

# TEXAS REGISTER

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(B) The number of network providers in the service area must be **documented by credible statistics**[shown] to be sufficient, with respect to current and expected policyholders, either:

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

(C) (No change.)

(D) Emergency care availability 24 hours per day and seven days a week must **bedemonstrated**.

(E) In the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting **the[such]** providers from billing or otherwise seeking reimbursement from or recourse against any individual covered under a Medicare Select policy or certificate. This **subparagraph**[paragraph] shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate.

(2)-(7) (No change.)

(g) A Medicare Select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the commissioner **60 days**prior to implementing such changes. Such changes shall be considered approved by the commissioner after 30 days unless specifically disapproved **or unless issuer requests an extension of the 30-day period and the commissioner grants the requested extension.**

(h) An updated list of network providers shall be filed with the commissioner at least quarterly. **If there is no change to the list of network providers within a particular calendar quarter, correspondence indicating no change from the prior reporting period to the current reporting period must, at a minimum, be filed to meet the reporting requirements of this subchapter.**

(i)-(j) (No change.)

(k) A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions, and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:

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

**(8) For hospital network providers, the statement in 12-point bold-face type: "Only certain hospitals are network providers under this policy. Check with your physician to determine if he or she has admitting privileges at the network hospital. If he or she does not, you may be required to use another physician at time of hospitalization or you will be required to pay for all expenses." This statement shall also be included in the "invitation to contract" advertisement, as that term is defined in §21.113(b) of this title (relating to Rules Pertaining Specifically to Accident and Health Insurance Advertising and Health Maintenance Organization Advertising).**

(l) (No change.)

(m) A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. Such procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.

(1) The grievance procedure shall be described in the policy and certificates and in the outline of coverage. **The in-hospital grievance procedure shall be outlined separately from the grievance procedures for other treatments and/or services, since grievances involving ongoing treatment in a hospital may need to be resolved more quickly.**

(2) At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer, **both during the period of care and after care.**

(3)-(6) (No change.)

(n) (No change.)

(o) At the request of an individual covered under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual covered the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make **the[such]** policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six months.

(p)-(r) (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 May 9, 1996.

TRD-9606467 Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Earliest possible date of adoption: June 21, 1996

For further information, please call: (512) 463-6327

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## TITLE 30. ENVIRONMENTAL QUALITY

### Part I. Texas Natural Resource Conservation Commission

#### Chapter 111. Control of Air Pollution From Visible Emissions and Particulate Matter

The commission proposes the repeal of §§111.101, 111.103, 111.105, and 111.107, concerning outdoor burning, and new §§111.201, 111.203, 111.205, 111.207, 111.209, 111.211, 111.213, 111.215, 111.219, and 111.221, concerning outdoor burning. The proposed new sections will be added under Subchapter B, Outdoor Burning. All existing sections in Chapter 111 will become part of Subchapter A, Visible Emissions and Particulate Matter.

The proposed new sections replace the existing rules in order to remove inconsistencies and ambiguities and interject realistic flexibility. These new sections are structured to more adequately relate to today's outdoor burning situation.

Section 111.201, relating to general prohibition, amends the previous prohibition by defining the term "executive director" to include staff representatives.

Section 111.203, relating to definitions, is a new addition to the rule which clarifies terms/concepts previously ambiguous and undefined in the existing rule, and introduces some new concepts.

Section 111.205, relating to exception for fire training, streamlines the notification procedures by eliminating some of the repetitive, nonessential notification requirements which were burdensome to both the fire training managers and to the commission regional office staff.

Section 111.207, relating to exception for fires used for recreation, ceremony, cooking, and warmth, is functionally the same as the existing rule.

Section 111.209, relating to exception for disposal fires, differentiates between fires used solely for the disposal of wastes and other forms of outdoor burning and regulates them in relation to practical alternatives. In regard to domestic waste burning, the rule clarifies allowable burning both in terms of waste collection criteria and types of wastes. In burns for landclearing and right-of-way maintenance, this section now addresses off-site impacts. New additions specifically address the regula-

tion of crop residue burning and brush burning by counties and municipalities for detrimental public health and safety considerations.

Section 111.211, relating to exception for prescribed burn, recognizes the use of fire as a positive forest, range, and wildland/wildlife management tool under certain circumstances for which there is no practical alternative. In the case of the burning of coastal salt-marsh, the notification criteria and procedures have been streamlined.

Section 111.213, relating to hydrocarbon burning for pipeline breaks and spills, now contains a sampling and monitoring requirement, upon executive director determination.

Section 111.215, relating to executive director approval of otherwise prohibited outdoor burning, now recognizes that authorization is contingent upon not causing a condition of nuisance or traffic hazard.

Section 111.219, relating to general requirements for allowable outdoor burning, now clarifies points which have previously been unclear or ill-defined. Section 111.219(2) is modified to recognize local government burning ordinance authority stipulated in the Texas Clean Air Act (TCAA). Section 111.219(3) has been changed to have a more realistic emphasis on avoidance of potential off-site impacts to sensitive receptor(s). Section 111.219(5) adds flexibility to the previously inflexible 300-foot prohibition by setting wind direction and distance from sensitive receptor(s) as the regulatory criteria for extent of the burn. Section 111.219(6) has as its principal change the extension of the allowable burn hours to one hour after sunrise to one hour before sunset. This allows more flexibility while at the same time insuring adherence to the appropriate meteorological conditions for proper dispersion. Section 111.219(7) is modified to provide more specificity to prohibited burn fuels.

Section 111.221, relating to responsibility for consequences of outdoor burning, has not been changed from the existing rule.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections are in effect there will be no significant 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 proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be more efficient use of agency resources and cost-effective control of emissions from outdoor burning. There will be no effect on small businesses. There are no anticipated economic cost to persons who are required to comply with the sections as proposed.

A public hearing on the proposal will be held on June 18, 1996, at 2:00 p.m. in Building F, Room 2210 at Texas Natural Resource Conservation Commission complex, located at 12100 North IH-35, Park 35 Technology Center, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments may be mailed to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 95143-111-AI. Comments must be received by 5:00 p.m. June 21, 1996. For further information, contact Terry Leifeste at (512) 239-1873.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the commission at (512) 239-4900. Requests should be made as far in advance as possible.

## Outdoor Burning

### • 30 TAC §§111.101, 111.103, 111.105, 111.107

The repeals are proposed under the Texas Health and Safety Code (Vernon 1992), the TCAA, §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed repeals implement the Health and Safety Code, §382.017.

### §111.101. General Prohibition.

### §111.103. Exceptions to Prohibition of Outdoor Burning.

### §111.105. General Requirements for Allowable Outdoor Burning.

### §111.107. Responsibility for Consequences of Outdoor Burning.

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 May 9, 1996.

TRD-9606455 Kevin McCalla  
Director, Legal Services Division  
Texas Natural Resource Conservation Commission

Earliest date of adoption: August 21, 1996

For further information, please call: (512) 239-1970



## Subchapter B. Outdoor Burning

### • 30 TAC §§111.201, 111.203, 111.205, 111.207, 111.209, 111.211, 111.213, 111.215, 111.219, 111.221

The new sections are proposed under the Texas Health and Safety Code (Vernon 1992), the TCAA, §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed new sections implement the Health and Safety Code, §382.017.

*§111.201. General Prohibition.* No person may cause, suffer, allow, or permit any outdoor burning within the State of Texas, except as provided by this subchapter. Outdoor disposal or deposition of any material capable of igniting spontaneously shall not be allowed without written permission of the executive director. The term "executive director", as defined in Chapter 3 of this title (relating to Definitions), includes authorized staff representatives.

*§111.203. Definitions.* Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Natural Resource Conservation Commission (commission), the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Extinguished—The absence of any visible flames or smoke.

Landclearing operation—The uprooting or clearing of vegetation in connection with conversion for the construction of buildings, rights-of-way, residential, commercial, or industrial development, or the clearing of vegetation to enhance property value, access or production. It does not include the maintenance burning of on-site property wastes such as fallen limbs, branches, or leaves, or other wastes from routine property clean-up activities, nor does it include burning following clearing for ecological restoration.

Practical alternative—An economically, technologically, ecologically and logistically viable option.

Prescribed burn—The controlled application of fire to naturally-occurring vegetative fuels under specified environmental conditions and confined to a predetermined area, following appropriate planning and precautionary measures.

Structure containing sensitive receptor(s)—A man-made structure utilized for human residence or business, the containment of livestock, or the housing of sensitive live vegetation. It does not include such things as range fences, roads, bridges, hunting blinds or facilities used solely for the storage of hay or other livestock feeds.

Sunrise/Sunset—Official sunrise/sunset as set forth in the United States Naval Observatory tables available from National Weather Service offices.

Wildland—Uncultivated land other than fallow, land minimally influenced by human activity, and land maintained for biodiversity, wildlife forage production, protective plant cover, or wildlife habitat.

*§111.205. Exception for Fire Training.*

(a) Outdoor burning shall be authorized for training fire-fighting personnel when requested in writing and when authorized either verbally or in writing by the local air pollution control agency. In the absence of such local entities, the appropriate commission regional office shall be notified. The burning shall be authorized if notice of denial from the local air pollution control agency, or commission regional office is not received within 15 working days after the date of postmark or the date of personal delivery of the request.

(b) Facilities dedicated solely for fire-fighting training, at which training will be conducted on a frequency of at least once per week, shall submit an annual written notification of intent to continue such training to the appropriate commission regional office and any local air pollution control agency.

(c) Facilities dedicated solely for fire-fighting training, at which training is conducted less than weekly, shall provide an annual written notification of intent, with a telephone notice one week in advance of any scheduled training session. Both the written and telephone notifications shall be submitted to the appropriate commission regional office and any local air pollution control agency.

(d) Authorization to conduct outdoor burning under this provision may be revoked by the executive director if the authorization is used to circumvent other prohibitions of this subchapter.

*§111.207. Exception for Fires Used for Recreation, Ceremony, Cooking, and Warmth.* Outdoor burning shall be authorized for fires used solely for recreational or ceremonial purposes, or in the noncommercial preparation of food, or used exclusively for the purpose of supplying warmth during cold weather. Such burning shall be subject to the requirements of §111.219(7) of this title (relating to General Requirements for Allowable Outdoor Burning).

*§111.209. Exception for Disposal Fires.* Outdoor burning shall be authorized for:

(1) Domestic waste burning at a property designed for and used exclusively as a private residence, housing not more than three families, when collection of domestic waste is not provided or authorized by the local governmental entity having jurisdiction, and when the waste is generated only from that property. Provision of waste collection refers to collection at the premises where the waste is generated. The term "domestic waste" is defined in §101.1 of this title, (relating to Definitions). Wastes normally resulting from the function of life within a residence that can be burned include such things as kitchen garbage, untreated lumber, cardboard boxes, packaging (including plastics and rubber), clothing, grass, leaves, and branch trimmings. Examples of wastes not considered domestic waste which can not be burned, include such things as tires, non-wood construction debris, furniture, carpet, electrical wire and appliances.

(2) Diseased animal carcass burning.

(3) On-site burning of trees, brush, and other plant growth for right-of-way maintenance and landclearing operations when no practical alternative to burning exists and when the materials are generated only from that property. Structures containing

sensitive receptors must not be negatively affected by the burn. Such burning shall be subject to the requirements of §111.219 of this title (relating to General Requirements for Allowable Outdoor Burning). Notification of intent to burn shall be made to the appropriate commission regional office prior to the proposed burn, when possible. Commission approval is not required.

(4) Crop residue burning for agricultural management purposes when no practical alternative exists. This section is not applicable to crop residue burning covered by an administrative order. Such burning shall be subject to the requirements of §111.219 of this title, and structures containing sensitive receptors must not be negatively affected by the burn. Notification of intent to burn shall be made to the appropriate commission regional office prior to the proposed burn, when possible. Commission approval is not required.

(5) Brush, trees, and other plant growth causing a detrimental public health and safety condition may be burned by a county or municipal government at a site it owns upon receiving site and burn approval from the executive director. Such a burn can only be authorized when there is no practical alternative, and it may be done no more frequently than once every two months. Such burns can not be conducted at municipal solid waste landfills unless authorized under §111.215 of this title (relating to Executive Director Approval of Otherwise Prohibited Outdoor Burning), and shall be subject to the requirements of §111.219 of this title.

*§111.211. Exception for Prescribed Burn.* Outdoor burning shall be authorized for:

(1) Prescribed burning for forest, range and wildland/wildlife management purposes. Such burning shall be subject to the requirements of §111.219 of this title (relating to General Requirements for Allowable Outdoor Burning), and structures containing sensitive receptors must not be negatively affected by the burn. Notification of intent to burn shall be made to the appropriate commission regional office prior to the proposed burn, when possible. Commission approval is not required.

(2) Coastal salt-marsh management burning conducted in Aransas, Brazoria, Calhoun, Chambers, Galveston, Harris, Jackson, Jefferson, Kleberg, Matagorda, Nueces, Orange, Refugio, and San Patricio Counties. Coastal salt-marsh burning in these counties shall be subject to the following requirements:

(A) All land on which burning is to be conducted shall be registered with the appropriate commission regional office using a United States Geological Survey map or equivalent upon which are identified significant points such as roads, canals, lakes, and streams, and the method by which access is made to the site. For large acreage, the map should be divided into manageable blocks with identification for each defined block. The information must be received for review at least 15 working days before the burning takes place.

(B) Prior to any burning, notification, either verbal or written, must be made to, and authorization must be received from the appropriate commission regional office. Notification must identify the specific area and/or block to be burned, approximate start and end time, and a responsible party who can be contacted during the burn period.

(C) Such burning shall be subject to the requirements of §111.219 of this title.

*§111.213. Exception for Hydrocarbon Burning.* Outdoor burning shall be authorized for hydrocarbon burning from pipeline breaks and oil spills only upon proper notification as set forth in §101.6 of this title (relating to Notification Requirements for Major Upset),

and if the executive director has determined that the burning is necessary to protect the public welfare. Sampling and monitoring may be required to determine and evaluate environmental impacts.

*§111.215. Executive Director Approval of Otherwise Prohibited Outdoor Burning.* If not otherwise authorized by this chapter, outdoor burning may be authorized by written permission from the executive director if there is no practical alternative and if the burning will not cause or contribute to a nuisance, traffic hazard or to a violation of any federal primary or secondary ambient air standard. The executive director may specify procedures or methods to control or abate emissions from outdoor burning authorized pursuant to this rule. Authorization to burn may be revoked by the executive director at any time if the burning causes nuisance conditions, is not conducted in accordance with the specified conditions, violates any provision of an applicable permit, or causes a violation of any air quality standard.

*§111.219. General Requirements for Allowable Outdoor Burning.* Outdoor burning which is otherwise authorized shall also be subject to the following requirements when specified in this subchapter.

(1) Prior to prescribed or controlled burning for forest management purposes, the Texas Forest Service shall be notified.

(2) Burning must be outside the corporate limits of a city or town except where the incorporated city or town has enacted ordinances which permit burning consistent with the Texas Clean Air Act, Subchapter E, Authority of Local Governments.

(3) Burning shall be commenced and conducted only when wind direction and other meteorological conditions are such that smoke and other pollutants will not cause adverse effects to any public road, landing strip, navigable water, or off-site structure containing sensitive receptor(s).

(4) If at any time the burning causes or may tend to cause smoke to blow onto or across a road or highway, it is the responsibility of the person initiating the burn to post flag-persons on affected roads.

(5) Burning must be conducted downwind of or at least 300 feet (90 meters) from any structure containing sensitive receptors located on adjacent properties unless prior written approval is obtained from the adjacent property owner(s).

(6) Burning shall be conducted in compliance with the following meteorological and timing considerations:

(A) The initiation of burning shall commence no earlier than one hour after sunrise. Burning shall be completed on the same day not later than one hour before sunset. In cases where residual fires and/or smoldering objects continue to emit smoke after this time, such areas shall be extinguished if the smoke from these areas has the potential to create a nuisance or traffic hazard condition. In no case shall the extent of the burn area be allowed to increase after this time.

(B) Burning shall not be commenced when surface wind speed is predicted to be less than six miles per hour (mph) (five knots) or greater than 23 mph (20 knots) during the burn period.

(C) Burning shall not be conducted during periods of actual or predicted persistent low-level atmospheric temperature inversions.

(7) Electrical insulation, treated lumber, plastics, non-wood construction/demolition materials, heavy oils, asphaltic materi-

als, potentially explosive materials, chemical wastes, and items containing natural or synthetic rubber may not be burned.

*§111.221. Responsibility for Consequences of Outdoor Burning.*

The authority to conduct outdoor burning under this regulation does not exempt or excuse any person responsible from the consequences, damages, or injuries resulting from the burning and does not exempt or excuse anyone from complying with all other applicable laws or ordinances, regulations, and orders of governmental entities having jurisdiction, even though the burning is otherwise conducted in compliance with this regulation.

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 May 9, 1996.

TRD-9606454 Kevin McCalla  
Director, Legal Services Division  
Texas Natural Resource Conservation Commission

Earliest date of adoption: August 21, 1996

For further information, please call: (512) 239-1970

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**TITLE 37. PUBLIC SAFETY**  
**Part I. Texas Department of Public Safety**

**Chapter 18. Driver Education**

**Driver Training School Testing and Issuance of Instruction Permits**

• **37 TAC §§18.1-18.4**

The Texas Department of Public Safety proposes new §§18.1-18.4 concerning Driver Training School Testing and Issuance of Instruction Permits. The new sections are necessary to implement the provisions of Texas Civil Statutes, Article 6687b as amended by Senate Bill 964 of the 74th Legislative Session, and establish procedures for said testing and issuance.

New §18.1 Definitions: provides definitions for certain terms used in the driver training school testing procedures. New §18.2 Required Documentation and Fees: specifies the required documents and fees necessary for an application for a driver training school issued instruction permit. New §18.3 Tests Administered by a Driving School: outlines the rules and procedures for testing of applicants by driver training schools. New §18.4 Reporting Issuance of Instruction Permits: explains the rules and procedures by which a driver training school reports the issuance of instruction permits to the Texas Department of Public Safety (DPS).

Tom Haas, Chief of Finance, has determined that for each year of the first five years that 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. Haas 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 administering the sections will be the reduction of crowded conditions in Driver License offices as a result of the applicants and their parents not being required to go to those offices to acquire an instruction permit. There will be a substantial impact to the benefit of commercial Driver Training Schools as this law will encourage teenage applicants to select a commercial program over public school programs who cannot provide this service. Generally, the effect of this rule will increase the cost of driver education training for those individuals who select commercial programs over public school programs. Public school programs currently range from \$140 per course to \$260 per course; whereas, commercial programs range from \$240 to \$400 per course.

Comments on the proposal may be submitted to John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 424-2890.