

The commission adopts new §§32.1, 32.3, 32.5, 32.7, 32.9, 32.11, 32.13, 32.15, 32.51, 32.53, 32.55, 32.57, 32.59, 32.75, 32.77, 32.101, 32.103, 32.125, 32.127, 32.151, 32.153, 32.155, 32.157, 32.175, 32.177, 32.201, 32.203, and 32.205, concerning Transfers of Permits, Licenses, and Other Authorizations. The primary purpose of the new sections is to consolidate and streamline transfer requirements.

Adopted with changes to the proposed text as published in the January 31, 1997, issue of the *Texas Register* (22 TexReg 1052) are §§32.3, 32.9, 32.11, 32.13, and 32.205. Sections 32.1, 32.5, 32.7, 32.15, 32.51, 32.53, 32.55, 32.57, 32.59, 32.75, 32.77, 32.101, 32.103, 32.125, 32.127, 32.151, 32.153, 32.155, 32.157, 32.175, 32.177, 32.201, and 32.203 are adopted without changes and will not be republished.

#### EXPLANATION OF ADOPTED RULES

Existing transfer requirements in §§116.110, 291.109, 291.112, 291.115, 293.13, 303.41, 297.81, 297.82, 297.83, 304.43, 305.64, 305.97, 312.10, 312.11, 321.34, 330.63, 330.812, 330.835, 330.843, 330.852, and 330.855 will be moved to this new chapter.

Section 32.3, concerning Definitions, defines terms unique to §§32.1-32.205. In response to comments, the definition of “transfer” was revised. Other minor changes were made for clarification.

Section 32.9, concerning Application, contains the requirements for application for transfer. In response to comments, the signatory requirements were revised to exempt certain authorizations.

Section 32.11, concerning Post-Transfer Notice to the Executive Director, contains post-transfer notification requirements. In response to comments, the new source review permit, permit exemption, and water rights requirements were clarified. A subsection concerning compliance history was deleted, also in response to comments.

Section 32.13, concerning Pre-Transfer Notice to the Executive Director, contains pre-transfer notification requirements. In response to comments, the requirements concerning when a person is operating without a permit were clarified. Other minor changes were made for clarification.

Section 32.205, concerning Sewage Sludge Beneficial Use Registration Applications Processing, contains requirements for sewage sludge beneficial use registration transfers. In response to comments, a requirement for transfer when there is a change in ownership was added for clarification purposes.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rules is to make it easier for the public to use agency rules, specifically the requirements for transfers of permits, licenses, and other authorizations. The rules substantially advance this specific purpose by

moving the existing requirements from their current location within the rules and placing them under a single chapter (Chapter 32). Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because there is no substantive change in existing requirements, only a change in the organization of the rules.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking for consistency with the Coastal Management Plan (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the rulemaking will not have direct or significant adverse effect on any Coastal Natural Resource Areas, nor will the rulemaking have a substantive effect on commission actions subject to the CMP.

#### HEARINGS AND COMMENTERS

A public hearing was held on March 3, 1997, in Austin. The comment period closed on March 3, 1997. Written comments were received from Brown McCarroll & Oaks Hartline, L.L.P./P.C. (Brown McCarroll), the Texas Chemical Council (TCC), Houston Lighting & Power (HLP), Monsanto, Texas Instruments, Inc. (TI), the United States Environmental Protection Agency Region 6 (EPA), and the executive director's staff. No comments were provided at the public hearing.

ANALYSIS OF TESTIMONY

Brown McCarroll, Houston Lighting & Power, Texas Instruments, and Monsanto, stated that, in general, the proposed rules are a reasonable improvement over the existing regulatory situation with respect to transfers. Brown McCarroll further stated that the regulated community can be aided in its environmental and economic efforts, without any harm to human health or the environment or to the integrity of Texas Natural Resource Conservation Commission programs, to the extent that the transfer of environmental permits can be simplified.

Texas Instruments stated that the definition of “transfer” departs from current agency practice. The definition of “transfer” includes three components. According to the commenter, the first component is consistent with current rules. However, the second component of the “transfer” definition (a change of ownership or control) represents a significant departure from current agency practice and may have the unintended consequence of triggering permit transfer requirements in a wide variety of corporate transactions involving commission permittees.

**It is the commission’s intent to clarify those transactions that trigger the requirements in the commission’s transfer rules. There have been concerns from the regulated community that commission programs have not agreed on those transactions that trigger the commission’s transfer requirements. The definitions adopted by the commission are intended to address those concerns and provide a guideline to the regulated community and agency staff.**

Texas Instruments believes that the definition of a “change in ownership” is too broad and will result in bringing into the permit transfer requirements a multitude of corporate reorganizations and restructurings where there is no effective change in the identity of the permittee.

**The commission does not agree. The definition of a change in ownership specifies examples of those types of activities that result in more than a mere change in the identity of the permittee. The definition incorporates those types of activities that result in a change in ownership or a change in control. A change in control includes a change in the ownership of shares or stocks that enable a person to own a controlling interest.**

Texas Instruments believes that the commission should define separately what is meant by a “change in control” or revise the defined term “change of ownership” to be “change of ownership or control.”

**The commission believes that the definition is clear in that it includes those transactions where a change in ownership of a stock or asset results in a change in the control of the permittee.**

Texas Instruments recommended that if the commission decides to include mergers and stock transfers within the scope of those transactions requiring permit transfers, these concepts should be refined to address situations only where there is a change in the identity or ultimate ownership or control of the permittee.

**The commission believes that the rules include those transactions and situations where there is a change in the controlling ownership of a permittee that results from a stock transfer or asset purchase, or a merger. The rules do not include situations where there is only a change in the name of the permittee. The commission also recognizes that permits issued under the Texas Clean Air Act are frequently issued to the operator of a facility. Transfers of most air permits may not be triggered by the sale or transfer of a facility if the operator remains the same. The transfer of most air quality permits would be triggered upon the transfer of the permit from one operator to another.**

Texas Instruments recommended that the definitions of these triggering terms be refined to exclude corporate reorganizations and restructurings and to clarify further what is meant by the concept “controlling interest.”

**The rules include corporate reorganizations and restructurings that result in a change in the control of or operation of the permittee. They are not meant to include those situations where there is a change in a parent company that does not directly affect a subsidiary which is a permittee. However, the rules do include those situations where a change in a parent company does result in a change in the control or operation of the subsidiary permittee, such as a change in the management or operation of the subsidiary.**

Texas Instruments also recommended that a change in the permittee's federal tax identification number should not be deemed to be a change in ownership where the change is the result of a corporate restructure.

**Since this is a consolidation package, the commission has not changed the requirement regarding the tax identification number. However, the commission will review this matter further and may address this concern in a future rule package.**

Texas Instruments stated that the third component of the "transfer" definition (stock transfer by a person holding a commission permit) appears to be distinct from the stock transfers included in the definition of "change of ownership." This phrase seems to encompass a stock transfer even of a minority interest in a company.

**The commission agrees with the commenter. That third component has been deleted. The inclusion of a "stock transfer that results in a controlling interest in a permittee" as part of the definition of a "change in ownership" is sufficient.**

Houston Lighting & Power stated that proposed §32.7 would be more easily understood if all the exceptions are specified here and referred the reader to the correct citation.

**The commission does not agree. The purpose of the subchapters is to allow a person interested in a transfer to review the general rules in Chapter 32, Subchapter A and then review any relevant subchapter for requirements that are specific to that program.**

Houston Lighting & Power stated that the proposed language in §32.9(5) includes a reference to 30 TAC §305.44, which only applies to wastewater and solid waste permits. Houston Lighting & Power asked whether air and water rights related transfers will be required to conform to the provisions of this section.

**The commission agrees, and has modified the provision to show that air and water rights permits are not required to comply with that provision.**

Brown McCarroll and the Texas Chemical Council stated that unless required by statute, all permit transfers should be handled by post transfer notification to the TNRCC. If no permit amendment is sought with the transfer and if the transferee certifies that it will comply with the permit and the representations in the permit application, the TNRCC should be adequately protected by a post transfer notification.

Brown McCarroll stated that it is aware that the commission is required by statute to evaluate financial assurance in connection with the transfer of some permits before the transfer takes place. However,

where there are no such requirements, the most efficient and effective method of transferring permits is by post-transfer notification, as provided in proposed §32.11.

Brown McCarroll recommended that proposed §32.11 and §32.13 be revised to reflect that only transfer of those permits for which financial assurance is required, such as hazardous waste management permits and waste tire processor registrations under the Solid Waste Disposal Act and underground storage and registrations under the Texas Water Code, be subject to pre-transfer notification to the commission and that all other permit transfers be subject to post-transfer notifications. This would address financial assurance prior to transferring a permit. At the same time, those permits for which financial assurance is not an issue can be handled in a simpler process, without any burdensome pre-transfer notice.

Houston Lighting & Power recommended that, unless otherwise required by law, the transfer of permits should be authorized to occur no later than 30 days after the purchase and sales agreement is finalized.

**The commission does not agree. Pre-notification requirement is not burdensome. The pre-notification requirement is not meant to, nor should it, delay the process. It should also be noted that the commission is expressly required by statute to require prior approval of a transfer for those permits issued under Health and Safety Code, Chapters 361 and 401, as well as permits issued under Water Code, Chapter 27.**

Brown McCarroll stated that the language in proposed §32.11(1)(A) is confusing and seems to imply that a transferee who has ever received a permit from the commission at any facility does not have to obtain a new permit for the transferred facility. Brown McCarroll recommended the following language change: “For other than water rights, the new owner of a facility to which this section applies and for which a permit from the commission has previously been issued and is in effect, is not required to apply for a new permit.” The Texas Chemical Council recommends the following language to §32.11(1)(A), “For other than water rights, the new owner of a facility to which this section applies is not required to apply for a new permit so long as the permit for the facility being purchased remains in effect.”

**The commission agrees and has modified §32.11 by removing “and who previously has received a permit from the commission” in an effort to clarify the language.**

Brown McCarroll stated that the relationship between §32.11(1)(B) and Chapter 32, Subchapter B of the proposed rules is unclear and that it would be helpful for these provisions to be cross-referenced as appropriate or for unnecessary or redundant provisions to be eliminated.

**The commission agrees and has modified §32.11 to cross-reference §32.55.**

Brown McCarroll recommended the deletion of §32.11(3) and §32.13(5), which give the executive director of the commission discretion to refuse to allow a permit transfer if there are terms of an order,

decree, or agreement that have not been met. Brown McCarroll, the Texas Chemical Council, and Monsanto stated that those sections also require the executive director to consider the compliance history of the transferee. The commenters stated that they were not aware of any statute that requires the commission to consider compliance history in connection with permit transfers. Brown McCarroll stated that the legislature appears to be able to compel consideration of compliance history in circumstances as it deems appropriate, so the absence of specific statutory requirements to consider compliance history in connection with permit transfers should be construed to mean that such consideration is not to be included in a permit transfer.

Brown McCarroll also stated that requiring compliance histories to be prepared for permit transfer would only add delay to the process and should address compliance problems through compliance programs and not through the permitting process.

Texas Instruments stated that the element of discretion that the commission maintains through its authority to deny a transfer based upon a person's compliance history must be eliminated where post-transfer notice is to be given. The commenters recommended the deletion of these provisions.

**The commission agrees in part with these comments. The commission does have the express authority to consider compliance history in certain program areas (permits issued under Health and Safety Code, Chapter 401, §401.110 and permits issued under Water Code, Chapter 26, §26.0281). However, the commission has deleted §32.11(3) based upon the fact that the rules**

**proposed are a streamlining effort. It is the commission's intent to consolidate current requirements in one chapter and clarify those transactions that trigger the commission's transfer requirements. The commission's current rules pertaining to post-notification transfers do not contain an express provision regarding the ability to refuse a transfer where conditions of an order, decree, or agreement that have not been met. Nor do the commission's current rules pertaining to post-notification transfers contain an express provision regarding the ability of the commission to consider prior compliance of the transferee. However, the deletion of this provision should in no way be interpreted as an admission by the commission that it does not have the authority to consider whether the conditions of an order, decree, or agreement that have not been met or to consider the compliance history of the transferee. The commission has taken the position that it has the inherent authority to deny a transfer of a permit it has the authority to issue based on its authority to issue that permit. Therefore, the commission has not deleted §32.13(5).**

Brown McCarroll recommended that the commission develop a single form that can be used to make notifications of permit transfers.

**The commission agrees and will consider the feasibility of such a form.**

Texas Instruments stated that the provisions in §32.11(2) and §32.13(2), which require that a copy of the written agreement between the parties to a transfer be submitted to the executive director of the

commission, do not take into account the practical realities of corporate transactions. More often than not, parties do not enter into a separate permit transfer agreement. Texas Instruments proposed that the rules be clarified to allow satisfaction of this requirement by a separate letter to the commission signed by both parties reflecting the transfer date rather than the transaction agreement itself.

**The commission agrees and has modified the language to reflect the comment.**

Texas Instruments further stated that it may not be possible for the parties to know the actual closing date until late in the process. The language in proposed §32.13(1) and (2) may not necessarily be inconsistent with this approach. However, the commenter believes that the language could be construed to mean that the transfer of the permit responsibility and liability could be deemed to have occurred on the date that the commission approves the transfer rather than the date on which the transfer occurs.

**For those permits that fall within §32.13 pertaining to pre-transfer notification, the commission will consider a permit transferred upon receipt of documentation or evidence that the parties have completed the sale or transaction that has triggered the transfer. If the parties have already completed the transaction, the commission will not transfer the permit until the commission has received the evidence or documentation from the parties that the transaction has been completed. For those permits that fall within the post-transfer notification, the commission will consider a permit transferred on the date that the parties list as the date that the transaction that triggered the commission's transfer requirements was completed.**

The Texas Chemical Council recommended that the commission delete the requirement for pre-transfer notice since, “if it can be waived for good cause, there appears to be no pressing need.”

**The commission disagrees. The reference to good cause is included in order to provide a method to be able to address situations that may arise. The provision as written provides the commission with the flexibility to address those unforeseen situations that may arise.**

The Texas Chemical Council stated that “if there is a requirement for quasi-approval (i.e. the executive director must be satisfied,)” in §32.13(3), the agency should establish written acceptability criteria for financial responsibility.”

**Section 32.13(3) states that “the executive director must be satisfied that proof of any required financial responsibility be sufficient.” The criteria necessary for the executive director to give his approval relative to this section of the rules is for the transferee to provide a financial assurance mechanism in the proper amount in accordance with each specific program’s existing financial assurance regulations.**

Brown McCarroll stated that the provisions in §32.13(4) prohibit the operation of a facility prior to receiving approval of the permit transfer by the commission. Brown McCarroll stated that it is conceivable that there could be a need for the facility to be operated by the transferee before the permit transfer is approved by the commission and that the commission should allow the transferee to operate

the facility as long as a properly filed application for transfer is pending before the commission. Brown McCarroll recommended the following language change: “If a person attempting to acquire a permit, causes or allows operation of the facility before approval is given, this person is considered to be operating without a permit or other authorization, unless a timely filed application for transfer that meets the requirements of the section is pending with the executive director.”

Houston Lighting & Power stated that the language in §32.13(4) (the commenter cited §32.13(1)(B)(4); however, staff assumes the commenter meant to reference §32.13(4)) does not allow for agency review time to be considered. If the pre-transfer notice is submitted at least 30 days before the proposed transfer date and the commission cannot act on the request, the facility would be required to cease operation or delay the proposed transfer date. The requirements in this provision do not allow for the uncertainty that often occurs when ownership or operation of a facility is transferred. Houston Lighting & Power further stated that the situation can be rectified by including language in the proposed section allowing either the transferor or transferee of a facility to continue operation if the 30-day pre-notice has been given and confirmation notice is made within 30 days after the transfer.

**The commission does not agree. Permits issued under Water Code, Chapter 27, and Health and Safety Code, Chapters 361 and 401 require the approval of the commission or the executive director before a permit may be transferred. Health and Safety Code, Chapters 361 and 401, and Water Code, Chapter 27 expressly require that a person acquire a permit or license before a person operates under those chapters. The commission has changed §32.13 of the proposed rules**

**to reflect the statutory requirements and to reflect current practice for permits issued under proposed Chapter 32, Subchapter H: “(4) If a person attempting to acquire a permit, causes or allows operation of the facility before approval is given, this person is considered to be operating without a permit or other authorization, except for permit transfers identified in §32.201 of this title (relating to Applicability). (5) For a permit transfer identified in §32.201 of this title (relating to Applicability), if a person attempting to acquire a permit causes or allows operation of the facility before approval is given, this person is considered to be operating without a permit or other authorization, unless a timely filed application for transfer that meets the requirements of the section is pending with the executive director. (6) The executive director may refuse....”**

Brown McCarroll questioned the need for a 90-day pre-transfer notice requirement for the transfer of a hazardous waste management permit under Chapter 32, Subchapter D of the proposed rules.

**Since this is, primarily, a consolidation and streamlining rule package, the commission does not believe that such an action should be taken through this rule amendment. The 90-day time frame is especially necessary in order address the adequacy of the financial assurance to be provided by the transferee. However, the commission may review the possibility of reducing the notice requirement for the transfer of hazardous waste management permits during a future rule process.**

Houston Lighting & Power stated that there is some confusion among the regulated community between the terms “permit” or “certificates of adjudication” and “a water right license” in §32.51. The confusion could be eliminated by replacing the term “license” with terms “permits, certificates of adjudication or certified filings.”

**The commission will review this issue and may address this concern in a future rule proposal.**

Houston Lighting & Power stated that there is a reference in proposed §32.203(3) to 30 TAC §305.43. The commenter believes that §405.43 must also be modified, because the current language is ambiguous and confusing as it relates to who can, or is required to submit an application. By incorporating the existing language, the ambiguity and confusion inherent in §305.43 becomes a part of this rulemaking. As such, this proposed section should clearly specify what entity(s) can submit an application, or §305.43 should be rewritten.

**Although referenced in the proposed rules, §305.43 is not a part of this rule package. However, the commission has forwarded your comment so that the commission’s staff may evaluate whether a rule change is necessary.**

Commission staff recommended a change in the language in §32.205 to clarify that a transfer of a sewage sludge beneficial use registration is required when there has been a change in ownership of the land where a facility is located or if there is a change in the site operator.

The EPA commented that Texas will need to submit Chapter 32 as a State Implementation Plan revision so that EPA recognizes that new owners/operators of facilities that previously received a permit would not be required to apply for a new permit and that the change of ownership is not subject to public notification.

**The commission agrees. The commission will submit the necessary information to EPA.**

#### STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006, and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

## **CHAPTER 32**

### **TRANSFERS OF PERMITS, LICENSES, & OTHER AUTHORIZATIONS**

#### **SUBCHAPTER A : GENERAL PROVISIONS**

##### **§§32.1, 32.3, 32.5, 32.7, 32.9, 32.11, 32.13, 32.15**

#### **§32.1. Applicability.**

This chapter applies to applications for transfer of all permits, licenses, and other written and unwritten authorizations issued by the commission and to applications seeking orders that have the effect of transferring permits, except:

- (1) interwatershed transfers under Texas Water Code, §11.085 (transfers between watersheds);
- (2) sewage sludge and similar waste transporter registrations; and
- (3) federal operating permits under Chapter 122 of this title (relating to Federal Operating Permits).

**§32.3. Definitions.**

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

**Change of ownership** - Includes, but is not limited to:

- (A) a merger;
- (B) a stock transfer that results in a controlling interest in a permittee;
- (C) an asset purchase that results in a change in the operational control of a permittee;

or

- (D) a change in the federal tax identification number.

**Transfer** - Includes the assignment of a permit from one entity to another or a change of ownership or control.

**§32.5. Limits of Permits.**

(a) For other than water rights, a permit is issued to a person and may be transferred only upon approval of the executive director or the commission. No transfer is required for a corporate name change, as long as the secretary of state can verify that a change in name alone has occurred.

(b) For water rights, a permit is issued in rem and may be transferred within the records of the agency only upon notification of the executive director or the commission. No transfer fee payment is required for a corporate name change, as long as the secretary of state can verify that a change in name alone has occurred, but the executive director of the agency must be notified of the name change.

(c) A permit is attached to the realty to which it pertains and may not be transferred from one site to another except as otherwise noted.

#### **§32.7. Application Submittal.**

Except as otherwise provided in this chapter, a submittal of an application for transfer of a permit must be conducted pursuant to the submittal requirements in §305.43 of this title (relating to Who Applies).

#### **§32.9. Application.**

An application for transfer must include:

- (1) the name and address of the transferee and/or future operator if applicable;
- (2) the permit number and any other applicable authorization numbers;

(3) the date of the proposed transfer;

(4) if the permit requires financial responsibility, the method by which the proposed transferee intends to assume or provide financial responsibility which must be identified and be in accordance with any applicable state and federal financial responsibility requirements;

(5) except for permits, licenses, and other authorizations issued under Chapter 116, Subchapters B and C of this title (relating to New Source Review Permits and Permit Exemptions) and Chapter 297 of this title (relating to Water Rights, Substantive), the signatures of the transferor and transferee, in addition to provisions in §305.44 of this title (relating to Signatories to Applications); and

(6) any other information that the executive director may reasonably require.

**§32.11. Post-Transfer Notice to the Executive Director.**

(a) Water rights. This subsection applies to permits, licenses, and other authorizations issued under Chapter 297 of this title (relating to Water Rights Substantive).

(1) The new owner is not required to post public notice of the change of ownership, but is required to notify the executive director of the changes under §32.55 of this title (relating to Duty to Inform the Executive Director).

(2) The new owner of the facility is required to comply with all conditions of the permit and all representations made in the application for permit and any amendments to the permit.

(b) Air quality. This subsection applies to permits, licenses, and other authorizations issued under Chapter 116, Subchapters B and C of this title (relating to New Source Review Permits and Permit Exemptions).

(1) The new owner or operator of a facility to which this section applies is not required to apply for a new permit, and the change of ownership or operator shall not be subject to the public notification requirements of this chapter, provided that within 30 days after the change of ownership or operator the new owner or operator notifies the commission of the change. The notification shall include a certification of each of the following:

(A) the change in owner or operator has occurred and the new owner or operator agrees to be bound by all conditions of the permit or special permit and all representations made in the application for permit or special permit and any amendments to the permit;

(B) there will be no change in the type of pollutants emitted;

(C) there will be no increase in the quantity of pollutants emitted.

(2) The new owner or operator of the facility is required to comply with all conditions of the permit or special permit and all representations made in the application for permit or special permit and any amendments to the permit.

(3) The owner of the facility or the operator of the facility authorized to act for the owner is responsible for complying with this subsection.

**§32.13. Pre-Transfer Notice to the Executive Director.**

This section applies to all transfers except for those transfers in §32.11 of this title (relating to Post-Transfer Notice to the Executive Director) and Subchapter E of this chapter (relating to Radioactive Material Licenses).

(1) Except as provided otherwise in Subchapters D and F of this chapter (relating to Hazardous Waste and Utilities), the transferee, the permittee, or the current or future operator of a facility, if applicable, must submit to the executive director an application for transfer at least 30 days before the proposed transfer date. The executive director may waive the 30-day requirement for good cause. In addition to the requirements in §32.9 of this title (relating to Application), the application must contain the following:

(A) a fee of \$100 to be applied toward the processing of the application, as provided in §305.53(a) of this title (relating to Application Fee), unless otherwise specified; and

(B) a sworn statement that the application is made with the full knowledge and consent of the permittee if the transferee is filing the application.

(2) If no agreement, or evidence thereof as approved by the executive director, regarding transfer of permit responsibility and liability is provided, responsibility for compliance with the terms and conditions of the permit and liability for any violation associated therewith is assumed by the transferee, effective on the date of the approved transfer. This section is not intended to relieve a transferor of any liability.

(3) The executive director must be satisfied that proof of any required financial responsibility is sufficient. Except as provided otherwise in Subchapter D of this chapter, no permit may be transferred until any required financial responsibility is approved.

(4) If a person attempting to acquire a permit causes or allows operation of the facility before approval is given, this person is considered to be operating without a permit or other authorization, except for transfers of permits identified in §32.201 of this title (relating to Applicability).

(5) For transfers of permits identified in §32.201 of this title, if a person attempting to acquire a permit causes or allows operation of the facility before approval is given, this person is considered to be operating without a permit or other authorization, unless a timely filed application for transfer that meets the requirements of the section is pending with the executive director.

(6) The executive director may refuse to approve a transfer where conditions of a judicial decree, compliance agreement, or other enforcement order have not been entirely met. The executive director must also consider the prior compliance record of the transferee, if any.

**§32.15. Involuntary Transfer of Permits.**

This section applies to involuntary transfers of all permits other than those covered under Subchapters B and E of this chapter (relating to Water Rights and Radioactive Material Licenses).

(1) The executive director may transfer a permit involuntarily if:

(A) the permittee no longer owns or controls the permitted facilities; or the facilities have not been built and the permittee no longer has sufficient property rights in the site of the proposed facilities; and

(B) except for hazardous or industrial solid waste permits:

(i) the executive director received proof of ownership of the facilities and/or site of the proposed facilities;

(ii) the executive director has provided notice by certified mail to the permittee, using the last address of record, giving an opportunity for hearing;

(iii) the executive director did not receive a request for hearing from the permittee within 30 days from the date the notice was mailed; and

(iv) the executive director has received an application for transfer from the transferee as required by this chapter.

(2) The commission may transfer permits to an interim permittee pending an ultimate decision on a permit transfer if it finds that there exists a need for the continued operation of the facility and the proposed interim permittee is capable of assuming responsibility for compliance with the permit.

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

Issued in Austin, Texas, on June 25, 1997.

## **SUBCHAPTER B : WATER RIGHTS**

### **§§32.51, 32.53, 32.55, 32.57, 32.59**

The new sections are adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006, and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

#### **§32.51. Applicability.**

This subchapter applies to licenses issued under Texas Water Code, Chapter 11, and Chapter 295 of this title (relating to Water Rights, Procedural).

#### **§32.53. General Rules of Conveyance Applicability.**

(a) Except as provided in subsection (b) of this section, the right to use water for the purpose of irrigation is appurtenant to the land authorized to be irrigated and a conveyance of land with an appurtenant water right also conveys the water right unless expressly reserved or excepted, provided

that the water right has been granted for the irrigation of land not owned by the water right holder.

This water right is personal to the permittee and does not pass with a conveyance of the land.

(b) A water right does not attach to the irrigated land when held by a water corporation, water district, river authority, or governmental entity authorized to supply water to others. Only by express written conveyance can this water right be transferred. The foregoing is subject to all laws relating to lawful rights of owners along ditches and canals.

(c) If a landowner reserves a water right in a conveyance of land authorized to be irrigated and desires to change the place of use, the point of diversion, or the purpose of use, an application to amend the water right must be filed with the executive director as provided by §295.71 of this title (relating to Applications to Amend a Permit).

(d) A water right may be conveyed separately from the land, provided that the water right must be utilized in accordance with its terms and conditions until amended by the commission.

**§32.55. Duty to Inform the Executive Director.**

An owner of a water right or his or her agent must promptly inform the executive director of any transfer of water right or change of the owner's address in accordance with §32.11 of this title (relating to Post-Transfer Notice to the Executive Director).

**§32.57. Recording Conveyances of Water Rights.**

The written instrument evidencing a water right ownership transfer must be recorded in the office of the county clerk. Certified copies or photocopies of the recorded instruments establishing the complete chain of title between owners of record and the new owner must be filed with the executive director along with a completed "Change of Ownership" form and an ownership recording fee as required by §295.139(d) of this title (relating to Miscellaneous Fees).

**§32.59. Sale of Water Rights.**

(a) This subsection applies to the Rio Grande Basin.

(1) The owner of a water right may convey his water right as provided by this subchapter. The purpose and place of use may not be changed without authorization from the commission. Owners of water rights must promptly inform both the executive director and the watermaster of any transfers of water rights. The new owner must file with the executive director all required documents as identified in this subchapter. No authorization to divert may be granted by the watermaster until the watermaster is notified of any transfer of water rights.

(2) If a tract of land to which a smaller water right acreage is appurtenant is owned by more than one person in divided interests, a water right partition agreement is required among all the

owners of said tract of land before any one of the owners can be authorized by the watermaster to divert water. However, if the owners fail to submit a water right partition agreement within one month after being notified by the executive director that this agreement is needed, the executive director must administratively divide the water rights among the owners on a prorata basis by acreage. The owners involved may request that the executive director grant an extension of the one month deadline not to exceed six months if extenuating circumstances exist. If the executive director does not grant the extension, the division will be made on a prorata basis. The executive director will recognize the prorata shares until changes are made by valid partition agreement.

(b) This subsection applies to all water rights transfers in watermaster areas except those in the Rio Grande Basin.

(1) When a water right is sold or otherwise transferred, the new owner must promptly inform the executive director, and the watermaster if one has been established for the authorized basin of use, of the change of ownership and must provide the appropriate ownership documents. No authorization to divert or impound waters will be granted by the watermaster until the transfer of ownership is recorded with the executive director. If a tract of land to which a smaller water right acreage is appurtenant is owned by more than one person in divided interest, the executive director may administratively divide the water right among the owners on a pro rata basis by acreage. If the new ownership record is not complete, the executive director must inform the alleged owner by letter that ownership documents must be filed within 30 days and approved by the executive director. During a

60-day period following the date of the executive director's letter, the watermaster will honor declarations of intent, as defined under §304.3 of this title (relating to Definitions), by the alleged owner in accordance with the water right. After the 60-day period, no declaration of intent will be honored until the executive director notifies the watermaster of the approved change in ownership.

(2) Requests for extension for the initial 60-day period referenced in paragraph (1) of this subsection must be submitted in writing to the executive director at least five business days before the end of the 60-day period. If the extension is granted, the watermaster may honor declarations of intent for the alleged owner; otherwise, no declaration of intent from the unverified owner will be honored.

This agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 25, 1997.

## **SUBCHAPTER C : WASTE TIRES**

### **§32.75, §32.77**

The new sections are proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006, and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

#### **§32.75. Applicability.**

This subchapter applies to permits issued under Chapter 330 of this title (relating to Municipal Solid Waste).

#### **§32.77. Transfers Pertaining to Tire Registrations.**

(a) A new waste tire transporter registration application must be submitted to the executive director within ten days of a determination by the executive director that operations or management methods are no longer adequately described by the existing registration or ownership of the registered

transporter is changed. Following the executive director's determination, the old transporter registration number may be canceled or transferred to the new registrant.

(b) A Type VIII-R registration is transferrable contingent upon executive director approval. A change in the federal tax identification number will constitute a change of ownership. A new Type VIII-R storage facility registration application and a non-refundable \$500 application review fee must be submitted to the executive director within ten days of a determination by the executive director that operations or management methods are no longer adequately described by the existing registration. If ownership of the registered Type VIII-R storage facility will change or if the operator of a Type VIII-R storage facility will change, notification of the pending change must occur at least 60 days before the actual transfer of ownership or operations. Until the change of ownership and/or operations of the facility is approved in writing by the executive director, no Waste Tire Reimbursement Fund reimbursements will occur.

(c) A new registration application must be submitted to the executive director within ten days of a determination by the executive director that operation or management methods are no longer adequately described by the existing registration. If ownership of the registered waste tire facility will change or the location of the equipment or facility will change, notification of the pending change must occur at least 30 days before the actual transfer of ownership or operations. Until the change of ownership and/or operations of the facility is approved in writing by the executive director, no

reimbursements will occur. A change in the federal tax identification number will constitute a change of ownership.

(d) A waste tire recycling registration is transferrable contingent upon prior executive director approval. A change in the federal tax identification number will constitute a change of ownership.

(e) A waste tire energy recovery facility registration is transferrable contingent upon prior approval from the executive director.

This agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 25, 1997.

## **SUBCHAPTER D : HAZARDOUS WASTE**

### **§32.101, §32.103**

The new sections are proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006, and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

#### **§32.101. Applicability.**

This subchapter applies to the transfer of permits to carry out the responsibilities for management of hazardous waste storage, processing, and/or disposal activities under Chapter 305 of this title (relating to Consolidated Permits), with the exception of permits issued under Chapter 331 of this title (relating to Underground Injection Control).

#### **§32.103. Requirements.**

For permits involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361, changes in the ownership or operational control of a facility must be

made as Class 1 modifications with prior written approval of the executive director in accordance with §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).

(1) The new owner or operator must submit a revised permit application no later than 90 days before the scheduled change. The executive director may waive the 90-day requirement with good cause.

(2) The application must include, in part, documentation to satisfy the requirements of §305.50(4)(B) of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit).

(3) A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the executive director.

(4) When a transfer of ownership or operational control occurs, the old owner or operator must comply with the requirements of 40 Code of Federal Regulations Part 264, Subpart H, as adopted by reference in §335.152(a)(6) of this title (relating to Standards), until the new owner or operator has demonstrated to the executive director that he is complying with the requirements of 40 Code of Federal Regulations Part 264, Subpart H.

(5) The new owner or operator must demonstrate compliance with 40 Code Federal Regulations Part 264, Subpart H requirements within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the executive director by the new owner or operator of compliance with 40 Code of Federal Regulations Part 264, Subpart H, the executive director must notify the old owner or operator that he no longer needs to comply with 40 Code of Federal Regulations Part 264, Subpart H as of the date of demonstration.

This agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 25, 1997.

## **SUBCHAPTER E : RADIOACTIVE MATERIAL LICENSES**

### **§32.125, §32.127**

The new sections are proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006, and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

#### **§32.125. Applicability.**

This subchapter applies to radioactive material licenses issued under Chapter 336 of this title (relating to Radiation Rules).

#### **§32.127. Radioactive Material Licenses.**

- (a) It is the duty of the licensee to submit an application to transfer a license under this section.
- (b) A license, or any right thereunder, may not be transferred, assigned, or in any manner disposed, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the

license to any person, unless the commission finds that the transfer is in accordance with the provisions of the Texas Radiation Control Act and applicable rules and orders of the commission and gives its consent in writing in the form of a major amendment to the license.

This agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 25, 1997.

**SUBCHAPTER F : UTILITIES**

**§§32.151, 32.153, 32.155, 32.157**

The new sections are proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006, and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

**§32.151. Applicability.**

This subchapter applies to the transfer of water utilities governed by Chapter 291 of this title (relating to Water Rates).

**§32.153. Report of Sale, Merger, or Consolidation.**

(a) The utility or water supply or sewer service corporation must notify the commission and give public notice of the proposed transaction. The notification must be on the form required by the commission. Public notice may be waived by the executive director for good cause shown:

(1) at least 120 days before the proposed effective date of any sale, acquisition, lease, rental, merger, or consolidation of any water or sewer system required by law to possess a certificate of public convenience and necessity; or

(2) at least 60 days before a utility purchases voting stock in or person acquires a controlling interest in a utility doing business in the state.

(b) The commission must, with or without a public hearing, investigate the sale, acquisition, lease, rental, merger, or consolidation to determine whether the transaction will serve the public interest.

(1) The commission or executive director may request a contested case hearing for those transactions.

(2) A copy of the written agreement between parties reflecting the specific date of transfer must be submitted to the executive director.

(c) Before the expiration of the applicable notification period, the executive director must notify all known parties to the transaction of the decision to either approve the sale administratively or to request that the commission hold a public hearing to determine if the transaction will serve the public interest. The executive director may request a hearing if:

- (1) the notification to the commission or the public notice was improper;
- (2) the person purchasing or acquiring the water or sewer system is inexperienced as a utility service provider;
- (3) the person or an affiliated interest of the person purchasing or acquiring the water or sewer system has a history of noncompliance with the requirements of the commission or the Texas Department of Health or of continuing mismanagement or misuse of revenues as a utility service provider;
- (4) the person purchasing or acquiring the water or sewer system cannot demonstrate the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the customers of the water or sewer system; or
- (5) it is in the public interest to investigate the following factors:
  - (A) whether the seller has failed to comply with a commission order;
  - (B) the adequacy of service currently provided to the area;
  - (C) the need for additional service in the requested area;

(D) the effect of approving the transaction on the utility or water supply or sewer service corporation, the person purchasing or acquiring the water or sewer system, and on any retail public utility of the same kind already serving the proximate area;

(E) the ability of the person purchasing or acquiring the water or sewer system to provide adequate service;

(F) the feasibility of obtaining service from an adjacent retail public utility;

(G) the financial stability of the person purchasing or acquiring the water or sewer system, including, if applicable, the adequacy of the debt-equity ratio of the person purchasing or acquiring the water or sewer system if the transaction is approved;

(H) the environmental integrity; and

(I) the probable improvement of service or lowering of cost to consumers in that area resulting from approving the transaction.

(d) Unless the executive director requests that a public hearing be held, the transaction may be completed as proposed at the end of the appropriate notification or may be completed at any time after

the utility or water supply or sewer service corporation receives notice that a hearing will not be requested.

(e) Within 30 days after the actual effective date of the transaction, the utility or water supply or sewer service corporation must file a signed contract, bill of sale, or other appropriate documents as evidence that the transaction has been made final and, for transactions other than purchases or acquisitions of voting stock, documentation that customer deposits have been transferred or refunded to the customer with interest as required by these rules.

(f) If a hearing is requested or if the utility or water supply or sewer service corporation fails to provide the required notification or public notice, the transaction may not be completed unless the commission determines that the proposed transaction serves the public interest.

(g) The conveyance of any water or sewer system required by law to possess a certificate of public convenience and necessity that is not completed in accordance with the provisions of Texas Water Code, §13.301 is void.

(h) The requirements of Texas Water Code §13.301 do not apply to the purchase of replacement property, to a transaction under Texas Water Code, §13.255, or to foreclosure on the physical assets of a utility.

(i) If a utility facility or system is sold and the facility or system was partially or wholly constructed with customer contributions in aid of construction derived from specific surcharges approved by the regulatory authority over and above revenues required for normal operating expenses and return, the utility may not sell or transfer any of its assets, its certificate of convenience and necessity, or controlling interest in an incorporated utility, unless the utility provides to the purchaser or transferee before the date of the sale or transfer a written disclosure relating to the contributions. The disclosure must contain, at a minimum, the total dollar amount of the contributions and a statement that the contributed property or capital may not be included in invested capital or allowed depreciation expense by the regulatory authority in rate-making proceedings.

(j) A utility or a water supply or sewer service corporation that proposes to sell, assign, lease, or rent its facilities must notify the other party to the transaction of the requirements of this section before signing an agreement to sell, assign, lease, or rent its facilities.

**§32.155. Transfer of Certificate of Convenience and Necessity.**

(a) A certificate is issued in person, continues in force until further order of the commission, and may be transferred only by the approval of the commission. Any attempted transfer is not effective for any purpose until actually approved by the commission.

(b) Except as provided by Texas Water Code, §13.255, a utility or a water supply or sewer service corporation may not sell, assign, or lease a certificate of public convenience and necessity or any right obtained under a certificate unless the commission has determined that the purchaser, assignee, or lessee is capable of rendering adequate and continuous service to every consumer within the certificated area, after considering the factors under Texas Water Code, §13.246(c). The sale, assignment, or lease must be on the conditions prescribed by the commission.

(c) If the executive director does not request a hearing, the commission may approve the transfer by order at a regular meeting of the commission.

(d) If a hearing is requested, the application will be processed in accordance with Chapter 263 of this title (relating to Final Approval By Executive Director, Evaluation of Request for Contested Case Hearing).

(e) The commission may approve a sale, acquisition, lease or rental, or merger or consolidation and/or transfer of a certificate of convenience and necessity if it determines that the transaction is in the public interest after considering:

(1) if notice has been properly given;

(2) if the retail public utility which will acquire the facilities or certificate is capable of rendering adequate and continuous service to every consumer within the certificated area, after considering the factors set forth in Texas Water Code, §13.246(c). The commission may refuse to approve a sale, acquisition, lease, rental, merger, or consolidation and/or transfer where conditions of a judicial decree, compliance agreement, or other enforcement order have not been substantially met;

(3) the experience of the person purchasing or acquiring the water or sewer system as a utility service provider;

(4) the history of the person or an affiliated interest of the person in complying with the requirements of the commission or the Texas Department of Health or of properly managing or using revenues as a utility service provider; or

(5) the ability of the person purchasing or acquiring the water or sewer system to provide the necessary capital investment to ensure the provision of continuous and adequate service to the customers of the water or sewer system.

(f) Within 30 days after the sale or transfer of any utility or operating units thereof, the seller must file with the commission, under oath, in addition to other information, a list showing the names and addresses of all customers served by this utility or unit who have to their credit a deposit, the date

this deposit was made, the amount thereof, and the unpaid interest thereon. All such deposits must be refunded to the customers or transferred to the new owner, with all accrued interest.

**§32.157. Cessation of Operations by a Retail Public Utility.**

If a utility abandons operation of its facilities without commission authorization, the commission may appoint a temporary manager to take over operations of the facilities to ensure continuous and adequate service.

This agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 25, 1997.

## **SUBCHAPTER G : WATER DISTRICTS**

### **§32.175, §32.177**

The new sections are proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006, and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

#### **§32.175. Applicability.**

This subchapter applies to the transfer of water districts governed by Chapter 293 of this title (relating to Water Districts).

#### **§32.177. Special Considerations for Water District Creation.**

With respect to special utility districts, a water supply corporation may not be converted to a special utility district unless the water supply corporation is to be dissolved after the conversion. A certified copy of the dissolution order must be filed with the executive director. The certificate of

convenience and necessity for the water supply corporation will automatically be transferred to the district.

This agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 25, 1997.

## **SUBCHAPTER H : WATER QUALITY**

### **§§32.201, 32.203, 32.205**

The new sections are proposed under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006, and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

#### **§32.201. Applicability.**

This subchapter applies to permits for storage, processing, incineration, or disposal of sewage sludge issued under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation), wastewater discharge issued under Chapter 305 of this title (relating to Consolidated Permits), and concentrated animal feeding operation and commercial livestock and poultry production operation issued under Chapter 321 of this title (relating to Control of Certain Activities by Rule).

**§32.203. Application Submittal.**

A person who seeks a transfer of the following permits, licenses, or other authorizations must submit an application under §32.9 and §32.13 of this title (relating to Application and Pre-Transfer Notice to the Executive Director):

(1) registration for the beneficial use of domestic sewage sludge under §312.12(a) of this title (relating to Registration of Land Application Activities);

(2) permit to process, dispose of, or incinerate domestic sewage sludge under §312.11(b) of this title (relating to Permits);

(3) wastewater discharge permit under §305.43(a) of this title (relating to Who Applies);

(4) concentrated animal feeding operation permit under §321.184(b) of this title (relating to Application Requirements); and

(5) commercial livestock and poultry production operation permit under §321.34(a) of this title (relating to Procedures for Making Application for a Permit).

**§32.205. Sewage Sludge Beneficial Use Registration Applications Processing.**

(a) A transfer is required when there has been a change in ownership of the land or the site operator.

(b) In addition to the signature requirements in §32.9(4) of this title (relating to Application), both the registered site operator and the landowner must sign the transfer application. In order to transfer a sewage sludge beneficial use registration, an application for transfer that is not signed by both the registered site operator and the landowner will be considered a request for cancellation.

This agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 25, 1997.

The commission adopts new §70.121, concerning Enforcement. The new section is adopted without changes to the proposed text as published in the January 31, 1997, issue of the *Texas Register* (22 TexReg 1052) and will not be republished. The primary purpose of the new section is to place those existing involuntary transfer requirements for permits, licenses, and other authorizations, which are enforcement in nature, with other enforcement requirements.

#### EXPLANATION OF ADOPTED RULE

Existing requirements in 30 TAC §305.64 will be moved into this new section.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule is to make it easier for the public to use agency rules. The rule substantially advances this specific purpose by moving portions of the existing involuntary transfer requirements from their current location within the rules and placing them under a new subchapter within the enforcement chapter (Chapter 70, Subchapter D). Promulgation and enforcement of this rule will not burden private real property which is the subject of the rules because there is no substantive change in existing requirements, only a change in the organization of the rules.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and

has determined that the rulemaking will not have direct or significant adverse effect on any Coastal Natural Resource Areas, nor will the rulemaking have a substantive effect on commission actions subject to the CMP.

#### HEARINGS AND COMMENTERS

A public hearing was held on March 3, 1997, in Austin. The comment period closed on March 3, 1997.

#### ANALYSIS OF TESTIMONY

No comments were provided.

#### STATUTORY AUTHORITY

The new section is adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006, and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

**CHAPTER 70**  
**ENFORCEMENT**  
**SUBCHAPTER D : OTHER PROVISIONS**

**§70.121**

**§70.121. Involuntary Transfer of Permits.**

This section applies to involuntary transfers of all permits other than those covered under Chapter 32, Subchapters B and E of this title (relating to Water Rights and Radioactive Material Licenses).

(1) The commission may transfer a permit involuntarily after notice to the permit holder and an opportunity for hearing if:

(A) the permittee has failed or is failing to comply with commission rules, orders, permits, or other authorizations;

(B) the permitted facilities have been or are about to be abandoned;

(C) the permittee has been or is operating the permitted facilities in a manner which creates an imminent and substantial endangerment to the public health or the environment;

(D) foreclosure, insolvency, bankruptcy, or similar proceedings have rendered the permittee unable to construct the permitted facilities or adequately perform its responsibilities in operating the facilities; or

(E) transfer of the permit would maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, the operation of existing industries, and the economic development of the state and/or would minimize the damage to the environment; and

(F) the transferee has demonstrated the willingness and ability to comply with the permit and all other applicable requirements.

(2) The commission may transfer permits to an interim permittee pending an ultimate decision on a permit transfer if it finds that the permittee is about to abandon or cease operation of the facilities; or the permittee has abandoned or ceased operating the facilities.

(3) The executive director, the Office of Public Interest Counsel, and the permittee are parties to any hearing regarding involuntary transfers under paragraph (1) of this section.

(4) The commission may initiate proceedings in accordance with Texas Water Code, Chapter 13 for the appointment of a receiver consistent with commission rules.

(5) The commission may approve a transfer by order at a commission meeting.

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

Issued in Austin, Texas, on June 25, 1997.

The commission adopts an amendment to §116.110, concerning Applicability. The amendment is adopted without changes to the proposed text as published in the January 31, 1997, issue of the *Texas Register* (22 TexReg 1052) and will not be republished. The primary purpose of the amendment is to consolidate requirements for transfers of permits, licenses, and other authorizations into a new 30 TAC Chapter 32. The amendment also eliminates duplicative, confusing, and overly bureaucratic language.

#### EXPLANATION OF ADOPTED RULE

The proposed amendment moves existing transfer requirements from §116.110(c) and places them into the new Chapter 32.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule is to make it easier for the public to use agency rules, specifically the requirements for transfers of permits, licenses, and other authorizations. The rule substantially advances this specific purpose by moving the existing requirements from their current location within the rules and placing them under a single chapter (Chapter 32). Promulgation and enforcement of this rule will not burden private real property which is the subject of the rules because there is no substantive change in existing requirements, only a change in the organization of the rules.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the rulemaking will not have direct or significant adverse effect on any Coastal Natural Resource Areas, nor will the rulemaking have a substantive effect on commission actions subject to the CMP.

#### HEARINGS AND COMMENTERS

A public hearing was held on March 3, 1997, in Austin. The comment period closed on March 3, 1997.

#### ANALYSIS OF TESTIMONY

No comments were provided.

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006, and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

**CHAPTER 116**  
**CONTROL OF AIR POLLUTION BY PERMITS FOR**  
**NEW CONSTRUCTION OR MODIFICATION**  
**SUBCHAPTER B : NEW SOURCE REVIEW PERMITS**  
**PERMIT APPLICATION**

**§116.10**

**§116.110. Applicability.**

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

(c) Submittal under seal of registered professional engineer. All applications for permit or permit amendment with an estimated capital cost of the project above \$2 million, and not subject to any exemption contained in the Texas Engineering Practice Act (TEPA), shall be submitted under seal of a registered professional engineer. However, nothing in this subsection shall limit or affect any requirement which may apply to the practice of engineering under the TEPA or the actions of the Texas State Board of Registration for Professional Engineers. For purposes of this subsection, the estimated capital cost is defined in §116.141 of this title (relating to Determination of Fees).

(d) Responsibility for permit application. The owner of the facility or the operator of the facility authorized to act for the owner is responsible for complying with this section.

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

Issued in Austin, Texas, on June 25, 1997.

The commission adopts the repeal of §291.109, concerning Water Rates. The repeal is adopted without changes to the proposed text as published in the January 31, 1997, issue of the *Texas Register* (22 TexReg 1052) and will not be republished. The primary purpose of the repeal is to consolidate requirements for transfers of permits, licenses, and other authorizations into a new 30 TAC Chapter 32. The repeal also will eliminate duplicative, confusing, and overly bureaucratic language.

#### EXPLANATION OF ADOPTED RULE

The repeal will correct references within the sections and cut existing transfer requirements from §§291.109, 291.110(d), 291.112(a), (b), (c)(4)-(6), and (d), and 291.115 and place them into the new Chapter 32.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for the rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule is to make it easier for the public to use agency rules, specifically the requirements for transfers of permits, licenses, and other authorizations. The rule substantially advances this specific purpose by moving the existing requirements from their current location within the rule and placing them under a single chapter (Chapter 32). Promulgation and enforcement of the rule will not burden private real property which is the subject of the rules because there is no substantive change in existing requirements, only a change in the organization of the rules.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the rulemaking will not have direct or significant adverse effect on any Coastal Natural Resource Areas, nor will the rulemaking have a substantive effect on commission actions subject to the CMP.

#### HEARINGS AND COMMENTERS

A public hearing was held on March 3, 1997, in Austin. The comment period closed on March 3, 1997.

#### ANALYSIS OF TESTIMONY

No comments were provided.

#### STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006, and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

**CHAPTER 291**

**WATER RATES**

**SUBCHAPTER G : CERTIFICATES OF CONVENIENCE AND NECESSITY**

**§291.109**

**§291.109. Report of Sale, Merger, or Consolidation.**

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

Issued in Austin, Texas, on June 25, 1997.

The commission adopts amendments to §§291.110, 291.112, and 291.115, concerning Water Rates.

The amendments are adopted without changes to the proposed text as published in the January 31, 1997, issue of the *Texas Register* (22 TexReg 1052) and will not be republished. The primary purpose of the adopted amendments is to consolidate requirements for transfers of permits, licenses, and other authorizations into a new 30 TAC Chapter 32. The amendments also will eliminate duplicative, confusing, and overly bureaucratic language.

#### EXPLANATION OF ADOPTED RULES

The adopted amendments will correct references within the sections and move existing transfer requirements from §§291.109, 291.110(d), 291.112(a), (b), (c)(4)-(6), and (d), and 291.115 and place them into the new Chapter 32.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rules is to make it easier for the public to use agency rules, specifically the requirements for transfers of permits, licenses, and other authorizations. The rules substantially advance this specific purpose by moving the existing requirements from their current location within the rules and placing them under a single chapter (Chapter 32). Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because there is no substantive change in existing requirements, only a change in the organization of the rules.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the rulemaking will not have direct or significant adverse effect on any Coastal Natural Resource Areas, nor will the rulemaking have a substantive effect on commission actions subject to the CMP.

#### HEARINGS AND COMMENTERS

A public hearing was held on March 3, 1997, in Austin. The comment period closed on March 3, 1997.

#### ANALYSIS OF COMMENTS

No comments were provided.

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006, and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

**SUBCHAPTER G : CERTIFICATES OF CONVENIENCE AND NECESSITY**

**§§291.110, 291.112, 291.115**

**§291.110. Foreclosure and Bankruptcy.**

(a) - (c) (No change.)

(d) The financial institution may operate the utility for an interim period not to exceed 12 months before transferring according to Chapter 32 of this title (relating to Transfers of Permits, Licenses, and Other Authorizations) or otherwise obtaining a certificate of convenience and necessity unless the executive director in writing extends the time period. A financial institution that operates a utility during an interim period under this subsection is subject to each commission rule to which the utility was subject and in the same manner.

**§291.112. Transfer of Certificate of Convenience and Necessity.**

Notice of proposed sale, acquisition, lease, rental, merger, or consolidation and transfer of a certificate of convenience and necessity.

(1) Unless notice is waived by the executive director for good cause shown, mailed notice shall be given to customers of the water or sewer system to be sold, acquired, leased or rented or

merged or consolidated and other affected parties as determined by the executive director on the form prescribed by the executive director and shall include the following:

(A) the name and business address of the currently certificated retail public utility and the retail public utility which will acquire the facilities or certificate;

(B) a description of the service area of the retail public utility being transferred;

(C) the anticipated effect of the acquisition or transfer on the operation or the rates and services provided to customers being transferred; and

(D) a statement that persons who wish to comment upon the action sought should contact the designated representative of the executive director at the commission's mailing address within 30 days of mailing or publication of notice, whichever occurs later.

(2) The commission may require the applicant to publish notice once each week for two consecutive weeks in a newspaper of general circulation in the area in which the retail public utility being transferred is located and publication may be allowed in lieu of individual notice as required in this subsection.

(3) The applicant shall mail the notice to cities and neighboring retail public utilities providing the same utility service within two miles of the requested service area, and any city with an extraterritorial jurisdiction which overlaps the proposed service area.

**§291.115. Cessation of Operations by a Retail Public Utility.**

(a) - (i) (No change.)

This agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 25, 1997.

The commission adopts an amendment to §293.13, concerning Special Considerations for Water District Creation. The amendment is adopted without changes to the proposed text as published in the January 31, 1997, issue of the *Texas Register* (22 TexReg 1052) and will not be republished. The primary purpose of the adopted amendment is to consolidate requirements for transfers of permits, licenses, and other authorizations into a new 30 TAC Chapter 32. The amendment also will eliminate duplicative, confusing, and overly bureaucratic language.

#### EXPLANATION OF ADOPTED RULE

The adopted amendment will move existing transfer requirements from §293.13(b)(2) and place them into the new Chapter 32.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the rulemaking will not have direct or significant adverse effect on any Coastal Natural Resource Areas, nor will the rulemaking have a substantive effect on commission actions subject to the CMP.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for the rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule is to make it easier for the public to use agency rules, specifically the requirements for transfers of

permits, licenses, and other authorizations. The rule substantially advances this specific purpose by moving the existing requirements from their current location within the rules and placing them under a single chapter (Chapter 32). Promulgation and enforcement of this rule will not burden private real property which is the subject of the rule because there is no substantive change in existing requirements, only a change in organization of the rules.

#### HEARINGS AND COMMENTERS

A public hearing was held on March 3, 1997, in Austin. The comment period closed on March 3, 1997.

#### ANALYSIS OF TESTIMONY

No comments were provided.

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006, and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

**CHAPTER 293**  
**WATER DISTRICTS**  
**CREATION OF WATER DISTRICTS**

**§293.13**

**§293.13. Special Considerations for Water District Creation.**

(a) (No change.)

(b) The following considerations shall apply only with respect to special utility districts.

(1) The legal description accompanying the resolution requesting conversion of a water supply corporation, as defined in Texas Water Code, §65.001(10), to a special utility district shall conform to the legal description of the service area of the water supply corporation as such service area appears in the certificate of public convenience and necessity issued by the commission or by the Public Utility Commission of Texas to the water supply corporation except that any area of the water supply corporation that overlaps another entity's certificate of convenience and necessity must be excluded unless the other entity consents in writing to the inclusion of its dually certified area in the district.

(2) Notice of the public creation hearing and transfer of the certificate of convenience and necessity shall be provided as follows:

(A) published in a newspaper with general circulation in the county or counties in which the district is located once a week for two consecutive weeks. The first publication shall be at least 30 days before the date of the hearing;

(B) sent to each city which has extraterritorial jurisdiction in the county or counties in which the proposed district is located and which has formally requested notice of the creation of all districts in the county or counties in which the city's extraterritorial jurisdiction is located;

(C) mailed to customers of the water supply corporation and other affected parties at least 60 days prior to the date of the hearing including the following:

(i) name and business address of the district;

(ii) a description of the service area involved;

(iii) the anticipated effect of the conversion on the operation or the rates and services provided to customers; and

(iv) a statement that persons may attend the hearing and participate in the process.

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

Issued in Austin, Texas, on June 25, 1997.

The commission adopts the repeal of §§297.81-297.83, concerning Conveyances of Land and Water Rights. The repeals are adopted without changes to the proposed text as published in the January 31, 1997, issue of the *Texas Register* (22 TexReg 1052) and will not be republished. The primary purpose of the adopted repeals is to consolidate requirements for transfers of permits, licenses, and other authorizations into a new 30 TAC Chapter 32. The repeals also will eliminate duplicative, confusing, and overly bureaucratic language.

#### EXPLANATION OF ADOPTED RULES

The adopted repeals will remove §§297.81-297.83 and place them into the new Chapter 32.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for the rule under Texas Government, §2007.043. The following is a summary of that assessment. The specific purpose of the rule is to make it easier for the public to use agency rules, specifically the requirements for transfers of permits, licenses, and other authorizations. The rule substantially advances this specific purpose by moving the existing requirements from their current location within the rules and placing them under a single chapter (Chapter 32). Promulgation and enforcement of the rule will not burden private real property which is the subject of the rule because there is no substantive change in existing requirements, only a change in the organization of the rules.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the rulemaking will not have direct or significant adverse effect on any Coastal Natural Resource Areas, nor will the rulemaking have a substantive effect on commission actions subject to the CMP.

#### HEARINGS AND COMMENTERS

A public hearing was held on March 3, 1997, in Austin. The comment period closed on March 3, 1997.

#### ANALYSIS OF TESTIMONY

No comments were provided.

#### STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006, and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas

**CHAPTER 297**

**WATER RIGHTS, SUBSTANTIVE**

**SUBCHAPTER H : CONVEYANCES OF LAND AND WATER RIGHTS**

**§§297.81-297.83**

**§297.81. General Rules of Conveyance.**

**§297.82. Duty To Inform Executive Director.**

**§297.83. Recording Conveyances of Water Rights.**

This agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 25, 1997.

The commission adopts the repeal of §303.41, concerning Sale of Water Rights. The repeal is adopted without changes to the proposed text as published in the January 31, 1997, issue of the *Texas Register* (22 TexReg 1052) and will not be republished. The primary purpose of the adopted repeal is to consolidate requirements for transfers of permits, licenses, and other authorizations into a new 30 TAC Chapter 32. This repeal also will eliminate duplicative, confusing, and overly bureaucratic language.

#### EXPLANATION OF ADOPTED RULE

The adopted repeal will remove §303.41 and place the section into the new Chapter 32.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for the rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule is to make it easier for the public to use agency rules, specifically the requirements for transfers of permits, licenses, and other authorizations. The rule substantially advances this specific purpose by moving the existing requirements from their current location within the rules and placing them under a single chapter (Chapter 32). Promulgation and enforcement of this rule will not burden private real property which is the subject of the rules because there is no substantive change in existing requirements, only a change in the organization of the rules.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and

has determined that the rulemaking will not have direct or significant adverse effect on any Coastal Natural Resource Areas, nor will the rulemaking have a substantive effect on commission actions subject to the CMP.

#### HEARINGS AND COMMENTARY

A public hearing was held on March 3, 1997, in Austin. The comment period closed on March 3, 1997.

#### ANALYSIS OF TESTIMONY

No comments were provided.

#### STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006, and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

**CHAPTER 303**  
**OPERATION OF THE RIO GRANDE**  
**AMENDMENTS TO AND SALES OF WATER RIGHTS**

**§303.41**

**§303.41. Sale of Water Rights.**

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

Issued in Austin, Texas, on June 25, 1997.

The commission adopts the repeal of §304.43, concerning Watermaster Operations. The repeal is adopted without changes to the proposed text as published in the January 31, 1997, issue of the *Texas Register* (22 TexReg 1052) and will not be republished. The primary purpose of the adopted repeal is to consolidate requirements for transfers of permits, licenses, and other authorizations into a new 30 TAC Chapter 32. This repeal also will eliminate duplicative, confusing, and overly bureaucratic language.

#### EXPLANATION OF ADOPTED RULE

The adopted repeal will move §304.43 into the new Chapter 32.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for the rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule is to make it easier for the public to use agency rules, specifically the requirements for transfers of permits, licenses, and other authorizations. The rule substantially advances this specific purpose by moving the existing requirements from their current location within the rules and placing them under a single chapter (Chapter 32). Promulgation and enforcement of this rule will not burden private real property which is the subject of the rules because there is no substantive change in existing requirements, only a change in the organization of the rules.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the rulemaking will not have direct or significant adverse effect on any Coastal Natural Resource Areas, nor will the rulemaking have a substantive effect on commission actions subject to the CMP.

#### HEARINGS AND COMMENTERS

A public hearing was held on March 3, 1997, in Austin. The comment period closed on March 3, 1997.

#### ANALYSIS OF TESTIMONY

No comments were provided.

#### STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006, and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

**CHAPTER 304**  
**WATERMASTER OPERATIONS**  
**ADMINISTRATION**

**§304.43**

**§304.43. Ownership.**

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

Issued in Austin, Texas, on June 25, 1997.

The commission adopts amendments to §305.61 and §305.69, concerning Consolidated Permits. The amendments are adopted without changes to the proposed text as published in the January 31, 1997, issue of the *Texas Register* (22 TexReg 1052) and will not be republished. The primary purpose of the adopted amendments is to consolidate requirements for transfers of permits, licenses, and other authorizations into a new 30 TAC Chapter 32. These amendments also will eliminate duplicative, confusing, and overly bureaucratic language.

#### EXPLANATION OF ADOPTED RULES

The adopted amendments will move existing transfer requirements from §305.61 and §305.69 and place them into the new Chapter 32.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rules is to make it easier for the public to use agency rules, specifically the requirements for transfers of permits, licenses, and other authorizations. The rules substantially advance this specific purpose by moving the existing requirements from their current location within the rules and placing them under a single chapter (Chapter 32). Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because there is no substantive change in existing requirements, only a change in the organization of the rules.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the rulemaking will not have direct or significant adverse effect on any Coastal Natural Resource Areas, nor will the rulemaking have a substantive effect on commission actions subject to the CMP.

#### HEARINGS AND COMMENTERS

A public hearing was held on March 3, 1997, in Austin. The comment period closed on March 3, 1997.

#### ANALYSIS OF TESTIMONY

No comments were provided.

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006, and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

**CHAPTER 305**

**CONSOLIDATED PERMITS**

**SUBCHAPTER D : AMENDMENTS, MODIFICATIONS, RENEWALS, TRANSFERS,**

**CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS**

**§305.61, §305.69**

**§305.61. Applicability.**

The provisions of this subchapter set forth the standards and requirements for applications and actions concerning amendments, modifications, renewals, corrections, revocations, and suspensions of permits.

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

(a) - (h) (No change.)

(i) Appendix I. The following appendix will be used for the purposes of this subchapter which relate to solid waste permit modification at the request of the permittee. **Figure: 30 TAC §305.69(i)**

**Figure: 30 TAC §305.69(i)**

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 <sup>1</sup>
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<sup>1</sup>
- 7. Changes in ownership or operational control of a facility, provided the  
procedures of §32.103 are followed . . . . . 1<sup>1</sup>
- 8. Six months or less extension of the construction period time limit applicable  
to commercial hazardous waste management units pursuant to  
§305.149(b)(2) or §305.149(b)(4) . . . . . 2
- 9. Greater than six-month extension of the commercial hazardous waste management  
unit construction period time limit pursuant to §305.149(b)(3) or §305.149(b)(4)..3
- 10. Any extension pursuant to §305.149(b)(3) of a construction period time limit  
for commercial hazardous waste management units which has been previously  
authorized under§305.149(b)(2) . . . . . 3

B. - M. (No change.)

This agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 25, 1997.

The commission adopts the repeal of §305.64 and §305.97, concerning Consolidated Permits. The repeals are adopted without changes to the proposed text as published in the January 31, 1997, issue of the *Texas Register* (22 TexReg 1052) and will not be republished. The primary purpose of the adopted repeals is to consolidate requirements for transfers of permits, licenses, and other authorizations into a new 30 TAC Chapter 32. These repeals also will eliminate duplicative, confusing, and overly bureaucratic language.

#### EXPLANATION OF ADOPTED RULES

The adopted repeals will cut existing transfer requirements from §305.64 and §305.97 and place them into the new Chapter 32 and into the new 30 TAC Chapter 70.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rules is to make it easier for the public to use agency rules, specifically the requirements for transfers of permits, licenses, and other authorizations. The rules substantially advance this specific purpose by moving the existing requirements from their current location within the rules and placing them under a single chapter (Chapter 32). Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because there is no substantive change in existing requirements, only a change in the organization of the rules.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the rulemaking will not have direct or significant adverse effect on any Coastal Natural Resource Areas, nor will the rulemaking have a substantive effect on commission actions subject to the CMP.

#### HEARINGS AND COMMENTERS

A public hearing was held on March 3, 1997, in Austin. The comment period closed on March 3, 1997.

#### ANALYSIS OF TESTIMONY

No comments were provided.

#### STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006, and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

**SUBCHAPTER D : AMENDMENTS, MODIFICATIONS, RENEWALS, TRANSFERS,  
CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS**

**§305.64**

**§305.64. Transfer of Permits.**

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

Issued in Austin, Texas, on June 25, 1997.

**SUBCHAPTER E : ACTIONS, NOTICE, AND HEARING**

**§305.97**

The repeal is adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006, and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

**§305.97. Action on Application for Transfer.**

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

Issued in Austin, Texas, on June 25, 1997.

The commission adopts amendments to §312.10 and §312.11, concerning Sludge Use, Disposal, and Transportation. The amendments are adopted without changes to the proposed text as published in the January 31, 1997, issue of the *Texas Register* (22 TexReg 1052) and will not be republished. The primary purpose of the adopted amendments is to consolidate requirements for transfers of permits, licenses, and other authorizations into a new 30 TAC Chapter 32. These amendments also will eliminate duplicative, confusing, and overly bureaucratic language.

#### EXPLANATION OF ADOPTED RULES

The adopted amendments will delete §312.10(j) and §312.11(d) and place them into the new Chapter 32.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rules is to make it easier for the public to use agency rules, specifically the requirements for transfers of permits, licenses, and other authorizations. The rules substantially advance this specific purpose by moving the existing requirements from their current location within the rules and placing them under a single chapter (Chapter 32). Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because there is no substantive change in existing requirements, only a change in the organization of the rules.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the rulemaking will not have direct or significant adverse effect on any Coastal Natural Resource Areas, nor will the rulemaking have a substantive effect on commission actions subject to the CMP.

#### HEARINGS AND COMMENTERS

A public hearing was held on March 3, 1997, in Austin. The comment period closed on March 3, 1997.

#### ANALYSIS OF TESTIMONY

No comments were provided.

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006, and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

**CHAPTER 312**

**SLUDGE USE, DISPOSAL, AND TRANSPORTATION**

**SUBCHAPTER A : GENERAL PROVISIONS**

**§312.10, §312.11**

**§312.10. Permit and Registration Applications Processing.**

(a) - (i) (No change.)

(j) If a registration for a site is canceled, a complete application for registration must be submitted in order to re-register the site. If the application is approved, the site will be re-registered under the same site registration number.

(k) For purposes of this chapter and except as provided in subsection (l) of this section, a major amendment is an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit or registration or a substantive change in the information provided in an application for registration, regarding sewage sludge. Changes which are not considered major include typographical errors, changes which result in more stringent monitoring requirements, changes in site ownership, changes in site operator, or similar administrative information.

(l) Upon the effective date of this chapter, the commission will process as a minor amendment a request by an existing wastewater disposal permittee, a sewage sludge registrant, or by a sewage sludge permittee to change any substantive term, provision, requirement, or a limiting parameter in a permit or registration which was due to prior regulations of the commission, when it is no longer a requirement of this chapter. Notice requirements of §312.13 of this title (relating to Actions and Notice) are not applicable to minor amendments.

**§312.11. Permits.**

(a) - (c) (No change.)

(d) Any person who is required to obtain a permit, or who requests an amendment, modification, or renewal of a permit to dispose of or incinerate sewage sludge is subject to the standards and requirements for applications and actions concerning amendments, modifications, renewals, transfers, corrections, revocations, and suspensions of permits, as set forth in §305.62 of this title (relating to Amendment), §305.63 of this title (relating to Renewal), Chapter 32 of this title (relating to Transfer of Permits, Licenses, and Other Authorizations), §305.65 of this title (relating to Corrections of Permits), §305.66 of this title (relating to Permit Denial, Suspension, and Revocation), §305.67 of this title (relating to Revocation and Suspension upon Request or Consent), and §305.68 of this title (relating to Action and Notice on Petition for Revocation or Suspension).

(e) (No change.)

This agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 25, 1997.

The commission adopts amendments to §§321.34, 321.183, and 321.184, concerning Control of Certain Activities by Rule. The amendments are adopted without changes to the proposed text as published in the January 31, 1997, issue of the *Texas Register* (22 TexReg 1052) and will not be republished. The primary purpose of the amendments is to consolidate requirements for transfers of permits, licenses, and other authorizations into a new 30 TAC Chapter 32. The amendments also will eliminate duplicative, confusing, and overly bureaucratic language.

#### EXPLANATION OF ADOPTED RULES

The adopted amendments will change references in §§321.34(a), 321.183(i), and 321.184(e) to reflect the new Chapter 32, which consolidates requirements for transfers of permits, licenses, and other authorizations.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rules is to make it easier for the public to use agency rules, specifically the requirements for transfers of permits, licenses, and other authorizations. The rules substantially advance this specific purpose by moving the existing requirements from their current location within the rules and placing them under a single chapter (Chapter 32). Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because there is no substantive change in existing requirements, only a change in the organization of the rules.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the rulemaking will not have direct or significant adverse effect on any Coastal Natural Resource Areas, nor will the rulemaking have a substantive effect on commission actions subject to the CMP.

#### HEARINGS AND COMMENTERS

A public hearing was held on March 3, 1997, in Austin. The comment period closed on March 3, 1997.

#### ANALYSIS OF TESTIMONY

No comments were provided.

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006, and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

**CHAPTER 321**  
**CONTROL OF CERTAIN ACTIVITIES BY RULE**  
**SUBCHAPTER B : COMMERCIAL LIVESTOCK AND**  
**POULTRY PRODUCTION OPERATIONS**

**§321.34**

**§321.34. Procedures for Making Application for a Permit.**

(a) Any person whose feedlot operation does not conform to the criteria for regulation by rule set forth under §321.33 of this title (relating to Applicability) shall apply for a permit. Application for a permit shall be made on forms provided by the executive director. The applicant shall provide such additional information in support of the application as may be necessary for an adequate technical review of the application. At a minimum, the application shall demonstrate compliance with the technical requirements set forth in §321.35 of this title (relating to Surface Water Protection), §321.36 of this title (relating to Ground Water Protection), §321.37 of this title (relating to Feedlot Waste Utilization or Disposal by Land Spreading), §321.38 of this title (relating to Other Waste Disposal Methods) and §321.39 of this title (relating to Pesticide Use), or other equivalent technical requirements. Applicants shall comply with §§305.41-305.45 of this title (relating to Applicability; Application Required; Who Applies; Signatories to Applications; and Contents of Application for Permit). Each applicant shall pay an application fee as required by §305.503 of this title (relating to Application Fees). An annual waste treatment inspection fee is also required of each permittee as

required by §305.503 of this title (relating to Fee Assessments). Except as provided in subsections (b)-(e) of this section, each permittee shall comply with Chapter 32 of this title (relating to Transfer of Permits, Licenses, and Other Authorizations) and §§305.61-305.64 and 305.66-305.68 of this title (relating to Applicability, Amendment, Renewal, Corrections of Permits; Permit Denial, Suspension, and Revocation; Revocation and Suspension Upon Request or Consent; and Action and Notice on Petition for Revocation or Suspension). Each permittee shall comply with §305.125 of this title (relating to Standard Permit Conditions). Permits authorized under this subchapter may be effective for the life of the project as determined by §305.127(1)(C) of this title (relating to Conditions to be Determined for Individuals Permits).

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

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

Issued in Austin, Texas, on June 25, 1997.

## **SUBCHAPTER K : CONCENTRATED ANIMAL FEEDING OPERATIONS**

### **§321.183, §321.184**

The amendments are adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006, and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

#### **§321.183. Applicability.**

(a) - (h) (No change.)

(i) Any CAFO which has existing authority under the TCAA does not have to meet the air quality criteria of this subchapter. Pursuant to the TCAA, §382.051, any new CAFO which meets all of the requirements of this subchapter is hereby entitled to an air quality standard permit authorization under this subchapter in lieu of the requirement to obtain an air quality permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification). Those CAFOs which would otherwise be required to obtain an air quality permit under Chapter 116 of this title, which cannot satisfy all of the requirements of this subchapter shall apply for and obtain an air quality permit pursuant to Chapter 116 of this title in addition to any authorization required under this

subchapter. Those animal feeding operations which are not required to obtain authorization under this subchapter may be subject to requirements under Chapter 116 of this title. Any change in conditions such that a person is no longer eligible for authorization under this section requires authorization under Chapter 116 of this title. No person may concurrently hold an air quality permit issued under Chapter 116 of this title and an authorization with air quality provisions under this subchapter for the same site. Any application for a permit renewal, amendment, or transfer for any permit issued under the TCAA shall be reviewed and/or issued under the provisions of Chapter 116 of this title and Chapter 32 of this title (relating to Transfer of Permits, Licenses, and Other Authorizations).

(j) - (l) (No change.)

**§321.184. Application Requirements.**

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

(e) Each permittee shall comply with Chapter 32 of this title (relating to Transfer of Permits, Licenses, and Other Authorizations), §§305.61, 305.64, and 305.66-305.68 of this title (relating to Applicability, Corrections of Permits, Revocation and Suspension, Revocation and Suspension Upon Request or Consent, Action and Notice on Petition for Revocation or Suspension).

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

This agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 25, 1997.

The commission adopts amendments to §§330.63, 330.812, 330.835, 330.843, 330.852, and 330.855, concerning Municipal Solid Waste. The amendments are adopted without changes to the proposed text as published in the January 31, 1997, issue of the *Texas Register* (22 TexReg 1052) and will not be republished. The primary purpose of the adopted amendments is to consolidate requirements for transfers of permits, licenses, and other authorizations into a new 30 TAC Chapter 32. These amendments also will eliminate duplicative, confusing, and overly bureaucratic language.

#### EXPLANATION OF ADOPTED RULES

The adopted amendments move existing transfer requirements from §§330.63, 330.812, 330.835, 330.843, 330.852, and 330.855 and place them into the new Chapter 32.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rules is to make it easier for the public to use agency rules, specifically the requirements for transfers of permits, licenses, and other authorizations. The rules substantially advance this specific purpose by moving the existing requirements from their current location within the rules and placing them under a single chapter (Chapter 32). Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because there is no substantial change in existing requirements, only a change in the organization of the rules.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the rulemaking will not have direct or significant adverse effect on any Coastal Natural Resource Areas, nor will the rulemaking have a substantive effect on commission actions subject to the CMP.

#### HEARINGS AND COMMENTERS

A public hearing was held on March 3, 1997, in Austin. The comment period closed on March 3, 1997.

#### ANALYSIS OF TESTIMONY

No comments were provided.

#### STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006, and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

**CHAPTER 330**  
**MUNICIPAL SOLID WASTE**  
**SUBCHAPTER E : PERMIT PROCEDURES**

**§330.63**

**§330.63. Duration and Limits of Permits.**

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

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

Issued in Austin, Texas, on June 25, 1997.

**SUBCHAPTER R : MANAGEMENT OF WHOLE USED OR SCRAP TIRES**

**§§330.812, 330.835, 330.843, 330.852, 330.855**

The amendments are adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006, and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

**§330.812. Transporter Registration.**

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

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

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

(A) failure to maintain a complete and accurate record of shipments of tires;

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

(C) altering waste shipping documents or shipment records;

(D) delivery of whole used or scrap tires to a facility not registered to handle the tires;

(E) failure to comply with any rule or order issued by the commission pursuant to the requirements of this chapter;

(F) failure to submit the annual report required in §330.815(c)(3) of this title (relating to Transporter Record Keeping);

(G) failure to pay registration fees pursuant to §330.817 of this title (relating to Transporter Fees);

(H) illegal dumping of whole used or scrap tires;

(I) collection or transportation of whole used or scrap tires without registration as required in this section;

(J) failure to notify the TNRCC of any change in transporter registration information required in subsection (d) of this section;

(K) illegally charging a transportation fee to a wholesale or retail dealer of tires; or

(L) illegally transporting out-of-state scrap tires using a commission-approved manifest or transporter number.

(2) A transporter registration shall be suspended for a period of one year; however, depending upon the seriousness of the offense(s), the time of suspension may be increased or decreased. A transporter registration is revoked automatically upon a second suspension. If the registration is suspended or revoked, a transporter shall not transport whole used or scrap tires or shredded tire pieces regulated under this subchapter.

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

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

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

(B) An opportunity for a formal hearing on the denial of registration or renewal of registration may be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of denial has been sent from the executive director to the address listed on the application. If the registration is denied, a person shall not collect or transport whole used or scrap tires or shredded tire pieces.

(C) The formal hearing under this paragraph shall be a contested case in accordance with the requirements of the Administrative Procedure [Procedures] Act, Texas Government Code Annotated, §2001 et seq. (Vernon 1993) and the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361 (Vernon 1993) and the rules of the commission.

(f) Transport vehicles owned and operated by municipalities, counties, or other governmental entities or agencies which are used to transport whole used or scrap tires to a waste tire facility, a waste tire storage facility, a waste tire recycling facility, or a waste tire energy recovery facility shall be exempt from registration under this section; however, the load of whole used or scrap tires shall be manifested. To properly manifest these tires, the generator portion of the manifest form should be completed showing the governmental entity's generator number, the number of tires hauled (separated

by passenger and truck tires), the date of transportation, and physical location where the tires were removed from and to. The transporter portion of the manifest form should be completed as described in §330.815(a) of this title (relating to Transporter Record Keeping), using the governmental entity's generator number as the registration number.

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

(a) Registration requirements.

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

(3) A Type VIII-R registration shall expire 60 months from the date of issuance unless the storage site changes ownership prior to that time. Registrations shall be renewed prior to the expiration date. Applications for renewal shall be submitted at least 60 days prior to the expiration date of the Type VIII-R storage facility registration.

(4) (No change.)

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

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

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

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

(iii) altering any record maintained or received by the registrant;

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

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

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

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

(viii) altering any documentation used to substantiate a request for reimbursement from the WTRF;

(ix) failure to deliver scrap tires, tire pieces or shredded tire pieces to another registered waste tire storage site, registered waste tire energy recovery facility or registered waste tire recycling facility or other in-state or out-of-state facility approved by the executive director within the time frame specified in §330.832(b)(2) of this title (relating to Waste Tire Storage Facility Classification).

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

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

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

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

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

(iii) the formal hearing under this paragraph shall be in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, §2001 (Vernon 1993) and the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated Chapter 361 (Vernon 1993) and the rules of the commission.

(E) If the registration is suspended or revoked, and a formal hearing has been timely requested by the registrant the Type VIII-R storage facility shall not accept for storage additional

shredded tire pieces, whole used or scrap tires or scrap tire pieces regulated under this subchapter until a final decision has been made by the commission as result of the hearing.

(F) If the revocation of the Type VIII-R storage facility registration is approved by the commission, the owner or operator of the facility shall remove all shredded tire pieces and whole used or scrap tires and scrap tire pieces stored at the facility within 60 days from the date of suspension or revocation in accordance with the requirements contained in this subchapter.

(6) Preparation and submission of an application for a Type VIII-R storage facility shall be in accordance with the following procedures:

(A) The application for registration shall be prepared and signed by the applicant on a form to be provided by the executive director. The application shall include information necessary for the executive director to make an evaluation of the proposed operation to ensure that the facility is located, designed, and operated so that the health, welfare, and physical property of the public as well as the environment and endangered species are protected. Failure to submit complete information as required by these sections shall result in the return of the application to the applicant without further action by the executive director. The submission of false information shall constitute grounds for denial of the initial or renewal application or suspension or revocation of the current Type VIII-R storage facility registration.

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

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

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

(ii) the legal name and address of landowner where the Type VIII-R storage facility will be or is currently located;

(iii) the current status of the Type VIII-R storage facility; (i.e., proposed or existing);

(iv) the specific location of the Type VIII-R storage facility by street address, if within the city limits, or distance and direction from a city corporate limits or road intersection. The Type VIII-R storage facility location shall be further described by giving the direction (using compass headings as N, NE, E, etc.) and distance measured perpendicularly (in feet or miles),

unless otherwise noted, from each Type VIII-R storage facility boundary to a known physical feature (such as a road, highway, canal, creek, etc.);

(v) the location of the Type VIII-R storage facility by county, or extraterritorial jurisdiction of a city;

(vi) the estimated number of whole used or scrap tires or shredded tire pieces to be received daily;

(vii) the size of the Type VIII-R storage facility in acres;

(viii) the maximum number of whole used or scrap tires or shredded tire pieces to be stored at the Type VIII-R storage facility;

(ix) the intended purpose of the whole used or scrap tires or shredded tires pieces stored at the Type VIII-R storage facility;

(x) the time period that the whole used or scrap tires or shredded tire pieces will be stored at the Type VIII-R storage facility (not to be in excess of 12 months unless written authorization for a longer storage period has been granted by the executive director);

(xi) the storage method (tire pile on the ground, inside a building or enclosure, totally enclosed and lockable containers);

(xii) a topographic map which shall be a United States Geological Survey 7-1/2 minute quadrangle sheet or equivalent, encompassing the area of the site and showing the location of area streams (particularly those entering and leaving the site), and marked to show the Type VIII-R storage facility boundaries, and roadway access. These maps may be obtained at a nominal cost from: Branch of Distribution, United States Geological Survey Federal Center, Denver, Colorado 80225;

(xiii) a general location map, which shall be all or a portion of a half-scale county map, prepared by the Texas Department of Transportation, annotated as necessary to show the location of the Type VIII-R storage facility; prevailing wind direction; residences, cemeteries, and recreational areas within a one mile radius of the Type VIII-R storage facility and location and type of surface of all roads within a one mile radius which will be used for entering or leaving the Type VIII-R storage facility. If only a portion of the map sheet is used, the portion shall include scale, date, north arrow, and two or more latitudes and longitudes. These maps may be obtained at a nominal cost from the nearest District Highway Engineer Office or by writing to: Texas Department of Transportation, Attention: Transportation Planning Division (D-10), P. O. Box 5051, West Austin Station, Austin, Texas 78763-5051;

(xiv) a statement from the property owner shall be submitted on a form prepared by the executive director when the applicant is not a city, county, state agency, federal agency, or other governmental entity and is not the owner of record of the land described in the application, or does not have an option to buy the land. The statement shall be witnessed and notarized;

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

(xvi) a drainage plan showing drainage flow throughout the Type VIII-R storage facility area, specifically the potential for contaminated storm water run-off from storage piles, or wastewater run-off from areas of the waste tire storage facility where equipment is operated or stored; locations of streams; and any other important drainage feature of the facility. Any additional surface drainage controls that are necessary to ensure facility containment and treatment of potentially contaminated storm water or wastewater shall be designed by a registered professional engineer. If, during review of the application or after issuance of the registration, a detailed drainage plan is determined to be required, then it shall be prepared, signed, and sealed by a registered professional engineer within the time period requested by the executive director;

(xvii) a legal description of the Type VIII-R storage facility consisting of the official metes and bounds description including the volume and page number of the deed record, or if platted property, the book and page number of the plat record of only that acreage encompassed in the application;

(xviii) a Type VIII-R storage facility operating plan containing information outlined in subsection (c) of this section;

(xix) an applicant's statement and signature provided by the applicant, or the authorized representative empowered to make commitments for the applicant, that he/she is familiar with the application and all supporting data and is aware of all commitments represented in the application and that he/she is also familiar with all pertinent requirements in these regulations and he/she agrees to develop and operate the Type VIII-R storage facility in accordance with the application, the sections in this subchapter, and any special provisions that may be imposed by the executive director; and

(xx) a Type VIII-R storage facility fire plan containing information outlined in subsection (c)(3) of this section.

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

**§330.843. Waste Tire Facility Registration.**

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

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

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

(A) failure to maintain complete and accurate records pursuant to §330.845 of this title (relating to Waste Tire Facility Record Keeping);

(B) failure to maintain equipment in safe working order;

(C) altering any record maintained or received by the registrant;

(D) delivery of shredded tire pieces to a facility not registered or permitted by the commission to handle the material;

(E) failure to comply with any rule or order issued by the commission pursuant to the requirements of this chapter;

(F) failure to submit annual reports as required by §330.845(d) of this title (relating to Waste Tire Facility Record Keeping);

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

(H) failure to operate a registered waste tire processing facility within 180 days of receipt of registration from the executive director, or cessation of the processing operation for longer than 180 days after commencing processing of scrap tires at the facility;

(I) collection and/or shredding of whole used or scrap tires without registration as required in this section;

(J) failure to deliver shredded tire pieces to a registered waste tire facility or a recycling, reuse, or energy recovery facility as required in §330.841(c) of this title (relating to Waste Tire Facility Processors of Scrap Tires);

(K) altering any request for reimbursement from the WTRF;

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

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

(N) knowingly accepted out-of-state scrap tires on a manifest using a commission approved transporter or generator number;

(O) failure of a new or expanded waste tire facility, approved after September 1, 1995, to provide certification that the waste tire facility is capable of collecting and transporting waste tires from registered generators in rural counties of the state at the request of the commission during emergency periods as defined by the commission;

(P) failure of a new or expanded waste tire facility, approved after September 1, 1995, to collect waste tires from generators located in rural counties during commission declared emergency periods; or

(Q) failure to have a binding agreement with authorized legitimate end users.

(2) A waste tire facility registration shall be suspended for a period of one year; however, depending upon the seriousness of the offense(s), the time of suspension may be increased or decreased. A waste tire facility registration is revoked automatically upon a second suspension. If the registration is suspended or revoked, a waste tire facility shall not shred any whole used or scrap tires regulated under this subchapter.

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

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

(A) An opportunity for a formal hearing on the suspension or revocation of registration may be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of proposed suspension or revocation or denial of the initial or renewal registration has been sent from the executive director to the last known address of the applicant.

(B) An opportunity for a formal hearing on the denial of initial registration or renewal of registration may be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of denial of initial or renewal registration has been sent from the executive director to the last known address listed on the application. If the registration is denied, a person shall not process whole used or scrap tires regulated under this subchapter.

(C) The formal hearing under this paragraph shall be in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, §2001 (Vernon 1993), the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361 (Vernon 1993), and the rules of the commission.

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

(h) Effective January 1, 1996, all existing, new, amended, and renewal waste tire facility registration applications shall contain requirements for the applicant to identify the entity registered pursuant to §330.852 of this title (relating to Requirements for Registration for a Waste Tire Recycling Facility) or §330.855 of this title (relating to Requirements for Registration for a Waste Tire Energy Recovery Facility) that intends to accept for recycling or energy recovery, the waste tire facility's shredded tire pieces. The executive director shall only reimburse a waste tire facility for those shredded tire pieces that have been delivered to, or have been contracted for delivery to a registered waste tire recycling facility or waste tire energy recovery facility or other entity that has been approved as a legitimate end user by the executive director.

(i) Beginning January 1, 1996, the commission may reimburse a waste tire facility for scrap tires shredded only if in accordance with one of the following options:

(1) The waste tire facility has a binding agreement to deliver, within 180 days of reimbursement, 100% of the shredded scrap tires (including process wire, wire bead and fluff) to a registered waste tire recycling facility, waste tire energy recovery facility, or other entity that has been approved as a legitimate end user by the executive director. The waste tire facility shall submit an affidavit to the executive director which confirms that the contract it has submitted to the executive director with the registered waste tire recycling facility, waste tire energy recovery facility, or entity that has been approved as a legitimate end user by the executive director, is a binding agreement as required by and described in Texas Health and Safety Code §361.477(g) and applicable Texas law. This affidavit shall also affirm that the contract consists of terms that are certain as to quantity, duration, and parties. Further, the affidavit shall affirm that the parties agree to the terms of the agreement and that it is a valid and enforceable agreement. The affidavit should be notarized and signed by someone who has authority to sign contracts for the waste tire facility. The commission shall suspend reimbursements to a waste tire facility that fails to deliver the tire shreds (including process wire, wire bead and fluff) to a legitimate end user before the 181st day after the date of reimbursement unless the executive director determines that the failure to deliver was caused by an act of God or by unforeseen business events. The commission may not resume suspended reimbursements until the processor makes all delinquent deliveries.

(2) The waste tire facility provides to the executive director proof of delivery of the shreds to an authorized end user.

(j) For all shreds reimbursed after January 1, 1996, the waste tire facility shall report monthly to the executive director the date of reimbursement for each shredded tire and whether, as of the date of the monthly report, the shredded tire was delivered to a registered waste tire recycling facility, waste tire energy recovery facility, or other entity that has been approved as a legitimate end user by the executive director. The end use delivery information shall be submitted on a form provided by the executive director and shall be applied to the end use credit system pursuant to §330.884 of the title (relating to WTRF End Use Credit System).

(k) Registration fees.

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

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

**§330.852. Requirements for Registration for a Waste Tire Recycling Facility.**

(a) Registration requirements.

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

(3) A waste tire recycling registration shall expire 60 months from the date of issuance unless the waste tire recycling facility changes ownership prior to that time.

(4) - (7) (No change.)

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

**§330.855. Requirements for Registration for a Waste Tire Energy Recovery Facility.**

(a) Registration requirements for a waste tire energy recovery facility.

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

(3) A waste tire energy recovery registration shall expire 60 months from the date of issuance unless the facility changes ownership prior to that time.

(4) - (5) (No change.)

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

This agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on June 25, 1997.