a permit, either on commission forms or other approved writing, together with all materials and documents submitted to complete the application.

Bypass–The intentional diversion of a waste stream from any portion of a treatment facility.

Class I sludge management facility–Any publicly-owned treatment works (POTW) identified under 40 Code of Federal Regulations, §403. 10(a), as being required to have an approved pretreatment program and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the regional administrator in conjunction with the executive director because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

Continuous discharge–A discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

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

CWA–Clean Water Act (formerly referred to as the Federal Water Pollution and Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, 33 United States Code, §1251 et seq.

Daily average concentration–The arithmetic average of all effluent samples, composite, or grab as required by this permit, within a period of one calendar month, consisting of at least four separate representative measurements.

(A) For domestic wastewater treatment plants–When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values in the previous four consecutive month period consisting of at least four measurements shall be utilized as the daily average concentration.

(B) For all other wastewater treatment plants–When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values taken during the month shall be utilized as the daily average concentration.

Daily average flow–The arithmetic average of all determinations of the daily discharge within a period of one calendar month. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily discharge, the determination shall be the average of all instantaneous measurements taken during a 24-hour period of during the period of daily discharge if less than 24 hours. Daily average flow determi-

nation for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.

Direct discharge-The discharge of a pollutant.

Discharge Monitoring Report (DMR)-The Environmental Protection Agency (EPA) uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees.

Disposal-The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid, liquid, or hazardous waste into or on any land, or into or adjacent to any water in the state so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into or adjacent to any waters, including groundwaters.

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

Effluent limitation-Any restriction imposed on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters in the state.

Environmental Protection Agency (EPA)-The United States Environmental Protection Agency.

Facility-**Includes:**

(A) [All] **all** contiguous land and fixtures, structures, or appurtenances used for storing, processing, treating, or disposing of waste, or for injection activities. A facility may consist of several storage, processing, treatment, disposal, or injection operational units;[.]

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

Indirect discharger-A nondomestic discharger introducing pollutants to a publicly-owned treatment works.

Injection well permit-A permit issued pursuant to the Texas Water Code, Chapter 27.

Land disposal facility-includes landfills, waste piles, surface impoundments, land farms, and injection wells.

National Pollutant Discharge Elimination System (NPDES) -The national program for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under CWA, §§307, 402, 318, and 405. The term includes an approved program.

New discharger-

(A) Any building, structure, facility, or installation:

(i) from which there is or may be a discharge of pollutants;

(ii) that did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

(iii) which is not a new source; and

(iv) which has never received a finally effective NPDES permit for discharges at that site.

(B) This definition includes an indirect discharger which commences discharging into water of the United States after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit.

New source-Any building structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(A) after promulgation of standards of performance under CWA, §306; or

(B) after proposal of standards of performance in accordance with CWA, §306, which are applicable to such source, but only if the standards are promulgated in accordance with §306 within 120 days of their proposal.

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

Outfall-The point or location where waterborne waste is discharged from a sewer system, treatment facility, or disposal system into or adjacent to water in this state.

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

Permit-A written document issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify or operate, in accordance with stated limitations, a specified facility for waste discharge, for solid waste storage, processing or disposal, or for underground injection, and includes a wastewater discharge permit, a solid waste permit, and an injection well permit.

Person-An individual, corporation, organization, government, governmental subdivision or agency, business trust, estate, partnership, or any other legal entity or association.

Primary industry category-Any industry category listed in 40 Code of Federal Regulations, Part 122, Appendix A, adopted by reference by §305.532(d) of this title (relating to Adoption of Appendices by Reference).

Process wastewater-Any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

Processing-The extraction of materials, transfer or volume reduction, conversion to energy, or other separation and preparation of waste for reuse or disposal, including the treatment or neutralization of hazardous waste so as to render such waste nonhazardous, safer for transport, or amenable to recovery, storage, or volume reduction. The meaning of "transfer" as used here, does not include the conveyance or transport off- site of solid waste by truck, ship, pipeline, or other means.

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

Radioactive material-A material which is identified as a radioactive material under Texas Civil Statutes, Article 4590f, as amended, and the rules adopted by the Texas Board of Health pursuant thereto.

Recommencing discharger-A source which recommences discharge after terminating operations.

Regional administrator-Except when used in conjunction with the words "State Director," or when referring to EPA approval of a state program, where there is a reference in the EPA regulations adopted by reference in this chapter to the "regional administrator" or to the "director, " the reference is more properly made, for purposes of state law, to the executive director of the **Texas Natural Resource Conservation Commission** [Texas Water Commission], or to the **Texas Natural Resource Conservation Commission** [Texas Water Commission], consistent with the organization of the agency as set forth in the Texas Water Code, Chapter 5, Subchapter B. When used in conjunction with the words "State Director" in such regulations, regional administrator means the Regional Administrator for the Region VI Office of the EPA or his or

her authorized representative. A copy of 40 Code of Federal Regulations, Part 122 is available for inspection at the library of the Texas Natural Resource Conservation Commission [Texas Water Commission], located in Room B-20 of the Stephen F. Austin State Office Building, 1700 North Congress, Austin.

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

Schedule of compliance-A schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (e.g., actions, operations, or milestone events) leading to compliance with the CWA and regulations.

Severe property damage-Substantial physical damage to property, damage to treatment facilities which causes them to become inoperable or substantial, and permanent loss of natural resources which can reasonably be expected to occur in the absence of a discharge.

Sewage sludge-The solids, residues, and precipitate separated from or created in sewage or municipal waste by the unit processes of a treatment works.

Site-The land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

Solid waste permit-A permit issued pursuant to Texas Civil Statutes, Article 4477-7, as amended.

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

Texas Pollutant Discharge Elimination System (TPDES)-The state program for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under CWA, §§307, 402, 318, and 405, the Texas Water Code, and Texas Administrative Code regulations.

Toxic pollutant-Any pollutant listed as toxic under the CWA, §307(a) or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing CWA, §405(d).

Treatment works treating domestic sewage-A POTW or any other sewage sludge or wastewater treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of sewage or municipal waste, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices.

Variance-Any mechanism or provision under the CWA, §301 or §316, or under Chapter 308 of this title (relating to Criteria and Standards for the Texas Pollutant Discharge Elimination System) which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the CWA or this title.

Wastewater discharge permit-A permit issued pursuant to the Texas Water Code, Chapter 26.

Wetlands-Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas and constitute water in the state.

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

Issued in Austin, Texas, on November 17, 1993.

TRD-9332197 Mary Ruth Holder
Director, Legal Services
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: December 24, 1993

For further information, please call: (512) 463-8069

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Subchapter D. Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits

• 30 TAC §305.69

The amended section is proposed under the Texas Water Code, §§5.103, 5. 105, and 26.011, which give the commission the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The sections are also adopted under the Solid Waste Disposal Act, §3 and §4, which gives the commission the authority to regulate industrial solid wastes and hazardous municipal wastes and to adopt rules and promulgate rules consistent with the general intent and purposes of the Act.

§305.69. Solid Waste Permit Modification at the Request of the Permittee.

(a)-(g) (No change.)

(h) Newley regulated wastes and units.

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

(i) Appendix I. The following appendix will be used for the purposes of Subchapter D which relate to solid waste permit modification at the request of the permittee.

Modifications-Class

(A) General Permit Provisions

(1) Administrative and informational changes. 1

(2) Correction of typographical errors..... 1

(3) Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls)..... 1

(4) Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee:

(a) To provide for more frequent monitoring, reporting, sampling, or maintenance..... 1

(b) Other changes..... 2

(5) Schedule of compliance

(a) Changes in interim compliance dates, with prior approval of the executive director..... 1[1]

(b) Extension of final compliance date..... 3

(6) Changes in expiration date or permit to allow earlier permit expiration, with prior approval of the executive director..... ..... 1[1]

(7) Changes in ownership or operational control of a facility, provided the procedures of §305.65(g) are followed..... 1[1]

(B) General Standards

(1) Changes to waste sampling or analysis methods:

(a) To conform with agency guidance or regulations..... 1

(b) Other changes..... 2

(2) Changes to analytical quality assurance/control plan:

(a) To conform with agency guidance or regulations..... 1

(b) Other changes..... 2

(3) Changes in procedures for maintaining the operating record..... 1

(4) Changes in frequency or content of inspection schedules..... 2

(5) Changes in the training plan:

(a) That affect the type or decrease the amount of training given to employees..... 2

(b) Other changes..... 1

(6) Contingency plan:

(a) Changes in emergency procedures (i.e., spill or release response procedures)..... 2

(b) Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed..... 1

(c) Removal of equipment from emergency equipment list..... 2

(d) Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan..... 1

Note: When a permit modification (such as introduction of a new unit) requires a change in facility plans or other general facility standards, that change shall be reviewed under the same procedures as the permit modification. (No change)

(C) Ground-water Protection

(1) Changes to wells:

(a) Changes in the number, location, depth, or design of upgradient or downgradient wells of permitted groundwater monitoring system..... 2

(b) Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well..... 1

(2) Changes in groundwater sampling or analysis procedures or monitoring schedule, with prior approval of the executive director..... [1]

(3) Changes in statistical procedure for determining whether a statistically significant change in groundwater quality between upgradient and downgradient wells has occurred, with prior approval of the executive director. ..... [1]

(4) Changes in point of compliance..... 2

(5) Changes in indicator parameters, hazardous constituents, or concentration limits (including ACLs):

(a) As specified in the groundwater protection standard..... 3

(b) As specified in the detection monitoring program..... 2

(6) Changes to a detection monitoring program as required by §335.164(10) of this title (relating to Detection Monitoring Program), unless otherwise specified in this appendix..... 2

(7) Compliance monitoring program:

(a) Addition of compliance monitoring program pursuant to §335.164(7) (D) of this title (relating to Detection Monitoring Program), and §335.165 of this title (relating to Compliance Monitoring Program)..... 3

(b) Changes to a compliance monitoring program as required by §335.165(11) of this title (relating to Compliance Monitoring Program), unless otherwise specified in this appendix.... 2

(8) Corrective action program:

(a) Addition of a corrective action program pursuant to §335.165(9)(B) of this title (relating to Compliance Monitoring Program) and §335.166 of this title (relating to Corrective Action Program)..... 3

(b) Changes to a corrective action program as required by §335.166(8), unless otherwise specified in this appendix..... 2

(D) Closure 1. Changes to the closure plan:

(a) Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility, with prior approval of the executive director..... [1]

(b) Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the executive director..... [1]

(c) Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the executive director..... [1]

(d) Changes in procedures for decontamination of facility equipment or structures, with prior approval of the executive director..... [1]

(e) Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise specified in this appendix..... 2

(f) Extension of the closure period to allow a landfill, surface impoundment or land treatment unit to receive nonhazardous wastes after final receipt of hazardous wastes under 40 CFR, §264.113(d) and (e)..... 2

(2) Creation of a new landfill unit as part of closure..... 3

(3) Addition of the following new units to be used temporarily for closure activities:

(a) Surface impoundments..... 3

(b) Incinerators..... 3

(c) Waste piles that do not comply with 40 CFR, §264.250(c)..... 3

(d) Waste piles that comply with 40 CFR, §264.250(c)..... 2

(e) Tanks or containers (other than specified below)..... 2

(f) Tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the executive director..... [1]

(E) Post-Closure

(1) Changes in name, address, or phone number of contact in post-closure plan..... 1

(2) Extension of post-closure care period..... 2

(3) Reduction in the post-closure care period..... 3

(4) Changes to the expected year of final closure, where other permit conditions are not changed..... 1

(5) Changes in post-closure plan necessitated by events occurring during the active life of the facility, including partial and final closure..... 2

(F) Containers

(1) Modification or addition of container units:

(a) Resulting in greater than 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below..... 3

(b) Resulting in up to 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below..... 2 .

(c) Or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR, §268.8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes or narrative descriptions of wastes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028) ..... 1[1]

(2) Modification of a container unit without increasing the capacity of the unit..... 2

(b) Addition of a roof to a container unit without alteration of the containment system..... 1

(3) Storage of different wastes in containers, except as provided in F(4) below:

(a) That require additional or different management practices from those authorized in the permit..... 3

(b) That do not require additional or different management practices from those authorized in the permit..... 2
Note: See §305.69(g) of this title (relating to Newly Listed Solid Waste Permit Modification at the Request of the Permittee or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

(4) Storage or treatment of different wastes in containers:

(a) That require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards, or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR, §268.8(a)(2)(ii), with prior approval of the executive director. This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... .. .. 1[1]

(b) That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1

(5) Other changes in container management practices (e.g., aisle space, types of containers, segregation)..... 2

(G) Tanks

(1)

(a) Modification or addition of tank units resulting in greater than 25% increase in the facility's tank capacity, except as provided in G(1)(c), G(1)(d), and G(1)e) below of this appendix..... 3

(b) Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided in G(1)(d) and G(1)(e) below of this appendix..... 2

(c) Addition of a new tank (no capacity limitation) that will operate for more than 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation..... 2

(d) After prior approval of the executive director, addition of a new tank (no capacity limitation) that will operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation..... 1[1]

(e) Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR, §268. 8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... ..... 1[1]

(2) Modification of a tank unit or secondary containment system without increasing the capacity of the unit..... 2

(3) Replacement of a tank with a tank that meets the same design standards and has a capacity within +/-10% of the replaced tank provided:..... .. 1

(a) The capacity difference is no more than 1500 gallons;

(b) The facility's permitted tank capacity is not increased; and

(c) The replacement tank meets the same conditions in the permit.

(4) Modification of a tank management practice 2

(5) Management of different wastes in tanks:

(a) That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(c) below..... 3

(b) That do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(d) below..... 2

(c) That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR, §268.8(a)(1)(ii), with prior approval of the executive director. The modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... ..... 1[1]

(d) That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1
Note: See §305.69(g) of this title (relating to Newly Listed Solid Waste Permit Modification at the Request of the Permittee or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

(H) Surface Impoundments

(1) Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity. .. 3

(2) Replacement of a surface impoundment unit..... 3

(3) Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system..... 2

(4) Modification of a surface impoundment management practice..... 2

(5) Treatment, storage, or disposal of different wastes in surface impoundments:

(a) That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit..... 3

(b) That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit..... 2

(c) That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR, §268.8(a)(2)(ii), and provided that the unit meets the minimum technological requirements stated in 40 CFR, §268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1

(d) That are residues from wastewater treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in 40 CFR, §268.5(h)(2), and provided further that the surface impoundment has previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

(I) Enclosed Waste Piles. For all waste piles except those complying with 40 CFR, §264.250(c), modifications are treated the same as for a landfill. The following modifications are applicable only to waste piles complying with 40 CFR, §264.250(c).

(1) Modification or addition of waste pile units:

(a) Resulting in greater than 25% increase in the facility's waste pile storage or treatment capacity..... 3

(b) Resulting in up to 25% increase in the facility's waste pile storage or treatment capacity..... 2

(2) Modification of waste pile unit without increasing the capacity of the unit..... 2

(3) Replacement of a waste pile unit with another waste pile unit of the same design and capacity and meeting all waste pile conditions in the permit..... 1

(4) Modification of a waste pile management practice.... 2

(5) Storage or treatment of different wastes in waste piles:

(a) That require additional or different management practices or different design of the unit..... 3

(b) That do not require additional or different management practices or different design of the unit..... 2

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes. J. Landfills and Unenclosed Waste Piles

(1) Modification or addition of landfill units that result in increasing the facility's disposal capacity..... 3

(2) Replacement of a landfill..... 3

(3) Addition or modification or a liner, leachate collection system, leachate detection system, run-off control, or final cover system..... 3

(4) Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, run-off control, or final cover system..... 2

(5) Modification of a landfill management practice..... 2

(6) Landfill different wastes:

(a) That require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system..... 3

(b) That do not require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system..... 2

(c) That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR, §268.8(a)(2)(ii), and provided that the landfill unit meets the minimum technological requirements stated in 40 CFR, §268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1

(d) That are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in 40 CFR, §268.5(h)(2), and provided further that the landfill has previously received wastes of the same type (for example, incinerator ash). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

(K) Land Treatment

(1) Lateral expansion of or other modification of a land treatment unit to increase areal extent..... 3

(2) Modification of run-on control system..... 2

(3) Modify run-off control system..... 3

(4) Other modifications of land treatment unit component specifications or standards required in the permit..... 2

(5) Management of different wastes in land treatment units:

(a) That require a change in permit operating conditions or unit design specifications..... 3

(b) That do not require a change in permit operating conditions or unit design specifications..... 2

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

(6) Modification of a land treatment management practice to:

(a) Increase rate or change method of waste application..... 3

(b) Decrease rate of waste application..... 1

(7) Modification of a land treatment unit management practice to change measures of pH or moisture content, or to enhance microbial or chemical reactions..... 2

(8) Modification of a land treatment unit management practice to grow food chain crops, or add to or replace existing permitted crops with different food chain crops, or to modify operating plans for distribution of animal feeds resulting from such crops..... 3

(9) Modification of operating practice due to detection of releases from the land treatment unit pursuant to 40 CFR, §264.278(g)(2)..... 3

(10) Changes in the unsaturated zone monitoring system, resulting in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or com- ponents that have specifications different from permit requirements..... 3

(11) Changes in the unsaturated zone monitoring system that do not result in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or components having specifications not different from permit requirements..... 2

(12) Changes in background values for hazardous constituents in soil and soil-pore liquid..... 2

(13) Changes in sampling, analysis, or statistical procedure..... 2

(14) Changes in land treatment demonstration program prior to or during the demonstration..... 2

(15) Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and the executive director's prior approval has been received..... 1[1]

(16) Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration and have received the prior approval of the executive director..... 1[1]

(17) Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the waste can be treated completely, where the conditions for the second demonstration are not substantially the same as the conditions for the first demonstration..... 3

(18) Changes in vegetative cover requirements for closure..... 2

(L) Incinerators, Boilers and Industrial Furnaces

(1) Changes to increase by more than 25% any of the following limits authorized in the permit: A thermal feed rate limit; a feedstream feed rate limit; a chlorine feed rate limit, a metal feed rate limit, or an ash feed rate limit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means..... 3

(2) Changes to increase by up to 25% any of the following limits authorized in the permit: A thermal feed rate limit; a feedstream feedrate limit; chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means..... 2

(3) Modification of an incinerator, boiler, or industrial furnace unit by changing the internal size of geometry of the primary or secondary combustion units, by adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove HCl/Cl2, metals or particulate from the combustion gases, or by changing other features of the incinerator, boiler, or industrial furnace that could affect its capability to meet the regulatory performance standards. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means..... 3

(4) Modification of an incinerator, boiler, or industrial furnace unit in a manner that would not likely affect the capability of the unit to meet the regulatory performance standards but which would change the operating conditions or monitoring requirements specified in the permit. The executive director may require a new trial burn to demonstrate compliance with the regulatory performance standards..... 2

(5) Operating requirements:

(a) Modification of the limits specified in the permit for minimum or maximum combustion gas temperature, minimum combustion gas residence time, oxygen concentration in the secondary combustion chamber, flue gas carbon monoxide and hydrocarbon concentration, maximum temperature at the inlet to the particulate matter emission control system, or operating parameters for the air pollution control system. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means..... 3

(b) Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls..... 3

(c) Modification of any other operating condition or any inspection or recordkeeping requirement specified in the permit..... 2

(6) Burning different wastes:

(a) If the waste contains a POHC that is more difficult to burn than authorized by the permit or if burning of the waste requires compliance with different regulatory performance standards than specified in the permit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means..... 3

(b) If the waste does not contain a POHC that is more difficult to burn than authorized by the permit and if burning of the waste does not require compliance with different regulatory performance standards than specified in the permit..... 2

Note: See §305.69(g) of this title (relating to Newly Regulated Wastes and Units) for modification procedures to be used for the management of newly regulated wastes and units.

(7) Shakedown and trial burn:

(a) Modification of the trial burn plan or any of the permit conditions applicable during the shakedown period for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn..... 2

(b) Authorization of up to an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction, with the prior approval of the executive director .....1[1]

(c) Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the executive director... 1[1]

(d) Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the executive director..... 1[1]

(8) Substitution of an alternate type of nonhazardous waste fuel that is not specified in the permit..... 1

(N) Corrective Action

(1) Approval of a corrective action management unit pursuant to 40 Code of Federal Regulations §264.552..... . 3

(2) Approval of a temporary unit or time extension for a temporary

unit pursuant to 40 Code of Federal Regulations §264.553..... 2

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

Issued in Austin, Texas, on November 17, 1993.

TRD-9332198 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Proposed date of adoption. December 24, 1993

For further information, please call: (512) 463-8069

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Subchapter M. Waste Treatment Fee Program

• 30 TAC §§305.501-305.507

The Texas Natural Resource Conservation Commission (Commission) proposes amendments to §§305.501-305.506, and new §305.507, concerning the waste treatment fee program. The Texas Water Code, §26.0291, authorizes the Commission to assess an annual fee against each permittee holding a permit for wastewater treatment or discharge issued under Chapter 26 of the Texas Water Code. In determining the revenue to be derived from these assessments the Commission considers the funds available from all authorized sources and the requirements to meet budgeted expenses of the water quality activities to which these fee revenues may be allocated. In determining the amount of the fee, the Commission may consider permitting factors such as flow volume, toxic pollutant potential, levels of traditional pollutants and heat load. In addition, the Commission may consider the designated uses and the ranking classifications of the waters affected by discharges from the permitted facility.

Increases in the costs of the regulatory and administrative functions associated with wastewater treatment facilities and water quality programs are anticipated for the 1994-1995 biennium. In addition, federal funds and general state tax revenue sources for water quality regulatory programs will decrease over the same period. To meet the requirements for funds anticipated during the 1994-1995 biennium, the Commission proposes to modify certain features of the rate schedule for determination of waste treatment fees and increase the fee rates.

Under the current rate schedule, each permit for which discharge parameters have been established is assigned a variable number of points based on the values of the specific permit parameters. The point values for permits without variable discharge limitations are set as fixed values by rule. The fee is determined by multiplying the total number of points assigned to a permit by the current rate of $70 per point, up to a maximum of $11,000. Inactive permits are assessed a fee that is 50% of the fee calculated for an active permit. Industrial evaporation and land disposal permits are assigned a fixed number of 5 points while domestic evaporation or land disposal permits are assigned set point values of four points for facilities authorized up to 0.1 million gallons per day (mgd) and ten points for facilities authorized at 0.1 mgd or greater. Stormwater permits are assigned 12 points.

Fee assessments for all permits will increase under this proposed rule. The proposal is to increase the rate per point for all permits from $70 to $75. This generally represents an increase of 7.0%, except for a permit which might exceed the maximum fee, in which case the increase would be less. In addition, however, other changes are proposed which will increase the point values assigned to certain permits and increase the fee assessments. The calculation of the assessed fee is amended to clarify that all of the points calculated for a permit, variable or fixed, are to be multiplied by the applicable rate to establish the fee. Points assigned to permits with the lowest pollutant potential rating are proposed to be increased from zero points to two, except for evaporation and land disposal permits, for which only one point will be assigned for permits of lowest pollutant potential. Points assigned on the basis of permitted flow volume are proposed to be increased from between one point (for permits authorizing less than .05 million gallons per day of discharge) to 32 points (for permits authorizing greater than 6 million gallons per day of discharge). The assignment of points for stormwater permits is amended in order to more clearly identify the types of permits affected.

The title of Subchapter M is proposed to be changed by deleting the word "Inspection" in order to reflect the general application of waste treatment facility revenues to the administration of water quality enforcement and regulatory programs, consistent with existing statutory authority. Generally, all references to "Texas Water Commission" are changed to "Texas Natural Resource Conservation Commission" (TNRCC) consistent with the consolidation of the programs of the former Texas Water Commission into the TNRCC under the provisions of Senate Bill 2, Acts of the 72nd Legislature, First Called Session, 1991. New §305.507 is proposed to implement provisions of House Bill 2605, Acts of the 73rd Legislature, 1993 which authorizes the Commission to establish uniform and consistent provisions for the assessment of penalties and interest for late payment of fees. House Bill 2605 also authorized the deposit of fees to the Water Quality Fund.

Section 305.501, relating to purpose, is amended to refer to the re-titled subchapter. Language is added to clarify that a fee is assessed on both the holder of a permit issued under the Water Code Chapter 26, or other authorization for wastewater treatment or discharge under the subchapter.

Section 305.502, concerning to definitions and abbreviations, is amended, in subsection (a), by deleting the word "inspection" from the definition of "annual waste treatment inspection fee" and states that the fee will apply to any permit or other authorization. The definitions related to Type I and Type II flows are changed to more accurately characterize the types of wastewater streams included. The definition of "fund" is amended to refer to the Water Quality Fund consistent with legislative amendments regarding deposit of revenues. The definition of "land application/evaporation permit" is re-worded and the definitions for "parameter", "payment" and "permit" and definitions related to stormwater permits are amended, generally to incorporate changes to the agency name or the subchapter heading. Under subsection (b), the definition of the technical abbreviation "mg/l" is clarified. The definition of permit is changed to clarify that for the purposes of this subchapter the term "permit" refers to any authorization for the treatment or discharge of wastewater under the Water Code, Chapter 26.

Section §305.503, relating to fee assessment, is amended to reflect the proposed changes to the rate schedule and the determination of wastewater facility fees. Section 305.503(a) is amended with the deletion of the word "inspection" in reference to the fee and clarification of the type of permit or authorization subject to assessment. Section 305.503(c) is amended to clarify that the variable points and any fixed points assigned to a permit are summed and multiplied by the current fee rate to arrive at the total fee assessed for each permit. Section 305.503(f) is amended at subdivision (1) to assign a point value of two to a permit with the lowest pollutant potential (Group I). Under the current rule, no points are assigned on the basis of pollutant potential for Group I permits. New §305 503(f)(1)(C) is added to qualify the assignment of points for pollutant potential to permits for evaporation or land application. For these permits, only 1 point will be assigned to evaporation and land application permits with a pollutant potential rating of I. Section 305.503(f)(2) is amended to incorporate increased point values for authorized flow volumes Increases in point values assigned range from an increase from 3 to 4 points (net 1 point) for a permit of less than .05 mgd authorized discharge volume to an increase from 40 to 72 points (net 32 points) for a permit of greater than 6 mgd authorized discharge volume. Section 305.503(g)(2) is amended by re-wording the description of stormwater permits which are subject to the assignment of set points. Section 3035.503(h) is amended to change the dollar value for each point assigned to a permit from $70 to $75 per point. Section 305.503(i) is amended by deleting a provision authorizing a fee of 25% of the calculated fee rate for permits which are inactive. The provision was effective until August 31, 1992, and has expired under its own terms. The fee for inactive permits shall be 50% of the calculated rate and shall not be less than $150.

Section 305 504, relating to fee payment, is amended to reflect the revised name of the assessed fee and the change in agency name.

Section 305 505 is amended to reference the Water Quality Fund as the appropriate fund to which waste treatment fees are deposited.

Section 305.506, relating to cancellation, is amended with the deletion of the term "in-

spection" in reference to the fee authorized under this subchapter.

New §305.507 establishes penalties and interest rates applicable to delinquent payments of the waste treatment fees authorized under this subchapter. Consistent with House Bill 2605, Acts of the 73rd Legislature, 1993, a penalty of 5.0% of the amount due is assessed late payments with an additional 5.0% due after a payment is 30 days delinquent. After 60 days, delinquent payments will accrue interest at an annual rate of 12%, compounded monthly.

Stephen Minick, budget and planning division, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of enforcement and administration of the sections. The effect on state government will be an increase in revenue of approximately $1,160,00 in each of the fiscal years 1994-1998. The effect on local governments holding municipal wastewater permits will be an increase in costs for annual wastewater permit fees. Facilities which are currently assigned sufficient points to qualify for the maximum fee of $11,000 will see no increase. Other facilities will be affected to varying degrees depending on the size of the facility and the specific permit parameters which are affected by the proposed rule. The increase in assessment rate from $70 to $75 per point will generally increase annual fees by approximately 7.0% Additional proposed changes could result in further increases. The maximum potential increase for any permit will be approximately $3,100. The average increase will be significantly less, no more than $300, and the majority of permits will see an even smaller increase.

Fees for permits of each type will be increased. The increase in cost per point from $70 to $75 will affect each permit and class of permit equally. Changes proposed in the assignment of points, however, will affect different types of permits less uniformly. Agricultural permit holders will be assessed an additional $51,000 per year as a group (an average of $100) related to the assignment of additional points for pollutant potential and authorized flow. On the same basis, increases for industrial permits are anticipated to be approximately $196,000 annually (average of $190). Increases for municipal and private domestic permits, above the base 7.0% increase, are anticipated to be $98,000 (average of $96) and $156,000 (average of $112), respectively. Generally, the maximum fee of $11,000 will mitigate fee increases for larger permits with higher point values, while fee increases for smaller permits will be more significant on the basis of percentage increase and actual dollar increase Annual fees for the approximately 275 inactive permits will increase under provisions of existing regulation which will require payment of 50% of the rate for an active permit. This is increased from the 25% rate which was in effect until August 31, 1993.

The sections as proposed will have fiscal impacts on small businesses. Those businesses with waste treatment permits will be affected in the manner described above. Businesses which discharge to publicly-owned treatment facilities may be collectively affected by increased rates for service if additional permit fee costs are passed directly on to customers. It is not anticipated that recovery of these costs by utility providers will significantly affect small businesses.

Mr. Minick has also determined that for each year of the first five years these sections are in effect the public benefit anticipated as a result of enforcing the sections will be improvements in: the regulation of waste treatment facilities and permitted wastewater discharges, protection of the quality of the state's surface water resources, and compliance with the provisions of the Texas Water Code and the regulations of the Texas Natural Resource Conservation Commission. The costs to individuals who are not affected permit holders anticipated as a result of compliance with these sections would be the same as those costs identified for small businesses which are ratepayers to municipal treatment facilities. On an individual basis, these costs are not anticipated to be significant.

Comments on this proposal may be submitted to Stephen Minick, Budget and Planning Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-8227 The deadline for submission of written comments will be 30 days after the date of publication of this proposal in the *Texas Register*

These amendments are proposed under the Texas Water Code, §5.102 and §5. 105, which provides the Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Code and other laws of the State of Texas, and to establish and approve all general policy of the Commission, and §26.0291 of the Texas Water Code, which authorizes the Texas Natural Resource Conservation Commission to revise fee rates for waste treatment facilities in order to fund regulatory programs for wastewater treatment facilities and discharges to the surface waters of the state.

§305.501. Purpose.

(a) It is the purpose of these sections to maintain the Waste Treatment [Inspection] Fee Program. Under this program, an annual [waste treatment inspection] fee is imposed on each permittee holding a permit **or otherwise authorized to treat or discharge wastewater** under the Texas Water Code, Chapter 26. All fees shall be deposited in a fund for the purpose of supplementing other funds appropriated by the legislature to pay the expenses of the commission in inspecting waste treatment facilities and enforcing the provisions of the Texas Water Code, Chapter 26, the rules and orders of the commission, and the provisions of commission permits governing waste discharges and waste treatment facilities.

(b) (No change.)

§305.502. Definitions and Abbreviations.

(a) Definitions. The definitions contained in the Texas Water Code, §26.001, shall apply herein. The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Annual waste treatment [inspection] fee-A fee charged to each permittee holding a permit **or otherwise authorized to treat or discharge wastewater** under the Texas Water Code, Chapter 26.

(2) (No change.)

(3) Commission-The **Texas Natural Resource Conservation** [Water] Commission.

(4) **Flow** [Final flow] limit-The maximum amount of wastewater discharge authorized during any term of the permit, expressed as a daily average flow, a daily maximum flow, an annual average, or an annual maximum.

(5) (No change.)

(6) Flow volume

(A) Type I[, contaminated]-These wastewaters include sanitary wastewater, process wastewater flows, or any mixed wastewaters containing more than 10% process wastewaters;

(B) Type II[, uncontaminated]-These wastewaters [are relatively uncontaminated. They] include non-contact cooling water or mixed flows which contain at least 90% non-contact cooling water and not more than 1 million gallons per day of process wastewater.

(7) Fund-The **Water Quality Fund** [waste treatment facility inspection fund].

(8) Heat load parameter-The temperature limitation specified in a permit. For purposes of assessing the waste treatment [inspection] fee, points are assigned according to the existence of a temperature limitation within a waste discharge permit.

(9) (No change.)

(10) Land application/evaporation permit-A permit which does not authorize the discharge of wastewaters into surface waters in the state. **These permits include** [, including,] but are not limited to permits for evaporation ponds and irrigation systems.

(11) (No change.)

(12) Parameter-A variable which **defines** [acts as] a set of physical properties whose values determine the characteristics of a waste discharge. Those parameters to be considered under the waste treatment facility [inspection] fee are:

(A) pollutant potential[, expressed as the Standard Industrial Classification (SIC) for industrial permits and an authorized flow of greater than 1 mgd and/or biomonitoring requirements or toxicant numeric limits for domestic permits];

(B)-(G) (No change.)

(13) Payment-Receipt by the commission of the full amount of the annual waste treatment [inspection] fee.

(14) Permit-Any permit issued by the Texas **Natural Resource Conservation** [Water] Commission under authority of the Texas Water Code, Chapter 26, including those permits issued under the authority of both the Texas Water Code, Chapter 26, and other statutory provisions (such as the Health and Safety Code, Chapter 361). **For the purpose of this subchapter, the term "permit" shall include any other authorization for the treatment or discharge of wastewater, including permits by rule.**

(15) (No change.)

(16) Report **only** [discharge] permit-A permit which authorizes the variable or occasional discharge of wastewaters with a requirement that the volume of discharge be reported but without any limitation on the volume of discharge.

(17) Stormwater **outfall or** [/Report discharge] permit-A permit or **outfall(s)** which authorizes the variable or occasional discharge of accumulated stormwater and stormwater runoff, but without any specific limitation on the volume of discharge.

(18) (No change.)

(19) Traditional pollutants-The wastewater parameters typically found in wastewater discharge permits, specifically BOD/COD/TOC, TSS, and ammonia. For purposes of assessing the waste treatment [inspection] fee, points are assigned to these parameters if they are included in a permit.

(b) Abbreviations. The following abbreviations apply to these sections.

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

(4) Mg/l (milligrams per liter)-All limits measured in mg/l are converted to pounds per day (lb/day) using the following conversion: mg/l **multiplied by** the [times] flow volume in MGD **multiplied by** [times] 8.34 equals lb/day.

(5) SIC-Standard Industrial Classification(s)assigned to a facility generating wastewater.

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

§305.503. Fee Assessment.

(a) An annual waste treatment [inspection] fee is assessed against each person holding a permit **or other authorization** issued under the authority of the Water Code, Chapter 26 The amount of the fee is determined by specific permit parameters for which a facility is authorized as of each September 1. The maximum fee which may be assessed each permit is $11,000, except that upon delegation of National Pollutant Discharge Elimination System (NPDES) permit authority to the commission, the maximum fee which may be assessed is $15,000.

(b) (No change.)

(c) Except as provided in subsection (g) of this section, the commission shall assign a point value to each of the permit parameters in subsection (b) of this section. The assigned value(s) shall be weighted according to the specific permit limits and the weighted values summed. **The** [Either the] sum of the variable point values under subsection (f) of this section **and** [or] the set point values established under subsection (g) of this section are multiplied by the current fee rate under subsection (h) of this section to determine the fee to be assessed.

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

(f) Fee rate schedule Except as provided in subsection (g) of this section, each permit shall be assessed a fee based on the specific parameters assigned to the permit and determined by the following schedule. Each permit shall be reviewed to determine the individual values for the parameters covered by this schedule.

(1) Pollutant Potential

(A) Industrial Discharges.

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Group I   =   2 [0] Points
Group II  =  10 Points
Group III =  15 Points
Group IV  =  20 Points
Group V   =  30 Points
Group VI  =  40 Points
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(B) Domestic Discharges.

Group I (< 1.0 mgd, no biomonitoring or toxicant numerical limit) = 2 [0] Points

Group II (≥ 1 mgd and/or biomonitoring, but no toxicant numerical limit) = 10 Points

Group III (toxicant numerical limit) = 15 Points

[Pollutant Potential Points = _____]

(C) Evaporation/land application permits with a toxic rating of 1 will be assessed only one point for pollutant potential. Pollutant Potential Points=_____

(2) Flow Volume.

(A) Type I [(Contaminated)]

≤.05 mgd	=	4 [3] points
>.05 but ≤.25	=	7 [5] points
>.25 but ≤ 2	=	14 [10] points
> 2 but ≤ 4	=	28 [20] points
> 4 but ≤ 6	=	46 [30] points
> 6 [but ≤ 8]	=	72 [40] points
[> 8 but ≤ 10	=	50 points
> 10 mgd	=	60 points]

(B) Type II [(Uncontaminated)]:

≤ 1 mgd	=	3 points
> 1 but ≤ 5	=	10 points
> 5 but ≤ 10	=	20 points
> 10 but ≤ 50	=	30 points
> 50 but ≤ 500	=	40 points
> 500 mgd	=	50 points

(C) Flow Volume Points [(Not To Exceed 60)]=_____

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

(5) Major/Minor Designation. [If facility is rated as] EPA minor facility-0 points; and

[If facility is rated as] EPA major facility-10 points. Major Facility Points=_____

(g) Set Point Permits. The following fees are assessed for permits to which the parameters under subsection (f) of this section are not applicable:

(1) (No change.)

(2) **Report only** or Stormwater **Outfall(s) and** [/Report]

(A) Permits-12 points

(B) Stormwater permit[s] **outfalls** for which **flow** discharge parameters have been established shall be assessed a fee under subsection (f) of this section. Set Points=_____

(h) The annual fee to be assessed is calculated by multiplying the total points determined under subsections (f) and[/or] (g) of this section by the rate of $75 [$70] per point. Permits having both process wastewater discharges assessed under subsection (f) of this section and stormwater discharges assessed under subsection (g) f this section shall be assessed the total of the fees determined under the respective subsections, not to exceed the maximum fee under subsection (a) of this section.

(i) **The** [Until August 31, 1992, the fee assessed an inactive permit shall be 25% of that calculated under subsection (f) and/or subsection

(g) of this section. Beginning September 1, 1992, the] fee assessed an inactive permit shall be 50% of that calculated under subsection (f) and[/or] subsection (g) of this section. In no event shall the fee for an inactive permit be less than **$150** [$100] per year.

§305.504. Fee Payment. Annual waste treatment [inspection] fees are payable within 30 days of the billing date each year for all permittees. Fees shall be paid by check, certified check, or money order payable to the Texas **Natural Resource Conservation** [Water] Commission. New permits will require full payment of the appropriate fee within 30 days of the billing date, and thereafter will be assessed an annual waste treatment [inspection] fee under the schedule set forth herein, beginning with the next regular billing date. All fee assessments are to be based on the permitted parameters (interim or final) specified in the permit, without regard to the actual quality of effluent that the permitted facility is discharging. Where the parameters authorized for a permitted facility change to a higher interim level or to the final level authorized by the permit, the revised fee, if any, will be assessed at the next regular payment date following the change in authorized limits. If a permit is amended to authorize lesser or greater parameters, the revised fee will be assessed at the next regular payment date following the final order of the Texas **Natural Resource Conservation** [Water] Commission effecting the amendment. Fees are payable regardless of whether the permitted facility actually is constructed or in operation.

§305.505. Fund. All fees collected under this waste treatment [inspection] fee program are to be deposited in the **Water Quality Fund** [waste treatment facility inspection fund]. The fund shall be managed in accordance with §305.501 of this title (relating to Purpose).

§305.506. Cancellation, Revocation, and Transfer. Cancellation or revocation of a permit, whether by voluntary action on the part of the permittee or as a result of involuntary proceedings initiated by the commission, will not constitute grounds for a refund, in whole or in part, of any [annual inspection] fee already paid by the permittee. Transfer of a permit will not entitle the transferor permittee to a refund, in whole or in part, of any [annual inspection] fee already paid by that permittee. Any permittee to whom a permit is transferred shall be liable for payment of the annual [inspection] fee assessed for the permitted facility on the same basis as the transferor of the permit.

§305.507. Failure to Make Payment.

(a) Failure to make payment in accordance with this subchapter constitutes a violation subject to enforcement pursuant to the provisions of the Water Code, §26.123.

(b) Owners or operators of a facility failing to make payment of the fees imposed under this subchapter when due shall be assessed a penalty of 5. 0% of the amount due; and, if the fees are not paid within 30 days after the day on which the fees are due, an additional 5.0% penalty shall be imposed. An annual interest rate of 12% compounded monthly, shall be imposed on delinquent fees beginning 60 days from the date on which the fee is due.

(c) Interest or penalties collected by the commission under this section shall be deposited to the Water Quality Fund

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

Issued in Austin, Texas, on November 15, 1993.

TRD-9332112 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: December 24, 1993

For further information, please call: (512) 463-8069

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Chapter 330. Municipal Solid Waste

Subchapter E. Permit Procedures

• 30 TAC §330.65

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

The repealed section is proposed under the authority of the Texas Water Code (Vernon 1992), §5.103, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and under House Bill 2043, as passed by the 73rd Legislature. Additionally, they are promulgated pursuant to the Texas Solid Waste Disposal Act, §361.024, (the Act), Texas Health and Safety Code, (Vernon 1992), which provides the Texas Natural Resource Conservation Commission with the authority to regulate municipal solid waste and adopt rules as necessary to regulate the operation, management, and control of solid waste under its jurisdiction.

§330.65. Requirements of an Application for Registration of Solid Waste Facilities (Type V).

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

Issued in Austin, Texas, on November 17, 1993.

TRD-9332200 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: December 24, 1993

For further information, please call: (512) 463-8069

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Subchapter E. Permit Procedures and Design Criteria

• 30 TAC 330.65

The new section is proposed under the authority of the Texas Water Code (Vernon 1992), §5.103, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and under House Bill 2043, as passed by the 73rd Legislature. Additionally, they are promulgated pursuant to

the Texas Solid Waste Disposal Act, §361.024 (the Act), Texas Health and Safety Code, (Vernon 1992), which provides the Texas Natural Resource Conservation Commission with the authority to regulate municipal solid waste and adopt rules as necessary to regulate the operation, management, and control of solid waste under its jurisdiction.

§330.65. Registration for Solid Waste Management Facilities.

(a) Applicability. This section shall apply to a municipal solid waste management facility which is exempt from permit requirements under §330.4(d) and (g) of this title (relating to Permit Required).

(b) Construction and operation. Owners/operators may proceed with construction of a solid waste management facility meeting all the requirements of this section without prior executive director approval, provided that a public meeting is held pursuant to subsection (d)(3)(C) of this section and the applicant has submitted an application complete with all information demonstrating compliance with these rules to the executive director. The operation of the facility shall not begin until after a preopening inspection has been conducted and authorization to accept waste has been given by the executive director. Owners/operators must comply with all applicable regulations, and shall remain responsible for making corrections and/or other changes that are necessary to meet the requirements, prior to beginning operation of the facility.

(c) Number of copies. Registrants shall submit three copies of the completed application for registration.

(d) Application. The complete registration application shall include Part I of a permit application as required by §330.52 of this title (relating to Technical Requirements of Part I of the Application), including, but not limited to, documentation of population or incoming waste rate, site plan, land use narrative, site operating plan, legal description, evidence of competency, evidence of financial assurance, and an applicant's statement, and shall be submitted as follows.

(1) Documentation of population or incoming waste rate.

(A) Documentation of the population to be served shall be submitted with the application. The population information shall be consistent with the latest population data from the last decennial census.

(B) Documentation of the incoming waste rate shall be submitted with the application. The incoming municipal solid waste rate shall be supported by the reports submitted for calculation of the municipal solid waste disposal fee for the previous six reporting quarters, documentation of new or existing programs that recycle and would reduce the waste loading for the facility, existing data of the municipal solid waste generated by the area to be served, or other data acceptable to the executive director.

(2) Site plan. The site plan shall include all the general design criteria which could be incorporated in a set of construction plans and specifications. A site layout plan, signed and sealed by a registered professional engineer, and a location map shall be included in the plans.

(3) Land use narrative.

(A) The land use narrative shall include a description of the surrounding land use within one-half mile of the site and it shall be shown on a topographic map.

(B) The applicant shall attach documentation of local government approval/acceptance of the site location, e.g., conformity with local zoning restrictions, a building permit, license, nonconforming use authorization, etc. These regulations do not grant authorization for development/operation of the facility in noncompliance with local government ordinances and regulations.

(C) The applicant and the Commission shall conduct a public meeting in the local area, prior to the beginning of construction of the facility, to describe the proposed action to the general public. The public meeting shall be held as prescribed in the Health and Safety Code, §361.0791 (relating to Public Meeting and Notice Requirement) and §305.107 of this title (relating to Public Meeting and Notice Requirements).

(4) Site operating plan

(A) The site operating plan shall include, as a minimum, a description of the solid waste data, the facility operation, operational characteristics of the equipment, facility maintenance, safety provisions, emergency procedures, fire protection, sanitation, facility rules, operating hours, litter control procedures, and vector control procedures.

(B) The plan shall also address alternate processing or disposal procedures of the solid waste in the event that the facility becomes inoperable for periods longer than 24 hours.

(C) The solid waste data shall include an estimate of the amount of solid waste to be received daily, the maximum amount of solid waste to be stored, the maximum and average lengths of time that solid waste is to remain on the site, and the intended destination of the solid waste received at this site.

(5) Legal description. A legal description of the property, including the book and page number of the county deed records, of the current property owner shall be submitted. The legal description shall be a metes and bounds description of the site signed and sealed by a registered professional land surveyor. A drawing of the description, signed and sealed by the surveyor, shall also be submitted. If the property is platted, the book and page number of the final plat record and a copy of the final plat shall be submitted.

(6) Evidence of competency.

(A) The applicant shall submit a list of all Texas solid waste sites which the applicant has owned or operated within the past ten years. The site name, site type, permit or registration number, county, and dates of operation shall be also submitted.

(B) The names of the principals and supervisors of the applicant's organization shall be provided, together with previous affiliations with other organizations engaged in solid waste activities.

(7) Evidence of financial assurance Evidence of financial assurance shall be provided in accordance with §330.9 and §§330. 280-330 286 of this Chapter (relating to Financial Assurance).

(8) Statement of applicant. The following document shall be signed, notarized, and submitted with the application.

(A) I,_____, state that I have knowledge of the facts set forth herein and that these facts are true and correct, to the best of my knowledge and belief. I further state that, to my knowledge and belief, the project for which application is now being made will not in any way violate any law, rule, ordinance, or decree of the duly authorized governmental entity having jurisdiction. I further state that I am the applicant or am authorized to act for the city/county/applicant.

_____

(Signature)

_____

(Type Name and Title)

_____

(Date)

(B) Notary public's certificate:

Subscribed and sworn to before me, by the said _____, this _____ day of _____ 19__, to certify which witness my hand and seal of office.

_____

Notary Public in and for _____ County, Texas.

My commission expires on _____.

(C) The applicant shall provide documentation that the person signing the application meets the requirements of §305.44 of this title (relating to Signatories to Applications).

(e) Design Criteria.

(1) Site access. The site access road from a publicly owned roadway shall be at least a two lane gravel or paved road, designed for the expected traffic flow. Safe on-site access for commercial collection vehicles and for residents shall be provided. The access road design shall include adequate turning radii according to the vehicles that will utilize the site and shall avoid disruption of normal traffic patterns. A positive means to control dust and mud shall be provided.

(2) Access control. Access to the site shall be controlled by a perimeter fence, four foot barbed wire or six foot chain-link, with lockable gates. An attendant shall be on-site during operating hours. A sign shall be provided that gives the site name, registrant name, registration number, operating hours, and site rules.

(3) Miscellaneous design details. The facility shall be designed in accordance with all local building code and land development code requirements. Building setback lines shall be followed, if applicable. Vehicle parking shall be provided for equipment, employees, and visitors. Safety bumpers at hoppers shall be provided for vehicles. Necessary connections for facility cleaning shall be provided. Provisions shall be made to prevent the entry of precipitation into vehicles. The operating area and transport shall be enclosed by walls, chain-link fencing, and/or gates.

(4) Water pollution control. Provisions for the treatment of wastewaters from the facility shall be provided. A connection into a public sewer system, a septic system, or a small wastewater treatment plant are acceptable. The applicant shall obtain any permit or other approval required by state or local code for the system installed. The floor of the operating area shall be concrete, and the walls of the operating areas shall be smooth masonry, metal, or concrete. A sump drain shall be provided to collect all wastewaters generated by the facility, and transport them to the treatment facility.

(5) Air pollution and ventilation. Ventilation of structures designed in accordance with applicable codes shall be provided. The applicant shall consult with the Texas Air Control Board for assistance and any permit requirements.

(6) Storage requirements. On-site storage of source-separated recyclable materials should be provided and this area shall be separate from the transfer area. Control of odors, vectors, and windblown waste from the storage area shall be maintained.

(7) Fire protection. A fire protection plan shall be prepared. This fire protection plan shall describe the source of fire protection (a local fire department, fire hydrants, fire extinguishers, water tanks, water well, etc.), procedures for using the fire protection source, and employee training and safety procedures. The fire protection plan shall comply with local fire codes.

(8) Noise pollution and screening. Screening or other measures to minimize the noise pollution and adverse visual impacts shall be provided.

(9) Site drainage. Drainage provisions for controlling surface water on or near the site shall be provided. The locations of any proposed dikes, berms, storm sewers, levees, detention ponds, and the outfall point shall be identified. Drainage calculations shall be in accordance with §330.55 of this title (relating to Site Development Plan).

(10) Site facilities. The site shall provide facilities for potable water, sanitary purposes, office, maintenance, recyclable materials collection, and solid waste transfer. Concrete pads with raised curbs around the perimeter or asphalt paved areas with berms shall be utilized to control spills and contaminated water.

(11) Additional technical information for composting facilities. For registration of composting facilities, additional technical information related to the specifics of composting shall be submitted by the applicant in accordance with the criteria for composting facilities provided by 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 November 17, 1993.

TRD-9332193 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: December 24, 1993

For further information, please call: (512) 463-8069

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Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste

The Texas Natural Resource Conservation Commission (TNRCC) proposes amendments to §335.1 under Subchapter A (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General), §335.111 under Subchapter E (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), §§335.151, 335. 152, and 335.167 under Subchapter F (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), and §335.431 under Subchapter O (relating to Land Disposal Restrictions). It should be noted that the federal CAMU rule is currently being challenged in the federal courts, and that if the federal rule were to be vacated by the federal court, the TNRCC CAMU rule adopting the federal regulation by reference would no longer be effective.

This proposal, particularly the standards regarding corrective action management units is set forth with the intention of providing decision makers with some degree of additional flexibility in order to expedite and improve remedial decisions. However, it should be pointed out that, even with this proposed extra flexibility, the commission does not intend for this proposal, if adopted, to replace existing standards that define the necessary level of protection to human health and the environment for remedial actions. For example, the applicable requirements contained in the risk reduction standards of Chapter 335 of this title, Subchapter S and related rules, such as §335.8 (relating to Closure), would still be in force.

Section 335.1 (relating to Definitions) is proposed to be amended to add definitions for the terms "corrective action management unit or CAMU" and "remediation waste," and to amend the definitions for the terms "disposal facility," "facility," "landfill," "land treatment facility," "miscellaneous unit," "pile," and "surface impoundment." A corrective action management unit or CAMU is proposed to be defined as an area within a facility that is designated by the commission under Title 40 Code of Federal Regulations (CFR), Part 264, Subpart S, for the purpose of implementing corrective action requirements pursuant to Title 30 of the Texas Administrative Code (TAC) §335.167 and the Texas Health and Safety Code, §361.303. The 40 Code of Federal Regulations, Part 264, Subpart S standards are proposed to be adopted by reference under Chapter 335 Subchapter F, as discussed later in this preamble. The proposed definition for a CAMU requires that only remediation wastes can be managed in the CAMU pursuant to implementing such corrective action requirements.

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

It should be noted that the proposed definition of remediation waste does not include "new" or as-generated wastes that are generated by ongoing industrial or other non-corrective action related processes at the facility, nor does it include corrective action related wastes that are excavated, transported to an off-site facility, and then returned to the originating facility. However, the term is intended to encompass corrective action related wastes managed under the appropriate statutory and regulatory corrective action authorities at commercial waste management facilities, even though they initially originated outside the facility boundaries, having been accepted from off-site. For the purposes of this proposal, such commercial facility remediation wastes would be considered to have "originated" from the commercial facility. The proposed definition of remediation waste is also intended to include wastes such as those generated, under the appropriate statutory and regulatory corrective action authorities, as a result of site investigations relating to corrective actions (e.g., drilling muds).

The term "disposal facility" is proposed as a facility or part thereof where solid waste is intentionally placed into or on any land or water, and at which waste will remain after closure, but does not include a corrective action management unit into which remediation wastes are placed. Since the placement of remediation wastes into a CAMU does not lead to the facility being defined as a "disposal facility," under this proposal, the land disposal restrictions of 40 Code of Federal Regulations, Part 268 would not be invoked by such placement. It should be noted that the "non-inclusion" of a CAMU in the proposed definition of the term "disposal facility" does not necessarily mean that a CAMU is a unit where solid waste has not been intentionally placed into or on the land, at which waste will remain after closure. In this regard, this proposed definition merely excludes CAMUs from the definition of "disposal facility" so that the land disposal restrictions will not apply. The idea here is to create a new class of units called corrective action management units, that is not bound to the land disposal restrictions which are placed on other classes of units in which hazardous waste disposal takes place.

The term "facility" is proposed to be amended to include that, for the purposes of implementing corrective action pursuant to 31 TAC §335.167 or the Texas Health and Safety Code, §361.303, a facility includes all contiguous property under the control of an owner or operator seeking a permit for the management of hazardous waste. Thus, the definition of the term "facility" is proposed to be broader in scope in certain cases, for the purpose of implementing properly authorized corrective action, than the existing definition. Property under the control of an owner or operator seeking a hazardous waste permit that is separated only by a public right-of-way is intended to be included in this proposed amendment to the definition of facility.

Other possible interpretations of this proposed amendment to the definition of facility are illustrated by the following examples. Consider an owner of a contiguous parcel of land consisting of 200 acres, 50 acres of which are leased to another company, and the owner of the 200 acres is seeking a hazardous waste permit. For the purpose of conducting properly authorized corrective action (by the owner of the 200 acres), the facility would include the entire 200-acre parcel, under this proposal. If, on the other hand, the lessee of the 50 acres is seeking a hazardous waste permit and the owner is not, and the lessee wishes to properly conduct corrective action activities, then the facility in this example would be limited to the 50 leased acres. The key portion of the proposed amended definition upon which this interpretation is based is the phrase "...contiguous property under the control of the owner or operator seeking a permit for the storage, processing, and/or disposal of hazardous waste." Since the person seeking a hazardous waste permit controls only the 50-acre plot, then the definition of facility in this example is limited to the 50 acres.

The terms "landfill," "land treatment facility," "miscellaneous unit," "pile," and "surface impoundment" are proposed to be amended to clarify that such units or facilities do not include corrective action management units.

Section 335.111 (relating to Purpose, Scope, and Applicability) is proposed to be amended to specify that the standards for corrective action management units and temporary units under 40 Code of Federal Regulations, §264.552 and 40 Code of Federal Regulations, §264.553 apply to interim status hazardous waste management facilities. These 40 Code of Federal Regulations, Part 264 standards are proposed to be adopted by reference under §335.152, as discussed below. The amendment to §335.111 is proposed as a conforming change so that it is clear that the 40 Code of Federal Regulations, Part 264, Subpart S provisions relating to corrective action management units and temporary units would apply to interim status facilities, as well as to permitted facilities. Together with the proposed amendment at §335.151(c) of this title (relating to Purpose, Scope, and Applicability), as discussed below, a connection between the interim standards and the permitting standards under Chapter 335 of this title, Subchapters E and F, respectively, would be created.

Section 335.151(c) is proposed to state that owners and operators of interim status facilities must comply with the interim status standards until final administrative disposition of the permit application, except as provided under Title 40 Code of Federal Regulations, Part 264, Subpart S. Under this proposal, the permitting standards relating to corrective action management units and temporary units are available to be applied to interim status hazardous waste management facilities, under the appropriate statutory and regulatory corrective action authorities.

Section 335.152(a) of this title (relating to Standards) is proposed to be amended by the addition of language adopting by reference 40 Code of Federal Regulations, Part 264, Subpart S, relating to Corrective Action for Solid Waste Management Units, as amended through February 16, 1993, at 58 FedReg 8683. This adoption by reference is proposed to be placed under §335.152(a) (14), while the current paragraphs (14)-(17) are proposed to be renumbered (15) -(18), respectively.

40 Code of Federal Regulations, Part 264, Subpart S contains §264.552 (relating to Corrective Action Management Units (CAMU)) and §264.553 (relating to Temporary Units (TU)) As proposed to be adopted by reference under §335.152(a)(14), the commission, for the purposes of implementing remedies under §335.167 (relating to Corrective Action for Solid Waste Management Units) or the Texas Solid Waste Disposal Act, Texas Health and Safety Code, (Vernon Pamphlet 1993), §361.303 (relating to Corrective Action) , may designate an area at a facility as a CAMU, in accordance with the requirements of 40 Code of Federal Regulations, §264.552. Please refer to 40 Code of Federal Regulations, §264.552. Under this section, the placement of remediation wastes into or within a CAMU does not constitute land disposal of hazardous wastes, and thus the land disposal restrictions (LDRs) of 40 Code of Federal Regulations, Part 268, as adopted by reference under Chapter 335 Subchapter O,

would not apply. Also, the consolidation or placement of remediation wastes into or within a CAMU would not constitute creation of a unit subject to minimum technological requirements (MTRs). Under this proposal, the excavation of remediation wastes from a CAMU for on-site treatment in another separately regulated (or otherwise exempt) unit, followed by redeposition of those wastes or residuals into the CAMU would not trigger the LDRs or the MTRs. However, removal of remediation wastes from a CAMU, and placement of those wastes into a land-based unit that is not a CAMU would be subject to applicable LDRs and MTRs. It should be noted that non-land-based units physically located within a CAMU would not actually be part of the CAMU, and the applicable hazardous waste regulatory requirements would apply to these "non-CAMU" units.

As proposed to be adopted by reference at §335.152(a)(14), 40 Code of Federal Regulations, §264.552 further provides that the commission may designate a regulated unit as a CAMU, or may incorporate a regulated unit into a CAMU, if: the regulated unit has begun the closure process under 40 Code of Federal Regulations, §264.113 or §265.113; and inclusion of the regulated unit will enhance implementation of effective, protective and reliable remedial actions for the facility. With regard to the requirement for the regulated unit to be closed or closing, it should be noted that operating regulating units, including those continuing to operate under the delay of closure provisions, would not be eligible for designation as CAMUs. Also, the applicable ground-water monitoring, closure and post-closure, financial, and unit-specific requirements that applied to that regulated unit would continue to apply to that portion of the CAMU after incorporation of the regulated unit into the CAMU.

As proposed to be adopted by reference, 40 Code of Federal Regulations, §264.552(c) specifies decision criteria which the commission must use in designating a CAMU. These criteria include that the CAMU shall facilitate the implementation of reliable, effective, protective, and cost-effective remedies; and that the waste management activities associated with the CAMU shall not create unacceptable risks to humans or to the environment resulting from exposure to hazardous wastes or hazardous constituents. Under this proposal, the CAMU may include uncontaminated areas of the facility, only if including such areas for the purpose of managing remediation waste is more protective than management of such wastes at contaminated areas of the facility. Other decision criteria involve minimizing future releases, expediting remedial activities, enabling the use of treatment technologies (including innovative technologies) to enhance long-term effectiveness, and minimizing the land area upon which wastes would remain after closure of the CAMU.

As proposed to be adopted by reference, 40 Code of Federal Regulations, §264.552(d) requires the facility owner or operator to provide sufficient information to enable the commission to designate a CAMU in accordance with the criteria of 40 Code of Federal Regulations, §264.552. 40 Code of Federal Regulations, §264.552(e) contains requirements for CAMUs which the commission must specify in the permit or order. These requirements relate to a number of factors, including areal configuration, design, operation, closure, post-closure, and ground-water monitoring requirements. Please refer to 40 Code of Federal Regulations, §264.552(e) for details concerning these CAMU requirements.

As proposed to be adopted by reference, 40 Code of Federal Regulations, §264.552(f)-(h) requires the executive director to document the rationale for designating CAMUs and to make the documentation available to the public, requires that incorporation of a CAMU into an existing permit must be accomplished through the permit amendment or modification procedures, and specifies that the designation of a CAMU does not change the commission's existing authority to address clean-up levels, including the risk reduction standards under Chapter 335, Subchapter S, nor does it change the commission's existing authority to address media-specific points of compliance to be applied to remediation at a facility, or other remedy selection decisions. Of course, CAMUs may also be implemented through the use of orders issued pursuant to the Texas Health and Safety Code, §361.303 Such orders will generally require the same information as required in permits under 40 Code of Federal Regulations, §264.552(e), proposed to be adopted by reference, as previously discussed. It should be noted that the only mechanisms for designating and implementing a CAMU is through a permit or an order under the appropriate statutory and regulatory authorities.

Also as proposed to be adopted by reference under §335.152(a)(14), 40 Code of Federal Regulations, §264.553 (relating to Temporary Units (TU)) provides that, for temporary tanks and container storage areas used for processing or storage of hazardous remediation wastes, during remedial activities required under §335.167 (relating to Corrective Action for Solid Waste Management Units) or the Texas Solid Waste Disposal Act, Texas Health and Safety Code, (Vernon Pamphlet 1993), §361.303 (relating to Corrective Action), the commission may determine that a design, operating, or closure standard applicable to such units may be replaced by alternative requirements which are protective of human health and the environment. Any temporary unit to which alternative requirements are so applied would have to be located within the facility boundary, and would have to be used only for processing or storage of remediation wastes.

Note that only tanks and container units used for the processing or storage of hazardous remediation wastes are eligible for designation as temporary units under this proposal. Thus, a miscellaneous unit regulated under 40 Code of Federal Regulations, Part 264, Subpart X is not eligible for TU designation under this proposal. Also note that otherwise eligible units that manage non-hazardous remediation wastes and do not handle hazardous remediation wastes are not included in this proposal, because there is no need to provide alternative requirements where specific design, operating, or closure standards do not exist, as is the case for non-hazardous industrial solid waste management at this time.

As proposed to be adopted by reference under this proposal, 40 Code of Federal Regulations, §264.553 also provides a number of factors which the commission would have to consider in establishing standards to be applied to a TU, including length of time of operation, type of unit, waste volumes and the characteristics of the wastes to be managed, release potential, hydrogeological and other relevant environmental conditions at the facility which may influence the migration of any potential releases, and potential for exposure of humans and environmental receptors if any releases were to occur from the unit.

Under this proposal, the commission would be required to specify in the permit or order the length of time a temporary unit will be allowed to operate, to be no longer than one year, with an allowance for the commission to extend the operational period once for no longer than one year beyond that originally specified in the permit or order, if the commission determines that: continued operation of the unit will not pose a threat to human health and the environment; and continued operation of the unit is necessary to ensure timely and efficient implementation of remedial actions at the facility.

Under this proposal, the executive director would have to document the rationale for designating TUs and for granting time extensions for TUs, and to make the documentation available to the public. Under this proposal, incorporation of a TU into an existing permit must be accomplished through the permit amendment or modification procedures. Of course, TUs may also be implemented through the use of orders issued pursuant to the Texas Health and Safety Code, §361.303. It should be noted that the only mechanisms for designating and implementing a TU is through a permit or an order under the appropriate statutory and regulatory authorities.

Section 335 152(c) is proposed to be amended to include additional references to state equivalents for certain federal terms. For example, it is proposed that, where there is a reference in the Environmental Protection Agency regulations adopted by reference in this section to the Resource Conservation and Recovery Act, §3008(h) et seq, the reference is more properly made, for the purposes of state law, to the Texas Solid Waste Disposal Act, Texas Health and Safety Code, (Vernon Pamphlet 1993), §361.303 (relating to Corrective Action). Other state references which are proposed to be added are those equivalent to the following federal references. 40 Code of Federal Regulations (CFR), §§260.10, 264.90, 264.101, 270 41, and 270.42, 40 Code of Federal Regulations, Part 264, Subpart F, and 40 Code of Federal Regulations, Part 265, Subpart F. Also proposed under §335.152(c) is amendment of the term Texas Water Commission to Texas Natural Resource Conservation Commission.

Finally, §335.431(c)(1) is proposed to be amended to change the date through which the 40 Code of Federal Regulations, Part 268 regulations are adopted by reference, to February 16, 1993, in (58 FedReg 8685). This regulation contains the conforming change in the definition of "land disposal," such that the

term does not include placement in a corrective action management unit.

Stephen Minick, division of budget and planning, has determined that for the first five years the proposed rules will be in effect there will be fiscal implications as a result of enforcement and administration of the rules. There are no significant effects anticipated for state government. These rules may result in some shift in workload requirements related to submission of additional permit modification requests and the execution of additional formal compliance orders by the commission. Any actual increases in workload are anticipated to be small and will be satisfied within existing resources. There are no anticipated effects on local governments.

Under these rules persons cleaning up hazardous waste facilities with releases of hazardous constituents are allowed to request that certain contaminated areas be designated as corrective action management units not subject to certain stringent restrictions on land disposal. Statewide cost savings to the affected regulated community over the first five years of implementing the rule is estimated to total between $1.0 billion to $1.67 billion or an average of between $200 million and $334 million per year. These savings are primarily attributable to avoided costs during remediation activities of off-site incineration and disposal of clean-up residues. There are no direct effects on small businesses anticipated. Generally, only large businesses would be affected by the proposed rules. The affected businesses are mostly large industrial or manufacturing concerns that have practiced hazardous waste disposal on-site. Virtually no small businesses are engaged in operation of on-site hazardous waste land disposal facilities and would not be affected by these proposed rules.

Mr. Minick also has determined that for the first five years these rules are in effect the public benefit anticipated as a result of enforcement of or compliance with the rules will be: increased economic stability of businesses engaged in clean-up of onsite contamination; stimulation of remediation technology and related business activities; increased levels of remediation activity and resulting decreases in the number of contaminated sites; and reduction in the amounts of hazardous waste transported to and disposed at off-site facilities. There are no known costs anticipated for persons required to comply with these rules as proposed.

Comments on the proposed sections may be submitted to Raymond Austin, Manager, Rules Development Section, Waste Policy Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 908-6814.

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

- **30 TAC §335.1**

The amendment is proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, which provides the commission with authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The sections are also promulgated under the Texas Health and Safety Code, Texas Solid Waste Disposal Act, §361.017 and §361.024, which provides the commission the authority to regulate industrial solid wastes and hazardous municipal wastes and to adopt and promulgate rules consistent with the general intent and purposes of the Act.

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

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

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

Facility-Includes:

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

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

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

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

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

Pile-Any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for processing or storage, **and that is not a corrective action management.**

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

Surface impoundment or impoundment-A facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well or a

corrective action management unit. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

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

Issued in Austin, Texas, on November 17, 1993.

TRD-9332194 Mary Ruth Holder
Director, Legal Services
Texas Natural Resource Conservation Commission

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For further information, please call: (512) 463-8069

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

• 30 TAC §335.111

The amended section is proposed under the Texas Water Code, §5.103 and §5.105 (Vernon 1988), which authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and pursuant to the Texas Health and Safety Code, §361.017 and §361. 024 (Vernon 1992), which further authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary to manage industrial solid and municipal hazardous wastes.

§335.111. Purpose, Scope, and Applicability.

(a) The purpose of this subchapter is to establish minimum requirements that define the acceptable management of hazardous waste prior to the issuance or denial of a hazardous waste permit and until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled. This subchapter and the standards of 40 Code of Federal Regulations, §264.552 and §264.553 apply [applies] to owners and operators of hazardous waste storage, processing or disposal facilities who have fully complied with the requirements for interim status under the Resource Conservation and Recovery Act, §3005(e).

(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.

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

• 30 TAC §§335.151, 335.152, 335.167

The amended sections are proposed under the Texas Water Code, §5.103 and §5.105 (Vernon 1988), which authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and pursuant to the Texas Health and Safety Code, §361.017 and §361. 024 (Vernon 1993), which further authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary to manage industrial solid and municipal hazardous wastes.

§335.151. Purpose, Scope and Applicability.

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

(c) A facility owner or operator who has fully complied with the requirements for interim status, as defined in the Resource Conservation and Recovery Act, §3005(e), and §335.2 and §335.43 of this title (relating to Permit Required), must comply with the requirements of Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) in lieu of the requirements of this subchapter, until final administrative disposition of his permit application is made, except as provided under Title 40 Code of Federal Regulations, Part 264, Subpart S.

§335.152. Standards.

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

(1)-(13) (No change.)

(14) **Subpart S-Corrective Action for Solid Waste Management Units (as amended through February 16, 1993, at 58 FedReg 8683);**

(15)[14] Subpart W-Drip Pads (as amended through December 24, 1992 at 57 Federal Regulations 61492);

(16)[(15)] Subpart X-Miscellaneous Units;

(17)[(16)] Subpart AA-Air Emission Standards for Process Vents (as amended through April 26, 1991, at 56 FedReg 19290);

(18)[(18)] Subpart BB-Air Emission Standards for Equipment Leaks (as amended through April 26, 1991, at 56 FedReg 19290).

(b) (No change).

(c) Where there is reference in the Environmental Protection Agency regulations adopted by reference in this section to the "regional administrator," the reference is more properly made, for purposes of state law, to the "executive director" of the Texas Natural Resource Conservation Commission [Texas Water Commission] or to the commission, consistent with the organization of the commission as set out in the Texas Water Code, Chapter 5, Subchapter B. Where there is a reference in the Environmental Protection Agency regulations to the term "treatment," the reference is more properly made, for purposes of state law, to the term "processing." **Where there is a reference in the Environmental Protection Agency regulations adopted by reference in this section to the Resource Conservation and Recovery Act, §3008(h), et seq, the reference is more properly made, for purposes of state law, to the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (relating to Corrective Action). Where there is a reference in the Environmental Protection Agency regulations adopted by reference in this section to 40 Code of Federal Regulations, §§260.10, 264.90, 264.101, 270.41, or 270.42, the reference is more properly made, for purposes of state law, to §335.1 of this title (relating to Definitions), §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response), §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), §305.62 of this title (relating to Amendment), or §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), respectively. Where there is a reference in the Environmental Protection Agency regulations adopted by reference in this section to 40 Code of Federal Regulations, Part 264,**

Subpart F, the reference is more properly made, for purposes of state law, to §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response), §335.157 of this title (relating to Required Programs), §335.158 of this title (relating to Groundwater Protection Standard), §335.159 of this title (relating to Hazardous Constituents), §335.160 of this title (relating to Concentration Limits), §335.161 of this title (relating to Point of Compliance), §335.162 of this title (relating to Compliance Period), §335.163 of this title (relating to General Groundwater Monitoring Requirements), §335.164 of this title relating to Detection Monitoring Program), §335.165 of this title (relating to Compliance Monitoring Program), §335.166 of this title (relating to Corrective Action Program), and §335.167 of this title (relating to Corrective Action for Solid Waste Management Units). Where there is a reference in the Environmental Protection Agency regulations adopted by reference in this section to 40 Code of Federal Regulations, Part 265, Subpart F the references is more properly made, for purposes of state law, to include §335.116 of this title (relating Applicability of Groundwater Monitoring Requirements) and §335.117 of this title (relating to Recordkeeping and Reporting), in addition to the reference to 40 Code of Federal Regulations, Part 265, Subpart F, except §265.90 and §265.94. Where there is a reference in the Environmental Protection Agency regulations adopted by reference in this section to the EPA, the reference is more properly made, for the purposes of state law, to the Texas Natural Resource Conservation Commission. A copy of 40 Code of Federal Regulations, Part 264 is available for inspection at the library of the Texas Water Commission, located on the fifth floor of the Stephen F. Austin State Office Building, 1700 North Congress Avenue, Austin.

§335.167. Corrective Action for Solid Waste Management Units.

(a) (No change.)

(b) Corrective action will be specified in the compliance plan under §305.401 of this title (relating to Groundwater Compliance Plan) and in accordance with this section, 40 Code of Federal Regulations, Part 264, Subpart S, and §335.152 of this title (relating to Standards) The plan will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit or plan) and assurances of financial responsibility for completing such corrective action.

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

Issued in Austin, Texas, on November 17, 1993.

TRD-9332196 Mary Ruth Holder
Director, Legal Services
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: December 24, 1993

For further information, please call: (512) 463-8069

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Subchapter R. Waste Classification

- **30 TAC §§335.501-335.503, 335.507-335.514**

The Texas Natural Resource Conservation Commission ("commission") proposes amendments to §§335.501-335.503, and 335.507-335.514, concerning waste classification. The rules were published in the in the November 13, 1992, issue of the *Texas Register* (17 TexReg 8010) in much the same form as they were adopted by the commissioners on November 4, 1992; however, certain provisions had been inadvertently altered. The purpose of the proposed changes is to correct those alterations and to clarify certain provisions of the rules.

It is proposed that §335.501 (Purpose, Scope and Applicability), §335. 502 (Conversion to New Waste Notification and Classification System), §335. 507 (Class 3 Waste Determination), §335.508 (Classification of Specific Industrial Solid Wastes), §335.509 (Waste Analysis) and §335.514 (Variance from Waste Classification Provisions) be amended to correct typing errors. (Examples of the type of corrections are adding an "s" to the phrase "hydrocarbon concentration" and placing "the" in appropriate locations.)

It is proposed that §335.502(a)(1) (Conversion to New Waste Notification and Classification System) be removed since it refers to the "effective date of the rules" only in generalities. The proposal is being made because the specific effective dates and their consequences are fully described elsewhere in the section. It is also felt that since the paragraph does not provide any additional information, it could be confusing to those attempting to determine why it was included in the rules With the removal of §335.502(a)(1), §335. 502(a) will require renumbering. In addition, the commission did not intend to include the provisions of §335.502(a)(1) in the original rule, however, it was inadvertently added.

It is proposed that additional language be added to §335.502(a)(2) (Conversion to New Waste Notification and Classification System) which clarifies that after January 1, 1993, all new waste streams and existing unclassified waste streams shall be coded in accordance with provisions of Subchapter R.

It is proposed that §335.502(b) (Conversion to New Waste Notification and Classification System) be revised to replace the phrase "after the effective date of this subchapter" with "in accordance with the schedule set forth in the subchapter". This is proposed because there is more than one effective date provided for in Subchapter R.

It is proposed that §335.502(c) (Conversion to New Waste Notification and Classification System) be revised to replace the phrase "the effective date of this subchapter" with the actual effective date (January 1, 1993) for this particular provision.

For clarification purposes, it is proposed that in §335.502(d) (Conversion to New Waste Notification and Classification System) the phrase "these rules" be replaced by the phrase "this chapter".

For clarification purposes, it is proposed that in §335.502(e) and (f) (Conversion to New Waste Notification and Classification System) the phrase "these rules" be replaced by the phrase "this subchapter".

For clarification purposes, it is proposed that in §335.502(g) (Conversion to New Waste Notification and Classification System) the phrase "these rules" be deleted since the provision already references a particular subsection of the rules.

It is proposed that §335.503(b)(4) (Waste Classification and Waste Coding Required) be amended to allow generators of spill waste the ability to obtain sequence numbers from commission staff other than those associated with the commission's Emergency Response Team or, if applicable, assign their own sequence numbers.

It is proposed that §335.507 (Class 3 Waste Determination) be amended to clarify the fact that representative sampling may include one or more samples. The number of samples necessary for representative sampling to occur depends upon the waste and the particular circumstances of its generation.

It is proposed that §335.508(2) (Classification of Specific Industrial Solid Wastes) be amended to allow empty small containers, regardless of what they have held, to be considered Class 2 wastes. The current provision limits the Class 2 classification to those containers which have held a non-hazardous waste. Therefore, under the current provision, containers which have held products or which have held hazardous wastes are ineligible for the Class 2 classification. The proposal to allow empty small containers, which have held products and/or hazardous wastes, a Class 2 classification is felt warranted because when small containers are thoroughly emptied (ie. they meet the requirements of §335.41(f)(2)), the minimal residues they may contain should pose little harm. The commission intended to allow for this provision in its original rule. However, the rule was published with the "non-hazardous waste" limitation for small containers. It is proposed that §335.508(3)(B) and (C) (Classification of Specific Industrial Solid Wastes), be modified to allow (not require) generators to designate certain types of Class 2 wastes as specific types of plant refuse.

It is proposed that §335.508(3)(E) (Classification of Specific Industrial Solid Wastes) be clarified to state that medical wastes, that are regulated under the Medical Waste Program, are to be classified as Class 2 wastes. The current provision could be misinterpreted to

mean that all medical waste, regardless of its status in the Medical Waste Program, is subject to the requirements of the Medical Waste Program. The intention of the provision is to have non-hazardous medical wastes that are regulated under the Medical Waste Program be subject to the shipping and reporting requirements of the Medical Waste Program rather than to both the Medical Waste Program and the Industrial and Hazardous Waste Program. Non-hazardous medical wastes which are not subject to the Medical Waste Program are not automatically Class 2 waste and are subject to the remainder of the classification criteria.

It is proposed that §335.508(3)(E) be renumbered to §335.508(4). This will clarify that the provisions of §335.508(3)(E) specifically references medical waste and should not be considered part of the listing in 335.508(3) which references "paper, cardboard, food wastes, and general plant trash". Medical waste is not considered "paper, cardboard, food wastes, or general plant trash" and should be recognized in its own grouping. If §335.508(3)(E) is renumbered, the remainder of the section (§335.508(4)-(8)) would also require renumbering.

It is proposed that §335.508(8) (Classification of Specific Industrial Solid Wastes) be amended to clarify where supporting analytical data requirements may be found in Subchapter R.

It is proposed that §335.510 (Sampling Documentation), §335.511 (Use of Process Knowledge) and §335.513 (Documentation Required) be amended to clarify that documentation for all waste classifications must be maintained for the time periods established in §335.513. It is proposed that §335. 511(a) (Use of Process Knowledge) be amended to clarify that process knowledge may be allowed for any classification determination.

It is proposed that §335.511(a)(4) (Use of Process Knowledge) be amended to clarify that the commission can require and/or request documentation be submitted to it.

It is proposed that in §335.511(b) (Use of Process Knowledge) the word "analysis" be replaced by the word "concentration" when discussing the presence or absence of individual analytes in a waste. Analysis provide information on the concentrations of analytes in waste. The analysis is not the concentration.

It is proposed that §335.512 (Executive Director Review) be amended such that an appeal to a commission's waste classification not be limited to 30 days from receipt of notice of the classification. The 30-day limitation was not intended to be included in this provision in the original rule, since additional information and or situations, which may justify a reclassification, may be forthcoming after the expiration of the 30-day time period.

It is proposed that §335.513 (Documentation Required) be amended to include a provision which notes that a generator may request information submitted to the commission remain confidential. The inclusion or deletion of this provision does not alter a generator's ability to request that certain information remain confidential. However, it was the intention of the commission to include this "confidential" provision in the original rules since many individuals may be unaware that they can request confidentiality.

It is proposed that §335.514 (Variance from Waste Classification Provisions) be amended to remove the reference to "alternating classification criteria or procedures which meet or exceed the requirements and intent of these rules". The commission did not intend to include this reference in the original rules and has not established any "alternating classification criteria or procedures".

Mr. Stephen Minick, Office of Budget and Planning, has determined that for the first five-year period the sections are in effect, there will be no direct fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Minick 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 a reduction in the cost of interpreting the rules as well as a reduction in the cost of managing small, empty containers. As a result, increased compliance with the rules regarding industrial and hazardous waste is anticipated. With an increase in compliance with the rules, one should also see an increase in the protection of human health and the environment. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Vanessa Schiller, Waste Evaluation Section, Texas Natural Resource Conservation, 1700 North Congress Avenue, Austin, Texas 78701. Comments will be accepted for 30 days after the date of this publication.

The amended sections are proposed under the Texas Water Code, §5.103 and §26.011, which authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary to carry out its power and duty to protect water quality in the state

The sections are also proposed under the Texas Health and Safety Code, §361.017 and §361.024, which authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary to manage industrial solid and municipal hazardous wastes.

§335.501. Purpose, Scope and Applicability. **Persons** [Person] who **generate** [generates] industrial solid waste or municipal hazardous waste shall comply with the provisions of this subchapter. Persons who generate wastes in Texas shall classify their own waste according to the standards set forth in this subchapter and may do so without any prior approval or communication with the commission other than notification of waste generation activities pursuant to §335 6 of this title (relating to Notification Requirements) and submittal of required documentation pursuant to §335.513 of this title (relating to Documentation Required) This subchapter will

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

§335.502. Conversion to New Waste Notification and Classification System.

(a) These rules relating to waste classification are effective as outlined below. The rules shall be implemented as defined in subsections (b)-(g) of this section, which are summarized as follows:

[(1) effective date of rules adoption–after this date all waste classifications involving new waste streams and existing unclassified waste streams shall be classified according to the requirements of this subchapter;]

(1)[(2)] January 1, 1993–On and after this date all waste classifications involving new waste streams and existing unclassified waste streams shall be classified **and coded** according to the requirements of this subchapter.

(2)[(3)] July 1, 1994–This is the completion deadline for updating all hazardous and nonhazardous waste stream notifications.

(3)[(4)] October 1, 1994–This date is the deadline for the commission to provide notice in Texas Register concerning final implementation of rules.

(4)[(5)] January 1, 1995–The rules shall be fully implemented on or before **this** [the] date. All waste must be managed according to the classification assigned under this subchapter.

(b) Waste notification information as required under §335.6 of this title (relating to Notification Requirements) and waste codes required under §335.10(b) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste) shall be assigned by the generator and provided to the commission as provided by this chapter [and all other applicable laws].

(1) All waste notification information provided to the commission **in accordance with the schedule set forth in this subchapter** [after the effective date of this subchapter] shall be provided in a format defined by the commission.

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

(c) All industrial solid waste and municipal hazardous waste managed in the state shall be classified by the generator according to the provisions of this subchapter.

(1) After **January 1, 1993** [the effective date of this subchapter], all new waste streams and waste streams not previously classified shall be classified and managed pursuant to the provisions of this subchapter

(2) (No change.)

(d) The effective date for management of **all** wastes under **this chapter** [these rules] is January 1, 1995. On and after this date, all solid waste generated or otherwise handled in the state shall be classified and accordingly managed pursuant to this subchapter. This effective date may be revised by subsection (e) of this section.

(e) Not later than October 1, 1994, the commission shall assess the impact of the implementation of **this subchapter** [these rules]. The commission shall evaluate waste capacity issues, costs to the regulated community and the state, personnel and staffing levels of the commission, and review the applicability of the rules themselves. The commission may use information from any source necessary to assess the impact. Based on this evaluation, by October 1, 1994, the commission shall give public notice in the *Texas Register* that either:

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

(f) If the commission fails to give public notice in the Texas Register as required in subsection (e) of this section, **this subchapter** [these rules] takes full force and effect on January 1, 1995.

(g) After the effective management date [of these rules] as provided in subsection (d) of this section, future reclassification of a waste may be required because of changes in classification criteria. A generator whose waste stream is reclassified to a more stringent waste classification after the effective management date of this subchapter as provided in subsection (d) of this section must reclassify the waste and begin managing the waste according to the more stringent classification requirements according to the following schedule:

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

§335.503. Waste Classification and Waste Coding Required.

(a) (No change.)

(b) As required under the schedule provided in §335.502 (relating to Conversion to New Waste Notification and Classification System), all industrial solid waste and municipal hazardous waste generated, stored, processed, transported, or disposed of in the state shall be coded with an eight-digit waste code number which shall include a four-digit waste sequence number, a three-digit form code, and a one-character classification (either H, 1, 2, or 3). Form codes are provided in Appendix 3 of this subchapter. Procedures for assigning waste code numbers and sequence numbers are outlined below and available from the commission at the address listed in Appendix 2 of this subchapter.

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

(4) Generators of wastes resulting from a spill **may** [must] obtain a sequence number for the spill related wastes from the commission's Emergency Response Section.

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

§335.507. Class 3 Waste Determination. An industrial solid waste is a Class 3 waste if it is inert and essentially insoluble, and poses no threat to human health and/or the environment. Class 3 wastes include, but are not limited to, materials such as rock, brick, glass, dirt, and certain plastics and rubber which are not readily decomposable. An industrial solid waste is a Class 3 waste if it:

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

(4) is essentially insoluble.

(A) Essential insolubility is established:

(i) when, using the test methods specified in Appendix 4 (7-Day Distilled Water Leachate Test), the **extract(s)** [extract] from **the** [a] representative **sampling** [sample] of the waste does not leach greater than the Maximum Contaminant Levels listed in Table 3 of Appendix 1 of this subchapter;

(ii) using the test methods described in 40 Code of Federal Regulations, Part 261, Appendix II, or equivalent methods approved by the executive director under the procedures set forth in §335.509 of this title (relating to Waste Analysis), the **extract(s)** [extract] from **the** [a] representative **sampling** [sample] **of the waste** does not exhibit detectable levels of constituents found in Table 1. This excludes the constituents listed in 40 Code of Federal Regulations, Part 141, Subparts B and G, which are addressed in clause (i) of this subparagraph;

(iii) when using an appropriate test method, [a] representative **sampling** [sample] of the waste does not exhibit detectable levels of total petroleum hydrocarbon (TPH). Petroleum substance wastes as defined in §334.481 of this title (relating to Definitions) are not subject to this subsection; and

(iv) when using an appropriate test method,[a] representative **sampling** [sample] of the waste does not exhibit detectable levels of polychlorinated biphenyls (PCB's).

(B)-(C) (No change.)

§335.508. Classification of Specific Industrial Solid Wastes. The following non-hazardous industrial solid wastes shall be classified no less stringently than according to the provisions of this section:

(1) (No change.)

(2) Empty containers that are a solid waste as defined in §335.1 (relating to Definitions) shall be subject to the following criteria:

(A) A container which has held a Hazardous Substance as defined in 40 CFR, Part 302, a Hazardous waste, a Class 1 waste, or a material which would be classified as a Hazardous or Class 1 waste if disposed, and is empty per §335.41(f)(2) of this title (relating to Purpose, Scope and Applicability concerning empty containers):

(i) shall be classified as a Class 1 waste;

(ii) may be classified as a Class 2 waste if the container has a capacity less than 5 gallons [and has held a non-hazardous waste]; or

(iii) (No change.)

(B)-(C) (No change.)

(3) Paper, cardboard, food wastes, and general plant trash shall be subject to the following classification criteria:

(A) (No change.)

(B) Paper, cardboard, linings, wrappings, paper packaging materials, food wastes, glass, aluminum foil, plastics, styrofoam, and food packaging that are produced as a result of plant production, manufacturing, or laboratory operations and that are classified as Class 2 waste **may** [shall] be designated "plant production refuse". Plant production refuse shall not include oils, lubricants of any type, oil filters, contaminated soils, sludges, or wastewaters.

(C) Paper, cardboard, linings, wrappings, paper or wood packaging materials, food wastes, glass, aluminum foil, plastics, styrofoam, and food packaging that come from general office, cafeteria, or food service operations, that are classified as Class 2 wastes, **may** [shall] be designated "plant office refuse."

(D) (No change)

(4)[(E)] **Medical wastes** [Wastes that are associated with first aid stations, medical emergencies, or other non-surgical medical treatment] **which are subject to the provisions of Chapter 330, Subchapter Y, of this title (relating to Medical Waste Management** shall be des-

ignated as Class 2 wastes. [and are subject to the provisions of §§330.1004-1009].

(5)[(4)] (No change.)

(6)[(5)] Waste containing petroleum hydrocarbon **concentrations** [concentration] greater than 1500 parts per million total petroleum hydrocarbon (TPH) shall be classified as Class 1. Wastes resulting from the cleanup of leaking underground storage tanks (USTs) which are regulated under **Chapter** [§] 334, Subchapter K, of this title (relating to Petroleum Substance Waste) are not subject to classification under this subchapter.

(7)[(6)] Wastes generated by the mechanical shredding of automobiles, appliances, or other items of scrap, used or obsolete metals shall be handled according to the provisions set forth in Texas Solid Waste Disposal Act, the Health and Safety Code, §361.019 until the commission develops specific standards for the classification of this waste and assures adequate disposal capacity.

(8)[(7)] If a nonhazardous industrial solid waste is generated as a result of commercial production of a "new chemical substance" as defined by the federal Toxic Substances Control Act, 15 U.S.C.A., §2602(9), the generator shall notify the commission prior to the processing or disposal of the waste and shall submit documentation requested under §335.513(b) and (c) of this title (relating to Documentation Required) for commission review. The waste shall be managed as a Class 1 waste, unless the generator can provide appropriate analytical data and/or process knowledge which demonstrates that the waste is Class 2 or Class 3, and the commission concurs. If the generator has not received concurrence from the commission within 120 days from the date of the request for the review, the generator may manage the waste according to the requested classification, but not prior to giving ten working days written notice to the commission.

(9)[(8)] All nonhazardous industrial solid waste generated outside the state of Texas and transported into or through Texas for processing, storage, or disposal shall be classified as:

(A) Class 1; or

(B) may be classified as a Class 2 or Class 3 waste if:

(i) (No change.)

(ii) a request for Class 2 or Class 3 waste determination is submitted to the commission accompanied by all supporting **documentation** [analytical data] as **required by §335.513 of this title (relating to Document Required)**. Waste generated out-of-state may be assigned a Class 2 or Class 3 classification only after approval by the commission.

§335.509. Waste Analysis.

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

(c) Upon request of the executive director, **the** generator shall provide additional information as necessary to enable the executive director to adequately review the alternate methods proposed by the generator.

§335.510. Sampling Documentation.

(a) Generators who use analytical data to classify their [Class 2 and Class 3] waste[s] pursuant to §335.509 of this title (relating to Waste Analysis) must maintain documentation of their sampling procedures.

(b) (No change.)

(c) Generators shall document all the information listed in subsection

(b) of this section, and **shall** retain copies on-site **in accordance** with [for a minimum of five years after waste is no longer generated or upon site closure, pursuant to] §335.513 of this title (relating to Documentation Required).

(d) (No change.)

§335.511. Use of Process Knowledge.

(a) Generators may use their existing knowledge about the process to classify or assist in classifying a waste as Hazardous, Class 1, Class 2, or Class 3. Process knowledge must be documented and maintained on-site pursuant to §335.513 of this title (relating to Documentation Required). Material Safety Data Sheets, manufacturers' literature, and other documentation generated in conjunction with a particular process may be used to classify a waste provided that the literature provides sufficient information about the waste and addresses the [Class 1] criteria set forth in **§§335.504-335.508 of this title (relating to Hazardous Waste Determination, Class 1 Waste Determination, Class 2 Waste Determination, Class 3 Waste Determination, and Classification of Specific Industrial Solid Wastes)** [§335.505 of this title (relating to Class 1 Waste Determination)]. **For classes other than hazardous or Class 1, a** [A] generator must be able to demonstrate requisite knowledge of his or her process by satisfying all of the following:

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

(4) Documentation of the waste classification must be maintained and, **if requested or required,** provided to the commission [if required,] pursuant to §335.513 of this title (relating to Documentation Required).

(b) **If the** [a] total **concentration** [analysis] of the constituents [the generator chooses to evaluate] demonstrates that individual analytes are not present in the waste, or that they are present but at such low concentrations that the appropriate Maximum Leachable Concentrations could not possibly be exceeded, the TCLP extraction procedure discussed in §335.505(1) of this title (relating to Class 1 Waste Determination) need not be run. If an analysis of any one of the liquid fractions of the TCLP extract indicates that a regulated constituent is present at such high concentrations that, even after accounting for dilution from the other fractions of the extract, the concentration would be equal to or greater than the Maximum Leachable Concentration for that constituent, then the waste is Class 1, and it is not necessary to analyze the remaining fractions of the extract.

§335.512. Executive Director Review.

(a) (No change.)

(b) A person who believes that the commission staff has inappropriately classified a waste pursuant to this section may appeal that decision. [Such appeal must be filed within 30 days of the date of the receipt of the executive director's determination.] The person shall file an appeal directly with the executive director requesting a review of the waste classification. If the person is not satisfied with the decision of the executive director on the appeal, the person may request an evidentiary hearing to determine the appropriateness of the classification by filing a request for hearing with the commission.

§335.513. Documentation Required.

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

(c) The following documentation shall be maintained by the generator on-site immediately upon waste generation and for a minimum of five years after the waste is no longer generated or stored or until site closure:

(1) all information required under subsection (b) of this section;

(2) all analytical data and/or process knowledge allowed under §335. 511 of this title (relating to Use of Process Knowledge) used to characterize Hazardous, **Class 1,** Class 2, and Class 3 wastes, including quality control data.

(d) The executive director may request that a generator submit all documentation listed in subsections (b) and (c) of this section for auditing the classification assigned. Documentation requested under this section shall be submitted within ten working days of receipt of the request.

(e) Any changes to the information required in sections (b) and (c) of this subsection shall be maintained or submitted according to the timing requirements of this section.

(f) A generator may request information provided to the agency remain confidential in accordance with the Texas Open Records Act, the Government Code, Chapter 552.

§335.514. Variance from Waste Classification Provisions.

(a) (No change.)

(b) Factors to be considered in determining whether a variance should be granted include, but are not limited to, circumstances which were reasonably unforeseeable and beyond the reasonable control of the generator[, or the use of alternating classification criteria or procedures which meet or exceed the requirements and intent of these rules]. The burden of justifying the need for a variance is on the requestor, and the requestor must submit information sufficient to clearly indicate the issues involved, the reason(s) for the request, and both positive and negative impacts that may result from the granting of the variance. Prior [to] approval of [for] the variance must be obtained before any change is authorized.

(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 November 17, 1993.

TRD-9332192 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: December 24, 1993

For further information, please call: (512) 463-8069

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 19. Long Term Care Nursing Facility Requirements for Licensure and Medicaid Certification

The Texas Department of Human Services (DHS) proposes amendments to §§19.604, 19.1104, and 19.1807, and new §19.1103, concerning Preadmission Screening and Annual Resident Review (PASARR), rehabilitative services system, rate-setting methodology, and specialized services, in its Long Term Care Nursing Facility Requirements rule chapter. The purpose for the amendments and new section is to maximize federal Medicaid dollars by providing mental retardation and/or related conditions specialized therapy services through several existing Medicaid programs, including DHS's Goal-Directed Therapy program. The Goal-Directed Therapy program provides physical therapy, occupational therapy, and speech and language pathology services on a prior-approval basis to recipients residing in nursing facilities and receiving Medicaid benefits. In addition, the amendments include changes in reference from the Texas Department of Health to DHS, which now administers the Bureau of Long Term Care.

Burton F. Raiford, commissioner, has determined that for the first five-year period the rules as proposed are in effect there will be fiscal implications as a result of enforcing or administering the proposal The effect on state government for the first five-year period the rules are in effect is an estimated reduction in cost of $769,238 for fiscal year (FY) 1994; $789,164 for FY 1995; $819,704 for FY 1996; $849,623 for FY 1997; and $881, 314 for FY 1998. There will be no fiscal implications for local government as a result of enforcing or administering the rules

Mr. Raiford also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules will be to ensure that services provided to Medicaid nursing facility recipients are similar to the services provided to the general resident population in nursing facilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed

Questions about the content of the proposal may be directed to Geri Bischoff at (512) 450-3171 in DHS's Institutional Programs Section Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-248, Texas Department of Human Services W-402, P O Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

Subchapter G. Resident Assessment

• 40 TAC §19.604

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 and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds. The amendment implements the Human Resources Code, §32.021(c) and §32.024.

§19.604. Preadmission Screening and Annual Resident Review (PASARR).

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

(e) Specialized Services **and alternate placement.**

(1) (No change.)

(2) **A case manager will be assigned** [The local MHMR authority assigns a case manager] for those residents who require specialized services and/or must be alternately placed.

(3) (No change.)

(4) The case manager will determine how specialized services will be provided and will facilitate provision of those services. [These services will be provided via contract funds from TDMHMR with the local MHMR authority. The local MHMR authorities may directly provide or may subcontract for those services with other providers, including the nursing facility.] Those services **provided by TXMHMR** must meet the relevant portions of **TXMHMR's** [TDMHMR's] community service standards.

(5)-(12) (No change.)

(f)-(h) (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 November 16, 1993.

TRD-9332169 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: February 1, 1994

For further information, please call. (512) 450-3765

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Subchapter L. Specialized Rehabilitative Services

• 40 TAC §19.1103, §19.1104

The new section and amendment are 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 and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds. The new section and amendment implement the Human Resources Code, §32.021(c) and §32.024.

§19.1103. Specialized Services.

(a) Specialized services are established and reviewed by licensed professionals to ensure that residents who need these services are identified by their Preadmission Screening and Annual Resident Review (PASARR) interdisciplinary team. Professional evaluations and reviews are paid, prior-authorized, and coordinated through the Texas Department of Human Services' (DHS's) Rehabilitative Services System. These specialized services are not eligible for reimbursement under the Texas Index for Level of Effort (TILE) 202. (See §19.604 of this title (relating to Preadmission Screening and Annual Resident Review (PASARR)). Services provided under this program are prior-approved and paid by the Rehabilitative Services System. These services may include physical, occupational, and speech and/or language pathology evaluations and consultation. Eligibility for specialized services is determined by DHS without regard to other financial resources.

(b) DHS pays whichever of the following rates is lowest:

(1) the maximum allowable Medicaid rate per visit as determined by the Texas Board of Human Services;

(2) the therapy provider's interim rate per visit as determined by Medicare; or

(3) the provider's customary charge per visit.

*§19.1104. **Rehabilitative Services System** [Goal-directed Therapy].*

(a) If a facility admits or retains residents who require physician-prescribed rehabilitative services, the facility must either furnish **therapy** [Goal-directed Therapy] as a certified Title XVIII provider of services or must have written agreements with Title XVIII providers of rehabilitative services. The facility must ensure that such agreements provide a basis for effective working arrangements under which **rehabilitative** [goal-directed] therapy is made available to residents if needed and ordered by the attending physician.

(b) The **Rehabilitative Services System** [Goal-directed Therapy system] includes physical therapy, occupational therapy, and speech pathology services. The attending physician must order these services in order for provider reimbursement to occur.

(c) Prior authorization by the Texas Department of Human Services (DHS) is required for residents with only Medicaid coverage **for rehabilitative services.**

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

(d) (No change.)

(e) [DHS pays contracted nursing facilities an administrative fee determined by the Texas Board of Human Services for each approved unit of service for costs incurred in processing claims for payment for this fee. The department pays the fee for each approved unit of therapy service that a facility reports, based on a rate determined by the Texas Board of Human Services.] A **visit** [unit of service] is defined as one physical therapy service, one occupational therapy service, or one speech therapy service performed for one resident. An evaluation is paid at the same rate as one unit of service. One evaluation is paid for an illness or injury at the unit rate without prior authorization; any additional evaluations performed on the recipient must be supported by the attending physician's documentation indicating a new illness or injury or a substantive change in a pre-existing condition.

(f) (No change.)

(g) Coverage for physical therapy, **occupational, or speech pathology services** includes evaluation and treatment of functions that have been impaired by illness [or injury. The purpose is to improve and restore the resident's ability to perform transfer or ambulation activities.] **Rehabilitative** [The] services must be provided with the expectation that the resident's functioning will improve measurably in 30 days.

(h) **Rehabilitative services provided by licensed professionals must provide a written discharge plan of care to the nursing facility staff. The professional nursing staff should use this to develop an individual restorative nursing plan of care. Restorative nursing care refers to nursing interventions that promote the resident's ability to adapt and adjust to living as independently and safely as possible. Rehabilitative services may qualify for reimbursement under the Texas Index for Level of Effort (TILE) 202.** [Coverage for occupational therapy includes evaluation and treatment of functions that have been impaired by illness or injury. The purpose is to improve or restore the resident's ability to perform self-care activities. The services must be provided with the expectation that the resident's functioning will improve measurably in 30 days.]

[(i) Coverage for speech pathology includes evaluation and treatment of communication disorders that are related to loss of hearing or have been acquired. Treatment must be provided with the expectation that the resident's communication will improve measurably in 30 days.]

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

Issued in Austin, Texas, on November 16, 1993.

TRD-9332168 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Proposed possible date of adoption: February 1, 1994

For further information, please call. (512) 450-3765

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Subchapter S. Reimbursement Methodology for Nursing Facilities

• 40 TAC §19.1807

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 and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds The amendment implements the Human Resources Code, §32. 021(c) and §32.024.

§19.1807. Rate Setting Methodology.

(a) (No change.)

(b) Rate determination The Texas Board of Human Services determines general reimbursement rates for medical assistance programs for Medicaid recipients under provisions of the Human Resources Code, Chapter 24 (relating to Reimbursement Methodology). The Texas Board of Human Services determines reimbursement rates for **nursing facilities** [NFs] based on consideration of DHS staff recommendations. To develop reimbursement rate recommendations for **nursing facilities** [NFs], DHS staff apply the following procedures

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

(5) The TILE classification system. The Texas Index for Level of Effort (TILE) classification system is defined in terms of recipient condition and service-

descriptors on the Texas Nursing Facility Client Assessment, Review, and Evaluation (CARE) form. Classifications are based on criteria for frequency and duration for each descriptor. The TILE classification system includes four clinical categories. These categories are subdivided on the basis of an activities of daily living (ADL) scale that measures functional abilities for eating, transferring, and toileting. The combination of clinical categories and ADL measurements yields an array of 11 TILE case-mix classifications.

(A) Clinical categories. Each recipient is assigned to one of the following four clinical categories:

(i) (No change.)

(ii) The rehabilitation group. To qualify for the rehabilitation clinical group, a recipient must be receiving physical or occupational therapy at least three times per week. The therapy must be ordered by a licensed physician, must be rehabilitative[/restorative] in intent, and must be reimbursed by Medicare or through DHS's **Rehabilitative Services System** [goal-directed therapy system] **Specialized services that are identified by a Preadmission Screening and Annual Resident Review (PASARR) and are categorized as maintenance services, are not eligible for this category, unless there is a medical condition or injury that qualifies the resident for rehabilitation services.**

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

(B)-(C) (No change.)

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

(c)-(e) (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 November 16, 1993.

TRD-9332167 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: February 1, 1994

For further information, please call: (512) 450-3765

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Chapter 48. Community Care for Aged and Disabled

The Texas Department of Human Services (DHS) proposes an amendment to §48.6003, concerning client eligibility criteria, and the repeal of §48. 6004, concerning Priority One criteria, in its Community Care for Aged and Disabled chapter. The purpose of the amendment and repeal to the nursing facility waiver program rules is to place a cost-ceiling on the clients' plan of care, to modify and clarify some targeting criteria, and to delete Priority One as an eligibility criteria. Implementation of this Medicaid home and community-based waiver program is contingent upon an additional approval by the Texas Board of Human Services.

Burton F. Raiford, commissioner, 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. Raiford 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 section will be that DHS will be permitted to identify and serve those individuals who choose to live in the community and whose needs cannot be met without the Nursing Facility Waiver. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Anita Anderson at (512) 450-3195 in DHS's Community Care Section. Written comments on the proposal may be submitted to Nancy Murphy, Policy and Document Support- 263, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

1915(c) Medicaid, Home and Community-Based Waiver Services for Aged and Disabled Adults Who Meet Criteria for Alternatives to Nursing Facility Care

• 40 TAC §48.6003

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs. The amendment implements Human Resources Code §§22.001 and 32.001-32.040.

§48.6003. Client Eligibility Criteria.

(a) To be determined eligible by the Texas Department of Human Services (DHS) for the 1915(c) Medicaid waiver program provided as an alternative to care in a nursing facility, an applicant must:

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

(5) have ongoing needs for one or more of the following tasks that cannot be delivered adequately on an ongoing basis by friends, relatives, volunteers, other Medicaid-reimbursed services, service agencies other than DHS, or by third-party resources, and **which will be met by waiver services:**

(A) medication administration;

(B) tube feeding through permanently placed tubes;

(C) sterile procedures, which are those procedures involving a wound or an anatomical site which could potentially become infected;

(D) non-sterile procedures, such as dressing or cleansing penetrating wounds and deep burns already contaminated;

(E) invasive procedures, which involve inserting tubes in a body cavity or instilling or inserting substances into an indwelling tube, such as intermittent or indwelling catheterization;

(F) care of broken skin other than minor abrasions or cuts generally classified as requiring only first aid treatments; or

(G) twenty-four hour supervision.

[(5) meet one of the requirements in subparagraphs (A), (B), or (C) of this paragraph:

[(A) have ongoing needs for personal assistance services (including health-related tasks requiring delegation by a registered nurse);

[(B) have ongoing needs for foster care, or assisted living; or

[(C) meet the Priority One criteria described in §48.6004 of this title (relating to Priority One Criteria);]

(6) have an individual plan of care for waiver services as specified in §48.6006 of this title (relating to Individual Plan of Care for Waiver Services) **whose cost does not exceed 95% of the individual's actual Texas Index for Level of Effort payment rate;**

(7)-(8) (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 November 17, 1993.

TRD-9332208 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: January 20, 1994

For further information, please call: (512) 450-3765

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• 40 TAC §48.6004

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

The repeal is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs. The repeal implements the Human Resources Code, §§22. 001 and 32.001-32.040.

§48.6004. Priority One Criteria.

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

Issued in Austin, Texas, on November 17, 1993.

TRD-9332209 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: January 20, 1994

For further information, please call: (512) 450-3765

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Chapter 75. Investigations

General Procedures

• 40 TAC §75.10

The Texas Department of Human Services (DHS) proposes new §75.10, concerning reimbursement rates for fraud prosecution, in its Investigations chapter. The purpose of the new section is to establish payment amounts for contested and uncontested fraud prosection cases involving Aid to Families with Dependent Children (AFDC) program and Food Stamp program benefits.

Burton F. Raiford, commissioner, has determined that for the first five-year period the section as proposed is in effect there will be no fiscal implications for state or local government 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 appropriate reimbursement of county and district attorneys for the costs involved in prosecuting public assistance fraud cases. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Questions about the content of the proposal may be directed to Sharyn Belk at (512) 450-4231 in DHS's Office of Inspector General. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-296, 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 new section is proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public assistance and nutritional assistance programs. The new section implements the Human Resources Code, §33.011(e).

§75.10. Reimbursement Rates for Fraud Prosecution. The Texas Department of Human Services (DHS) reimburses county and district attorneys for the costs involved in prosecuting welfare fraud cases. DHS passes to the local prosecutors the 75% federal share of the cost per case, and the local prosecutors supply the 25% state match. Based on a review and analysis of prosecutors' costs, DHS has established the payment rates as follows:

(1) $420 for uncontested cases; and

(2) $1,017 for contested cases.

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

Issued in Austin, Texas, on November 16, 1993.

TRD-9332166 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: February 1, 1994

For further information, please call: (512) 450-3765

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Name: James Focer
Grade: 3
School: Northampton Elementary, Klein ISD

Withdrawn Sections

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a section by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filling or 20 days after filing. If a proposal is not adopted or withdrawn six months after the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 16. ECONOMIC REGULATIONS

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter CC. Tow Trucks

- **16 TAC §§5.802, 5.803, 5.805, 5.806**

The Railroad Commission of Texas has withdrawn the emergency effectiveness of repeals to §§5.802, 5.803, 5.805, and 5.806, concerning the Transportation Division. The text of the emergency repeals appeared in the September 7, 1993, issue of the *Texas Register* (18 TexReg 5933). The effective date of this withdrawal is December 6, 1993.

Issued in Austin, Texas, on November 15, 1993.

TRD-9332149 Mary Ross McDonald
Legal Division, Gas Utilities/LP-Gas
Railroad Commission of Texas

Effective date: December 6, 1993

For further information, please call: (512) 463-7094

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The Railroad Commission of Texas has withdrawn the emergency effectiveness of new §§5.802, 5.803, 5.805, and 5.806, concerning the Transportation Division. The text of the emergency new §§5.802, 5.803, 5.805, and 5.806 appeared in the September 7, 1993, issue of the *Texas Register* (18 TexReg 5933). The effective date of this withdrawal is December 6, 1993.

Issued in Austin, Texas, on November 15, 1993.

TRD-9332150 Mary Ross McDonald
Legal Division, Gas Utilities/LP-Gas
Railroad Commission of Texas

Effective date: December 6, 1993

For further information, please call: (512) 463-7094

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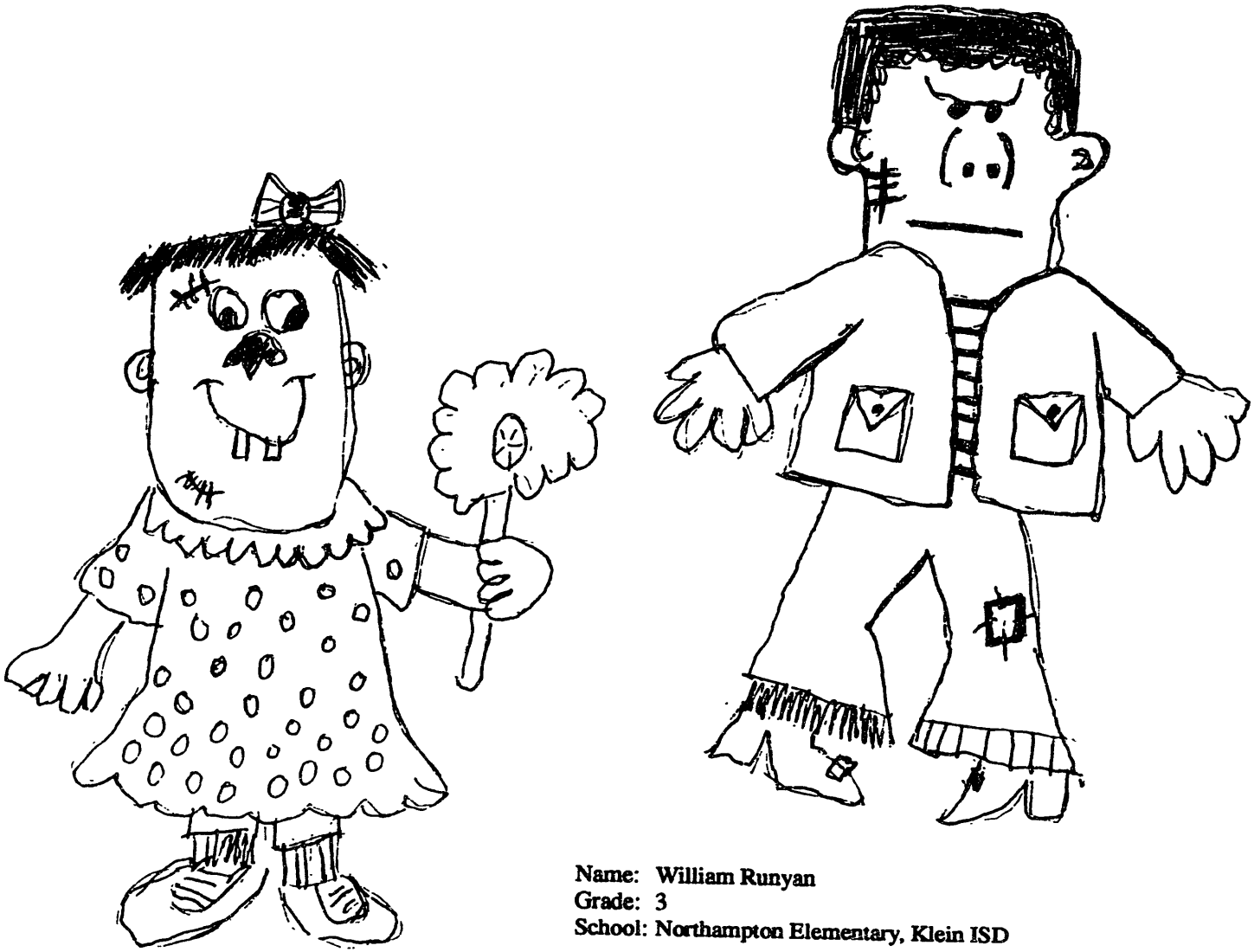
William Runyan
September 30, 1993
Northampton Elementary
3rd grade
Klein I.S.D.
Spring, TX



Name: William Runyan
Grade: 3
School: Northampton Elementary, Klein ISD

Adopted Sections

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 11. Herbicide Regulations

• 4 TAC §§11.1-11.9

The Texas Department of Agriculture (the department) adopts the repeal of §§11.1-11.9, concerning general requirements for application of regulated herbicides, without changes to the proposed text as published in the September 14, 1993, issue of the *Texas Register* (18 TexReg 6168). The department in a separate submission is adopting new sections to replace the sections repealed in this submission. The department is repealing §§11.1-11.9 in order to replace these sections with new sections which more clearly set forth the requirements for application of regulated herbicides, and requirements for inspection and licensing of application equipment used to apply regulated herbicides. The department also is repealing the sections in order to adopt new sections that include new record keeping requirements and a change in the requirements for payment of spray permit fees.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Agriculture Code (the Code), §§75. 003, 75.005, 75.006, 75.012-75.018, 75.021, and 75.022, which provides the department with the authority to adopt rules for the implementation of Chapter 75. The code sections which will be affected by this repeal are the Code, Chapters 75 and 76.

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

Issued in Austin, Texas, on November 15, 1993.

TRD-9332134 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Effective date: December 6, 1993

Proposal publication date: September 14, 1993

For further information, please call: (512) 463-7583

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• 4 TAC §§11.1-11.10

The Texas Department of Agriculture (the department) adopts new §§11. 1-11.10, concerning general requirements for the regulation of herbicides. Section 11.6 and §11.7 are adopted with changes to the proposed text as published in the September 14, 1993, issue of the *Texas Register* (18 TexReg 6169). Sections 11.1-11.5 and 11.8-11.10 are adopted without changes and will not be republished. The department, in a separate submission, is adopting the repeal of §§11.1-11.9 and is replacing those sections with the new sections adopted in this submission. The new sections are adopted in order to make the regulations clearer and more consistent with recent changes in Chapter 75 of the Texas Agriculture Code made by the 73rd Legislature, 1993, and to clarify the rights and responsibilities of all entities affected by Chapter 75 of the Texas Agriculture Code.

Section 11.6 is adopted with changes. Subsection (b)(3) has been changed to also exempt from permit requirements nurserymen licensed by the department for turf weed control for structural pest control applications. This change was made based on a comment received noting that under the proposed language, nurserymen licensed by the department would be required to obtain a permit, while applicators licensed by the Structural Pest Control Board making the same applications would be exempted from the permit requirement. The department agreed that differential in treatment would unfairly impose an additional requirement on department licensees, and changed that paragraph accordingly.

Section 11.7 is adopted with changes. A new subsection (g) has been added to prohibit the use of turbine or blower-type ground application equipment to apply regulated herbicides. This change was also made as a result of comments received by the department. A comment was received requesting that this type of ground application equipment be prohibited due to the risks posed by its use and noting that the existing regulations did prohibit the use of such equipment. The department agrees that the use of turbine or blower-type ground application equipment does pose a risk to desirable vegetation through drift and uncontrolled application and has added subsection (g) to address that concern.

New §11.1 contains the list of regulated counties. New §11.2 contains special provisions for regulated counties. New §11.3 sets forth the list of regulated herbicides. New §11.4 contains definitions necessary for interpreting Chapter 11. New §11.5 sets forth the requirements for herbicide dealers regarding multiple business locations, license requirements, fees for a dealer's license, payment of fees, expiration of dealer's license, sales records, and submission of such records to the department. New §11.6 pertains to the general requirements for herbicide applicators, as well as expiration of permits, exempt methods of application, high volatile herbicides, and suspension of permit requirements. New §11.7 addresses registration of and specifications for equipment used in making applications of regulated herbicides. New §11.8 gives the department the authority to investigate complaints involving regulated herbicides. New §11.9 deals with the requirement for special county provisions and sets forth the existing requirements for counties to follow in order for the department to adopt special county provisions. New §11.10 provides penalty provisions.

All comments received were submitted by individuals, with no groups or associations offering comment. In addition to the comments previously noted, the department received a comment on §11 8, regarding complaint investigations and disposition of complaints. The commentor suggested that subsection (c) be changed to provide the department with the sole authority to determine whether investigations should be prosecuted or dismissed, and to require that the department notify the complainant of any intention to cease an investigation. The department disagrees with the commentor and believes that the section, as written, adequately incorporates the requirements of the Code, Chapters 75 and 76, and regulations adopted under those chapters regarding investigation of complaints. In addition, the department has the latitude to determine the extent of investigations and has written and published guidelines that outline the procedures to be used in determining an appropriate enforcement action for complaints filed with the department Accordingly, §11 8 is adopted without changes.

The new sections are adopted under the Texas Agriculture Code, §75.003, which authorizes the department to adopt by rule a list of regulated herbicides for the state or for one or more designated areas in the state, §75.021 which gives the department the authority to adopt rules concerning the use of a regulated herbicide in a county in which a commissioners court has entered an order; §75.005, which authorizes the department to adopt rules prescribing information to be requested of dealers and allows the department to request submission of such records by a licensee; §75.006, which authorizes the department to require spray permits and to al-

low exemptions from the permit requirements; §75.012, which authorizes the department to adopt rules for the application of regulated herbicides; §75. 013, which authorizes the department to adopt rules prescribing the information to be kept by applicators; §75.014, which authorizes the department to require a showing of proof of financial responsibility by commercial applicators; §75.015, which authorizes the department to investigate complaints involving regulated herbicides; §75.016, which authorizes the department to regulate application equipment; §75.017, which authorizes the department to hold public hearings to consider requests for a revision of a rule, and exemption from a requirement of this chapter, or a prohibition of the spraying of a regulated herbicide in an area, §75.018, which authorizes the department to enforce the provisions of this chapter and rules adopted thereunder, and §75.022 which authorizes the department to enforce the provisions of this chapter through criminal and administrative actions.

§11.6. General Requirements for Applicators. The following requirements are applicable to all persons applying regulated herbicides.

(1) Spray permits. No person shall apply regulated herbicides without first obtaining a permit for such application. A blanket permit may be issued to a licensed or certified applicator who shall submit to the department a supplemental report of each regulated herbicide application within seven days following such application

(A) Expiration of permits. All permits expire when the acreage for which the permit was granted has been sprayed, or 180 days after issuance, whichever occurs first

(B) Exempt methods of application. Applications of regulated herbicides by brush, mop, wick, basal treatment, or injection method are hereby exempt from the requirements of obtaining a permit.

(C) High volatile herbicides Spraying high volatile herbicides is prohibited when there are susceptible crops within a four mile radius from every point of the land to be sprayed

(2) Commercial applicators.

(A) It shall be the joint responsibility of the person in control of the crop and, if applicable, the commercial applicator to insure that the application of regulated herbicides is made in compliance with the rules and regulations issued by the department.

(B) All persons engaged in the application of regulated herbicides for hire must be licensed by the department under §7 13 of this title (relating to Commercial Applicator License) and meet the requirements of financial responsibility under §7.14 of this title (relating to Commercial Applicator Proof of Financial Responsibility) or of the Structural Pest Control Board as provided by the Structural Pest Control Act, Texas Civil Statutes, Article 135b-6.

(C) Applications by an applicator licensed by the Texas Structural Pest Control Board in turf and weed control and a nurseryman licensed by the department in turf weed control for structural pest control applications are exempt from the permit requirements of this section.

(3) Persons other than commercial applicators. All persons applying regulated herbicides to lawns are exempt from the permit requirements of this section.

(4) Records. The applicator shall keep the following records for a period of two years:

(A) the date and time of day each application started;

(B) the name of the person for whom the application was made (owner or lessee);

(C) the location of the land where the application was made, stated in a manner that would permit inspection by authorized parties,

(D) the regulated herbicide applied, including·

(i) product name,

(ii) its EPA registration number;

(iii) rate of product per unit; and

(iv) total volume of spray mix, dust, granules, or other materials applied per unit;

(E) the name of the pest for which it was used;

(F) the site treated (for example: name of crop, etc);

(G) total acres or volume of area treated,

(H) wind direction, velocity, and air temperature;

(I) the FAA "N" number of aerial application equipment, or identification number of other types of application equipment, or decal number affixed to the application unit; and

(J) the name and department license number of the applicator.

§11.7. Registration and specification of equipment.

(a) Requirements for spray operations. All spraying of regulated herbicides must conform to these requirements in a regulated county regardless of whether or not a permit is required.

(1) Maximum pressure for aerial equipment. It is unlawful for a person to spray regulated herbicides with aerial application equipment at an outlet pressure which exceeds 30 pounds per square inch

(2) Maximum pressure for ground equipment. It is unlawful for a person to spray regulated herbicides with ground equipment when the equipment outlet pressure exceeds 40 pounds

(b) Maximum velocity. No person shall spray regulated herbicides when the wind velocity exceeds ten miles per hour or as specified on the product label, if the label is more restrictive

(c) The application of regulated herbicides in dust form is prohibited unless

(1) all particles of the herbicide can pass through a United States standard 10-mesh sieve; and

(2) not more than 1.0% of the particles can pass through a United States standard 60-mesh sieve.

(d) Commercial applicator equipment

(1) Application equipment used by commercial applicators, except pressurized hand-sized apparatus or any equipment or device for which the person applying the pesticide is the source of power or energy used in making pesticide application, must be registered with the department. The department shall issue to the licensee a license decal to be attached to each such piece of equipment in a conspicuous place The license decal will contain the following information:

(A) an identification number, and

(B) the name of the department

(2) The licensee shall notify the department of any equipment changes and remove the license decal before giving up possession of the equipment

(e) All application equipment used by commercial applicators is subject to inspection by the department at any reasonable time. Such equipment must be maintained in a condition that will provide safe and proper application of the pesticide. If the department finds that it is not, the department shall require the needed repairs or adjustments before allowing the use of such equipment.

(f) Persons other than commercial applicator. Equipment used by persons other than commercial applicators may be inspected, but proof of financial responsibility is not required for the equipment or the person.

(g) The use of any turbine or blower-type ground application equipment to apply regulated herbicides is prohibited.

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

Issued in Austin, Texas, on November 15, 1993.

TRD-9332135 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Effective date: December 6, 1993

Proposal publication date. September 14, 1993

For further information, please call (512) 463-7583

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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Chapter Z. Base Rates, Deviations, and Suspensions

• 16 TAC §5.582

The Railroad Commission of Texas adopts an amendment to §5 582, concerning deviations from commission established base rates, without changes to the proposed text as published in the October 5, 1993, issue of the *Texas Register* (18 TexReg 6794).

The amendment will allow common carriers to deviate from commission established base rates for shipments weighing 9,999 pounds or less. Deviations are not currently allowed for shipments weighing less than 501 pounds. Adoption of the amendments will extend the deviation authority currently allowed on shipments weighing between 501 and 9,999 pounds, to any shipment weighing less than 9,999 pounds.

Four public comments regarding the proposed rule were received All four comments supported adoption of the proposed deviation authority. The Phillips 66 Company supported adoption of the proposed rule as published and noted that common carrier shipping rates have recently increased significantly for shipments in this weight range The Association of Texas Warehousemen commented that warehouse operators in Texas support the adoption of the proposed rule The Common Carrier Motor Freight Association supported adoption and noted that the proposed rule would allow shipments weighing 500 pounds or less to deviate on the same basis as other less-than-truckload shipments, which currently have deviation authority. The Texas Association of Business supported the proposed rule as published, however, suggested the Commission consider adopting authority to deviate by even greater percentages from commission established base rates.

The amendment is adopted pursuant to Texas Civil Statutes, Article 911b, §4(a), which vest the commission with power and authority to prescribe all rules and regulations necessary for the government of motor carriers, and to supervise and regulate motor carriers in all matters affecting the relationship between such carriers and the shipping public.

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

Issued in Austin, Texas, on November 15, 1993

TRD-9332148 Mary Ross McDonald
Assistant Director, Legal Division-Gas Utilities/LP Gas
Railroad Commission of Texas

Effective date. December 6, 1993

Proposal publication date: October 5, 1993

For further information, please call (512) 463-7094

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Subchapter CC. Tow Trucks

• 16 TAC §§5.801-5.816

The Railroad Commission of Texas adopts the repeal of existing Subchapter CC, and §§5 801-5.816 adopts new Subchapter CC, §§5.801-5 816, concerning the regulation and operation of tow trucks. New §§5 802, 5.805, 5.806, 5 808, 5.810, and 5 812 are adopted with changes to the proposed text as published in the September 21, 1993, issue of the *Texas Register* (18 TexReg 6388) Sections 5.801, 5.803, 5 804, 5.807, 5.809, 5.811, and 5.813-5 816 are are adopted without changes and will not be republished. The new rules are adopted pursuant to Senate Bill 452 and Senate Bill 958, 73rd Legislature, 1993, which transferred jurisdiction of the regulation and operation of tow trucks from the Department of Licensing and Regulation to the Railroad Commission of Texas. New Subchapter CC contains the new rules for use by the Railroad Commission of Texas The new rules set forth the requirements for the registration, regulation, and operation of tow trucks. The changes to the proposed rules are as follows.

(1) The definition of "mechanical device" as set out in §5.802 is expanded, for clarification purposes, to include tow bars or other towing devices.

(2) The definition of "non-tow truck or tow device" is expanded, for clarification purposes, to exclude electrical or hydraulic winches or wheel lifts.

(3) The definition of "operator" as set out in §5.802 is changed to remove the phrase "or causing to be operated" so as to clarify and simplify the definition.

(4) The requirement of workers' compensation insurance and accidental injury insurance coverage as contained in §5.805(e) and (f) is eliminated in its entirety, with renumbering of the remaining subparagraphs. This coverage is not required by the legislature and would be financially burdensome to the many independently owned and operated small towing companies throughout the state.

(5) The first sentence of §5.806 is changed, for clarification purposes, to reflect that fees charged are non-refundable.

(6) Paragraph (8) of §5.806 is removed in its entirety. Texas Civil Statutes, Article 6675a-5i, specifies that such fees will be collected by the County Tax-Assessor Collector of the county in which the tow truck is situated

(7) Paragraph (9) of §5 806 is deleted because an insurance filing fee of $100 is required under the Motor Carrier Act and a different insurance filing fee for tow trucks would cause confusion in the insurance and motor carrier/tow truck industries. It is anticipated that refunds would have to be made for overpayment of fees and the administrative costs of dealing with the refunds may exceed any revenue received. In order to simplify the registration process, this fee is eliminated.

(8) Subsections (a) and (b) of §5.808 are changed to include the phrase "as necessary to enforce the requirements of this subchapter," regarding commission inspections and investigations. This change will clarify that inspections and investigations performed pursuant to §5.808 will be for the purpose of enforcing this Subchapter CC, relating to tow trucks.

(9) Subparagraph (b) of §5.810 is changed to include the words "or operator" in the introductory clause regarding owners who commit violations for which the commission may impose administrative sanctions. This change will clarify that an owner is responsible for the violations of his or her operator.

(10) Subsection (b)(1) of §5.812 is changed, for clarification purposes, to read "legal business name or legal assumed name as specified on the completed application form prescribed by the director." This change clarifies what name must be used on the tow truck for identification purposes. Comments regarding the rule centered entirely around the workers' compensation requirement. Several associations who actively pursued legis-

lation to transfer jurisdiction of tow trucks to the commission are concerned that such a substantial requirement has been added to what they and their member organizations anticipated as being solely a transfer of jurisdiction. All of the comments pointed out that the cost of obtaining such coverage would be prohibitively expensive for the small, independent tow truck company that often operates with a very small profit margin, although one of these comments supported some form of insurance protection for employees One comment suggested that, if the commission desires that workers' compensation or accidental injury insurance coverage be required, it postpone such a requirement until September, 1995, so as to allow the commission and the tow truck operators to plan ahead regarding the cost and availability of such coverage. One comment suggested that any inquiry into felony convictions on applications be limited to the preceding three years. The following groups and associations commented against inclusion of the workers' compensation and accidental injury insurance coverage requirements of the proposed rules Texas Towing & Storage Association Houston Emergency Towing Association Houston Automobile Wrecker Association Houston Private Wrecker Association The commission agrees that no legislation specifically requires that a tow truck owner carry workers' compensation or accidental injury insurance coverage The commission agrees that any requirement for such coverage at this time might be financially burdensome to many tow truck companies and that any proposed rule by the commission to require such coverage should be delayed, pending a more thorough evaluation of the need and effect on the industry of such coverage The commission recognizes that, under the proposed rules, many tow truck companies would have been subject to having their licenses cancelled for failing to have such insurance on record, and that any proposal to require such insurance would require further study The commission disagrees that questions regarding felony convictions be limited to the preceding three years for the reason that any such limitation would not ensure that serious offenders have demonstrated the rehabilitation as required by Texas Civil Statutes, Article 6252-13c, pertaining to eligibility of persons with criminal backgrounds for certain occupations, professions, and licenses, and Texas Civil Statutes, Article 6252-13d, pertaining to suspension, revocation, or denial of license to persons with criminal backgrounds

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

Issued in Austin, Texas, on November 15, 1993

TRD-9332152 Mary Ross McDonald
Assistant Director, Legal Division-Gas Utilities/LP Gas
Railroad Commission of Texas

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Proposal publication date September 7, 1993

For further information, please call (512) 463-7094

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Existing Subchapter CC is repealed pursuant to Senate Bill 452 and Senate Bill 958, 73rd Legislature, 1993, which transferred jurisdiction of the regulation and operation of tow trucks from the Commission of Licensing and Regulation to the Railroad Commission of Texas Subchapter CC-Texas Civil Statutes, Article 6687-9b

Emergency rules §§5 802, 5.803, 5.805, and 5 806 are repealed pursuant to the adoption of the rules and to Senate Bill 452 and Senate Bill 958, 73rd Legislature, 1993, which transferred jurisdiction of the regulation and operation of tow trucks from the Commission of Licensing and Regulation to the Railroad Commission of Texas Subchapter CC-Texas Civil Statutes, Article 6687-9b

§5 802 Definitions The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Act-Texas Civil Statutes, Article 6687-9b.

Original application-The required application form to obtain certificates of registration

Certificate of registration-The document issued by the commission authorizing the operation of a specific tow truck

Commercial motor vehicle or commercial carrier-Have the same meanings as ascribed to them in §5 501 of this title

Commission-The Railroad Commission of Texas.

Consent tow-Any tow conducted with the permission of, or at the direction of, the towed vehicle's legal or registered owner, or such owner's authorized representative Except as set forth in the definition of "nonconsent tow" below, a tow will be considered a consent tow where the owner is able to give consent

Director-The director of the Transportation/Gas Utilities Division of the commission, or a designee of the director

Mechanical device-A mechanical, electrical, or hydraulic winch, wheel lift, tow bar, or other towing device permanently attached to or used in combination with a commercial motor vehicle

Mini-wrecker or auto trailer-A vehicle without motive power used in combination with a commercial motor vehicle, and which is adapted or used to tow, winch or otherwise move another motor vehicle

Motor Carrier Act-Texas Civil Statutes, Article 911b

Motor Carrier Safety Act-Texas Civil Statutes, Article 6701d

Motor vehicle-A vehicle subject to registration under the Certificate of Title Act (Texas Civil Statutes, Article 6687-1), or any other self-propelled device permitted to travel on a public highway.

Non-tow truck or tow device-A commercial motor vehicle used in combination with a mini-wrecker, auto trailer or other towing device, and which is not equipped with a mechanical, electrical, or hydraulic winch or wheel lift.

Nonconsent tow-Any tow conducted without permission of, or not at the direction of, the towed vehicle's legal or register owner, or such owner's authorized representative Regardless of this definition, certified law enforcement officials may control the scene of an accident in the manner they deem appropriate and order a nonconsent tow

Operate-Driving or causing to be driven a tow truck on a public highway

Operator-Any person operating a tow truck on a public highway of this state.

Owner-A person owning, leasing or otherwise using, either directly or indirectly, a tow truck on a public highway of this state.

Person-An individual or other legal entity

Registration year-The period between January 1st and December 31st of each year

Renewal application-The required application form to renew certificates of registration.

Tow truck-A commercial motor vehicle equipped with, or used in combination with a mechanical device, mini-wrecker, or auto trailer, and which is adapted or used to tow, winch or otherwise move a motor vehicle

Vehicle-As defined in Texas Civil Statutes, Article 6675a-1

§5 805 Insurance Requirements

(a) Every owner shall file and maintain evidence of currently effective bodily injury and property damage automobile liability insurance in the following minimum amounts

(1) for a tow truck, together with the towed vehicle, having a gross vehicular weight, registered weight, or actual weight of 26,000 pounds or under, $300, 000 combined single limit for bodily injuries to or death of all persons injured or killed in any accident, and loss or damage in any one accident to the property of others, or

(2) for a tow truck, together with the towed vehicle, having a gross vehicle weight, registered weight, or actual weight exceeding 26,000 pounds, $500,000 combined single limit for bodily injuries to or death of all persons injured or killed in any accident, and loss or damage in any one accident to the property of others

(b) Except as follows, every owner shall maintain and have on file with the commission evidence of cargo or on-hook

insurance coverage. The intent of this subsection is to require insurance covering damage to a towed vehicle during which time the owner is the bailee of the vehicle being towed. The term "damage" shall include but is not limited to damage to the towed vehicle that is a direct or indirect result of an improper hookup or improper towing. The minimum insurance coverage required under this subsection shall be:

(1) $10,000 for the loss of or damage to the vehicle towed by any one tow truck which, together with the towed vehicle, has a gross vehicular weight, registered weight, or actual weight of 26,000 pounds or less; or

(2) $25,000 for the loss of or damage to the vehicle towed by any one tow truck which, together with the towed vehicle, has a gross vehicular weight, registered weight, or actual weight exceeding 26,000 pounds.

(c) In lieu of cargo or on-hook insurance, an owner may secure garagekeepers legal liability insurance with direct primary coverage in an amount not less than that prescribed in subsection (b) of this section.

(d) An owner who is exclusively engaged in the towing of property owned by it may, in its original application and in every renewal application, certify that all tow trucks operated by it are used exclusively to transport its own property. An owner or operator so certifying will be exempt from the requirements of subsections (b)-(c) of this section.

(e) No owner shall operate a tow truck over the public highways of this state without the insurance coverage required by this section filed with the commission.

(f) Evidence of insurance required in this section shall be filed on a form prescribed by the director and shall be duly completed and executed by an authorized representative of an insurance company holding a certificate of authority to transact business in the State of Texas, or by a surplus lines insurer that meets the requirements of the Insurance Code, Article 1.14-2, and rules adopted by the Texas Department of Insurance under that article

(g) Notwithstanding the provisions of subsection (a) of this section, an owner may be authorized to self-insure for bodily injury and property damage liability in lieu of filing proof of insurance The authorization for an owner to self-insure may be granted upon the same showing required of a motor carrier under the terms of §5 182 of this title (relating to Qualifications as Self-Insurer).

(h) If insurance coverage lapses, the owner shall immediately cease all operations of tow trucks owned by it The director shall notify the owner of any such lapse, and that all certificates of registration held by it shall be subject to cancellation.

(i) The owner who files, or causes to be filed, evidence of bodily injury or property damage insurance shall pay the appropriate fee.

§5.806. Fees. The following nonrefundable fees apply in connection with this Act.

(1) For each tow truck sought to be registered with an original application postmarked before January 1, 1994, the fee shall be $50.

(2) For each tow truck sought to be registered with an original application postmarked after January 1, 1994, the fee shall be $120.

(3) For each tow truck sought to be registered with a renewal application postmarked before December 1st of each year, the fee shall be $60.

(4) For each tow truck sought to be registered with a renewal application postmarked between December 1st and December 31st of each year, the fee shall be $85.

(5) The fee for adding newly acquired tow trucks during a current year shall be $60, prorated according to paragraph (7) of this section; except, during the first registration year the original application is filed the fee shall be the same as set forth in paragraph (2) of this section and prorated as set out in paragraph (7) of this section.

(6) The fee for substituting a certificate of registration from one tow truck to another or for replacing a lost or stolen certificate of registration shall be $10.

(7) An owner making an original application for certificates of registration or for requesting the addition of newly acquired tow trucks during a current registration year shall pay a prorated fee based on the number of months left in the registration year.

§5.808. Inspection and Investigation by the Commission.

(a) The commission or its authorized representative shall exercise all the authority given it under the Motor Carrier Act, and may examine the books, records, accounts, letters, memoranda, documents, checks, vouchers, or telegrams of a tow truck owner, as necessary to enforce the requirements of this subchapter.

(b) Any person who applies for or has received a certificate of registration shall have given its implied consent for an authorized inspector of the commission to audit, examine, or inspect any business record, document, book, account, equipment, or facility of that person, as necessary to enforce the requirements of this subchapter. The refusal of a person to consent to such audit, examination or inspection shall constitute a violation under this subchapter

§5 810. Administrative Sanctions.

(a) When the term "violation" or "violate," in either singular or plural form, is used in this section it shall mean:

(1) any violation of the Act, or rule or order adopted or issued related to the Act;

(2) any violation of the Motor Carrier Act, or rule or order adopted or issued related to that act,

(3) any violation of the Motor Carrier Safety Act, or rule or order adopted or issued related to that act,

(4) any felony or misdemeanor conviction of an owner that directly relates to the duties and responsibilities involved in operating a tow truck, or

(5) any revocation of an owner's felony probation, parole, or mandatory supervision.

(b) If an owner or operator commits a violation the commission may

(1) deny, revoke, or suspend the owner's certificate of registration,

(2) assess an administrative penalty in an amount not to exceed that permitted by Texas Civil Statutes, Article 911b, §4(a)(12); or,

(3) place the owner on probation.

(c) If a suspension is probated, the commission may require the owner to:

(1) report regularly to the commission or its designee on the matter made the basis of probation; or

(2) limit areas of operations to the areas prescribed by the commission.

(d) If, after investigation of a possible violation by an authorized inspector of the commission, the investigator determines that a violation has occurred, the investigator shall issue a report to the director, stating the facts on which the conclusion that a violation occurred is based. Upon reviewing the report, the director shall recommend what sanctions, if any, should be imposed upon the violator. If it is recommended by the director that sanctions should be imposed, the recommendation to the commission shall be based on the following factors which the commission may consider when ordering sanctions:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount or action necessary to deter future violations;

(4) the amount of monetary gain realized by the owner charged;

(5) efforts made to correct the violation;

(6) if the violation involves a felony conviction or probation, parole, or mandatory supervision revocation:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the safe operation and insuring of a tow truck;

(C) the extent to which a certificate of registration might offer an opportunity to engage in further criminal activity of the same type as that in which the owner was previously involved;

(D) the relationship of the crime to the ability, capacity, or fitness to perform the responsibilities of operating a tow truck;

(E) the extent and nature of the owner's past criminal activity;

(F) the amount of time elapsed between the owner's last criminal activity;

(G) the conduct and work activity of the owner prior to and following the criminal activity;

(H) whether or not the owner was a minor at the time of the conviction of the crime;

(I) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release;

(J) other evidence of the person's present fitness as deemed appropriate; and

(7) any other matters that justice may require.

(e) The director shall give written notice of the violation to the owner. The notice shall include:

(1) a brief summary of the charges;

(2) a statement of the proposed sanction, and any accompanying conditions; and

(3) a statement of the right of the owner charged to a hearing on the occurrence of the violation and the sanction and any terms thereof.

(f) Not later than the 20th day after the date on which the notice is received, the owner charged may accept the recommendation of the director made under this rule, including the sanction and all accompanying conditions, or make a written request for a hearing on the charges made. The director may extend the time for the owner charged to reply to the recommendation, provided that in the opinion of the director, a good-faith effort to negotiate a settlement of the violation has begun.

(g) If the owner charged with the violation accepts the recommendation of the director, the commission may issue an order approving the recommendation of the director (or other sanction as may be agreed upon between the director and the owner charged) ordering the recommended sanction and accompanying conditions be imposed upon that owner. The commission may refuse to issue an order approving the recommendation of the director and enter an order approving a lesser sanction, and it may require a hearing, or direct that further negotiations be made with the owner charged.

(h) If the owner charged fails to respond in a timely manner to the notice, or if the owner requests a hearing, the director shall set a hearing and the charges heard.

§5.812. General Technical Requirements.

(a) Each tow truck must display a tow truck license plate issued by the Texas Department of Transportation under Texas Civil Statutes, Article 6675a-1. The plate must be permanently attached to the rear of the vehicle and in clear visible view.

(b) Each tow truck shall have the owner's:

(1) legal business name or legal assumed name as specified on the completed application form prescribed by the director;

(2) city, or county (if the owner's place of business is in an unincorporated area); and

(3) telephone number

(c) The identification markings shall be durably inscribed or affixed on each side of the tow truck in letters of no less than two inches, in contrasting colors, and clearly visible at 50 feet for a person with a normal vision range.

(d) If the owner claims an exemption to the cargo, hook-up or similar insurance requirements of this subchapter, there must be durably affixed on each side of the tow truck, in letters at least two inches high, the words "Not For Hire."

(e) Every tow truck owner shall comply with the law regarding brakes contained in Texas Civil Statutes, Article 6701d, §132, or rules adopted by the Public Safety Commission relating to motor carrier safety.

(f) No tow truck shall tow more than its actual weight unless it has a 35,000 pound winch capacity (single or dual line), a 5/8-inch cable or its equivalent, and air brakes. If a certified law enforcement officer at the scene of an accident determines that the scene must be cleared immediately, and a heavy-duty tow truck is not available, the officer may waive this requirement at the scene.

(g) When a tow truck is towing two or more vehicles, it must be able to tie into and operate the service brakes on the rearmost towed vehicle. This provision does not apply if the rearmost towed vehicle has only vacuum brakes and the tow truck is not equipped with a pneumatic braking system.

(h) A tow truck equipped with a mechanical device shall have, as a minimum:

(1) a winch that has a winch line and boom with a lifting capacity of not less than 8,000 pounds single line capacity; or

(2) a wheel lift with a lifting capacity of not less 2,500 pounds.

(i) A tow truck used in combination with a mini-wrecker or auto trailer equipped with a mechanical device shall have a lifting capacity of not less than 5,000 pounds, and it shall have a towing capacity of not less than 7,000 pounds whether or not it is equipped with a mechanical device.

(j) Each tow truck shall have the following standard equipment:

(1) for a tow truck towing a motor vehicle that has wheels in contact with the ground a mechanical device or other equipment sufficient to prevent the swinging of the motor vehicle being transported;

(2) standard J-hook-up chains and at least two 5/16-inch link steel safety chains for tow trucks with a registered weight of 10,000 pounds or less;

(3) at least two 3/8-inch steel safety chains or their equivalent for tow trucks with a registered weight over 10,000 pounds;

(4) rope, wire, or straps suitable for securing doors, hoods, trunks or other parts of the motor vehicle being towed for the safe tow of such motor vehicle; and

(5) outside rear view mirrors on both sides of the tow truck.

(k) A tow truck operator towing a vehicle that does not have functioning tail lights, or turn signals, while being towed shall supply the towed motor vehicle with functioning tail lights or turn signals

(l) A tow truck operator shall perform a safety wrap sufficient to secure the towed motor vehicle in the event of failure of the mechanical device used in towing the motor vehicle.

(m) Safety chains shall be used on all tows performed by an operator

(n) Tow trucks with a slip-in bed must have the bed properly secured to the frame of the truck by a minimum of eight one-half inch diameter bolts of which at least four must be at the front of the slip-in bed.

(o) A tow truck with a mechanical device shall not be used to lift or tow more than its safe lifting capacity as recommended by the manufacturer.

(p) A tow truck operator must have a valid driver's license of the proper class

(q) A tow truck shall, at all times, meet the motor vehicle inspection standards required by law

(r) No tow truck operator shall tow a vehicle contrary to the recommended towed vehicle's manufacturer's safety policies and procedures regarding hook-up and towing.

(s) A tow truck owner shall inform consumers or service recipients of the name, mailing address, and telephone number of the commission for purposes of directing unresolved complaints to the commission. The information pertaining to any unresolved complaints may be included on:

(1) a written tow truck slip or ticket,

(2) a sign prominently displayed at the place of payment; or

(3) any other bill for service

(t) The term "unresolved complaint" as used in this section shall mean a good-faith effort between the tow truck owner and the consumer or service recipient, to reach an amiable solution to their to dispute, and are unable to do so

(u) At no time shall any owner tow a vehicle while there is a person in the towed vehicle. Violation of this provision shall subject the violator to the administrative penalty sanctions as set out in this subchapter.

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

Issued in Austin, Texas, on November 15, 1993

TRD-9332151 Mary Ross McDonald
Assistant Director, Legal Division-Gas Utilities/LP Gas
Railroad Commission of Texas

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For further information, please call (512) 463-7094

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Subchapter DD. Vehicle Storage Facilities

• 16 TAC §§5.902, 5.903, 5.905, 5.906, 5.908, 5.909, 5.913-5. 920

The Railroad Commission of Texas adopts amendments to §§5 902, 5 903, 5 905, 5 906, 5 908, 5.909, and 5 913-5 920 of this title, concerning vehicle storage facilities Sections 5 902, 5 905, 5 917, and 5 919 are adopted with changes to the proposed text as published in the September 7, 1993, issue of the *Texas Register* (18 TexReg 5957) Sections 5 903, 5.906, 5 908, 5 909, 5 913-5 916, 5 918, and 5 920 are adopted without changes and will not be republished

Section 5 902 is changed by adding "preservation" as a newly-defined term The language defining the term was published in §5 919(b) of the proposed rules Section 5 919(b) is changed to provide that a vehicle storage facility operator is entitled to charge $10 for preservation of a stored motor vehicle, as that term is defined in §5 902 The definition of "preservation" in §5 902 distinguishes between efforts to preserve, protect, or service a stored vehicle and efforts to secure a stored vehicle, which include closing the vehicle's doors, windows and/or hatchback and raising or covering the vehicle's convertible top, if it has one These changes clarify that a vehicle storage facility operator is entitled to charge the vehicle's owner a one-time fee of $10 for preservation of the stored vehicle, bringing the rules into conformity with the legislative changes made by Senate Bill 452

Section 5 905 is changed by the addition of the word "prior" in subsection (d), to clarify when written notice of any cancellation or expiration of an insurance policy must be given Section 5 917 is changed by the addition of language to subsection (a), to make the rule consistent with Texas Civil Statutes, Article 6687-9a, §7, which limits the relevant time period for considering prior criminal convictions to three years preceding the date of an application for a license under that Article

The amendments bring the regulations into conformity with Senate Bill 452, by which the 73rd Legislature, 1993 transferred jurisdiction over the licensing of vehicle storage facilities from the Texas Department of Licensing and Regulation to the Railroad Commission of Texas

Three different provisions were addressed by the comments submitted during the public comment period One comment requested that §5 906(b) be amended to allow a vehicle storage facility to notify the last registered owner and all recorded lienholders of its acceptance of a vehicle sooner than within 24 hours of receipt of the vehicle Another comment requested that §5 918 be amended to eliminate paragraph (5), which requires that vehicle storage facilities that accept vehicles 24 hours per day must have vehicles available for release 24 hours per day within one hour's notice The third comment requested that §5 919 be amended to allow a vehicle storage facility operator to charge an administrative, or "impoundment," fee of $10 for accepting a vehicle for storage at its facility

The Texas Towing & Storage Association commented only insofar as to request the amendment of §5 919 summarized previously

The commission disagrees with the comment requesting an amendment to §5 906, because the requirement sought to be eliminated by that comment was explicitly added to the Vehicle Storage Facility Act by the Legislature in Senate Bill 452

The commission also disagrees with the comment requesting an amendment to §5 918, because, although legitimate safety and other concerns may exist for a vehicle storage facility operator, the commission also recognizes that a member of the public, whose vehicle may be towed to such a facility at any hour of the day, should be afforded the opportunity to arrange for the release of the vehicle at any hour of the day

Finally, the commission disagrees with the comment requesting an amendment to §5 919 Section 14 of the Vehicle Storage Facility Act prescribes the fees which may be charged by a vehicle storage facility operator, it provides for fees to be charged for storage, as well as for complying with the notification and preservation requirements of the Act In addition, the Act, §14(d), explicitly states that a vehicle storage facility operator "may not charge any additional fees that are similar to notification, preservation, or administrative fees " Therefore, it is not within the commission's legislative authority to amend §5 919 as requested

The amendments are adopted under Texas Civil Statutes, Article 6687-9a, §4(b), which require the commission to adopt rules establishing requirements for the licensing of persons to operate vehicle storage facilities, to ensure that licensed storage facilities maintain adequate standards for the care of stored vehicles

The following article is affected by these rules §§5 902, 5 903, 5 905, 5 906, 5 908, 5 909, and 5 913-5 920-Texas Civil Statutes, Article 6687-9a

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

Commission–The Railroad Commission of Texas.

Director–The director of the Transportation/Gas Utilities Division of the commission or his or her designee.

Preservation–An action taken by or at the direction of the owner or operator of a vehicle storage facility that is necessary to preserve, protect, or service a vehicle stored or parked at the facility. Reasonable efforts necessary for the storage of a vehicle, such as locking doors, rolling up windows, and closing doors, hatchbacks, or convertible tops, are included in the fee for storage of a vehicle, as set forth in §5.919(c) of this title (relating to Technical Requirements–Storage Fees/Charges), and do not constitute "preservation."

Vehicle storage facility–A garage, parking lot, or any facility owned or operated by a person other than a governmental entity, except as provided in §5.919(f) of this title (relating to Technical Requirements–Storage Fees/Charges), for storing or parking ten or more vehicles. Ten or more vehicles shall mean the capacity to park or store ten or more vehicles a year.

§5.905. Insurance Requirements.

(a) Each license applicant shall file with the commission a certificate of insurance evidencing the required garagekeeper's legal liability insurance for the vehicle storage facility.

(b) No insurance policy or certificate of insurance will be accepted by the commission unless issued by an insurance company licensed and authorized to do business in this state in the form prescribed or approved by the State Board of Insurance and signed or countersigned by an authorized agent of the insurance company.

(c) (No change.)

(d) The vehicle storage facility's insurance policy shall provide that the insurance company will give the commission 30 days prior written notice of any policy cancellation or expiration.

(e) (No change.)

§5.917. Sanctions–Revocation or Suspension Because of a Criminal Conviction.

(a) The commission may revoke, suspend, or deny a license issued under the Act, or place a person on probation whose license has been suspended, if the commission determines that a licensee, a partner of the licensee, a principal in the licensee's business, or an employee of the licensee has been finally convicted, in the three years immediately preceding the date of the application, of:

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

(b) The commission may also, after hearing, suspend, revoke, or deny a certificate of registration because of a person's felony probation revocation, parole revocation, or revocation of mandatory supervision.

(c) In determining whether a criminal conviction directly relates to the operation of a vehicle storage facility, the commission shall consider:

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

(d) In determining the present fitness of a person who has been convicted of a crime, the commission shall also consider:

(1) (No change.)

(2) whether or not the person was a minor at the time of the commission of the crime;

(3)-(6) (No change.)

(e) It shall be the responsibility of the applicant, to the extent possible, to secure and provide the commission the recommendations of the prosecution, law enforcement, and correctional authorities as required.

(f) The applicant shall also furnish proof, in such form as may be required by the commission, that he or she has maintained a record of steady employment, has supported his or her dependents per court order, has otherwise maintained a record of good conduct, and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

§5.919. Technical Requirements–Storage Fees/Charges.

(a) A vehicle storage facility operator may not charge an owner more than $25 for notification under §5.906(b) of this title (relating to Accepting Vehicles for Storage).

(b) A vehicle storage facility operator is entitled to charge an owner $10 for preservation of a stored motor vehicle, as defined in §5.902 of this title (relating to Definitions).

(c) A vehicle storage facility operator may not charge less than $5.00 or more than $15 for each day or part of a day for storage of a vehicle. A daily storage fee may be charged for a day regardless of whether the vehicle is stored for 24 hours of the day, except that a daily storage fee may not be charged for more than one day if the vehicle remains at the vehicle storage facility less than 12 hours. For the purposes of this subsection, a day is considered to begin and end at midnight.

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

(f) For purposes of this section, "vehicle storage facility" includes a garage, parking lot, or any type of facility owned by a governmental entity for storing or parking ten or more vehicles.

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

Issued in Austin, Texas, on November 15, 1993.

TRD-9332153 Mary Ross McDonald
Assistant Director, Legal Division-Gas Utilities/LP Gas
Railroad Commission of Texas

Effective date: December 6, 1993

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For further information, please call: (512) 463-7095

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Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Customer Service and Protection

- **16 TAC §23.49**

The Public Utility Commission of Texas adopts an amendment to §23.49, with changes to the proposed text as published in the August 3, 1993, issue of the *Texas Register* (18 TexReg 4989).

The commission adopts the amendment for the purpose of providing for expedited processing of petitions for the expansion of toll-free local calling areas. Initiation of this rulemaking proceeding was required by Senate Bill 632, 73rd Legislature, 1993, which enacted Texas Civil Statutes, Article 1446c, §93A, hereinafter referred to as PURA, §93A. The procedures required in §23.49(c) are revised from the August publication in response to specific comments received by the commission.

Nine parties submitted comments in response to the August 3, 1993, *Texas Register* publication: AT&T Communications of the Southwest, Inc. (AT&T); GTE Southwest Incorporated and Contel of Texas, Inc. (joint comments) (GTE/Contel); MCI Telecommunications Corporation (MCI); Office of Public Utility Counsel (OPC); City of Sour Lake (Sour Lake); Texas Association of Long Distance Telephone Companies (TEXALTEL); Texas Communities for Expanded Local Calling Areas (TCELCA); Texas Statewide Telephone Cooperative, Inc. (TSTCI); and Texas Telephone Association (TTA). In addition, the commission conducted a public hearing on October 7, 1993, at which comments were received.

The commission, in its August publication in the *Texas Register*, asked commenters to respond to several specific questions.

Commenters were asked whether a successful petition should provide for expansion of toll-free calling in both directions between the petitioning and petitioned exchange, or outbound-only from the petitioning exchange.

AT&T and MCI argued that PURA, §93A directs the commission to provide for one-way expanded toll-free calling areas. They expressed concern about the impact of expanded toll-free local calling areas on competition for intraLATA MTS, noting that mandatory two-way expanded toll-free local calling areas effectively transform a potentially competitive market into a monopoly in which only the local exchange carrier (LEC) can carry the call.

OPC and TCELCA argued for two-way expanded toll-free local calling areas, saying that two exchanges are not effectively made a toll-free local calling area if only outbound calls are toll-free.

GTE/Contel said that expanded toll-free calling areas should be two-way only in instances where there is a bilateral community of interest and a need for two-way toll-free local calling is indicated. In such a case, the petitioned exchange should be made a party to the proceedings, its subscribers should be balloted along with subscribers in the petitioning exchange, and the subsection should allow for cost recovery from all participating customers in both the petitioning and petitioned exchanges. GTE/Contel noted that the cost of two-way toll-free local calling is significantly greater than the cost of one-way expanded toll-free calling. They reported that, when presented a choice between one-way and two-way calling options, only about 20% of GTE customers choose the more expensive two-way service.

TTA, GTE/Contel, and Sour Lake suggested making two-way expanded toll-free calling optional and requiring customers to indicate on an expanded toll-free calling area petition whether one-way or two-way expanded toll-free calling is sought.

The commission agrees with OPC and TCELCA that in order to give full effect to the language of PURA, §93A, two-way expanded toll-free local calling areas are required. The commission believes that the comments of AT&T, MCI, and GTE/Contel address policy concerns that were resolved by the legislature when it enacted PURA, §93A. PURA, §93A(a) describes the purpose of the statute as requiring the commission to address "the calling needs between nearby telephone exchanges" by allowing the expansion of toll-free local calling areas. The expansion of a toll-free local calling area is not the same as the provision of an alternative billing arrangement (e.g., allowing a caller to make all the calls she wants from her home exchange to a nearby exchange at a flat-rate.) If the "area" in which a caller from a petitioning exchange can make toll-free local calls is expanded to include a petitioned exchange, then the caller should be able to move to the petitioned exchange, which would now be included in an expanded geographic area, and make a toll-free local call back to the petitioning exchange. Although the statute does not specifically require either two-way or one-way calling (i.e , by use of those words), and the statute does not expressly forbid one-way calling, the commission concludes that the language that was used by the legislature in describing the purpose of the legislation (i.e., "the expanding of toll-free calling areas") in fact does require the commission to implement expanded toll-free local two-way communications between qualifying exchanges. Thus, even allowing the option of one-way calling is inappropriate under the statute. There is clearly nothing in the statute contravening this interpretation. Those who wish to pursue one-way calling may do so under the commission's extended area service requirements in subsection (b) The commission's interpretation is reflected in subsection (c)(1)(A), which now describes petitions "for expansion of two-way toll-free local calling areas."

Commenters were also asked whether the local exchange carrier's costs recoverable under the subsection should include settlements to reimburse the carrier serving the petitioned exchange for its costs of providing the expanded toll-free local calling.

All parties responding supported including such settlements, to the extent they are reasonable and necessary, in a LEC's recoverable costs when expanded toll-free calling is one-way TCELCA supported their inclusion "up to the stated maximum total charges of $3.50 on residential and $7.00 on business."

All but one party responding supported the inclusion of intercompany settlements in recoverable costs for two-way expanded toll-free local calling areas. GTE/Contel, dissenting from that view, recommended that the petitioning exchange be required to bear only costs and lost toll originating in that exchange. The GTE companies argued strongly that "any expansion of two-way toll-free calling should allow for cost recovery from all participating customers in both the petitioning and petitioned exchanges, so that the manner in which costs are recovered would not depend on which exchange happens to file a petition with the commission."

The commission is persuaded by the comments of GTE/Contel and believes that the language of the statute does not foreclose the LEC serving a petitioned exchange (or a LEC that merely provides transport between petitioning and petitioned exchanges) from recovering its costs and lost toll revenue as a result of the expansion by the petitioning exchange. The commission believes that the statute was designed to provide rural areas with an affordable means of communication within their community but without penalty to the affected LECs. In order to adhere to the underlying legislative intent, the commission has provided a mechanism whereby a LEC serving a petitioned exchange (or serving as a transporting LEC) may be made whole without a revenue requirement showing Therefore, there is no need for intercompany settlements as proposed by the parties commenting on this issue. In addition, the procedure provided under paragraphs (6)(B) and (12) of subsection (c) will ensure that as a result of the expansion of toll-free local calling areas the customers of the petitioning exchange do not bear additional costs in an amount beyond the fees specified by statute.

Commissioner Rabago disagrees with the decision to allow a LEC to recover lost toll revenue from a petitioned exchange if that LEC does not also serve the petitioning exchange. In his view, the purpose of PURA, §93A was to facilitate expanded calling scopes for petitioning exchanges. Recovery of lost toll revenue was an incidental aspect of this main legislative purpose. Thus, he does not agree that the special revenue recovery provision contained in PURA, §93A(3)(a)(A) reaches local exchange companies other than the LEC of the petitioning exchange.

Commissioner Rabago believes that, contrary to the plain meaning of the statute, the majority has created an independent right of the petitioned LEC to appear on its own behalf to recover its lost revenues without any showing that its overall revenues are inadequate. To give effect to the majority's decision, "the local exchange company" must be interpreted to mean "any" LEC rather than a particular LEC Absent a clear statement of legislative intent to create an LEC's vested right to recover a revenue stream, Commissioner Rabago believes that the commission does not have authority to create such a right In his opinion, nothing in PURA establishes a utility's vested right in a revenue stream absent a specific grant of authority by the legislature, and no such special right was created by Senate Bill 632.

Commissioner Rabago notes that PURA, §93A(a)(3)(A) provides that "the local exchange company shall recover all of its costs incurred and all loss of revenue from any expansion of toll-free calling areas under this section" through a request "other than a revenue requirement showing." In his view, the plain meaning of the words in the statute does not support the majority's action. In support of his position, he notes that under the Government Code, the ordinary meaning should be given to words in a statute. Government Code §312.002; see also Smith *v* Brooks, 825 SW 2d 208 (Tex. App. -Texarkana 1992) Further, courts have determined that it is to be presumed that the legislature intended to use and give meaning to each word in the statute. See Valley International Properties *v.* Los Campeones, 568 SW 2d 680 (Tex. App.-Corpus Christi 1978). In Commissioner Rabago's view, a key issue in this rulemaking is the meaning of the word "the" in subsection (a)(3) (A) of PURA, §93A. According to Commissioner Rabago, "the" is a definite article which indicates that the following noun, or in this case, noun phrase, was specified in a previous context. In prior subsection (a)(1) of PURA, §93A, "the local exchange company" is the one which ballots "its subscribers within the petitioning exchange." Commissioner Rabago believes that this subsection clearly refers only to the LEC serving the petitioning exchange. In his view, both paragraphs (1) and (3)(A) of PURA, §93A are criteria which the commission is to consider in providing an expedited hearing to expand toll-free calling areas Thus, Commissioner Rabago believes that, read in the context of the entire statute, paragraph (3)(A) of PURA, §93A has no function apart

from its role in expedited expanded calling scope hearings for petitioning exchanges

Commissioner Rabago believes that PURA, §93A explicitly provides for recovery of the costs incurred by the LEC serving the petitioning exchange. In his view, such costs include charges for services rendered to it by a LEC serving the petitioned exchange (as well as charges for any services rendered to it by a third LEC for transporting calls between exchanges) The LEC serving the petitioned exchange should be allowed to charge the LEC serving the petitioning exchange for the cost of terminating calls in its exchange and any costs associated with the origination of calls from its exchange into the petitioning exchange In his opinion, these charges are costs incurred by the petitioning exchange in order to implement expanded two-way local calling for its customers and would be recoverable under PURA, §93A However, Commissioner Rabago specifically disagrees that lost toll revenues experienced by the LEC serving the petitioned exchange are implementation costs to the LEC serving the petitioning exchange and, therefore, would not allow a charge for recovery of such lost toll revenues

Commissioner Rabago further supports his dissent on this issue as follows Under subsection (a)(3) of PURA, §93A, there are two methods for "the local exchange company" to recover lost toll revenue Read as applying to the petitioning exchange's LEC, both special revenue recovery provisions make sense On the other hand, it is nonsensical to interpret subsection (a)(3)(A) (i) of PURA, §93A as authorizing a petitioned LEC to recover $3 50 per line from petitioning exchange subscribers Conversely, it is perfectly logical for the petitioning LEC to recover a surcharge from its state wide customers as provided in subsection (a)(3)(A)(ii) of PURA, §93A

Commissioner Rabago notes that if the LEC serving the petitioned exchange is different from the one serving the petitioning exchange, that LEC is not without remedy to recover costs One option is for the LEC serving the petitioned exchange to recover costs in the context of a normal rate case as provided by PURA Another option is to recognize that the LEC serving a petitioning exchange could be required to make some payment to the LEC serving a petitioned exchange for the termination of calls to that exchange or for providing the origination of calls to be terminated in the petitioning LEC's exchange under expanded two-way local calling The payment to the LEC serving the petitioned exchange is a cost incurred by the LEC serving the petitioning exchange, and that cost is recoverable under PURA, §93A Thus, in Commissioner Rabago's view, the LEC serving the petitioned exchange would receive compensation for the use of its facilities to enable expanded two-way local calling between the petitioning and petitioned exchanges

On the issue of lost toll revenues, Commissioner Rabago determines, again reading "the" to refer only to the petitioning LEC, recovery of lost toll revenue for that LEC is allowed Therefore, in his view, if the LEC serving the petitioning exchange is also the LEC serving the petitioned exchange, all lost toll revenue experienced by that LEC could be recovered under PURA, §93A. However, the recovery of toll revenues lost by a LEC serving only the petitioned exchange must be addressed under provisions of PURA other than §93A

The commission also asked commenters whether, when the petition is based on a community of interest standard, the balloting should occur after the determination that a community of interest exists

Four parties (GTE/Contel, TTA, OPC, and TCELCA) recommended that balloting occur after the commission has made a community of interest determination TTA notes that balloting prior to a determination regarding community of interest could result in unnecessary costs and in falsely raising the hopes and expectations of customers AT&T and MCI state that PURA, §93A provides for balloting to occur before the commission is required to consider a petition Nevertheless, AT&T supports whichever procedure "is more economically and judicially efficient"

The commission finds that community of interest (or geographic proximity) should be determined before balloting occurs The overriding consideration is to minimize confusion among customers who may believe that the service will be implemented after an affirmative vote of at least 70% of the subscribers in the petitioning exchange In addition, finding a community of interest before balloting would be more cost effective for the petitioners, the LECs, and the commission Thus, subsection (c)(5), read in conjunction with paragraph (3) of that subsection, provides that balloting will follow a determination of community of interest

In addition to responding to the commission's specific questions, parties offered general comments

OPC, TEXALTEL, and TCELCA commented that expanded toll-free calling and extended area service should be in separate sections of the substantive rules TEXALTEL expressed concern that inclusion of expanded toll-free calling areas in §23 49 will limit the rights of some parties under §23 49(b) (relating to Extended Area Service)

The commission notes that the addition of §23 49(c) does not limit any party's access to the procedures prescribed in other subsections of §23 49 Furthermore, many sections of the substantive rules contain disparate subject matter, and including the two programs in the same section does not imply a functional relationship between them

TCELCA commented that the petition need not contain a statement that rates for expanded toll-free calling areas are subject to change in a rate case because all rates are subject to change in a rate case

The commission believes that the public interest requires that voters in the petitioning exchange be informed that the monthly fee imposed upon the customers in the petitioning exchange for expanded toll-free local calling areas is temporary only until the company's next general rate case However, in order not to discourage the petitioning process, the commission has eliminated this statement at the petition stage and has instead added clarifying language at the balloting stage in subsection (c)(5)(B)(iv). The commission believes that customers are likely to be aware that local exchange rates are subject to change in a general rate case. Therefore, the commission does not require a warning in that portion of the ballot dealing with the monthly fee to be surcharged to all customers statewide.

GTE/Contel and TTA both commented that an application for expanded toll-free calling areas should include only one petitioned exchange, as the proposed subsection provided

The commission disagrees and has specifically provided for multiple exchange petitions. Nothing in the underlying statute specifically addresses whether a single petition can seek expansion into more than one area. However, the commission believes that its response to this issue is primarily driven by its finding (discussed elsewhere in this preamble) that the maximum exchange-specific fee of $3.50 or $7 00 applies to each line in the petitioning exchange, regardless of how many petitioned exchanges are added to the expanded toll-free local calling area. If the exchange-specific fee applied as to each petitioned exchange that is added to the toll-free local calling area, it would make some sense to limit a petition to a single petitioned exchange so that subscribers being asked to sign a petition could keep track of their fees However, where that pricing aspect is eliminated, it would be overly bureaucratic, and serve no useful purpose, to require several petitions to accomplish the same result that can be achieved with one petition The commission has included in subsection (c)(5)(B) a safeguard to prevent confusion while ensuring that each petitioned exchange receives a 70% affirmative vote of those voting in the petitioning exchange This provision will allow for an expeditious process in addition to the reduction of paperwork involved in multiple petitions

TCELCA, GTE/Contel, and TTA all pointed out difficulties with sending petitions to the address to which payments are sent. The commission agrees that petitions will be more efficiently processed if sent by the commission directly to the affected LECs. The commission's decision is reflected at subsection (c)(1)(B), which provides for the general counsel to send petitions to each affected LEC

TCELCA requested that a petitioner be allowed to identify an exchange by a three-digit prefix, by the name of a community or municipality in the exchange, or by some other description

The commission notes that such informal and imprecise designations can create enormous difficulties for LECs and the commission staff in implementing expanded toll-free local calling, at the cost of expeditious handling of petitions The commission has clarified subsection (c)(1)(B)(ii)(II)(-b-) and (-c-) to require a petitioner to clearly identify both the petitioning and petitioned exchanges in its petition

TCELCA requested that "petition coordinator" be substituted for "representative"

The commission has clarified in subsection (c)(1)(B)(i)(I) that the letter asking the commission to accept a petition for filing must designate a contact person to respond to inquiries about the petition The inquiries that may be made of the contact person will presumably come from the commission staff, the LECs, or intervenors as the petition is processed at the commission This individual obviously may be a different person from the petition coordinator required in subsection (c)(1)(B)(ii)(II)(-a-), who is the person signatories to the petition may contact for further information about the petition. It is important for expeditious treatment of these petitions that the commission staff have a single point of contact, and it seems most fair that the person filing the petition with the commission be allowed to designate that contact.

GTE/Contel recommended that subsection (c)(2)(A) be reworded to include review of the petition for compliance with filing requirements.

The commission agrees that an initial review would prevent the LECs from commencing the process of cost studies and the like, thereby incurring possibly unnecessary costs. Furthermore, the commission staff will likewise be spared possibly unnecessary review of such studies The commission has incorporated into subsection (c)(2) a review of the petition for compliance with the requirements of subsection (c)(2)

TCELCA requested that the staff review of a petition for expansion of toll-free local calling areas be eliminated and instead that LECs be required to file annually information about all exchanges which are not ineligible for such expansion.

The commission believes that staff review of expanded toll-free local calling area petitions pursuant to subsection (c)(2) is more cost effective than the detailed filings requested by TCELCA, and declines to make the requested change

GTE/Contel and TTA argued for the need for a waiting period before a petition may be filed for an expanded toll-free local calling area for which a ballot has failed

The commission agrees that such a waiting period is appropriate, and has added an 18-month waiting period at subsections (c)(1)(C)(i)(III) and (c)(2)(B) . This waiting period will apply only when a ballot has failed, not when a petition has been found insufficient The waiting period is a reasonable means to avoid unnecessary expenditure of limited commission resources (as well as unnecessary costs for affected LECs) where there has been a recent vote indicating that a sufficient number of subscribers do not wish to expand their toll-free local calling area The commission has created a safety valve for consideration of a new petition sooner than 18 months if the petitioners demonstrate materially changed circumstances that justify a new opportunity to vote

TCELCA requested that the 22-mile geographical proximity threshold be measured from the petitioning exchange's border to the petitioned exchange's central office

The underlying statute is silent as to how the 22-mile requirement should be measured. The commission is persuaded by TCELCA's comments. However, the commission has provided more flexibility than TCELCA suggests so that procedural expediency will not be undermined. In this regard, subsection (c)(3) (B) provides three methods whereby the 22-mile proximity test may be measured, depending upon the individual circumstances of each petition. One possible method allows proximity to be measured by using the same vertical and horizontal (V & H) coordinates for each of the exchanges that the LECs use to rate interexchange calls to and from exchanges. Another method allows measurement from the nearest points on the petitioning and petitioned exchanges' boundaries Still another method of measurement incorporates TCELCA's method of measuring the distance between the central office of the petitioning exchange and the border of each petitioned exchange. The commission believes that allowing for several methods will retain the expediency sought by the statute while at the same providing flexibility to those exchanges which do not meet the strict vertical and horizontal (V & H) coordinate method as originally provided in the published version

TCELCA requested that the amendment establish a two-pronged test for determining a community of interest, allowing a petition to establish a community of interest automatically by meeting certain criteria spelled out in the subsection

The commission agrees that such a specification may eliminate costly hearings and is in keeping with the spirit of the statute. In addition, communities would be able to receive service without unnecessary delay while giving the statute its full effect The commission incorporates automatic community of interest tests in subsection (c)(3)(C)(ii) The commission uses essentially the standards suggested by TCELCA, providing that one of the three criteria (common school districts, county seat, primary hospital) must be met before an automatic community of interest determination is made. The commission is persuaded that the presence of any one of these elements would demonstrate a prima facie showing that a community of interest exists

TSTCI commented that LECs should not have to apply for the exemptions permitted by PURA, §93A(b)(1) and requests that the commission automatically reject petitions from exchanges falling within these exemptions

The commission notes that PURA, §93A(b)(1) permits but does not require a LEC to take advantage of these exemptions, and declines to make the requested change in order to allow LECs to exercise their option to provide expanded toll-free local calling areas within all otherwise eligible exchanges The procedure for requesting an exemption is defined at subsection (c)(4)

AT&T and MCI commented that the PURA, §93A exception for expanded toll-free local calling into an exchange contiguous to a metropolitan exchange is omitted from the proposed amendment

Because subsection (c)(4)(A)(iv) only allows an exemption if "the petitioning or petitioned exchange is a metropolitan exchange," the commission does not find it necessary to incorporate the language of PURA, §93A(b)(2), which merely clarifies that no exemption is available regarding expansion into an exchange that is located in a local calling area that is contiguous to a metropolitan exchange. The requirements of PURA, §93A(b)(2) apply to both the commission and the LEC even though the commission does not find it necessary to incorporate them into the subsection

TCELCA requested that a request for exemption based on geographical or technological infeasibility should be granted only temporarily, and that the LEC be required to give the commission a timeline to cure the condition giving rise to the infeasibility

The commission acknowledges the merit of this approach, and feels that such a refinement of the section may be appropriate at a future date if technological and geographic infeasibility proves to be a significant impediment to implementation of expanded toll-free local calling areas To address this underlying concern, the commission has added at subsection (c)(4) (C) a requirement that a LEC, in order to receive an exemption based on technological or geographic infeasibility, must make a good and sufficient showing that technology is not available in the marketplace to make the expansion of toll-free local calling areas feasible This requirement is premised on an understanding that technology may be capable of overcoming geographic infeasibility

GTE/Contel, TCELCA, and TTA all requested that the commission establish a form ballot In response to these requests, the commission has specified minimum requirements for the ballot at subsection (c)(5)(B) General counsel and commission staff will require the use of a standard form for ballots

TTA requested that LECs be permitted to use a company-wide surrogate cost methodology for the purpose of determining fees for inclusion on expanded toll-free calling area ballots

By providing at subsection (c)(5)(B)(iv)(I) that the ballot will state only the maximum exchange-specific fees, rather than estimated actual charges based on cost studies, the commission has obviated the need for the recommended change

OPC and TCELCA comment that the maximum exchange-specific surcharge of $3 50 per residential line and $7 00 per business line should apply regardless of how many exchanges a petitioning exchange includes in its expanded toll free local calling area

The commission has reviewed the statute and agrees that the interpretation suggested by OPC and TCELCA is correct The key language in PURA, §93A(a)(3) (A)(i) is that the LEC (which the commission interprets in this instance as the LEC serving the petitioning exchange) may impose a monthly fee on each residential and business subscriber in the petitioning exchange of not more than $3 50 "per line" for residential customers nor

more than $7.00 "per line" for business customers This language appears to confine the exchange-specific fee to a single charge (up to these maximums) regardless of the number of exchanges added to the toll-free local calling area. Thus, if petitioning exchange A gets expanded toll-free local calling to petitioned exchange B, and the costs incurred by the LEC serving A justify an exchange-specific surcharge of only $1.75 per line for residential customers, then that surcharge may be no more than $1.75 per line. If A also gets expanded toll-free local calling to petitioned exchanges C, D, and E (either in the same petition as B or in a subsequent petition), and the costs incurred by the LEC serving A in connection with the expansion to C, D, and/or E would justify an exchange-specific surcharge of more than $3.50 per line for residential customers, the LEC may nonetheless only assess a customer-specific surcharge of $3.50 per line. Because of the absence of a contemporaneous legislative record evidencing intent, the commission has confined its interpretation to the four corners of the statute and believes its interpretation is consistent with the statute as a whole, is not inconsistent with any part of the statute, and gives meaning to all words of the statute. The commission's interpretation is reflected at subsection (c)(5)(B)(iv)(II) and subsection (c)(6)(B)(i).

GTE/Contel requested that a LEC be permitted to accumulate the revenue requirements from several expanded toll-free calling area petitions before implementing a statewide monthly fee to recover costs incurred in such expansions under PURA, §93A(a)(3)(A)(ii). The commission believes that such an implementation of statewide fees may be cost-effective in many cases and will probably minimize customer confusion However, the commission believes that such a practice is permitted without the need to address it specifically

Both TCELCA and Sour Lake commented that the proposed amendment contains no time limits for certain actions on the part of the petitioners, LECs, and commission staff TCELCA proposed a specific timetable to govern the process from the filing of a petition to commission approval. In response to these concerns, the commission has included timelines for action throughout the subsection The timelines are both expeditious and realistic, given commission resources, and should add clarity to specific steps that must be taken

All comments received, including those not specifically referenced herein, were fully considered by the commission

The amendment is adopted pursuant to Texas Civil Statutes, Article 1446c, §16, which provide the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and §93A, which requires the commission to initiate a rulemaking proceeding to approve rules to provide for an expedited hearing to allow the expanding of toll-free calling areas

The statute affected by the amendment is Texas Civil Statutes, Article 1446c, §93A.

§23.49. Telephone Extended Are Service (EAS) and Expanded Toll-free Local Calling Areas.

(a) Purpose. This section is intended to establish consistent procedures for the processing of requests for extended area service (EAS) and to provide for an expedited hearing allowing the expansion of two-way toll-free local calling for rural areas, as enacted in Senate Bill 632 by the 73rd Legislature.

(b) Extended Area Service.

(1) Filing Requirements.

(A) In order to be considered by the commission, a request for extended area service shall be initiated by at least one of the following actions:

(i) a petition signed by the greater of 5.0% or 100 of the subscribers in the exchange from which the petition originates;

(ii) a resolution adopted and filed with the commission by the governing body of a political subdivision provided that said governing body properly represents the exchange requesting EAS;

(iii) a resolution adopted and filed with the commission by the board of directors or trustees of a community association representing an unincorporated community; or

(iv) an application filed by one or more of the affected utility(ies)

(B) A request for establishment of a particular extended area service arrangement pursuant to subsections (b)(1)(A)(i), (ii), or (iii) of this section shall not be considered sooner than three years after either a determination of the failure of any such previous request to meet eligibility requirements, or final commission action on any such previously-docketed request. An exception to this requirement may be granted to any petitioning exchange which demonstrates that a change of circumstances may have materially affected traffic levels between the petitioning exchange and the exchange to which EAS is desired

(C) All requests for EAS, regardless of how initiated, shall state the name of the exchange(s) to which the extended area service is sought

(D) The petition shall set forth the name and telephone number of each signatory and the name of the exchange from which the subscribers receive service.

(E) Each signature page of a petition for EAS must contain information which clearly states that establishment of the requested EAS route may require that subscribers to the service change their telephone numbers and pay a monthly EAS rate in addition to their local exchange service rates, as well as applicable service connection charges. The requirements of this paragraph shall not apply to petitions received before the effective date of this section.

(F) Petitions for extended area service into metropolitan exchanges on file with the commission on or before the effective date of this section will be grouped by relevant metropolitan exchange. For each metropolitan exchange, General Counsel will file a motion to docket a proceeding for the determination of uniform extended area service rate additives as directed by subsections (b)(3), (4), and (5) of this section for all pending EAS requests to that metropolitan exchange. Upon the docketing of such a proceeding, two weeks' notice in a newspaper of general circulation in the metropolitan area shall be published. The notice shall contain such information as deemed reasonable by the hearings examiner in the proceeding. No fewer than 60 days from the final publication of notice shall pass before the demand studies required by subsection (b)(3) of this section are initiated. New petitioners for extended area service into the metropolitan exchange may be accepted prior to the initiation of the demand studies.

(2) Community of interest.

(A) Upon receipt of a proper filing under the provisions set out in subsection (b)(1) of this section, the utility(ies) involved will be directed by the commission staff to initiate appropriate calling usage studies and, thereafter, within 90 days of receipt of such notification, file with the commission staff and a representative of the petitioning exchange the results of such studies The message distribution and revenue distribution detail from the studies are to be considered proprietary unless the parties agree otherwise and may not be released for use outside the context of the commission's proceedings The data to be filed shall be based upon a minimum 60-day study of representative calling patterns, shall be in such form, detail, and content as the commission staff may reasonably require and shall include at a minimum, the following information:

(i) the number of messages and either minutes-of-use or billed toll revenues, expressed per customer account per month, in each direction over the route being studied segregated between business and residence users and combined for both;

(ii) a detailed analysis of the distribution of calling usage among subscribers, in each direction over the route being studied, showing the number of subscriber accounts placing zero calls, one call, etc., through ten calls, the number of subscriber accounts placing between 11 and 20 calls, the number placing between 21 and 50 calls, and the number of subscriber accounts placing more than 50 calls, per month;

(iii) data showing, by class of service, the number of subscriber accounts in service for each of the exchanges being studied;

(iv) the distance between rate centers, and the average revenue per message for the calls during the study period;

(v) the number of foreign exchange (FX) lines in service over each route and the estimated average calling volumes on these lines expressed as message per month; and

(vi) a listing of known interexchange carriers providing service between the petitioning exchange and the exchange to which EAS is desired.

(B) A showing that a reasonable degree of community of interest between exchanges will be considered to exist from one exchange to the other when

(i) there is an average (arithmetic mean) of no less than ten calls per subscriber account per month from one exchange to the other; and

(ii) no less than two-thirds of the subscribers' accounts place at least five calls per month from one exchange to the other.

(C) Requests for EAS not processed under subsection (b)(1)(F) of this section shall be assigned a project number to establish its place in a queue and notice shall be provided, pursuant to the provisions set out in subsection (b) (7) of this section, whenever a reasonable community of interest is found to exist as described in subparagraph (B) of this paragraph:

(i) on a bilateral basis between exchanges; or

(ii) on a unilateral basis from the petitioning exchange to the other exchange

(D) The project shall be established as a formal docket upon the motion of General Counsel.

(E) Following the docketing of a request, a prehearing conference will be scheduled to establish the exchange to which EAS is sought, and to report any agreements reached by the parties. The utility(ies) involved shall conduct appropriate demand and costing analyses according to subsections (b)(3) and (4) of this section

(3) Demand analysis.

(A) The utility(ies) involved shall conduct analyses of anticipated demand for the requested extended area service. The data to be filed shall be in such form, detail, and content as the commission staff may reasonably require and shall include, at a minimum, the following information:

(i) the number of subscribers who are expected to take the requested service at the estimated rates recommended pursuant to subsection (h)(5) of this section and the associated probability of that level of subscribership;

(ii) the anticipated stimulation effects which would be applied to the present traffic volumes generated by the subscribers anticipated by clause (i) of this subparagraph, and

(iii) the total volume of traffic upon which to base the anticipated switching and trunking requirements resulting from clauses (i) and (ii) of this subparagraph

(B) Unless the utility(ies) demonstrate good cause to expand the time schedule, no later than 120 days after the prehearing conference, the utility(ies) shall file with the commission staff and other parties to the proceeding the summary results of these analyses, together with supporting schedules and detailed documentation as will permit the identification of study components and verification and understanding of study results

(4) Determination of costs.

(A) The utility or utilities involved shall conduct studies necessary to determine the changes in costs and revenues which may reasonably be expected to result from establishment of the requested extended area service. These studies will consider and develop the long run incremental costs as follows

(i) switching and trunking costs associated with existing toll traffic which converts to extended area service traffic plus the costs of switching and trunking required to handle the additional traffic as determined in subsection (b)(3)(A)(ii) of this section,

(ii) the increases and decreases in expenses resulting from the new service and the net effect on operating expenses; and

(iii) direct costs incurred by the utility(ies) in conducting demand analyses in compliance with subsection (b)(3) of this section.

(B) The utility(ies) may analyze the effect on toll revenues in order to present evidence on the overall revenue effects of providing the requested EAS. Revenue effects supported by such evidence, if presented, may be included in the EAS rate additives specified in subsection (b)(5)(D) of this section

(C) The utility(ies) shall file with the commission staff and other parties to the proceeding the summary results of these studies, together with such supporting schedules and detailed documentation as will permit the identification of study components and verification and understanding of study results according to the following schedule, unless the utility(ies) can demonstrate that good cause exists to expand the time schedule for a particular study:

(i) incremental costs identified in paragraph (1) of this subsection shall be filed no later than 90 days from the filing of the results of the demand analysis conducted pursuant to subsection (b)(3) of this section, and

(ii) toll revenue effects, if analyzed pursuant to subparagraph (B) of this paragraph, shall be filed no later than 90 days from the filing of the results of the incremental costs, pursuant to clause (i) of this subparagraph.

(5) Extended area service rate additives.

(A) Coincident with the filing of cost study results, or coincident with the toll revenue effect results, if filed, the utility(ies) shall submit recommendations for proposed incremental rate additives, by class of service, necessary to support the cost of the added service, as well as to support the toll revenue effect, if such effect is filed.

(i) The extended area rate additives to be assessed on EAS subscribers in the petitioning exchange(s) are to recover the incremental cost of providing the service as identified according to subsection (b)(4)(A) of this section plus 10% of the incremental cost.

(ii) The rate additives to be assessed on subscribers in the metropolitan exchange for which EAS has been requested are to recover revenues determined by the following formula: net lost toll multiplied by the percent outbound toll and mul-

tiplied by the estimated EAS take-rate. The terms in the formula are defined as follows:

(I) net lost toll-lost toll revenue as identified according to subsection (b)(4)(B) of this section less the revenue recovered through the EAS rate additive identified in subsection (b)(5)(A)(i) of this section;

(II) percent outbound toll-this factor is calculated by dividing toll minutes of use originating in the metropolitan exchange and terminating in the petitioning exchanges by the total number of toll minutes of use between the metropolitan exchange and the petitioning exchange(s); and

(III) estimated EAS take-rate-the estimated number of EAS subscribers in the petitioning exchanges divided by the total number of subscribers in the petitioning exchange(s).

(iii) Tel-Assistance subscribers in the metropolitan exchange will not be assessed this rate additive

(B) Service connection charges will be applicable.

(C) A non-recurring charge to defray the direct incremental costs of the demand analyses identified in subsection (b)(4)(A)(iii) of this section shall be charged to subscribers who order the service within 12 months from the time it is first offered. The non-recurring charge shall not exceed $5.00 per access line

(D) The EAS rate additive to be used in the affected exchange(s) must meet the following standards

(i) No increase in rates shall be incurred by the subscribers of nonbenefitting exchanges, that is, by subscribers whose calling scopes are not affected by the requested EAS service

(ii) If the petitioning exchange has demonstrated a unilateral but not a bilateral community of interest through the requirements of subsection (b)(2)(C)(i) of this section, the EAS arrangements will be priced using those rate increments designed to recover the added costs for each route, plus the toll revenue effect, if found reasonably substantiated. The total increment chargeable to subscribers within an exchange will be the sum of the increments of all new extended area service routes established for that exchange after the effective date of this section

(iii) If the petitioning exchange demonstrated a bilateral community of interest through the requirements of subsection (b)(2)(C)(i) of this section and has requested that the costs be borne on a bilateral basis, the additional cost for the new EAS route will be divided between the two participating exchanges according to the ratio of calling volumes between the two exchanges.

(iv) In establishing a flat-rate EAS increment, all classes of customer access line rates within each exchange shall be increased by equal percentages.

(6) Subscription threshold

(A) A threshold demand level shall be established by the commission's order in the docketed proceeding prior to the design or construction of facilities for the service. A reasonable pre-subscription process will then be undertaken to determine the likely demand level. If the likely demand level equals or exceeds the threshold demand level, then EAS shall be provided in accordance with the commission's order. If the threshold demand level is not met, the affected utility(ies) shall be relieved of any duty or obligation to provide the EAS approved by the commission

(B) The cost of pre-subscription shall be divided between the utility and the petitioners. The petitioners shall pay for the printing of bill inserts and ballots and the utility shall insert them in bills free of charge. In the alternative, upon the agreement of the parties, the utility shall provide, free of charge, and under protective order, the mailing labels of the subscribers in the petitioning exchange, and the petitioners shall pay the cost of printing and mailing the bill inserts and ballots.

(7) Notice.

(A) Notice of the assignment of a project number, pursuant to subsection (b)(2)(C) of this section, must be provided to all subscribers within the petitioning exchange(s), by publication for two consecutive weeks in a newspaper of general circulation in the area. Notice must also be given to individual subscribers either through inserts in customer bills, or through a separate mailing to each subscriber. The notice must state the project number, the nature of the request, and the commission's mailing address and telephone number to contact in the event an individual wishes to protest or intervene. The commission shall also publish notice in the *Texas Register*.

(B) Written notice containing the information described above shall be provided to the governing official(s) of all incorporated areas within the affected exchanges and the county commission(s) or the board of directors or trustees of a community association representing any unincorporated areas within the affected exchanges.

(C) The cost of notice shall be borne by the petitioners.

(8) Joint filings

(A) EAS agreements. The commission may approve agreements for EAS or EAS substitute services filed jointly by the representatives of petitioning exchanges and the affected utility(ies) (joint filings) so long as the agreements are in accordance with subparagraphs (C)(i)-(ix) of this paragraph

(B) Multiple exchange common calling plans. Joint filing agreements for EAS or EAS substitute services among three or more exchanges shall be permitted pursuant to subparagraphs (C)(i)-(x) following

(C) Joint filings shall be permitted subject to the following.

(i) The parties to such joint filings shall include the name of each local exchange company (LEC) which provides service in the affected exchanges and one duly appointed representative for each of the affected exchange. Each exchange representative shall be designated jointly by the governing officials of all incorporated areas within the affected exchange and the county commission(s) representing any unincorporated areas within the affected exchange

(ii) These joint filings are exempt from the traffic requirements contained in subsection (b)(2) of this section

(iii) These joint filings may include rate proposals which are flat-rate, usage-sensitive, block rates, or other pricing mechanisms. In the circumstance where usage-sensitive rates are proposed, the joint applicants shall include the commission staff in its negotiations

(iv) These joint filings may propose either one-way or two-way calling arrangements

(v) These joint filings may propose either optional or non-optional calling arrangements

(vi) These joint filings shall specify all non-recurring and recurring rate additives to be paid by the various classes and grades of service in the affected exchanges

(vii) These joint filings shall demonstrate that the proposed rate additives

(I) are in the public interest, and in the case of non-optional joint filings which include flat-rate additives, the petition shall demonstrate that more than 50% of the total subscribers who will experience a rate change are in favor of this joint filing at the proposed rates; and

(II) shall recover, for the local exchange company providing the service, the appropriate cost of providing EAS including a contribution to joint costs.

(viii) The notice requirements of subsection (b)(7) of this section are applicable to joint filings. In addition, the commission shall publish notice of the proposed joint filing in the *Texas Register* and shall provide notice to the Office of Public Utility Counsel upon receipt of the joint filing.

(ix) If intervenor status is not requested within 60 days of notice, the joint filing shall be handled administratively, with the commission determining whether the service meets the criteria listed in clause (vii) of this subparagraph. If there is an intervenor, or if requested by the commission staff, the joint filing shall be docketed for hearing and final order. In any event, any of the parties to the joint filing may withdraw the joint filing without prejudice at any time prior to the rendition of the final order. Any alteration or modification of the joint filing by the commission may only be made upon the agreement of all parties to the proceeding.

(x) The exchanges to be included within the proposed common calling plan area shall be contained within a continuous boundary and all exchanges within that boundary shall be included in the common calling plan

(c) Expanded toll-free local calling areas

(1) Petition for expanded toll-free local calling

(A) Filing a petition In order to be considered by the commission a request for expansion of two-way toll-free local calling areas may be initiated by filing a petition with the commission. The petition shall be initiated by one or more of the following actions:

(i) a petition signed by the greater of 5 0% or 100 subscribers in the exchange from which the petition originates,

(ii) a resolution endorsing and adopting a petition described in clause (i) of this subparagraph and filed with the commission by the governing body of a political subdivision that said governing body properly represents an area within the exchange requesting expanded toll-free local calling areas; or

(iii) a resolution endorsing and adopting a petition described in clause (i) of this subparagraph and filed with the commission by the board of directors or trustees of a community association representing an unincorporated community within the exchange requesting expanded toll-free local calling areas.

(B) Other filing requirements. When submitted for filing, the petition shall be accompanied by a filing letter The petition and the accompanying filing letter shall contain the information described in subparagraph (C) of this paragraph. When filed, the petition shall be assigned a project number. A presiding officer shall be assigned and the petition shall be reviewed administratively, under the provisions of Chapter 22, Subchapter C, §22 32 (relating to Administrative Review), unless the presiding officer, for good cause, determines at any point during the review that the petition should be docketed Within five working days of receipt by the general counsel of a filed petition, the general counsel shall send a copy of the petition and the letter by certified mail to each local exchange company (LEC) serving either a petitioning or petitioned exchange

(C) Contents of a petition and filing letter

(i) Filing Letter

(I) Contact Person The letter asking the commission to accept a petition for filing shall designate a contact person to respond to inquiries about the petition The name, address, and daytime telephone number of the contact person shall be identified in the letter

(II) Community of Interest Affidavit or Statement If the petitioning and petitioned exchanges do not meet the geographic requirement set forth in paragraph (3)(B) of this subsection, the letter requesting that the petition be filed with the commission shall also contain an affidavit or statement describing the community of interest between the petitioning and petitioned exchanges The standards that will be used by the presiding officer in deciding whether a community of interest exists, and whether an affidavit or a statement is required in the filing letter, are stated in paragraph (3)(C) of this subsection If the applicable standard for determining whether a community of interest exists is the standard discussed in paragraph (3)(C)(i) of this subsection, the statement by the person filing the letter must describe the existence of a community of interest with the petitioned exchange(s) in sufficient detail so as to allow for verification of the assertions made in the statement. If more than one petitioned exchange is included in the petition, the affidavit and/or statement required by this subclause shall refer with particularity to the factors describing the community of interest between the petitioning exchange and each petitioned exchange

(III) Statement of changed circumstances. If the subscribers in the petitioning exchange have denied by ballot a petition for expanded toll-free local calling to any one or more of the same petitioned exchange(s) within the previous 18 months, the filing letter shall contain a statement explaining what circumstances have changed since the time of the prior ballot that materially affect the need for expanded toll-free local calling between the petitioning and petitioned exchanges For purposes of this subsection, a petition is denied by ballot if it fails to receive an affirmative vote of at least 70% of the voting subscribers in the petitioning exchange If more than one petitioned exchange is included in the petition and is subject to the requirements of this subclause, the statement required by this subclause shall refer with particularity to the changed circumstances affecting the need for expanded toll-free local calling between the petitioning exchange and each such petitioned exchange

(ii) Petition

(I) General A single petition may request expansion of toll-free local calling areas from a single petitioning exchange into multiple petitioned exchanges

(II) Signature pages Each signature page of the petition for expanded toll-free local calling shall include

(-a-) the name and telephone number of a petition coordinator, who is the person signatories may contact for further information about the petition,

(-b-) the name, or the area code and prefix, of the exchange from which the petitioners receive service (the petitioning exchange),

(-c-) the name, or the area code and prefix(es) of the exchange(s) to which expanded toll-free local calling is sought (the petitioned exchange(s),

(-d-) a clear statement that only subscribers in the petitioning exchange may sign the petition,

(-e-) a clear statement that subscribers in the petitioning exchange will be required initially to pay a monthly expanded toll-free local calling fee of up to $3.50 per residential line and $7.00 per business line, in addition to basic local exchange service rates;

(-f-) a clear statement that there must be an affirmative vote of at least 70% of those subscribers responding within the petitioning exchange as to each petitioned exchange before the expanded toll-free local calling can be implemented to that petitioned exchange; and

(-g-) if more than one exchange is petitioned, a clear statement that $3.50 per residential line and $7.00 per business line is for all exchanges petitioned, not for each exchange petitioned.

(III) Signature requirement. A petition must be signed by at least 100 subscribers or 5.0% of the subscribers in the petitioning exchange, whichever is less. Each signatory shall include his or her name and telephone number on the petitic

(2) Initial review of a petitio.

(A) The presiding officer shall, by order issued within 20 days of the filing of the petition, determine if the petition and the accompanying filing letter are sufficient or if they are deficient as to any of the requirements of paragraph (1)(C) of this subsection If the presiding officer finds that the petition or letter is deficient, the presiding officer shall notify the designated contact person so that the contact person may cure any such deficiencies. The petition or filing letter may be cured within 35 days of its initial filing, and if it is not cured by the subsequent filing of sufficient information within that time, the presiding officer shall dismiss the petition (in whole, if appropriate, or in relevant part), without prejudice to the filing of another petition involving the same petitioning and petitioned exchanges.

(B) The presiding officer shall, by order issued no later than 20 days after the filing of the petition, determine whether a statement of changed circumstances required by paragraph (1)(C)(i)(III) of this subsection justifies allowing another ballot sooner than 18 months after the denial by ballot of a prior petition involving the same petitioning and petitioned exchanges If the presiding officer finds that the statement does justify allowing another ballot sooner than 18 months, the general counsel and commission staff shall continue to review the petition administratively. If the presiding officer finds that the statement does not justify allowing another ballot sooner than 18 months, the presiding officer shall dismiss the petition (in whole, if appropriate, or in relevant part).

(C) If the petitioning exchange serves more than 10,000 lines, the presiding officer shall issue an order dismissing the petition within 20 days of the filing of the petition.

(D) The general counsel and commission staff shall continue to review administratively any remaining relevant parts of the petition, as ordered by the presiding officer pursuant to subparagraphs (A)-(C) of this paragraph.

(3) Geographic proximity or community of interest requirement

(A) The presiding officer shall, by order issued no later than 20 days after determining that the petition and accompanying cover letter are sufficient or that any deficiencies have been cured, determine whether the petitioning exchange and each petitioned exchange satisfy either the geographic proximity requirement set forth in subparagraph (B) of this paragraph or the community of interest requirement set forth in subparagraph (C) of this paragraph. If the presiding officer determines that neither the geographic proximity nor the community of interest requirements are satisfied, the presiding officer shall dismiss the petition (in whole, if appropriate, or in relevant part)

(B) The geographic proximity requirement is satisfied as to each petitioned exchange if

(i) the exchange boundaries are contiguous; or

(ii) the distance between the petitioning exchange and the petitioned exchange is 22 miles or less, where the distance between the two exchanges is measured

(I) by using the same vertical and horizontal (V & H) coordinates for each of the exchanges that the LECs use to rate interexchange calls from or to such exchanges,

(II) as the nearest point between the two exchange boundaries, or

(III) as the distance between the central office of the petitioning exchange and the border of the petitioned exchange

(C) A community of interest between a petitioning exchange and a petitioned exchange exists, for purposes of this subsection, when the most distant central offices affected by the petition are within 50 miles of each other, and

(i) the filing includes information demonstrating that the petitioning and petitioned exchanges have a relationship because of schools, hospitals, local governments, or business centers, or that the petitioning or petitioned exchanges have other relationships that would make the unavailability of extended local service a hardship to the residents of the area; or

(ii) the filing letter contains an affidavit stating that any one of the following conditions exists:

(I) the petitioning exchange and the petitioned exchange have a public school district in common;

(II) the county seat of the petitioning exchange is located in the petitioned exchange, or

(III) the primary local hospital used by residents in the petitioning exchange is located in the petitioned exchange.

(D) The general counsel and commission staff shall continue to review administratively any remaining relevant parts of the petition, as ordered by the presiding officer pursuant to subparagraph (A) of this paragraph

(4) Request for exemption

(A) A LEC serving either the petitioning or petitioned exchange may file a request for exemption from the provisions of this subsection Such requests must be filed no later than 20 days after the filing of the petition The request for exemption shall be accompanied by an affidavit identifying with particularity which of the conditions described in this subparagraph exist If the petition includes more than one petitioned exchanges, the request for exemption shall clearly identify which conditions apply to which exchanges Exemptions shall be granted and the petition shall be dismissed by the presiding officer, in the manner described in subparagraphs (B) and (C) of this paragraph, if

(i) the LEC serves fewer than 10,000 lines,

(ii) the petitioning or petitioned exchange is served by a cooperative,

(iii) EAS or extended metropolitan service is currently available

between the petitioning exchange and the petitioned exchange;

(iv) the petitioning or petitioned exchange is a metropolitan exchange; or

(v) it is technologically or geographically infeasible to serve the area

(B) If the LEC's affidavit described in subparagraph (A) of this paragraph identifies one of the conditions described in subparagraph (A)(i)-(iv) of this paragraph, the presiding officer shall, by order issued no later than 40 days after the filing of the petition, grant the exemption and dismiss the petition (in whole, if appropriate, or in relevant part).

(C) If the LEC has requested an exemption based on subparagraph (A)(v) of this paragraph, the presiding officer shall, by order issued no later than 40 days after the filing of the petition, determine whether the LEC has made a good and sufficient showing in its affidavit that technology is not available in the marketplace to make the expansion of toll-free local calling feasible. If the presiding officer determines that the LEC in its affidavit has failed to establish that such technology is not available in the marketplace, the exemption request shall be denied. If the presiding officer determines that the LEC in its affidavit has made a good and sufficient showing that such technology is not available in the marketplace, the exemption request shall be granted. If the exemption request is granted, the presiding officer shall dismiss the petition (in whole, if appropriate, or in relevant part).

(D) The general counsel and commission staff shall continue to review administratively any relevant parts of the petition, as ordered by the presiding officer pursuant to subparagraphs (A)-(C) of this paragraph

(5) Balloting. If all applicable requirements contained in paragraphs (1)-(3) of this subsection have been met, and no exemption has been granted pursuant to paragraph (4) of this subsection, the presiding officer shall, by order issued no later than 40 days after determining that the petition and accompanying cover letter are sufficient or that any deficiencies have been cured, direct the LEC serving the petitioning exchange to begin balloting the subscribers in that exchange, and shall notify the designated contact person that balloting will take place

(A) The cost of preparing and distributing the ballots shall be borne by the LEC serving the petitioning exchange, as a regulatory case expense.

(B) No later than 30 days after the presiding officer's order directing the LEC serving the petitioning exchange to begin balloting, that LEC shall distribute a ballot, in English and Spanish, to each subscriber in the petitioning exchange. The ballot shall require a separate vote for each petitioned exchange. The ballot must be in a standard form approved by general counsel and each ballot shall include:

(i) a statement explaining the service;

(ii) a statement that subscribers in the petitioning exchange have petitioned to expand the toll-free local calling area into the named exchange(s);

(iii) a description of the proposed expanded local service calling area, including an identification of the petitioning exchange and each petitioned exchange for which toll-free local calling is sought;

(iv) a statement that if at least 70% of those subscribers responding vote "yes" as to any petitioned exchange.

(I) subscribers in the petitioning exchange will be temporarily required to pay a monthly fee of up to $3.50 per residential line and $7.00 per business line, in addition to the company's local exchange service rates;

(II) the amount of the temporary monthly additional fee for each subscriber in the petitioning exchange will depend on the costs incurred by the company in providing the service, but cannot exceed $3.50 per residential line or $7.00 per business line, and

(III) the temporary additional fee will be charged to all subscribers in the petitioning exchange until the company's next general rate case,

(v) unambiguous instructions for voting,

(vi) the following statement in large print "It is important that you return this ballot. If you are in favor of obtaining Expanded Toll-Free Local Calling to a listed exchange, check the box labeled 'YES' next to that exchange If you do not want Expanded Toll-Free Local Calling to a listed exchange, check the box labeled 'NO' next to that exchange",

(vii) a statement that a petitioned exchange will be included in the expanded toll-free local calling area only if at least 70% of the subscribers responding vote affirmatively for that exchange,

(viii) the date by which the returned ballot must be postmarked, which date shall be 15 days from the date of the mailing of the ballot to the customer;

(ix) the address to which the ballot should be returned upon completion of voting, identifying the commission as the recipient of the returned ballots; and

(x) a unique identification number assigned by the LEC serving the petitioning exchange to each subscriber in that exchange.

(C) No later than 35 days after the presiding officer's order to the LEC serving the petitioning exchange to begin balloting, that LEC shall submit to the commission staff a master list of all subscribers within the petitioning exchange in an electronic spreadsheet format prescribed by the commission staff. The LEC shall classify the master list as confidential, and the list will be treated as such by the commission under the provisions of the Government Code, Title 5, Chapter 552. The master list shall be arranged sequentially by billing number and shall include for each subscriber in the petitioning exchange:

(i) the billing name;

(ii) the billing number;

(iii) the service address;

(iv) the mailing address;

(v) the class of service; and

(vi) the unique identification number assigned to the subscriber by the LEC

(D) The general counsel shall, by written pleading filed no later than 15 days after the final date stated on the ballot for return of the ballot, notify the presiding officer, the contact person, and the affected LECs of the results of the ballot. The pleading shall specify the results of the ballot for each petitioned exchange.

(i) If at least 70% of those subscribers responding vote affirmatively as to any petitioned exchange, the LEC serving the petitioning exchange shall file with the commission, no later than 30 days after the filing of general counsel's pleading notifying the LEC of the results of the ballot, the LEC's proposed implementation schedule and its proposed schedule of fees described in paragraph (6)(B) of this subsection The filing shall include a study justifying all of the costs incurred by the petitioning LEC in providing the requested expansion of toll-free local service The implementation schedule shall be expeditious, and shall explain and justify the reasons for the time required No later than 15 days after the LEC's filing of its proposed fees and costs, the presiding officer shall issue

an order granting interim approval of the LEC's proposed fees as temporary fees, which may be charged by the LEC no sooner than the first billing cycle following implementation of expanded toll-free local calling from the petitioning exchange. All fees given interim approval are subject to refund No later than 30 days after the LEC's filing of its implementation plan, the presiding officer shall issue an order approving, modifying, or denying the LEC's implementation schedule

(ii) If at least 70% of those responding do not vote in favor of expanding toll-free local calling to a petitioned exchange, the presiding officer shall, by order issued no later than 30 days after the filing of general counsel's pleading notifying the presiding officer of the results of the ballot, deny the petition (in whole, if appropriate, or in relevant part)

(6) Fees

(A) Notwithstanding the provisions of subparagraph (B) of this paragraph, a LEC may not recover regulatory case expenses under this subsection by surcharging subscribers

(B) A LEC serving either a petitioning or petitioned exchange, or serving as a transporting LEC, shall recover all of its costs incurred and all loss of revenue from any expansion of toll-free local calling areas Clause (i) of this subparagraph applies only to the LEC serving the petitioning exchange Clause (ii) of this subparagraph applies to LECs serving either petitioning or petitioned exchanges, and to LECs serving as transporting LECs in connection with the provision of expanded toll-free local calling service A LEC may recover its costs and lost revenue by

(i) imposing a monthly fee for toll-free local calling service of not more than $3 50 per line for residential customers nor more than $7 00 per line for business customers, to be collected from all such residential or business customers in the petitioning exchange and only until the LEC's next general rate case In the event a monthly fee for toll-free local calling service for all of the LEC's local exchange service customers in the state is imposed, the fee imposed under this clause (i) shall, to the extent necessary, be reduced by the amount required to ensure that in no case shall a residential line in the petitioning exchange be surcharged a total of more than $3 50 or a business line a total of more than $7 00, and/or

(ii) imposing a monthly fee for toll-free local calling service upon all of its local exchange service customers in the state in addition to its current local exchange rates

(C) Applications filed pursuant to subsection (c)(6)(B)(ii) by LECs serving petitioned exchanges, or by transporting LECs, to recover their costs and loss of revenue shall not delay implementation of expanded toll-free local calling service to the petitioning exchange. Paragraph (12) of this subsection provides the applicable procedure for the recovery of costs and lost revenue by LECs serving petitioned exchanges and by transporting LECs.

(7) Proceedings After Interim Approval. Within 30 days of the issuance of an order under paragraph (5)(D)(i) of this subsection granting interim approval of temporary fees to be charged by the LEC serving the petitioning exchange, any interested person, including general counsel, may request that the presiding officer docket the petition in order to allow the parties to further investigate the fees proposed by the LEC or the costs underlying such fees. Upon receipt of any such request, the presiding officer shall establish a procedural schedule that allows for the issuance of an order finally approving or modifying such fees no later than 210 days after the interim approval of the temporary fees. If no such request for further investigation is timely filed, the presiding officer shall, within 60 days after the order granting interim approval of temporary fees, issue an order finally approving or modifying the fees to be charged by the LEC serving the petitioning exchange.

(8) Notice. Notice of the filing of the petition must be given to all subscribers in the petitioning exchange by publishing, one time in a newspaper of general circulation in the petitioning exchange, not less than 15 days before any ballots are mailed, all of the information to be included on the ballot, except for the information described in paragraph (5)(B)(v), (vi), and (viii)-(x) of this subsection Notice must be given in both English and Spanish The LEC serving the petitioning exchange shall bear the cost of notice, as a regulatory case expense

(9) Intervention Any interested person with a justiciable interest may intervene in the project The presiding officer shall rule within ten days on any request for intervention Intervention by an interested person does not by itself require that the project be docketed

(10) Docketing If at any time a party requests that a petition be docketed, the petition shall be docketed If a petition is docketed, the presiding officer shall impose procedural timelines that will allow the presiding officer to order interim approval of temporary fees within 205 days after issuance of the order described in paragraph (2)(B) of this subsection determining that the petition and accompanying cover letter are sufficient or that any deficiencies have been cured.

(11) Petitions filed prior to adoption of this subsection. A petition for expanded toll-free local calling that was filed with the commission before the effective date of this subsection, shall not be dismissed solely because it does not comply with the requirements of paragraphs (1) and (2) of this subsection. The presiding officer shall ensure compliance with all requirements of Senate Bill 632, 73rd Legislature, 1993, and may require such information from the person filing the petition as is necessary and appropriate to assure such compliance. The presiding officer assigned to such a petition shall establish a procedural schedule for such a petition that allows for interim approval within 205 days after the presiding officer obtains from the contact person all of the information necessary and appropriate to ensure the requirements of Senate Bill 632 as set forth in subsection (c)(1) and (2) of this section have been met.

(12) Separate proceeding for LECs other than the LEC serving the petitioning exchange. A LEC, other than the LEC serving the petitioning exchange, that incurs costs or loses revenue from any expansion of toll-free local calling areas may request commission approval to impose the monthly fee described in subsection (c)(6)(B)(ii) of this section. Such an application shall not require a revenue requirement showing. The LEC shall file with the commission its proposed schedule of fees The filing shall include a study justifying all of the costs incurred, and all revenue lost, by the LEC in providing the expansion(s) of toll-free local calling areas. The filing shall be assigned a project number. A presiding officer shall be assigned and the filing shall be reviewed administratively, under the provisions of Chapter 22, Subchapter C, §22.32 (relating to Administrative Review), unless the presiding officer, for good cause, determines at any point during the review that the petition should be docketed No later than 45 days after the LEC's filing of its proposed fees and costs, the presiding officer shall issue an order granting interim approval of the LEC's proposed fees as temporary fees, which may be charged by the LEC no sooner than the first billing cycle following implementation of the relevant expansion(s) of toll-free local calling areas All fees given interim approval are subject to refund Within 30 days of the issuance of an order granting interim approval of temporary fees to be charged by the LEC, any interested person, including general counsel, may request that the presiding officer docket the filing in order to allow the parties to further investigate the fees proposed by the LEC or the underlying costs of such fees Upon receipt of any such

request, the presiding officer shall docket the filing and establish a procedural schedule that allows for the issuance of an order finally approving or modifying such fees no later than 210 days after the interim approval of the temporary fees If no such request for further investigation is timely filed, the presiding officer shall, within 60 days after the order granting interim approval of temporary fees, issue an order finally approving or modifying the fees to be charged by the LEC serving the petitioning exchange.

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

Issued in Austin, Texas, on November 16, 1993.

TRD-9332188 John M Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Effective date· December 7, 1993

Proposal publication date. August 3, 1993

For further information, please call. (512) 458-0100

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 114. Control of Air Pollution From Motor Vehicles

Motor Vehicles

• 30 TAC §114.3

The Texas Natural Resource Conservation Commission (TNRCC), formerly the Texas Air Control Board (TACB), adopts the repeal of §114 3 and new §114 3, concerning the Vehicle Emissions Inspection/Maintenance (I/M) Program New §114 3 is adopted with changes to the proposed text as published in the July 27, 1993, issue of the *Texas Register* (18 TexReg 4938) The repeal to §114 3 is adopted without changes and will not be republished (On September 1, 1993, authority for the adoption and administration of all TACB rules was transferred to TNRCC)

The existing §114 3 was proposed for repeal and a new §114 3 was proposed which contains I/M program-specific definitions, prohibitions on the operation of a motor vehicle without satisfying required inspection requirements, prohibitions on the improper issuance of a vehicle emissions certificate, a prohibition of the use or distribution of falsified inspection documents, requirements that I/M program contractors satisfy all applicable provisions of the Texas I/M State Implementation Plan (SIP), requirements that vehicles from state registration and certain fleet vehicles not registered, but primarily operated in an I/M program area comply with the emissions inspection requirements; requirements that federal agencies ensure that vehicles operated by federal employees on property under the agency's jurisdiction comply with the I/M program requirements; requirements that motorists comply with all emission-related recalls, requirements that owners of vehicles that are identified by on-road testing submit the vehicle for an out-of-cycle inspection and corrective action, provisions for receipt of minimum expenditure, hardship, and time extension waivers and other general exemptions, and specification of the model years subject to the inspection program and the applicable counties and compliance schedules Revisions were also proposed to the SIP

TNRCC concurrently proposed a control strategy to implement vehicle emissions inspection programs in the Houston/Galveston and El Paso nonattainment areas that will meet or exceed the enhanced I/M performance standard established by the United States Environmental Protection Agency (EPA) and in the Dallas/Fort Worth and Beaumont/Port Arthur nonattainment areas that will meet or exceed the basic I/M performance standard established by EPA This control strategy addresses specific program requirements in accordance with EPA rules promulgated on November 5, 1992

Since I/M program modifications could be necessary if EPA deter- mined that additional measures as needed to meet Federal Clean Air Act (FCAA) Amendments of 1990, the TNRCC solicited testimony relating to the proposals consideration of a hardship waiver and other measures to mitigate the economic impact on low-income motorists, consideration of emission repair technician training and certification, and consideration of additional program measures, such as additional model years or an alternative set of model years to be included in high-tech testing, increased frequency of emissions testing, or increased waiver requirements

The FCAA Amendments required states with moderate, serious, or severe ozone nonattainment areas or carbon monoxide nonattainment areas to submit revisions to their SIPs by November 15, 1992, that identify and adopt specific vehicle I/M programs for the control of in-use vehicle emissions However, EPA did not issue rules for basic or enhanced I/M programs until November 5, 1992 States were permitted to submit revised SIPs to address vehicle I/M programs by November 15, 1993

Public hearings were held to discuss the SIP proposal and the proposed rule revisions in Houston, Beaumont, El Paso, and Irving

Testimony was received from 23 commenters during the comment period which ended August 27, 1993

The following companies or agencies made specific comments Specialty Equipment Market Association (SEMA), Automotive Restorative Services (ARS), Galveston-Houston Association for Smog Prevention (GHASP), Automotive Service Association (ASA), Fort Worth Chapter; Consumers Union (CU), Southwest Regional Office; EPA, Region 6; Texas Automobile Dealers Association (TADA); City of Houston (COH) Bureau of Air Quality Control; Texas Vehicle Club (TVC); and the Texas Department of Transportation (TxDOT).

Sixteen written and ten oral comments were received during this comment period compared to 73 written and 36 oral comments received during the comment period for a series of public hearings, preceding the I/M Committal SIP of 1992 TNRCC believes that the small turnout to these public hearings was due to the TNRCC's extensive meetings with Metropolitan Planning Organizations and special interest groups during the preceding year in which most of the previous concerns were resolved.

GHASP suggested that the enhanced I/M program should start in 1995 instead of 1997 for Chambers, Liberty, and Waller Counties because the FCAA Amendments require states to implement I/M programs "as expeditiously as practical."

TNRCC is proceeding as expeditiously as practical to develop the inspection network and initiate testing within the additional counties within the urbanized area as required by the FCAA Amendments of 1990 The addition of Chambers, Liberty, and Waller Counties, which are in the Houston-Galveston Consolidated Metropolitan Statistical Area, exceeds the minimum federal requirement for an I/M program However, these counties were added to obtain further emission reductions toward the reasonable further progress and attainment demonstration SIP revisions

An individual from the Dallas/Fort Worth area suggested the addition of Rockwall, Kaufman, Ellis, Johnson, Parker, and Wise Counties because cars from these counties are driven into the Dallas/Fort Worth area These vehicles can be found in parking facilities in and around Dallas/Fort Worth

These nearby counties are not in the nonattainment area and are not required by the FCAA Amendments to participate in an I/M program TNRCC cannot include counties that meet the ozone standards unless these counties elect to participate TNRCC plans to contact large employers and ask for their assistance in identifying vehicles operating in the nonattainment area, but registered in another county and encouraging employees to participate with the I/M program

A commenter from the Beaumont/Port Arthur area believed that as much as one-third of the transportation moving through Orange, Port Arthur, and Beaumont is from out-of-state or out-of-the country Furthermore, the commenter contended that people living in Orange, Jasper, and Newton Counties are coming into the nonattainment area because of the refineries This commenter believed that the people living in the nonattainment area were burdened with the program when they did not cause the problem

The I/M program is federally mandated in serious ozone nonattainment areas, which includes Orange and Jefferson Counties regardless of the cause of the exceedance

Fleets primarily operating in the nonattainment area, even if not registered in the nonattainment area are also required to comply with vehicle emission inspection requirements.

An Automotive Service Excellence Certified Technician questioned the economical feasibility of the Beaumont/Port Arthur I/M program regardless of the proposal. The individual was concerned with the ability of repair technicians to profitably operate a test facility.

The Managing Contractor's network in Beaumont/Port Arthur is managed jointly with the Houston-Galveston area and is contractually one area, the Southeast Region Contract area. Thus, all the overhead for the program is not borne by facilities conducting few tests. The Managing Contractor provided information that demonstrated that the network is economically viable. The network was designed to meet throughput capacity for the busiest time of day, time of month, and time of year. In addition, the network was designed on a facility per-lane basis using current and adjusted future volumes. The price of the inspection is set by contract and both the operating contractor and managing contractor receive a fixed portion of the test fee. The vehicle emissions test in Beaumont/Port Arthur is a less costly test than the one performed in the Houston/Galveston area, so the fee in Beaumont/Port Arthur is 65% or less than the Houston/Galveston area fee. The biennial emissions inspection in the Beaumont/Port Arthur area should cost the consumer less than $15 dollars every two years.

EPA stated that the SIP should include census data to verify geographical coverage.

Since the Texas I/M program areas include the entire county, the census data is not relevant information. In addition, the submission of census data is not a requirement of EPA's Final I/M rule. After conversation with the TNRCC staff, EPA staff agreed that submittal of census data is not needed.

EPA commented that the SIP should provide a plan on how the number of unregistered vehicles will be identified.

TNRCC is currently developing a plan to identify vehicles that only initially register with the TxDOT and federal vehicles. This plan includes the development of a fleet data base that will track all subject fleet vehicles. These subject fleets are also required by proposed Chapter 114, to register with TNRCC by March 1, 1994. A testing cycle for unregistered fleets is being developed with the input of the Managing Contractor to ensure compliance with the I/M requirements.

Most of the federally owned vehicles operating on federal facilities in the I/M program areas will be identified through the assistance of the General Service Administration Regional Office in Fort Worth and the United States Postal Service of Region 6. TNRCC will request addresses of Texas federal facilities from the United States Department of Corrections Industries Division, who supply the vehicle license plate to these facilities. TNRCC will work with fleet managers of federal facilities to identify covered vehicles owned by the federal government. TNRCC will work with Base Commanders and facility directors/managers to assure that employee-owned vehicles operating on the facilities are in compliance with the emission inspection requirements.

TNRCC will provide education of law enforcement officials through local governments, targeting local law enforcement officials, county judges, and justices of the peace. Since the local law enforcement authority can keep the fines that they collect, there will be a greater incentive to identify the unregistered vehicles.

To identify fleets that may be operating in the area, but not registered in the nonattainment area, TNRCC will use local directories to seek out leasing agencies to notify them of their requirement to comply with the I/M program. In addition, in cooperation with Councils of Governments, TNRCC will identify major employers that serve as attractions for vehicles registered outside the nonattainment area. Fleet managers will be encouraged to make appointments for testing with the I/M program contractor.

TNRCC has adopted additional language to the SIP narrative to more fully describe the plan for identification of an unregistered vehicle.

An individual expressed concern that the emissions program will not address diesel emissions before 1997.

Diesel vehicles are not major contributors to higher ozone concentrations. However, the I/M SIP revision states that diesel-powered vehicles may be added to the testing program at a later date. Contractors must be provided 120 day's notice prior to initiation of diesel testing.

Diesel vehicles make up a smaller percentage of the vehicle population. However, due to less standardization in diesel vehicles, technology needs more development before mass testing is initiated. In addition, EPA is working on a policy for testing diesel vehicles. TNRCC does not want to establish rules in potential conflict with EPA's policy. However, when EPA's policy is final, TNRCC expects to add diesel-powered vehicles, possibly as early as 1997.

TADA expressed concern that TNRCC will not enforce the requirement of notification of a waiver to a prospective buyer, and that the dealer or an individual buyer will have no knowledge of the waiver. Therefore, the buyer would have to bring the vehicle into compliance without having the benefit of valuing the vehicle with knowledge of the waiver.

TADA suggested that a nonremovable label be place on the automobile that informs the next buyer about TNRCC waiver and also recommended that TNRCC promulgate the written form to be completed by the motorist to the prospective owner.

The Managing Contractor is required to maintain a data base of the vehicles receiving waivers that permits prospective buyers the option to contact the Managing Contractor to determine if a vehicle, identified by the Vehicle Identification Number (VIN), has received a waiver. TNRCC believes that with public information, this notification that stays with the vehicle is the best protection for the consumer.

A nonremovable label marking waived vehicles is not practical for three reasons: TNRCC does not have statutory authority from the Legislature to affix such a label and would not be able to obtain such authority until the Legislature reconvenes in 1995 by which time the I/M program will have already commenced; waivers are only valid for a single testing cycle (two years) at which time they expire; and California tried to utilize an added sticker, but was not able to find a label that was truly nonremovable.

An individual recommended specific standards for waivers instead of 25% reduction.

Since the FCAA Amendments of 1990 and EPA's Final I/M Rules qualify a vehicle for an emission inspection waiver based solely on expenditures and not on any other studies, the TNRCC proposal included a 25% reduction to help ensure that the failing vehicles would be repaired and not provide incentive for false repair expenditures. The reduction provision requires a decrease in emission levels proportional to the extent of the failure.

The preceding individual also suggested (if retaining the 25% reduction) that for clarity the waiver language should specifically state that "No waiver shall be granted unless a 25% reduction in the difference between emissions during the initial test and the standards in the SIP can be attained."

The Time Extension Waiver outlined in the I/M SIP is not dependent upon a 25% reduction. Therefore, the addition of the proposed statement referring that "No waiver unless..." is too broad. TNRCC recognizes the merit of the commenter's suggestion of a different way to calculate the 25% reduction (so that there is a 25% decrease based on the emission standard instead of 25% decrease from the initial test). This method would provide less incentive to pre-tamper with the vehicle in order to fraudulently elevate emissions readings during the first test, thus making it easier to attain a waiver. Revising the method for the calculation for the 25% requirement could also prevent a situation where false changes and no vehicle repairs were conducted. However, the adoption of any alternative calculation for the 25% reductions, would need to be considered in future rulemaking.

Two ASA representatives stated that the 25% vehicle emission reduction requirement for a waiver was left out of an August 3, 1993, draft and should be retained as it is in the July 16, 1993, document. The reduction is needed to encourage actual repair work and will assist in reducing pollution from vehicle exhaust or evaporative losses.

The August 3, 1993, draft was related to a repair technician's workshop and not a different draft of the SIP. TNRCC understands that the commenter is in favor of the 25% emission reduction requirement for a waiver.

One individual suggested that a statement be added that requires the minimum expenditure criteria for a waiver to be met (spent) each biennium.

TNRCC reviewed the minimum expenditure criteria and believes that the I/M SIP does contain provisions which limit the validity of the minimum expenditure waiver to one emission inspection cycle (two years) and which require motorists to submit to a separate waiver application with proof of the minimum emission-related expenditures each cycle. Since a minimum expenditure waiver will not be issued unless the prior provisions are met, TNRCC will receive proof that the minimum expenditure requirement was met (spent) for each minimum expenditure waiver issued.

GHASP believed that the $75-$200 minimum expenditure in basic I/M areas is too low and that inspection of all model years (even in basic areas) should be required. GHASP also expected that basic program areas be designed for maximum effectiveness in reducing vehicle emissions.

TNRCC did not consider increasing the minimum expenditure waiver amount in basic I/M areas since the required test procedures in basic and enhanced nonattainment areas differ. Furthermore, basic I/M programs do not have as great an emission reduction to achieve compared to enhanced programs and basic emission test procedures have less stringent cutpoints. Since less expensive vehicle repairs are needed in basic programs, increasing the waiver amount to $450 is unnecessary.

Several ASA members expressed concern that the minimum expenditure (except in hardship) should be $450 to attract quality, honest, and certified repair technicians, to go a long way toward the goal of clean air and add parity for all affected areas.

EPA set the $75 and $200 minimums in basic areas because they believed that most of the respective vehicles could be repaired to meet the performance standards for those dollar amounts. TNRCC recognizes that some repairs will cost more and wish to clarify that these minimum expenditures do not limit the amount of the repair bill or charges for the repairs performed.

One individual expressed concern that the $200 limit on repairs would encourage counterfeiting without affecting current (air pollution) problems.

The $200 minimum expenditure limit in basic nonattainment areas is required by EPA. The $200 minimum expenditure is not a limit on repairs. However, the 25% minimum would reduce the chance that no repairs are performed and would ensure that every waiver issued would contribute toward reducing vehicle emissions.

EPA expressed disapproval of the provision to allow a hardship waiver or time extension waiver more than one time per vehicle. EPA contended that TNRCC must limit the waiver to one time per vehicle as required in EPA's Final I/M Rule or exempt a group of vehicles and take a credit reduction in modeling MOBILE5a.

EPA contended that the I/M SIP provision allowing a hardship waiver (allowing a $150 maximum expenditure on emission-related repairs for a motorist meeting financial hardship criteria) was in conflict with the minimum expenditure provisions of the FCAA and EPA rule. Since the FCAA requires $450 minimum expenditure on repairs in enhanced I/M areas (adjusted annually) and since the EPA rule requires a minimum of $75-$200 to be spent for repairs in basic I/M areas before being eligible for a waiver, EPA contended that the proposed hardship waiver is a serious deficiency in the I/M SIP.

TNRCC believes that EPA should recognize that economically disadvantaged motorists will be disproportionately impacted by the repair bill required. For example, in El Paso County the Median Family Income is $24,057 annually. The required repair bill would represent 23% of a monthly income (gross). TNRCC has revised the SIP and the regulation to change the hardship waiver to a one-time hardship extension which would be acceptable to EPA.

CU commented that the proposed plan presents disproportionately adverse effects on low-income vehicle owners and urged the TNRCC to include provisions to assist low-income citizens to mitigate the effects of the I/M program. CU urged the TNRCC to direct staff to devise effective methods and assistance plans which increase compliance with the I/M program, help retire the vehicles in the worst conditions, and which will result in cleaner air.

TNRCC will continue to explore all opportunities to assist low-income vehicle owners and may implement a vehicle scrappage program that will be of assistance to low-income motorists. Through the scrappage programs anyone can sell a car to a participating stationary source industry, which can obtain emission reduction credits in the amount of emission removed when the vehicle is destroyed.

One commenter contended that transferable hardship waivers would encourage fraud and recommended that hardship waivers automatically expire upon sale or transfer of title of vehicle.

All waivers, not just hardship waivers, have an expiration time frame. Waivers are only valid for a single test cycle and as proposed a motorist must inform a prospective buyer that the vehicle considered for sale currently satisfies the emission inspection requirements with a waiver.

One commenter explained that the hardship waiver provisions could be abused by a motorist or person whose "family" is receiving financial assistance, but individually does not meet the waiver criteria.

The criteria for the hardship waiver has been based upon commonly used and readily available proof of hardship requirements. The criteria presented in the I/M SIP resulted from numerous consultations with consumer groups and, thus, the current criteria has received their support. An individual may be considered a family if no other person contributes to the income. A family utilizing the collective incomes of its members cannot be considered as an individual. The Median Family Income provides a fair indication of proof of hardship and is a better means of measurement of economic status than the Median Individual Income.

An individual from the Houston/Galveston area expressed concern that while granting a hardship waiver seems a compassionate thing to do, it will exempt many or most of the most-polluting vehicles from the program. This individual presented (quoted) data from a study at the California Bureau of Automotive Repair and Harris County records that he believed demonstrated that many if not most of these vehicles are causing 50% of the total emissions. This individual proposed that the hardship waiver/exemption be deleted and that the vehicles which are causing excessive emissions be repaired or removed from service. GHASP and another individual suggested that people in need of financial assistance can be directed to government agencies whose function is to provide financial assistance or to direct affected motorists to institutions where there are training technicians to repair such vehicles. Such a program would benefit the certification program and low-income motorist as well as improve air quality while reducing the need for waivers. One commenter pointed out that instead of a broad exemption, under the proposed regulations a motorist with a hardship could apply to the Executive Director of TNRCC, who may approve an exemption of a special case.

While the EPA does estimate that half of the mobile source related pollution may originate with 10% of the vehicle population, EPA does not contend that older vehicles are largely at fault. First, older vehicles are few in number and comprise a small proportion of the entire vehicle fleet. Second, older vehicles proportionately are driven far fewer miles and consume far less fuel. Third, EPA and the repair industry have frequently commented that the single greatest contribution to poor emissions from a vehicle is lack of proper and regular maintenance. Fourth, 1990 and newer model vehicles emit dramatically less than prior model year vehicles only as long as the on-board computer and its associated sensors remain functional. Finally, EPA estimates that as much as 8.0% of all one year old vehicles will fail an emission inspection due to faulty emission control devices.

TNRCC has been in contact with vocational schools teaching automotive repair and find that most of these institutions are not required nor possess the resources to extend discounted or free automotive repairs. Vocational schools would also be unable to guarantee timely turnaround to people who typically depend upon a reliable means of transportation to meet their needs. Additionally, these institutions have expressed concern about potential liability issues when working on vehicles for the general public. TNRCC will continue to explore this alternative.

The Executive Director of TNRCC may approve exempting vehicles from the inspection test based on certain criteria. However, TNRCC does not have the capability of determining individual financial responsibility.

One individual was opposed to the requirement that repairs counting toward a waiver be performed by a certified technician and repair facility. The commenter expressed the belief that the certification requirement will increase the cost of repairs and that a person should

be able to do his or her own repairs and show proof of purchase.

Individual motorists are able to perform their own emission-related repairs, however, EPA's I/M rule does not allow those repairs to count toward waiver issuance TNRCC believes that well-educated emission repair technicians will actually reduce the overall cost of emission-related repairs All trained and TNRCC-certified repair technicians will be familiar with engine diagnostic and emission analyzer data interpretation and capable in diagnosing problems, and repairing vehicles

An individual was opposed to repairs for tampering being excluded from the minimum amount for a waiver/exemption, especially for model years 1968-1974 that were not previously checked for emission equipment This individual argued that if these auto owners now have to purchase (emission control) equipment, this expenditure should count toward the exemption/waiver Another individual expressed concern for hobbyists like himself who have a vehicle with missing parts and would get a part if they knew where to get one

Tampering of vehicle emission control devices in the State of Texas is illegal and does not conform to EPA's requirements EPA's Final I/M Rule requires the cost of tampering related repairs not be calculated in the minimum expenditure waiver and would not consider the SIP approvable if the TNRCC allowed tampering related repairs to count toward waivers If parts necessary for the repair of tampered vehicles are difficult to locate, a time extension waiver may be issued Contractors will provide phone numbers of after-market parts companies to motorists requiring this assistance

In order to avoid an "open ended violation," GHASP recommended a specified period for obtaining a waiver, not to exceed 90 days following failure of vehicle emission inspection

Registration denial is the primary enforcement mechanism for the vehicle emission inspection program In order for a motorist to register a vehicle, the motorist must have obtained a passing or waived vehicle emission certificate (VEC) In addition, House Bill 1969 provides a minimum fine of $100 and a maximum fine of $200 to vehicle owners with expired or improper vehicle registrations

TNRCC has adopted additional language in the I/M SIP narrative to clarify that motorists must comply with inspection requirements by obtaining a VEC through either passing the vehicle emissions inspection test or receiving a waiver, on or before the valid registration period expires

GHASP recommended a definition of uncommon parts TNRCC agrees with GHASP and the I/M SIP and rule now provides a definition of uncommon parts An automotive emission-related part is considered uncommon if a motorist can prove that a reasonable attempt made to locate necessary emission control parts by retail or wholesale parts suppliers will exceed the remaining time prior to expiration of the vehicle's registration A motorist may qualify a vehicle for a time extension waiver, if this criteria is met.

TNRCC has adopted additional language in the I/M SIP narrative and in new §114.3 to define an uncommon part.

GHASP requested that motorists be required to return the vehicle to be reinspected after a 30-day time limit

The I/M SIP does require a motorist issued a time extension waiver for his or her vehicle to report to a referee facility for a reinspection at time of the completion of the required emission-related repairs or the expiration of the time extension waiver. Failure to submit to a reinspection is punishable by TNRCC Notice of Violation TNRCC does not believe that there is a benefit to requiring a motorist to submit to a reinspection after a 30-day time limit, since the time extension may be from one to three months in duration.

COH commented that the language in the §114 3(3)(B) should be modified to recognize that there are some instances where there will not be a receipt of purchase or payment because there are no charges involved As COH pointed out, a repair made under warranty is an example.

TNRCC recognizes that there may be some instances where purchase receipts may not be applicable. Modification to the language in §114 3(3)(B) has been made to provide other documentation for such occurrences.

ARS requested a special class exemption under the authority of the Texas Health and Safety Code, §382 037(k) for all vehicles licensed by the State of Texas as "ANTIQUE VEHICLES " ARS contended that antique vehicles should be exempt from emission testing in ozone nonattainment areas and cited, among others, the following reasons. These cars are collectable automobiles which are over 25 years old and have special plates that are renewable every five years These vehicles are allowed to be driven on public roads for club sanctioned events only, their annual mileage is expected to be less than 1,000 miles per year, and the percentage of the vehicle miles driven could be expected to be small relative to the total vehicle miles driven ARS claims that most road mileage is outside the nonattainment area and contends that these vehicles are generally in excellent repair Also, ARS is concerned about the possibility of damage to these vehicles during part of the test

ARS and another individual commented that antique cars, being 25 years or older, should be exempted from the proposed emission inspection program Any tail pipe emission test would place an undue burden on a subclass of vehicles which is primarily used for recreational uses Furthermore, such antique vehicles accumulate very low annual mileage, and are not a major contribution to urban air pollution levels

The purpose of the I/M program is not to fail vehicles under normal deterioration rates, but rather to have poorly-maintained vehicles repaired To make allowances for the higher emission levels of older vehicles, TNRCC will develop more lenient pass/fail cutpoints for those vehicles Therefore, older vehicles are not subjected to the same tests, emission cutpoints, or evaporative purge checks that newer vehicles will undergo. Antique vehicles that are only displayed at shows, parades, etc may be trailered to these events and, therefore, do not need to be registered for use on public roadways

TNRCC believes that most well-maintained vehicles will meet performance standards for their class. However, the TNRCC's Executive Director may grant an exemption for a motor vehicle when a motorist can demonstrate that reasonable measures have been taken to comply with the I/M program and that the exemption would have minimal impact on the air quality. In addition, TNRCC has provided a time extension waiver, to allow vehicle owners additional time to comply with I/M vehicle emission inspection requirements when they are waiting for an emission-related uncommon part.

ARS and TVC requested that a special class waiver be allowed until 1999 for the original owners of 1968-1974 imported vehicles that have a "One-time Exemption" from the EPA ARS expressed concern that some imported vehicles may not be able to pass the emissions test because their cars were not equipped with emissions equipment required of other cars in that model year In such cases, ARS and TVC were concerned that about $75 would be the required expenditure for waiver in Dallas/Fort Worth and $450 for enhanced areas ARS and TVC contended that these expenditures would not make the car cleaner and are not really repairs for emission control systems because such systems for these vehicles never existed A special class waiver or exemption until 1999 would give time for owners to modify their vehicles to meet standards or the vehicle would be old enough for a recommended Executive Director exemption as an antique vehicle.

ARS estimates that less than 2,000 vehicles in Texas would be eligible for this waiver/exemption ARS commented that the majority of these cars have low annual mileage and their owners took advantage of a very limited process to import some very unusual cars

One individual stated that there is an extensive "car culture" revolving around older cars and requested a limited recreational-only exemption for 1968-1974 model years He was concerned that the regulations would create a new class of "outlaws" circumventing the system and suggested that an exemption be patterned after antique tags laws, restricting driving to 3,000 miles per year The TVC representative requested consideration of a clause that would grandfather 1969-1974 model cars for the current owner ARS commented that a 1973 Morgan imported from England would never pass the Evaporative Function test of pressurization because the car is not equipped with the proper devices

EPA's Final I/M Rules mandate that 1968 and later model year vehicles be tested for excessive emissions In order to meet this federal mandate and meet emission reduction requirements, TNRCC is currently proposing all 1968 and later model year gasoline-powered vehicles complete an emissions test However, the 1968-1974 model year vehicles

complete a less stringent emission test than the high-tech test required of newer model vehicles. However, TNRCC recognizes that a small number of vehicles imported between 1968 and 1974 received a one-time exemption because they cannot be modified to conform to EPA's emission requirements. The TNRCC Executive Director may grant, on a case-by-case basis, an exemption for vehicles that have been well-maintained, but cannot pass the emission inspection test EPA's position regarding vehicles that do not have an evaporative system, is that, these vehicles would not be subjected to an evaporative system test.

ARS and another individual believed that stricter enforcement of visible polluters is needed.

The proposed emissions testing program will include more stringent enforcement of visible polluters than the current program Vehicles will be subjected to periodic out-of-cycle testing if it is determined through remote sensing that the vehicle exceeds the emission standards. However, TNRCC has determined through recent on-road remote sensing studies that the cut-off for requiring an out-of-cycle test should be changed from vehicle emission of 4.5%, the Carbon Monoxide (CO) standard to 6.0%. At 6 0% of the CO standard it is possible to declare with some certainty which vehicles should be checked for emissions.

Law enforcement personnel, through legislative authority, will have the ability to impound motorist's vehicles or impose higher monetary penalties upon motorists who are visibly out of compliance. TNRCC §111.111 requires that motor vehicles not have visible exhaust emissions for more than ten consecutive seconds. TNRCC currently has a program called the Smoking Vehicle Hot Line that gives persons the opportunity to report vehicles with visible exhaust emissions.

ARS and individuals in the Dallas/Fort Worth area believed that better monitoring of current inspection stations would be better than the proposed program Another individual expressed concern that there is an estimated 35% noncompliance in Dallas/ Fort Worth and questioned enforcement of a more strict law if TNRCC cannot enforce the current pollution control law

TNRCC examined the possibility of trying to improve the current test-repair inspection system However, EPA discounts the effectiveness of a test-repair program by 50% compared to the test-only program In addition, the cost to the consumer would be much higher to oversee and enforce and likely would cost $3 00-$5 00 per vehicle per year The proposed test-only program oversight cost is anticipated to be $1 25-$2 00 per vehicle. Since the test-only program will be biennial, the estimated oversight cost is less $1.00 per vehicle per year Therefore, a test-only program is far more cost-effective than a test-and-repair alternative.

TNRCC proposes a more effective enforcement method than the current system Under the program proposal, enforcement will be through the process of registration denial, which will decrease the noncompliance rate by requiring motorists to present a valid VEC before completing the annual registrations process. TNRCC will utilize computer matching which will compare emission test results with the registration records to determine if motorists have complied with the emission requirements. Law enforcement officials, under the new program will have the ability to impose higher monetary penalties and will have the ability to impound vehicles that are found to be out of compliance

EPA requested clarification of enforcement against a vehicle owner who receives a fine, but does not comply EPA further commented that the state should explain how impoundment will be used in the I/M enforcement program for vehicle owners who receive a fine, but still do not comply

Vehicle owners who avoid the I/M program requirements by not registering their vehicles may be subject to multiple penalties by law enforcement officials until the registration requirements are met Under Texas Civil Statutes, Articles 6675b-4(a)(b), 6675b-4A(b)(d), 6675b-4B (c)(e), and 6701d(5) (B)(D), law enforcement officials have the authority to impound vehicle owners who have received a fine, but have still not complied with the emission inspection requirements

TNRCC is developing a plan to educate local law enforcement officials on the I/M program requirements and the types of enforcement opportunities available to them The local law enforcement agencies will be allowed to retain the fines that they collect TNRCC will promote the enforcement requirements necessary for the program's effectiveness

EPA stated that the SIP should contain a commitment to the routine issuance of citations to motorists who fail to comply with the registration requirements and a commitment that noncompliance cases "cannot" be closed until compliance is demonstrated

Motorists will be issued routine citations by law enforcement personnel who determine that their vehicle registration sticker is out of date These noncompliant cases will not be closed until the registration is completed or other compliance is demonstrated Until compliance is demonstrated, a vehicle found in violation of new §114 3(m) will continue to be in violation of the rule, even if a fine has been paid

EPA commented that the SIP is required to estimate the current compliance rate of the vehicle inspection program and that the SIP should commit to the compliance rate assumed in the modeling or that any deficiencies would be offset in improvements in other modeling areas EPA also stated the SIP is required to include estimates of closing loopholes and otherwise improving the enforcement mechanism

According to TxDOT studies conducted by the Texas Transportation Institute (TTI), the current registration compliance rate is between 80-98% The TNRCC proposed enforcement process will encourage compliance and increase the effectiveness of registration enforcement Law enforcement personnel will have the ability to impound vehicles and issue routine citations to motorists attempting to avoid the program requirements.

While the I/M SIP section on Motorists Compliance Enforcement contained language regarding the noncompliance rates, TNRCC will modify the language to clarify the compliance rate Also, TNRCC has added language in the SIP that makes a commitment to the compliance rate assumed in the modeling (96%) or to offset the deficiencies TNRCC also revised the SIP narrative, in Motorist Compliance Enforcement, with additional description of the registration denial enforcement and a discussion of how the TNRCC intends to raise compliance levels

EPA stated that the SIP should commit to preventing fraudulent initial classification or reclassification of a vehicle by requiring certification from the test facility that a vehicle is exempt (i e , diesel fueled) EPA clarified that this certification should be based on physical inspection, VIN decoding, or other alternative method which would ensure an accurate clarification of any vehicle not required to be tested in the program

TNRCC will periodically run VIN decoding procedures to determine if vehicles have been classified or reclassified incorrectly In addition, the operators of diesel vehicles are required to obtain a diesel permit from TxDOT

To clarify that dual-fueled vehicles are not exempt, the TNRCC has added language to the I/M SIP narrative and new §114 3 stating that dual-fueled vehicles will be tested in the gasoline mode and must comply with the performance standards and I/M program requirements

One commenter questioned whether an additional sticker would be issued with this inspection

There is no additional sticker issued for the vehicle emission test unless a vehicle is not subject to registration requirements For enforcement of the registration denial I/M program, the motorist will be issued a VEC which must be presented to complete vehicle registration requirements that are necessary to validate the state's vehicle license

EPA commented that the SIP should include a more definitive commitment that the state will compare the testing and registration data bases to determine program effectiveness, to establish compliance rates, to trigger potential rate adjustment, and to trigger potential enforcement actions against non- complying motorists

TNRCC will compare the testing and registration data bases to determine program effectiveness, establish compliance rates, and target violators TNRCC has adopted an appropriate statement added to the SIP narrative

EPA suggested that the SIP include a more definitive commitment for the state to sample the fleet as a determination of compliance through parking lot surveys, roadside pullovers, or other in-use vehicle measurements

TNRCC will be maintaining a fleet data base to track compliance with requirements

TNRCC will also be conducting remote sensing studies that would be applicable to fleets. TNRCC has added appropriate language to the proposed I/M SIP to include the preceding commitment. TNRCC has added language to the SIP narrative stating that TNRCC will be working with major employers to survey cars parking in their lots TNRCC will also be working with public and private parking garage owners/operators for sampling the fleets to ascertain the compliance

EPA was concerned about the TNRCC's authority to immediately suspend an inspector and requested that the SIP narrative contain a clarification

The state will have the authority to require the Managing Contractor to suspend an inspector pursuant to Section 6 8 1 of the "Request for Proposal for the Design, Construction, and Operation of a Motor Vehicle Inspection/Maintenance Program for the State of Texas" (RFP) This authority does not afford the state "immediate" suspension privileges Based on the TNRCC's reading of the federal regulations (as well as conversation with EPA staff), the state is not required to have immediate suspension authority It is the "Quality Assurance" officer who is required to have that authority Under the Texas system the Managing Contractor is the Quality Assurance Officer He will have the authority to immediately suspend an employee of the Operating Contractor If an agent of the Managing Contractor finds that an inspector is intentionally improperly passing a vehicle, the agent can immediately remove that inspector from duty This authority will be expressed in the operating contract that exists between the Managing Contractor and the Operating Contractor TNRCC will require such provisions in those contracts pursuant to its authority under Section 7 1 of the contract between TNRCC and the Managing Contractor Section 7 1 gives to the TNRCC approval authority over all leases and contracts between the Managing Contractor and the Operating Contractor

Language similar to that in the preceding paragraph will be added to the SIP to clarify the authority that the Managing Contractor has to suspend an inspector

EPA acknowledged the TNRCC's general enforcement approach which was described in the SIP and the RFP Section 6 8 1, but stated that the SIP should contain language that commits to the "specific enforcement actions and the exact wording required by the (EPA) rule." EPA identified two enforcement issues of concern as examples. The EPA specified that an offense directly affecting emissions reduction benefits should result in the immediate removal of an inspector who intentionally passed a vehicle having emissions above the cutpoints The EPA requested that the SIP narrative contain a commitment that an inspector be removed from duty for six months or that a retainage penalty equal to the inspector's salary for six months be imposed. The EPA stated that the SIP should commit to a minimum penalty of $100 or five times the inspection fee (whichever is greater) in the case of gross neglect on the first offense

As stated in the SIP submittal, the Compliance Division of TNRCC is responsible for calculating the appropriate penalty amount for violations of the Texas Clean Air Act and/or TNRCC Rules. The Compliance Division implements enforcement action that meets or exceeds the requirements of state and federal statutes and rules. The specific enforcement actions and minimum penalty amounts required by the EPA's Final I/M Rule will, therefore, be incorporated into the Compliance Division's penalty calculation as a minimum threshold As stated in the SIP, the TNRCC believes that this system provides necessary flexibility to impose different penalty amounts based on the severity of a violation while maintaining the minimum enforcement actions required by the EPA's Final I/M Rule

TNRCC has added language to the SIP to clarify that the State commits to perform, at the least, the minimum enforcement action required by the EPA's Final I/M rules The language includes a commitment to impose the minimum penalties cited in the two examples in the previous comment as well as the other specific enforcement actions stated in the EPA's rules

EPA commented that the SIP should address the enforcement the managing contractor will take against the operating contractor and stated that the penalties for violation of program requirements must be as stringent as required by the EPA rule regarding stations and inspectors

TNRCC does not interpret the EPA's Final I/M Rule to require the I/M SIP to address the enforcement the Managing Contractor will take against the Operating Contractor The rules only require the I/M SIP to set forth the enforcement that the State will take against the relevant entity The state has committed to enforce all of the appropriate program rules against the Managing Contractor as well as the Operating Contractor and the employees of the Operating Contractor through its regulatory enforcement program A violation of a program rule by the Operating Contractor will be a violation of the TNRCC rules and will subject the Operating Contractor to the TNRCC enforcement action (see previous discussion regarding the TNRCC compliance with minimum enforcement actions)

The enforcement relationship between the Managing Contractor and the Operating Contractor is a relationship distinct from the TNRCC regulatory enforcement The Managing Contractor will enforce against the Operating Contractor pursuant to contract provisions Although TNRCC has oversight authority of the Managing Contractor's enforcement against Operating Contractors, the state intends that compliance with the issue contained in this comment will be through the TNRCC's direct regulatory enforcement against Operating Contractors

TNRCC has added language to the I/M SIP to clarify the enforcement relationship that the state will have with the Operating Contractor and its employees It will also more adequately address the enforcement procedure that the Managing Contractor will use against the Operating Contractor

SEMA contended that visual inspection of emission control devices and related equipment could be disruptive and a hardship on the automotive aftermarket industry and Texas citizens since the SIP explicitly does not limit tampering to fuel inlet restrictor and catalysts. SEMA was concerned that a vehicle would be failed because of the presence of aftermarket parts. SEMA emphasized the following sentence from §114 3(k)(6): "Tampering includes, but is not limited to, engine modifications, emission system modifications, or fuel type modifications not approved by the TNRCC or EPA "

SEMA and several individuals recommended that vehicle inspection only be used to verify the presence of the applicable emission inspection controls and that the emission testing with the IM240 could verify the proper functioning of the equipment

An older car owner stated that there should not be a concern about all proper equipment installed, just whether the car passes the test or not

SEMA expressed concern that without the proper guidance an inspector may fail a vehicle on the visual inspection for the mere presence of aftermarket parts, including add-on and modified parts, engine changes, or engine swaps which would preclude aftermarket parts

Since TNRCC will only visually inspect the fuel inlet restrictor and the catalytic converter, aftermarket configurations are not examined Pass/fail determination is based solely on the presence of the aforementioned emission control devices, a sampling of the vehicle's emissions, and the results of the evaporative purge and/or pressure tests Aftermarket parts or configuration of parts that meet EPA or California Air Resource Board (CARB) requirements would not be considered tampering

SEMA proposed that their document "Visual Emissions Equipment Inspection Procedures" be included in the curriculum for training inspectors and technicians. SEMA also expressed concern that TNRCC's provision for visual inspections of emission control devices did not follow procedures established by EPA

TNRCC has limited the vehicle emission control check to two parameters, the fuel inlet restrictor and the catalytic converter All inspection procedures and equipment utilized will comply with all aspects of §51.357 and §51 358 of EPA's Final I/M Rule, as well as EPA's final *High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications*

EPA stated that the SIP should include a provision that allows the motorist access to the test area to observe the entire inspection.

This provision is included in §51 357 of EPA's Final I/M Rule TNRCC requires its I/M contractor to abide by all provisions of §51.357 The contractor proposals for test facilities that were accepted by TNRCC provide for waiting areas that comply with §51 357 In addition, the TNRCC staff have final approval authority of the test facility design

TNRCC has adopted this clarification in the SIP narrative

EPA requested a clarification of the procedures for a retest after the vehicle has failed.

TNRCC is currently developing the retest specifications with each of its I/M contractors. However, at a minimum, the retest procedures shall conform to EPA Final I/M Rule §51.369(b)(3) and the general test procedures given in §51.357 and in EPA's final *High-tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications.*

EPA stated that the SIP should address how the program will test engine switched vehicles and vehicles that have converted to a different fuel type. EPA suggested referencing the Federal §51.357(d).

TNRCC requires the I/M contractors to abide by all provisions of §51.357. In general, a vehicle will receive an emission inspection according to the model year indicated upon the vehicle registration record as provided to TNRCC from TxDOT.

TNRCC believes that no additional language needs to be added to the SIP since the entire section is referenced

EPA requested that the SIP include a commitment that the equipment will be updated from time to time to accommodate new technology vehicles as well as changes to the program.

TNRCC believes that the SIP contains the commitment described in the preceding paragraph. The RFP, Appendix F of the I/M SIP revision, explicitly requires the I/M contractors to adopt the test procedures and equipment specifications given in §51.357 and §51.358 of the I/M rule as well as EPA's final *High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications.* In addition, the contract between TNRCC and the I/M contractors requires the contractors to abide by the current I/M rule, as well as subsequent amendments to the regulations and policy regarding test equipment and test procedures.

EPA commented that the SIP should include a more definitive commitment under the Records Audits section that a records review will include visits to inspection stations to review records not already covered in the electronic analysis.

TNRCC believes that record audits section of the I/M SIP adequately addresses all aspects and requirements for quality assurance in §51.363 of EPA's I/M Rule.

TNRCC has changed the word "may" to "shall if appropriate" to provide a stronger commitment for EPA.

GHASP expressed concern with audits and remarked that managing contractors, operating contractors, and repair stations needed to be audited by the TNRCC staff to assure honesty.

The SIP commits TNRCC to numerous quality assurance measures, including both overt and covert performance audits, record audits, and equipment audits. In an overt audit, the audited party is aware of the audit occurring; while in a covert audit the audited party does not know the audit is occurring. For example, in a covert audit a vehicle is set to fail and is tested by an undercover auditor. In addition, TNRCC will employ another audit system to ascertain how auditors are performing their job duties.

SEMA requested that the curriculum outlined in "Visual Emissions Equipment Inspection Procedures" be included in the TNRCC curriculum for training inspectors and technicians.

The curriculum outlined in the SEMA document does not follow the requirements established by EPA. TNRCC required its I/M contractors to adhere to emission inspection procedures and equipment specifications provided by EPA.

GHASP requested a mandatory certification of all repair technicians because a voluntary program is not as effective.

TNRCC does not have the legislative authority to require that all emission inspection repair technicians receive training, testing, and certification in the I/M SIP. House Bill 1969 of the 73rd Legislature empowers TNRCC to establish a voluntary training and certification program for automotive emission repair technicians.

Several members of ASA expressed concern for the effect of a few dishonest persons on the repair program and recommended that only professional quality repair technicians be allowed to participate or be issued certification.

TNRCC believes that in practice only qualified automotive emission repair technicians will be able to pass the voluntary certification program requirements established by TNRCC as permitted by House Bill 1969.

An ASA member expressed concern that comments from Referee Facility personnel could adversely affect some certified emissions repair technicians and facilities. The commenter emphasized the need for confidentiality and impartiality on behalf of these Referee Facility personnel during the waiver process. The commenter pointed out that motorists will be able to draw their own conclusions about the repair effectiveness of certified emissions repair facilities from the performance monitoring statistics.

TNRCC agrees that Managing Contractor impartiality is a very serious concern and has addressed it in the RFP, which was included in Appendix F of the SIP. Section 8.5 entitled, "Conflicts of Interest", included in the contracts that have been signed with the Managing Contractors for each region states: "Operating and Managing Contractors are barred from referring vehicle owners to specific providers of vehicle repair services." This requirement applies to all Managing and Operating Contractor personnel, not just those that will work in the Referee Facility. TNRCC will insure compliance with this requirement through regular auditing of all Managing Contractor operations. TNRCC agrees that motorists will be able to satisfactorily draw their own conclusions about acceptable certified emissions repair facilities from the performance monitoring statistics.

EPA commented that the SIP should include a commitment that the repair technician training will include provisions in the area of the utilization of diagnostic information on systematic or repeated failures observed in the transient test and the evaporative system functional test.

TNRCC believes that the SIP does include such a provision. The I/M SIP, Section 20) b), contains a technical assistance plan which will require the TNRCC and its contractors to inform the automotive repair industry about the I/M program, training and certification schedules, common problems, and potential solutions for particular engine families, diagnostic tips, repairs, other technical assistance issues

A commenter from El Paso believed that there should be fewer facilities that conduct the emissions test than the current program because he had seen use of different standards and test procedures. The individual suggested that standard test procedures and standardized locations result in much better emission standard control. The commenter believed that, in some instances, people are paying for repair work on vehicles that is not necessary. This commenter attributed some of the unnecessary repairs to people who are not operating the emission inspection machines properly and who are not properly trained.

Another commenter recommended tightening the standards on the current inspections

TNRCC recognizes that the potential conflict of interest and the problems for companies that result from emission tests and repairs being performed at the same facility are common problems with decentralized emissions inspection programs. The new vehicle emissions inspection will be conducted at test-only facilities. These high-volume, test-only facilities will employ personnel trained to perform emissions inspections only. The emission testing equipment, procedures, and standards shall be uniform throughout the network for consistent and accurate emission testing. TNRCC will be regularly auditing the operations of emissions inspection personnel and equipment to insure testing fairness and consistency. This will be a manageable task since a much smaller number of both personnel and facilities will require review by auditing than in a decentralized program.

One individual, from the Dallas/Fort Worth area, stated that while the documents promised an average 30-minute wait for the emission test, it took 25 minutes to inspect his truck. He claimed that a 30-minute wait was only valid when inspection starts immediately after you roll up into a stall.

The number and location of inspection lanes are contractually obligated to be such that the daily average waiting time for vehicles in line for inspection shall not exceed 15 minutes for more than three days in any calendar month at any one facility. In addition, the "assembly line" type inspection allows for three cars to be involved in the inspection process at the same time. This results in vehicles being tested in five-eight minutes each.

All facilities will display the current estimated wait time on a sign near the entrance. This will give the motorist the option of waiting, or returning at another time, prior to entering a facility.

If TNRCC determines that the wait times at any inspection station are causing excessive motorist inconvenience, it can require the changes in the facility's operating procedures or the building of additional lanes. If the problem is not solved within a designated time, TNRCC can assess penalties.

A comment was made that inspection stations need to be open very late on weekdays and especially on Saturday and Sunday since 90% of the people required to get the vehicle emissions tests will have to do so on a weekend or a weekday after 6:00 p.m.

Although studies in private industry including Systems Control's experience in other states show that the public does not fully take advantage of additional hours, all inspection facilities are contractually required to be open for a minimum of 48 hours per week including not less than five hours on Saturday. TNRCC believes that the schedule of extended hours addresses the needs of all citizens and is still economically sound.

TADA commented that the amendment to the Texas Health and Safety Code §382.038, as passed by the 73rd Legislature under House Bill 1969 did not appear to be incorporated in the proposal published in the *Texas Register* or the SIP dated July 16, 1993. TADA requested that the statutory provision be incorporated into the SIP and the TNRCC propose rules for the implementation of this amendment to the Code.

The legislation is incorporated in the SIP in its entirety since it is an appendix to the SIP. In addition, the language regarding convenience for fleets and dealerships is on page 30 of the proposed SIP Section 6) e) Fleet Testing. The action is referenced as the Texas Health and Safety Code, §382.038, because House Bill 1969 amended this section of the Texas Health and Safety Code.

GHASP was opposed to a biennial cycle and wanted an annual test to ensure that the requirements of the FCAA Amendments be met "as soon as practicable," to achieve more reductions, and to reduce the potential of allowing up to 719 days (two years) of noncompliance. ASA also suggested annual inspection as an alternative to the proposed SIP.

EPA promotes biennial testing because it reduces consumer costs and inconvenience while maintaining overall effectiveness. The remote sensing program will identify off-cycle high emitter vehicles. Annual inspection frequencies only generate an additional 1.0-3.0% Volatile Organic Compound (VOC) reduction compared to an estimated 28% reduction for a program with IM240 biennial testing.

One individual commented that with the biennial cost, estimated to be $54 million in Harris County, the public is entitled to have an effective program reasonably free of loopholes.

TNRCC agrees and has adopted registration denial, cross-checking TxDOT's registration data base with the emission inspection testing data base, extensive audit provisions, and strict waiver provisions.

One individual stated that the testing cycle is ambiguous and asked for clarification on the following comments and questions. If a 1994 model vehicle is bought in 1993 can I assume that when it comes up for inspection in 1995, that emission inspection will not be required, but it will be required in 1996? However, if a 1994 model vehicle is not bought until early 1995, can I assume it will not need inspection until 1997, and will escape emission inspection until 1998?

The emissions testing cycle is based on the registration cycle, such that the registration renewal of a new car is one year after it is registered. In the commenter's example, if a motorist purchased a 1994 vehicle in September of 1993, it will need it's first emission inspection test prior to registration in September 1994 and again in 1996. If a new 1994 vehicle is purchased new in early 1995, it will need an emission inspection test in 1996.

EPA commented that the El Paso Area SIP should include a statement that at least 30% of the vehicles required to be tested will be tested in 1995.

In 1995, the I/M program in the El Paso nonattainment area will conduct emission inspections on at least 30% of the applicable vehicle population. TNRCC has added the requested statement to the SIP revision.

EPA contended that the Texas Health and Safety Code, §382.037(d) and (e) were in conflict and stated that the SIP must address the legal discrepancy of whether it is discretionary or mandatory for the TxDOT to require a VEC before a vehicle can be registered.

The Texas Health and Safety Code, §382.037, was amended by House Bill 1969, adopted by the 73rd Texas Legislature, effective August 30, 1993. House Bill 1969 repealed subsection (d), thereby resolving any conflict that may have existed between it and subsection (e) (redesignated as subsection (d) pursuant to House Bill 1969). House Bill 1969 was attached to the SIP as Appendix C.

Regarding other agencies involved in the I/M program, EPA commented that the statutes, rules, and hearing records addressing the authority of the Public Safety Commission and the TxDOT (formerly, the State Department of Highways and Public Transportation) must be submitted as part of the SIP.

TNRCC and TxDOT fully commit to include all relevant TxDOT documentation in the November 15 SIP submission, including the statutes and rules addressing TxDOT authority. The Department of Public Safety (DPS) is involved in the current emission inspection that is tied to the vehicle safety inspection. However, DPS will not be involved in the proposed I/M vehicle emission inspection program. Enforcement of the proposed program has been more fully explained in the Motorist Compliance Enforcement section of the SIP.

TxDOT pointed out that while the SIP states that "TxDOT may revoke registration" if it is determined that some form of counterfeiting was used to obtain a VEC, there is no statutory authority for TxDOT to revoke a registration on this basis.

TNRCC agrees with TxDOT's comment that TxDOT does not currently have statutory authority to revoke motor vehicle registration on the basis of a fraudulently obtained or submitted emissions inspection certificate. TNRCC has adopted a revision to the I/M SIP narrative to clarify that the authority for TxDOT to revoke registration does not currently exist, but may be given to TxDOT in the future. For clarification on the enforcement penalties for counterfeiting "Counterfeiting VECs, repair statements, or other documents used to obtain a VEC is a violation of TNRCC Rules and an infraction of the rule carries administrative penalties up to $10,000 per day per violation of (TNRCC) Rules or judicial penalties of up to $25,000 per day per violation, as well as possible criminal sanctions."

TxDOT commented that while the tax assessor-collectors are the agents of TxDOT for the purpose of collecting registration fees, they are not subject to discipline by TxDOT.

TNRCC agrees with the TxDOT's comment that TxDOT does not currently have the authority to discipline tax assessor-collectors or their deputies.

The SIP narrative will be amended to clarify TxDOT's discipline authority over tax assessor collectors and their deputies. TNRCC has been and will continue to work with the tax assessor-collectors to provide a quality and high compliance program. The tax assessor-collectors are elected officials and are disciplined through the court system. TNRCC will work with the tax assessor-collectors who do have the authority to revoke registration privileges of their deputies who have been found to knowingly participate in fraudulent registration. In addition, TNRCC will be training the tax assessor-collectors and their deputies on validating the VEC as a condition of registration. TNRCC has added language to the I/M SIP to clarify the enforcement authority.

EPA questioned whether TNRCC §114.4 would continue to be pertinent and whether this rule should be repealed.

Section 114.4 will continue to be required in the phased-in portion of the enhanced program in El Paso, even after the test-only start date, for a portion of the El Paso fleet. Therefore, the rule should not be repealed until the enhanced El Paso program is 100% in effect (January 1, 1996).

In reference to an August 5, 1993, letter addressed to the TNRCC from the Office of Mobile Source, EPA stated that additional IM240 model year coverage, or a tighter than recommended HC cutpoint would be needed for El Paso and Houston to meet the enhanced performance standard.

TNRCC has revised the I/M contracts to include high-tech emission testing for additional model years in the Houston/ Galveston and El Paso nonattainment areas. The contracts state that "High-tech testing in Houston-Galveston will include 1984 and newer model year light-duty gasoline vehicles and light-duty gasoline trucks. In El Paso, high-tech testing will include 1988 and newer model

year light-duty gasoline vehicles and light-duty gasoline trucks."

However, the TNRCC staff does recommend public notification and hearing before revising the proposed I/M SIP to include these changes required by EPA. TNRCC has agreed to adopt the I/M SIP without these changes so that the SIP can be submitted in time to meet the submission deadline on November 15, 1993. TNRCC also agreed to revise the SIP to include these additional model years as soon as practical to conform with the appropriate procedures. The SIP will be revised and submitted to EPA no later than March 15, 1994, so that EPA can consider the I/M SIP approvable. In the Houston/Galveston program area the additional model years covered by high tech testing would be 1984-1989 and in El Paso the 1988 and 1989 model years would be added to a more stringent testing method.

EPA asked that the MOBILE5a input and output reports be included in the SIP revision document.

TNRCC has agreed that the MOBILE5a input and output reports for Dallas/Fort Worth and the Beaumont/Port Arthur areas be included with the I/M SIP to be submitted by November 15, 1993. However, TNRCC also agreed that the revised MOBILE5a input/output reports be submitted with the I/M SIP that proposes to include EPA's required additional model years for Houston/Galveston and El Paso. Without the added vehicle model years, the MOBILE5a modeling would not indicate that the I/M program would meet EPA's performance standards, and would not be appropriate information to submit.

Several individuals commented that the modeling of urban air quality is not an exact science and that former predictions about air quality and mobile source pollution contributions were incorrect. One individual used an example of air quality monitoring along a specific highway (I-H 635) in the Dallas area. These commenters explicitly or implicitly suggested better monitoring techniques with regard to air monitoring.

In point of clarification, there are several models used to predict urban air quality. All of them have limitations, but their use is required by the EPA. Analysis used in this SIP revision uses the MOBILE5a emission factor model. This model uses composite emission factors to prove compliance with federal performance standards for I/M programs. Another monitoring system used is called HPMS. This monitoring system is used to predict highway traffic levels. The model used to prove attainment of national air quality standards is known as the Urban Airshed Model (UAM).

It is true that a previous model used in the 1980s, called the empirical kinetic modeling approach (EKMA), did not have the ability to interactively evaluate mobile, biogenic, point, and area sources. Based on these lackings, TNRCC adopted use of an improved chemical reactivity model, UAM. More information about the UAM methodology is available from the TNRCC's Office of Air Quality Planning Modeling Section.

The main reason for mandating the revised I/M programs in areas such as Dallas/Fort Worth is because of federal requirements to achieve a 15% reduction of VOCs net of growth 1990-1996. While implementation of a test-only and high-tech I/M program may appear to be extreme, some nonattainment areas will have difficulty attaining the 15% reduction even with the revised I/M programs.

EPA commented that the SIP should provide more information about the amount of the test fee available for State resources when the full SIP is submitted and whether this fee (or a portion) will be dedicated specifically to the I/M program.

SIP Appendix E, which is the Texas Natural Resource Conservation Commission Chapter of the 1992 Appropriation Bill contains the following language on page E-12, Section 23 "Automobile Inspection Fee Appropriated. In addition to the amounts appropriated above, the Commission is hereby appropriated from the Clean Air Fund all fees collected from contractors performing automobile emission inspections pursuant to Section 382.037 (f), Health and Safety Code, for the purpose of developing, administering, evaluating, overseeing, and enforcing the vehicle emissions inspection an maintenance program, including federally required measures to support the availability of effective emissions repairs."

At the time of program start-up, TNRCC anticipates that the portion of the fee collected by contractors that would be available to TNRCC will be no less than $1.25 per paid vehicle inspection.

TNRCC has added appropriate language to the I/M SIP revision to satisfy EPA's question regarding fees and changed the language to clarify that the fees are to be used by the I/M program.

A commenter stated the new §114.3 is burdensome for existing vehicles subject to recall notices prior to the effective date of the rule.

Compliance with recalls only applies to vehicle recalls that are made after EPA sets policy on recall required by §51.370 of the EPA rule. EPA's policy determination for recall is expected in 1994.

One individual suggested that the new §114.3 have a separate requirement that the vehicle owner must maintain evidence of compliance with a recall notice.

The recall compliance information will be entered in the computer data by the VIN.

TADA commented that is was not clear on what kind of written statement is acceptable for the motorist to furnish as proof of compliance with the recall notice and which indicates that emission repairs have been completed. TADA suggested that a copy of a repair notice should be adequate to satisfy compliance so that no additional paper work is required of a dealership.

The TNRCC staff believes that repair notices that are not standardized will decrease the efficiency at the testing facility and could also cause a motorist to return to the dealership for additional information. TNRCC knows that some type of form that will provide uniform information is needed, but since EPA has not finalized its policy on recall, it is not known if EPA will require a "standard form." TNRCC recommends complying with the EPA policy when it is final. TNRCC will include warranty recall repair on the standard form for certifying repairs for waivers. Accepting a copy of a repair notice/bill would not be appropriate because it could set up potential abuse or counterfeiting.

ARS suggested using hard to counterfeit VECs that are tied to registration.

The VEC will be tied to registration. As required by the RFP, the VEC will utilize at least a minimum of seven security features designed to hinder or detect counterfeiting.

ARS recommended extensive random emissions testing using Dr. Stedman's "Remote Monitoring of Vehicle Emissions."

Remote monitoring only addresses tail pipe emissions while half of the emissions are evaporative losses that remote sensing does not detect. In addition, remote sensing has problems with consistency of testing. The I/M program does propose on-the-road testing to identify vehicles for an out-of-cycle I/M vehicle emissions test. However, to rely on remote monitoring alone would not satisfy EPA's I/M program requirements.

ARS stated that more extensive public information should be provided on improving air quality through changes to driving habits.

As required in the RFP, an extensive public information program is being provided. The program includes improving air quality through changes to driving habits, refueling habits, vehicle maintenance, and other behavior affecting vehicle emissions.

Firestone expressed concern for the people who are in the business of repairing cars who have spent over $5,000 to $6,000 per facility on I/M test equipment which would not be fully depreciated. They indicated that the proposed program was not fully understood. The commenter was also concerned how the program would affect the stores and employees.

The equipment used in the present emissions inspection can continue to be used to perform vehicle diagnostics and check vehicle repairs. People in the business of repairing cars can benefit from additional repair business related to improving emissions. In addition, businesses that are currently doing safety inspections can continue to do so.

ARS believed that the rules and SIP were extreme in relation to the overall problem in Dallas/Fort Worth area.

The Dallas/Fort Worth area is designated as a moderate nonattainment area for ozone and must implement a basic I/M program. The area is also required to achieve a 15% reduction in VOCs from the 1990 level by 1996. Since automotive related pollution constitutes 36% of all the pollution emitted in the Dallas/Fort Worth nonattainment area, enhancing the I/M program was the only cost effective means of achieving the 15% reduction target.

GHASP recommended that the definition of motorists should include the word "person" in addition to entity.

TNRCC agrees with GHASP and added the word "person" to the definition of motorist.

Several individuals made comments about subjects, such as transportation plans, that were not related to the public hearing topics.

These comments are beyond the scope of this rulemaking

One individual complained that he did not receive a copy of the proposed SIP when a copy of the TNRCC new §114 3 was requested from staff

The hearings examiner questioned the commenter and found that this individual did receive notice of the subjects of the hearing The hearing record shows that the *Texas Register* publication properly stated that the proposed control strategy hearing would cover the whole I/M program

One commenter remarked that while we cannot measure the value of clean air, that the health effects of pollution from automobile emissions are measurably deleterious Several other comments were made regarding the positive health effects and benefits of clean air as a result of the I/M program

The I/M SIP section entitled "Vehicle Inspection/Maintenance Program" describes the possible health effects related to vehicle emission including VOCs, hydrocarbons, CO, and Nitrogen Oxides (NO_x) The benefits of clean air is the motivation of the I/M program Staff has considered these health issues in the SIP proposal

Another commenter expressed the belief that regardless of EPA rules, TNRCC has no right to set mandatory rules for testing and certification of privately owned vehicles This individual stated that all testing of private vehicles should be dropped and the effort be spent on the testing of government owned vehicles He further stated, that since the government agencies set specification for the automobiles that the purchase, they are responsible for the design, performance, and pollution This commenter recommended that the test be performed on government controlled vehicles (ICC and FAA) and recall those that fail It was claimed that in this commenter's experience government controlled vehicles are not tested and are more likely to fail This individual stated that after 10 years less than 1 0% of the automobiles are still being driven, the state discards automobiles after three years, and that it doesn't make sense to penalize the 15 million automobile owners registered in Texas to find a few of the 50,000 older cars that are driven less than 10, 000 miles per year

Congress mandated I/M programs in moderate, serious, severe, and extreme nonattainment areas and required federal fleets to comply with vehicle emission inspection requirements The TNRCC rule reflects federal requirements for the testing of government vehicles, including federal and state fleets The average age of a car in Texas in 7 5 years It is not possible to determine from the age alone if a vehicle is a high pollution emitter Even 8 0% of one year old cars fail the IM240 test

The repeal is adopted under the Texas Health and Safety Code (Vernon 1990), the Texas Clean Air Act (TCAA), §382.017, which provides TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

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

Issued in Austin, Texas, on November 15, 1993

TRD-9332203 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource
Conservation
Commission

Effective date December 8, 1993

Proposal publication date July 27, 1993

For further information, please call (512) 463-8159

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• 30 TAC §114.3

The new rule is adopted under the Texas Health and Safety Code (Vernon 1990), the Texas Clean Air Act (TCAA), §382 017, which provides TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA

§114 3 Vehicle Emissions Inspection and Maintenance Program

(a) Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Natural Resource Conservation Commission (TNRCC), the terms used by the TNRCC have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by TCAA, the following words and terms, when used in this rule, shall have the following meanings, unless the context clearly indicates otherwise

(1) Adjusted annually-Percentage, if any, by which the Consumer Price Index (CPI) for the preceding calendar year differs from the CPI for 1989, adjustments shall be effective on January 1 of each year

(2) Emissions tune-up-A basic tune-up along with functional checks and any necessary replacement or repair of emission control components

(3) Fleet vehicle-Any motor vehicle operated as a member of a group of more than ten motor vehicles belonging to a single non-household entity, any state or local government motor vehicle, including a motor vehicle exempted from the payment of a registration fee and issued a specially designated license plate; or any federal government motor vehicle, except for a tactical military vehicle

(4) Managing contractor-Firm contracted by TNRCC to design, build, equip, maintain, and oversee operation of vehicle emission inspection facilities, operate referee inspection facilities, and provide other administrative functions for the vehicle emissions inspection and maintenance program contained in the revised Texas Inspection/Maintenance (I/M) State Implementation Plan (SIP)

(5) Motorist-A person or other entity responsible for the repair a ' maintenance of a motor vehicle, which may include, but is not limited to, owners and lessees

(6) Primarily operated Use of a motor vehicle greater than 50% of total use as measured in vehicle miles traveled

(7) Program area County or counties in which TNRCC, in coordination with the Texas Department of Transportation (TxDot), administers the vehicle emissions inspection and maintenance program contained in the revised Texas I/M SIP The program shall be implemented in two models, basic and enhanced

(8) Referee inspection facility Station administered by a Managing Contractor for challenge and waiver testing purposes and determination of reciprocal compliance

(9) Retest Successive vehicle emissions inspections following the failing of an initial test by a vehicle during a single testing cycle

(10) Revised Texas I/M SIP The Texas SIP as revised in accordance with the United States Environmental Protection Agency (EPA) 40 Code of Federal Regulations Part 51, Subpart S, issued November 5, 1992, including the procedures and requirements of the vehicle emissions inspection and maintenance program

(11) Testing cycle-Biennial cycle commencing with the first registration expiration date for which a motor vehicle is subject to a vehicle emissions inspection, required for a motor vehicle of an even-numbered model year during an even-numbered year and for a motor vehicle of an odd-numbered model year during an odd-numbered year

(b) No person may operate any motor vehicle which does not comply with

(1) air pollution emission control related requirements included in the annual vehicle safety inspection requirements administered by the Texas Department of Public Safety (DPS), as evidenced by a currently valid inspection certificate affixed to the vehicle windshield until such requirements are superseded by the vehicle emissions inspection and maintenance requirements contained in the revised Texas I/M SIP; or

(2) the vehicle emissions inspection and maintenance requirements contained in the revised Texas I/M SIP

(c) No person may issue or allow the issuance of:

(1) a vehicle inspection certification, as authorized by DPS, unless all air pollution emission control related requirements of the annual vehicle safety inspection are completely and properly performed in accordance with the rules and regulations adopted by DPS. Prior to taking any enforcement action regarding this provision, TNRCC shall consult with DPS. The requirements in this paragraph shall apply until superseded by the vehicle emissions inspection and maintenance requirements and procedures contained in the revised Texas I/M SIP; or

(2) a Vehicle Emissions Certificate (VEC), as authorized by TNRCC, unless:

(A) all vehicle emissions I/M requirements and procedures required by the revised Texas I/M SIP are completely and properly performed; or

(B) reciprocal compliance is established in accordance with all vehicle emissions I/M requirements and procedures contained in the revised Texas I/M SIP. A motorist shall submit an original vehicle emissions inspection document to a referee inspection facility. If the inspector determines that the document fulfills the requirements of the program area in which the motorist intends to register a motor vehicle, the motorist shall receive a VEC upon remittance of any applicable fees.

(d) No person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen VECs, vehicle emissions repair documentation, or other documents which may be used to circumvent the vehicle emissions I/M requirements and procedures contained in the revised Texas I/M SIP.

(e) No person may own, operate, or allow the operation of a fleet vehicle primarily operated in a program area, unless the fleet vehicle has complied with all vehicle emissions I/M requirements contained in the revised Texas I/M SIP. An owner or operator of a fleet vehicle exempted from the payment of a registration fee and issued a specially designated license plate or otherwise not required to be registered in a program area by TxDOT shall comply with the following requirements specific to such fleets:

(1) present the fleet vehicle for inspection in accordance with the fleet vehicle inspection schedule developed by TNRCC;

(2) register with TNRCC by March 1, 1994, and shall provide by that date information on each vehicle including, but not limited to, all data required for the registration of the fleet vehicle by TxDOT and other information specified on forms provided by TNRCC; and

(3) maintain the following vehicle information and shall provide that information to TNRCC, EPA, or local air pollution control agency upon request:

(A) the number and types of vehicles operated and maintained by the fleet;

(B) vehicle identification number of any vehicle currently operated and notating changes such as purchased, leased, sold, or retired;

(C) changes to the fuel type that would affect the applicability of program requirements;

(D) number of miles traveled and percentage of miles traveled by each vehicle in a program area; and

(E) other data as required by TNRCC.

(f) All federal government agencies shall require a motor vehicle operated by any federal government agency employee on any property or facility under the jurisdiction of the agency and located in a program area to comply with all vehicle emissions I/M requirements contained in the revised Texas I/M SIP.

(g) A Managing Contractor shall design, build, and oversee operation of inspection facilities in accordance with the performance and operating reliability standards and other requirements and procedures contained in the revised Texas I/M SIP.

(h) No organization, business, person, or other entity may represent itself as an inspector certified by a Managing Contractor, as a repair technician certified by TNRCC, or as a repair facility certified by TNRCC, unless such certification has been issued pursuant to the certification requirements and procedures contained in the revised Texas I/M SIP.

(i) Any motorist in an enhanced program area whose motor vehicle has been issued an emissions-related recall notice, after the program start date and earlier than six months before the motor vehicle is presented for a vehicle emissions inspection, shall furnish proof of compliance with the recall notice in order for the inspection to commence, provided that compliance with the recall has not been proven during a previous vehicle emissions inspection. The motorist may present a written statement from the dealership or leasing agency indicating that emissions repairs have been completed as proof of compliance.

(j) A motorist whose motor vehicle has failed an on-road test administered by TNRCC shall:

(1) submit the motor vehicle for an out-of-cycle vehicle emissions inspection within 30 days of written notice by TNRCC; and

(2) satisfy all inspection or waiver requirements of the vehicle emissions I/M program contained in the revised Texas I/M SIP within 60 days of written notice by TNRCC.

(k) A motorist may apply to the Managing Contractor for waivers which defer the need for full compliance with vehicle emissions standards for a specified period of time after failing a vehicle emissions inspection. For the minimum expenditure and time extension waiver, the motorist may apply only once for each type of waiver for each testing cycle and shall pay any applicable processing fee. For the one-time hardship extension waiver, the motorist may apply once for the lifetime of the vehicle and shall pay any applicable processing fee.

(l) A Minimum Expenditure Waiver may be granted in accordance with the following conditions.

(A) The motor vehicle must have failed a retest after repairs satisfying the following conditions have been performed:

(i) in enhanced program areas, repairs shall require a minimum expenditure of at least $450, adjusted annually;

(ii) in basic program areas, repairs shall require a minimum expenditure of at least $75 for pre-1981 model year vehicles and at least $200 for 1981 and later model year vehicles;

(iii) repairs shall be performed by a TNRCC voluntarily certified repair technician;

(iv) repairs shall be directly applicable to the cause for the test failure; and

(v) repairs shall have directly reduced emissions by 25% of the difference between emissions during the initial test and the emissions standards contained in the revised Texas I/M SIP.

(B) A Minimum Expenditure Waiver shall be valid for the remaining portion of the testing cycle.

(2) A one-time hardship extension waiver may be granted once in the life of the vehicle in accordance with the following conditions.

(A) A motorist must have a valid VEC indicating that the subject vehicle failed the initial emission inspection test.

(B) A motorist shall provide proof in writing of at least one of the following criteria to establish financial hardship:

(i) the motorist's family income is below the poverty level as defined by the Office of Management and Budget Poverty Index;

(ii) the motorist's family receives financial assistance pursuant to the Texas Human Resources Code, Chapter 31, Financial Assistance Programs; Code;

(iii) the motorist's family receives food stamp assistance as determined by the Texas Department of Human Services in accordance with the Food Stamp Act Amendments of 1977; or

(iv) the motorist's family earns not more than 40% of the area median income as defined in the Comprehensive Housing Affordability Strategy of the Texas Department of Housing and Community Development.

(3) A Time Extension Waiver may be granted in accordance with the following conditions.

(A) The motorist can document that emissions-related repairs cannot be completed before the expiration of current registration or before the 30-day period following an out-of-cycle inspection because the repairs require an uncommon part. An uncommon part is defined as one that takes more than 30 days for expected delivery and installation and a motorist can prove that a reasonable attempt made to locate necessary emission control parts by retail or wholesale part suppliers, will exceed the remaining time prior to expiration of the vehicle registration.

(B) The motorist shall provide an original VEC and an original itemized documentation indicating prepayment, if applicable, and expected delivery and installation dates of uncommon parts before a Time Extension Waiver can be issued.

(C) The motorist shall return the motor vehicle to the referee inspection facility for a retest and verification of repairs upon completion of the repairs.

(D) The motorist shall provide to TNRCC, prior to expiration of a Time Extension Waiver, adequate documentation that one of the following conditions exists:

(i) the motor vehicle passed a retest;

(ii) the motorist qualifies for a Minimum Expenditure Waiver or Hardship Waiver; or

(iii) the motor vehicle shall no longer be operated in the program area.

(E) The length of a Time Extension Waiver shall depend upon expected delivery and installation dates of uncommon parts as determined by the Managing Contractor, but shall not exceed three months.

(4) If a motorist leases or offers for lease, sells or offers for sale, trades or offers for trade, or otherwise transfers the title of a motor vehicle during the time any waiver is in effect, the motorist shall notify the prospective owner or operator in writing of the waiver.

(5) A motorist shall use any available warranty coverage to obtain needed repairs before expenditures shall be used in calculating the minimum repair expenditures to qualify for a Minimum Expenditure or a Hardship Waiver, unless the warranty remedy has been denied in writing from the manufacturer or authorized dealer.

(6) A motorist may not use or attempt to use expenditures for tampering-related repairs in calculating the minimum repair expenditures to qualify for a Minimum Expenditure or a Hardship Waiver. Tampering includes, but is not limited to, engine modifications, emission system modifications, or fuel-type modifications not approved by TNRCC or EPA.

(7) A motorist shall provide to the Managing Contractor at the referee inspection facility an original retest VEC and an original itemized receipt indicating the emissions-related repairs performed for the issuance of a Minimum Expenditure or a Hardship Waiver. A motorist shall provide to the Managing Contractor at the referee inspection facility an original retest VEC and an original itemized receipt indicating the purchase, payment, and expected delivery and installation dates of uncommon parts for the issuance of a Time Extension Waiver.

(l) A motorist may petition the Executive Director of the TNRCC for the exemption of a motor vehicle from the requirements of the vehicle emissions I/M program contained in the revised Texas I/M SIP, upon demonstration that the motorist has taken reasonable measures to comply with such requirements and that such exemption shall have minimal impact on air quality. If the Executive Director approves the petition, the motorist may receive an exemption upon remittance of any applicable fees.

(m) The requirements of the vehicle emissions I/M program contained in the revised Texas I/M SIP shall be applied to all 1968 and newer model year gasoline-powered motor vehicles, excluding motorcycles. Alternatively fueled or dual-fueled vehicles will be tested in the gasoline mode, if the vehicle can be operated on gasoline.

(n) The requirements of the vehicle emissions I/M program contained in the revised Texas I/M SIP shall be applied in the program areas in accordance with the following schedule:

(1) the basic program in Collin, Dallas, Denton, Jefferson, Orange, and Tarrant Counties beginning on July 1, 1994;

(2) the enhanced program in Brazoria, El Paso, Fort Bend, Galveston, Harris, and Montgomery Counties beginning on January 1, 1995; and

(3) the enhanced program in Chambers, Liberty, and Waller Counties beginning on January 1, 1997.

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

Issued in Austin, Texas, on November 15, 1993.

TRD-9332204 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

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For further information, please call: (512) 463-8159

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• 30 TAC §114.23

The Texas Natural Resource Conservation Commission (TNRCC), a new agency combining the Texas Air Control Board and the Texas Water Commission, adopts new §114.23, Control of Air Pollution from Motor Vehicles, concerning enforceability of transportation control measures (TCMs), with changes to the proposed text as published in the September 21, 1993, issue of the *Texas Register* (18 TexReg 6424).

The new rule is a revision to the State Implementation Plan (SIP) for ozone nonattainment areas. There was extensive coordination in the development of this rule through teleconferences and meetings which involved the United States Environmental Protection Agency (EPA) Region 6, Office of Mobile Sources, TNRCC, the Texas Department of Transportation (TxDOT), the nonattainment area Metropolitan Planning Organizations (MPO), and other affected entities.

Public hearings were held in Houston on September 20, 1993, in El Paso on September 22, 1993, and in Irving on September 23, 1993, to receive testimony regarding these

proposed revisions. Written testimony was received from seven commenters during the comment period which ended September 24, 1993, including: EPA Region 6, the City of Dallas, the Houston Metropolitan Transit Authority (MTA), the Houston-Galveston Area Council (H-GAC), the Transportation Policy Council (TPC) of the H-GAC, the Regional Transportation Council (RTC) of the North Central Texas Council of Governments (NCTCOG), and the Galveston-Houston Association for Smog Prevention (GHASP).

The EPA expressed agreement with the requirement for TCM specificity and their projected emission reductions. The EPA also stated that a technical support document containing all of the modeling, input parameters, computations, and other rationale should be provided to EPA so that it may judge the approach and analyses on which emission credits are being determined. The EPA was largely supportive of the TCM rule; however, it commented that no guidance was provided in the proposed rule on when the 12-month clock will start for submission of revised TCMs or correction of deficiencies.

The TNRCC's intention was that the one year allowed to make corrections to TCM commitments start with approval of the Transportation Improvement Program (TIP). The TIP approval is the date when congestion management and air quality funding of TCMs is finalized. While this is implied under subsection (b)(2), (3), and (4) where firm commitments and obligation of funding of projects are discussed, subsection (e) has been revised to read "... the responsible MPO shall within the next 12 months after TIP approval by the MPO or regional transportation policy body..."

The EPA also mentioned that subsection (e) does not clearly make reference to situations which may warrant a SIP revision if significant changes occur.

Based on discussions with EPA, it is TNRCC's understanding that SIP revisions will be necessary only when modifications substantially change TCM reductions or utilize alternative TCMs. A new subsection (e)(4) is adopted stating "revise the SIP if the alternative TCMs are not within the same category, or if required emission reductions cannot be met with the planned alternative TCMs."

The RTC, which is the regional transportation policy body of NCTCOG, strongly opposed the proposed rule. It noted that, as far as can be determined, in no other state in the nation are EPA and the lead state air control agency proposing a state regulation to enforce the implementation and monitoring of TCMs in the SIP.

In discussions with the TNRCC, the EPA staff stated that in the past, EPA has had considerable difficulty getting some states to enforce TCMs. The EPA noted that the Federal Clean Air Act (FCAA) Amendments of 1990 requires TCMs to be specific and enforceable. Although specific rules were not required, the TNRCC legal staff indicated a rule was the only truly enforceable means of ensuring compliance.

In order to produce a rule that most agencies would find reasonable and acceptable, several meetings and teleconferences were held. The NCTCOG staff were included in these meetings, expressed their concerns, and assisted in drafting the proposed TCM rule.

The RTC suggested that the proposed rule was an unfair hardship and an example of over-regulation, especially when the RTC has aggressively supported these controls through the long-range planning process and the TIP. Furthermore, the RTC has these legal responsibilities under the Intermodal Surface Transportation Efficiency Act (ISTEA) and the FCAA, therefore, duplicative state regulations are not needed.

If TCMs are implemented as required, the proposed rule should create no problems or hardship for the MPOs. According to subsection (g), the punitive portion of this regulation, a financial penalty against the MPO or an implementing agency only applies to egregious or knowing violations of the provisions of this rule.

The RTC added that in the event the TNRCC proceeds with this proposed rule, they will be forced to adopt a conservative policy regarding TCM commitments to the SIP in order to minimize the risk and burden associated with the proposed rule.

The rule basically formalizes guidance from EPA to assure that TCMs are specific and enforceable If the MPOs propose TCMs for the SIP which follow this guidance, and then fail to produce the required emissions reduction, there are specific alternative measures which need to be applied. If these procedures are carefully followed, it is highly unlikely that enforcement action will be taken against the MPO or implementing agency, unless it is an egregious or knowing violation. Whenever TCMs are submitted, there should be definite commitments, obligation of a funding source, a schedule to plan, implement, and enforce the TCM, and a monitoring program to assess the TCM's effectiveness and to allow for corrections or alterations The RTC should carefully weigh any reluctance to commit TCMs to the SIP against the possible failure to achieve attainment of the National Ambient Air Quality Standards (NAAQS) and a possible bump up to a worse category, or the imposition of sanctions by EPA under the provisions of the FCAA. Air pollution remains largely a mobile source problem in the Dallas/Fort Worth nonattainment area, and the improvement of air quality there rests largely on reduction of mobile source emissions TCMs can be an important tool in this regard.

The City of Dallas expressed concern about the rule affecting financing of local governments when the local government might be an implementing agency. It suggested changing "non-TCM" to "TCM" in that same paragraph. This paragraph states that the MPO shall withhold all or part of the funds for non-TCM projects from the applicable implementing agency

Since the MPO would be the funding agency, it seems unlikely that the City of Dallas would be in danger of losing any funds for approved TCMs. In any event, funding will not be deleted from valid proposed or ongoing TCMs because of the failure to implement some other TCM Failure to fund TCM projects would not lead to cleaner air; however, the potential loss of non-TCM funding is sufficient incentive to ensure TCM implementation

The GHASP recommended a strong audit program to measure and verify emissions reductions. The MPO and implementing agency will be estimating the effectiveness of TCMs and will report on the results periodically. Annual TIPs must demonstrate conformity with the SIP, including satisfaction of all TCM commitments and associated emission reductions. TNRCC will evaluate and verify the conformity of the TIP with the SIP.

The GHASP recommended real life monitoring near heavily traveled and congested areas A number of air monitoring studies have been done in Houston and other places to verify the transportation and air quality models Some of these data could be updated for Houston if sufficient resources can be identified

The GHASP expressed disappointment that there are no real, detailed TCMs that are measurable and enforceable in this proposal This proposal was not designed to develop TCMs or to cover the individual TCMs, but to issue a rule to ensure that TCMs are enforceable The TIP, the long-range plan, and the conformity analysis will present specific information on TCMs The MPOs develop commitments for TCMs with implementing agencies and analyze emission reductions

The GHASP asked the meaning of the word "egregious " This term is defined in Webster's Dictionary as conspicuously bad or flagrant

The GHASP representative mentioned that the public should also be allowed access to records on TCM activities This statement, in subsection (d), was intended to identify the governmental agencies that had a need for the data This information is also available to the public

The GHASP asked what the word "expeditious" means in the context in which it is used in subsection (f)(1). It means contingency measures will be implemented such that the planned emissions reduction will occur in the same time frame as previously programmed

The GHASP complained that an afternoon meeting was inconvenient and requested that evening meetings be held in the future so people who work can attend. TNRCC attempts to schedule hearings in the evening whenever appropriate and possible.

The H-GAC supported the use of categories of TCMs rather than project-specific commitments because of the flexibility it provides to implementing agencies in fulfilling their commitments. The H-GAC supported the stipulation that financial penalties will not be used, except in the case of egregious failures to comply with commitments because threats of fines on MPOs and implementing agencies are substantial disincentives for commitments by implementing agencies. It also supported the use of one aggregate emission target rather than project-specific or category-specific targets, because the aggregate target more fully reflects the interactions of TCMs

These features of the rule were worked out through extensive coordination with concerned parties, including EPA Region 6, EPA Office of Mobile Sources, the MPOs, MTA in Houston, TxDOT, and TNRCC.

The H-GAC supported the development of a SIP with emphasis on demand reduction, the use of commitments to categories of TCMs to make it easier to make changes, and the use of one aggregate emission target. The H-GAC also supported the statement that financial penalties will not be imposed, except for egregious failure to comply. It expressed a need for TNRCC to work with the implementing agencies and MPOs to develop monitoring and enforcement procedures for TCM commitments.

The TPC of H-GAC agreed to support expeditious implementation of TCMs, as required in ISTEA, through federal funding assistance. The TPC also supported implementation of alternative TCMs as needed to achieve emission reduction targets. It will enforce commitments by withholding funding approvals from implementing agencies which fail to make good faith efforts to achieve their commitments.

Both H-GAC and MTA questioned what "enforce the TCM" meant from the perspective of an implementing agency, as expressed in subsection (b)(5) of the rule. The MTA suggested deleting the word "enforce" before TCM in subsection (b)(5). The current statement reads "evidence that a complete schedule to plan, implement, and enforce the TCM has been adopted by the implementing agencies; and, ..." The MTA stated that it is assumed that implementing agencies will not enforce, but will accept or approve enforcement programs.

The EPA is intent on enforcing TCMs. In its guidance and in the FCAA, there is continuing emphasis on keeping TCMs specific and enforceable. The action taken to enforce TCMs has to begin at the local level with implementing agencies. The MPO, on the other hand, may revise the TIP, withhold funding, or seek financial penalties.

The TNRCC staff looks at enforcement in a broad sense as the whole process of implementing TCMs from identification of the TCM to full implementation. In this sense, the implementing agency plays the key role in enforcing a TCM with the assistance of the MPO and others in the transportation planning community.

Enforcement is achieved through careful planning, coordination, and scheduling. It includes the establishment of firm commitments, provision of an assured source of funding or other needed resources, calculation of emission benefits, monitoring of progress, prediction of future progress, and, in the event of failure to achieve the emission reduction goals, planning and implementation of sufficiently effective alternative measures to achieve the planned emission reductions. In short, enforcement of TCMs is the assured implementation of TCMs through careful planning and the carrying out of those plans in order to achieve established emission reduction goals.

TNRCC recognizes that implementing agencies do not "enforce" measures by imposition of fines or penalties. Only as a last resort for an egregious or knowing violation of the provisions of this rule to implement TCMs, would TNRCC impose financial penalties.

In an effort to further clarify this issue and to be responsive to public comments, this portion of the rule in subsection (b)(5) has been changed to delete the word "enforce" and to read "evidence that a complete schedule to plan, adopt, fund, implement, monitor, and ensure compliance with the TCM has been adopted by the implementing agencies; and, ..."

Both H-GAC and MTA asked what "contingency measures" means in subsection (f) (1). Contingency measures, as used here, mean alternative transportation control measures. The contingency anticipated is the failure to completely implement a planned TCM and to achieve the emission reductions expected, for whatever reason. Contingency measures are to be identified and evaluated by the MPO based on effectiveness in reducing emissions at minimum economic cost and without seriously interfering with personal life style. They should be approved by TNRCC during the planning phase and planned in advance of need.

The H-GAC suggested that "non-TCM projects" be replaced with the phrase "projects with no air quality benefit" since denial of funding for non-TCM projects may not achieve the desired air quality goals. TNRCC believes that a change in this wording is not necessary since the provision is to "withhold all or part" of the funding for non-TCM projects. This allows the MPO to make a judgment call on which projects, for any other reason, do not need to be funded and which projects do the most to improve air quality. The presumption is that, of those projects that are non-TCM, those most beneficial in improving air quality will be given first priority for funding. The present wording gives the MPO the needed flexibility in withholding funding.

Under the definition of implementing agency in subsection (a)(3), MTA suggested adding "procurement of funds" and also "monitoring of" and the deletion of "compliance with." This suggestion further describes the activities performed by implementing agencies and seeks to make the MPOs alone responsible for ensuring compliance with TCMs. The suggestions to add "procurement of funds" and "monitoring" to the description of duties of an implementing agency is accepted. The request to delete the word "compliance" is rejected because compliance is a key issue. If the implementing agency and the MPO are not both working to ensure compliance, the implementation of the TCM may be unsuccessful. Therefore, the adjusted phrasing is "(3) Implementing agency-An entity, transportation provider, organization, agency, or individual responsible for the design, procurement of funds, construction, operation, maintenance, management, monitoring, and, in conjunction with the MPO, compliance with TCMs."

In subsection (b), MTA suggested the removal of the words "development of" before "the long-range transportation plan", the deletion of "implementing agency" after "such", and the insertion of "by the MPO" after "commitments." This language would make the MPO, and not the implementing agency, responsible for providing most of the information on TCMs. The deletion of "development of" is accepted since it is repetitive. However, changing "implementing agency" to "by the MPO" is inappropriate since, in most cases, commitments to adopt or fund a TCM will be made by the implementing agencies.

The MTA suggested substitution of the word "by" for "from" with reference to funding approvals in subsection (b)(4). This is in reference to evidence of funding commitment approvals, which may be obtained either "by" or "from" implementing agencies. It is true, that in some cases, commitments for funding might be obtained from other agencies, so the change of "from" to "by" is accepted.

The MTA commented that the term "parties" in subsection (b)(4) is too vague or should be defined. Parties is a commonly used legal term that is appropriate for this purpose. No change has been made.

The MTA objected to the statement in subsection (b)(4) that "programming within the TIP will serve as sufficient evidence of commitment." It states that a conforming TIP will usually not occur until after the SIP is approved. The TNRCC staff believes that approval by the governing transportation planning body is evidence of commitment and should be timely enough. SIP approval by EPA is, therefore, not necessary and no change has been made.

The MTA commented that in subsection (b)(6) "monitoring program" needs further definition. It also asked if this program will monitor for air quality, traffic, fuel, or maintenance.

Monitoring must demonstrate the reduction of mobile source emissions. The study of the feasibility of implementing a TCM should take into account the ease of documentation of progress and effectiveness. If the emission reductions are too difficult to assess, it may be advisable to plan to develop a different TCM.

The MTA asked what type of "measurable criteria" would be used to quantify progress. The implementing agency must decide what criteria can best demonstrate effectiveness in reducing emissions. For example, it could be reduction of vehicle miles traveled (VMT) or number of trips, or a decrease in congestion or delays due to accidents. The key requirement is the quantification of the effect on mobile source emissions by the use of reasonable rationale and assumptions.

The new rule is adopted under the Texas Health and Safety Code (Vernon 1990) , the Texas Clean Air Act (TCAA), §382.017, which provides TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§114.23. Transportation Control Measures.

(a) Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Natural Resource Conservation Commission (TNRCC), the terms

used by TNRCC have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms defined by the TCAA, the following words and terms, when used in this rule, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Transportation control measure (TCM)–Any category or group of actions, programs, or transportation services or facilities which reduces vehicle emissions.

(2) Metropolitan Planning Organization (MPO)–As defined under the Intermodal Surface Transportation Efficiency Act, Title 23, §134.

(3) Implementing agency–An entity, transportation provider, organization, agency, or individual responsible for the design, procurement of funds, construction, operation, maintenance, management, monitoring, and, in conjunction with the MPO, compliance with TCMs.

(b) The MPO for any designated nonattainment area shall be responsible for the identification, evaluation, coordination, tracking, and periodic revision, as necessary, of TCMs required for inclusion in the Texas State Implementation Plan (SIP) adopted by TNRCC. The MPO shall obtain and submit to TNRCC the necessary commitments from applicable implementing agencies and shall ensure adequate, timely funding of such projects through the development, management, and annual revision of the Transportation Improvement Program (TIP) and, through the long-range transportation plan, ensuring conformity of the regional transportation network with the SIP. Such implementing agency commitments shall include, but not be limited to, the following information:

(1) a complete description of the program of measures and estimated emission reduction benefits from the program of measures adopted;

(2) evidence that the measure was properly adopted by a jurisdiction with legal authority to commit to and execute the program of measures;

(3) evidence that funding has been or will be obligated to implement the measure;

(4) evidence that all necessary funding approvals have been obtained by all appropriate implementing agencies, including the Texas Department of Transportation (TxDot), if applicable; and all parties intend to implement specific control measures upon final environmental clearance. Programming within the TIP will serve as sufficient evidence of commitment;

(5) evidence that a complete schedule to plan, adopt, fund, implement, monitor, and ensure compliance with the TCM has been adopted by the implementing agencies; and

(6) a description of the monitoring program to assess the measure's effectiveness and to allow for necessary in-place corrections or alterations.

(c) MPOs required to comply with the provisions of this rule include the:

(1) El Paso MPO for the El Paso Urban Transportation Study–responsible for the El Paso nonattainment area;

(2) Houston-Galveston Area Council–responsible for the Houston/Galveston nonattainment area;

(3) North Central Texas Council of Governments–responsible for the Dallas/Fort Worth nonattainment area; and

(4) Southeast Texas Regional Planning Commission–responsible for the Beaumont/Port Arthur nonattainment area.

(d) The responsible MPO shall obtain information from implementing agencies responsible for TCMs included in the SIP; shall maintain complete and accurate records for at least five years; and shall make such records available to representatives of TNRCC, the United States Environmental Protection Agency, the Federal Highway Administration, the Federal Transit Administration, the TxDot, and local air pollution agencies having jurisdiction in the area, upon request. The information in the records shall be sufficient to accurately reflect the effectiveness of the TCM program and shall include, but shall not be limited to, the following:

(1) the annual status of the implementation of the program of TCMs and the categories of TCMs, including quantifying progress based on the measurable criteria established in implementing agency commitments;

(2) an annual estimate of the funding and other resources expended toward implementing the program of TCMs and a comparison of the actual and projected expenditures;

(3) an annual estimate of the emission reductions achieved from implementation of the program of TCMs and a comparison of actual and projected reductions; and

(4) any modifications to the program of TCMs since the last annual report and/or projected in the next reporting period to compensate for a shortfall in the implementation of the program of TCMs or in the associated emission reductions.

(e) If information regarding the status of the program of TCMs in the SIP indicates that any TCM included in the SIP has not been adequately implemented in accordance with the projected schedule, the responsible MPO shall within the next 12 months after TIP approval by the MPO or regional transportation policy body:

(1) ensure that the responsible implementing agencies have instituted supplemental efforts as necessary to demonstrate compliance with commitments, future TCM milestones, or goals;

(2) develop, submit, and initiate an alternative TCM in coordination with the same or other responsible implementing agencies, which, as part of the program of TCMS in the SIP, demonstrates at least an equivalent emission reduction in the same time frame to the existing program;

(3) initiate a revision to the TIP as necessary, but no more frequently than annually, to ensure that sufficient funding and authorization has been provided to correct the deficiency; and

(4) submit to TNRCC new or modified TCMs as proposed SIP revisions if the alternative TCMs are not within the same category, or if required emission reductions cannot be met with the planned alternative TCMs.

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

Issued in Austin, Texas, on November 10, 1993.

TRD-9332205 **Mary Ruth Holder**
Director, Legal Division
Texas Natural Resource Conservation Commission

Effective date: December 8, 1993

Proposal publication date: September 21, 1993

For further information, please call: (512) 463-8159

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 85. Admission and Placement

Placement Planning

• 37 TAC §85.31, §85.43

The Texas Youth Commission (TYC) adopts amendments to §85.31 and §85. 43, concerning home placement and interstate compact for TYC youth, without changes to the proposed text as published in the October 5, 1993, issue of the *Texas Register*, (18 TexReg 6803).

The amendments will result in a more efficient system of providing services through the Texas Interstate Compact on Juveniles Office (IJC) for youth who are sent between states.

The amendments to §85.31 add that the home evaluation process be applied to all youth properly referred to parole officers through the IJC, and the amendments to §85.43 clarify how the IJC office provides services for youth sent between states.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

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

Issued in Austin, Texas, on November 12, 1993.

TRD-9332137 Ron Jackson
Executive Director
Texas Youth Commission

Effective date: December 6, 1993

Proposal publication date: October 5, 1993

For further information, please call: (512) 483-5244

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 72. Memorandum of Understanding with Other State Agencies

Memorandum of Understanding Concerning Coordination of Services to Persons with Disabilities

• 40 TAC §§72.210

The Texas Department of Human Services (DHS) adopts an amendment to §72. 210 without changes to the proposed text published in the October 15, 1993, issue of the *Texas Register*(18 TexReg 7136).

The amendment is justified to clarify the responsibilities of the Texas Interagency Council on Early Childhood Intervention (ECI) in relation to persons with disabilities.

The amendment will function by making policy clearer regarding the ECI's responsibilities to persons with disabilities.

The department received no comments regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs. The amendment implements §22.001 of the Human Resources Code.

§72.210. The Texas Interagency Council on Early Childhood Intervention (ECI).

(a) Financial and service responsibilities to persons with disabili- ties.

(1) ECI was established by the Texas State Legislature to provide services to infants and toddlers with developmental delays and their families. ECI contracts with 75 local community organizations and agencies. The ECI programs are affiliates of local school districts, educational service centers, state centers, state schools, Texas Department of Mental Health and Mental Retardation (TXMHMR) community centers, private rehabilitation centers, and universities. Children under age three with a significant delay in one or more areas of development, or with established medical conditions known to lead to developmental delays (such as Down syndrome), and children diagnosed as having atypical behaviors are eligible for services. The contact for program information is Executive Director, Texas Early Childhood Intervention Program, (512) 502-4900.

(2) Agreements with state agencies. The Texas ECI Program represents an inter-agency effort of the Texas Department of Health, Texas Department of Mental Health and Mental Retardation, Texas Department of Human Services, Texas Commission on Alcohol and Drug Abuse, Texas Department of Protective and Regulatory Services, and the Texas Education Agency. The Texas ECI Program is governed by an inter-agency council with a representative from each of the departments listed in this paragraph, plus three public representatives appointed by the Office of the Governor.

(b) (No Change).

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

Issued in Austin, Texas, on November 17, 1993.

TRD-9332207 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Effective date: December 1, 1993

Proposal publication date: October 15, 1993

For further information, please call: (512) 450-3765

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Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register.*

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register.*

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas Department of Agriculture

Wednesday, December 1, 1993, 8:00 a.m.

Harvey Hotel, 3100 I-40 West

Amarillo

According to the agenda summary, the Texas Wheat Producers Board will call the meeting to order; discuss and act on: report from TDA; minutes of August meeting; quarterly and year-to-date financial report; year-to-date collections and refunds report; presentation of information-November salary review; meet in executive session to review employment compensative for individual employees in accordance with Texas Government Code Annotated, §551.074; adjourn executive session; reconvene open meeting for action on executive session; reports on seminars and meetings reports; report and action on Perryton economic development; CANPO straw venture; discussion and action on: NAFTA research and education fund; adv. and promotion budget amendment; NAWG convention; setting next meeting date; discuss new business; and adjourn.

Contact: Bill Nelson, 803 Texas Commerce Bank, 2201 Civic Circle, Amarillo, Texas 79109, (806) 352-2191.

Filed: November 17, 1993, 11:38 a.m.

TRD-9332215

Thursday, December 2, 1993, 8:00 a.m.

Harvey Hotel, 3100 I-40 West

Amarillo

According to the agenda summary, the Texas Grain Sorghum Producers Board will call the meeting to order; discuss and act on: minutes; financial reports; supplement the budget; funding considerations; research proposals; swearing in of new directors; roll call and discussion: United States Feed Grains Council Canada/Mexico market assessment mission update; GATT/NAFTA update; other business; and adjourn.

Contact: Lorie Forbes, P.O. Box 560, Abernathy, Texas 79311-0560, (806) 298-2543.

Filed: November 17, 1993, 9:56 a.m.

TRD-9332213

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Texas Commission on the Arts

Thursday, December 2, 1993, 11:00 a.m.

Doubletree Hotel-Dezavala Room, 400 Dallas Street

Houston

According to the complete agenda, the License Plate Committee call to order; public hearing; license plate fact sheet; selection of advertising agency; and other business.

Contact: Connie Green, P.O. Box 13406, Austin, Texas 78711, (512) 463-5535.

Filed: November 16, 1993, 3:30 p.m.

TRD-9332183

Thursday, December 2, 1993, 2:15 p.m.

Doubletree Hotel-Dezavala Room, 400 Dallas Street

Houston

According to the complete agenda, the Acquisitions Committee call to order; public hearing; acquisitions policy and procedures; and other business.

Contact: Connie Green, P.O. Box 13406, Austin, Texas 78711, (512) 463-5535.

Filed: November 16, 1993, 3:31 p.m.

TRD-9332184

Friday, December 3, 1993, 8:00 a.m.

Doubletree Hotel-Dezavala Room, 400 Dallas Street

Houston

According to the complete agenda, the Investment and Development Committee call to order; public hearing; Texas Cultural Endowment fact sheet; investment policy; investment strategy; and other business.

Contact: Connie Green, P.O. Box 13406, Austin, Texas 78711, (512) 463-5535.

Filed: November 16, 1993, 3:31 p.m.

TRD-9332185

Friday, December 3, 1993, 9:30 a.m.

Doubletree Hotel-Dezavala Room, 400 Dallas Street

Houston

According to the agenda summary, the commission call to order; public hearing; items for Commission consent; items for individual consideration; items for information only; executive session; and adjournment.

Contact: Connie Green, P.O. Box 13406, Austin, Texas 78711, (512) 463-5535.

Filed: November 16, 1993, 3:31 p.m.

TRD-9332186

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Texas Child Care Development Board

Friday, November 19, 1993, 9:00 a.m.

Sam Houston State Office Building, Room 710, 210 East 14th Street

Austin

Emergency Meeting

According to the complete agenda, the board welcomed and made introductory remarks; training session to acquaint new board members with duties; discussion of status of child care facility; and adjourned. (Executive session.)

Reason for Emergency: Status of child care center.

Contact: Judith Dale, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-5130.

Filed: November 17, 1993, 3:30 p.m.

TRD-9332239

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Texas Board of Chiropractic Examiners

Tuesday, November 30, 1993, 9:00 a.m.

333 Guadalupe Street, Tower III, Suite 825

Austin

According to the complete agenda, the Enforcement Committee will conduct informal conferences on cases numbers 93-107, 93-108, 93-153, 93-154, 93-155, 94-19, 94-29, 94-26, and 92-183, regarding possible violations by it's licensees.

Contact: Patte Kent, 333 Guadalupe Street, Austin, Texas 78701, (512) 305-6700.

Filed: November 17, 1993, 9:56 a.m.

TRD-9332212

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Texas Education Agency (TEA)

Tuesday, December 7, 1993, 9:30 a.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

According to the agenda summary, the State Board of Education Task Force on the Education of Students with Disabilities will: greetings, announcements, and approval of minutes for October 28, 1993; overview of briefing materials; working groups to identify the themes and concepts to be included in the policy; general reporting session; overview of leadership initiative for improving the education of students who are deaf or hard of hearing; invited presentation-parent. involvement; public hearing from 2:00 p.m. until 3:30 p.m. and from 5:30 p.m. until 7:00 p.m. to obtain input for the development of a policy to improve special education services; and adjourn.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: November 18, 1993, 8:36 a.m.

TRD-9332244

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Texas Commission on Law Enforcement Officers Standards and Education

Wednesday, December 1, 1993, 1:30 p.m.

Doubletree Hotel, 6505 IH-35 North

Austin

According to the agenda summary, the Commission will call the meeting to order; introduce new commissioner(s); recognize visitors; BPOC revision committee report; update on test for BPOC; status of curriculum committee; final adoption of proposed amendment to §211.77, Minimum Training Standards for Peace Officers; report by Reserve Training Subcommittee; Provider Rules Committee; and Law Enforcement Training Provider Task Force; proposed amendment to §211.65; academy licensing; academy evaluations; academy license application of McLennan Community College; application and procedure for issuing master peace officer certificate and recovery/reimbursement of expenses; reports by staff on 1993 achievement award nominations; Texas Peace Officers' Memorial; license; and adjourn.

Contact: Fred Toler, 1033 LaPosada, #175, Austin, Texas 78752, (512) 406-3613.

Filed: November 18, 1993, 8:42 a.m.

TRD-9332247

Thursday, December 2, 1993, 9:00 a.m.

Doubletree Hotel, 6505 IH-35 North

Austin

According to the agenda summary, the Commission will call the meeting to order; invocation; election of officers (if new commissioner appointed); recognize visitors; approve minutes of September 14-15, 1993, meeting; discussion and action of final adoption of §211.77, Minimum Training Standards for Peace Offices (new BPOC); proposed amendment to §211.65, Academy Licensing, Operations and Evaluations; discussion and action on academy license application of McLennan Community College; discussion and action on application and procedure for issuing master peace officer certificate and recovery/reimbursement of expenses; discussion and action on rescheduling March, 1994 work session and regular quarterly meetings; consider agreed final orders for suspension of licenses; report on voluntary surrenders; public comment on any subject without discussion will be received; executive session to discuss compensation; development of job description and criteria; application and selection process for employment of executive director; and adjourn.

Contact: Fred Toler, 1033 LaPosada, #175, Austin, Texas 78752, (512) 406-3613.

Filed: November 18, 1993, 8:42 a.m.

TRD-9332247

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Texas Department of Licensing and Regulation

Monday, November 29, 1993, 10:00 a.m.

920 Colorado Street, Room 1012, E. O. Thompson Building

Austin

According to the complete agenda, the Policies and Standards Division will hear public comments on the proposal to adopt the following rules: Chapter 66-registration of property tax consultants; Chapter 67-auctioneers; Chapter 74-elevators, and; Chapter 75-air conditioning and refrigeration contractor license law.

Contact: Jimmy G. Martin, 920 Colorado Street, Austin, Texas 78711, (512) 463-7348.

Filed: November 17, 1993, 9:53 a.m.

TRD-9332210

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Texas State Board of Medical Examiners

Friday-Saturday, November 19-20, 1993, 9:00 a.m. and 10:00 a.m., respectively.

1812 Centre Creek Drive, Suite 300

Austin

Emergency Revised Agenda

According to the agenda summary, the board considered more Agreed Board Orders and more termination/modification orders have been placed on the agenda for consideration.

Reason for Emergency: Information had come to the attention of the agency and required prompt consideration.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: November 17, 1993, 3:25 p.m.

TRD-9332236

Friday, November 19, 1993, 3:30 p.m.

1812 Centre Creek Drive, Suite 300

Austin

Emergency Revised Agenda

According to the agenda summary, the Medical School Committee withdraw the agenda item related to a request from UTMB for approval of an unapproved training program, since the posting of this committee meeting.

Reason for Emergency: Information had come to the attention of the agency and required prompt consideration.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: November 17, 1993, 3:26 p.m.

TRD-9332237

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Texas Natural Resource Conservation Commission

Wednesday, December 1, 1993, 1:30 p.m.

1700 North Congress Avenue, Stephen F. Austin Building, Room 1149

Austin

According to the complete agenda, the Texas Groundwater Protection Committee will meet to discuss: subcommittee reports on Agriculture Chemicals, Ground Water Classification, and Data Management Subcommittee; hear presentations on the U.S. Geological Survey-Ground Water Program in Texas; discuss business on Committee Public Education Outreach Efforts, State Ground-Water Protection Program: Core Program Assessment, and the Nonpoint Source Program: Update of the Groundwater Assessment and Management Plan Documents, and the Briefing on Clean Water Act. Section 319, Nonpoint Source Federal Funding; announcements and information exchange for other ground water related activities; status update on the Joint Groundwater Monitoring and Contamination Report; other announcements; and public comments.

Contact: Mary Ruth Holder, 1700 North Congress, Austin, Texas 78711, (512) 463-8069.

Filed: November 18, 1993, 10:00 a.m.

TRD-9332287

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Public Utility Commission of Texas

Wednesday, November 24, 1993, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Administrative Division will adjourn for executive session to consider evaluation, reassignment, duties, discipline and/or dismissal of executive director and special counsel; reconvene for discussion and decisions on matters considered in executive session; set time and place for next meeting; and final adjournment.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 16, 1993, 2:45 p.m.

TRD-9332180

Thursday, December 2, 1993, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the commission will hold a prehearing conference in Docket Number 12482-application of Southwestern Bell Telephone Company for proposed rate reduction to the local switching and carrier common line rate elements for Type 1 and Type 2A service in Sections 2 and 3 of the cellular mobile telephone tariff.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 16, 1993, 2:51 p.m.

TRD-9332181

Friday, December 3, 1993, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the commission will hold a prehearing conference in Docket Number 12470-Application of Lea County Electric Cooperative, Inc. for authority to change rates.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 16, 1993, 3:32 p.m.

TRD-9332187

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Texas Savings and Loan Department

Monday, December 13, 1993, 9:00 a.m.

300 West 15th Street, Room 408

Austin

According to the agenda summary, the purpose of this meeting (hearing) is to accumulate a record of evidence in regard to the application of Horizon Savings Association, Austin, Travis County, for a branch office at 13497 Anderson Mill Road, Austin, from which record the Commissioner will determine whether to grant or deny the application.

Contact: Teresa Scarborough, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 475-1350.

Filed: November 16, 1993, 1:59 p.m.

TRD-9332174

Monday, December 13, 1993, 10:00 a.m.

300 West 15th Street, Room 408

Austin

According to the agenda summary, the purpose of this meeting (hearing) is to accumulate a record of evidence in regard to the application of Jacksonville Savings and Loan Association, Jacksonville, Cherokee County, for a branch office at the Corner of Old Bullard Road and Timberwilde Drive, Tyler, from which record the Commissioner will determine whether to grant or deny the application.

Contact: Teresa Scarborough, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 475-1350.

Filed: November 16, 1993, 1:59 p.m.

TRD-9332173

Monday, December 13, 1993, 11:00 a.m.

300 West 15th Street, Room 408

Austin

According to the agenda summary, the purpose of this meeting (hearing) is to accumulate a record of evidence in regard to the application of Coastal Banc Savings Association, Houston, Harris County, for a branch office at Highway 6 at Highway 59, Sugar Land, from which record the Commissioner will determine whether to grant or deny the application.

Contact: Teresa Scarborough, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 475-1350.

Filed: November 16, 1993, 1:59 p.m.

TRD-9332172

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University of Texas Health Science Center at San Antonio

Wednesday, November 24, 1993, 11:00 a.m.

7703 Floyd Curl Drive, Room 422A (Medical School)

San Antonio

According to the agenda summary, the Institutional Animal Care and Use Committee will discuss approval of minutes; protocols for review; subcommittee reports; and other business.

Contact: Molly Greene, 7703 Floyd Curl Drive, San Antonio, Texas 78284-7822,

(512) 567-3717.

Filed: November 17, 1993, 1:56 p.m.

TRD-9332217

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Texas Water Development Board

Thursday, November 18, 1993, 9:00 a.m.

Stephen F. Austin Building, Room 118, 1700 North Congress Avenue

Austin

Emergency Revised Agenda

According to the emergency revised agenda summary, the board considered authorizing the executive administrator to solicit bids and sign contracts with lowest/best bid for safekeeping of bonds and banking services.

Reason for Emergency: The emergency status was necessary as notice that Treasury contract would not cover board/TWRFA banking services received after time for regular posting, and existing contracts to expire before board/TWRFA were able to meet again.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: November 17, 1993, 3:54 p.m.

TRD-9332241

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Texas Water Resources Finance Authority

Thursday, November 18, 1993, 9:00 a.m.

Stephen F. Austin Building, Room 118, 1700 North Congress Avenue

Austin

Emergency Revised Agenda

According to the emergency revised agenda summary, the authority considered authorizing the executive administrator to solicit bids and sign contracts with lowest/best bid for safekeeping of bonds and banking services.

Reason for Emergency: The emergency status was necessary as notice that Treasury contract would not cover board/TWRFA banking services received after time for regular posting, and existing contracts to expire before board/TWRFA were able to meet again.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: November 17, 1993, 3:54 p.m.

TRD-9332240

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Regional Meetings

Meetings Filed November 16, 1993

The Austin-Travis County Mental Health and Mental Retardation Center Planning and Operations Committee met at 1430 Collier Street, Board Room, Austin, November 19, 1993, at Noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9332170.

The Deep East Texas Regional Mental Health and Mental Retardation Services Board of Trustees will meet at the Ward R. Burke Community Room, Administration Facility, 4101 South Medford Drive, Lufkin, November 23, 1993, at 3:00 p.m. Information may be obtained from Sandra J. Vann, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141. TRD-9332179.

The Lower Rio Grande Valley Development Council Board of Directors met at the Harlingen Chamber of Commerce, 311 East Tyler, Harlingen, November 22, 1993, at 1:30 p.m. Information may be obtained from Kenneth N. Jones, Jr., 4900 North Second Street, McAllen, Texas 78504, (210) 682-3481. TRD-9332171.

The Trinity River Authority of Texas Utility Services Committee will meet at 5300 South Collins, Arlington, November 23, 1993, at 10:30 a.m. Information may be obtained from James L. Murphy, 5300 South Collins, Arlington, Texas 76018, (817) 467-4343. TRD-9332175.

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Meetings Filed November 17, 1993

The Leon County Central Appraisal District Board of Directors met at the Leon County Central Appraisal District Office, Gresham Building, Centerville, November 22, 1993, at 7:00 p.m. Information may be obtained from Donald G. Gillum, P.O. Box 536, Centerville, Texas 75833, (903) 536-2252. TRD-9332216.

The Lubbock Regional MHMR Center Board of Trustees met at 1602 Tenth Street, Board Room, Lubbock, November 22, 1993, at Noon. Information may be obtained from Gene Menefee, 1602 Tenth Street, Lubbock, Texas 79401, (806) 766-0202. TRD-9332232.

The Upper Leon River Municipal Water District Board of Directors met at the General Office of the Filter Plant, Comanche County, Lake Proctor, November 18, 1993, at 6:30 p.m. Information may be obtained from Gary D. Lacy, P.O. Box 67, Comanche, Texas 76442, (817) 879-2258. TRD-9332190.

Meetings Filed November 18, 1993

The Central Appraisal District of Johnson County Board of Directors will meet at 109 North Main, Suite 201, Room 202, Cleburne, December 2, 1993, at 4:30 p.m. Information may be obtained from Priscilla A. Bunch, 109 North Main, Cleburne, Texas 76031, (817) 645-3986. TRD-9332251.

The Deep East Texas Council of Governments Solid Waste Task Force Meeting will meet at the Bluebonnet Savings and Loan Building, 606 East Lufkin Avenue, (Community Room), Lufkin, December 1, 1993, at 10:00 a.m. Information may be obtained from Katie Bayliss, 274 East Lamar, Jasper, Texas 75951, (409) 384-5704. TRD-9332253.

The Education Service Center, Region XI Board of Directors will meet at the Educational Service Center, Region XI, 3001 North Freeway, Fort Worth, November 30, 1993, at Noon. Information may be obtained from R. P. Campbell, Jr., 3001 North Freeway, Fort Worth, Texas 76106, (817) 625-5311. TRD-9332250.

The North Texas Private Industry Council Nortex Regional Planning Commission will meet at 4309 Jacksboro Highway, Suite 200, Wichita Falls, December 1, 1993, at 12:15 p.m. (R vised Agenda). Information may be obtained from Dennis Wilde, 4309 Jacksboro Highway, Suite 200, Wichita Falls, Texas 76302, (817) 322-5281. TRD-9332252.

The San Antonio-Bexar Metropolitan Planning Organization Transportation Steering Committee met at the International Conference Center of the Convention Center Complex, San Antonio, November 22, 1993, at 1:30 p.m. Information may be obtained from Charlotte Roszelle, 434 South Main, Suite 205, San Antonio, Texas 78204, (210) 227-8651. TRD-9332246.

The Southwest Milam Water Supply Corporation Board met at 114 East Cameron, Rockdale, November 22, 1993, at 7:00 p.m. Information may be obtained from Dwayne Jekel, P.O. Box 232, Rockdale, Texas 76567, (512) 446-2604. TRD-9332249.

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In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

State Banking Board

Notice of Hearing

The Hearing Officer of the State Banking Board will conduct a hearing on December 20, 1993, at 9:30 p.m., at 2601 North Lamar Boulevard, Austin, on the change of domicile application for Texas Independent Banking, Irving.

Additional information may be obtained from Lynda A. Drake, Director of Corporate Activities, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1322.

Issued in Austin, Texas, on November 15, 1993.

TRD-9332177 Lynda A. Drake
Director of Corporate Activities
Texas Department of Banking

Filed: November 16, 1993

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Office of Consumer Credit Commissioner

Correction of Error

The Office of Consumer Credit Commissioner submitted a Notice of Rate Ceilings which was published in the "In Addition" section, Part II, of the November 9, 1993, issue of the *Texas Register* (18 TexReg 8262).

Due to a publishing error the issue date was incorrect. The correct issue date should be "November 1, 1993", instead of "November 8, 1993", as shown in the *Texas Register*.

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Texas Department of Criminal Justice Pardons and Paroles Division

Invitation to Bid

The Texas Department of Criminal Justice Pardons and Paroles Division invites bids for the Sex Offender Treatment Services Program which will be operated by State Parole Officials to provide assistance to those participants identified by the Texas Department of Criminal Justice Pardons and Paroles Division as sex offenders and who are supervised by the Texas Department of Criminal Justice Pardons and Paroles Division. These treatment services will be needed statewide. The program goals of the Texas Department of Criminal Justice Pardons and Paroles Division are to subsidize the treatment costs for group therapy and evaluations for those participants requiring financial assistance, in order to facilitate availability of treatment, prevent recidivism, and retain qualified treatment providers. Bids will be evaluated in accordance with Article 601B, Texas Civil Statutes, State Purchasing and General Services Commission adopted rules, and compliance with the Terms, Conditions, and Specifications of this Invitation for Bids. The Texas Department of Criminal Justice Pardons and Paroles Division will not be bound to act by any previous communication with bidders, other than this Invitation for Bids, Commission Rules and State Law. The Texas Department of Criminal Justice Pardons and Paroles Division shall be the sole judge of "the interest of the PPD".

As provided by statute, awards will be based on the lowest and best bids most advantageous to the Texas Department of Criminal Justice Pardons and Paroles Division as determined by consideration of service rates offered, quality, general reputation, performance capabilities of the bidders, services as related to past performance, terms and conditions of this Invitation for Bids. It is the Texas Department of Criminal Justice Pardons and Paroles Division's intent to enter into a contract about January 24, 1994, for one year with a one-year option to renew.

This is a Competitive Bid Contract

The closing date for receipt of offers is January 6, 1994, 5:00 p.m. Bid opening date is January 7, 1994, 9:00 a.m. at 209 West 14th Street, Fifth Floor Conference Room, Price Daniels, Jr. Building, Austin, Texas 78711.

The contact person for requesting bid packets is Larry Nunn, Texas Department of Criminal Justice Pardons and Paroles Division, Business Management Section, 209 West 14th Street, Price Daniels, Jr. Building, Austin, Texas 78711, (512) 463-7661. The bid packet and mailing instructions must be obtained from the Texas Department of Criminal Justice Pardons and Paroles Division and signed by the prospective provider.

The contact person for inquiries regarding treatment program requirements is Patti Dobbe, Texas Department of Criminal Justice Pardons and Paroles Division, Program Services, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5302.

Issued in Austin, Texas, on November 15, 1993.

TRD-9332176 Carl Reynolds
General Counsel
Texas Department of Criminal Justice

Filed: November 16, 1993

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Texas Higher Education Coordinating Board

Notice of Hearing

A public hearing will be conducted by the Texas Higher Education Coordinating Board, State Postsecondary Review Entity (SPRE) program on Friday, December 3, 1993 from 9:00 a.m. to 3:00 p.m at the Sheraton Inn-Civic Center, 505 Avenue Q., Santa Fe Ballroom, Lubbock. The

purpose of the hearing will be to gather comments to use in developing Texas review standards and procedures to determine if postseondary education institutions are in compliance with federal student-aid standards. In addition, comments on developing a complaint system will be gathered. Copies of draft review standards specified by the federal legislation are available from the Universities and Health Affairs Division of the Coordinating Board. For additional information please contact Colleen Klein at (512) 483-6207.

Issued in Austin, Texas, on November 16, 1993.

TRD-9332178 Sharon Jahsman
Administrative Secretary
Texas Higher Education Coordinating Board

Filed: November 16, 1993

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Texas Department of Human Services

Correction of Error

The Texas Department of Human Services filed a proposed amendment to 40 TAC §19.1807, concerning rate setting methodology, in its Long Term Care Nursing Facility Requirements. The rule appeared in the November 9, 1993, *Texas Register* (18 TexReg 8172).

DHS inadvertently omitted the following concluding sentence from the "Request for Public Comment" paragraph of the preamble: "Local DHS offices have copies of the revised rules for public review, or contact Jack Boland."

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Notice of Intent to Purchase Electronic Benefit Transfer Services

The Texas Department of Human Services (TDHS) announces that it intends to procure Electronic Benefit Transfer (EBT) System Services, under the "Catalogue Purchase Procedure." This catalogue procedure is a replacement for the request for proposal (RFP) (#324-3-3438-JA) that was issued by the General Services Commission. The RFP was canceled on Friday, October 8, 1993, after bid prices received in response to the RFP exceeded TDHS estimates.

TDHS will now proceed with its acquisition of EBT System Services under the "Catalogue Purchase Procedures." Catalogue purchase procedures are newly established guidelines implemented by the General Services Commission (GSC), in accordance with the provisions of Senate Bill 381, 73rd Legislature, Regular Session, 1993. The TDHS plans to purchase the following EBT services from a single vendor, experienced in providing EBT or electronic funds transfer (EFT) services:

Benefit Delivery Services-Statewide delivery of Food Stamp and Aid to Families with Dependent Children (AFDC) benefits to clients using Point of Sale (POS) and EFT technologies;

Host Processing/Database Management-Processing of debit/credit transactions affecting client accounts;

Telecommunications Network Services-Management of telecommunications resources and services from EBT host mainframe to TDHS mainframe and local office and retailer/provider sites;

Training-"Conversion" training and limited "ongoing" training for TDHS clients;

Card Issuance/Card Activation Equipment-Card activation equipment and magnetic strip cards for all local TDHS offices and specified management units;

Help Desk/Helpline-Assistance to EBT system users;

Project Management-Administrative access to EBT vendor system by TDHS staff in all local offices and up to 50 TDHS headquarters staff.

Retailer Management-Installation, inventory management, and maintenance of POS equipment and necessary telecommunications devices and services, at all food retailers' sites certified by the Food and Nutrition Service (FNS), U S. Department of Agriculture, and other sites, as authorized by the TDHS, as "cash providers".

Financial Management-Concentrator Bank (settlement), reconciliation and reporting services as defined in 7 CFR, §274.12.

Below is a summary of catalogue purchase procedures:

A potential Qualified Information Systems Vendor submits an application (including catalogue) to the GSC for approval consideration;

The application can receive GSC approval only if all criteria established by statute are met. GSC uses a 37-item checklist to review each application to assure compliance prior to approval.

Once approved, the vendor receives a letter from GSC notifying them of the approval. Once designated as a qualified information systems vendor, the vendor shall publish and maintain a catalogue listing all products and services available for purchase. If not approved, the applicant will receive a letter notifying the vendor of the reason(s) for disapproval. The applicant has 30 days to correct any problem(s).

GSC maintains a database containing the updated listing of approved vendors The listing is made available, upon request, to any user agency/political subdivision The listing includes company name, company address, telephone number, point of contact, and Historically Underutilized Business (HUB) information.

Qualified Information Systems Vendors can distribute/market the GSC-approved catalogue to state agencies and political subdivisions who are members of the GSC Cooperative Purchasing Program.

State agencies and political subdivisions may negotiate additional terms and conditions based on specific agency needs. The special terms and conditions, if any, must also be submitted to the GSC.

TDHS intends to consider the catalogue offers of qualified information systems vendors, only. A vendor must have its EBT catalogue reviewed and approved by the GSC within 30 calendar days of the publication date of this *Texas Register* notice to be considered relative to the EBT procurement.

A package containing EBT system terms and conditions, together with other vendor requirements, will be available for distribution beginning 1:00 p.m. (C S.T.) on November 23, 1993. Prospective EBT system vendors may pick up this package in person at the EBT Project headquarters located at the Twin Towers Office Building, 1106 Clayton Lane, Austin (Suite 218-E). To receive a copy of the package by mail, prospective offerors should contact

Amelia Bunch, EBT Project Systems and Controls Officer, at (512) 483-3966 or by fax at (512) 483-3951.

NOTE: The EBT Project will be moving on Wednesday, November 24, 1993. Project offices will be closed the afternoon of November 24th and all day on November 25th and November 26th.

Beginning November 29, 1993, the package may be picked up at the new EBT Project headquarters located at the Winters Human Services Complex, 701 West 51st Street, Austin (3rd Floor, East Tower, Section C). Ms. Bunch can be contacted at (512) 706-5457 and (512) 706-5476, respectively.

An offeror's conference is scheduled for Friday, December 3, 1993, from 8: 30 a.m. to 12:00 a.m. in Room 1.102 of the Balcones Research Center Commons Building located at 10100 Burnet Road, Austin. Prospective offerors should fax questions about the EBT system information package or the catalogue purchase procedure to Penny Tisdale, Assistant Project Director, no later than 5:00 p.m. C.S.T. on Wednesday, December 1, 1993. at (512) 706-5476.

A list of vendor representatives to be in attendance at the offeror's conference should be faxed along with each vendor's questions.

The TDHS anticipates commencing negotiations with qualified information systems vendors on December 13, 1993.

For information about how to become a qualified information systems vendor with the GSC, please contact Ted Jarrell, GSC Purchaser, at (512) 463-9923. Requests for information about the proposed procurement and vendor negotiation schedule should be directed to Ms. Tisdale at (512) 483-3954 or (512) 706-5467 (beginning November 29, 1993). All other request for information about the EBT Project should be directed to Robert Ambrosino, Project Director, at (512) 483-3950 or (512) 706-5456 (beginning November 29, 1993).

Issued in Austin, Texas, on November 17, 1993.

TRD-9332206 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Filed: November 17, 1993

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Texas Department of Insurance

Company Licenses

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for name change in Texas for Guaranty County Mutual Insurance Company, a domestic fire and casualty company. The proposed new name is Ameristar County Mutual Insurance Company. The home office is in Bedford.

Application for name change in Texas for Trans Pacific Life Insurance Company, a foreign life, accident, and health company. The proposed new name is Aurora National Life Assurance Company. The home office is in Los Angeles, California.

Application for admission in Texas for Consumer Service Casualty Insurance Company, Inc., a foreign fire and casualty company. The home office is in Pittsburgh, Pennsylvania.

Application for name change in Texas for Fidelity Bankers Life Insurance Company, a foreign life, accident, and health company. The proposed new name is First Dominion Mutual Life Insurance Company. The home office is in Richmond, Virginia.

Application for incorporation in Texas for Foundation Health, Texas Health Plan, Inc., a domestic health maintenance organization. The home office is in Dallas.

Application for admission in Texas for Leader National Insurance Company, a foreign fire and casualty company. The home office is in Independence, Ohio.

Application for name change in Texas for Middle Atlantic Life Insurance Company, a foreign life, accident, and health company. The proposed new name is Liberty Bankers Life Insurance Company. The home office is in Wilmington, Ohio.

Application for Incorporation in Texas for Republic National Life Insurance Company, a domestic life, accident, and health company. The home office is in Houston.

Issued in Austin, Texas, on November 16, 1993.

TRD-9332201 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Filed: November 17, 1993

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The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for Incorporation in Texas for Anchor Risk Management Services, Inc., a domestic third-party administrator. The home office is in Dallas.

Application for admission in Texas for Dalton Claims Service, Inc., a foreign third-party administrator. The home office is in Martinsville, Indiana.

Application for admission in Texas for DCA, Inc., a foreign third-party administrator. The home office is in Minnetonka, Minnesota.

Application for Incorporation in Texas for Independence Casualty and Surety Company, a domestic fire and casualty company. The home office is in Bellaire.

Application for Incorporation in Texas for Plan 21, Incorporated, a domestic third-party administrator. The home office is in Houston

Application for name change in Texas for Transamerica Countrywide Insurance Company, a foreign fire and casualty company. The proposed new name is TIG Countrywide Insurance Company. The home office is in Woodland Hills, California.

Application for name change in Texas for Transamerica Indemnity Company, a foreign fire and casualty company. The proposed new name is TIG Indemnity Company. The home office is in Woodland Hills, California.

Application for name change in Texas for Transamerica Insurance Company, a foreign fire and casualty company. The proposed new name is TIG Insurance Company. The home office is in Woodland Hills, California.

Application for name change in Texas for Transamerica Premier Insurance Company, a foreign fire and casualty company. The proposed new name is TIG Premier Insurance Company. The home office is in Orange, California.

Application for name change in Texas for Transamerica Reinsurance Company, a foreign fire and casualty company The proposed new name is TIG Reinsurance Company. The home office is in Stamford, Connecticut.

Issued in Austin, Texas, on November 17, 1993

TRD-9332202 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Filed. November 17, 1993

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Texas Natural Resource Conservation Commission

Notices of Receipt of Application and Declaration for Administrative Completeness for Sludge Registrations

Attached are Notices of Receipt Applications and Declaration of Administrative Completeness for sludge registrations issued during the period of November 8-12, 1993.

These applications have been determined to be administratively complete, and will now be subject to a technical evaluation by the staff of the Texas Natural Resource Conservation Commission. Persons should be advised that these applications are subject to change based on evaluations of the proposed treatment levels, treatment processes and site specific conditions as they relate to the protection of the environment and public health.

Persons desiring a public meeting regarding these applications should submit a written request to the Chief Clerk of the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711. The request should contain the name, mailing address, and phone number of the person making the request; and the reason a public meeting is desired. The deadline for submitting this request is 30 days from the date which the application was posted for public review.

Information concerning these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Agronomic Management Group/Oscar Renda Contracting, Inc.; located on Massey Road, approximately ten miles southeast to the City of Grandbury, Hood County, and on the Brazos River; new beneficial sludge use site; 710667.

Organic Land Management, Inc.; located approximately 17 miles south on State Highway 21, on the north side of the highway from the junction of State Highway 21 and State Highway 71 in Bastrop County; new beneficial sludge use site, 710670.

Issued in Austin, Texas, on November 15, 1993.

TRD-9332155 Gloria A Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed. November 15, 1993

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Public Utility Commission of Texas

Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application for expedited review of an amendment to an approved customer specific contract pursuant to Public Utility Commission Substantive Rule 23.27 for GTECH Corporation and the State of Texas Lottery Network.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for Approval of an Amendment to an Approved Customer Specific Contract for GTECH Corporation Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 12487.

The Application. Southwestern Bell Telephone Company is requesting approval of an amendment to an approved customer specific contract for GTECH Corporation. The customized service is being offered on a statewide basis from one location per LATA.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on November 15, 1993.

TRD-9332189 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: November 16, 1993

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The University of Texas System

Request for Proposals

The University of Texas Medical Branch at Galveston (UTMB) requests, pursuant to the provisions of Texas Civil Statutes, Article 6252-11C the submission of proposals leading to the award of a contract for an Employer Commute Option Program. The principal objective of the Contract is to develop an Employer Commute Option (ECO) Program that will enable UTMB to meet the required average passenger occupancy (APO) target of 1.41. Federal and State guidelines require the employers of over 400 employees have a compliance plan submitted by May 15, 1994, and that compliance be demonstrated by May 15, 1996. Further guidelines require that a maintenance plan be developed and that compliance continue to be demonstrated no less than once every two years.

The awarded firm will be responsible for completing the project phase(s) which are awarded to the firm and may, at UTMB's request, manage the entire project. The awarded firm will also be responsible that the ECO Program meets all Federal and State regulations and guidelines and be accepted and approved by all Federal and State authorities.

Respondents must be regularly engaged in the business of developing an ECO Program.

UTMB reserves the right to accept or reject any or all proposals. The proposals submitted will be the basis for contract negotiation and the representations made therein will be binding on Respondent.

Selected Respondents may be requested to conduct an on-site presentation, at their expense, to clarify and expand upon items provided in their proposals. The consulting group awarded a contract, if any, will be the Respondent whose proposal conforming to this request, is deemed to be the most advantageous by UTMB. Factors in awarding a contract will include, but not limited to, demonstrated competence and experience in conducting and developing an ECO Program that will meet Federal and State guidelines, proposed project time table, and reasonableness in the overall cost. Proposals must remain valid for acceptance and may not be withdrawn for a period of 90 days after the proposal closing date.

An original and five copies of the full proposal must be submitted to UTMB prior to 3:00 p.m., Friday, December 17, 1993. Proposals received thereafter will not be considered and will be returned unopened. Proposals must be sent to the address indicated below.

All Respondents interested in submitting a bid are advised to attend a Pre-Submittal Conference and Site Inspection to be held at UTMB. The conference and site inspection will begin at 10:00 a.m. on December 2, 1993 in the Department of Auxiliary Enterprises located on Ninth Street, Gail Borden Building, Room G-32, Galveston, Texas 77555.

For further information or to obtain a complete proposal package (RFP Number 4-9), contact Kyle Barton, Senior Procurement Officer, The University of Texas Medical Branch at Galveston, Administration Annex Building, Suite 3. 202, 301 University Boulevard, Galveston, Texas 77555-0105, (409) 772-2262.

Issued in Austin, Texas, on November 15, 1993.

TRD-9332125 Arthur H. Dilly
Executive Secretary to the Board
The University of Texas System

Filed: November 15, 1993

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The University of Texas Medical Branch at Galveston (UTMB) requests, pursuant to the provisions of Texas Civil Statutes, Article 6252-11C the submission of proposals leading to the award of a contract for a Library Cost Analysis Study, in compliance with OMB Circular A-21. UTMB's objective for this project is to utilize the data obtained from the Study to negotiate an indirect overhead rate with the Department of Health and Human Services (DHHS) that will be applied to Federal Contracts and Grants for fiscal years 1995 and beyond.

The awarded firm will be responsible for completing the project phase(s) which are awarded to the firm and may, at UTMB's request, participate in the indirect overhead cost negotiations with DHHS. The awarded firm will also be responsible to implement the recommended and approved corrective action.

Respondents must be regularly engaged in the business of conducting Library Cost Analysis Study in an academic/healthcare environment.

UTMB reserves the right to accept or reject any or all proposals. The proposals submitted will be the basis for contract negotiation and the representations made therein will be binding on Respondent.

Selected Respondents may be requested to conduct an on-site presentation, at their expense, to clarify and expand upon items provided in their proposals. The consulting group awarded a contract, if any, will be the Respondent whose proposal conforming to this request, is deemed to be the most advantageous by UTMB. Factors in awarding a contract will include, but not limited to, demonstrated competence and experience in conducting Library Cost Analysis Studies according to OMB Circular A-21 rules and regulations, written approval by DHHS Office of Procurement and Assistance Financial Management of the Consultant's Library survey methodology, proposed project time table and the expectation of UTMB involvement, and reasonableness in the overall cost. Proposals must remain valid for acceptance and may not be withdrawn for a period of 90 days after the proposal closing date.

An original and five copies of the full proposal must be submitted to UTMB prior to 3:00 p.m., Thursday, December 9, 1993. Proposals received thereafter will not be considered and will be returned unopened. Proposals must be sent to the address indicated below.

For further information or to obtain a complete proposal package (RFP Number 4-8), contact Kyle Barton, Senior Procurement Officer, The University of Texas Medical Branch at Galveston, Administration Annex Building, Suite 3. 202, 301 University Boulevard, Galveston, Texas 77555-0105, (409) 772-2262.

Issued in Austin, Texas, on November 15, 1993.

TRD-9332126 Arthur H. Dilly
Executive Secretary to the Board
The University of Texas System

Filed: November 15, 1993

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1993 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the October-December 1993 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on July 30, November 5, November 30, and December 28. A asterisk beside a publication date indicates that 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.
81 Tuesday, October 26	Wednesday, October 20	Thursday, October 21
82 Friday, October 29	Monday, October 25	Tuesday, October 26
83 Tuesday, November 2	Wednesday, October 27	Thursday, October 28
Friday, November 5	NO ISSUE PUBLISHED	
84 Tuesday, November 9	Wednesday, November 3	Thursday, November 4
85 Friday, November 12	Monday, November 8	Tuesday, November 9
86 Tuesday, November 16	Wednesday, November 10	Thursday, November 11
87 Friday, November 19	Monday, November 15	Tuesday, November 16
88 Tuesday, November 23	Wednesday, Novmber 17	Thursday, November 18
89 Friday, November 26	Monday, November 22	Tuesday, November 23
Tuesday, November 30	NO ISSUE PUBLISHED	
90 Friday, December 3	Monday, November 29	Tuesday, November 30
91 Tuesday, December 7	Wednesday, December 1	Thursday, December 2
92 Friday, December 10	Monday, December 6	Tuesday, December 7
93 Tuesday, December 14	Wednesday, December 8	Thursday, December 9
94 Friday, December 17	Monday, December 13	Tuesday, December 14
95 Tuesday, December 21	Wednesday, December 15	Thursday, December 16
96 Friday, December 24	Monday, December 20	Tuesday, December 21
Tuesday, December 28	NO ISSUE PUBLISHED	

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