Texas Register

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Texas Register

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How to Use the Texas Register

Information Available: The 10 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 19 (1994) is cited as follows: 19 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "19 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 19 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Texas Administrative Code

The *Texas Administrative Code* (*TAC*) is the official compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*. West Publishing Company, the official publisher of the *TAC*, releases cumulative supplements to each printed volume of the *TAC* twice each year.

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency. The *Official TAC* also is available on WESTLAW, West's computerized legal research service, in the TX-ADC database.

To purchase printed volumes of the *TAC* or to inquire about WESTLAW access to the *TAC* call West: **1-800-328-9352.**

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 22, April 16, July 13, and October 12, 1993). In its second issue each month the *Texas Register* contains a cumulative *Table of TAC Titles Affected* for the preceding month. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

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

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

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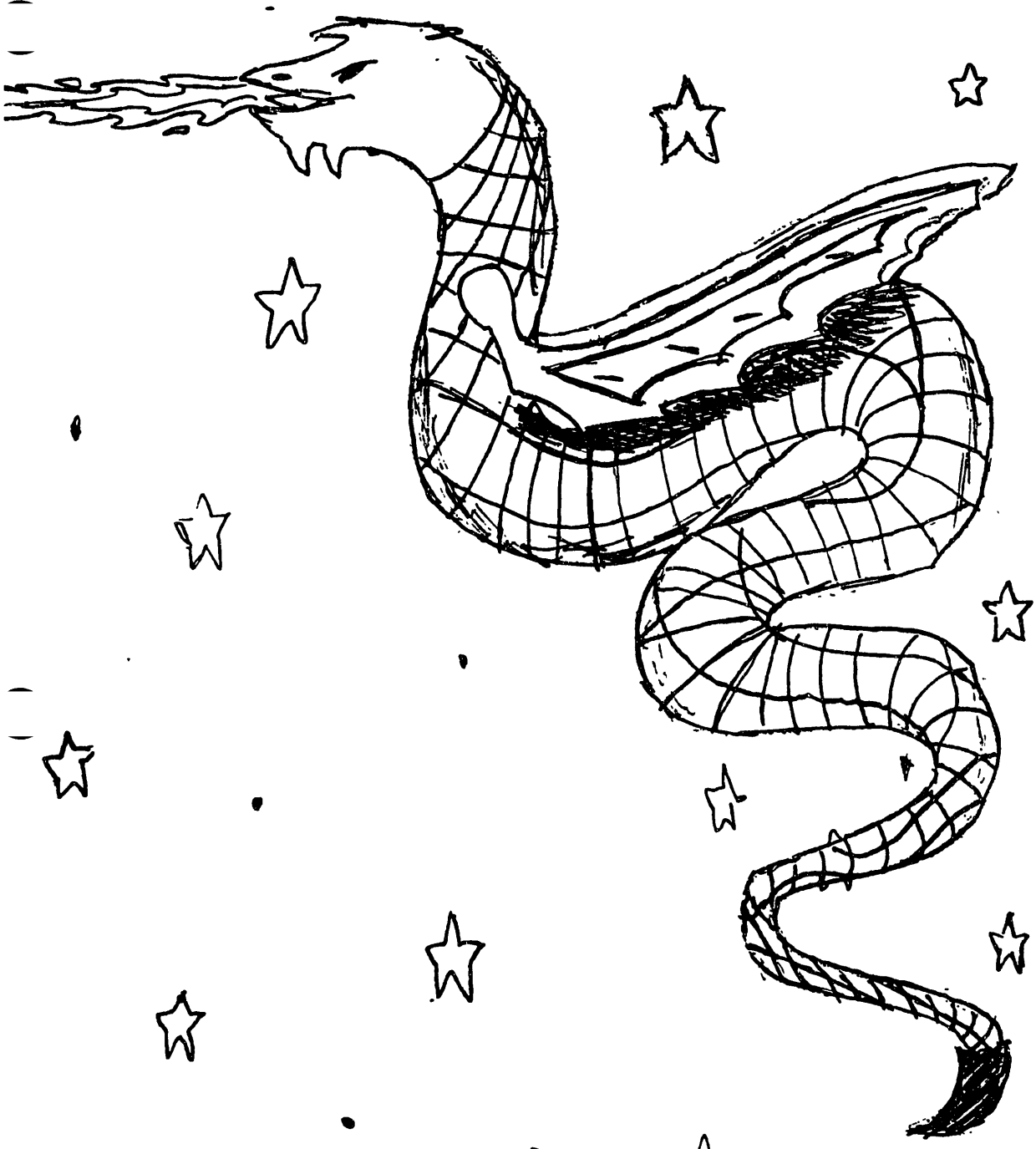

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By: Shawn Fisher

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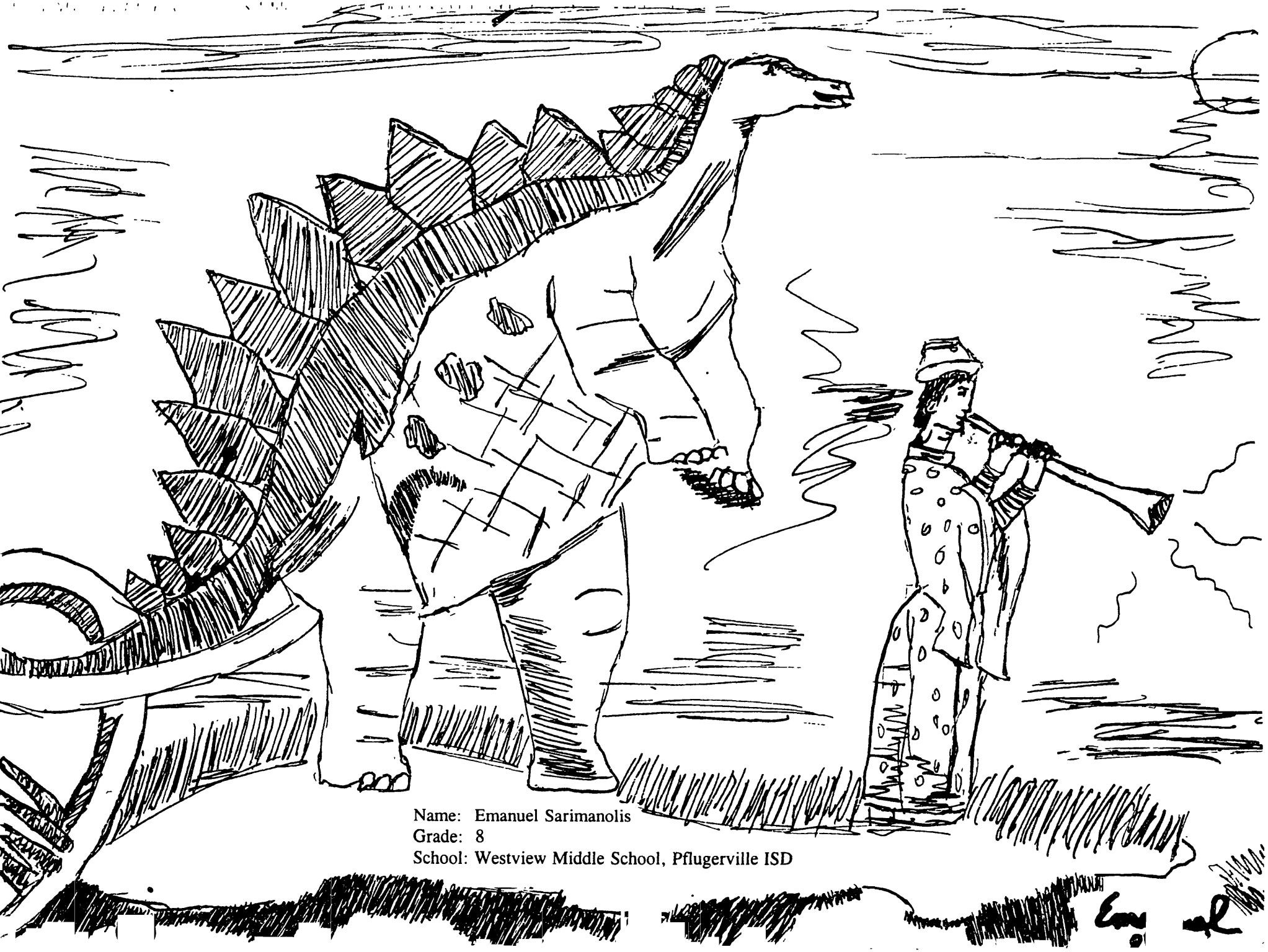

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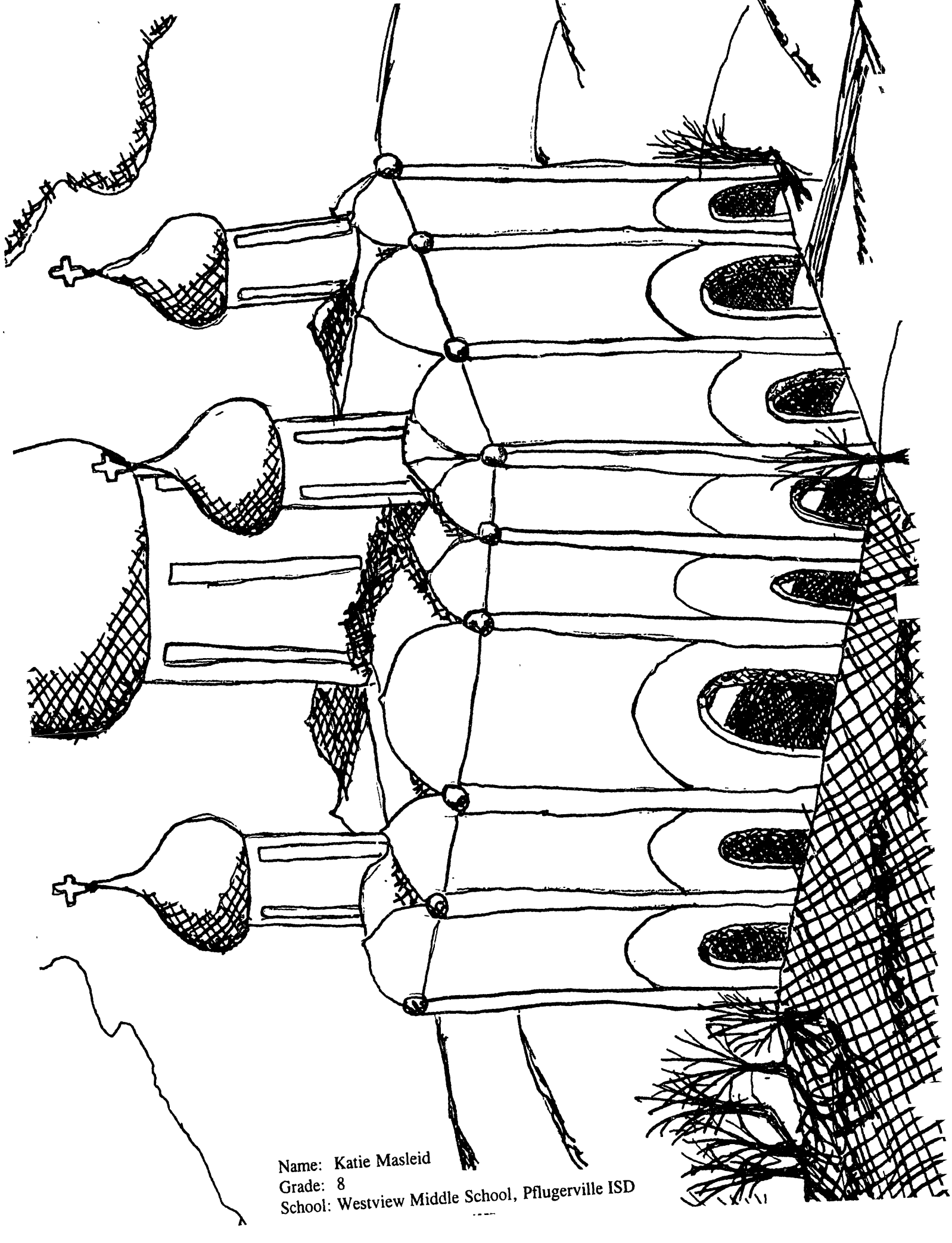

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THE GOVERNOR

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

Appointments Made December 13, 1993

To be a member of the **Governor's Drug Policy Advisory Board** for a term at the pleasure of the Governor: Mike Scott, Assistant Chief of Criminal Law Enforcement, Texas Department of Public Safety, 5805 North Lamar Boulevard, Austin, Texas 78752. Chief Scott will be replacing Ricky Fox of Cleveland, whose term expired.

Appointments Made December 15, 1993

To be **Chief Justice of the Court of Appeals, Eighth Court of Appeals District** until the next General Election and until his successor shall be duly elected and qualified, effective January 1, 1994: Justice Richard Barajas, 7140 Majorca, El Paso, Texas 79912. Justice Barajas will be replacing Chief Justice Max N. Osborn of El Paso, who resigned.

To be **Chief Justice of the Court of Appeals, Eighth Court of Appeals District** until the next General Election and until his successor shall be duly elected and qualified, effective January 1, 1994: Paul McCollum, 40 Via Playa, Odessa, Texas 79762. Mr. McCollum will be replacing Justice Richard Barajas of El Paso, who was elevated to the position of Chief Justice.

Appointments Made December 16, 1993

To be vice chairman of the **Texas Commission on Children and Youth:** Representative Allen Hightower of Huntsville, for a term at the pleasure of the Governor. This appointment is being made pursuant to Senate Bill Number 155, 73rd Legislature.

To be chairman of the **Texas Commission on Children and Youth:** Senator Jim Turner of Crockett for a term at the pleasure of the Governor. This appointment is being made pursuant to Senate Bill Number 155, 73rd Legislature.

Appointments Made December 17, 1993

To be a member of the **Executive Committee of the Center for Rural Health Initiatives** for a term to expire August 31, 1995: A. Earl Mgebroff, M.D., 711 Coke Street, Yoakum, Texas 77995. Dr. Mgebroff will be filling the unexpired term of Dr. Jim Bob Brame of Eldorado, who resigned.

Issued in Austin, Texas, on December 22, 1993.

TRD-9333912 Ann W. Richards
Governor of Texas

♦ ♦ ♦

Appointments Made December 21, 1993

To be a member of the **Texas State Board of Physical Therapy Examiners** for a term to expire January 31, 1999: Martin Infante, 1609 Wildrose Circle, Laredo, Texas 78041. Mr. Infante will be replacing Travis Cox of San Antonio, whose term expired.

To be a member of the **Texas State Board of Physical Therapy Examiners** for a term to expire January 31, 1999: Theodis Ware, 7708 Marlborough Drive West, Fort Worth, Texas 76134-4308. Mr. Ware will be replacing Russell J. Baird of Wharton, whose term expired.

To be a member of the **Texas State Board of Physical Therapy Examiners** for a term to expire January 31, 1999: Penny Butler Patterson, 1225 Hampton Lane, Tyler, Texas 75501. Ms. Patterson will be replacing Henry Laird of Amarillo, whose term expired.

Appointments Made December 22, 1993

To serve as **Judge of the 303rd Judicial District Court in Dallas** until the next General Election and until her successor shall be duly elected and qualified, effective January 9, 1994: Paula Larsen, 732 Kessler Lake Drive, Dallas, Texas 75208. Judge Larsen will be replacing Judge Sue Lykes of Dallas, who resigned.

To be a members of the **Selected Committee of Rate and Policy Form Regulation** for terms to expire December 31, 1994: Debbie D. Branson, 6920 Turtle Creek Boulevard, Dallas, Texas 75205; Jesse D. Oliver, 2227 Millermore, Dallas, Texas 75216; and Alice H. Gannon, 6423 Longhouse Court, San Antonio, Texas 78238-1525. These appointments are being made to new positions pursuant to House Bill 1461, 73rd Legislature.

To be Presiding Officer of the **Select Committee on Rate and Policy Form Regulation** for a term at the pleasure of the Governor: This appointment is being made pursuant to House Bill 1461, 73rd Legislature.

Issued in Austin, Texas, on December 27, 1993.

TRD-9333974 Ann W Richards
Governor of Texas

♦ ♦ ♦

Contour Drawing 9-7-93 Girl Writing

Name: Hooper Kanta
Grade: 12
School: Skyline High School, Dallas ISD

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

Part XIII. Texas Incentive and Productivity Commission

Chapter 271. Procedural Rules

• 1 TAC §271.5

The Texas Incentive and Productivity Commission proposes new §271.5, concerning charges for copies of public records. The new section provides a framework within which the Commission may recover the cost to provide copies of open records to persons requesting the copies. The section also sets forth the Commission's option to waive these charges.

M. Elaine Powell, executive director, has determined that for each year of the first five years the section as proposed will enable the Commission to recover costs for providing copies of public records in circumstances where such a practice would provide the most benefit to the State. The fiscal and economic implications for state and local government and small businesses as a result of enforcing or administering the section will be minimal or none for information typically requested.

Ms. Powell also has determined that for each year of the first five years the section as proposed will enable the Commission to recover costs for providing copies of public records in circumstances where such a practice would provide the most benefit to the State. The anticipated economic cost to persons who are required to comply with the rule as proposed will be either the cost set forth for all agencies by the General Services Commission's rules or no cost.

Comments on the proposal may be submitted to M. Elaine Powell, Executive Director, Texas Incentive and Productivity Commission, P.O. Box 12482, Austin, Texas 78711.

The new section is proposed in compliance with actions taken by the 73rd Legislature in House Bill 1009 in relation to Texas Civil Statutes, Article 6252-17a, which requires agencies to adopt rules specifying charges for copies of open records.

§271.5. Charges for Copies of Public Records.

(a) The charge to any person requesting photocopied reproductions of any readily available record of the TIPC will be the charges established by the General Services Commission.

(b) The Commission may waive these charges if there is a public benefit. The executive director is authorized to determine whether a public benefit exists on a case by case basis.

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

Issued in Austin, Texas, on December 28, 1993.

TRD-9334017

M. Elaine Powell
Executive Director
Texas Incentive and Productivity Commission

Earliest possible date of adoption: February 4, 1994

For further information, please call: (512) 475-2393

♦ ♦ ♦

Chapter 273. State Employee Incentive Program

• 1 TAC §273.9

The Texas Incentive and Productivity Commission proposes an amendment to §273.9(d), concerning the award eligibility period in the State Employee Incentive Program.

The amendment revises the provisions concerning the award eligibility period for a suggestion.

M. Elaine Powell, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Powell also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to facilitate participation in our cost saving program. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to M. Elaine Powell, Executive Director, Texas Incentive and Productivity Commission, P.O. Box 12482, Austin, Texas 78711.

The amendment is proposed under Government Code, Chapter 2108, §2108. 004(b), which provides the Texas Incentive and Productivity Commission with the authority to promulgate rules for the State Employee Incentive Program.

§273.9. Eligibility.

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

(d) Award Eligibility Period.

(1) Suggestions Approved by the Commission. In addition to the provisions in §273.27 of this title (relating to Awards), for a suggestion to be eligible for a cash award, an agency must implement the suggestion and transfer resulting savings/revenue within two years of the date on which the Commission received the suggestion.

[(1) In addition to the other criteria for payment of cash awards, suggestions must be implemented by at least one state agency within the following time periods for the employee to qualify for payment of a cash award:

[(A) Eligible Suggestions: within two years after the date the Commission approves the suggestion.

[(B) Ineligible Suggestions: within two years after the date the Commission receives the suggestion. In these cases, the coordinator shall notify the Commission, and the Commission may consider that suggestion for approval.

[(C) Suggestions Requiring Legislative Action: by the end of the third

fiscal year following the fiscal year during which the Commission receives the suggestion.

(2) Suggestions Not Approved by the Commission. If a suggestion that has not yet been approved by the Commission is not implemented by a target agency within two years of the date on which the Commission received the suggestion, it is not eligible for an award. If such a suggestion is implemented by a target agency, and the Commission is notified by a coordinator within the award eligibility period, the Commission may consider that suggestion for award. If such a suggestion is approved by the Commission, it shall automatically receive an extension as described in paragraph (5) of this section.

[(2) An employee may resubmit a suggestion after the expiration of the award eligibility period. Such resubmitted suggestions shall be considered as new suggestions and shall be subject to the eligibility review and evaluation processes described in Sections 273.7 and 273.9.]

(3) Suggestions Requiring Legislative Action. In addition to the provisions in §273.27, for a suggestion requiring legislative action to qualify for a cash award, an agency must implement the suggestion and transfer resulting savings/revenue by the end of the third fiscal year following the fiscal year during which the Commission receives the suggestion.

(4) Duplicate Suggestions. A suggestion is not eligible for an award if it duplicates a suggestion that was previously received by the Commission and that is eligible for an award.

(5) Extensions. An employee whose suggestion has been approved by the Commission may receive a two-year extension of the award eligibility period by making such a request prior to the expiration of the award eligibility period in a form issued by the Commission.

(6) Closing of suggestion files. The file on a suggestion will be closed at the expiration of the applicable award eligibility period, including any valid extensions.

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

Issued in Austin, Texas, on December 21, 1993.

TRD-9333881 M. Elaine Powell
Executive Director
Texas Incentive and Productivity Commission

Earliest possible date of adoption: February 4, 1994

For further information, please call: (512) 475-2393

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

Conservation Rules and Regulations

• 16 TAC §3.44

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

The Railroad Commission of Texas proposes to repeal §3.44, regarding oil nominations. This section requires purchasers to nominate crude oil to be purchased in the following month. This information has, in the past, been used to calculate oil allowables. The nominations are no longer needed because oil allowables are now set by the production factors of §3.90. The commission will meet its statutory obligation to monitor the market demand for oil by continuing to review relevant oil production, allowable, and storage data and by soliciting comments concerning the market demand for oil at the monthly statewide meeting.

Rita E. Percival, systems analyst, Oil and Gas Division, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of repealing the section. There will be no cost of compliance associated with the repeal of the section for small businesses.

Larry G. Borella, hearings examiner, Legal Division, has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of repealing this rule will be the economic benefit associated with the reduction in filing requirements. There will be no cost of compliance to the regulated community associated with the repeal of the rule.

Comments may be submitted to Larry Borella, Hearings Examiner, Legal Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*.

This repeal is proposed under the Texas Natural Resources Code, §§81.051, 81.052, 85.046, 85.053, 85.201-85.203, which provide the Railroad Commission of Texas with the authority to adopt rules to govern and regulate persons and their operations under the jurisdiction of the commission and to prevent waste of oil and gas in drilling and producing operations.

The proposed repeal effects the provisions and purposes of the Natural Resources Code, Chapter 85.

§3.44. Oil Nominations Required.

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

Issued in Austin, Texas, on December 20, 1993.

TRD-9333860 Mary Ross McDonald
Assistant Director, Legal Division-Gas Utilities/LP Gas
Railroad Commission of Texas

Earliest possible date of adoption: February 4, 1994

For further information, please call: (512) 463-6923

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TITLE 22. EXAMINING BOARDS

Part XV. Texas State Board of Pharmacy

Chapter 283. Licensing Requirements for Pharmacists

• 22 TAC §§283.7, 283.8, 283.11

Texas State Board of Pharmacy proposes amendments to §283.7 and §283. 8 and new §283.11, concerning Examination Requirements, Reciprocity Requirements, and Examination Retake Requirements. These rules, if adopted, will specify the procedures an applicant who has failed the licensing examination(s) three times must follow in order to be allowed to retake the examination.

Senate Bills 621 and 472 were passed by the 73rd Legislative Session and became effective September 1, 1993. Each of these bills amended the Texas Pharmacy Act, §21(c) to add the following language: "...An applicant who fails the examination may retake the examination two additional times. Before an applicant who has failed the examination three times is allowed to retake the examination, the applicant shall provide documentation from a college of pharmacy that additional college course work in subject areas the applicant failed in the examination has been successfully completed..."

In order to develop rule language to implement this new language, Board staff has reviewed similar provisions in other state board of pharmacy regulations and provisions in other medical licensing regulations in Texas. In addition, staff has consulted with the agency's legal counsel, the Attorney General's office, and with staffs of the three Texas Colleges of Pharmacy. After this review, Board staff has drafted language which: is applicable for persons who have failed either NABPLEX or the Texas Pharmacy Jurisprudence Examination three times after Septem-

ber 1, 1993; requires completion of college course work prior to any subsequent taking of the pharmacy examination(s) after an applicant has failed an exam three times; defines college course work as either one or more standard courses or self-paced work offered in a college of pharmacy's academic program, one or more courses presented by an ACPE approved provider or a course recommended by the committee; and establishes an Examination Retake Committee composed of one current Board member and a representative from each of the Texas Colleges of Pharmacy. The examination Retake Committee will: meet no more than two times a year; review the analysis of an applicant's performance on the failed examination(s); recommend college course work which the applicant must successfully complete before the applicant may retake the examination(s); specify the requirements for completion of the course work and the documentation required to validate successful completion of the required course work; and certify to the Board that the applicant has successfully completed the required course work.

Fred S. Brinkley, Jr., R.Ph., M.B.A., has determined that there will not be fiscal implications as a result of enforcing or administering the rules. There will be no effect on local government for the first five-year period the rule will be in effect. There is no cost for businesses to comply with the rule.

Mr. Brinkley also has determined that for each year of the first five years the rule as proposed will be in effect: the public benefits anticipated as a result of enforcing the rules as proposed, will be the protection of the public health through the setting of examination retake requirements for persons applying for a pharmacists license.

The anticipated economic cost to persons who are required to comply with the rule as proposed, will vary depending upon the person and the amount of course work required to be completed. The cost could range from $100. to $1, 500 for the initial course work and each subsequent occasion, if applicable.

Comments on the proposal may be submitted to Gay Dodson, Director of Compliance, Texas State Board of Pharmacy, 8505 Cross Park Drive, Suite 110, Austin, Texas 78754-4594.

The amendments and new rule are proposed under the Texas Pharmacy Act (Texas Civil Statutes, Article 4542a-1) §21(c), which specifies that an applicant who has failed the licensing examination three times must complete additional college course work before he/she is allowed to retake the examination; and §16(a), which provides the Texas State Board of Pharmacy the authority to adopt rules for the proper administration and enforcement of the Act.

The following is the Statute affected by this rule: Texas Pharmacy Act (Texas Civil Statutes, Article 4542a-1).

§283.7. Examination Requirements. Each applicant for licensure by examination shall pass the Texas Pharmacy Jurisprudence Examination and the NABPLEX. The examination requirements shall be as follows:

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

(4) Effective June 1, 1986, the following requirements apply.

(A) (No change.)

(B) Should the applicant fail to achieve a minimum average grade of 75 in the NABPLEX, such applicant, in order to be licensed, **shall** [is required to] retake the NABPLEX, **as specified in §283.11 of this title (relating to Examination Retake Requirements)** until such time as a minimum average grade of 75 is achieved.

(5) To pass the Texas Pharmacy Jurisprudence Examination, an applicant shall make a minimum grade of 75. **Should the applicant fail to achieve a minimum grade of 75 on the Texas Pharmacy Jurisprudence Examination, such applicant, in order to be licensed, shall retake the Texas Pharmacy Jurisprudence Examination as specified in §283.11 of this title (relating to Examination Retake Requirements) until such time as a minimum grade of 75 is achieved.**

(6) If the applicant should fail both NABPLEX and the Texas Pharmacy Jurisprudence Examination, the examinations shall be retaken at the same administration **as specified in §283.11 of this title (relating to Examination Retake Requirements).**

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

§283.8. Reciprocity Requirements.

(a) All applicants for licensure by reciprocity shall:

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

(4) pass the Texas Pharmacy Jurisprudence Examination with a minimum grade of 75. (The passing grade may be used for the purpose of licensure by reciprocity for a period of two years from the date of passing the examination.) **Should the applicant fail to achieve a minimum grade of 75 on the Texas Pharmacy Jurisprudence Examination, such applicant, in order to be licensed, shall retake the Texas Pharmacy Jurisprudence Examination as specified in §283.11 of this title (relating to Examination Retake Requirements) until such time as a minimum grade of 75 is achieved.**

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

§283.11. Examination Retake Requirements.

(a) Licensing by Examination. Should an applicant fail to achieve the minimum grade on the NABPLEX or Texas Pharmacy Jurisprudence Examination or both, the following is applicable.

(1) If the applicant fails to achieve the minimum grade on NABPLEX as specified in §283.7 of this title (relating to Examination Requirements), the applicant may retake NABPLEX two additional times for a total of three exam administrations. Prior to any subsequent retakes of NABPLEX, the applicant must:

(A) request in writing an analysis of the applicant's performance on the most recent NABPLEX and provide this analysis to the Examination Retake Committee;

(B) complete college course work in subject areas recommended by the Examination Retake Committee;

(C) submit documentation from the Examination Retake Committee which specifies that the applicant has successfully completed the course work specified; and

(D) comply with the requirements of §283.7 of this title (relating to Examination Requirements).

(2) If the applicant fails to achieve the minimum grade on the Texas Pharmacy Jurisprudence Examination as specified in §283.7 of this title (relating to Examination Requirements), the applicant may retake the examination two additional times for a total of three exam administrations. Prior to any subsequent retake of the Texas Pharmacy Jurisprudence Examination, the applicant must:

(A) request in writing an analysis of the applicant's performance on the most recent Texas Pharmacy Jurisprudence Examination and provide this analysis to the Examination Retake Committee;

(B) complete college course work recommended by the Examination Retake Committee;

(C) submit documentation from the Examination Retake Committee which specifies that the applicant has successfully completed the recommended college course work; and

(D) comply with the requirements of §283.7 of this title (relating to Examination Requirements).

(3) If the applicant fails to achieve the minimum grade on both NABPLEX and the Texas Pharmacy Jurisprudence Examination, the applicant shall retake the examinations at the same admin-

istration until a passing grade is achieved on one of the examinations. Such retakes shall be as specified in paragraphs (1) and (2) of this subsection.

(b) Licensing by Reciprocity. If an applicant fails to achieve the minimum grade on the Texas Pharmacy Jurisprudence Examination as specified in §283.8 of this title (relating to Reciprocity Requirements), the applicant may retake the examination two additional times for a total of three exam administrations. Prior to any subsequent retake of the Texas Pharmacy Jurisprudence Examination, the applicant must:

(1) request in writing an analysis of the applicant's performance on the most recent Texas Pharmacy Jurisprudence Examination and provide this analysis to the Examination Retake Committee;

(2) complete college course work recommended by the Examination Retake Committee;

(3) submit documentation from the Examination Retake Committee which specifies that the applicant has successfully completed the recommended college course work; and

(4) comply with the requirements of §283.8 of this title (relating to Reciprocity Requirements).

(c) Examination Retake Committee. The board shall appoint one representative from each Texas college of pharmacy and one current board member to serve on the Examination Retake Committee. The Examination Retake Committee shall:

(1) meet as necessary but no more than twice each calendar year;

(2) review the analysis of an applicant's performance on failed examination(s);

(3) recommend college course work which the applicant must successfully complete before the applicant may retake the examination(s);

(4) specify the requirements for completion of the recommended college course work and the documentation required to validate successful completion of the recommended college course work; and

(5) once the applicant has met the requirements set out by the committee, certify to the board that the applicant has successfully completed the required college course work.

(d) College course work. For the purpose of this subsection, college course work shall be:

(1) one or more standard courses or self-paced work offered in a college of pharmacy's academic program; or

(2) one or more courses presented by a board-approved provider of continuing pharmacy education as specified in §295.8 of this title (relating to Continuing Education Requirements); or

(3) any course specified by the Examination Retake Committee.

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

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

TRD-9333994 Fred S. Brinkley, Jr., R.Ph., M.B.A.
Executive Director/Secretary
Texas State Board of Pharmacy

Proposed date of adoption: February 16, 1994

For further information, please call: (512) 832-0661

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Chapter 291. Pharmacies

All Classes of Pharmacy

• 22 TAC §291.21

The Texas State Board of Pharmacy (TSBP) proposes new §291.21, concerning Notification to Consumers. This rule, if adopted, will specify methods by which consumers are notified of the name, mailing address, and telephone number of the Board for the purpose of directing complaints to the Board as reqired by the Texas Pharmacy Act, §17A.

Senate Bill 621 (Sunset Bill) was passed by the 73rd Legislature and became effective on September 1, 1993. This bill added several new Sections to the Texas Pharmacy Act which are "across-the-board" recommendations that were applied to all regulatory agencies undergoing Sunset during the session. One of the new Sections is §17A which is titled "Public Interest Information and Complaints; Public Access to Board Functions." Sections (b) and (c) of the new §17A state the following: "(b)–The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notification: on each registration form, application, or written contract for services of an individual or entity regulated under this Act; on a sign prominently displayed in the place of business of each individual or entity regulated under this Act; or in a bill for service provided by an individual or entity regulated under this Act. (c)–The board shall list along with its regular telephone number the toll-free telephone number that may be called to present a complaint about a health professional if the toll-free number is established under other state law."

Fred S. Brinkley, Jr., R.Ph. M.B.A. has determined that there will be fiscal implications as a result of enforcing or administering this rule and the companion proposed §295.11. The effect on State government, specifically the Texas State Board of Pharmacy, for the first five-year period the rule will be in effect is as follows: Fiscal Year 1994 $181,447, Fiscal Year 1995 $171,528, Fiscal Year 1996 $171,528, Fiscal Year 1997 $171,528, Fiscal Year 1998 $171,528. This cost estimate is based on the anticipation that the number of complaints received by the agency will increase approximately 25% because of this required notification. This increase in workload will require the addition of four persons in the agency's enforcement staff to receive, monitor, investigate and resolve these additional complaints.

There will be no effect on local government for the first five-years the rule will be in effect. The cost for businesses to comply will vary depending upon the method of notification chosen and the volume of business. The cost could range from $0.00 to $200-$300 per year in printing costs.

Mr. Brinkley also has determined that the public benefit for each year of the first five years the rule will be effect is an increased awareness on the part of the public of the methods to file a complaint against pharmacists and pharmacies.

The economic cost for persons required to comply with the rule as proposed will vary depending upon the method of notification chosen and the volume of business. The cost could range from $0.00 to $200-$300 per year in printing costs.

Comments on the proposal may be submitted to Gay Dodson, Director of Compliance, 8505 Cross Park #110, Austin, Texas 78754.

The new rule is proposed under the Texas Pharmacy Act (Texas Civil Statutes, Article 4542a-1): §17A(b), which specifies that the Board by rules shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the Board for the purpose of directing complaints to the Board; §17A(c) which specifies that the Board shall list along with its regular telephone number the toll-free telephone number that may be called to present a complaint about a health professional if the toll-free number is established under other state law; and §16(a) which gives TSBP the authority to adopt rules for the proper administration and enforcement of the Act.

The following is the statute affected by this rule: Texas Pharmacy Act (Texas Civil Statutes, Article 4542a-1).

§291.21. Notification to Consumers. Every licensed pharmacy shall provide notification to consumers of the name, mailing address, and telephone number of the board for the purpose of directing complaints concerning the practice of pharmacy to the board. Such notification shall be provided as follows.

(1) If the pharmacy serves walk-in customers, the pharmacy shall either:

(A) post in a prominent place that is in clear public view where prescription drugs are dispensed, a sign furnished by the board which notifies the consumer that complaints concerning the practice of pharmacy may be filed with the board and list the board's name, mailing address, telephone number of the board, and if applicable a toll-free telephone number for filing complaints; or

(B) provide with each dispensed prescription a written notification in a type size no smaller than 10-point Times Roman which states the following: "Complaints concerning the practice of pharmacy may be filed with the Texas State Board of Pharmacy at: (list the mailing address, telephone number of the board, and if applicable a toll-free telephone number for filing complaints)."

(2) If the prescription drug order is delivered to patients at their residence or other designated location, the pharmacy shall provide with each dispensed prescription a written notification in type size no smaller than 10-point Times Roman which states the following: "Complaints concerning the practice of pharmacy may be filed with the Texas State Board of Pharmacy at: (list the mailing address, telephone number of the board, and if applicable a toll-free telephone number for filing complaints)." If multible prescriptions are delivered to the same location, only one such notice shall be required.

(3) The provisions of this section do not apply to prescriptions for patients in facilities where drugs are administered to patients by a preson required to do so by the laws of the State (i.e., nursing homes).

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

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

TRD-9333996 Fred S. Brinkley, Jr., R.Ph., M.B.A.
Executive Director/Secretary
Texas State Board of Pharmacy

Proposed date of adoption: February 16, 1994

For further information, please call: (512) 832-0661

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Chapter 295. Pharmacists

• 22 TAC §295.11

The Texas State Board of Pharmacy (TSBP) proposes new §295.11, concerning Notification to Consumers. This rule, if adopted, will specify methods by which consumers are notified of the name, mailing address, and telephone number of the Board for the purpose of directing complaints to the Board as required by the Texas Pharmacy Act, §17A.

Senate Bill 621 (Sunset Bill) was passed by the 73rd Legislature and became effective on September 1, 1993. This bill added several new Sections to the Texas Pharmacy Act which are "across-the-board" recommendations that were applied to all regulatory agencies undergoing Sunset during the session. One of the new Sections is §17A which is titled "Public Interest Information and Complaints; Public Access to Board Functions." Sections (b) and (c) of the new §17A state the following: (b)–The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notification: on each registration form, application, or written contract for services of an individual or entity regulated under this Act; on a sign prominently displayed in the place of business of each individual or entity regulated under this Act; or in a bill for service provided by an individual or entity regulated under this Act. (c)–The board shall list along with its regular telephone number the toll-free telephone number that may be called to present a complaint about a health professional if the toll-free number is established under other state law.

Fred S. Brinkley, Jr., R.Ph. M.B.A. has determined that there will be fiscal implications as a result of enforcing or administering this rule and the companion proposed §291.21. The effect on State government, specifically the Texas State Board of Pharmacy, for the first five-year period the rule will be in effect is as follows: Fiscal Year 1994 $181,447, Fiscal Year 1995 $171,528, Fiscal Year 1996 $171,528, Fiscal Year 1997 $171,528, Fiscal Year 1998 $171,528. This cost estimate is based on the anticipation that the number of complaints received by the agency will increase approximately 25% because of this required notification. This increase in workload will require the addition of four persons in the agency's enforcement staff to receive, monitor, investigate and resolve these additional complaints.

There will be no effect on local government for the first five-years the rule will be in effect. The cost for businesses to comply will vary depending upon the method of notification chosen and the volume of business. The cost could range from $0.00 to $200-$300 per year in printing costs.

Mr. Brinkley also has determined that the public benefit for each year of the first five years the rule will be effect is an increased awareness on the part of the public of the methods to file a complaint against pharmacists and pharmacies.

The economic cost for persons required to comply with the rule as proposed will vary depending upon the method of notification chosen and the volume of business. The cost could range from $0.00 to $200-$300 per year in printing costs.

Comments on the proposal may be submitted to Gay Dodson, Director of Compliance, 8505 Cross Park #110, Austin, Texas 78754.

The new rule is proposed under the Texas Pharmacy Act (Texas Civil Statutes, Article 4542a-1): §17A(b), which specifies that the Board by rules shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the Board for the purpose of directing complaints to the Board; §17A(c) which specifies that the Board shall list along with its regular telephone number the toll-free telephone number that may be called to present a complaint about a health professional if the toll-free number is established under other state law; and §16(a) which gives TSBP the authority to adopt rules for the proper administration and enforcement of the Act.

The following is the Statute affected by this rule: Texas Pharmacy Act (Texas Civil Statutes, Article 4542a-1).

§295.11. Notification to Consumers. Every pharmacist who practices pharmacy other than in a licensed pharmacy shall provide notification to consumers of the name, mailing address, telephone number of the board for the purpose of directing complaints concerning the practice of pharmacy to the board. Such notification shall be provided as follows.

(1) If the pharmacist maintains an office and provides pharmacy services to patients who come to the office, the pharmacist shall either:

(A) post in a prominent place that is in clear public view where pharmacy services are provided a sign furnished by the Texas State Board of Pharmacy which notifies the consumer that complaints concerning the practice of pharmacy may be filed with the board and list the mailing address, telephone number of the board, and if applicable a toll-free telephone number for filing complaints; or

(B) provide to the patient each time pharmacy services are provided a written notification in type size no smaller than ten-point Times Roman which states the following: "Complaints concerning my practice of pharmacy may be filed with the Texas State Board of Pharmacy at: (list the mailing address, telephone number of the board, and if applicable a toll-free telephone number for filing complaints)."

(2) If the pharmacist provides pharmacy services to patients not at the pharmacist's office, the pharmacist shall provide to the patient each time pharmacy services are provided, a written notification in type size no smaller than 10-point Times Roman which states the following: "Complaints concerning my practice of pharmacy may be filed with the Texas State Board of

Pharmacy at: (list the mailing address, telephone number of the board, and if applicable a toll-free telephone number for filing complaints)." Such notification shall be included:

(A) in each written contract for pharmacist services; or

(B) on each bill for service provided by the pharmacist

(3) The provisions of this section do not apply to prescriptions for patients in facilities where drugs are administered to patients by a preson required to do so by the laws of the State (i.e., nursing homes).

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

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

TRD-9333995 Fred S Brinkley, Jr., R Ph, M B A
Executive Director/Secretary
Texas State Board of Pharmacy

Proposed date of adoption. February 16, 1994

For further information, please call: (512) 832-0661

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Part XXIV. Texas Board of Veterinary Medical Examiners

Chapter 573. Rules of Professional Conduct

Supervision of Personnel

• 22 TAC §573.12

The Texas Board of Veterinary Medical Examiners proposes new §573.12, concerning Alternate Therapies, which defines musculoskeletal manipulation, as well as specifying when licensees must be involved in this treatment modality

Ron Allen, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Allen also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure that musculoskeletal manipulation is performed by a licensee, under the direct supervision of a licensee, or as a result of a specific diagnosis made by a licensee that the treatment is recommended.

No data is available reflecting the number of persons administering musculoskeletal manipulation as defined in this proposed rule, nor under what circumstances, therefore the board cannot project the cost to small businesses.

No data is available reflecting the number of persons administering musculoskeletal manipulation as defined in this proposed rule, nor under what circumstances, therefore the Board cannot project the cost to persons.

Comments on the proposal may be submitted to Texas Board of Veterinary Medical Examiners, 1946 South IH-35, Suite 306, Austin, Texas 78704.

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

§573.12. Alternate Therapies-Musculoskeletal Manipulation.

(a) Definition. Musculoskeletal manipulation (MSM) is a practice called chiropractic when applied to humans. For the purpose of this rule, MSM is the system of therapeutics based on the claim that disease is caused by abnormal function of the nerve system. It attempts to restore normal function of the nerve system by manipulation and treatment of structures of animals, especially those of the spinal column. MSM in animals is not an established science and is a non-traditional treatment in the practice of veterinary medicine.

(b) Treatment Using MSM-Veterinarians. MSM may be practiced by a licensee as a treatment modality if a diagnosis has been made and the owner, trainer, or handler of the animal is notified in writing that a non-traditional treatment will be used.

(c) Treatment Using MSM-Lay Persons. MSM may be used by a non-licensed person as a treatment modality if: a specific diagnosis has been made by a licensee; the treatment is performed under the direct supervision of the licensee; and, the owner, trainer, or handler of the animal has been notified in writing that a non-traditional treatment will be used.

(d) Use of MSM in Routine Conditioning Programs.

(1) Veterinarians-A veterinarian licensed in this state may perform MSM on an animal as part of a routine conditioning program if the licensee informs the owner, trainer, or handler in writing that the procedures are non-traditional veterinary medicine and that the licensee is responsible for injury or harm that may result from performing MSM. A veterinarian who employs a lay person to perform MSM will be held responsible to the Board should harm or injury result from the manipulation performed by the lay person.

(2) Lay person-A lay person may perform MSM on animals as part of a routine conditioning program if the owner, trainer, or handler is informed in writing that: a non-traditional procedure is being performed by an unlicensed person; a licensed veterinarian in the immediate geographic area has been notified in advance that the manipulations are to be performed and the veterinarian has agreed to be on call and readily available should an emergency arise as a result of the MSM: and, that the person performing the MSM, not the veterinarian on call, is responsible for injury or harm that may result. The notified veterinarian is responsible to record: the name of the person performing the MSM; the date and time the notification was made; the name and address of the owner, trainer, or handler; and, the species, sex, description, and name or other identification of the animal.

(e) Notification and Record Keeping. All written notifications shall include the name, address and telephone number of the person performing the MSM and the following statement: "Musculoskeletal manipulation (MSM) in animals is not an established science and is a non-traditional treatment in the practice of veterinary medicine. The use of MSM could result in harm or injury to the animal being treated. If this treatment is performed by a veterinarian licensed in Texas or under the direct supervision of a veterinarian, the veterinarian is responsible for any harm or injury that may occur. If the MSM is performed by a non-licensed person as a part of a routine conditioning program, a licensed veterinarian should have been notified and is on call in the event an emergency arises. The veterinarian on call is not responsible for injury or harm that resulted from the MSM. This statement must be signed by the owner, trainer, or handler before any MSM is performed." In addition, the person performing the MSM should record the following on the written notification: the date the treatment was performed; the name and address of the owner, trainer, or handler; and, the species, sex, description, and name or other identification of the animal being treated. The notification must be signed by the person performing the MSM and the owner, trainer, or handler responsible for the animal being treated. The notification records must be retained by the person performing the MSM for a period of three years.

(f) Prohibited Use of Terms. MSM/chiropractic on animals is not an established science and no accrediting bodies are recognized by the State of Texas. Therefore, no person shall represent himself or herself as being a "veterinary chiropractor," an "animal chiropractor," or "(name of species) chiropractor." Any persons so representing themselves shall be in violation of

this rule and the Texas Veterinary Licensing Act.

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

Issued in Austin, Texas, on December 20, 1993.

TRD-9333885 Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: February 4, 1994

For further information, please call: (512) 447-1183

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• 22 TAC §573.13

The Texas Board of Veterinary Medical Examiners proposes new §573.13, concerning use of ultrasound in diagnosis or therapy, which defines terminology associated with this discipline and specifies when licensees must be involved in the therapy and/or diagnosis.

Ron Allen, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Allen also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure that ultrasound diagnosis and/or therapy is performed by a licensee, or under the supervision of a licensee, or as a result of a diagnosis and recommendation by the licensee.

No data is available reflecting the number of individuals administering ultrasound therapy or diagnosis as defined in this rule, nor under what circumstances, therefore the Board cannot project the cost to small businesses.

No data is available reflecting the number of individuals administering ultrasound, therapy or diagnosis as defined in this rule, nor under what circumstances, therefore the Board cannot project the cost to persons.

Comments on the proposal may be submitted to the Texas Board of Veterinary Medical Examiners, 1946 South IH-35, Suite 306, Austin, Texas 78704.

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

§573.13. Use of Ultrasound in Diagnosis or Therapy.

(a) Definitions.

(1) Ultrasound–Mechanical radiant energy with a frequency greater than 20 kilocycles per second.

(2) Ultrasonics–That part of the science of acoustics dealing with the frequency range beyond the upper limit of perception by the human ear, but usually restricted to frequencies above 500 kilocycles per second.

(3) Ultrasonic radiation–The effect of ultrasound which is injurious to tissues because of its thermal effects when absorbed by living matter.

(4) Ultrasound therapy–Controlled doses of ultrasound used therapeutically to selectively break down pathologic tissues, as in treatment of arthritis and lesions of the nervous system.

(5) Ultrasound diagnosis–Ultrasound images used as a diagnostic aid by visually displaying echoes received from irradiated tissues.

(6) Ultrasonography–The visualization of deep structures of the body by recording the reflections of pulses of ultrasonic waves directed into the tissues.

(b) Use of ultrasound for diagnosis or therapy of animals. The use of ultrasound in animals to diagnosis any condition or for any therapeutic purpose is the practice of veterinary medicine and shall only be performed by a licensed veterinarian or under the direct or general supervision of a licensed veterinarian.

(c) Use of ultrasound by persons who are not licensed veterinarians.

(1) For diagnostic purposes–A person who is not a licensed veterinarian may perform ultrasonography on an animal for diagnostic purposes only if: the person administering the ultrasound is doing so at the request of a licensed veterinarian; the veterinarian has established a veterinarian/client/patient relationship; and it is the veterinarian who uses the ultrasonography to make a diagnosis.

(2) For therapeutic ourposes–A person who is not a licensed veterinarian may perform ultrasonography on an animal for therapeutic purposes only if a veterinarian has: established a veterinarian/client/patient relationship; made a diagnosis; prescribed ultrasonics as a treatment; and, the person administering the ultrasound is doing so at the specific request of a licensed veterinarian.

(d) Probihited acts. Any person who uses ultrasound on animals in a manner inconsistent with this rule shall be in violation of this rule and the Texas Veterinary Licensing Act.

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

Issued in Austin, Texas, on December 20, 1993.

TRD-9333884 Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: February 4, 1994

For further information, please call: (512) 447-1183

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resources Conservation Commission

Chapter 115. Control of Air Pollution from Volatile Organic Compounds

Subchapter B. General Volatile Organic Compound Sources

Vent Gas Control

• 30 TAC §§115.121, 115.122, 115.126, 115.127, 115.129

The Texas Natural Resource Conservation Commission (TNRCC) proposes amendments to §§115.121, 115.122, 115.126, 115.127, and 115.129, concerning Vent Gas Control. The proposed changes have been developed in response to a requirement by the U.S. Environmental Protection Agency (EPA) and the 1990 Amendments to the Federal Clean Air Act (FCAA) for states to develop and adopt the Rate of Progress (ROP) State Implementation Plan (SIP). The ROP SIP is required to achieve and maintain a volatile organic compound (VOC) emissions level that is 15% below the 1990 base year emissions by 1996 in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas. The ozone nonattainment counties affected by this proposal are Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller.

The proposed amendments to §115.121, concerning Emission Specifications, add emission limitations for bakery ovens. The proposed amendments to §115. 122, concerning Control Requirements, specify that each affected bakery shall reduce total VOC emissions by at least 30% from the 1990 emissions inventory and clarify the "once-in, always-in" requirement in response to a request by the Texas Chemical Council. The proposed amendments to §115.126, concerning Monitoring and Recordkeeping Requirements, require affected bakeries to submit an initial control plan which demonstrates that the overall reduction of VOC emissions at the bakery will be at least 30% by May 31, 1996, require submission of an annual report beginning in 1997 which demonstrates that the overall reduction of VOC emissions at the

bakery continues to be at least 30%, and require submission of an updated report following the installation of an additional bakery oven(s).

The proposed amendments to §115.127, concerning Exemptions, provide an exemption for smaller bakery ovens, and add an exemption for vent gas streams in the pulp and paper industry in response to a petition for rulemaking submitted by the Texas Paper Industry Environmental Council. The proposed exemption for vent gas streams in the pulp and paper industry would allow affected vent gas streams to continue to utilize the current 30,000 parts per million (ppm) exemption rather than the 612 ppm exemption which takes effect May 31, 1995. The proposed exemption would only apply until November 15, 1998, by which time the federal maximum achievable control technology (MACT) standard for the pulp and paper industry is anticipated to be in effect. The proposed amendments to §115.129, concerning Counties and Compliance Schedules, specify the applicable counties and the compliance date for the new requirements.

The proposed amendments are part of the Phase II rules in a series of proposed revisions to Chapter 115 (concerning Control of Air Pollution From Volatile Organic Compounds) and the SIP to provide the required reductions in the ozone nonattainment areas as mandated by the 1990 FCAA Amendments. Since this is an interim step in attaining the ozone standard, only those controls needed to satisfy the requirement will be adopted. Additional controls are anticipated to be adopted by November 15, 1994, in conjunction with an attainment demonstration requirement in each ozone nonattainment area. By this time, Urban Airshed Modeling (UAM) will be available to facilitate more scientific decision-making regarding the effect of control measure scenarios on ozone levels. The UAM is a quantitative state-of-the-art computer model that will enable the staff to evaluate the effects of various combinations of control measures on ozone.

Texas is submitting rules to meet the ROP reduction in two phases. Phase I rules comprised a significant portion of the required reductions and were submitted by the original deadline of November 15, 1993. Phase II consists of any remaining percentage toward the 15% net of growth reductions, as well as additional contingency measures to obtain an additional 3.0% of reductions. Phase II will be submitted by November 15, 1994.

Stephen Minick, budget and planning division, has determined that for each year of the first five-year period the proposed sections are in effect, there would be no fiscal implications for state and local governments. Economic costs to small businesses, persons, or businesses required to implement the proposed control measures are estimated at a total capital cost of approximately $1.25 million (an average of $104,167 per bakery) plus total annual operating and maintenance costs of $250,000 (an average of $20,833 per bakery) for the 12 affected bakeries.

Mr. Minick also has determined that for the first five-year period the proposed sections are in effect, the public benefit anticipated as a result of implementing the sections will be satisfaction of FCAA Amendments and EPA requirements, and VOC emission reductions in ozone nonattainment areas which are necessary for the timely attainment of the ozone standard.

Public hearings on this proposal will be held at the following times and places: January 24, 1994, 7:00 p.m., City of Houston, Pollution Control, Building Auditorium, Houston, Texas; January 26, 1994, 6:00 p.m., City of El Paso, Council Chambers, 2 Civic Center Plaza, El Paso, Texas; January 27, 1994, 7:00 p.m., Irving Central Library, 801 West Irving Boulevard, Irving, Texas.

Staff members will be available to discuss the proposal 30 minutes prior to each hearing. Public comments, both oral and written, on the proposed changes are invited at the hearings. Interrogation or cross-examination is not permitted.

Written comments not presented at the hearings must be submitted to the TNRCC, Office of Air Quality, Regulation Development Section, P.O. Box 13087, Austin, Texas 78711-3087, no later than February 11, 1994. Material received by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposed revisions. Copies of the proposed revisions are available at the Regulation Development Section of the TNRCC Air Quality Planning Annex located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, Texas 78753, and at all TNRCC Air Program regional offices. For further information, contact Eddie Mack at (512) 239-1488.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 475-2245. Requests should be made as far in advance as possible.

The amendments are proposed for adoption under the Texas Health and Safety Code, (Vernon 1990), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§115.121. Emission Specifications.

(a) For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas as defined in §115.10 of this title (relating to Definitions), the following emission specifications shall apply.

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

(5) For the Dallas/Fort Worth, El Paso, and Houston/Galveston areas after May 31, 1996, no person shall allow a vent gas stream to be emitted from any bakery oven, as defined in §115.10 of this title (relating to Definitions), unless the total VOC mass emissions are controlled properly in accordance with §115.122(a)(3) of this title (relating to Control Requirements).

(b)-(c) (No change.)

§115.122. Control Requirements.

(a) For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following control requirements shall apply.

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

(3) For the Dallas/Fort Worth, El Paso, and Houston/Galveston areas each bakery with a vent gas stream(s) affected by §115.121(a)(5) of this title shall reduce total volatile organic compound (VOC) emissions by at least 30% from the bakery's 1990 baseline emissions inventory by May 31, 1996.

(4)[(3)] Any vent gas stream that becomes subject to the provisions of paragraphs (1), [or] (2), or (3) of this subsection by exceeding provisions of §115.127(a) of this title (relating to Exemptions) shall [will] remain subject to the provisions of this subsection, even if throughput or emissions later fall below the exemption limits unless and until emissions are reduced to at or below the controlled emissions level existing prior to **implementation of the project by which throughput or emission rate was reduced** [the modification] and:

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

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

§115.126. Monitoring and Recordkeeping Requirements.

(a) For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the owner or operator of any facility which emits volatile organic compounds (VOC) through a stationary vent shall maintain records at the facility for at least two years and shall make such records available to representatives of the Texas Natural Resource Conservation Commission (TNRCC), U.S. Environmental Protection Agency (EPA), or any local air pollution control agency having jurisdiction in the area upon request. These records shall include, but not be limited to, the following.

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

(4) For bakeries affected by §115.121(a) (5) and §115.122(a)(3) of this title (relating to Emission Specifications and Control Requirements), the following additional requirements apply.

(A) The owner or operator of each bakery shall submit an initial control plan no later than May 31, 1995, to the TNRCC Austin Office (Office of Air Quality), the appropriate TNRCC

Regional Office, and any local air pollution control program with jurisdiction which demonstrates that the overall reduction of VOC emissions from the bakery's 1990 baseline emissions inventory will be at least 30% by May 31, 1996. At a minimum, the control plan shall include the emission point number (EPN) and the facility identification number (FIN) of each bakery oven and any associated control device, a plot plan showing the location, EPN, and FIN of each bakery oven and any associated control device, and calculation of the 1990 VOC emission rates (consistent with the bakery's 1990 emissions inventory).

(B) In order to document continued compliance with §115.121(a)(5) and §115.122(a)(3) of this title, the owner or operator of each bakery shall submit an annual report no later than March 31 of each year, starting in 1997, to the TNRCC Austin Office (Office of Air Quality), the appropriate TNRCC Regional Office, and any local air pollution control program with jurisdiction which demonstrates that the overall reduction of VOC emissions from the bakery's 1990 baseline emissions inventory during the preceding calendar year is at least 30% after May 31, 1996. At a minimum, the report shall include the emission point number (EPN) and the facility identification number (FIN) of each bakery oven and any associated control device, a plot plan showing the location, EPN, and FIN of each bakery oven and any associated control device, and the calculation of VOC emission rates.

(C) The owner or operator of each bakery shall submit an updated report no later than 30 days after the installation of an additional bakery oven(s). The report shall be submitted to the TNRCC Austin Office (Office of Air Quality), the appropriate TNRCC Regional Office, and any local air pollution control program with jurisdiction and shall demonstrate that the overall reduction of VOC emissions from the bakery's 1990 baseline emissions inventory during the preceding calendar year continues to be at least 30%.

(b) (No change.)

§115.127. Exemptions.

(a) For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following exemptions apply.

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

(3) In Dallas, Harris, and Tarrant Counties, and after May 31, 1995, in ozone nonattainment counties other than Dallas, Harris, and Tarrant, the following vent gas streams are exempt from the requirements of §115.121(a)(2) of this title:

(A) (No change.)

(B) Until May 31, 1995, in Harris County, a vent gas stream specified in §115.121(a)(2) of this title with a concentration of volatile organic compounds (VOC) less than 0.44 pounds per square inch absolute (psia) true partial pressure (30,000 parts per million); [and]

(C) until November 15, 1998, for facilities which have been assigned the code number 26 as described in the document Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement, a vent gas stream specified in §115.121(a)(2) of this title with a concentration of VOC less than 0.44 psia true partial pressure (30,000 parts per million); and

(D)[(C)] a vent gas stream specified in §115.121(a)(2) of this title with a concentration of VOC less than 0.009 psia true partial pressure (612 ppm).

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

(6) Bakeries are exempt from the requirements of §115.121(a)(5) of this title if each bakery oven on the property, when uncontrolled, emits a combined weight of VOC less than 25 tons in one year.

(b)-(c) (No change.)

§115.129. Counties and Compliance Schedules. All affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas shall be in compliance with this undesignated head (relating to Vent Gas Control) in accordance with the following schedules.

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

(5) All affected bakeries in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Liberty, Montgomery, Tarrant, and Waller Counties shall be in compliance with §§115.121(a)(5), 115.122(a)(3), 115.126(a)(4), and 115.127(a) (6) of this title (relating to Emission Specifications, Control Requirements, Monitoring and Recordkeeping Requirements, and Exemptions), as soon as practicable, but no later than May 31, 1996.

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

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

TRD-9334024 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Proposed date of adoption May 15, 1994

For further information, please call: (512) 463-8159

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Industrial Wastewater

• 30 TAC §§115.140, 115.142-115.149

The Texas Natural Resource Conservation Commission (TNRCC) proposes new §§115.140, 115 142-115.449, concerning Industrial Wastewater. This new undesignated head will be included in existing Subchapter B, concerning General Volatile Organic Compound Sources. The new sections have been developed in response to a requirement by the U.S Environmental Protection Agency (EPA) and the 1990 amendments to the Federal Clean Air Act (FCAA) for states to develop and adopt revisions to the Rate-of-Progress (ROP) State Implementation Plan (SIP).

The ROP SIP is required to achieve and maintain a volatile organic compound (VOC) emissions level that is 15% below the 1990 base year emissions by 1996 in the Beaumont/Port Arthur, Dallas/ Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas The ozone nonattainment counties affected by this proposal are Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Liberty, Montgomery, Tarrant, and Waller.

Proposed §115 140, concerning Definitions, defines certain words and phrases unique to the proposed rule The proposal defines an affected source category based on the Source Identification Code (SIC) as proposed in the draft Control Techniques Guidelines (CTG). The draft CTG recommended not including the pulp and paper industry due to an extensive work in developing a multimedia Maximum Available Control Technology (MACT) standard for the industry. Additionally, the draft CTG has recommended not including the petroleum refinery industry. The staff has decided to include the petroleum refinery industry in this rulemaking since the majority of the quantifiable wastewater emissions in the 1990 inventory are from petroleum refineries The staff realizes that the Benzene National Emissions Standards for Hazardous Air Pollutants (NESHAPS) will affect many of these refineries, however, industry has not been able to accurately reflect what reductions have or will occur from this regulation. The staff will continue to work with the petroleum refinery industry and if it determines that the majority of the 1990 emissions will be regulated by the Benzene NESHAPS, the staff may reconsider including them as an affected source category.

The definition for affected VOC wastewater stream bases the determination on two char-

acteristics: flow rate and concentration. The proposal sets these limits at 500 parts per million by weight (ppmw) and 1 liter per minute (lpm), or at 10,000 ppmw regardless of the flow rate. These limits are based upon a draft control techniques guideline (CTG) which is still under review at the federal level. If the levels are relaxed as a part of that review, then the TNRCC intends to revise this rule to be consistent with whatever the final levels are, provided it does not result in a loss of credit significant enough to cause an area to fall short of the 15% ROP requirement.

A definition is proposed for point of generation to ensure that controls to reduce VOC emissions are applied before the wastewater is exposed to the atmosphere. It is not the intent to allow dilution for circumvention of the controls. The definition of VOC wastewater works closely with the definition for point of generation and is intended to separate from regulation those waters which are not from a process but may pick up VOCs inadvertently, such as rainfall runoff, fire, and other exigency use water, or spills.

Proposed §115.142, concerning Control Requirements, specifies the controls required for all components of an affected wastewater stream and the controls required for loading or unloading from a container. The preference is to reduce the concentration of the wastewater stream below the level for an affected stream at or near the point of generation. The draft CTG suggests that a steam stripper is the preferred device to do this. If the levels cannot be reduced, then the affected stream must be controlled. The proposal states a vapor recovery device must maintain a control efficiency of 90%. This will allow industry more flexibility and addresses the concern that a higher control level may result in increasing the nitrogen oxide and carbon monoxide levels in the nonattainment areas. This could be of particular concern in the Houston/Galveston area. The TNRCC is soliciting information and data supporting or disputing this assertion.

The proposed rule also states that a properly operated bio-treatment unit need not be covered. As of this time, a definition of a properly operated bio-treatment unit has not been finalized, but language will be added before the proposed rule is adopted. It is anticipated that the finalized Hazardous Organic NESHAPS for Hazardous Air Pollutants, will include such a definition, which then may be tailored for VOCs. The TNRCC is soliciting input from all parties as to a definition for a properly operated bio-treatment unit.

Similarly, industry has requested that wet weather retention basins not be required to be covered as well. These basins are designed to handle situations where the runoff from rainfall events exceeds that capacity of the water treatment system. In these situations, water is diverted to a retention basin where it is held until the water can be returned to the water treatment system during dry weather conditions. Industry has asserted that VOC emissions from retention basins contribute a very small portion of total wastewater emissions, but would be extremely costly to cover. The staff is soliciting information and data justifying such an exemption. The information should include specific examples and descriptions of specific concerns, as well as estimations of the emissions expected annually from these impoundments.

Proposed §115.143, concerning Alternate Control Requirements, references §115.910 of this title (relating to Alternate Means of Control (AMOC)) for a procedure to receive approval for an alternative control. The proposed §115. 144, concerning Inspection and Monitoring Requirements, specifies the frequency and type of inspection required for all covers, seals, and floating roofs and the monitoring requirements of control devices.

Proposed §115.145, concerning Approved Test Methods, specifies the accepted test methods to show compliance with §115.142 and §115.144. Currently, EPA has proposed to use Test Method 25D. Concern has been expressed by affected industries that this test method does not accurately reflect the emissions which could be realistically expected to emit from a wastewater stream. The TNRCC agrees that the intent of this rule should be to control those streams which actually have the potential to emit VOCs and not those streams where the VOCs will remain in solution. Therefore, the TNRCC is also proposing to allow EPA test methods approved by the Clean Water Act and the TNRCC test method used to test the VOC concentration of cooling water. Industry has been encouraged to submit comments to the EPA regarding the requirement and validity of Test Method 25D. If the CTG does not allow for other test methods when it is finalized, the TNRCC will have to revise the rule and remove the test methods that are not approved in the CTG. This has the potential of invalidating any determinations of affected streams which were determined using the other tests.

Proposed §115.146, concerning Recordkeeping Requirements, specifies the frequency, detail, and scope of the recordkeeping requirements of this section. The proposed §115.147, concerning Exemptions, allows for an exemption based upon VOC loading up to 10 megagrams (mg). This level is based upon the draft CTG and are similar to levels set in the Benzene NESHAPS and the proposed Hazardous Organic NESHAPS. Industry has indicated that the level may not be as cost-effective as a slightly higher level. The TNRCC is soliciting any information or data to determine a more cost-effective level. However, as stated before, if the draft CTG determines the proposed level as reasonably available control technology (RACT) then the TNRCC will have to adopt it.

Proposed §115.148, concerning Determination of Wastewater Characteristics, specifies the accepted methods and procedures to be used in determining if a wastewater is to be defined as an affected stream or not. The section specifies that the determination is to be done at the point of generation.

Proposed §115.149, concerning Counties and Compliance Schedules, specify the applicable counties and the compliance date for the new requirements.

The proposed amendments are part of the Phase II rules in a series of proposed revisions to Chapter 115 (concerning Control of Air Pollution From VOCs) and the SIP to provide the required ROP reductions in the ozone nonattainment areas as mandated by the 1990 FCAA amendments. Since this is an interim step in attaining the ozone standard, only those controls needed to satisfy the requirement will be adopted. Additional controls are anticipated to be adopted by November 15, 1994 in conjunction with an attainment demonstration requirement in each ozone nonattainment area. By this time, Urban Airshed Modeling (UAM) will be available to facilitate more scientific decision making regarding the effect of control measure scenarios on ozone levels. The UAM is a quantitative state-of-the-art computer model that will enable the staff to evaluate the effects of various combinations of control measures on ozone.

Texas is submitting rules to meet the ROP reduction in two phases. Phase I rules comprised a significant portion of the required reductions and were submitted by the original deadline of November 15, 1993. Phase II consists of any remaining percentage toward the 15% net of growth reductions, as well as contingency measures to obtain an additional 3.0% of reductions. Phase II will be submitted by November 15, 1994.

Steve Minick, Budget and Planning, has determined that for each year of the first five-year period the proposed sections are in effect, there will be no fiscal implications for state and local governments. Economic costs to small businesses, individuals, and businesses required to implement the proposed measures may vary from no cost, if the facility already has or does not need add-on control equipment, to the estimated total industry annual cost of $120 million as stated in EPA's draft CTG. This is the sum of the expected costs, which range from $1.8 million up to $100 million, depending on the industry. The CTG also states this equates to an average cost effectiveness ($ per ton of VOC removed) of $460/ton. Affected industries have disputed the suggested cost effectiveness and have submitted actual cost breakdowns from having to comply with the similar control requirements of the Benzene NESHAPS. They suggest a range of cost effectiveness from as low as $5,732/ton up to as high as $420,796/ton.

Mr. Minick also has determined that for the first five-year period the proposed sections are in effect, the public benefit anticipated as a result of implementing the sections will be satisfaction of FCAA amendments and EPA requirements, and VOC emission reductions in ozone nonattainment areas which are necessary for the timely attainment of the ozone standard. Public hearings on this proposal are scheduled for the following times and places: January 24, 1994, 7:00 p.m., City of Houston, Pollution Control, Building Auditorium, 7411 Park Place Boulevard, Houston, Texas; January 26, 1994, 6:00 p.m., City of El Paso Council Chambers, Second Floor, 2 Civic Center Plaza, El Paso, Texas; and January 27, 1994, 7:00 p.m., Irving Central Library, 801 West Irving Boulevard, Irving, Texas.

Staff members will be available to discuss the proposal one hour prior to each hearing. Public comments, both oral and written, on the proposed changes are invited at the hearings. Interrogation or cross-examination is not permitted.

Written comments not presented at the hearings must be submitted to the TNRCC, Office of Air Quality, Regulation Development Section, P.O. Box 13087, Austin, Texas 78711-3087, no later than February 11, 1994. Material received by the Regulation Development Section by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposed revisions. Copies of the proposed revisions are available at the Regulation Development Section of the TNRCC Air Quality Planning Division located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, Texas 78753, and at all the TNRCC regional offices. For further information, contact Chuck Mueller at (512) 239-1916.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 475-2245. Requests should be made as far in advance as possible.

The new sections are proposed under the Texas Health And Safety Code (Vernon 1990), Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§115.140. Definitions. The following terms, when used in this undesignated head, shall have the following meanings, unless the context clearly indicates otherwise.

Affected source category–Any of the following source categories:

(A) organic chemicals, plastics, and synthetic fibers manufacturing industry under Source Identification Code (SIC) 2821, 2823, 2824, 2865, and 2869;

(B) pesticides manufacturing industry under SIC code 2879;

(C) petroleum refining industry under SIC code 2911;

(D) pharmaceutical manufacturing industry under SIC codes 2833, 2834, and 2836;

(E) hazardous waste treatment, storage, and disposal facilities industry under SIC codes 4952, 4953, and 4959

Affected volatile organic compounds (VOC) wastewater stream–A VOC wastewater stream with either a VOC concentration greater than or equal to 10,000 parts per million by weight (ppmw) or a VOC concentration greater than or equal to 500 ppmw and a flow rate greater than or equal to 1 liter per minute (lpm) (0.264 gallons per minute), as determined in accordance with §115.148 of this title (relating to Determination of Wastewater Characteristics).

Plant–All facilities included within the same Texas Natural Resource Conservation Commission account number.

Point of generation–A location between where a volatile organic compounds waste-water stream exits a process unit.

Volatile organic compounds (VOC) wastewater–Water which, as part of a facility process, has come into contact with VOC and is intended for treatment, disposal, or discharge without further use in the process unit.

§115.142. Control Requirements. For the Dallas/Fort Worth, El Paso, and Houston/Galveston areas, any person who is the owner or operator of an affected source category within a plant shall comply with the following control requirements. Any component of a wastewater storage, handling, transfer, or treatment facility, if the component contains an affected volatile organic compounds (VOC) wastewater stream, shall be controlled in accordance with either paragraph (1) or (2) of this section. The control requirements shall apply from the point of generation of an affected VOC wastewater stream until the affected VOC wastewater stream is either returned to a process unit or is treated to remove VOC so that the wastewater stream no longer meets the definition of an affected VOC wastewater stream. For this undesignated head, a component of a wastewater storage, handling, transfer, or treatment facility shall include, but is not limited to, wastewater storage tanks, surface impoundments, wastewater drains, junctions boxes, lift stations, weirs, and oil-water separators.

(1) The wastewater component shall meet the following requirements.

(A) All components shall be fully covered or be equipped with water seal controls, except that a properly operated bio-treatment unit and a wet weather retention basin need not be covered.

(B) All openings shall be closed and sealed, except when the opening is in actual use for its intended purpose.

(C) All liquid contents shall be totally enclosed.

(D) If any cover, other than a junction box cover, is equipped with a vent, the vent shall be equipped with either a vapor control system which maintains a minimum control efficiency of 90% or a system which prevents the flow of VOC vapors from the vent during normal operation. Any junction box vent shall be equipped with a vent pipe at least 90 centimeters (36 inches) in length and no more than 10.2 centimeters (4.0 inches) in diameter. The requirements to control the flow of VOC vapors from a vent shall not apply to any vent if the vent gases have a combined weight of VOC equal to or less than 100 pounds (45.4 kilograms) in any continuous 24-hour period.

(E) All gauging and sampling devices shall be vapor-tight except during gauging or sampling.

(F) Any loading or unloading to or from a portable container by pumping shall be performed with a submerged fill pipe.

(G) All seals and cover connections shall be maintained in proper condition. For purposes of this rule, "proper condition" means that covers shall have a tight seal around the edge and shall be kept in place except as allowed by this undesignated head, that seals shall not be broken or have gaps, and that sewer lines shall have no visible gaps or cracks in joints, seals, or other emission interfaces.

(H) If any seal or cover connection is found to not be in proper condition, the repair or correction shall be completed as soon as practicable but within 15 days of detection, unless the repair or correction is technically impossible without requiring a unit shutdown, in which case the repair or correction shall be made before the end of the next unit shutdown.

(2) The wastewater component shall be equipped with a floating roof or internal floating cover which meets the following requirements.

(A) All openings in an internal or external floating roof except for automatic bleeder vents and rim space vents shall provide a projection below the liquid surface or be equipped with a cover, seal, or lid. Any cover, seal, or lid shall be in a closed (i.e., no visible gap) position at all times except when the opening is in actual use for its intended purpose.

(B) Automatic bleeder vents shall be closed at all times except when the roof is floated off or landed on the roof leg supports.

(C) Rim vents, if provided, shall be set to open only when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting.

(D) Any emergency roof drain shall be provided with a slotted membrane fabric cover that covers at least 90% of the area of the opening.

(E) There shall be no visible holes, tears, or other openings in any seal or seal fabric.

(F) Secondary seals shall be the rim-mounted type (i.e., the seal shall be continuous from the floating roof to the tank wall). The accumulated area of gaps that exceed 1/8-inch (0.32 centimeters (cm)) in width between the secondary seal and tank wall shall be no greater than 1.0 in^2 per foot (21 cm^2/meter) of tank diameter;

(3) Any wastewater component that becomes subject to this section by exceeding the provisions of §115.147 of this title (relating to Exemptions) or an affected VOC wastewater stream as defined in §115.140 of this title (relating to Definitions), will remain subject to the requirements of this section, even if the component later falls below those provisions unless and until emissions are reduced to at or below the controlled emissions level existing prior to the implementation of the project by which throughput or emission rate was reduced, and:

(A) the project by which throughput or emission rate was reduced is authorized by any permit or permit amendment or standard permit or standard exemption required by Chapter 116 of this title (relating to Control of Air Pollution By Permits for New Construction or Modification). If a standard exemption is available for the project, compliance with this subsection must be maintained for 30 days aster the filing of documentation of compliance with that standard exemption; or

(B) if no permit or standard exemption is required for the project, the owner or operator has given the Texas Natural Resource Conservation Commission 30 days notice of the project in writing.

§115.143. Alternate Control Requirements. For the Dallas/Fort Worth, El Paso, and Houston/Galveston areas, alternate methods of demonstrating and documenting compliance with applicable control requirements or exemption criteria in this undesignated head may be approved by the Executive Director in accordance with §115.910 of this title (relating to Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

§115.144. Inspection and Monitoring Requirements. For the Dallas/Fort Worth, El Paso, and Houston/Galveston Areas, any person who is the owner or operator of a facility subject to the control requirements of §115. 142 of this title (relating to Control Requirements), shall comply with the following inspection and monitoring requirements.

(1) All seals and covers used to comply with §115.142(a)(1) of this title shall be inspected according to the following schedules to ensure compliance with §115.142(a)(1) (G)-(H) of this title:

(A) initially and semiannually thereafter to ensure compliance with §115.142(a)(1)(G) of this title; and

(B) upon completion of repair to ensure compliance with §115.142(a)(1)(G)-(H) of this title.

(2) Floating roofs and internal floating covers used to comply with §115.142(a)(2) of this title shall be subject to the following requirements. All secondary seals shall be inspected according to the following schedules to ensure compliance with §115.142(a)(2)(E)-(F) of this title.

(A) If the primary seal is vapor-mounted, the secondary seal gap area shall be physically measured annually to ensure compliance with §115.142(a)(2)(F) of this title.

(B) If the tank is equipped with a metallic type shoe or liquid-mounted primary seal, compliance with §115. 142(a)(2)(F) of this title may be determined by visual inspection.

(C) All secondary seals shall be visually inspected semi-annually to ensure compliance with §115.142(a)(2)(E)-(F) of this title.

(3) Monitors shall be installed and maintained to measure operational parameters of any emission control device installed to comply with §115.142(a) of this title. Such monitoring and parameters shall be sufficient to demonstrate proper functioning of those devices, and include the monitoring and parameters listed in subparagraphs (A)-(F) of this paragraph, as applicable. In lieu of the monitoring and parameters listed in subparagraphs (A)-(F) of this paragraph, other monitoring and parameters may be approved by the Executive Director.

(A) for an enclosed combustion device (including, but not limited to, a thermal incinerator, boiler, or process heater), continuously monitor and record the temperature of gas stream either in the combustion chamber or immediately downstream before any substantial heat exchange;

(B) for a catalytic incinerator, continuously monitor and record the temperature of the gas stream immediately before and after the catalyst bed;

(C) for a condenser (chiller), continuously monitor and record the temperature of the gas stream at the condenser exit;

(D) for a carbon adsorber, continuously monitor and record the volatile organic compounds (VOC) concentration of exhaust gas stream to determine if breakthrough has occurred. If the carbon adsorber does not regenerate the carbon bed directly in the control device (e.g., a carbon canister), the exhaust gas stream shall be monitored daily or at intervals no greater than 20% of the design replacement interval, whichever is greater, or as an alternative to conducting monitoring, the carbon may be replaced with fresh carbon at a regular predetermined time interval that is less than the carbon replacement interval that is determined by the maximum design flow rate and the VOC concentration in the gas stream vented to the carbon adsorber;

(E) for a flare, continuously monitor for the presence of a flare pilot light using a thermocouple or any other equivalent device to detect the presence of a flame; and

(F) for a steam stripper, continuously monitor and record the steam flow rate, the wastewater feed mass flow rate, the wastewater feed temperature, and condenser vapor outlet temperature.

§115.145. Approved Test Methods. For the Dallas/Fort Worth, El Paso, and Houston/Galveston areas, compliance with this undesignated head shall be determined by applying the following test methods, as appropriate:

(1) for determination of gas flow rate-Test Methods 1-4 (40 Code of Federal Regulations (CFR) Part 60, Appendix A);

(2) for determination of gaseous organic compound emissions by gas chromatography-Test Method 18 (40 CFR, Part 60, Appendix A);

(3) for determination of volatile organic compound (VOC) leaks-Test Method 21 (40 CFR Part 60, Appendix A);

(4) for determination of total gaseous nonmethane organic emissions as carbon–Test Method 25 (40 CFR, Part 60, Appendix A);

(5) for determination of total gaseous organic concentration using a flame ionization or a nondispersive infrared analyzer–Test Methods 25A or 25B (40 CFR Part 60, Appendix A);

(6) for determination of VOC concentration of wastewater samples–Test Method 5030 (purge and trap) followed by Test Method 8015 with a DB-5 boiling point (or equivalent column), and flame ionization detector, with the detector calibrated with benzene (SW-846 and 40 CFR, Part 261); Test Methods 3810, 5030 (followed by 8020), 8240, 8260, and 9060 (SW-846 and 40 CFR, Part 261); Test Methods 602 and 624 (40 CFR, Part 136); Test Method 5310(B) (Standard Methods 17th Edition); or Test Method 25D (40 CFR, Part 60, Appendix A);

(7) for determination of true vapor pressure–American Society for Testing and Materials Test Methods D323-89, D2879, D4953, D5190, or D5191 for the measurement of Reid vapor pressure, adjusted for actual storage temperature in accordance with American Petroleum Institute Publication 2517, Third Edition, 1989; and

(8) minor modifications to these test methods approved by the Executive Director.

§115.146. Recordkeeping Requirements. For the Dallas/Fort Worth, El Paso, and Houston/Galveston areas, any person who is the owner or operator of an affected source category within a plant shall comply with the following recordkeeping requirements.

(1) Complete and up-to-date records shall be maintained which are sufficient to demonstrate the characteristics of wastewater streams and the qualification for any exemptions claimed under §115.147 of this title (relating to Exemptions).

(2) Records shall be maintained of the results of any inspection or monitoring conducted in accordance with the provisions specified in §115.144 of this title (relating to Inspection and Monitoring Requirements).

(3) Records shall be maintained of the results of any testing conducted in accordance with the provisions specified in §115.145 of this title (relating to Approved Test Methods).

(4) Records shall be maintained of the dates and reasons for any maintenance and repair of the required control devices and the estimated quantity and duration of volatile organic compounds emissions during such activities.

(5) All records shall be maintained at the plant for at least two years and be made available upon request to representatives of the Texas Natural Resource Conservation Commission, U.S. Environmental Protection Agency, or any local air pollution control agency having jurisdiction in the area.

§115.147. Exemptions. For the Dallas/Fort Worth, El Paso, and Houston/Galveston Areas, the following exemptions shall apply.

(1) Any plant with an annual volatile organic compounds (VOC) loading in wastewater, as determined in accordance with §115.148 of this title (relating to Determination of Wastewater Characteristics), less than or equal to 10 megagrams (mg) (11.03 tons) shall be exempt from the control requirements of §115.142 of this title (relating to Control Requirements).

(2) At any plant with an annual VOC loading in wastewater, as determined in accordance with §115.148 of this title greater than 10 mg (11. 03 tons), any person who is the owner or operator of the plant may exempt from the control requirements of §115.142 of this title one or more affected VOC wastewater streams for which the sum of the annual VOC loading in wastewater for all of the exempted streams is less than or equal to 10 mg (11.03 tons).

(3) Unless specifically required by this undesignated head, any component of a wastewater storage, handling, transfer, or treatment facility to which the requirements of this undesignated head applies shall be exempt from the requirements of any other portion of this chapter.

(4) If compliance with the control requirements of §115.142 of this title would create a safety hazard in a component of a waste-water storage, handling, transfer, or treatment facility, the owner or operator may request the Executive Director to exempt that component from the control requirements of §115.142 of this title The Executive Director shall approve the request if justified by the likelihood and magnitude of the potential injury and if reducing or eliminating the hazard is technologically or economically unreasonable, based on the emissions reductions that would be achieved.

(5) Wastewater components are exempt from the control requirements of §115.142 of this title if the overall control of VOC emissions at the account from affected VOC wastewater streams is at least 90%, and the following requirements are met.

(A) The owner or operator of the wastewater component shall submit a control plan no later than March 15, 1995 to the TNRCC Austin Office (Office of Air Quality), the appropriate TNRCC regional office, and any local air pollution control program with jurisdiction, which demonstrates that the overall control of VOC emissions at the account from affected VOC wastewater streams will be at least 90% by November 15, 1996. The control plan shall include the applicable emission point number (EPN); the facility identification number (FIN); the calendar year 1993 throughput of affected VOC wastewater streams; a plot plan showing the location, EPN, and FIN associated with a wastewater storage, handling, transfer, or treatment facility; and the calendar year 1993 controlled and uncontrolled VOC emission rates.

(B) In order to maintain exemption status under this paragraph, the owner or operator shall submit an annual report no later than March 31 of each year, starting in 1997, to the TNRCC Austin Office (Office of Air Quality) , the appropriate TNRCC regional office, and any local air pollution control program with jurisdiction, which demonstrates that the overall control of VOC emissions at the account from affected VOC wastewater streams during the preceding calendar year is at least 90% after November 15, 1996. The report shall include the EPN; the FIN; the throughput of affected wastewater streams; a plot plan showing the location, EPN, and FIN associated with a wastewater storage, handling, transfer, or treatment facility; and the controlled and uncontrolled VOC emission rates for the preceding calendar year.

(C) The owner or operator shall submit an updated report no later than 30 days after the installation of an additional wastewater component(s) containing an affected VOC wastewater stream(s) or any change which results in a wastewater component(s) containing an affected VOC wastewater stream(s), or vice versa. The report shall be submitted to the TNRCC Austin Office (Office of Air Quality), the appropriate TNRCC Regional Office, and any local air pollution control program with jurisdiction, and shall demonstrate that the overall control of VOC emissions at the account from affected VOC wastewater streams to be at least 90%.

(6) The owner or operator of wastewater components subject to the control requirements of §115.142 of this title may request an exemption determination from the Executive Director if the overall control of VOC emissions at the account from affected VOC wastewater streams is at least 80%, and the following requirements are met.

(A) Each request for an exemption determination shall be submitted to

the TNRCC Austin Office (Office of Air Quality), the appropriate TNRCC Regional Office, and any local air pollution control program with jurisdiction. Each such request shall demonstrate that the overall control of VOC emissions at the account from affected VOC wastewater streams will be at least 80%. The request shall include the applicable EPN; the FIN; the calendar year throughput of affected VOC wastewater streams; the controlled and uncontrolled VOC emission rates; and a plot plan showing the location, EPN, and FIN associated with a wastewater storage, handling, transfer, or treatment facility.

(B) The Executive Director shall approve the exemption for specific wastewater components if it is determined to be economically unreasonable to control the associated emissions subject to these rules, all reasonable controls are applied, and the overall control of VOC emissions at the account from affected VOC wastewater streams is at least 80%. The Executive Director may subsequently direct the holder of an exemption under this paragraph to reapply for their exemption if there is good cause to believe that it has become economically reasonable to meet the requirements of the applicable rule(s). Within three months of an Executive Director request, the holder of an exemption under this paragraph shall reapply for their exemption. If the reapplication for an exemption is denied, the holder of the exemption shall meet the requirements of the applicable rule(s) as soon as practicable, but no later than two years from the date of denial.

§115.148. Determination of Wastewater Characteristics. The determination of the characteristics of a wastewater stream for purposes of this undesignated head shall be made as follows.

(1) The characteristics shall be determined at the point of generation and before the wastewater stream is exposed to the atmosphere, treated for volatile organic compound (VOC) removal or mixed with another wastewater stream. For wastewater streams which, prior to November 15, 1993, were either actually being mixed or construction had commenced which would result in the wastewater streams being mixed, this mixing shall not establish a limit on where the characteristics may be determined.

(2) The flow rate of a wastewater stream shall be determined on the basis of an annual average by one of the following methods:

(A) the highest annual quantity of wastewater managed, based on historical records for the most recent five years of operation, or for the entire time the wastewater stream has existed if less than five years but at least one year;

(B) the maximum design capacity of the wastewater component;

(C) the maximum design capacity to generate wastewater of the process unit generating the wastewater stream;

(D) measurements that are representative of the actual, normal wastewater generation rates.

(3) The VOC concentration of a wastewater stream shall be determined on the basis of a flow-weighted annual average by one of the following methods, or by a combination of the methods. If the Executive Director determines that the VOC concentration cannot be adequately determined by knowledge of the wastewater, or by bench-scale or pilot-scale test data, the VOC concentration shall be determined in accordance with subparagraph (C) of this paragraph, or by a combination of the methods in subparagraphs (A), (B), and (C) of this paragraph. VOC with a Henry's Law Constant less than 7.5×10^{-5} atmosphere cubic meters (atm-m^3)/mole shall not be included in the determination of VOC concentration.

(A) Knowledge of the wastewater. Sufficient information to document the VOC concentration. Examples of information include material balances, records of chemical purchases, or previous test results

(B) Bench-scale or pilot-scale test data. Sufficient information to demonstrate that the bench-scale or pilot-scale test concentration data are representative of the actual VOC concentration.

(C) Measurements. Collect a minimum of three representative samples from the wastewater stream and determine the VOC concentration for each sample in accordance with §115.145 of this title (relating to Approved Test Methods) . The VOC concentration of the wastewater stream shall be the flow-weighted average of the individual samples.

(4) The annual VOC loading in wastewater for a wastewater stream shall be the annual average flow rate determined in paragraph (2) of this section multiplied by the annual average VOC concentration determined in paragraph (3) of this section.

(5) The annual VOC loading in wastewater for a plant shall be the sum of the annual VOC loading in wastewater for each affected VOC wastewater stream.

§115.149. Counties and Compliance Schedules. For the Dallas/Fort Worth, El Paso, and Houston/Galveston areas, any person who is the owner or operator of an affected source category within a plant shall be in compliance with this undesignated head no later than November 15, 1996.

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

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

TRD-9334025 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Proposed date of adoption. May 15, 1994

For further information, please call: (512) 463-8159

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Subchapter C. Volatile Organic Compound Transfer Operations

Control of Reid Vapor Pressure of Gasoline

• 30 TAC §§115.252, 115.253, 115.255-115.257, 115.259

The Texas Natural Resource Conservation Commission (TNRCC) proposes new §§115.252, 115.253, 115.255-115.257, and 115.259, concerning Control of Reid Vapor Pressure of Gasoline. This new undesignated head will be included in Subchapter C, concerning Volatile Organic Compound Transfer Operations The proposed changes have been developed in response to a requirement by the U.S. Environmental Protection Agency (EPA) and the 1990 Amendments to the Federal Clean Air Act (FCAA) for states to develop and adopt the Rate-of-Progress (ROP) State Implementation Plan (SIP). The ROP SIP is required to achieve and maintain a volatile organic compound (VOC) emissions level that is 15% below the 1990 base year emissions by 1996 in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas. These rules regarding Reid vapor pressure (RVP) of gasoline are proposed for El Paso County only.

Proposed §115.252, concerning Control Requirements, limits the gasoline RVP to 6.5 pounds per square inch absolute during the summer ozone season. The proposed §115.253, concerning Alternate Control Requirements, specifies that alternate control requirements which will result in equivalent VOC emission reductions may be approved by the Executive Director. The proposed §115.255, concerning Approved Test Methods, identifies federally approved test methods for determining compliance with the gasoline RVP limits. Proposed §115.256, concerning Recordkeeping Requirements, re-

quires the owner or operator of any affected gasoline storage vessel, gasoline terminal, or gasoline bulk plant to maintain records of the gasoline RVP. The proposed §115.257, concerning Exemptions, specifies the exemptions from the gasoline RVP requirements. The proposed §115.259, concerning Counties and Compliance Schedules, requires all affected facilities in El Paso County to be in compliance with the new requirements in accordance with specified annual schedules beginning May 1, 1996.

The proposed sections are part of the Phase II rules in a series of proposed revisions to Chapter 115 (concerning Control of Air Pollution From Volatile Organic Compounds) and the SIP to provide the required reductions in the ozone nonattainment areas as mandated by the 1990 FCAA Amendments. Since this is an interim step in attaining the ozone standard, only those controls needed to satisfy the requirement will be adopted. Additional controls are anticipated to be adopted by November 15, 1994, in conjunction with an attainment demonstration requirement in each ozone nonattainment area. By this time, Urban Airshed Modeling (UAM) will be available to facilitate more scientific decision-making regarding the effect of control measure scenarios on ozone levels. The UAM is a quantitative state-of-the-art computer model that will enable the staff to evaluate the effects of various combinations of control measures on ozone.

Texas is submitting rules to meet the ROP reduction in two phases. Phase I rules comprised a significant portion of the required reductions and were submitted by the original deadline of November 15, 1993. Phase II consists of any remaining percentage toward the 15% net of growth reductions, as well as additional contingency measures to obtain an additional 3.0% of reductions. Phase II will be submitted by November 15, 1994.

Stephen Minick, budget and planning division, has determined that for each year of the first five-year period the proposed sections are in effect, there would be no cost to state and local governments. Economic costs to small businesses, persons, or businesses required to implement the proposed control measures are estimated at approximately $0.02-0.05 per gallon retail price increase.

Mr. Minick also has determined that for the first five-year period the proposed sections are in effect, the public benefit anticipated as a result of implementing the sections will be satisfaction of FCAA Amendments and EPA requirements, and VOC emission reductions in ozone nonattainment areas which are necessary for the timely attainment of the ozone standard.

A public hearing on this proposal will be held at 6:00 p.m. on January 26, 1994, at City of El Paso, Council Chambers, Second Floor, 2 Civic Center Plaza, in El Paso, Texas.

Staff members will be available to discuss the proposal 30 minutes prior to the hearing. Public comments, both oral and written, on the proposed changes are invited at the hearing. Interrogation or cross-examination is not permitted.

Written comments not presented at the hearing must be submitted to the TNRCC, Office of Air Quality, Regulation Development Section, P.O. Box 13087, Austin, Texas 78711-3087, no later than February 11, 1994. Material received by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposed revisions. Copies of the proposed revisions are available at the Regulation Development Section of the TNRCC Air Quality Planning Division located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, Texas 78753, and at all TNRCC Air Program regional offices. For further information, contact Eddie Mack at (512) 239-1488.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 475-2245. Requests should be made as far in advance as possible.

The new rules are proposed under the Texas Health and Safety Code, (VERNON 1990), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§115.252. Control Requirements. For the El Paso area as defined in §115.10 of this title (relating to Definitions), the following control requirements shall apply.

(1) No person shall place, store, or hold in any stationary tank, reservoir, or other container any gasoline with a Reid vapor pressure (RVP) greater than 6.5 pounds per square inch absolute (psia) which may ultimately be used in a motor vehicle.

(2) No person shall transfer or allow the transfer of gasoline with a RVP greater than 6.5 psia to or from any storage vessel or tank-truck tank at any gasoline terminal, bulk plant, or motor vehicle fuel dispensing facility which may ultimately be used in a motor vehicle.

(3) All adjustments in the operation of affected facilities and all transfers or alterations of noncompliant gasoline must be completed as necessary to conform with the provisions of this rule during the following periods of each calendar year:

(A) for motor vehicle fuel dispensing facilities from June 1 through September 16 of each year; and

(B) for all other affected facilities from May 1 through September 16 of each year.

§115.253. Alternate Control Requirements. For all affected persons in the El Paso area, alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this section may be approved by the Executive Director in accordance with §115.910 of this title (relating to Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

§115.255. Approved Test Methods. For the El Paso area, the following testing requirements shall apply.

(1) Sampling Procedures for Fuel Volatility (40 Code of Federal Regulations, Part 80, Appendix D); and

(2) Tests for Determining Reid Vapor Pressure of Gasoline and Gasoline-Oxygenate Blends (40 Code of Federal Regulations, Part 80, Appendix E) .

§115.256. Recordkeeping Requirements. For the El Paso area, the owner or operator of any gasoline storage vessel, gasoline terminal, or gasoline bulk plant affected by the provisions of §115.252 of this title (relating to Control Requirements) shall maintain records of the Reid vapor pressure of all gasoline stored or transferred during the compliance period. All records shall be maintained for two years and be made available for review by the Texas Natural Resource Conservation Commission, the U.S. Environmental Protection Agency, and local air pollution control agencies.

§115.257. Exemptions. For the El Paso area, the following exemptions shall apply.

(1) Any stationary tank, reservoir, or other container used exclusively for the fueling of implements of agriculture is exempt from the requirements of §115.252 of this title (relating to Control Requirements).

(2) The owner or operator of a motor vehicle fuel dispensing facility is exempt from the requirements of §115.256 of this title (relating to Recordkeeping Requirements).

(3) Any tank, reservoir, storage vessel, or other stationary container with a nominal capacity of 500 gallons (1,893 liters) or less is exempt from the requirements of §115.252 of this title.

§115.259. Counties and Compliance Schedules. All affected persons in El Paso County shall be in compliance with this undesignated head (relating to Control of Reid Vapor Pressure of Gasoline) no later than May 1, 1996.

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

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

TRD-9334026 Mary Ruth McDonald
Director, Legal Division
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: May 15, 1994

For further information, please call: (512) 463-8159

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Subchapter E. Solvent-Using Processes

Surface Coating Processes

• 30 TAC §§115.421, 115.422, 11 5.429

The Texas Natural Resource Conservation Commission (TNRCC) proposes amendments to §§115.421, 115.422, and 115.429, concerning Surface Coating Processes. The proposed changes have been developed in response to a requirement by the U.S. Environmental Protection Agency (EPA) and the 1990 Amendments to the Federal Clean Air Act (FCAA) for states to develop and adopt the Rate-of-Progress (ROP) State Implementation Plan (SIP). The ROP SIP is required to achieve and maintain a volatile organic compound (VOC) emissions level that is 15% below the 1990 base year emissions by 1996 in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas. The ozone nonattainment counties affected by this proposal are Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Liberty, Montgomery, Tarrant, and Waller.

The proposed changes to §115.421, concerning Emission Specifications, add VOC emission limits for lacquers, sanding sealers, stains, shellac, and varnish used in surface coating of wood parts and products. The proposed changes to §115.422, concerning Control Requirements, revise the "once-in, always-in" requirement to provide additional flexibility in response to a request by the Texas Chemical Council. The proposed changes to §115.422 also clarify the wording of the cleanup requirements for automobile refinishing operations to ensure consistency with the proposed Standard Exemption 124. The proposed changes to §115.429, concerning Counties and Compliance Schedules, specify the applicable counties and the compliance date for the new requirements.

The proposed amendments are part of the Phase II rules in a series of proposed revisions to Chapter 115 (concerning Control of Air Pollution From Volatile Organic Compounds) and the SIP to provide the required reductions in the ozone nonattainment areas as mandated by the 1990 FCAA Amendments. Since this is an interim step in attaining the ozone standard, only those controls needed to satisfy the requirement will be adopted. Additional controls are anticipated to be adopted by November 15, 1994, in conjunction with an attainment demonstration requirement in each ozone nonattainment area. By this time, Urban Airshed Modeling (UAM) will be available to facilitate more scientific decision-making regarding the effect of control measure scenarios on ozone levels. The UAM is a quantitative state-of-the-art computer model that will enable the staff to evaluate the effects of various combinations of control measures on ozone.

Texas is submitting rules to meet the ROP reduction in two phases. Phase I rules comprised a significant portion of the required reductions and were submitted by the original deadline of November 15, 1993. Phase II consists of any remaining percentage toward the 15% net of growth reductions, as well as additional contingency measures to obtain an additional 3.0% of reductions. Phase II will be submitted by November 15, 1994.

Stephen Minick, budget and planning division, has determined that for each year of the first five-year period the proposed sections are in effect, there would be no fiscal implications for state and local governments. Economic costs to small businesses, persons, or businesses required to implement the proposed control measures are negligible since the required compliant coatings are readily available and have a higher solids content than some current coatings, and therefore usage (i.e., purchases) will be reduced. The proposed changes to the "once-in, always-in" requirement will provide additional flexibility to the regulated community and therefore in some cases will represent a cost savings.

Mr. Minick also has determined that for the first five-year period the proposed sections are in effect, the public benefit anticipated as a result of implementing the sections will be satisfaction of FCAA Amendments and the EPA requirements, and VOC emission reductions in ozone nonattainment areas which are necessary for the timely attainment of the ozone standard.

Public hearings on this proposal will be held at the following times and places: January 24, 1994, 7:00 p.m., City of Houston Pollution Control Building Auditorium, 7411 Park Place Boulevard, Houston, Texas; January 26, 1994, 6:00 p.m., City of El Paso, Council Chambers, Second Floor, 2 Civil Center Plaza, El Paso, Texas, and January 27, 1994, 7:00 p.m., Irving Central Library, 801 West Irving Boulevard, Irving, Texas.

Staff members will be available to discuss the proposal 30 minutes prior to each hearing. Public comments, both oral and written, on the proposed changes are invited at the hearings. Interrogation or cross-examination is not permitted.

Written comments not presented at the hearings must be submitted to the TNRCC, Office of Air Quality, Regulation Development Section, P.O. Box 13087, Austin, Texas 78711-3087, no later than February 11, 1994. Material received by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposed revisions. Copies of the proposed revisions are available at the Regulation Development Section of the TNRCC Air Quality Planning Division located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, Texas 78753, and at all TNRCC Air Program regional offices. For further information, contact Eddie Mack at (512) 239-1488.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 475-2245. Requests should be made as far in advance as possible.

The amendments are proposed for adoption under the Texas Health and Safety Code, (VERNON 1990), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§115.421. Emission Specifications.

(a) No person in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas as defined in §115.10 of this title (relating to Definitions) may cause, suffer, allow, or permit volatile organic compound (VOC) emissions from the surface coating processes as defined in §115.10 of this title affected by paragraphs (1)-(13) [(1)-(12)] of this subsection to exceed the specified emission limits. These limitations are based on the daily weighted average of all coatings delivered to each coating line, except for those in paragraph (10) of this subsection which are based on paneling surface area and those in paragraph (11) of this subsection which are based on the VOC content of architectural coatings sold or offered for sale.

(1)-(12) (No change.)

(13) Surface coating of wood parts and products.

(A) After November 15, 1996, in the Dallas/Fort Worth, El Paso, and Houston/Galveston areas, VOC emissions from the coating of wood parts and products shall not exceed the following limits for each surface coating type:

***(i)* for lacquers:**

(I) 5.8 pounds per gallon (0.70 kg/liter) of coating (minus water and exempt solvent) for clear lacquers; and

(II) 5.4 pounds per gallon (0.65 kg/liter) of coating (minus water and exempt solvent) for opaque lacquers;

***(ii)* 4.6 pounds per gallon (0.55 kg/liter) of coating (minus water and exempt solvent) for sanding sealers;**

***(iii)* 6.6 pounds per gallon (0.79 kg/liter) of coating (minus water and exempt solvent) for stains (including toners and shaders);**

***(iv)* for shellac:**

(I) 5.4 pounds per gallon (0.65 kg/liter) of coating (minus water and exempt solvent) for clear shellac; and

(II) 5.0 pounds per gallon (0.60 kg/liter) of coating (minus water and exempt solvent) for opaque shellac;

(v) **4. 5 pounds per gallon (0.54 kg/liter) of coating (minus water and exempt solvent) for varnish;**

(B) All VOC emissions from solvent washings shall be included in determination of compliance with the emission limitations in subparagraph (A) of this paragraph, unless the solvent is directed into containers that prevent evaporation into the atmosphere.

(b) (No change.)

§115.422. Control Requirements. For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following control requirements shall apply.

(1) In Dallas and Tarrant Counties, and after July 31, 1994 in ozone nonattainment counties other than Dallas and Tarrant, any automobile refinishing operation shall minimize volatile organic compound emissions during equipment clean-up by the following procedures:

(A) install and operate a system which totally encloses spray guns, cups, nozzles, bowls, and other parts during washing, rinsing, and draining procedures. **Non-enclosed cleaners may be used if the vapor pressure of the cleaning solvent is less than 100 millimeters of mercury (mm Hg) at 68 degrees Fahrenheit and the solvent is directed towards a drain that leads directly to a remote reservoir;**

(B) keep [recycle] all wash solvents in [from] an enclosed reservoir that is covered [which must be kept closed] at all times, except when being refilled with fresh solvents [solvent solution]; and

(C) keep [dispose of] all waste solvents and other [associated] cleaning materials in closed containers.

(2) (No change.)

(3) Any surface coating operation that becomes subject to the provisions of §115. 421(a) of this title (relating to Emission Specifications) by exceeding the provisions of §115.427(a) of this title (relating to Exemptions) shall remain subject to the provisions in §115.421(a) of this title, even if throughput or emissions later fall below exemption limits unless and until emissions are reduced to at or below the controlled emissions level existing prior to implementation of the project by which throughput or emission rate was reduced, and:

(A) the project by which throughput or emission rate was reduced is authorized by any permit or permit amendment or standard permit or standard exemption required by Chapter 116 of this title. If a standard exemption is available for the project, compliance with this subsection must be maintained for 30 days after the filing of documentation of compliance with that standard exemption; or

(B) if no permit or standard exemption is required for the project, the owner/operator has given the TNRCC 30 days notice of the project in writing.

§115.429. Counties and Compliance Schedules.

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

(d) All wood parts and products surface coating affected by §115.421(a)(13) of this title (relating to Emission Specifications) in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Liberty, Montgomery, Tarrant, and Waller Counties shall be in compliance with this undesignated head (relating to Surface Coating Processes) as soon as practicable, but no later than November 15, 1996.

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

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

TRD-9334027

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

Proposal date of adoption: March 15, 1994

For further information, please call: (512) 463-8159

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Offset Lithographic Printing

• 30 TAC §§115.442, 115.443, 115.445, 115.446, 115.449

The Texas Natural Resource Conservation Commission (TNRCC) proposes amendments to §§115.442, 115.443, 115.445, 115.446, and 115.449, concerning Offset Lithographic Printing. The proposed amendments have been developed in response to a requirement by the U.S. Environmental Protection Agency (EPA) and the 1990 amendments to the Federal Clean Air Act (FCAA) for states to develop and adopt revisions to the Rate-of-Progress (ROP) State Implementation Plan (SIP).

The ROP SIP is required to achieve and maintain a volatile organic compound (VOC) emissions level that is 15% below the 1990 base year emissions by 1996 in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas. The affected ozone nonattainment counties are Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller.

The proposed amendments will extend the recently adopted regulation to the Houston/Galveston and Dallas/Fort Worth nonattainment areas. In response to concerns from small businesses within the Dallas/Fort Worth area with regards to competition from businesses outside of the four county nonattainment area, the rules will also be proposed in the additional five counties which make up the Consolidated Metropolitan Statistical Area (CMSA). These counties are: Ellis, Johnson, Kaufman, Parker, and Rockwall.

Section 115.442, concerning Control Requirements, specify control requirements for web-fed and sheet-fed offset lithographic printing presses which use alcohol in the fountain solution, offset lithographic printing press cleaning solutions, and heatset offset lithographic printing press dryer exhaust streams. Section 115.443, concerning Alternate Control Requirements, references §115.910 of this title (relating to Alternate Means of Control) for a procedure to receive approval for an alternative control. Section 115. 445, concerning Approved Test Methods, specifies the accepted test methods to show compliance with §115.442. Section 115.446, concerning Monitoring and Recordkeeping Requirements, specifies the frequency, detail, and scope of the recordkeeping and monitoring requirements of this section. Section 115.449, concerning Counties and Compliance Schedules, specifies the applicable counties and the compliance date for the new requirements.

The proposed amendments are part of the Phase II rules in a series of proposed revisions to Chapter 115 (concerning Control of Air Pollution from Volatile Organic Compounds) and the SIP to provide the required ROP reductions in the ozone nonattainment areas as mandated by the 1990 FCAA amendments. Since this is an interim step in attaining the ozone standard, only those controls needed to satisfy the requirement will be adopted. Additional controls are anticipated to be adopted by November 15, 1994, in conjunction with an attainment demonstration requirement in each ozone nonattainment area. By this time Urban Airshed Modeling (UAM) will be available to facilitate more scientific decision-making regarding the effect of control measure scenarios on ozone levels. The UAM is a quantitative state-of-the-art computer model that will enable the staff to evaluate the effects of various combinations of control measures on ozone.

Texas is submitting rules to meet the ROP reduction in two phases. Phase I rules comprised a significant portion of the required reductions and were submitted by the original deadline of November 15, 1993. Phase II

consists of any remaining percentage toward the 15% net of growth reductions, as well as contingency measures to obtain an additional 3.0% of reductions. Phase II will be submitted by November 15, 1994.

Steve Minick, budget and planning division, has determined that for each year of the first five-year period the proposed sections are in effect, there would be no fiscal implications for state and local governments. Economic costs to small businesses, individuals, and businesses required to implement the proposed measures may vary from no cost if the facility already uses compliant solvents and already has or does not need add-on control equipment to the following estimated costs associated with the expanded abatement, monitoring, and recordkeeping requirements.

Per Facility Control Unit--0-in 1994; $50,000 in 1995; $50,000 in 1996; $50,000 in 1997; and $50,000 in $50,000.

Per Volatile Organic Compound Monitoring Unit--0-in 1994; $15,000 in 1995; $15,000 in 1996; $15,000 in 1997; $15,000 in 1998.

Any costs continuing beyond 1998 would be operating, maintenance, and recordkeeping requirements. All estimates are stated in 1994 dollars with no adjustments for inflation and assume continuing costs equal to those incurred during 1994-1998.

Mr. Minick also has determined that for the first five-year period the proposed sections are in effect, the public benefit anticipated as a result of implementing the sections will be satisfaction of FCAA amendments and EPA requirements, and VOC emission reductions in ozone nonattainment areas which are necessary for the timely attainment of the ozone standard.

Public hearings on this proposal are scheduled for the following times and places: January 24, 1994, 7:00 p.m., City of Houston Pollution Control Building Auditorim, 7411 Park Place Boulevard, Houston, Texas, and January 27, 1994, 7:00 p.m., Irving Central Library, 801 West Irving Boulevard, Irving, Texas.

Staff members will be available to discuss the proposal 30 minutes prior to each hearing. Public comments, both oral and written, on the proposed changes are invited at the hearings. Interrogation or cross-examination is not permitted.

Written comments not presented at the hearings must be submitted to the TNRCC, Office of Air Quality, Regulation Development Section, P.O. Box 13087, Austin, Texas 78711-3087, no later than February 11, 1994. Material received by the Regulation Development Section by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposed revisions. Copies of the proposed revisions are available at the Regulation Development Section of the TNRCC Air Quality Planning Annex located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, Texas 78753, and at all of the TNRCC Air Program regional offices. For further information, contact Chuck Mueller at (512) 239-1916.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 475-2245. Requests should be made as far in advance as possible.

The amendments are proposed under the Texas Health and Safety Code, (Vernon 1990), Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§115.442. Control Requirements. For the **Dallas/Fort Worth,** El Paso, and **Houston/Galveston areas** [area] as defined in §115.10 of this title (relating to Definitions), and **for Ellis, Johnson, Kaufman, Parker, and Rockwall Counties,** the following control requirements shall apply.

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

§115.443. Alternate Control Requirements. For all affected persons in the **Dallas/Fort Worth,** El Paso, and **Houston/Galveston areas,** [area] as defined in §115.10 of this title (relating to Definitions), and **for Ellis, Johnson, Kaufman, Parker, and Rockwall Counties,** alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this section may be approved by the Executive Director in accordance with §115.910 of this title (relating to Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

§115.445. Approved Test Methods. For the **Dallas/Fort Worth,** El Paso, and **Houston/Galveston areas** [area] as defined in §115.10 of this title (relating to Definitions), and **for Ellis, Johnson, Kaufman, Parker, and Rockwall Counties,** compliance shall be determined by applying the following test methods, as appropriate:

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

§115.446. Monitoring and Recordkeeping Requirements. For the **Dallas/Fort Worth,** El Paso, and **Houston/Galveston areas** [area] as defined in §115.10 of this title (relating to Definitions), and **for Ellis, Johnson, Kaufman, Parker, and Rockwall Counties,** the following monitoring and recordkeeping requirements shall apply:

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

(5) The owner or operator of any offset lithographic printing press using refrigeration equipment on the fountain in order to comply with §115.442(a)(1)(A)-(D) shall monitor the temperature of the fountain solution reservoir at least once per hour.

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

§115.449. Counties and Compliance Schedules. All affected persons in **Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Ellis, Fort Bend, Galveston, Harris, Johnson, Kaufman, Liberty, Montgomery, Parker, Rockwall, Tarrant, and Waller Counties** [County] shall be in compliance with §115.442 of this title (relating to Control Requirements), §115.443 of this title (relating to Alternate Control Requirements), §115.445 of this title (relating to Testing Requirements), and §115.446 of this title (relating to Monitoring and Recordkeeping Requirements) as soon as practicable, but no later than November 15, 1996.

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

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

TRD-9334028

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

Proposed date of adoption: March 15, 1994

For further information, please call: (512) 463-8159

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Chapter 117. Control of Air Pollution From Nitrogen Compounds

The Texas Natural Resource Conservation Commission (TNRCC) proposes amendments to §§117.10, 117.103, 117.105, 117.107, 117.109, 117.111, 117. 113, 117.115, 117.117, 117.119, 117.121, 117.203, 117.205, 117.207-117.209, 117.211, 117.213, 117.215, 117.217, 117.219, 117.221, 117.311, 117.313, 117. 319, 117.321, 117.411, 117.413, 117.419, 117.421, 117.510, 117.520, 117.530, 117.540, and 117.560; the repeal of §117.580; and new §117.223, concerning Control of Air Pollution From Nitrogen Compounds. The proposed changes have been developed in response to a requirement by the United States Environmental Protection Agency (EPA) and the 1990 Federal Clean Air Act (FCAA) Amendments for states to apply reasonably available control technology (RACT) requirements to major sources of nitrogen oxides (NO_x) in the following ozone nonattainment counties: Brazoria, Chambers, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, and Waller.

The proposed amendments generally clarify rule provisions and facilitate more flexible methods of rule compliance. Revisions which are administrative in nature update names and titles to reflect the organizational structure of the TNRCC, change language to con-

form with *Texas Register* style conventions, and correct typographical and other errors in the current rule. These changes are not substantive in nature and therefore will not be summarized in this preamble. For clarity, several requirements are proposed to be relocated within the rules, as discussed in this preamble. A complete list of the proposed changes, both administrative and substantive, is available upon request from the TNRCC.

The TNRCC proposes revisions to Subchapter A: Definitions, in §117.10, concerning Definitions. The changes add new definitions for average activity level for fuel oil firing, and low annual capacity factor stationary gas turbine or stationary internal combustion engine. The changes also revise the definitions for low annual capacity factor boiler, process heater, or gas turbine supplemental waste heat recovery unit; rich-burn engine; lean-burn engine; system-wide emission limit; system-wide emission rate; and unit, clarifying applicability for replacement new units and new units belonging to any equipment category included in a source cap.

Revisions to Subchapter B: Combustion at Existing Major Sources, Utility Electric Generation, are proposed by the TNRCC Proposed revisions to §117. 103, concerning Exemptions, clarify the need for exempt units to be listed in the initial control plan and to demonstrate activity levels to maintain exempt status, specify the averaging period for determining operating hours, and move procedures for documenting exempt status to §117.113, concerning Continuous Demonstration of Compliance. It is proposed to exempt utility sources from fuel oil firing NO_x emission limits during officially declared emergency periods necessitating oil firing, since such periods are historically infrequent and the additional NO_x controls for oil firing may not be cost-effective. Revisions to §117.105, concerning Emission Specifications, are proposed which set a new carbon monoxide (CO) emission limit of 132 parts per million by volume (ppmv) for certain utility stationary gas turbines, thus setting the same CO limit as that currently in effect for industrial gas turbines. Other revisions to §117.105 clarify applicability of the current 400 ppmv CO emission limit for utility boilers, steam generators, and auxiliary steam boilers. It is proposed to allow the optional inclusion of replacement new facilities to facilitate compliance with the emission limitations of §117.105 by allowing new facilities with lower best available control technology emission limitations to provide credit to remaining existing facilities. Revisions proposed for §117.107, concerning Alternative System-Wide Emission Specifications, specify requirements for oil-fired utility boilers included in a system-wide averaging plan and clarify procedures for calculating in-stack NO_x.

Revisions to §117.109, concerning Initial Control Plan Procedures, are proposed which clarify that every major NO_x source is required to file an initial control plan, regardless of whether NO_x emission specifications apply to units within that source, and specify additional listing requirements in the plan In §117.111, concerning Initial Demonstration of Compliance, revisions are proposed which clarify procedures for demonstrating initial compliance with the rule and allow initial demonstration of compliance testing to be performed during the first 24 consecutive operating hours the unit fires fuel oil. The existing rule requires testing for oil firing by May 31, 1995, regardless of whether oil is desired to be fired at that time, potentially resulting in increased NO_x emissions and extra fuel costs not intended by the rule. Revisions to §117.113, concerning Continuous Demonstration of Compliance, are proposed allowing the option to use predictive emissions monitoring systems (PEMS) in lieu of continuous emissions monitoring systems (CEMS) for units not subject to the requirements of 40 Code of Federal Regulations (CFR) 75; requiring installation of totalizing fuel flow meters on certain stationary gas turbines; stating the requirements for certain exempt units to use totalizing fuel flow meters or elapsed run time meters (moved from §117. 103), and stating procedures to follow when exemption criteria are exceeded by such units (moved from §117 103). In §117.115, concerning Final Control Plan Procedures, proposed revisions distinguish averaging periods for gaseous fuel firing from those for oil or coal firing, and specify requirements to describe the NO_x control method and submit test results for each unit included in the final control plan Section 117.117, concerning Revision of Final Control Plan, proposes that new units installed as replacements for existing units complying with §117.105 or §117.107 may be included in the final control plan Revisions to §117.119, concerning Notification, Recordkeeping, and Reporting Requirements, and §117.121, concerning Alternative Case Specific Specifications, are proposed which replace references to "Board" with "Commission."

The TNRCC proposes revisions to Subchapter B: Combustion at Existing Major Sources, Commercial, Institutional, and Industrial Sources. Proposed revisions to §117.203, concerning Exemptions, clarify the need for exempt units to be listed in the initial control plan and to demonstrate activity levels to maintain exempt status, state that certain new units placed into service after November 15, 1992, may not be exempt from applicable rule requirements, specify the averaging period for determining operating hours, and move procedures for documenting exempt status to §117.213, concerning Continuous Demonstration of Compliance. Revisions are proposed to §117 205, concerning Emission Specifications, which reorganize subsections (a), (b), and (h) for clarity, delete obsolete language, and state that the 400 ppmv CO emission limit for boilers and process heaters is referenced to 3.0% oxygen, dry basis. It is proposed to allow the optional inclusion of replacement new facilities to facilitate compliance with the emission limitations of §117.205 by allowing new facilities with lower best available control technology emission limitations to provide credit to remaining existing facilities Section 117. 207, concerning Alternative Plant-Wide Emission Specifications, contains proposed revisions which distinguish the methods of assigning emission limits for boilers and process heaters as opposed to gas turbines and engines, specify emission limitations for boilers and industrial furnaces (BIF units) elected to be included in a plant-wide emissions averaging plan, and clarify procedures for calculating in-stack NO_x.

A proposed revision to §117.208, concerning Operating Requirements, references sources subject to source cap emission limits. Changes to §117. 209, concerning Initial Control Plan Procedures, are proposed which clarify that every major NO_x source is required to file an initial control plan, regardless of whether NO_x emission specifications apply to units within that source, and specify additional listing requirements in the plan. Testing requirements for the initial control plan, currently contained in §117.211, concerning Initial Demonstration of Compliance, are proposed to be moved to §117.209 Proposed changes to §117.211 include extension of testing requirements to certain exempt units belonging to categories included in the source cap, addition of a reference to testing while burning solid fuel, stating that compliance for units without CEMS or PEMS shall be determined by the average of three one-hour emission test runs, allowance of alternative test methods, and addition of clarifying language Changes are proposed to §117 213, concerning Continuous Demonstration of Compliance, which correctly cite performance specifications and test methods, specify applicability of the continuous emissions monitoring requirements of 40 CFR 75 to certain units, allow the option to use PEMS in lieu of CEMS, require installation of totalizing fuel flow meters on certain stationary gas turbines, fluid catalytic cracking unit boilers, BIF units, and gas turbine supplemental waste heat recovery units; and move from §117.203 the requirements for certain exempt gas turbines and engines to use elapsed run time meters and the procedures to follow when exemption criteria are exceeded by exempted units Problems in implementing the equivalence test for PEMS have recently been experienced The TNRCC seeks input to further clarify or correct the proposed §117 213(c) to resolve these technical problems

Section 117 215, concerning Final Control Plan Procedures, contains proposed revisions which clarify that maximum allowable NO_x emissions for gas turbines and engines are to be assigned in the units given by the appropriate emission limitation of §117.205, specify requirements to describe the NO_x control method and submit test results for each unit included in the final control plan, and require sources complying with a source cap to submit a final control plan. Section 117.217, concerning Revision of Final Control Plan, proposes that new units installed as replacements for existing units complying with §117 205 or §117.207 may be included in the final control plan, and that any new unit belonging to an equipment category which participates in the source cap must be included in the source cap In §117 219, concerning Notification, Recordkeeping, and Reporting Requirements, minor changes in wording are proposed to clarify the rule, and a reference is made to the compliance schedule for submittal of test results Changes to §117 221, concerning Alternative Case Specific Specifications, replace references to "Board" with "Commission."

Proposed new §117.223, concerning Source Cap, incorporates the requirements of current §117.580, which is proposed for repeal. A proposed revision to §117.223 addresses EPA concerns about RACT equivalency by changing the method of calculating the historical activity level, replacing "operating days" with "actual heat input," based on a two-year average heat input plus one standard deviation. Other changes proposed for §117 223 delete language duplicated in §117.113 and §117.213, and require that the method of calculating the actual heat input for each unit included in the source cap must be included in the initial control plan.

The TNRCC proposes revisions to Subchapter C: Acid Manufacturing. In §117. 311 and §117.411, concerning Initial Demonstration of Compliance, §117.313 and §117.413, concerning Continuous Demonstration of Compliance, and §117. 319 and §117.419, concerning Notification, Recordkeeping, and Reporting Requirements, clarifying wording is proposed referencing PEMS and initial demonstration of compliance testing, and notification requirements. Changes are proposed to §117 313 and §117.413 which correctly cite quality assurance procedures Changes to §117.321 and §117.421, concerning Alternative Case Specific Specifications, replace references to "Board" with "Commission."

The TNRCC proposes revisions to Subchapter D: Administrative Provisions. In §117.510, concerning Compliance Schedule for Utility Electric Generation, a proposed change states that results of testing for initial demonstration of compliance with the oil-firing NO_x allowable be submitted within 60 days after completion of the testing, and specifies the due date for final control plans In §117.520, concerning Compliance Schedule for Commercial, Institutional, and Industrial Sources, revisions are proposed specifying the schedules for submitting results of CEMS or PEMS performance evaluation and quality assurance tests and schedules for submitting final control plans. Changes are proposed in §117.530, concerning Compliance Schedule For Nitric Acid and Adipic Acid Manufacturing Sources, adding clarifying references to PEMS and initial demonstration of compliance testing. Proposed revisions to §117 540, concerning Phased RACT and §117.560, concerning Rescission, change references from the Texas Air Control Board (TACB) to the TNRCC.

Separate revisions to §117.550, concerning Standard Construction Permits for NO_x RACT Projects, and §117.570, concerning Alternate Means of Compliance-Trading, may occur before the current rule proposal is adopted. Under the requirements of the Administrative Procedure Act, a rule section may not be reopened for new rulemaking until any existing rulemaking in that section is finalized. Therefore, minor changes to §117.550 and §117.570 are not being proposed at this time to allow for the flexibility of simultaneous rulemaking in this chapter.

Since §117.580, concerning Source Cap, pertains only to commercial, institutional, and industrial sources, the staff has determined that it would be administratively more efficient to propose concurrently the repeal of existing §117.580 and the addition of new §117.223 in the undesignated head Commercial, Institutional, and Industrial Sources in Subchapter B.

Stephen Minick, budget and planning division, has determined that for each year of the first five-year period the proposed sections are in effect, there will be no fiscal cost implications for state and local governments to implement the program.

Mr. Minick also has determined that for the first five-year period the proposed sections are in effect, the public benefit anticipated as a result of implementing the sections will be satisfaction of FCAA Amendments and EPA requirements, and NO_x emission reductions in ozone nonattainment areas which are necessary for the timely attainment of the ozone standard.

Economic costs to businesses required to implement the proposed control measures are estimated to be minimal. The current proposal to allow the use of predictive emissions monitoring systems in lieu of continuous emissions monitoring systems would result in a potential annualized cost savings of $62, 000 per monitoring system. These cost savings would extend beyond the first five years that the rule would be in effect.

Public hearings on this proposal will be held at the following times and places: January 26, 1994, 7.00 p.m., John Gray Institute, 855 Florida Avenue, Beaumont, Texas; and January 27, 1994, 11:00 a.m., City of Houston, Pollution Control Building Auditorium, 7411 Park Place Boulevard, Houston, Texas.

Staff members will be available to discuss the proposal 30 minutes prior to each hearing. Public comments, both oral and written, on the proposed changes are invited at the hearings. Interrogation or cross-examination is not permitted.

Written comments not presented at the hearings must be submitted to the TNRCC, Office of Air Quality, Regulation Development Section, P.O. Box 13087, Austin, Texas, 78711-3087, no later than January 28, 1994. Material received by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposed revisions. Copies of the proposed revisions are available at the Regulation Development Section of the TNRCC Air Quality Planning Annex located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, Texas 78753, and at all TNRCC Air Program regional offices. For further information, contact Randy Hamilton at (512) 239-1512.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 475-2245 Requests should be made as far in advance as possible.

Subchapter A. Definitions

• 30 TAC §117.10

The amendment is proposed under the Texas Health and Safety Code, (Vernon 1990), the Texas Clean Air Act (TCAA), §382 017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§117.10. Definitions. Unless specifically defined in the Texas Clean Air Act or the General Rules of this title, the terms in this chapter shall have the meanings commonly used in the field of air pollution control. Additionally, the following meanings apply, unless the context clearly indicates otherwise.

Average activity level for fuel oil firing-The product of an electric utility unit's maximum rated capacity for fuel oil firing and the average annual capacity factor for fuel oil firing for the period from January 1, 1990, to December 31, 1993.

Lean-burn engine-A spark-ignited or compression-ignited, Otto cycle, diesel cycle, or two-stroke engine that is **not capable of being** operated with an exhaust stream oxygen concentration **equal to** or **less than** [of] 0.5 [4.0]% by volume, [or greater] **as originally designed by the manufacturer**. [The exhaust gas oxygen concentration shall be determined from the uncontrolled exhaust stream.]

Low annual capacity factor boiler, process heater, or gas turbine supplemental waste heat recovery unit-A [An] **commercial, institutional, or** industrial boiler;[,] process heater;[,] or gas turbine supplemental waste heat recovery unit with maximum rated capacity:

(A) greater than or equal to 40 million Btu per hour (MMBtu/hr), but less than 100 MMBtu/hr and an annual heat input less than or equal to $2.8(10^{11})$ Btu per year (Btu/yr), **based on a rolling monthly average**; or

(B) greater than or equal to 100 MMBtu/hr and an annual heat input less than or equal to $2.2(10^{11})$ Btu/yr, **based on a rolling monthly average.**

Low annual capacity factor stationary gas turbine or stationary internal combustion engine-A stationary gas turbine or stationary internal combustion engine which is demonstrated to operate less than 850 hours per year, based on a rolling monthly average.

Rich-burn engine-A spark-ignited, Otto cycle, four-stroke, naturally aspirated or turbocharged engine that is **capable** of being operated with an exhaust stream oxygen concentration **equal to** or [of] less than 0.5 [4.0]% by volume, **as originally designed by the manufacturer**. [The exhaust gas oxygen concentration shall be determined from the uncontrolled exhaust stream.]

System-wide emission limit-The ratio of the total allowable nitrogen oxides mass emissions rate dischargeable into the

atmosphere from affected units in an electric power generating system **or portion thereof located within a single ozone nonattainment area** when firing at their **average activity levels** [maximum rated capacity] to the total **sum of average activity levels** [maximum rated capacities] for those units. **For gaseous or solid fuel, maximum rated capacities may be used in lieu of average activity levels for the purpose of calculating the system-wide emission limit.**

System-wide emission rate–The ratio of the total actual nitrogen oxides mass emissions rate discharged into the atmosphere from affected units in an electric power generating system **or portion thereof located within a single ozone nonattainment area** when firing at their **average activity levels** [maximum rated capacity] to the total **sum of average activity levels** [maximum rated capacities] for those units. **For gaseous or solid fuel, maximum rated capacities may be used in lieu of average activity levels for the purpose of calculating the system-wide emission rate.**

Unit–Any boiler, steam generator, process heater, stationary gas turbine, or stationary internal combustion engine, as defined in this section, which is **either:**

(A) placed into service prior to November 15, 1992;[.]

(B) placed into service after June 9, 1993, as functionally identical replacement for an existing unit subject to the provisions of this chapter and limited to the capacity limit of the unit replaced; or

(C) placed into service after June 9, 1993 and belonging to an equipment category which is complying with §117.223 of this title (relating to Source Cap).

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

Issued in Austin, Texas, on December 27, 1993.

TRD-9334030 Mary Ruth McDonald
Director, Legal Division
Texas Natural Resource Conservation Commission

Proposed date of adoption: March 31, 1994

For further information, please call: (512) 463-8159

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Subchapter B. Combustion at Existing Major Sources

Utility Electric Generation

- **30 TAC §§117.103, 117.105, 117.107, 117.109, 117.111, 117.113, 117.115, 117.117, 117.119, 117.121**

The amendments are proposed under the Texas Health and Safety Code (Vernon 1990), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purpose of the TCAA.

§117.103. Exemptions.

(a) (No change.)

(b) Units exempted from the provisions of this undesignated head (relating to Utility Electric Generation), **except for §117.109(b)(1) of this title (relating to Initial Control Plan Procedures) and §117.113(h) of this title (relating to Continuous Demonstration of Compliance),** include the following:

(1) (No change.)

(2) any utility boiler, steam generator, or auxiliary steam boiler with an annual heat input less than or equal to $2.2(10_{11})$ **British thermal units** (Btu) per year; or

(3) stationary gas turbines, which are:

(A) used solely to power other engines or gas turbines during start-ups; or

(B) [used as emergency standby gas turbines or engines and] demonstrated to operate less than 850 hours per [calendar] year, **based on a rolling monthly average.**[; or]

[(C) peaking gas turbines and operated less than 850 hours per calendar year.]

(c) The fuel oil firing emission limitation of §117.105(c) or §117.107(b) of this title shall not apply during an emergency operating condition declared by the Electric Reliability Council of Texas or the Southwest Power Pool, or any other emergency operating condition which necessitates oil firing. All findings that emergency operating conditions exist are subject to the approval of the Executive Director. The owner or operator of an affected unit shall give the Executive Director and any local air pollution control agency having jurisdiction verbal notification as soon as possible after declaration of the emergency. Verbal notification shall identify the anticipated date and time oil firing will begin, duration of the emergency period, affected oil-fired equipment, and quantity of oil to be fired in each unit. The owner or operator of an affected unit shall give the Executive Director and any local air pollution control agency having jurisdiction written notification as soon as possible but no later than two weeks after the termination of emergency fuel oil firing. Written notification shall identify the actual dates and times that oil firing began and ended, duration of the emergency period, affected oil-fired equipment, and quantity of oil fired in each unit.

[(c) The owner or operator of any utility boiler, steam generator, or auxiliary steam boiler using the exemption of subsection (b)(2) of this section shall install and maintain totalizing fuel meters for each individual unit, as approved by the Executive Director, and record the fuel input for each unit on a calendar year basis. The owner or operator of any engine or turbine using the exemption of subsection (b)(3) of this section shall record the operating time with instrumentation approved by the Executive Director. The owner or operator of any utility boiler, steam generator, auxiliary steam boiler, or stationary gas turbine or engine exempt under the exemptions of subsection (b) (2) and (3) of this section must notify the Executive Director within seven days if the applicable Btu per year (Btu/yr) or hour per year (hr/yr) limit is exceeded. If the Btu/yr or hr/yr limit is exceeded, the exemption shall be permanently withdrawn Within 90 days after loss of the exemption, the owner or operator must submit a compliance plan detailing a plan to meet the applicable compliance limit as soon as possible but no later than 24 months after exceeding the hr/yr limit. Included with this compliance plan, the owner or operator must submit a schedule of increments of progress for the installation of the required control equipment. This schedule shall be subject to the review and approval of the Executive Director.]

§117.105. Emission Specifications.

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

(d) No person shall allow the discharge into the atmosphere from any utility boiler, steam generator, or auxiliary steam boiler, NO_x emissions in excess of the heat input weighted average of the applicable emission limits specified in subsections (a)-(c) of this section on a rolling 24-hour averaging period while firing a mixture of natural gas and fuel oil, as follows: Emission Limit = [a(0.26) + b(0 30)]/(a + b) Where: a = [is] the percentage of total heat input from natural gas. b = [is] the percentage of total heat input from fuel oil.

(e)-(i) (No change.)

(j) No person shall allow the discharge into the atmosphere from any **utility boiler, steam generator, or auxiliary steam boiler** [unit] subject to this undesignated head (relating to Utility Electric Generation), carbon monoxide (CO) emissions in excess of 400 ppmv based on a rolling 24-hour averaging period.

(k) No person shall allow the discharge into the atmosphere from any stationary gas turbine with a MW rating greater than or equal to 10 MW, CO emissions in excess of a block one-hour average of 132 ppmv at 15% O_2, dry basis.

(l)[(k)] No person shall allow the discharge into the atmosphere from any unit subject to this undesignated head, ammonia emissions in excess of 20 ppmv based on a block one-hour averaging period.

(m) [(l)] The NO_x emission limits specified in subsections (a) -(i) of this section shall apply at all times, except as specified in §117. 103 of this title (relating to Exemptions) and §117.107 of this title (relating to Alternative System-Wide Emission Specifications). The emission limits specified in subsections (j), [and] (k), **and (l)** of this section shall apply at all times, except as specified in §117.103 of this title.

(n)[(m)] For purposes of this subchapter, **the following shall apply:**

(1) The [the] **lower** [more stringent] of any permit NO_x emission limit in effect on June 9, 1993 under a permit issued pursuant to Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) and the NO_x emission limits of subsections (a)-(i) of this section shall apply, except that gas-fired boilers and heaters operating under a permit issued after March 3, 1982, with an emission limit of 0.12 pound NO_x per million Btu heat input, shall be limited to that rate for the purposes of this subchapter.

(2) For any unit placed into service after June 9, 1993, and prior to May 31, 1995, or the final compliance date as approved under the provisions of §117.540 of this title (relating to Phased Reasonably Available Control Technology (RACT)), as functionally identical replacement for an existing unit subject to the provisions of this chapter and limited to the capacity limit of the unit replaced, the higher of any permit NO_x emission limit under a permit issued after June 9, 1993, pursuant to Chapter 116 of this title and the emission limits of subsections (a)-(i) of this section shall apply. The inclusion of such new units is an optional method for complying with the emission limitations of this section.

§117.107. Alternative System-Wide Emission Specifications.

(a) **An owner or operator of any gaseous- or coal-fired utility boiler or stationary gas turbine** may achieve compliance with the nitrogen oxides (NO_x) emission limits of §117.105 of this title (relating to Emission Specifications) by achieving compliance with a system-wide emission limitation, **except as provided for in subsection (d) of this section.** Any owner or operator who elects to comply with system-wide emission limits shall reduce emissions of NO_x from affected units so that, if all such units were operated at their maximum rated capacity, the system-wide emission rate from all units in the system would not exceed the system-wide emission limit as defined in §117.10 of this title (relating to Definitions), and shall establish enforceable emission limits for each affected unit in the system. A pound per million (MM) Btu emission limit based on a rolling 24-hour averaging period and a pound per MMBtu emission limit based on a 30-day averaging period shall apply to each gas-fired unit in the system. A pound per MMBtu emission limit based on a rolling 24-hour averaging period shall apply to each coal-fired unit in the system. **For stationary gas turbines, the emission limits shall be assigned in the units given by the appropriate emission limitation of §117.105 of this title.**

(b) An owner or operator of any fuel oil-fired utility boiler may achieve compliance with the NO_x emission limits of §117.105 of this title by achieving compliance with a system-wide emission limitation. Any owner or operator who elects to comply with system-wide emission limits for oil firing shall reduce emissions of NO_x from affected units so that, if all such units were operated at their average activity level for fuel oil firing as defined in §117.10 of this title, the system-wide emission rate from all oil-fired units in the system would not exceed the system-wide emission limit as defined in §117.10 of this title, and shall establish enforceable emission limits for oil firing for each affected unit in the system. A pound per MMBtu emission limit based on a rolling 24-hour averaging period shall apply to each oil-fired unit in the system The emission limit assigned to each oil-fired unit in the system shall not exceed 0.5 pound per MMBtu based on a rolling 24-hour average.

(c)[(b)] An owner or operator of any gaseous and liquid fuel-fired utility boiler, steam generator, auxiliary steam boiler, or gas turbine [which derives more than 50% of its annual heat input from gaseous fuel] shall calculate the gaseous and liquid fuel-fired system-wide emission limits of subsections (a) and (b) of this section separately. The owner or operator shall also:

(1) (No change.)

(2) comply with the **assigned maximum allowable emission rates for liquid fuel** [liquid fuel emission limit of §117.105 of this title] while firing liquid fuel only; and

(3) comply with **a limit** [limits] calculated as the actual heat input weighted sum of the assigned gas-firing allowable emission **limit** [rate] and the **assigned liquid-firing allowable emission limit** [liquid fuel emission limit of §117.105 of this title] while operating on liquid and gaseous fuel concurrently.

(d) [(c)] Peaking gas turbines subject to the emission limits of §117. 105(h) or (i)of this title and auxiliary steam boilers subject to the emission limits of §117.105(a), (c), (d), or (e) of this title shall comply with those individual emission specifications under this section and shall not be included in the system-wide emission specification. Coal-fired utility boilers or steam generators shall be treated as a separate system, and system averaging for coal-fired utility boilers or steam generators shall be limited to those units under this section.

(e)[(d)] Solely for purposes of calculating the system-wide emission limit, the allowable mass emission rate for each affected unit shall be calculated from the emission specifications of §117.105 of this title, as follows.

(1) The NO_x emissions rate (in pounds per hour) for each affected utility boiler, steam generator, or auxiliary steam boiler is the product of its **average activity level for fuel oil firing or** maximum rated capacity **for gas firing** and its NO_x emission specification of §117.105 of this title.

(2) The NO_x emissions rate (in pounds per hour) for each affected stationary gas turbine is the product of the in-stack NO_x, the turbine manufacturer's rated exhaust flow rate (expressed in pounds per hour at megawatt (MW) rating and International Standards Organization (ISO) flow conditions), and $(46/28)(10_p)$; Where:

$\%O_2$ = the volume percent oxygen in the stack gases on a wet basis, as calculated from the manufacturer's data, or other data as approved by the Executive Director, at the MW rating and ISO flow conditions.

§117.109. Initial Control Plan Procedures.

(a) The owner or operator of any major source of nitrogen oxides (NO_x) [which has units subject to §117.105 of this title (relating to Emission Specifications) or §117.107 of this title (relating to Alternative System-Wide Emission] shall submit, for the approval of the Executive Director, an initial control plan for installation of nitrogen oxides (NO_x) emissions control equipment and demonstration of anticipated compliance with other applicable requirements of this subchapter [to meet the requirements of §117.105 of this title or §117. 107 of this title]. The Executive Director shall approve the plan if it contains all the information specified in this section. Revisions to the initial control plan shall be submitted with the final control plan.

(b) The initial control plan shall be submitted in accordance with the schedule specified in §117.510(1) [§117.510] of this title (relating to Compliance Schedule For Utility Electric Generation) and shall contain the following:

(1) a list of all combustion units at the source with a maximum rated capacity greater than 5.0 million Btu per hour; all stationary, reciprocating internal combustion which are located in the Houston/Galveston ozone nonattainment area and rated 150 horsepower (hp) or greater, or located in the Beaumont/Port Arthur ozone nonattainment area and rated 300 hp or greater; all stationary gas turbines with a megawatt (MW) rating of greater than or equal to 1.0 MW; to include the maximum rated capacity, anticipated annual heat input capacity factor, the facility identification numbers and emission point numbers as submitted to the Emissions Inventory Section [Division] of the Texas Natural Re-

source Conservation Commission (TNRCC) [Texas Air Control Board (TACB)], and the emission point numbers as listed on the Maximum Allowable Emissions Rate Table of any applicable TNRCC [TACB] permit for each unit;

(2) identification of all units subject to the emission specifications of §117.105 [of this title] or §117.107 of this title;

(3) identification of all boilers[,] and stationary gas turbines with a claimed exemption from the emission specifications of §117.105 [of this title] or §117.107 of this title and the rule basis for the claimed exemption;

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

(6) a list of any units which have been or will be retired, decommissioned, or shutdown and rendered inoperable, indicating the date of occurrence and whether these actions are [as] a result of compliance with this regulation; and

(7) the basis for calculation of the mass rate of NO_x emissions for each unit to demonstrate that each unit will achieve the NO_x emission rates specified in §117.105 [of this title] or §117.107 of this title. Emissions from stationary gas turbines shall be represented in the units given by the appropriate emission limitation of §117.105 of this title.

(8) for units required to install totalizing fuel flow meters in accordance with §117.113(e), (g), or (h) of this title (relating to Continuous Demonstration of Compliance), indication of whether the devices have been placed in operation by April 1, 1994.

§117.111. Initial Demonstration of Compliance.

(a) All units which are [identified in the control plan required by §117.109 of this title (relating to Initial Control Plan Procedures) and are] subject to the emission limitations of §117.105 of this title (relating to Emission Specifications) or §117.107 of this title (relating to Alternative System [Plant]-Wide Emission Specifications)[,] shall be tested for nitrogen oxides (NO_x), carbon monoxide (CO), and oxygen (O_2) emissions. Units which inject urea or ammonia into the exhaust stream for NO_x control shall be tested for ammonia emissions. Such tests shall be performed in accordance with the schedules [schedule] specified in §117.510(4) [§117.510(3)] and (5) of this title (relating to Compliance Schedule For Utility Electric Generation).

(b) (No change.)

(c) Continuous emissions monitoring systems (CEMS) required by §117.113(a) of this title (relating to Continuous Demonstration of Compliance) or predictive emissions monitoring systems (PEMS) required by §117.113(e) of this title shall be installed and operational prior to conducting initial demonstration of compliance [performance] testing under subsection (a) of this section. Verification of operational status shall, as a minimum, include completion of the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device.

(d) Initial compliance with the emission specifications of §117.105 [of this title] or §117.107 of this title for units operating with CEMS in accordance with §117.113(a) of this title or with PEMS in accordance with §117.113(e) of this title shall be demonstrated using the NO_x CEMS or PEMS as follows.

(1) (No change.)

(2) To comply with the NO_x emission limit in pound per MMBtu on a rolling 24-hour average, NO_x emissions from a unit are monitored for 24 consecutive operating hours and the 24-hour average emission rate is used to determine compliance with the NO_x emission limit. The 24-hour average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during the 24-hour test period. Compliance with the NO_x emission limit for fuel oil firing shall be determined based on the first 24 consecutive operating hours a unit fires fuel oil.

(3) (No change.)

§117.113. Continuous Demonstration of Compliance.

(a) (No change.)

(b) Any CEMS required by subsection (a) of this section shall be installed, calibrated, maintained, and operated in accordance with 40 CFR, Part 75 or 40 CFR, Part 60, as applicable. The [Texas Air Control Board (TACB)] Executive Director of the Texas Natural Resource Conservation Commission (TNRCC) may approve alternative locations to in-stack monitoring for any affected unit subject to this section.

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

(e) As an alternative to CEMS, the owner or operator of units subject to continuous monitoring requirements under this undesignated head and not subject to the requirements of 40 CFR 75 may, with the approval of the Executive Director, elect to install, calibrate, maintain, and operate predictive emissions monitoring systems (PEMS) and totalizing fuel flow meters. The required PEMS and fuel flow meters shall be used to measure NO_x, CO, and O_2 (or CO_2) emissions and fuel flow for each affected unit and shall be used to demonstrate continuous compliance with the emission limitations of §117.105 or §117.107. As an alternative to using PEMS to monitor O_2 or CO_2, subsection (a) of this section or similar alternative method approved by the Executive Director may be used. Any PEMS shall meet the requirements of §117. 119 of this title (relating to Notification, Recordkeeping, and Reporting Requirements) and §117.213(c)(1)-(3) of this title (relating to Continuous Demonstration of Compliance).

(f)[(e)] The owner or operator of each gas turbine subject to the emission specifications of §117.105 of this title, in lieu of monitoring emissions in accordance with the monitoring requirements of 40 CFR 75, may elect to comply with the following monitoring requirements:

(1) for gas turbines rated less than 30 megawatt (MW) or peaking gas turbines (as defined in §117.10 of this title) which use steam or water injection to comply with the emission specifications of §117.105(h) or (i) of this title:

(A) install, calibrate, maintain and operate a CEMS or PEMS in compliance with subsection (b) of this section; or

(B) (No change.)

(2) for gas turbines subject to the emission specifications of §117.105(f) or (g) of this title, install, calibrate, maintain and operate a CEMS or PEMS in compliance with subsection (b) of this section [title].

(g) The owner or operator of any stationary gas turbine with a MW rating greater than or equal to 1.0 MW operated more than 850 hours per year shall install and maintain totalizing fuel flow meters on an individual unit basis.

(h) The owner or operator of any utility boiler, steam generator, or auxiliary steam boiler using the exemption of §117.103(b)(2) of this title shall install and maintain totalizing fuel meters for each individual unit, as approved by the Executive Director, and record the annual fuel input for each unit, based on a rolling monthly average. The owner or operator of any stationary gas turbine using the exemption of §117.103(b)(3) of this title shall record the operating time with an elapsed run time meter approved by the Executive Director.

(i) The owner or operator of any utility boiler, steam generator, or auxiliary steam boiler using the exemption of §117.103(b)(2) of this title, or any stationary gas turbine using the exemption of §117.103(b)(3) of this title shall notify the Executive Director within seven days if

the Btu/yr or hour-per-year (hr/yr) limit specified in §117.103(b)(2) or §117.103(b)(3) of this title, as appropriate, is exceeded. If the Btu/yr or hr/yr limit, as appropriate, is exceeded, the exemption from the emission specifications of §117.105 of this title shall be permanently withdrawn. Within 90 days after loss of the exemption, the owner or operator shall submit a compliance plan detailing a plan to meet the applicable compliance limit as soon as possible, but no later than 24 months after exceeding the Btu/yr or hr/yr limit, as appropriate. Included with this compliance plan, the owner or operator shall submit a schedule of increments of progress for the installation of the required control equipment. This schedule shall be subject to the review and approval of the Executive Director.

(j)[(f)] After the initial demonstration of compliance required by §117.111 of this title (relating to Initial Demonstration of Compliance), compliance with either §117.105 [of this title] or §117.107 of this title, as applicable, shall be determined by the methods required in this section. Compliance with the emission limitations may also be determined at the discretion of the Executive Director using any **TNRCC** [TACB] compliance method. If compliance with §117.105 of this title is selected, no unit subject to §117.105 of this title shall be operated at an emission rate higher than that allowed by the emission specifications of §117.105 of this title. If compliance with §117.107 of this title is selected, no unit subject to §117.107 of this title shall be operated at an emission rate higher than that approved by the Executive Director pursuant to §117.115(b)(2) of this title (relating to Final Control Plan Procedures).

§117.115. Final Control Plan Procedures.

(a) For sources complying with §117.105 of this title (relating to Emission Specifications), the owner or operator of an affected source shall submit a final control report to show compliance with the requirements of §117.105 of this title by the date specified in **§117.510(6)** [§117.510(4)] of this title (relating to Compliance Schedule For Utility Electric Generation). The report shall include a list of all affected units showing the method of control of nitrogen oxides (NO_x) emissions for each unit and the results of testing required in §117.111 of this title (relating to Initial Demonstration of Compliance).

(b) For sources complying with §117. 107 of this title (relating to Alternative System-Wide Emission Specifications) , the owner or operator of an affected source shall submit a final control plan to show attainment of the requirements of §117.107 of this title by the date specified in **§117.510(6)** [§117.510(4)] of this title. The owner or operator shall:

(1) assign to each affected unit the maximum NO_x emission rate, expressed in units of pound per million Btu heat input on a rolling 24-hour average and rolling 30-day average for gaseous [or liquid] fuel [-]firing, and a rolling 24-hour average for oil or coal firing, which are allowable for that unit under the requirements of §117.107 of this title;

(2) (No change.)

(3) **submit a description of the NO_x** control method used to achieve compliance with §117.107 of this title, and the results of testing for each unit in accordance with the requirements of §117.111 of this title. For units complying with a pound per million Btu emission limit on a rolling 30-day average, this information may be submitted according to the schedule given in §117.510(4) of this title.

(4)[(3)] submit a list summarizing the results of testing for each unit in accordance with the requirements of §117.111 of this title.

§117.117. Revision of Final Control Plan. A revised final control plan may be submitted by the owner or operator, along with any required permit applications. Such a plan shall adhere to the emission limits and the final compliance dates of this undesignated head (relating to Utility Electric Generation). **For sources complying with §117.105 of this title (relating to Emission Specifications), or §117.107 of this title (relating to Alternative System-Wide Emission Specifications), replacement new units may be included in the control plan.** The revision of the final control plan shall be subject to the review and approval of the Executive Director.

§117.119. Notification, Recordkeeping, and Reporting Requirements.

(a) For units subject to the exemptions allowed under §117.103(a) of this title (relating to Exemptions), hourly records shall be made of start-up and/or shutdown events and maintained for a period of at least two years. Records shall be available for inspection by the **Texas Natural Resource Conservation Commission (TNRCC)** [Texas Air Control Board (TACB)], United States Environmental Protection Agency (EPA), and any local air pollution control agency having jurisdiction upon request. These records shall include, but are not limited to: type of fuel burned; quantity of each type fuel burned; gross and net energy production in megawatt hours (MW-hr); and the date, time, and duration of the event [procedure].

(b) The owner or operator of a unit subject to the provisions of §117.105 of this title (relating to Emission Specifications) or §117.107 of this title (relating to Alternative System-Wide Emission Specifications) shall submit **notification** to the Executive Director [written notification,] as follows:

(1) verbal notification of the date of any **initial demonstration of compliance** [performance] testing conducted under §117. 111 of this title (relating to Initial Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed; and

(2) verbal notification of the date of any continuous emissions monitoring system (CEMS) **or predictive emissions monitoring systems (PEMS)** performance evaluation conducted under §117.113 of this title (relating to Continuous Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed.

(c) The owner or operator of an affected unit shall furnish the Executive Director and any local air pollution control agency having jurisdiction a copy of any **initial demonstration of compliance** [performance] testing conducted under §117.111 of this title or any CEMS **or PEMS** performance evaluation conducted under §117.113 of this title within 60 days after completion of such testing or evaluation. **Such results shall be submitted in accordance with the appropriate compliance schedules specified in §117.510(3) and (4) of this title (relating to Compliance Schedule for Utility Electric Generation).**

(d) The owner or operator of a unit required to install a CEMS, **PEMS,** [continuous operating parameter monitoring system,] or steam-to-fuel or water-to-fuel ratio monitoring system under §117.113 of this title shall report in writing to the Executive Director on a quarterly basis any exceedance of the applicable emission limitations in §117.105 [of this title] or §117.107 of this title and the monitoring system performance. All reports shall be postmarked or received by the 30th day following the end of each calendar quarter. Written reports shall include the following information:

(1) the magnitude of excess emissions computed in accordance with 40 Code of Federal Regulations, Part 60, §60.13(h), any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the unit operating time during the reporting period. For gas turbines using steam-to-fuel or water-to-fuel ratio monitoring to demonstrate compliance in accordance with **§117.113(f)(1)(B)** [§117. 113(e)(1)(B)] of this title, excess emissions are computed as each one-hour period dur-

ing which the hourly steam-to-fuel or water-to-fuel ratio is less than the ratio determined to result in compliance during the initial **demonstration of compliance** [performance] test required by §117.111 of this title.

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

(5) if the total duration of excess emissions for the reporting period is less than 1.0% of the total unit operating time for the reporting period and the CEMS, **PEMS,** or steam-to-fuel or water-to-fuel ratio monitoring system downtime for the reporting period is less than 5.0% of the total unit operating time for the reporting period, only a summary report form (as outlined in the latest edition of the **TNRCC** [TACB] "Guidance for Preparation of Summary, Excess Emission, and Continuous Monitoring System Reports") shall be submitted, unless otherwise requested by the Executive Director of the **TNRCC** [TACB]. If the total duration of excess emissions for the reporting period is greater than or equal to 1.0% of the total operating time for the reporting period or the CEMS or steam-to-fuel or water-to-fuel ratio monitoring system downtime for the reporting period is greater than or equal to 5.0% of the total operating time for the reporting period, a summary report and an excess emission report shall both be submitted.

(e) For units subject to the provisions of §117.105 [of this title] or §117.107 of this title, records of hours of operation and other operating records shall be made and maintained for a period of at least two years. Records shall be available for inspection by the **TNRCC** [TACB], EPA, or local air pollution control agencies having jurisdiction upon request. Operating records for each unit shall be recorded and maintained at a frequency equal to the applicable emission specification averaging period, or monthly for units exempt from the emission specifications based on annual heat input, or hours of operation per calendar year, and shall include:

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

(5) CEMS, **PEMS,** [continuous operating parameter monitoring system,] or steam-to-fuel or water-to-fuel ratio monitoring system data, as applicable, pursuant to §117.113 of this title. The records shall include:

(A) (No change.)

(B) the results of **initial demonstration of compliance** [performance] testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS, **PEMS,** [continuous operating parameter monitoring systems,] or steam-to-fuel or water-to-fuel ratio monitoring systems; and

(C) (No change.)

§117.121. Alternative Case Specific Specifications. Where a person can demonstrate that an affected unit cannot attain the requirements of §117.105 of this title (relating to Emission Specifications), as applicable, the Executive Director, on a case-by-case basis after considering the technological and economic circumstances of the individual unit, may approve emission specifications different from §117.105 of this title for that unit based on the determination that such specifications are the result of the lowest emission limitation the unit is capable of meeting after the application of reasonably available control technology. In determining whether to approve alternative emission specifications, the Executive Director may take into consideration the ability of the plant at which the unit is located to meet emission specifications through system-wide averaging at maximum capacity. Any person affected by the decision of the Executive Director may appeal to the **Commission** [Board] by filing written notice of appeal with the Executive Director within 30 days after the decision. Such appeal is to be taken by written notification to the Executive Director. Section 103.71 of this title (relating to Request for Action by the **Commission** [Board]) should be consulted for the method of requesting **Commission** [Board] action on the appeal. Executive Director approval does not necessarily constitute satisfaction of all federal requirements nor eliminate the need for approval by the United States Environmental Protection Agency in cases where specified criteria for determining equivalency have not been clearly identified in applicable sections of this undesignated head (relating to Utility Electric Generation).

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

Issued in Austin, Texas, on December 27, 1993

TRD-9334031 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Proposed date of adoption: March 31, 1994

For further information, please call: (512) 463-8159

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Subchapter B. Combustion at Existing Major Sources

Commercial, Institutional, and Industrial Sources

- **30 TAC §§117.203, 117.205, 117.207-117.209, 117.211, 117.213, 117.215, 117.217, 117.219, 117.221, 117.223**

The new section and amendments are proposed under the Texas Health and Safety Code (Vernon 1990), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposed of the TCAA.

§117.203. Exemptions.

(a) (No change.)

(b) Units exempted from the provisions of this undesignated head (relating to Commercial, Institutional, and Industrial Sources), **except for §117.209(c)(1) (relating to Initial Control Plan Procedures) and §117.213(d)(2) and (g) (relating to Continuous Demonstration of Compliance),** include the following:

(1) any new units placed into service after November 15, 1992, **except for new units which were placed into service as functionally identical replacement for existing units subject to the provisions of this undesignated head as of June 9, 1993. Such replacement shall be limited to the capacity limit of the units replaced;**

(2)-(5) (No change.)

(6) stationary gas turbines and engines, which are:

(A) used in research and testing, or used for purposes of performance verification and testing, or used solely to power other engines or gas turbines during start-ups, or operated exclusively for firefighting and/or flood control, or used in response to and during the existence of any officially-declared disaster or state of emergency, or used directly and exclusively by the owner or operator for agricultural operations necessary for the growing of crops or raising of fowl or animals, or used as chemical processing gas turbines; or

(B) [used as emergency standby gas turbines which are] demonstrated to operate less than 850 hours per [calendar] year, **based on a rolling monthly average.** [(low annual capacity

factor gas turbines) or engines which are demonstrated to operate less than 850 hours per calendar year (low annual capacity factor engines). The owner or operator of any engine or turbine using this exemption shall record the operating time with an elapsed run time meter; or

[(C) used as peaking gas turbines or engines and operated less than 850 hours per calendar year. The owner or operator of any engine or turbine using this exemption shall record the operating time with instrumentation approved by the Executive Director. The owner or operator of any stationary gas turbine or engine exempt under this exemption must notify the Executive Director within seven days if the hour-per-year limit is exceeded. If the hour-per-year limit is exceeded, the exemption shall be permanently withdrawn. Within 90 days after loss of the exemption, the owner or operator must submit a compliance plan detailing a plan to meet the applicable compliance limit as soon as possible but no later than 24 months after exceeding the hour-per-year limit. Included with this compliance plan, the owner or operator must submit a schedule of increments of progress for the installation of the required control equipment. This schedule shall be subject to the review and approval of the Executive Director;]

(7)-(8) (No change)

§117.205 Emission Specifications.

(a) No person shall allow the discharge of air contaminants into the atmosphere to exceed the emission limits of this section, except as provided in §117.207 of this title (relating to Alternative Plant-Wide Emission Specifications), **or §117.223 of this title (relating to Source Cap).**

(1) For purposes of this subchapter, the lower of any permit NO_x emission limit in effect on June 9, 1993 under a permit issued pursuant to Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) and the emission limits of subsections (b)-(d) of this section shall apply, except that.

(A) gas-fired boilers and process heaters operating under a permit issued after March 3, 1982, with an emission limit of 0.12 pound NO_x per million Btu heat input, shall be limited to that rate for the purposes of this subchapter; and

(B) gas-fired boilers and process heaters which have had NO_x reduction projects permitted since November 15, 1990 and prior to June 9, 1993 that were solely for the purpose of making early NO_x reductions, shall be subject to the appropriate emission limit of subsection (b) of this section. The affected person shall document that the NO_x reduction project was solely for the purpose of obtaining early reductions, and include this documentation in the initial control plan required in §117.209 of this title (relating to Initial Control Plan Procedures).

(2) For any unit placed into service after June 9, 1993 and prior to May 31, 1995 or the final compliance date as approved under the provisions of §117.540 of this title (relating to Phased Reasonably Available Control Technology (RACT)), as functionally identical replacement for an existing unit subject to the provisions of this chapter and limited to the capacity limit of the unit replaced, the higher of any permit NO_x emission limit under a permit issued after June 9, 1993 pursuant to Chapter 116 of this title and the emission limits of subsections (b)-(d) of this section shall apply. The inclusion of such new units is an optional method for complying with the emission limitations of this section.

(b) For boilers and process heaters [units] which operate with continuous emission monitors in accordance with §117.213(b) of this title (relating to Continuous Demonstration of Compliance), **or with predictive emissions monitors in accordance with §117.213(c) of this title,** the emission limits shall apply as the mass of nitrogen oxides (NO_x) emitted per unit of energy input (pound NO_x per million (MM) Btu), on a rolling 30-day average period, or as the mass of NO_x emitted per hour (pounds per hour), on a block one-hour average. **For boilers and process heaters** [units] which do not operate with continuous **or predictive** emission monitors, the emission limits shall apply as the mass of NO_x emitted per hour (pounds NO_x per hour), on a block one-hour average. The mass of NO_x emitted per hour shall be calculated as the product **of the boiler's or process heater's** [unit's] maximum rated capacity and its applicable limit [(]in pound NO_x per MMBtu[), as follows]. **For each commercial, institutional, or industrial boiler and process heater with a maximum rated capacity greater than or equal to 100.0 MMBtu/hr of heat input, the applicable emission limit is as follows:**

[(1) Each commercial, institutional, or industrial boiler which is an affected facility as defined by New Source Performance Standards (NSPS) 40 Code of Federal Regulations (CFR), Part 60, Subparts D or Db, shall be limited to the applicable NSPS NO_x emission limit, unless the boiler is also subject to a more stringent permit emission limit as identified in paragraph (2) of this subsection, in which case the more stringent emission limit applies.

[(2) Each commercial, institutional, or industrial boiler or process heater operating under a permit issued after March 3, 1982, pursuant to Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) and placed into service prior to November 15, 1992, and subject to a NO_x best available control technology review shall be subject to the permitted NO_x limitation, as follows:

[(3) Each commercial, institutional, or industrial boiler and process heater with a maximum rated capacity greater than or equal to 100.0 MMBtu/hr of heat input, not subject to paragraphs (1) or (2) of this subsection, shall meet the applicable emission limit, as follows:

[(A) the limit explicitly stated in pound NO_x per MMBtu of heat input by permit provision (converted from low heating value to high heating value, as necessary); or

[(B) the NO_x emission limit is the limit calculated as the permit Maximum Allowable Emission Rate Table emission limit in pounds per hour, divided by the maximum heat input to the unit in MMBtu per hour (MMBtu/hr), as represented in the permit application. In the event the maximum heat input to the unit is not explicitly stated in the permit application, the rate shall be calculated from Table 6 of the permit application, using the design maximum fuel flow rate and higher heating value of the fuel, or, if neither of the above are available, the unit's nameplate heat input.]

(1)[(A)] gas-fired boilers, as follows:

(A)[(i)] low heat release boilers with no preheated air or preheated air less than 200 degrees Fahrenheit [of air preheat], 0.10 pound (lb) NO_x/MMBtu of heat input,

(B)[(ii)] low heat release boilers with preheated air greater than or equal to 200 degrees Fahrenheit and less than 400 degrees Fahrenheit [of air preheat], 0 15 lb NO_x/MMBtu of heat input;

(C)[(iii)] low heat release boilers with preheated air greater than or equal to 400 degrees Fahrenheit [of air preheat], 0.20 lb NO_x/MMBtu of heat input,

(D)[(iv)] high heat release boilers with no preheated air or preheated air less than 250 degrees Fahrenheit [of air preheat], 0.20 lb NO_x/MMBtu of heat input;

(E)[(v)] high heat release boilers with preheated air greater than or equal to 250 degrees Fahrenheit and less than 500 degrees Fahrenheit [of air preheat], 0.24 lb NO_x/MMBtu of heat input; or

(F)[(vi)] high heat release boilers with preheated air greater than or equal to 500 degrees Fahrenheit [of air preheat], 0.28 lb NO_x/MMBtu of heat input.

(2)[(B)] gas-fired process heaters, based on either air preheat temperature or firebox temperature, as follows:

(A)[(i)] based on air preheat temperature:

(i)[(I)] process heaters with preheated air less than 200 degrees Fahrenheit [of air preheat], 0.10 lb NO_x/MMBtu of heat input;

(ii)[(II)] process heaters with preheated air greater than or equal to 200 degrees Fahrenheit and less than 400 degrees Fahrenheit [of air preheat], 0.13 lb NO_x/MMBtu of heat input; or

(iii)[(III)] process heaters with preheated air greater than or equal to 400 degrees Fahrenheit [of air preheat], 0.18 lb NO_x/MMBtu of heat input.

(B)[(ii)] based on firebox temperature:

(i)[(I)] process heaters with a firebox temperature less than 1,400 degrees Fahrenheit, 0.10 lb NO_x/MMBtu of heat input;

(ii)[(II)] process heaters with a firebox temperature greater than or equal to 1,400 degrees Fahrenheit and less than 1,800 degrees Fahrenheit, 0.125 lb NO_x/MMBtu of heat input; or

(iii)[(III)] process heaters with a firebox temperature greater than or equal to 1,800 degrees Fahrenheit, 0.15 lb NO_x/MMBtu of heat input;

(3)[(C)] liquid fuel-fired boilers and process heaters, 0.30 lb NO_x/MMBtu of heat input;

(4)[(D)] wood fuel-fired boilers and process heaters, 0.30 lb NO_x/MMBtu of heat input;

(5)[(E)] any unit operated with a combination of gaseous, liquid, or wood fuel, a variable emission limit calculated as the heat-input weighted average of the applicable emission limits of this **subsection** [paragraph].

(6)[(4)] **For any** [Any] gas-fired boiler or process heater firing gaseous fuel which contains more than 50% hydrogen by volume, over an eight-hour period, in which the fuel gas composition is sampled and analyzed every three hours, a multiplier of 1.25 times the appropriate emission limit in this subsection **may be used**[,] for that eight-hour period. The total hydrogen volume in all gaseous fuel streams will be divided by the total gaseous fuel flow volume to determine the volume percent of hydrogen in the fuel supply.

(c)[(b)] No person shall allow the discharge into the atmosphere from any stationary gas turbine with a megawatt (MW) rating greater than or equal to 10.0 MW, emissions in excess of a block one-hour average concentration of 42 parts per million by volume (ppmv) NO_x and 132 ppmv carbon monoxide (CO) at 15% oxygen, dry basis.

(d)[(c)] No person shall allow the discharge into the atmosphere from any gas-fired, rich-burn, stationary, reciprocating internal combustion engine, emissions in excess of a block one-hour average of 2.0 grams NO_x per horsepower hour (g NO_x/hp-hr) and 3.0 g CO/hp-hr for engines which are:

(1) rated 150 hp or greater and located in the Houston/Galveston ozone nonattainment area; or

(2) rated 300 hp or greater and located in the Beaumont/Port Arthur ozone nonattainment area.

(e)[(d)] No person shall allow the discharge into the atmosphere from any boiler or process heater subject to NO_x emission specifications in subsection (a) **or (b)** of this section, CO in excess of 400 ppmv **at 3.0% oxygen, dry basis,** based on a block one-hour average.

(f) [(e)] No person shall allow the discharge into the atmosphere from any unit subject to a NO_x emission limit in this undesignated head (relating to Commercial, Institutional, and Industrial Sources), ammonia emissions in excess of 20 ppmv based on a block one-hour averaging period.

(g)[(f)] Units exempted from the emissions specifications of this section include the following:

(1) any commercial, institutional, or industrial boiler or process heater with a maximum rated capacity less than 100 MMBtu/hr;

(2) any low annual capacity factor boiler, [or] process heater, **stationary gas turbine, or stationary internal combustion engine** as defined in §117.10 of this title (relating to Definitions);

(3) boilers and industrial furnaces which are regulated as existing facilities by the **United States** [U.S.] nvironmental Protection Agency at 40 **Code of Federal Regulations** [CFR] Part 266, Subpart H;

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

(h)[(g)] The NO_x emission limits specified in subsections (a)-**(d)**[(c)] of this section shall apply at all times except as specified in §117.203 of this title (relating to Exemptions), [and] §117.207 of this title [(relating to Alternative Plant-Wide Emission Specifications)], **and §117.223 of this title.** The CO emission limits specified in subsections (c)[(b)], **(d)**[(c)], and (e)[(d)] of this section and the ammonia emission limits specified in subsection **(f)**[(e)] of this section shall apply at all times, except as specified in §117.203 of this title.

[(h) For purposes of this subchapter, the more stringent of any permit NO_x emission limit in effect on June 9, 1993 under a permit issued pursuant to Chapter 116 of this title and the emission limits of subsections a)(3)-(c) of this section shall apply, except that:

[(1) gas-fired boilers and heaters operating under a permit issued after March 3, 1982, with an emission limit of 0.12 pound NO_x per million Btu heat input, shall be limited to that rate for the purposes of this subchapter; and

[(2) gas-fired boilers and process heaters which have had NO_x reduction projects permitted since November 15, 1990 and prior to June 9, 1993 that were solely for the purpose of making early NO_x reductions, shall be subject to the appropriate emission limit of subsections (a)(3)-(c) of this section. The affected person must document that the NO_x reduction project was solely for the purpose of obtaining early reductions, and include this documentation in the initial control plan required in §117.209 of this title (relating to Initial Control Plan Procedures).]

§117.207. Alternative Plant-Wide Emission Specifications.

(a) An owner or operator may achieve compliance with the emission limits of §117.205 of this title (relating to Emission Specifications) by achieving equivalent nitrogen oxides (NO_x) emission reductions obtained by compliance with a plant-wide emission limitation. Any owner or operator who elects to comply with a plant-wide emission limit shall reduce emissions of NO_x from affected units so that if all such units were operated at their maximum rated capacity, the plant-wide emission rate of NO_x from these units would not exceed the plant-wide emission limit as defined in §117.10 of this title (relating to Definitions) and shall establish an enforceable emission limit for each affected unit at the source. **For boilers and process heaters** [units] which operate with continuous emission monitors in accordance with §117.213(b) of this title (relating to Continuous Demonstration of Compliance), **or with predictive**

emission monitors in accordance with §117.213(c) of this title, the emission limits shall apply as the mass of NO_x emitted per unit of energy input (pound NO_x per million (MM) Btu), on a rolling 30-day average period, or as the mass of NO_x emitted per hour (pounds per hour), on a block one-hour average. For **boilers and process heaters** [units] which do not operate with continuous **or predictive** emission monitors, the emission limits shall apply as the mass of NO_x emitted per hour (pounds NO_x per hour), on a block one-hour average. **For stationary gas turbines, the emission limits shall apply as the concentration in parts per million by volume at 15% oxygen, dry basis on a block one-hour average. For stationary internal combustion engines, the emission limits shall apply in units of grams per horsepower-hour on a block one-hour average.**

(b) Units exempted from emission specifications in accordance with **§117.205(g)** [§117.205(f)] of this title are also exempt under this section and shall not be included in the plant-wide emission limit, except as provided in subsection (f) of this section.

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

(f) The owner or operator of exempted units as defined in **§117.205(g)** [§117.205(f)] of this title may elect to include one or more of an entire equipment class of exempted units into the alternative plant-wide emission specifications as defined in this section. The equipment classes which may be included in the alternative plant-wide emission specifications as an entire population of units at the major source include the following: fluid catalytic cracking unit carbon monoxide (CO) boilers; lean-burn, gas-fired, stationary, reciprocating internal combustion engines rated 150 horsepower (hp) or greater; boilers, steam generators, or process heaters with a maximum rated capacity of greater than or equal to 40 million Btu per hour (MMBtu/hr) and less than 100 MMBtu/hr; and stationary gas turbines with a megawatt (MW) rating of greater than or equal to 1.0 MW and less than 10.0 MW. Low annual capacity factor boilers, [or] process heaters, [and low annual capacity factor] gas turbines, or engines as defined in §117.10 of this title [and §117.203(b)(6)(B) of this title] are not to be considered as part of that class of equipment. The individual emission limits that are to be used in calculating the alternative plant-wide emission specifications are[,] as follows:

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

(5) boilers and industrial furnaces which are regulated as existing facilities by the United States Environmental Protection Agency at 40 Code of Federal Regulations Part 266, Subpart H, the appropriate emission limitation in §117.205(b) of this title.

(g) Solely for the purposes of calculating the plant-wide emission limit, the allowable mass emission rate for each affected unit shall be calculated from the emission specifications of §117.205 of this title, as follows.

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

(3) The NO_x emission rate (in lbs per hour) for each affected stationary gas turbine is the product of the in-stack NO_x, the turbine manufacturer's rated exhaust flow rate (expressed in lbs per hour at MW rating and International Standards Organization (ISO) flow conditions) and $(46/28)(10^{-6})$;

Where:

$$\text{In-stack } NO_x = NO_x \text{ (allowable)} \times (1 - \%H_2O/100) \times [20.9 - \%O_2/(1 - \%H_2O/100)]/5.9$$

NO_x (allowable) = the applicable NO_x emission specification of §117.105(f) or (g) of this title (expressed in ppmv NO_x at 15% oxygen, dry basis)

$\%H_2O$ = the volume percent water in the stack gases, as calculated <u>from the manufacturer's data, or other data as approved by the Executive Director,</u> at MW rating and ISO flow conditions

$\%O_2$ = the volume percent oxygen in the stack gases on a wet basis, as calculated from the manufacturer's data, or other data as approved by the Executive Director, at the MW rating and ISO flow conditions.

(4) The NO_x emission rate (in lbs per hour) for each affected gas-fired boiler and process heater firing gaseous fuel which contains more than 50% hydrogen (H_2) by volume, over an annual basis, in which the fuel gas composition is sampled and analyzed every three hours, may use a multiplier of 1.25 times the product of its maximum rated capacity and its NO_x emission specification of §117.205 of this title. Double application of the H_2 content multiplier using this paragraph and **§117.205(b)(6)** [§117.205(a)(4)] of this title is not allowed.

(h) The owner or operator of any gas-fired boiler or process heater firing gaseous fuel which contains more than 50% H_2 by volume, over an eight-hour period, in which the fuel gas composition is sampled and analyzed every three hours, may use a multiplier of 1.25 times the emission limit assigned to the unit in this section for that eight-hour period, not applicable to units under subsection (g)(4) of this section. The total H_2 volume in all gaseous fuel streams will be divided by the total gaseous fuel flow volume to determine the volume percent of H_2 in the fuel supply.

§117.208. Operating Requirements.

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

(c) The owner or operator shall operate any unit subject to the source cap emission limits of §117.223 of this title (relating to Source Cap) in compliance with those limitations.

(d)[(c)] All units subject to the emission limitations of §117.205, [of this title or] §117.207, or **§117.223** of this title shall be operated so as to minimize NO_x emissions, consistent with the emission control techniques selected, over the unit's operating or load range during normal operations. Such operational requirements include the following.

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

§117.209. Initial Control Plan Procedures.

(a) The owner or operator of any major source **of nitrogen oxides (NO_x)** [which has units subject to §117.205 of this title (relating to Emission Specifications) or §117.207 of this title (relating to Alternative Plant-Wide Emission] shall submit, for the approval of the Executive Director, an initial control plan for installation of [nitrogen oxides ([NO_x])] emissions control equipment **and demonstration of anticipated**

compliance with the applicable requirements of this subchapter [meet the requirements of §117.205 of this title or §117.207 of this title]. The Executive Director shall approve the plan if it contains all the information specified in this section. Revisions to the initial control plan shall be submitted with the final control plan.

(b) The owner or operator shall provide results of emissions testing using portable analyzers or, as available, initial demonstration of compliance [performance] testing conducted in accordance with §117. 211(e) [§117.211(f)] or (f) [(g)] of this title [for each unit subject to the testing requirements of §117.211 of this title] for NO_x, carbon monoxide (CO), and oxygen [O_2] emissions while firing gaseous fuel (and as applicable, hydrogen (H_2) fuel for units which may fire more than 50% H_2 by volume) and[/or] liquid and/or solid fuel at the maximum rated capacity or as near thereto as practicable, for the units listed in this subsection [paragraph]. Previous testing documentation for any claimed test waiver as allowed by §117.211(d) of this title (relating to Initial Demonstration of Compliance) shall be submitted with the initial control plan. Test results are required for the following units: [Testing using portable analyzers is acceptable for the units listed in this paragraph. The units listed are as follows:]

(1) boilers and process heaters with a maximum rated capacity greater than or equal to 40.0 million Btu per hour (MMBtu/hr), except for low annual capacity factor boilers and process heaters as defined in §117.10 of this title (relating to Definitions);

(2) boilers and industrial furnaces with a maximum rated capacity greater than or equal to 40.0 MMBtu/hr which are regulated as existing facilities by the United States Environmental Protection Agency (EPA) at 40 Code of Federal Regulations, Part 266, Subpart H, except for low annual capacity factor boilers and process heaters as defined in §117.10 of this title;

(3) fluid catalytic cracking units with a maximum rated capacity greater than or equal to 40 MMBtu/hr;

(4) gas turbine supplemental waste heat recovery units with a maximum rated fired capacity greater than or equal to 40 MMBtu/hr, except for low annual capacity factor gas turbine supplemental waste heat recovery units as defined in §117.10 of this title;

(5) stationary gas turbines with a megawatt (MW) rating of greater than or equal to 1.0 MW, except for low annual capacity factor gas turbines or peaking gas turbines as defined in §117.10 of this title; and

(6) gas-fired, stationary, reciprocating internal combustion engines which are located in the Houston/Galveston ozone nonattainment area and rated 150 horsepower (hp) or greater, or located in the Beaumont/Port Arthur ozone nonattainment area and rated 300 hp or greater, except for low annual capacity factor engines or peaking engines as defined in §117.10 of this title.

(c) The initial control plan shall be submitted in accordance with the schedule specified in §117.520(1) [§117.520] of this title (relating to Compliance Schedule For Commercial, Institutional, and Industrial Combustion Sources) and shall contain the following:

(1) a list of all combustion units at the source with a maximum rated capacity greater than 5.0 million Btu per hour; all stationary, reciprocating internal combustion engines which are located in the Houston/Galveston ozone nonattainment area and rated 150 horsepower (hp) or greater, or located in the Beaumont/Port Arthur ozone nonattainment area and rated 300 hp or greater; all stationary gas turbines with a megawatt (MW) rating of greater than or equal to 1.0 MW; to include the maximum rated capacity, anticipated annual capacity factor, the facility identification numbers and emission point numbers as submitted to the Emissions Inventory Section [Division] of the Texas Natural Resource Conservation Commission (TNRCC) [Texas Air Control Board (TACB)], and the emission point numbers as listed on the Maximum Allowable Emissions Rate Table of any applicable TNRCC [TACB] permit for each unit;

(2) identification of all units subject to the emission specifications of §117 205 of this title (relating to Emission Specifications), [or] §117.207 of this title (relating to Alternative Plant-Wide Emission Specifications), or §117.223 of this title (relating to Source Cap);

(3) identification of all boilers, process heaters, stationary gas turbines, or engines with a claimed exemption from the emission specifications of §117.205 [of this title] or §117.207 of this title and the rule basis for the claimed exemption;

(4) identification of the election to use individual emission limits as specified in §117.205 of this title, [or] the plant-wide emission limit as specified in §117.207 of this title, or the source cap emission limit as specified in §117.223 of this title to achieve compliance with this rule;

(5) (No change.)

(6) A list of units requiring operating modifications to comply with §117.208(d) of this title (relating to Operating Requirements) and the type of modification to be applied for all such units, including an anticipated construction schedule;

(7)[(6)] a list of any units which have been or will be retired, decommissioned, or shutdown and rendered inoperable, indicating the date of occurrence and whether these actions are [as] a result of compliance with this regulation;

(8)[(7)] the basis for calculation of the rate of NO_x emissions for each unit to demonstrate that each unit will achieve the NO_x emission rates specified in §117.205, [of this title or] §117.207, or §117.223 of this title. For fluid catalytic cracking unit [carbon monoxide (]CO[)] boilers, the basis for calculation of the pound NO_x per million Btu (lb NO_x/MMBtu) rate for each unit shall include the following:

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

(C) the calculation of the CO boiler lb NO_x/MMBtu emission rate;[.]

[(8) previous testing documentation for any claimed test waiver as allowed by §117.211(e) of this title (relating to Initial Demonstration of Compliance);]

(9) for units required to install totalizing fuel flow meters in accordance with §117.213(a)-(e) of this title (relating to Continuous Demonstration of Compliance), indication of whether the devices have been installed as a result of the requirements of this chapter, and whether the devices have been placed in operation by April 1, 1994;

[(9) results of emissions testing using portable analyzers or, as available, performance testing conducted in accordance with §117.211(f) or (g) of this title for each unit subject to the testing requirements of §117.211 of this title;]

(10) for units which have had NO_x reduction projects as specified in §117 205(a)(1)(B) of this title, documentation that such projects were undertaken solely for the purpose of obtaining early NO_x reductions; and

(11) Test results in accordance with subsection (b) of this section.

§117.211. Initial Demonstration of Compliance.

(a) All units which are [identified in the control plan required by §117.209 of this title (relating to Initial Control Plan Procedures) and are] subject to the emission limitations of §117.205 of this title (relating to Emission Specifications),[or] §117.207 of this title (relating to Alternative Plant-Wide Emission Specifications), or §117.223 of this title (relating to Source

Cap), and all units belonging to equipment classes which are elected to be included in the alternative plant-wide emission specifications as defined in §117.207(f) of this title, or in the source cap as defined in §117.223(b)(4) of this title, shall be tested for nitrogen oxides (NO_x), carbon monoxide (CO), and oxygen (O_2) emissions while firing gaseous fuel (and as applicable, hydrogen (H_2) fuel for units which may fire more than 50% H_2 by volume, and liquid **and solid** fuel). Units which inject urea or ammonia into the exhaust stream for NO_x control shall be tested for ammonia emissions. **Initial demonstration of compliance** [Performance] testing of these units shall be performed in accordance with the schedule specified in **§117.520** [§117 520(2)] of this title (relating to Compliance Schedule For Commercial, Institutional, and Industrial Combustion Sources).

(b) The **initial demonstration of compliance** [performance] tests required by subsection (a) of this section shall use the test methods referenced in subsection (e)[(f)] or (f)[(g)] of this section and shall be used for determination of initial compliance with either the emission limits of §117.205 of this title, [or] the assigned emission limits of §117 207 of this title, **or §117.223 of this title,** as applicable Test results shall be reported in the units of the applicable emission limits and averaging periods

(c)[(d)] Any continuous emissions monitoring system (CEMS) required by §117 213(b) of this title (relating to Continuous Demonstration of Compliance) **or any predictive emissions monitoring system (PEMS) approved for use in lieu of CEMS in accordance with §117.213(c) of this title** shall be installed and operational prior to conducting **initial demonstration of compliance** [performance] testing under subsection (a) of this section Verification of operational status shall, as a minimum, include completion of the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device **or system.**

[(c) The units listed in this subsection shall be tested for NO_x, CO, and O_2 emissions while firing gaseous fuel (and as applicable, H_2 fuel for units which may fire more than 50% H_2 by volume) and/or liquid fuel at the maximum rated capacity or as near thereto as practicable Testing using portable analyzers is acceptable for the units listed in this subsection The testing results shall be submitted with the initial control plan performed in accordance with the schedule specified in §117 520(1) of this title The units listed are as follows:

[(1) process heaters and boilers with a maximum rated capacity greater than or equal to 40 0 million Btu per hour (MMBtu/hr) and less than 100.0 MMBtu/hr, except for low annual capacity factor boilers and process heaters as defined in §117 10 of this title (relating to Definitions);

[(2) boilers and industrial furnaces with a maximum rated capacity greater than or equal to 40. 0 MMBtu/hr which are regulated as existing facilities by the U.S. Environmental Protection Agency (EPA) at 40 Code of Federal Regulations (CFR), Part 266, Subpart H, except for low annual capacity factor boilers and process heaters as defined in §117.10 of this title;

[(3) fluid catalytic cracking units with a maximum rated capacity greater than or equal to 40 MMBtu/hr;

[(4) gas turbine supplemental waste heat recovery units with a maximum rated fired capacity greater than or equal to 40 MMBtu/hr, except for low annual capacity factor gas turbine supplemental waste heat recovery units as defined in §117.10 of this title;

[(5) stationary gas turbines with a megawatt (MW) rating of greater than or equal to 1 0 MW and less than 10.0 MW, except for low annual capacity factor gas turbines as defined in §117.203(b)(6)(B) of this title (relating to Exemptions), or peaking gas turbines as defined in §117 203(b)(6)(C) of this title; and

[(6) lean-burn, gas-fired, stationary, reciprocating internal combustion engines which are located in the Houston/Galveston ozone nonattainment area and rated 150 horsepower (hp) or greater, or located in the Beaumont/Port Arthur ozone nonattainment area and rated 300 hp or greater, except for low annual capacity factor engines as defined in §117.203(b)(6)(B) of this title, or peaking engines as defined in §117.203(b)(6)(C) of this title.]

(d)[(e)] Testing conducted prior to the effective date of this rule may be used to demonstrate compliance with the standards specified in §117.205, [of this title or] §117 207, [of this title] **or §117.223 of this title,** or to satisfy the [additional] testing requirements of **§117.209(b)** [subsection (c)] of this **title** [section] **(relating to Initial Control Plan Procedures),** if the owner or operator of an affected facility demonstrates to the Executive Director that the prior performance testing at least meets the requirements of subsections (a), (b), (c), (e)[(d)], and (f)[(g)] of this section. The Executive Director reserves the right to request performance testing or CEMS **or PEMS** performance evaluation at any time.

(e)[(f)] Compliance with the emission specifications of §117.205 [of this title] or §117.207 of this title for units operating without CEMS **or PEMS** shall be demonstrated while operating at the maximum rated capacity, or as near thereto as practicable.[,] **Compliance shall be determined by the average of three one-hour emission test runs, using** [application of] the following test methods:

(1) Test method 7E or 20 (40 **Code of Federal Regulations (CFR)** [CFR], Part 60, Appendix A) for NO_x;

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

(5) American Society of Testing and Materials (ASTM) Method D-1945-81, ASTM Method D-3588-81, or ASTM Method D-2650-83 for fuel composition, **or alternate methods as approved by the Executive Director;** or

(6) (No change.)

(f)[(g)] Initial compliance with the emission specifications of §117.205 [of this title] or §117.207 of this title for units operating with CEMS in accordance with §117.213(b) of this title, **or PEMS in accordance with §117.213(c) of this title,** shall be demonstrated using the CEMS **or PEMS** as follows:[.]

(1) For **boilers and process heaters** [units] complying with a NO_x emission limit in pound per MMBtu on a rolling 30-day average, NO_x emissions from the unit are monitored for 30 successive unit operating days and the 30-day average emission rate is used to determine compliance with the NO_x emission limit. The 30-day average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during the 30-day test period.

(2) For units complying with a NO_x emission limit in pounds per hour or **parts per million by volume at 15% oxygen, dry basis,** on a block one-hour average, any one-hour period **while operating at the maximum rated capacity, or as near thereto as practicable,** after CEMS certification testing required in §117.213(b) of this title **or PEMS certification testing required in §117.213(c) of this title** is used to determine compliance with the NO_x emission limit.

(3) For units complying with a CO emission limit, block one-hour average, any one-hour period after CEMS certification testing required in §117.213(b) of this title **or PEMS certification testing required in §117.213(c) of this title** is used to determine compliance with the CO emission limit.

[(h) Testing with portable analyzers may be used to satisfy the emissions test requirements for units listed in subsection (c) of this section, and for providing initial compliance plan information for all units which are subject to emission limits. The information shall be provided in accordance with the schedule specified for

submission of the initial control plan in §117.520 of this title.]

§117.213. Continuous Demonstration of Compliance.

(a) (No change.)

(b) The owner or operator of units listed in this subsection and subject to the provisions of this undesignated head shall install, calibrate, maintain, and operate a continuous exhaust nitrogen oxides (NO_x) monitor, a carbon monoxide (CO) monitor, an O_2 (or carbon dioxide (CO_2)) diluent monitor, and a totalizing fuel flow meter. The required continuous emissions monitoring systems (CEMS) and fuel flow meters will be used to measure NO_x, CO, and O_2) or (CO_2) emissions and fuel flow for each affected unit. One CEMS may be used to monitor up to three units. Any CEMS shall meet all the requirements of 40 Code of Federal Regulations (CFR), Part 60, §60.13; 40 CFR 60, Appendix B, Performance Specification 2, [and] 3, and 4; and quality assurance procedures of 40 CFR 60, Appendix F, [Procedure 1, Section 5.1.2,] except that a cylinder gas audit may be performed in lieu of the annual relative accuracy test audit required in Section 5.1.1 [5 1.2]. The CEMS shall be subject to the approval of the Executive Director of the Texas Natural Resource Conservation Commission (TNRCC) under any permit issued pursuant to Title V of the 1990 Federal Clean Air Act [(FCAA)] Amendments.

(1) The CEMS shall be installed by the time of compliance with the emission limits specified in §117.205 [of this title] or §117.207 of this title for the following units:

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

(C) each stationary gas turbine with a megawatt (MW) rating greater than or equal to 30 MW operated more than 850 hours per year,

(D) (No change)

(E) each unit for which the owner or operator elects to comply with the NO_x emission specifications of §117.205 [of this title] or §117.207 of this title using a pound per MMBtu limit on a 30-day rolling average

(2) The units listed in §117.205(g)(3)-(5) [§117.205(f)(3)-(5)] of this title are not required to install CEMS under this subsection.

(3) Gas turbines or other units which are affected units and are subject to continuous emissions monitoring requirements in accordance with 40 CFR 75 shall comply with those requirements in lieu of complying with the 40 CFR 60 requirements of this section.

(c) As an alternative to CEMS, the owner or operator of units subject to continuous monitoring requirements under this undesignated head may, with the approval of the Executive Director, elect to install, calibrate, maintain, and operate predictive emissions monitoring systems (PEMS) and totalizing fuel flow meters. The required PEMS and fuel flow meters shall be used to measure NO_x, CO, and O_2 (or CO_2) emissions and fuel flow for each affected unit and shall be used to demonstrate continuous compliance with the emission limitations of §117.205, §117.207, or §117. 223, as applicable. As an alternative to using PEMS to monitor O_2 or CO_2, subsection (b) of this section or similar alternative method approved by the Executive Director may be used. Any PEMS shall meet the requirements of §117.219 of this title (relating to Notification, Recordkeeping, and Reporting Requirements) and all the requirements of 40 CFR 75, Subpart E, except that the following alternatives or exceptions may be made:

(1) Alternatives to 40 CFR 75, Subpart E which the owner or operator demonstrates to the satisfaction of the TNRCC to be substantially equivalent to the requirements of 40 CFR 75, Subpart E;

(2) Requirements of 40 CFR 75, Subpart E which the owner or operator demonstrates to the satisfaction of the TNRCC are not applicable;

(3) As an alternative to the test procedure of Subpart E for initial certification of any unit while firing its primary fuel, the owner or operator:

(A) May perform the following initial certification tests:

(i) Conduct initial relative accuracy test audit (RATA) pursuant to 40 CFR Part 60, Appendix B, Performance Specification 2, subsection 4.3 (pertaining to NO_x), Performance Specification 3, subsection 2 3 (pertaining to O_2 or CO_2), and Performance Specification 4, and subsection 2 3 (pertaining to CO) at each load level described in §75 41(a)(4)(i)-(iii) of 40 CFR 75, and

(ii) Conduct an F-test, a t-test, and a correlation analysis pursuant to 40 CFR 75, Subpart E at each load level described in §75.41(a)(4)(i)-(iii). Calculations shall be based on a minimum of 24 successive emission data points at each load range which are either 20-minute averages or hourly averages; and

(B) Shall further demonstrate PEMS accuracy with the following tests:

(i) For each of the three successive quarters following the quarter in which initial certification was conducted, demonstrate accuracy and precision of PEMS for at least one unit of a category of equipment by performing RATA and statistical testing in accordance with subparagraph (3)(A) of this subsection; and

(ii) For each alternative fuel fired in a unit, the PEMS shall be certified in accordance with subparagraph (3)(A) of this subsection.

(d)[(c)] In addition to the totalizing fuel flow meters specified in subsections (a),[and] (b), and (c) of this section, the owner or operator shall install and maintain totalizing fuel flow meters on an individual unit basis on the following units:

(1) process heaters and commercial, institutional, and industrial boilers, including boilers and industrial furnaces regulated as existing facilities by the United States Environmental Protection Agency at 40 CFR Part 266, Subpart H, and gas turbine supplemental waste heat recovery units, with a rated heat input greater than or equal to 40.0 MMBtu/hr and less than 100 0 MMBtu/hr;

(2) (No change)

(3) lean-burn, stationary, reciprocating internal combustion engines which are located in the Houston/Galveston ozone nonattainment area and rated 150 horsepower (hp) or greater, or located in the Beaumont/Port Arthur ozone nonattainment area and rated 300 hp or greater, [and]

(4) stationary gas turbines with a MW rating greater than or equal to 1 0 MW and [or] less than 30.0 [10 0] MW operated more than 850 hours per year; and[ ]

(5) Fluid catalytic cracking unit boilers.

(e)[(d)] The owner or operator of any stationary gas engine subject to the emission specifications of §117 205 [of this title] or §117 207 of this title shall install and maintain a totalizing fuel flow meter and perform biennial stack testing of engine emissions of NO_x and CO, measured in accordance with the methods specified in §117.211(e) [§117 211(f)] of this title (relating to Initial Demonstration of Compliance) In lieu of performing stack sampling on a biennial calendar basis, an owner or operator may elect to install and operate an elapsed operating time meter and shall test the engine within 15,000 hours of engine operation after the previous emission test The owner or operator who elects to test on

an operating hour schedule shall submit, in writing, to the **TNRCC** [Texas Air Control Board] and any local air pollution agency having jurisdiction, biennially after the initial demonstration of compliance, documentation of the actual recorded hours of engine operation since the previous emission test, and an estimate of the date of the next required sampling.

(f)[(e)] The owner or operator of any stationary gas turbine rated less than 30 MW using steam or water injection to comply with the emission specifications of §117.205 [of this title] or §117.207 of this title shall either:

(1) install, calibrate, maintain, and operate a CEMS in compliance with subsection (b) of this section **or a PEMS in compliance with subsection (c) of this section**; or

(2) install, calibrate, maintain, and operate a continuous monitoring system to monitor and record the average hourly fuel and steam or water consumption. The system shall be accurate to within 5.0%. The steam-to-fuel or water-to-fuel ratio monitoring data shall constitute the method for demonstrating continuous compliance with the applicable emission specification of §117.205 [of this title] or §117.207 of this title.

(g) The owner or operator of any low annual capacity factor stationary gas turbine or stationary internal combustion engine as defined in §117.10 of this title shall record the operating time with an elapsed run time meter approved by the Executive Director.

(h)[(f)] The owner or operator of any gas-fired boiler or process heater firing gaseous fuel which contains more than 50% H_2 by volume, shall sample, analyze, and record every three hours the fuel gas composition to comply with the emission specifications of §117.205 [of this title] or §117 207 of this title. The total H_2 volume flow in all gaseous fuel streams to the unit will be divided by the total gaseous volume flow to determine the volume percent of H_2 in the fuel supply to the unit Fuel gas analysis shall be tested according to American Society of Testing and Materials (ASTM) Method D1945-81 or ASTM Method D-2650-83, or other methods which are demonstrated to the satisfaction of the Executive Director to be equivalent. A gaseous fuel stream containing 99% H_2 by volume or greater may use the following procedure to be exempted from the sampling and analysis requirements of this subsection.

(1) A fuel gas analysis **shall** [must] be performed initially using one of the test methods in this subsection to demonstrate that the gaseous fuel stream is 99% H_2 by volume or greater

(2) The process flow diagram of the process unit which is the source of the H_2 shall be supplied to the **TNRCC** [Texas Air Control Board (TACB)] to illustrate the source and supply of the hydrogen stream.

(3) (No change.)

(i) [(g)] After the initial demonstration of compliance required by §117. 211 of this title, compliance with either §117.205 [of this title] or §117. 207 of this title, as applicable, shall be determined by the methods required in this section. Compliance with the emission limitations may also be determined at the discretion of the Executive Director using any **TNRCC** [TACB] compliance method.

(j)[(h)] If compliance with §117.205 of this title is selected, no unit subject to §117.205 of this title shall be operated at an emission rate higher than that allowed by the emission specifications of §117.205 of this title. If compliance with §117.207 of this title is selected, no unit subject to §117.207 of this title shall be operated at an emission rate higher than that approved by the Executive Director pursuant to **§117.215(b)(4)** [§117.215(b)(2)] of this title (relating to Final Control Plan Procedures).

(k)[(i)] The owner or operator of any low annual capacity factor boiler, [or] process heater, **stationary gas turbine, or stationary internal combustion engine,** as defined in §117.10 of this title, **shall** [must] notify the Executive Director within seven days if the Btu/yr **or hour-per-year mimi(hr/yr) limit specified in §117. 10 of this title, as appropriate,** is exceeded. If the Btu/yr or hr/yr limit, as appropriate, is exceeded, the exemption from the emission specifications of **§117.205** [§117.205(a)(3)] of this title shall be permanently withdrawn Within **90** [30] days after loss of the exemption, the owner or operator **shall** [must] submit a compliance plan detailing a plan to meet the applicable compliance limit as soon as possible, but no later than 24 months after exceeding the Btu/yr **or hr/yr** limit, **as appropriate** Included with this compliance plan, the owner or operator shall [must] submit a schedule of increments of progress for the installation of the required control equipment. This schedule shall be subject to the review and approval of the Executive Director.

§117.215. Final Control Plan Procedures.

(a) For sources complying with §117.205 of this title (relating to Emission Specifications), the owner or operator of an affected source shall submit a final control report to show compliance with the requirements of §117 205 of this title by the date specified in **§117.520(6)** [§117.520(4)] of this title (relating to Compliance Schedule For Commercial, Institutional, and Industrial Combustion Sources). The report shall include a list of all affected units showing the method of control of nitrogen oxides (NO_x) emissions for each unit and the results of testing required in §117.211 of this title (relating to Initial Demonstration of Compliance).

(b) For sources complying with §117.207 of this title (relating to Alternative Plant-Wide Emission Specifications), the owner or operator of an affected source shall submit a final control plan to show attainment of the requirements of §117. 207 of this title by the date specified in **§117.520(6)** [§117. 520(4)] of this title. The owner or operator shall:

(1) assign to each affected **boiler or process heater** [unit] the maximum allowable NO_x emission rate in pound per million Btu (rolling 30-day average), or in pounds per hour (block one-hour average) while firing gaseous or liquid fuel, which are allowable for that unit under the requirements of §117.207 of this title;[.]

(2) assign to each affected stationary gas turbine the maximum allowable NO_x emission in parts per million by volume at 15% oxygen, dry basis on a block one-hour average;

(3) assign to each affected stationary internal combustion engine the maximum allowable NO_x emission rate in grams per horse-power-hour on a block one-hour average;

(4)[(2)] submit a list to the Executive Director for approval of the maximum allowable NO_x emission rates identified in paragraph (1) of this subsection and maintain a copy of the approved list for verification of continued compliance with the requirements of §117.207 of this title; and

(5) submit a description of the NO_x control method used to achieve compliance with §117.207 of this title, and the results of testing for each unit in accordance with the requirements of §117.211 of this title. For boilers and process heaters complying with a pound per million Btu emission limit on a rolling 30-day average, this information may be submitted according to the schedule given in §117.520(4) of this title.

(6)[(3)] submit a list summarizing the results of testing of each unit at maximum rated capacity, in accordance with the requirements of **§117.211(e), and (f)(2) and (3)** [§117.520] of this title.

(c) For sources complying with §117.223 of this title (relating to Source Cap), the owner or operator of an affected source shall submit a final control plan to show attainment of the require-

ments of §117.223 of this title by the date specified in §117.520(6) of this title.

§117.217. Revision of Final Control Plan. A revised final control plan may be submitted by the owner or operator, along with any required permit applications. Such a plan shall adhere to the emission limits and the final compliance dates of this undesignated head (relating to Commercial, Institutional, and Industrial Sources). **For sources complying with §117.205 of this title (relating to Emission Specifications), or §117. 207 of this title (relating to Alternative Plant-Wide Emission Specifications), replacement new units may be included in the control plan. For sources complying with §117.223 of this title (relating to Source Cap), any new unit shall be included in the source cap, if the unit belongs to an equipment category which is included in the source cap.** [New units, including functionally identical replacement units, shall not be incorporated into the plan.] The revision of the final control plan shall be subject to the review and approval of the Executive Director.

§117.219. Notification, Recordkeeping, and Reporting Requirements.

(a) For units subject to the exemptions allowed under §117.203(a) of this title (relating to Exemptions), hourly records shall be made of start-up and/or shutdown events and maintained for a period of at least two years. Records shall be available for inspection by the **Texas Natural Resource Conservation Commission (TNRCC)** [Texas Air Control Board (TACB)], **United States** [U S] Environmental Protection Agency (EPA), and any local air pollution control agency having jurisdiction upon request. These records shall include, but are not limited to. type of fuel burned; quantity of each type fuel burned; and the date, time, and duration of the event [procedure]

(b) The owner or operator of an affected source shall submit **notification** to the Executive Director [written notification], as follows:

(1) verbal notification of the date of any **initial demonstration of compliance** [performance] testing conducted under §117. 211 of this title (relating to Initial Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed; and

(2) verbal notification of the date of any continuous emissions monitoring system (CEMS) **or predictive emissions monitoring system (PEMS)** performance evaluation conducted under §117.213 of this title (relating to Continuous Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed.

(c) The owner or operator of an affected unit shall furnish the Executive Director and any local air pollution control agency having jurisdiction a copy of any **initial demonstration of compliance** [performance] testing conducted under §117.211 of this title or any CEMS or **PEMS** performance evaluation conducted under §117.213 of this title, within 60 days after completion of such testing or evaluation. **Such** [For purposes of demonstrating compliance with §117.520 of this title (relating to Compliance Schedule For Commercial, Institutional, and Industrial Combustion Sources), such] results shall be submitted **in accordance with the compliance schedule** [no later than 30 days before the final compliance date] specified in §117.520 of this title **(relating to Compliance Schedule For Commercial, Institutional, and Industrial Combustion Sources).**

(d) The owner or operator of a unit required to install a CEMS, **PEMS,** or water-to-fuel or steam-to-fuel ratio monitoring system under §117.213 of this title shall report in writing to the Executive Director on a quarterly basis any exceedance of the applicable emission limitations in §117.205 of this title (relating to Emission Specifications) or §117.207 of this title (relating to Alternative Plant-Wide Emission Specifications) and the monitoring system performance. All reports shall be postmarked or received by the 30th day following the end of each calendar quarter. Written reports shall include the following information:

(1) the magnitude of excess emissions computed in accordance with 40 Code of Federal Regulations, Part 60, §60.13(h), any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the unit operating time during the reporting period. For gas turbines using steam-to-fuel or water-to-fuel ratio monitoring to demonstrate compliance in accordance with **§117.213(f)(2)** [§117.213(e)(2)] of this title, excess emissions are computed as each one-hour period during which the hourly steam-to-fuel or water-to-fuel ratio is less than the ratio determined to result in compliance during the initial **demonstration of compliance** [performance] test required by §117 211 of this title.

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

(5) if the total duration of excess emissions for the reporting period is less than 1.0% of the total unit operating time for the reporting period and the CEMS, **PEMS,** or water-to-fuel or steam-to-fuel ratio monitoring system downtime for the reporting period is less than 5.0% of the total unit operating time for the reporting period, only a summary report form (as outlined in the latest edition of the **TNRCC** [TACB] "Guidance for Preparation of Summary, Excess Emission, and Continuous Monitoring System Reports") shall be submitted, unless otherwise requested by the Executive Director of the **TNRCC** [TACB]. If the total duration of excess emissions for the reporting period is greater than or equal to 1.0% of the total operating time for the reporting period or the CEMS, **PEMS,** or water-to-fuel or steam-to-fuel ratio monitoring system downtime for the reporting period is greater than or equal to 5.0% of the total operating time for the reporting period, a summary report and an excess emission report shall both be submitted.

(e) The owner or operator of any rich-burn engine subject to the emission limitations in §117.205 [of this title] or §117.207 of this title shall report in writing to the Executive Director on a quarterly basis any excess emissions and the air-fuel ratio monitoring system performance. All reports shall be postmarked or received by the 30th day following the end of each calendar quarter. Written reports shall include the following information:

(1) the magnitude of excess emissions (based on the quarterly emission checks of **§117.208(d)(7)** [§117.208(c)(7)] of this title (relating to Operating Requirements) and the biennial emission testing required for demonstration of emissions compliance in accordance with **§117.213(e)** [§117.213(d)] of this title, computed in pounds per hour and grams per horsepower hour, any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the engine operating time during the reporting period,

(2) (No change.)

(f) The owner or operator of an affected unit shall maintain written records of all continuous emissions monitoring and performance test results, hours of operation, and fuel usage rates. Such records shall be kept for a period of at least two years and shall be made available upon request by authorized representatives of the **TNRCC** [TACB], EPA, or local air pollution control agencies having jurisdiction The emission monitoring (as applicable) and fuel usage records for each unit shall be recorded and maintained:

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

§117.221 Alternative Case Specific Specifications. Where a person can demonstrate that an affected unit cannot attain the requirements of §117.205 of this title (relating to Emission Specifications), as applicable, the Executive Director, on a case-by-case basis after considering the technological and economic circumstances of the individual

unit, may approve emission specifications different from §117.205 of this title for that unit based on the determination that such specifications are the result of the lowest emission limitation the unit is capable of meeting after the application of reasonably available control technology. In determining whether to approve alternative emission specifications, the Executive Director may take into consideration the ability of the plant at which the unit is located to meet emission specifications through plant-wide averaging at maximum capacity. Any person affected by the decision of the Executive Director may appeal to the Commission [Board] by filing written notice of appeal with the Executive Director within 30 days after the decision. Such appeal is to be taken by written notification to the Executive Director. Section 103.71 of this title (relating to Request for Action by the Commission [Board]) should be consulted for the method of requesting Commission [Board] action on the appeal. Executive Director approval does not necessarily constitute satisfaction of all federal requirements nor eliminate the need for approval by the United States Environmental Protection Agency in cases where specified criteria for determining equivalency have not been clearly identified in applicable sections of this undesignated head (relating to Commercial, Institutional, and Industrial Sources).

§117.223. Source Cap.

(a) An owner or operator may achieve compliance with the emission limits of §117.205 of this title (relating to Emission Specifications) by achieving equivalent nitrogen oxides (NO_x) emission reductions obtained by compliance with a source cap emission limitation in accordance with the requirements of this section. Each equipment category at a source whose individual emission units would otherwise be subject to the NO_x emission limits of §117.205 of this title may be included in the source cap. Any equipment category included in the source cap shall include all emission units belonging to that category. Equipment categories include, but are not limited to, the following: steam generation, electrical generation, and units with the same product outputs, such as ethylene cracking furnaces. All emission units not included in the source cap shall comply with the requirements of §117.205 or §117.207 (relating to Alternative Plant-Wide Emission Specifications) of this title.

(b) The source cap allowable mass emission rate shall be calculated as follows:

(1) A rolling 30-day average emission cap shall be calculated for all emission units included in the source cap using the following equation:

$$\text{NO}_x \text{ 30-day rolling average emission cap (lb/day)} = \sum_{i=1}^{N} (R_i \times \textit{Actual heat input})$$

Where: i = each emission unit in the emission cap

N = the total number of emission units in the emission cap

R_i = (A) For emission units subject to the federal New Source Review (NSR) requirements of 40 Code of Federal Regulations (CFR) 51.165(a), 40 CFR 51.166, or 40 CFR 52.21, or to the requirements of Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) which implements these federal re-

(B) For all other emission units, R_i is the lowest of the reasonably available control technology (RACT) limit of §117.205(b)-(d) or §117.207(f) of this title or the best available control technology (BACT) limit for any unit subject to a permit issued pursuant to Chapter 116 of this title that applies to emission unit i in the absence of trading.

Actual heat input = The actual historical average daily heat input for each unit included in the source cap, as certified to the Texas Natural Resource Conservation Commission (TNRCC), for a 24 consecutive month period between January 1, 1990 and June 9, 1993, plus one standard deviation of the heat input for that period. All sources included in the source cap shall use the same 24 consecutive month period.

(2) A maximum daily cap shall be calculated for all emission units included in the source cap using the following equation:

$$\text{NO}_x \text{ maximum daily cap (lb/day)} = \sum_{i=1}^{N} (R_i \times \textit{Maximum daily heat input})$$

Where: i, N, and R_i are defined as in paragraph (1) of this subsection.

Maximum daily heat input = The maximum heat input, as certified to the TNRCC, allowed or possible (whichever is lower) in a 24-hour period.

(3) Each emission unit included in the source cap shall be subject to the requirements of both paragraphs (1) and (2) of this subsection at all times.

(4) The owner or operator at its option may include any of the entire classes of exempted units listed in §117.207(f) of this title in a source cap. Such units shall be required to reduce emissions available for use in the cap by an additional amount calculated in accordance with the U.S. Environmental Protection Agency's proposed Economic Incentive Program rules for off-

set ratios for trades between RACT and non-RACT sources, as published in the February 23, 1993, *Federal Register* (58 FedReg 11110).

(5) For stationary internal combustion engines, the source cap allowable emission rate shall be calculated in pounds per hour using the procedures specified in §117.207(g)(2) of this title.

(6) For stationary gas turbines, the source cap allowable emission rate shall be calculated in pounds per hour using the procedures specified in §117.207(g)(3) of this title.

(c) The owner or operator who elects to comply with this section shall:

(1) For each unit included in the source cap, either:

(A) Install, calibrate, maintain, and operate a continuous exhaust nitrogen oxides (NO_x) monitor, carbon monoxide (CO) monitor, an oxygen (O_2) (or carbon dioxide (CO_2)) diluent monitor, and a totalizing fuel flow meter in accordance with the requirements of §117.213(b) of this title (relating to Continuous Demonstration of Compliance). The required continuous emissions monitoring systems (CEMS) and fuel flow meters shall be used to measure NO_x, CO, and O_2 (or CO_2) emissions and fuel use for each affected unit and shall be used to demonstrate continuous compliance with the source cap;

(B) Install, calibrate, maintain, and operate a predictive emissions monitoring system (PEMS) and a totalizing fuel flow meter in accordance with the requirements of §117.213(c) of this title. The required PEMS and fuel flow meters shall be used to measure NO_x, CO, and O_2 (or CO_2) emissions and fuel flow for each affected unit and shall be used to demonstrate continuous compliance with the source cap; or

(C) For units not subject to continuous monitoring requirements, as provided for in §117.213(a) of this title, and units belonging to the equipment classes listed in §117.207(f) of this title, the owner or operator may use the maximum emission rate as measured by hourly emission rate testing conducted in accordance with §117.211(e) of this title (relating to Initial Demonstration of Compliance) in lieu of CEMS or PEMS. Emission rates for these units shall be limited to the maximum emission rates obtained from testing conducted under §117.211(e) of this title.

(2) For each operating unit equipped with CEMS, the owner or operator shall either use a PEMS pursuant to §117.213 (c) of this title, or the maximum emission rate as measured by hourly emission rate testing conducted in accordance with §117.211(e) of this title, to provide emissions compliance data during periods when the CEMS is off-line. The methods specified in 40 CFR 75.46 shall be used to provide emissions substitution data for units equipped with PEMS.

(d) The owner or operator of any units subject to a source cap shall maintain daily records indicating the NO_x emissions from each source and the total fuel usage for each unit and include a total NO_x emissions summation and total fuel usage for all units under the source cap on a daily basis. Records shall also be retained in accordance with §117.219 of this title (relating to Notification, Recordkeeping, and Reporting Requirements).

(e) The owner or operator of any units operating under this provision shall report any exceedance of the source cap emission limit within 48 hours to the appropriate regional office. The owner or operator shall then follow up within 21 days of the exceedance with a written report which includes an analysis of the cause for the exceedance with appropriate data to demonstrate the amount of emissions in excess of the applicable limit and the necessary corrective actions taken by the company to assure future compliance. Additionally, the owner or operator shall submit quarterly reports for the monitoring systems in accordance with §117.219 of this title.

(f) The owner or operator shall demonstrate initial compliance with the source cap in accordance with the schedule specified in §117.520 of this title (relating to Compliance Schedule for Commercial, Institutional, and Industrial Combustion Sources).

(g) A unit which has operated since November 15, 1990 and has since been permanently retired or decommissioned and rendered inoperable prior to June 9, 1993 may be included in the source cap emission limit under the following conditions:

(1) the unit shall have actually operated since November 15, 1990;

(2) for purposes of calculating the source cap emission limit, the applicable emission limit for retired units shall be calculated in accordance with subsection (b) of this section;

(3) the actual heat input shall be calculated according to paragraph (b)(1) of this section. If the unit was not in service 24 consecutive months between January 1, 1990 and June 9, 1993, the actual heat input shall be the average daily heat input for the continuous time period that the unit was in service, plus one standard deviation of the daily heat input for that period. The maximum heat input shall be the maximum heat input, as certified to the TNRCC, allowed or possible (whichever is lower) in a 24-hour period;

(4) the owner or operator shall certify the unit's operational level and maximum rated capacity;

(5) a unit which has been shutdown and rendered inoperable, but not permanently retired, should be identified in the initial control plan and may be included in the source cap.

(6) emission reductions from shutdowns or curtailments which have not been used for netting or offset purposes under the requirements of Chapter 116 of this title or have not resulted from any other state or federal requirement may be included in the baseline for establishing the cap.

(h) An owner or operator who chooses to use the source cap option shall include in the initial control plan required to be filed under §117.209 of this title (relating to Initial Control Plan Procedures) a plan for initial compliance. The owner or operator shall include in the initial control plan the identification of the election to use the source cap procedure as specified in this section to achieve compliance with this section and shall specifically identify all sources that will be included in the source cap. The owner or operator shall also include in the initial control plan the method of calculating the actual heat input for each unit included in the source cap, as specified in paragraph (b)(1) of this section. An owner or operator who chooses to use the source cap option shall include in the final control plan procedures of §117.215 of this title (relating to Final Control Plan Procedures) the information necessary under this section to demonstrate final compliance with the source cap.

(i) For the purposes of determining compliance with the source cap emission limit, the contribution of each affected unit that is operating during a startup, shutdown, or upset period shall be calculated from the NO_x emission rate, as measured by the initial demonstration of compliance, for that unit, unless the owner or operator provides data demonstrating to the satisfaction of the Executive Director that actual emissions were less than maximum emissions during such periods.

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

Issued in Austin, Texas, on December 27, 1993.

TRD-9334032

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

Proposed date of adoption: March 31, 1994

For further information, please call: (512) 463-8159

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Subchapter C. Acid Manufacturing

Adipic Acid Manufacturing

- **30 TAC §§117.311, 117.313, 117.319, 117.321**

The amendments are proposed under the Texas Health and Safety Code (Vernon 1990), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposed of the TCAA.

§117.311. Initial Demonstration of Compliance.

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

(c) Any continuous emissions monitoring systems (CEMS) or **predictive emissions monitoring systems (PEMS)** required by §117. 313 of this title (relating to Continuous Demonstration of Compliance) shall be installed and operational prior to conducting performance testing under subsections (a) and (b) of this section. Verification of operational status shall, as a minimum, include completion of the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device or system.

(d) Testing conducted prior to the effective date of this rule may be used to demonstrate compliance with the standard specified in §117.305 of this title if the owner or operator of an affected facility demonstrates to the Executive Director that the prior performance testing at least meets the requirements of subsections (a)-(c) of this section. The Executive Director reserves the right to request performance testing or CEMS or **PEMS** performance evaluation at any time.

§117.313. Continuous Demonstration of Compliance.

(a) (No change.)

(b) Any CEMS installed subject to subsection (a) of this section shall meet all requirements of 40 Code of Federal Regulations (CFR), Part 60, §60.13; 40 CFR 60, Appendix B, Performance Specification 2; and quality assurance procedures of 40 CFR 60, Appendix F, [Procedure 1, Section 5. 1.2,] except that a cylinder gas audit may be performed in lieu of the annual relative accuracy test audit required in Section 5.1.1 [5.1.2].

(c) **As an alternative to CEMS, the owner or operator of units subject to continuous monitoring requirements under this undesignated head may, with the approval of the Executive Director, elect to install, calibrate, maintain, and operate a predictive emissions monitoring system (PEMS). The required PEMS shall be used to measure NO_x** emissions for each affected unit and shall be used to demonstrate continuous compliance with the emission limitations of §117.305 of this title. Any PEMS shall meet the requirements of §117.319 of this title (relating to Notification, Recordkeeping, and Reporting Requirements) and §117.213(c)(1)-(3) of this title (relating to Continuous Demonstration of Compliance).

(d) [(c)] The owner or operator of an affected facility shall establish a conversion factor for the purpose of converting monitoring data into units of the emission standard (in pounds NO_x per ton of acid produced) as specified in 40 CFR 60, Subpart G, §60.73(b). NO_x emissions data recorded by the CEMS or **PEMS** shall be represented in terms of both parts per million by volume and pounds NO_x per ton of acid produced.

(e)[(d)] After the initial demonstration of compliance required by §117.311 of this title (relating to Initial Demonstration of Compliance), compliance with §117.305 of this title (relating to Emission Specifications) shall be determined by the methods required in this section. Compliance with the emission limitations may also be determined at the discretion of the Executive Director using any **Texas Natural Resource Conservation Commission** [Texas Air Control Board] compliance method.

§117.319. Notification, Recordkeeping, and Reporting Requirements.

(a) The owner or operator of an affected facility shall submit **notification** to the Executive Director [written notification], as follows:

(1) verbal notification of the date of any continuous emissions monitoring systems (CEMS) or **predictive emissions monitoring systems (PEMS)** performance evaluation conducted under §117.313(b) of this title (relating to Continuous Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed; and

(2) verbal notification of the date of any **initial demonstration of compliance** [performance] testing conducted under §117.311 of this title (relating to Initial Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed.

(b) The owner or operator of an affected facility shall furnish the Executive Director and any local air pollution control agency having jurisdiction a copy of any CEMS or **PEMS** performance evaluation conducted under §117.313 of this title, or any **initial demonstration of compliance** [performance] testing conducted under §117.311 of this title, within 60 days after completion of such evaluation or testing. For purposes of demonstrating compliance with §117.530 of this title (relating to Compliance Schedules for Nitric Acid and Adipic Acid Manufacturing Sources), such results shall be submitted no later than 30 days before the final compliance date specified in §117.530 of this title.

(c) the owner or operator of an affected facility shall report in writing to the Executive Director on a quarterly basis all periods of excess emissions, defined as any 24-hour period during which the average nitrogen oxides (NO_x) emissions (arithmetic average of 24 contiguous one-hour periods) exceed the emission limitation in §117.305 of this title (relating to Emission Specifications) and the monitoring system performance. All reports shall be postmarked or received by the 30th day following the end of each calendar quarter. Written reports shall include the following information:

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

(3) the date and time identifying each period during which the CEMS or **PEMS** was inoperative, except for zero and span checks and the nature of the system repairs or adjustments;

(4) (No change.)

(5) if the total duration of excess emissions for the reporting period is less than 1. 0% of the total operating time for the reporting period and the CEMS or **PEMS** downtime for the reporting period is less than 5.0% of the total operating time for the reporting period, only a summary report form (as outlined in the latest edition of the **Texas Natural Resource Conservation Commission (TNRCC)** [Texas Air Control Board (TACB)] "Guidance for Preparation of Summary, Excess Emission, and Continuous Monitoring System Reports") shall be submitted, unless otherwise requested by the Executive Director of the **TNRCC** [TACB]. If the total duration of excess emissions for the reporting period is greater than or equal to 1.0% of the total operating time for the reporting period or the CEMS or **PEMS** downtime for the reporting period is greater than or equal to 5.0% of the total operating time for the reporting period, a summary report and an excess emission report shall both be submitted.

(d) The owner or operator of an affected facility shall maintain written records of all continuous emissions monitoring and performance test results, hours of operation, and daily production rates. Such

records shall be kept for a period of at least two years and shall be made available upon request by authorized representatives of the TNRCC [TACB], United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction.

§117.321. Alternative Case Specific Specifications. Where a person can demonstrate that an affected unit cannot attain the requirements of §117.305 of this title (relating to Emission Specifications), as applicable, the Executive Director, on a case-by-case basis after considering the technological and economic circumstances of the individual unit, may approve emission specifications different from §117.305 of this title for that unit based on the determination that such specifications are the result of the lowest emission limitation the unit is capable of meeting after the application of reasonably available control technology. Any person affected by the decision of the Executive Director may appeal to the **Commission** [Board] by filing written notice of appeal with the Executive Director within 30 days after the decision. Such appeal is to be taken by written notification to the Executive Director. Section 103.71 of this title (relating to Request for Action by the **Commission** [Board]) should be consulted for the method of requesting **Commission** [Board] action on the appeal. Executive Director approval does not necessarily constitute satisfaction of all federal requirements nor eliminate the need for approval by the United States Environmental Protection Agency in cases where specified criteria for determining equivalency have not been clearly identified in applicable sections of this undesignated head (relating to Adipic Acid Manufacturing).

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

Issued in Austin, Texas, on December 27, 1993.

TRD-9334033 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Proposal date of adoption: March 31, 1994

For further information, please call: (512) 463-8159

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Nitric Acid Manufacturing–Ozone Nonattainment Areas

- **30 TAC §§117.411, 117.413, 117.419, 117.421**

The amendments are proposed under the Texas Health and Safety Code (Vernon 1990), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposed of the TCAA.

§117.411. Initial Demonstration of Compliance.

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

(c) Any continuous emissions monitoring systems (CEMS) or predictive emissions monitoring systems (PEMS) required by §117. 413 of this title (relating to Continuous Demonstration of Compliance) shall be installed and operational prior to conducting performance testing under subsections (a) and (b) of this section. Verification of operational status shall, as a minimum, include completion of the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device or system.

(d) Testing conducted prior to the effective date of this rule may be used to demonstrate compliance with the standard specified in §117.405 of this title if the owner or operator of an affected facility demonstrates to the Executive Director that the prior performance testing at least meets the requirements of subsections (a)-(c) of this section. The Executive Director reserves the right to request performance testing or CEMS or PEMS performance evaluation at any time.

§117.413. Continuous Demonstration of Compliance.

(a) (No change.)

(b) Any CEMS installed subject to subsection (a) of this section shall meet all requirements of 40 Code of Federal Regulations (CFR), Part 60, §60.13; 40 CFR 60, Appendix B, Performance Specification 2; and quality assurance procedures of 40 CFR 60, Appendix F,[Procedure 1, Section 5. 1.2,] except that a cylinder gas audit may be performed in lieu of the annual relative accuracy test audit required in Section 5.1.1 [5.1.2].

(c) As an alternative to CEMS, the owner or operator of units subject to continuous monitoring requirements under this undesignated head may, with the approval of the Executive Director, elect to install, calibrate, maintain, and operate a predictive emissions monitoring system (PEMS). The required PEMS shall be used to measure NO_x emissions for each affected unit and shall be used to demonstrate continuous compliance with the emission limitations of §117.405 of this title. Any PEMS shall meet the requirements of §117.419 of this title (relating to Notification, Recordkeeping, and Reporting Requirements) and §117.213(c)(1)-(3) of this title (relating to Continuous Demonstration of Compliance).

(d) [(c)] The owner or operator of an affected facility shall establish a conversion factor for the purpose of converting monitoring data into units of the emission standard (in pounds NO_x per ton of acid produced, expressed as 100% nitric acid) as specified in 40 CFR 60, Subpart G, §60. 73(b). NO_x emissions data recorded by the CEMS or PEMS shall be represented in terms of both parts per million by volume and pounds NO_x per ton of acid produced, expressed as 100% nitric acid.

(e)[(d)] After the initial demonstration of compliance required by §117.411 of this title (relating to Initial Demonstration of Compliance), compliance with §117.405 of this title (relating to Emission Specifications) shall be determined by the methods required in this section. Compliance with the emission limitations may also be determined at the discretion of the Executive Director using any Texas Natural Resource Conservation Commission [Texas Air Control Board] compliance method.

§117.419. Notification, Recordkeeping, and Reporting Requirements.

(a) The owner or operator of an affected facility shall submit notification to the Executive Director[written notification], as follows:

(1) verbal notification of the date of any continuous emissions monitoring systems (CEMS) or predictive emissions monitoring systems (PEMS) performance evaluation conducted under §117.413(b) of this title (relating to Continuous Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed; and

(2) verbal notification of the date of any initial demonstration of compliance [performance] testing conducted under §117.411 of this title (relating to Initial Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed.

(b) The owner or operator of an affected facility shall furnish the Executive Director and any local air pollution control agency having jurisdiction a copy of any CEMS or PEMS performance evaluation conducted under §117.413 of this title (relating to Continuous Demonstration of Compliance), or any initial demonstration of compliance [performance] testing conducted under §117.411 of this title (relating to Initial Demonstration of Compliance), within 60 days after completion of such evaluation or testing. For purposes of demonstrating compliance with §117.530 of this title (relating to Compliance Schedules for Nitric Acid and Adipic Acid Manufacturing Sources), such results shall be submitted no

later than 30 days before the final compliance date specified in §117.530 of this title.

(c) The owner or operator of an affected facility shall report in writing to the Executive Director on a quarterly basis all periods of excess emissions, defined as any 24-hour period during which the average nitrogen oxides emissions (arithmetic average of 24 contiguous one-hour periods) as measured by a CEMS or **PEMS** exceed the emission limitation in §117. 405 of this title (relating to Emission Specifications) and the monitoring system performance. All reports shall be postmarked or received by the 30th day following the end of each calendar quarter. Written reports shall include the following information:

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

(3) the date and time identifying each period during which the CEMS or **PEMS** was inoperative, except for zero and span checks and the nature of the system repairs or adjustments;

(4) (No change.)

(5) if the total duration of excess emissions for the reporting period is less than 1.0% of the total operating time for the reporting period and the CEMS or **PEMS** downtime for the reporting period is less than 5.0% of the total operating time for the reporting period, only a summary report form (as outlined in the latest edituon of the **Texas Natural Resource Conservation Commission (TNRCC)** [Texas Air Control Board (TACB)] "Guidance for Preparation of Summary, Excess Emission, and Continuous Monitoring System Reports") shall be submitted, unless otherwise requested by the Executive Director of the **TNRCC** [TACB]. If the total duration of excess emissions for the reporting period is greater than or equal to 1.0% of the total operatıng time for the reporting period or the CEMS or **PEMS** downtime for the reporting period is greater than or equal to 5.0% of the total operating time for the reporting period, a summary report and an excess emission report shall both be submitted.

(d) The owner or operator of an affected facility shall maintain written records of all continuous emissions monitoring and performance test results, hours of operation, and daily production rates. Such records shall be kept for a period of at least two years and shall be made available upon request by authorized representatives of the **TNRCC** [TACB], United States Environmental Protection Agency, or any local air pollution control agency having jurisdiction.

§117.421. Alternative Case Specific Specifications. Where a person can demonstrate that an affected unit cannot attain the requirements of §117.405 of this title (relating to Emission Specifications), as applicable, the Executive Director, on a case-by-case basis after considering the technological and economic circumstances of the individual unit, may approve emission specifications different from §117.405 of this title for that unit based on the determination that such specifications are the result of the lowest emission limitation the unit is capable of meeting after the application of reasonably available control technology. Any person affected by the decision of the Executive Director may appeal to the **Commission** [Board] by filing written notice of appeal with the Executive Director within 30 days after the decision. Such appeal is to be taken by written notification to the Executive Director. Section 103.71 of this title (relating to Request for Action by the **Commission** [Board]) should be consulted for the method of requesting **Commission** [Board] action on the appeal. Executive Director approval does not necessarily constitute satisfaction of all federal requirements nor eliminate the need for approval by the United States Environmental Protection Agency in cases where specified criteria for determining equivalency have not been clearly identified in applicable sections of this undesignated head (relating to Nitric Acid Manufacturing).

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

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Director, Legal Division
Texas Natural Resource Conservation Commission

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For further information, please call: (512) 463-8159

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Subchapter D. Administrative Provisions

• 30 TAC §§117.510, 117.520, 117.530, 117.540, 117.560

The amendments are proposed under the Texas Health and Safety Code (Vernon 1990), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposed of the TCAA.

§117.510. Compliance Schedule For Utility Electric Generation. All persons affected by the provisions of the undesignated head (relating to Utility Electric Generation) in Subchapter B of this chapter shall be in compliance as soon as practicable, but no later than May 31, 1995 (final compliance date). Additionally, all affected persons shall meet the following compliance schedules and submit written notification to the Executive Director:

(1) (No change.)

(2) conduct applicable continuous emissions monitoring system (CEMS) **or predictive emissions monitoring systems (PEMS)** evaluations and quality assurance procedures as specified in §117.113 of this title (relating to Continuous Demonstration of Compliance) no later than January 1, 1995;

(3) install all nitrogen oxides (NO_x) abatement equipment, implement all NO_x control techniques, and submit the results of the CEMS **or PEMS** performance evaluation and quality assurance procedures to the **Texas Natural Resource Conservation Commission** [Texas Air Control Board] no later than May 31, 1995;

(4) conduct applicable tests for initial demonstration of compliance as specified in §117.111 of this title (relating to Initial Demonstration of Compliance) **and submit the results** no later than **July** [60 days after May] 31, 1995;[.]

(5) conduct applicable tests for initial demonstration of compliance with the NO_x emission limit for fuel oil firing, in accordance with §117.111(d)(2) of this title, and submit test results within 60 days after completion of such testing; and

(6) no later than May 31, 1995, submit a final control plan for compliance in accordance with §117.115 of this title (relating to Final Control Plan Procedures).

§117.520. Compliance Schedule For Commercial, Institutional, and Industrial Combustion Sources. All persons affected by the provisions of the undesignated head (relating to Commercial, Institutional, and Industrial Sources) in Subchapter B of this chapter shall be in compliance as soon as practicable, but no later than May 31, 1995 (final compliance date). All affected persons shall meet the following compliance schedules and submit written notification to the Executive Director:

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

(3) for units operating without continuous emissions monitoring system (CEMS) or **predictive emissions monitoring systems (PEMS)**, conduct applicable tests for initial demonstration of compliance as specified in §117.211 of this title (relating to Initial Demonstration of Compliance); and submit the results by April 1, 1994, or as early as practicable, but in no case later than May 31, 1995;

(4) for units operating with CEMS or **PEMS** and complying with the NO_x emission limit [in pound per million Btu] on a rolling 30-day average, conduct

the applicable tests for the initial demonstration of compliance as specified in §117.211 of this title and submit the results of the applicable CEMS or **PEMS** performance evaluation and quality assurance procedures as specified in §117. 213 of this title (relating to Continuous Demonstration of Compliance) **no later than July** [within 60 days after May] 31, 1995;[.]

(5) for units operating with CEMS or PEMS and complying with the NO_x emission limit in pounds per hour on a block one-hour average, conduct the applicable tests for the initial demonstration of compliance as specified in §117.211 of this title and submit the results of the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.213 of this title by May 31, 1995; and

(6) no later than May 31, 1995, submit a final control plan for compliance in accordance with §117.215 of this title (relating to Final Control Plan Procedures).

§117.530. Compliance Schedule For Nitric Acid and Adipic Acid Manufacturing Sources. All persons affected by the provisions of the undesignated head (relating to Adipic Acid Manufacturing) in Subchapter C of this chapter or the provisions of the undesignated head (relating to Nitric Acid Manufacturing) in Subchapter C of this chapter shall be in compliance as soon as practicable, but no later than May 31, 1995 (final compliance date). All affected persons shall meet the following compliance schedules and submit written notification to the Executive Director:

(1) (No change.)

(2) conduct applicable continuous emissions monitoring system (CEMS) **or predictive emissions monitoring systems (PEMS)** performance evaluation and quality assurance procedures as specified in §117.313 of this title (relating to Continuous Demonstration of Compliance) and §117.413 of this title (relating to Continuous Demonstration of Compliance), provide previous testing documentation for any claimed test waiver as allowed by §117.311(d) of this title (relating to Initial Demonstration of Compliance) or §117.411(d) of this title (relating to Initial Demonstration of Compliance); and conduct applicable **initial demonstration of compliance** [performance] testing as specified in §117.311[of this title] and §117.411 of this title, by:

(A) no later than January 1, 1994, for affected facilities not performing process modification or installation of a CEMS **or PEMS** device as part of the control plan specified in §117. 309 [of this title] and §117.409 of this title; and

(B) no later than May 31, 1995, for affected facilities performing process modification or installation of a CEMS **or PEMS** device as part of the control plan specified in §117.309 [of this title] and §117.409 of this title.

(3) Within 60 days after the applicable date specified in paragraph (2)(A) or (B) of this section, submit the results of CEMS **or PEMS** performance evaluation and quality assurance procedures and the results of **initial demonstration of compliance** [performance] testing specified in paragraph (2) of this section.

§117.540. Phased Reasonably Available Control Technology (RACT).

(a) The owner or operator affected by the provisions of this chapter (relating to Control of Air Pollution from Nitrogen Compounds) who determines that compliance by May 31, 1995 is not practicable may submit a petition for phased RACT. The process for submitting a petition and receiving approval shall be based on the following:

(1) (No change.)

(2) The owner or operator of the affected unit or units shall submit information in the petition to the **Texas Natural Resource Conservation Commission (TNRCC)** [Texas Air Control Board (TACB)] and a copy to the United States Environmental Protection Agency (EPA) Regional Office in Dallas which will demonstrate all of the following:

(A) Compliance by May 31, 1995 is impracticable due to the unavailability of nitrogen oxides (NO_x) abatement equipment, engineering services, or construction labor; system unreliability; manufacturing unreliability; equipment unreliability; or other technological and economic factors as the **TNRCC** [TACB] determines are appropriate,

(B)-(D) (No change.)

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

(5) Within 30 days of receiving a petition for phased RACT, the Executive Director shall inform the applicant in writing that the petition is complete or that additional information is required. If the petition is deficient, the notification shall state any additional information required. The requested information correcting the deficiency **shall** [must] be received by the Executive Director within 30 days of the date of the letter notifying the applicant of the deficiency.

(6) The Executive Director shall approve or deny the petition within 90 days of receiving an administratively complete phased RACT petition. The Executive Director shall approve a petition for phased RACT if the Executive Director determines that compliance is not practicable by May 31, 1995, because of either the unavailability of nitrogen oxides abatement equipment, engineering services, or construction labor, system unreliability; manufacturing unreliability; equipment unreliability; or other technological and economic factors as the **TNRCC** [TACB] determines are appropriate.

(7) Any person affected by the Executive Director's decision to deny a petition for phased RACT or to deny a revision to an approved phased RACT petition may appeal the decision to the **Commission** [Board] within 30 days after the date of the decision. Such appeal is to be taken by written notification to the Executive Director. Section 103.71 of this title (relating to Request for Action by the **Commission** [Board]) should be consulted for the method of requesting **Commission** [Board] action on the appeal. Approved petitions for phased RACT may be revised by the Executive Director upon a showing of just cause by the applicant.

(8) Approval of a phased RACT schedule by the **TNRCC** [TACB] does not waive any applicable federal requirements or eliminate the need for approval by EPA.

(9) (No change.)

(b) The Executive Director shall initiate a reevaluation of the final compliance dates specified in this undesignated head (relating to Administrative Provisions) one year after the adoption of this chapter. The Executive Director shall evaluate the practicability of all sources complying with §117.105 (relating to Emission Specifications), §117.107 (relating to Alternative System-Wide Emission Specifications), §117.205 (relating to Emission Specifications), §117.207 (relating to Alternative Plant-Wide Emission Specifications), §117.305 (relating to Emission Specifications), [and] §117.405 (relating to Emission Specifications), **and §117.223 (relating to Source Cap)** of this title by May 31, 1995. The Executive Director shall base the evaluation on the information contained in the control plans required by §§117.109, 117.209, 117.309, and 117.409 of this title. In evaluating the practicability of compliance by May 31, 1995, the Executive Director shall take into consideration the availability of NO_x abatement equipment, engineering services, or construction labor; system unreliability, manufacturing unreliability; equipment unreliability, or other technological and economic factors as the **TNRCC** [TACB] determines are appropriate. Within 15 months after adoption of this chapter, the Executive Director shall publish notice in the *Texas Register* of the intent to either retain or extend by

rulemaking the final compliance dates of this undesignated head.

§117.560. Rescission. If, after reviewing the results of the Urban Airshed Model for a nonattainment area, the **Texas Natural Resource Conservation Commission (TNRCC)** [Texas Air Control Board (TACB)] determines after conducting public hearings that the additional reductions of nitrogen oxides (NO_x) *in the nonattainment area would not contribute to attainment of the National Ambient Air Quality Standards for ozone in that nonattainment area, then the* **TNRCC** [TACB] shall have the Executive Director submit such findings and results to the United States Environmental Protection Agency (EPA) Administrator for a determination under the 1990 Federal Clean Air Act Amendments, §182(f). If the EPA Administrator approves the **TNRCC's** [TACB's] finding, then the requirements of this chapter shall be reproposed in rulemaking to address the findings of the Administrator as to the applicable NO_x *requirements.*

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

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TRD-9334035 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Proposed date of adoption: March 31, 1994

For further information, please call: (512) 463-8159

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Subchapter D. Administrative Provisions

• 30 TAC §117.580

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

The repeal is proposed under the Texas Health and Safety Code (Vernon 1990), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposed of the TCAA.

§117.580. Source Cap.

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

Issued in Austin, Texas, on December 27, 1993.

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Director, Legal Division
Texas Natural Resource Conservation Commission

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For further information, please call: (512) 463-8159

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Chapter 305. Consolidated Permits

Subchapter R. Petition for Groundwater Protection Information

• 30 TAC §§305.601-305.604

The Texas Natural Resource Conservation Commission (TNRCC) proposes new Subchapter R, §§305.601-305.604, concerning petitions for groundwater protection information. Current regulations of the Railroad Commission of Texas (RRC) require that the Texas Natural Resource Conservation Commission determine the occurrence and depth of usable-quality groundwater in conjunction with approval of various activities regulated by the RRC, including underground injection of oil and gas wastes, plugging and testing of inactive wells and exploration and production of oil, gas and other minerals. This determination is required in order to identify the existence of usable groundwater resources in relation to these underground activities and ensure that proper conditions, such as well casing intervals, are incorporated into permits and project plans to protect groundwater sources. It is the intention of the TNRCC to provide adequate resources to respond in a timely manner to the requests received and to ensure that programs be developed and maintained to provide the accurate and current data on groundwater occurrence to ensure protection of these resources. These sections are proposed in order that the TNRCC be able to recover it's reasonable costs of providing services to applicants in conjunction with review of activities under the jurisdiction of the RRC.

Stephen Minick, budget and planning division, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of enforcement and administration of the sections. The effect on state government will be an increase in revenue of approximately $500,000 in fiscal year 1994 and $1 million in each of the fiscal years 1995-1998. There are no effects anticipated for local governments. The effects on applicants for permits for mineral exploration or production or related activities will be an added cost of $50 to $100 for each application. Some affected entities may be small businesses; however, the affects will vary only with the number of applications filed and will not otherwise affect small business on any other basis.

Mr. Minick also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be improvements in the programs for determination of groundwater occurrence in conjunction with underground mineral exploration and development and certain waste disposal activities, improved service to applicants seeking commission concurrence on RRC permits, and enhanced protection of the quality of the state's usable groundwater sources. There are no anticipated costs to any persons required to comply with these sections as proposed.

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

These amendments are proposed under Water Code, §5.103 and §26.011, which authorize the Texas Natural Resource Conservation Commission to adopt any rules necessary to carry out its powers, duties and policies and to protect water quality in the state, and under Water Code, §5.235, which authorizes the Commission to assess a fee to recover the costs of review and processing of applications and petitions received by the Commission. These rules are proposed in order to implement the provisions of Water Code, §5. 235(b) and provisions of Senate Bill 5, Acts of the 73rd Legislature, 1993 (General Appropriations Act).

§305.601. Applicability. Fees required under this subchapter apply to petitions to the Executive Director of the Texas Natural Resources Conservation Commission for written certification regarding:

(1) occurrence of usable-quality groundwater resources during tests on inactive wells as provided by §3.14(a)(3) of this title (relating to Plugging);

(2) occurrence of usable-quality groundwater for the purpose of protecting groundwater resources during exploration for and production of oil, gas, and other minerals and for the plugging of associated wells as provided by §3.13(b)(2)(A)(i) of this title (relating to Casing, Cementing, Drilling, and Completion Requirements) and §3.14(a)(3);

(3) the depth or depths of usable-quality groundwater that must be protected during cathodic protection well operations as provided by §3.99(c) of this title (relating to Cathodic Protection Wells);

(4) recommendations to the Railroad Commission of Texas concerning the protection of groundwater resources during underground injection of oil and gas wastes as provided by Water Code, §27.033;

(5) the depth or depths of usable-quality groundwater to be protected during drilling for seismic and core holes in a project area as provided by §3.100(d) of

this title (relating to Seismic Holes and Core Holes); and

(6) any other rule adopted by the Railroad Commission of Texas that requires a written certification from the Texas Natural Resource Conservation Commission regarding the depth of usable-quality groundwater to be protected.

§305.602. Application Required. Any person required to obtain a written certification of the depth of usable-quality groundwater under this subchapter shall complete and submit a petition to the executive director.

(1) A petition for certification under §305.601(1)-(3) of this title (relating to Applicability) shall be made by completion and submittal of Texas Natural Resource Conservation Commission Form 0051, or other form approved by the executive director.

(2) A petition for certification under §305.601(4)-(6) of this title (relating to Applicability) shall be made by filing a written request with the executive director according to the provisions of this subchapter.

§305.603. Contents of Petition for Review. Forms or petitions for a written certification of the depth of usable-quality groundwater shall be submitted to the executive director and shall include the following information:

(1) name of person preparing the request and telephone number, including area code;

(2) operator's name as shown on Railroad Commission of Texas form W-1;

(3) return mailing address (city, state and zip code);

(4) location of well including county, survey name, block number, township, section/survey number or lot number, abstract number, lease name, well number, distances in feet and directions measured at right angles from each of two intersecting section or survey lines, distance in miles and direction from a nearby town in the county, Railroad Commission of Texas lease number and Railroad Commission of Texas district number;

(5) elevation (if available);

(6) proposed total depth;

(7) geologic formation at total depth;

(8) purpose of request (new drill, re-entry, plug and abandon, or other) ;

(9) type of request (amended or new);

(10) geophysical log of same or nearby well (preferably electric log);

(11) a map showing all surrounding surveys and the well site; and

(12) additional data as requested by the executive director.

§305.604. Petition Fees.

(a) Except as specifically provided in subsections (b) or (c) of this section, a petitioner shall include with each petition a fee of $50.

(b) The petition fee for written recommendations for a project area under §305.603(5) of this title (relating to Contents) is $50 for an area of 20 square miles or less. An additional $25 fee is charged for each additional increment of 5 square miles or fraction thereof above 20 square miles.

(c) Any person filing a request with the commission under this subchapter may request an immediate or expedited response to such request. The commission may assess an additional charge of $50 for each petition requested by an applicant to be expedited. No additional charge shall be assessed without written notice of the applicants's request for expedited processing.

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

Issued in Austin, Texas, on December 22, 1993.

TRD-9333905 Mary Ruth McDonald
Director, Legal Division
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: February 4, 1994

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

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part V. Texas Board of Pardons and Paroles

Chapter 141. General Provisions

Parole Commissioners

• 37 TAC §§141.21-141.26, 141.29

(Editor's note: The text of the following sections proposed for repeal will not be published The sections may be examined in the offices of the Texas Board of Pardons and Paroles or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin)

The Texas Board of Pardons and Paroles proposes the repeal of §141. 21-141.26, and §141.29, concerning parole commissioners, since statutory amendments have abolished the office of parole commissioner.

Michael F. Miller, general counsel, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Miller also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will reflect current statutory law. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759, P.O. Box 13401, Austin, Texas 78711.

The repeals are proposed under Texas Code of Criminal Procedure, Article 42. 18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§141.21. Origin and Purpose.

§141.22. Employment.

§141.23. Authority.

§141.24. Duties.

§141.25. Minimum Workload.

§141.26. Administrative Duties.

§141.29. Designated Duty Station.

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

Issued in Austin, Texas, on December 21, 1993.

TRD-9333868 Michael F. Miller
General Counsel
Texas Board of Pardons and Paroles

Earliest possible date of adoption: February 4, 1994

For further information, please call. (512) 406-5613

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Chapter 145. Parole

Parole Process

• 37 TAC §§145.1-145.3

(Editor's note The text of the following sections proposed for repeal will not be published The sections may be examined in the offices of the

Texas Board of Pardons and Paroles or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Pardons and Paroles proposes the repeal of §§145. 1-145.3, concerning Parole Panel, Standard Parole Guidelines and Tentative Parole Date, because they relate to obsolete statutory law.

Michael F. Miller, general counsel, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Miller also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be inapplicable as the public is relatively unaffected by this particular section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P O. Box 13401, Austin, Texas 78711

The repealed sections have no statutory reference

§145.1. Parole Panel

§145 2. Standard Parole Guidelines.

§145.3. Tentative Parole Date.

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

Issued in Austin, Texas, on December 21, 1993.

TRD-9333865 Michael F Miller
General Counsel
Texas Board of Pardons and Paroles

Earliest possible date of adoption: February 4, 1994

For further information, please call (512) 406-5613

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• 37 TAC §145.1

The Texas Board of Pardons and Paroles proposes new §145.1, concerning the parole process, which stipulates who is responsible for making parole decisions under current statutory law.

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

Mr. Miller also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be inapplicable as the public is relatively unaffected by this particular section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The new section is proposed under the Texas Code of Criminal Procedure, Article 42.18, §7(e) and §8(a) and (b) which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§145.1. Parole Decision-Maker.

(a) The board is the parole decision-maker when the date of offense of a capital felony is on, or after September 1, 1993. The board may grant parole to a person convicted of a capital felony, occurring on, or after September 1, 1993, only on a two-thirds vote of the entire membership of the board.

(b) In all other cases, including capital felonies occurring before September 1, 1993, a three-member parole panel is the parole decision-maker. A parole panel may consider for parole any eligible prisoner, and upon approval by panel majority may release such prisoner on parole. (Texas Code of Criminal Procedure, Article 42.18, §7(b), (e), and (g) and §8 (a), (d).

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

Issued in Austin, Texas, on December 21, 1993.

TRD-9333870 Michael F Miller
General Counsel
Texas Board of Pardons and Paroles

Earliest possible date of adoption: February 4, 1994

For further information, please call: (512) 406-5613

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• 37 TAC §145.2

The Texas Board of Pardons and Paroles proposes new §145.2, concerning the parole process which establishes standard parole guidelines to be utilized by the parole decision-maker as an aid to investigation and research in the area of parole selection.

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

Mr. Miller also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be inapplicable as the public is relatively unaffected by this particular section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The new section is proposed under Texas Code of Criminal Procedure, Article 42.18, §8(f)(5), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§145.2. Standard Parole Guidelines.

(a) The parole decision-maker is vested with complete discretion in making parole decisions to accomplish the following mandatory duties found in Code of Criminal Procedure, Article 42.18:

(1) "a parole shall be ordered only for the best interest of society; not as an award of clemency." (Code of Criminal Procedure, Article 42.18, §8(f)(5));

(2) "a parole panel may release a person on parole...if the panel determines that the person's release will not increase the likelihood of harm to the public." (Code of Criminal Procedure, Article 42.18, §8(a)); and

(3) "a prisoner shall be placed on parole only...when the parole panel believes that he is able and willing to fulfill the obligations of a law-abiding citizen." (Code of Criminal Procedure, Article 42.18, §8(f)(5));

(b) There are no mandatory rules or criteria upon which parole release decisions must be based. The parole decision-maker has complete discretion to investigate a candidate for parole and to use whatever criteria it deems appropriate in determining if an prospective release to parole is in the best interest of society.

(1) To assist the parole decision-maker in its preliminary investigation of a parole release, the board has adopted standard parole guidelines that are the basic, but not the exclusive criteria upon which parole decisions are made.

(2) The standard parole guidelines shall include:

(A) current offense or offense(s);

(B) time served;

(C) the risk factors (consideration for public safety);

(D) institutional adjustment;

(E) the criminal history; and

(F) factual information supplied by trial officials and victim impact statements.

(c) The adoption and use of the standard parole guidelines does not imply the creation of any parole release formula, or a right or expectation by an inmate to parole based upon the guidelines. A parole score and salient factor while utilized for research and reporting is not to be construed so as to indicate the parole decision. The standard parole guidelines shall serve as an aid in the parole decision process and the parole decision shall be at the discretion of the parole decision-maker.

(d) The board is authorized to revise the standard parole guidelines as warranted.

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

Issued in Austin, Texas, on December 21, 1993.

TRD-9333869 Michael F. Miller
General Counsel
Board of Pardons and Paroles

Earliest possible date of adoption: February 4, 1994

For further information, please call: (512) 406-5613

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• 37 TAC §145.3

The Texas Board of Pardons and Paroles proposes new §145.3, concerning policy statements of the Board of Pardons and Paroles to be used by the Board in its analysis and research of parole release decisions.

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

Mr. Miller also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be inapplicable as the public is relatively unaffected by this particular section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The new section is proposed under Texas Code of Criminal Procedure, Article 42.18, §7(a) and §8(a), (f), and (g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§145.3. Policy Statements Relating to Parole Release Decisions by the Board of Pardons and Paroles. To aid the Board of Pardons and Paroles in its analysis and research of parole release, the board adopts the following policies:

(1) Release to parole is a privilege, not an inmate right, and the parole decision-maker is vested with complete discretion to grant, or to deny parole release as defined by statutory law.

(A) Candidates for parole are to be evaluated on an individual basis.

(B) There are no mandatory rules or guidelines for analysis or set release criteria that must be followed in every case because each inmate is unique.

(C) Since the board has the statutory duty to make release decisions which are only in the best interest of society, and when it thinks an inmate is able and willing to be a law-abiding citizen, set guidelines are merely optional tools to aid in the completely discretionary parole decision.

(2) An inmate will be considered for parole when he becomes statutorily eligible and meets the following criteria dealing with his behavior while incarcerated:

(A) The inmate must not have had a major disciplinary misconduct report as defined by the Texas Department of Criminal Justice in the six-month period prior to the date he is reviewed for parole.

(B) At the time he is reviewed for parole the inmate must be classified in the same or higher time-earning status assigned all inmates during the initial phase of the TDCJ-ID diagnostic process.

(C) If any inmate who has received an affirmative vote to parole and following the vote is either reduced in classification status or loses good time, the parole decision will be reviewed and revoted by the parole decision-maker.

(D) An administrative release violator (parole or mandatory supervision violator) who has been revoked for technical reasons will be eligible for release to parole when he has been incarcerated for 12 months, calendar time, to be computed from his date of return to custody as an administrative release violator.

(E) An administrative release violator (parole or mandatory supervision violator) with a new felony conviction or convictions will be eligible for parole when he has served 12 months calendar time or has accumulated sufficient time to become eligible for parole on the new sentence, whichever is greater.

(F) An inmate who is convicted of a felony offense committed while in the TDCJ, any facility under its supervision, or under contract to the TDCJ will be considered eligible for parole after the inmate has served either three years flat time from the date the offense occurred or has served the new sentence in calendar days, whichever is less.

(G) An inmate who is otherwise statutorily eligible for parole and who is charged with a felony offense committed while in the TDCJ, any facility under its supervision, or a facility under contract to the TDCJ will not be released to parole until the felony charge is finally adjudicated and the Board notified of the final disposition for appropriate Board action.

(H) An offender may be approved for parole under the condition that the offender complete special treatment/educational programs, In-Prison Therapeutic Communities (IPTC), Substance Abuse Felony Punishment Facility (SAFPF) and any requirements of those programs, such as after-care. An offender approved for parole under these conditions will be reconsidered if he fails to complete the requirements of a special treatment/educational program, to include after-care components of the program.

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

Issued in Austin, Texas, on December 21, 1993

TRD-9333871 Michael F. Miller
General Counsel
Board of Pardons and Paroles

Earliest possible date of adoption: February 4, 1994

For further information, please call: (512) 406-5613

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Standards and Certification Procedures for Community Residential Facilities

• 37 TAC §§145.81-145.100

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

The Texas Board of Pardons and Paroles proposes the repeal of §§145. 81-145.100, concerning standards and certification procedures for community residential facilities, since the sections proposed for repeal have become obsolete due to changes in statutory law.

Michael F. Miller, general counsel, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Miller also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be clearer understanding of the Board of Pardons and Paroles rules and regulations. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The repeals are proposed under Texas Code of Criminal Procedure, Article 42. 18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§145.81. Community Services Section.

§145.82. Responsibilities of Community Service Section.

§145.83. Contract Eligibility; Certification.

§145.84. Certification Team; Composition.

§145.85. Working File; Compilation; Contents.

§145.86. Certification Team Report; Recommendation.

§145.87. Issuance of Certificate or Notice of Deficiency; Rebuttal.

§145.88. Temporary Certificate; Duration.

§145.89. Renewal of Certificate.

§145.90. Decertification; Investigation; Report/Notice of Deficiency; Imminent Hazard; Immediate Decertification; Opportunity to Correct Deficiencies; Extension; Final Action.

§145.91. Standards Relating to Physical Plant; Compliance with Applicable Codes; Size; Accommodations; Capacity; Location; Waiver.

§145.92. Standards Relating to Food Service.

§145.93. Standards Relating to Medical Care.

§145.94. Standards Relating to Fire Safety.

§145.95. Standards Relating to Staff; 24-hour Supervised Living; Discipline.

§145.96. Standards Relating to Program Goals and Services; Brochure; Written Procedures; Individual Treatment Plan; Successful Discharge.

§145.97. Standards Relating to Records.

§145.98. Standards Relating to Facility Financial Affairs.

§145.99. Standards Relating to Facility Personnel.

§145.100. Standards Relating to Financial Contribution by Client/Resident.

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

Issued in Austin, Texas, on December 21, 1993.

TRD-9333866

Michael F. Miller
General Counsel
Board of Pardons and Paroles

Earliest possible date of adoption: February 4, 1994

For further information, please call: (512) 406-5613

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Chapter 150. Board Policy Statements; Memoranda of Understanding

Memoranda of Understanding

• 37 TAC §§150.1-150.9

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

The Texas Board of Pardons and Paroles proposes the repeal of §§150. 1-150.9, concerning memoranda of understanding, since the sections proposed for repeal are based upon obsolete statutory law.

Michael F. Miller, general counsel, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Miller also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be clearer understanding of the Board's rules and regulations. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The repeals are proposed under Texas Code of Criminal Procedure, Article 42. 18, §8(g), which provides the Texas Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§150.1. Memorandum of Understanding Between the Texas Department of Corrections, the Texas Rehabilitation Commission, the Texas Commission for the Deaf, the Texas Department of Human Services, and the Texas Board of Pardons and Paroles.

§150.2. Memorandum of Understanding Between the Texas Department of Corrections, the Board of Pardons and Paroles, the Texas Department of Mental Health and Mental Retardation, and the Texas Commission on Alcohol and Drug Abuse.

§150.3. Agreement Between the Texas Department on Aging, the Texas Department of Corrections, the Texas Board of Pardons and Paroles and the Texas Department of Human Services.

§150.4. Memorandum of Understanding Between the Texas Department of Corrections, the Texas Employment Commission, and the Texas Board of Pardons and Paroles.

§150.5. Agreement By and Between the Texas Board of Pardons and Paroles and the Texas Department of Corrections.

§150.6. Memorandum of Understanding-Continuity of Care-Mentally Ill/Mentally Retarded Offenders.

§150.7. Memorandum of Understanding Between the Texas Department of Corrections and the Texas Board of Pardons and Paroles.

§150.8. Memorandum of Understanding Between the Texas Board of Pardons and Paroles, the Texas Rehabilitation Commission, the Texas Commission on Alcohol and Drug Abuse, and the Texas Adult Probation Commission.

§150.9. Interagency Cooperative Agreement Between the Texas Board of Pardons and Paroles and the Texas Employment Commission for the Management and Operation of Project RIO (the Governor's Special Initiative for Ex-offenders).

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

Issued in Austin, Texas, on December 21, 1993.

TRD-9333867 Michael F Miller
General Counsel
Texas Board of Pardons and Paroles

Earliest possible date of adoption: February 4, 1994

For further information, please call: (512) 406-5613

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Board Policy Statements

• 37 TAC §150.53, §150.57

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

The Texas Board of Pardons and Paroles proposes the repeal of §150.53, and §150.57, concerning board policy concerning the use of mace and stun guns by parole officers since these policies relate to obsolete statutory law, and parole officers are no longer employees of the Board of Pardons and Paroles.

Michael F. Miller, general counsel, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Miller also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be inapplicable as the public is relatively unaffected by this particular section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Michael F. Miller, 8610 Shoal Creek Boulevard, Austin, Texas 78759; P.O. Box 13401, Austin, Texas 78711.

The repeals are proposed under Texas Code of Criminal Procedure, Article 42. 18, §8(g), which provides the Board of Pardons and Paroles with the authority to adopt such reasonable rules not inconsistent with law as it may deem necessary.

§150.53. Mace Policy.

§150.57. Stun Gun Policy.

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

Issued in Austin, Texas, on December 21, 1993.

TRD-9333864 Michael F. Miller
General Counsel
Texas Board of Pardons and Paroles

Earliest possible date of adoption: February 4, 1994

For further information, please call: (512) 406-5613

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 48. Community Care for Aged and Disabled

In-Home and Family Support Program

• 40 TAC §48.2707

The Texas Department of Human Services (DHS) proposes an amendment to §48.2707, concerning program restrictions, in its Community Care for Aged and Disabled chapter. The purpose of the amendment is to conserve In-Home and Family Support Program (IH/FSP) state funds for applicants who are ineligible to receive services through other programs and to avoid duplication of services between programs. The amendment prohibits individuals from receiving IH/FSP and Nursing Facility Waiver (NFW) services at the same time. The NFW program offers individuals a wide array of services with a much larger service cap. In addition, the NFW program receives a federal Medicaid match.

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that IH/FSP funds saved as a result of this change can be used to serve individuals now on the IH/FSP waiting list. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Debra Berliner at (512) 450-3199 in DHS's Community Care Section. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-340, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714- 9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 35, which provides the department with the authority to administer public assistance and support services for persons with disabilities programs. The amendment implements the Human Resources Code, §§22.001-22.024 and 35. 001-35.012.

§48.2707. Program Restrictions.

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

(h) Individuals **enrolled** [eligible to receive benefits] in the Community Living Assistance and Support Services program **or the Nursing Facility Waiver program** are not eligible to receive benefits in the IH/FSP.

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

Issued in Austin, Texas, on December 22, 1993.

TRD-9333888 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: April 1, 1994

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

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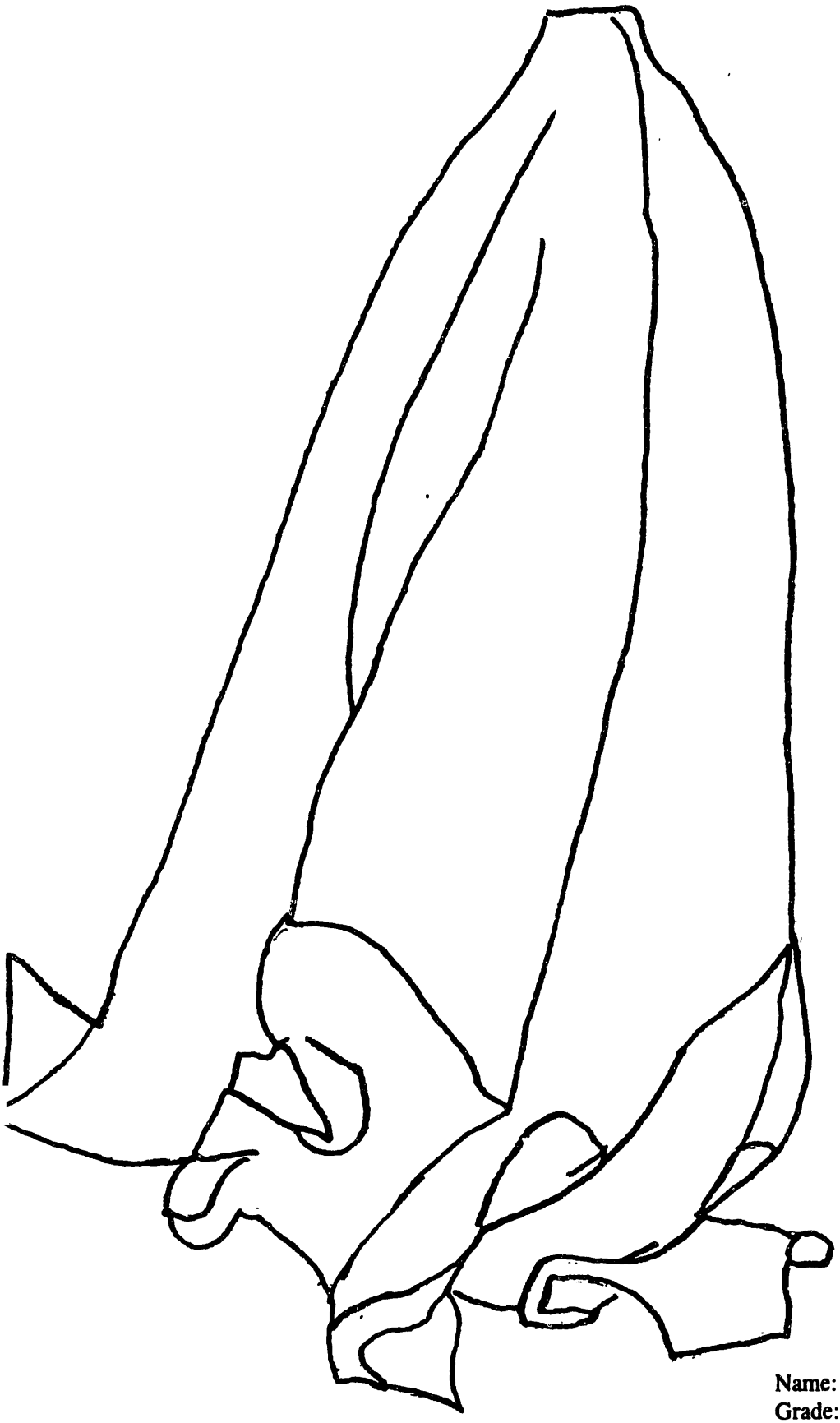

Name: Juan Martinez
Grade: 9
School: Skyline High School, Dallas ISD

WITHDRAWN RULES

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

TITLE 1. ADMINISTRATION

Part XIII. Texas Incentive and Productivity Commission

Chapter 273. State Employee Incentive Program

• **1 TAC §273.9**

The Texas Incentive and Productivity Commission has withdrawn from consideration for permanent adoption a proposed amendment to §273.9, which appeared in the November 12, 1993, issue of the *Texas Register* (18 TexReg 8297). The effective date of this withdrawal is December 22, 1993.

Issued in Austin, Texas, on December 22, 1993.

TRD-9333880 M. Elaine Powell
Executive Director
Texas Incentive and Productivity Commission

Effective date: December 22, 1993

For further information, please call: (512) 475-2393

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Name: Aaron Stanford
Grade: 8
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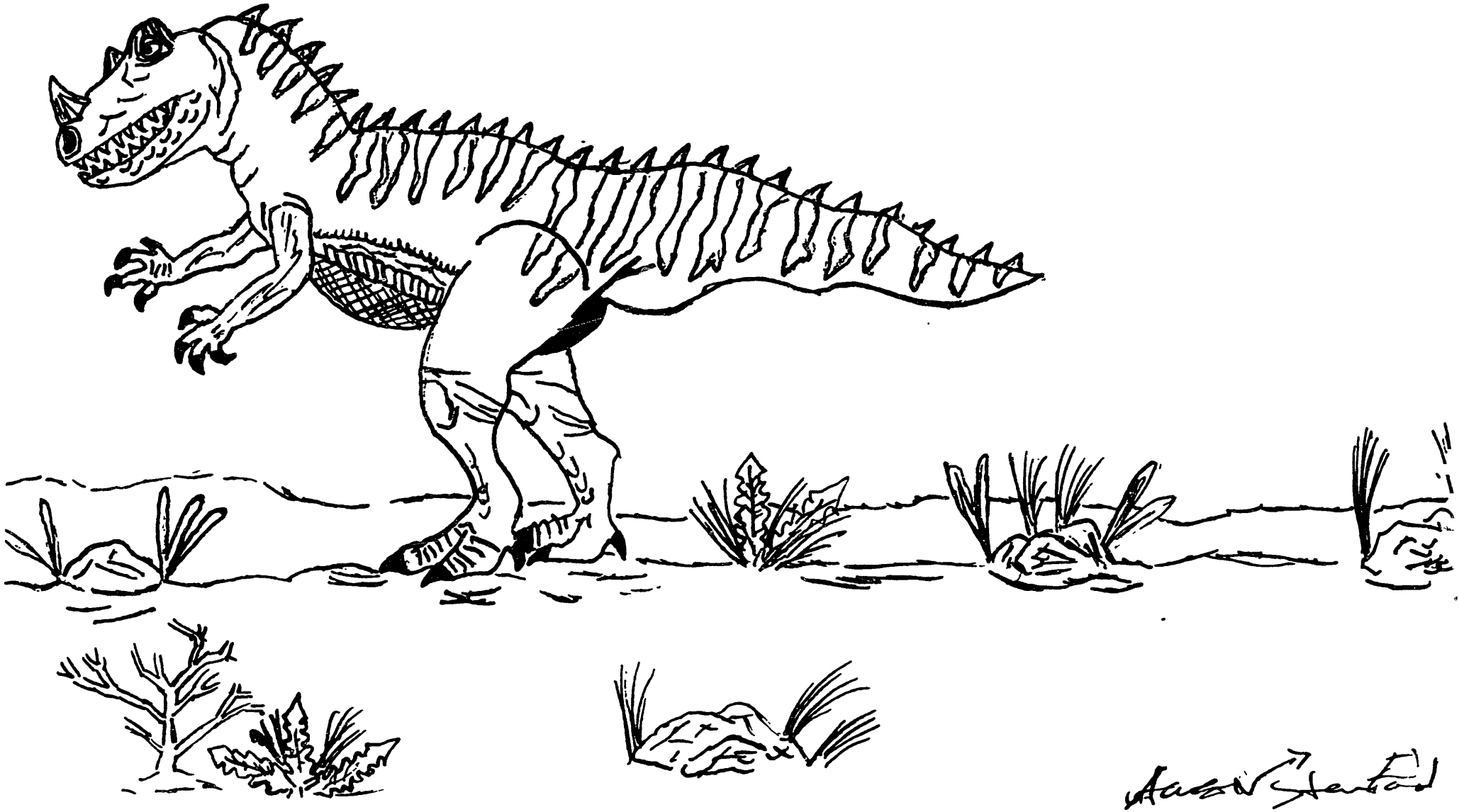

ADOPTED RULES

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

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

TITLE 1. ADMINISTRATION

Part XIII. Texas Incentive and Productivity Commission

Chapter 273. State Employee Incentive Program

• 1 TAC §§273.1, 273.7, 273.27

The Texas Incentive and Productivity Commission adopts amendments to §§273.1, 273.7, and 273.27. Section 273.7 and §273.27 are adopted with changes to the proposed text as published in the November 12, 1993, issue of the *Texas Register* (18 TexReg 8297). Section 273.1 is adopted without changes and will not be republished. Section 273.9, concerning the award eligibility period for a suggestion, is withdrawn and will be proposed at a later date. A nonsubstantive change is made regarding the fiscal implications contained in the proposed preamble. There will be a cost to those state agencies that participate in the State Employee Incentive Program in the form of the employer's share of social security taxes. The cost cannot be defined at this time because it depends on the participation levels and amount of the cash awards distributed.

These amendments are adopted so that the rules will facilitate compliance with Internal Revenue Service determinations.

Section 273.1 amends a definition to reflect change in Government Code and adds a definition to differentiate bonus payment and the amount the employee will receive after taxes. Section 273.7 further defines the agency role in processing the award payment. Section 273.27 amends provisions concerning the tax treatment of an award payment to have taxes withheld from the cash award and gives a beginning date that cash awards will be affected.

No comments were received regarding adoption of the rules.

The amendments are adopted under Government Code, Chapter 2108, §2108. 004(b), which provides the Texas Incentive and Productivity Commission with the authority to promulgate rules for the State Employee Incentive Program.

§273.7. Agency's Role.

(a) Agency coordinator appointments. The executive director of each eligible state agency shall designate an agency coordinator.

(b) Intra-agency review. The executive director of agencies with 25 or more employees shall designate at least two individuals employed by the agency to assist the agency coordinator in impartially evaluating all eligible employee suggestions as part of the internal review process provided for under the Act. One of the individuals should be experienced and familiar with the various cost centers, accounts, and line items which will be affected by a variety of implemented suggestions. Another of the individuals should have experience in the technical, engineering, procedural, management, or other areas required to objectively evaluate the feasibility of a variety of eligible suggestions. Executive directors of agencies with fewer than 25 employees shall designate at least one other person employed by the agency to assist the agency coordinator in evaluating suggestions. Additional members may be added to the intra-agency review staff as needed to evaluate the suggestions appropriately.

(c) Submission of suggestions. Agencies shall submit all suggestions, whether eligible or ineligible, to the Commission.

(d) Suggestion adoptions. The final adoption of an employee suggestion is at the discretion of the chief administrative officers of each agency.

(e) Establishment of Savings Measurement Account. Upon implementation of an approved employee suggestion, an agency shall establish a Savings Measurement Account and transfer into this account the share of the projected net first-year savings/revenues attributable to the suggestion during that fiscal year. Savings/revenue attributable to implementation of subsequent approved employee suggestions may be transferred into the agency's initial Savings Measurement Account or may be transferred into a newly established Savings Measurement Account. If a new fiscal year begins prior to the agency's certification of savings, at the beginning of the fiscal year the agency shall transfer into the Savings Measurement Account(s) the share of the projected net savings/revenues attributable to the suggestion(s) during the fiscal year. In the event that the certified savings/revenue amount differs from the balance in a Savings Measurement Account, the agency shall use the procedures outlined in the General Appropriations Act.

(f) Calculation and certification of net savings. Upon implementation of an approved suggestion, an agency shall track savings for one year in preparation for making the certification and funds transfers described in the Act, §2108.037. The Commission may certify a savings amount prior to the completion of a full implementation year if the suggestion involves a one-time savings or if the Commission finds the agency's projected savings to be based on a reasonable and reliable method.

(g) Allocation of net annual savings. Net annual savings realized from employee suggestions adopted by a state agency must be allocated by the state agency as provided in the Act, §2108.037, the General Appropriations Act, and Comptroller's Accounting Policy Statement #34. Necessary amounts for withholding of employee income and Social Security taxes will be deducted from the cash award and the originating agency will pay the employer share of the Social Security taxes.

§273.27. Awards.

(a) Amount. An employee whose suggestion results in a net annual savings or increase in revenues of $100 or more is eligible for a bonus of 10% of the net savings or revenue increase, up to a maximum of $5,000. If the suggestion is submitted by more than one employee, the bonus shall be divided among the employees.

(b) Suggestion eligibility. Only an approved and implemented employee suggestion is eligible for an award.

(c) Award prior to full one-year implementation. The Commission may grant an award before the completion of the first year in which the suggestion is implemented, based on actual or projected annual savings or increased revenues that are certified by the affected state agency and the Commission.

(d) Taxes on cash awards. Cash awards are considered wages for Social Security and income tax purposes.

(e) Processing cash awards. Upon Commission receipt of notification that savings have been transferred by the affected agency according to the allocations provided in the Government Code, §2108.037, General Appropriations Act, and Comptroller's Accounting Policy #34, the Commission will initiate processing payment of the net cash award. The Commission will process a supplemental pay transaction or cause a supplemental pay transaction to be made for the employee(s) submitting the suggestion. Necessary amounts for withholding of employee income and Social Security taxes will be deducted from the cash award. The originating agency will pay the employer share of Social Security taxes. This section will affect cash awards made in the period beginning January 1, 1994.

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

Issued in Austin, Texas, on December 21, 1993.

TRD-9333882 M. Elaine Powell
Executive Director
Texas Incentive and Productivity Commission

Effective date: January 25, 1994

Proposal publication date: November 12, 1993

For further information, please call: (512) 475-2393

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TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 26. Texas Agricultural Diversification Program: Linked Deposits

- **4 TAC §§26.1-26.3, 26.5, 26.6, 26.8, 26.10, 26.12**

The Texas Department of Agriculture (the department) adopts amendments to §§26.1-26.3, 26.5, 26.6, 26.8, 26.10, and 26.12, concerning the administration, implementation, practice, and procedure for participation in the Texas Department of Agriculture Linked Deposit Program. Section 26.1 has been adopted with changes to the proposed text as published in the November 2, 1993, issue of the *Texas Register* (18 TexReg 7904). Sections 26.2, 26. 3, 26.5, 26.6, 26.8, 26.10, 26.12 have been adopted without changes and will not be republished.

The definition "linked deposit" in §26.1 has been changed. In subparagraph (A)(i) of the definition, 2.09% has been changed to 2.0% to correct a printing error.

The amendments provide new definitions, clarify the program's purpose, make application procedures consistent with new definitions, allow for use of loan proceeds for the purchase of water conservation equipment, establish new program limitations, correct information on submitting communications regarding the program and comply with House Bill 1622 passed by the Texas Legislature, 73rd Session.

The amendments will function by providing for more efficient operation of the linked deposit program, facilitating the generation of up to $5 million in new agricultural loans, and ensuring consistency with recent statutory changes.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Agriculture Code, §44.007, which provides the Texas Department of Agriculture with the authority to adopt rules and procedures for administration of the linked deposit program.

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

Current market rate-The rate of interest on a United States treasury bill or note, the maturity date of which most closely matches the maturity date of the loan, or the end of the next biennium of the state, whichever is sooner, as determined by reference to the United States treasury bill or note section of the Wall Street Journal published on the day the loan is priced.

Customarily grown-Crops, including grapefruit, produced in this state that utilize conventional management systems, and have cash receipts equal to or exceeding $5 million as listed in the 1991 Texas Agricultural Cash Receipts and Price Statistics, compiled by the Texas Agricultural Statistics Service as published in November, 1992, for the period ending 1991, except for experimental varieties of these crops.

Eligible borrower-A person who is in the business or entering the business of:

(A) processing and marketing agricultural crops in this state;

(B) producing alternative agricultural crops in this state;

(C) producing agricultural crops in this state, the production of which has declined markedly because of natural disasters; or

(D) producing agricultural crops in this state using water conservation equipment for agricultural production purposes.

Lender-A financial institution that makes commercial loans, agrees to participate in the linked deposit program and is certified as a state depository by the treasury.

Loan-The note or other evidence of indebtedness entered into between the eligible borrower and the lender under the program.

Linked deposit-A time deposit governed by a written deposit agreement between the state and the lender that provides that:

(A) the lender pay interest on the deposit at a rate that is not less than the greater of:

(i) the current market rate minus 2.0%, or

(ii) 1.5%;

(B) the state note withdraw any part of the deposit before the expiration of a period set by a written advance notice of the intention to withdraw; and

(C) the eligible lending institution agree to lend the value of the deposit to an eligible borrow at a maximum rate that is the current market rate plus 4.0%.

Program-The Linked Deposit Program authorized by the Act, §44.007.

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

Issued in Austin, Texas, on December 22, 1993.

TRD-9333979 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Effective date. January 17, 1994

Proposal publication date. November 2, 1993

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

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Chapter 28. Texas Agricultural Finance Authority: Loan Guaranty Program

- **4 TAC §§28.1-28.3, 28.6-28.11, 28.13, 28.14**

The Board of Directors of the Texas Agricultural Finance Authority (TAFA) of the Texas

Department of Agriculture adopts amendments to §§28.1-28.3, 28. 6-28.11, 28.13 and 28.14, concerning procedures for participation in the Texas Agriculture Finance Authority Loan Guaranty Program, without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7072).

The amendments clarify and update sections that provide a general statement of authority, purpose of the program, definitions, general project eligibility requirements, application requirements and procedures for filing applications, general terms and conditions of the authority's financial commitment and criteria for approval of a guaranty, and make these sections consistent with statutory changes made by the 73rd Legislature, 1993.

The amendments will function by providing for more efficient operation of the loan guaranty applications process, and by ensuring consistency with recent statutory changes.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Agriculture Code, §58.023, which provides the TAFA Board with the authority to adopt rules to establish criteria for eligibility of applicants and lenders under the TAFA Loan Guaranty Program; and §58.022, which provides the Board with the authority to adopt rules and procedures as necessary for the administration of its program.

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

Issued in Austin, Texas, on December 22, 1993.

TRD-9333980 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Effective date. January 17, 1994

Proposal publication date. October 15, 1993

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

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Chapter 29. Texas Agricultural Diversification Program: Matching Grants

• 4 TAC §§29.2, 29.6, 29.7, 29.9, 29.12, 29.13

The Texas Department of Agriculture (the department) adopts amendments to §§29.2, 29.6, 29.7, 29.9, 29.12, and 29.13, concerning the administration, implementation, and procedure for participation in the Texas Department of Agriculture Matching Grants Program, without changes to the proposed text as published in the October 29, 1993, issue of the *Texas Register* (18 TexReg 7508).

The amendments provide changes to definitions, program limitations, application procedures, schedule of awards and communications regarding the program to make these consistent with statutory changes made by the 73rd Legislature.

The amendments will function by providing for more efficient operation of the matching grants programs, and will ensure consistency with recent statutory changes.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Agriculture Code, §12 016, which provides the department with general rulemaking authority; and §44. 002 of the Code, which provides that the commissioner shall create an agricultural diversification program.

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

Issued in Austin, Texas, on December 22, 1993.

TRD-9333981 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Effective date: January 17, 1994

Proposal publication date: October 29, 1993

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

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TITLE 7. BANKING AND SECURITIES

Part I. State Finance Commission

Chapter 1. Consumer Credit Commissioner

Subchapter B. Miscellaneous

• 7 TAC §1.303

The State Finance Commission of Texas adopts an amendment to §1.303, without changes to the proposed text as published in the August 3, 1993, issue of the *Texas Register* (18 TexReg 4988)

The amendment is adopted to reflect the changes in law concerning the amount of the annual fee and the repeal of late payment fees.

No comments were received regarding the adoption of the section.

The amended section is adopted under Texas Civil Statutes, Article 342-114A, which provide the State Finance Commission with the authority to prescribe such rules or procedure as may be necessary for supervising the Consumer Credit Commissioner and for ensuring compliance with Texas Civil Statutes, Title 79, Article 5069-1.01 et seq

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

Issued in Austin, Texas, on November 5, 1993.

TRD-9333950 Al Endsley
Consumer Credit Commissioner
State Finance Commission

Effective date: January 13, 1994

Proposal publication date: August 3, 1993

For further information, please call: (512) 479-1280

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TITLE 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Housing and Community Affairs

Chapter 9. Texas Community Development Program

Subchapter A. Allocation of Program Funds

• 10 TAC §9.3

The Texas Department of Housing and Community Affairs (TDHCA) adopts the repeal of §9.3, without changes to the proposed text as published in the November 26, 1993, issue of the *Texas Register* (18 TexReg 8739)

The repeal of §9.3 is necessary because the activities and programs available for funding under this section are now part of the new adopted Texas Capital Fund section, §9.7. New §9.7 clarifies the available Texas Capital Fund programs and incorporates changes to the funding cycle, selection procedures, and selection criteria for the Main Street Improvements Program.

The repeal provides for a greater a understanding of the available Texas Capital Fund programs and establishes selection cycle, procedures, and criteria through the adoption of new §9.7.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Government Code, Chapter 2306, §2306. 098, which provides the Texas Department of Housing Community Affairs with the authority to allocate Community Development Block Grant nonentitlement area funds to eligible counties and municipalities according to department rules.

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

Issued in Austin, Texas, on December 28, 1993

TRD-9334019 Henry Flores
Executive Director
Texas Department of Housing and Community Affairs

Effective date. January 19, 1994

Proposal publication date: November 26, 1993

For further information, please call: (512) 475-3948

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• 10 TAC §9.7

The Texas Department of Housing and Community Affairs (TDHCA) adopts new §9.7, without changes to the proposed text as published in the November 26, 1993, issue of the *Texas Register* (18 TexReg 8739).

The new section covers the activities and programs available for funding under the Texas Capital Fund and replaces repealed §9.3. New §9.7 clarifies the available Texas Capital Fund programs and incorporates changes to the funding cycle, selection procedures, and selection criteria for the Main Street Improvements Program.

The new section clarifies the available Texas Capital Fund programs and establishes a greater accountability for the selection of Main Street Improvements Programs grantees.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Government Code, Chapter 2306, §2306.098, which provides the Texas Department of Housing Community Affairs with the authority to allocate Community Development Block Grant nonentitlement area funds to eligible counties and municipalities according to department rules

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

Issued in Austin, Texas, on December 28, 1993.

TRD-9334018 Henry Flores
Executive Director
Texas Department of
Housing and
Community Affairs

Effective date. January 19, 1994

Proposal publication date: November 26, 1993

For further information, please call. (512) 475-3948

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Part V. Texas Department of Commerce

Chapter 176. Enterprise Zone Program Rules

• 10 TAC §§176.1-176.12

The Texas Department of Commerce adopts amendments to §§176.1-176 4 and new §§176.5.-176 12, concerning the Texas Enterprise Zone Act, Texas Government Code Chapter 2303, and Article 5190 7 as amended. Section 176 1 is adopted with minor changes to the proposed text as published in the August 31, 1993, issue of the *Texas Register* (18 TexReg 5812). Sections 176.2-176. 12 are adopted without changes, and will not be republished. The minor changes to §176.1 are necessary to correctly cite to the new locations of most of the Texas Enterprise Zone Act, the Texas Open Records Act and the Administrative Procedure Act. The new citations became effective subsequent to publication of the proposed rules.

Section 176.1, General Provisions, contains the general provisions and the definitions for the Texas Enterprise Zone Program.

Section 176 2, Filing Requirements for Applications and Claims, provides application filing guidelines, qualified business certification guidelines and new zone designation guidelines It also sets forth the Texas Department of Commerce's review procedure applicable to consideration of zone designations for previously granted zone designations and contains the fee requirements applicable to applications.

Section 176.3, Eligibility Requirement for Designation of an Enterprise Zone, sets forth the eligibility requirements for zone designations, clarifies that advance approval is required if providing population estimates based on data provided by other than the Texas State Data Center, removes the requirements that supporting documentation for zone designations be no more than 90 days old and authorizes surveys to be no more than three years old; and allows recycling market development zone applications to be submitted simultaneously with, or separate from, zone designation applications.

Section 176 4, Application Contents for Designation of Enterprise Zones, contains the requirements for zone applications, including recycling market development zone applications

Section 176 5, Requirement for Designation as a Recycling Market Development Zone and Respective Loans or Grants, and §176 6, Application Contents for Designation as a Recycling Market Development Zone, implement recycling market development zones, loans and grants which were established in Senate Bill 1051 by the enactment of §§481 371-481 375 of the Texas Government Code.

Section 176.7, Requirements for Designation of Enterprise Projects, sets forth the requirements for enterprise project designation and provides that the Texas Department of Commerce may approve assumptions of enterprise projects, leasing or transferring ownership of the project designation to another entity, under certain circumstances.

Section 176 8, Application Contents for an Enterprise Project, contains the content requirements for enterprise project applications as well as the procedures for receiving Texas Department of Commerce approval of an enterprise zone project name change.

Section 176 9, Certification of Neighborhood Enterprise Associations, establishes the process for obtaining neighborhood enterprise association certification.

Section 176 10, Approval Standards, sets forth the approval process for enterprise zones and projects, including recycling market development zones; establishes when applications will be received; sets out the deadlines for filing applications during the September, 1993, biennium for designated enterprise projects; specifies the number of new permanent and retained jobs which may be certified after August 31, 1993 for projects designated between September 1, 1993 and August 31, 1994; authorizes designation of up to six enterprise projects per zone per year and esiablishes a procedure under which the Texas Department of Commerce may allow an enterprise zone to exceed the maximum number of projects within it upon a showing of just cause and upon the governing body's agreement to concomitantly reduce the number of enterprise projects within another enterprise zone within its jurisdiction. It also establishes a term for recycling market development zones as well as certification and loan procedures for such zones; establishes procedures by which enterprise project designations may be assumed by another entity; and specifies that tax refunds under §151.429 or tax reductions under §151. 1015 of the Tax Code may not be applied for prior to September 1, 1995 for projects designated after August 31, 1993. Finally, §176.10 establishes certification standards for builders to be approved as qualified businesses under the Texas Enterprise Zone Act.

Section 176 11, Reporting Requirements, establishes certain reporting requirements; requires local governing bodies to notify the Texas Department of Commerce of each commitment made to a qualified business for one-time state sales and franchise tax refunds, delineates factors to be considered in evaluating the public entity's effort relating to the sale of publicly owned land when such property is sold at less than fair market value, includes a provision concerning the annual cost-benefit analysis of the Program which the Texas Department of Commerce must prepare annually for the state auditor and the requirement that neighborhood enterprise associations furnish an annual statement, by September 1 of each year, to the appropriate governing body concerning the programmatic and financial status of approved projects, together with an audited financial statement for such projects. The information is to be provided annually to the Texas Department of Commerce by the governing body.

Section 176.12, Boundary Agreements, establishes the process to be used for amending enterprise zone boundaries and clarifies that proposed zone boundaries may be amended to delete land area prior to the enterprise zone designation being approved.

Comments in opposition to the applicability of application fees to small cities were received from the Texas Municipal League. The Texas Department of Commerce staff frequently spends more time and resources in providing technical assistance to, and in processing applications from, small governing bodies than it does for larger governing bodies' applications. It is unwilling, therefore, to waive the application fee requirement for any governing body. The Legislature has directed the Texas Department of Commerce to implement cost recovery efforts for the programs and services it provides when feasible to do so.

Comments in opposition to portions of the proposed rules, or requesting changes to the proposed rules, were received from Texas Utilities Electric Company and Small Business Advisors. Texas Utilities Electric Company requested that §176.2(6)(ii) of the rules be changed to harmonize with Texas Utilities Electric Company's own requirements for qualified businesses under 3. 2.6 Rider ES-Enterprise Zone Service of the Company's tariff. The Texas Department of Commerce believes that the requested change is neither necessary nor in the public interest. The certification requirements of §176.2 do not conflict with Texas Utilities Electric Company's tariff, and any effort to tailor the Program rules precisely to a particular utility's current tariff may create a situation which inhibits other utilities with different tariff provisions, and customers on other utility's systems, from qualifying for the discounted utility rates which the Texas Enterprise Zone Act is designed to encourage.

Small Business Advisors commented against the definition of "new permanent job" in §176.1(20) of the rules due to its concern that many builders would be unable to benefit from the $2,000 refund since they generally employ contractors and subcontractors to provide construction work within an enterprise zone. The definition of "new permanent job" is taken directly from the definition in §3(a)(10) of the Texas Enterprise Zone Act; therefore, the Texas Department of Commerce is without discretion to change the definition. Small Business Advisors also suggested expanding the definition at §176.1(21) (D) of the rules to cover builders who substantially rehabilitate existing housing. House Bill 1872, which added builders to the definition of "qualified business", does not appear to provide for the expanded definition requested by Small Business Advisors. It appears to contemplate new construction, not rehabilitation of existing housing stock.

Small Business Advisors commented that §176.3 makes clear that the rehabilitation of existing, substandard housing falls within the general framework. The Texas Department of Commerce is unsure what "falls within the general framework" is intended to mean. It disagrees, however, that the eligibility requirements for enterprise zone designation set forth in §176.3 have anything to do with whether the rehabilitation of existing housing within an enterprise zone confers qualified business status upon a builder All builders must meet the statutory criteria in order to be qualified businesses under the Texas Enterprise Zone Act. Small Business Advisors also asked whether §176 5(b) would enable developers rehabilitating existing housing stock in need of substantial work to qualify for loans and grants. The answer is no. Section 176.5 is applicable only to recycling market development zones. Loans and grants are available for certain recycling activities under the statute which are not available to other entities. Small Business Advisors also commented that §176.8(a)(3)(B)(i)-(viii) deals with a variety of employment issues that are not very relevant to the development of housing. The Texas Department of Commerce disagrees that these provisions are not relevant. These are statutory enterprise project requirements set forth in §10 of the Texas Enterprise Zone Act. Small Business Advisors asked how housing projects are impacted by §176.10(b)(1) of the rules. Builders must meet the same requirements as any other qualified business to gain enterprise project benefits under the Texas Enterprise Zone Act.

Small Business Advisors stated that the standards set forth in §176.10(f) (1)(B) and (E) will not work for multifamily builders and that it might be appropriate to request another form of reference, such as a lender's recommendation to fulfill the requirement. The requirements set forth in §176.10(f) are statutory requirements that builders must meet in order to be qualified businesses under §3(a)(11) of the Texas Enterprise Zone Act. Small Business Advisors commented that §176.10(f)(2) needs to include language for rehabilitation and be specific to rental housing. The Texas Department of Commerce cannot make the requested changes under the statutory language currently in place. Section 10(b)(5) of the Texas Enterprise Zone Act contains the precise language that is set forth in §176.10(f)(2).

Small Business Advisors also commented that, after reviewing Senate Bill 405, the tax code might have to be modified to accept any changes regarding "permanent job". It also commented that it was unclear as to whether the Texas Department of Commerce is making recommendations to the local governments regarding local incentives, but that real estate tax abatements for some period of time would be very inviting to some developers. These comments are not relevant to the rules and, thus, are not addressed herein.

Sections 176.1-176.12 are adopted under the authority of the Texas Government Code, Chapter 2303 and Texas Civil Statutes, Article 5190.7, which give authority to the Texas Department of Commerce to implement the Texas Enterprise Zone Act Program; the Administrative Procedure Act, Texas Government Code Subchapter B, which sets forth the requirements for administrative rulemaking by state agencies; and the Texas Government Code, §481.005(d), which requires, among other things, that the Policy Board of the Texas Department of Commerce shall establish policy and adopt rules that it may adopt under law.

§176.1. General Provisions.

(a) Introduction. Pursuant to the authority granted by the Texas Enterprise Zone Act, Texas Government Code, Chapter 2303, Texas Civil Statutes, Article 5190.7, as amended, and the Administrative Procedure Act, Texas Government Code, Subchapter B, the Texas Department of Commerce prescribes the following sections regarding practice and procedure before the department in the administration and implementation of the Enterprise Zone Program.

(b) Purpose. It is the purpose of the Texas Enterprise Zone Act to establish a process that clearly identifies those distressed areas and provides incentives by both state and local government to induce private investment in those areas by means of the removal of unnecessary governmental regulatory barriers to economic growth and the provision of tax incentives and economic development program benefits. The purpose of these sections is to provide standards of eligibility and procedures for applications for designation of qualified areas as enterprise zones and recycling market development zones and for designation of qualified businesses as enterprise projects.

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

(1) Act-The Texas Enterprise Zone Act, Chapter 2303, Texas Government Code (Vernon's Session Laws 1993) and Texas Civil Statutes, Article 5190.7, as amended.

(2) Administrative authority-A board, commission, or committee appointed by the governing body to administer the Act within an enterprise zone.

(3) Affected entity-The applicant, qualified business, qualified employee, or any other person that is a party to a transaction involving the designation of an enterprise zone or project.

(4) Applicant-The municipality, county, or combination of municipalities or counties filing an application with the department for designation of an enterprise zone or enterprise project or affected entity filing with the department for certification under the Act, §3(a)(9) or (11) and this chapter.

(5) Application-An application, including supporting and supplemental instruments and documentation, for designation of an enterprise zone or for designation of an enterprise project or for certification by the department or local governing body as a qualified business or neighborhood enterprise association under the Act and this chapter.

(6) Board-The Board of Directors of the Texas Department of Commerce.

(7) Day-The period of time between 8:00 a.m. and 5:00 p.m. on any day other than a Saturday, Sunday, or state or federal holiday.

(8) Department-The Texas Department of Commerce.

(9) Depressed area-An area within the jurisdiction of a county or municipality designated by ordinance, or order that is an area with pervasive poverty, unemployment, and economic distress. An area is an area of pervasive poverty, unemployment, and economic distress if:

(A) the average rate of unemployment in the area during the most recent 12-month period for which data is available was at least one and one-half times the local, state, or national average for that period or if the area has had at least a 9.0% population loss during the most recent six-year period or a population loss of at least 3.0% for the most recent three-year period; and

(B) the area meets one or more of the following criteria:

(i) the area was a low-income poverty area;

(ii) the area is in a jurisdiction or pocket of poverty eligible for urban development action grants under federal law according to the most recent certification available from the United States Department of Housing and Urban Development;

(iii) at least 70% of the residents or households of the area have an income below 80% of the median income of the residents or households of the locality or state, whichever is lower;

(iv) the nominating government establishes to the satisfaction of the department that:

(I) chronic abandonment or demolition of commercial or residential structures exists in the area;

(II) substantial tax arrearages for commercial or residential structures exist in the area;

(III) substantial losses of businesses or jobs exist in the area; or

(IV) the area is part of a disaster area declared by the state or federal government during the most recent 18-month period.

(10) Economically disadvantaged individual-An individual who:

(A) for at least three months before obtaining employment with a qualified business was unemployed;

(B) receives public assistance benefits, such as welfare payments and food stamp payments, based on need and intended to alleviate poverty;

(C) is an economically disadvantaged individual, as defined by the Job Training Partnership Act, §4(8), (29 United States Code, §1503(8));

(D) is an individual with handicaps, as defined by 29 United States Code, §706(8);

(E) is an individual who is an inmate, as defined by the Government Code, §493.001, or who is entering the workplace after being confined in a unit of the institutional division of the Texas Department of Criminal Justice or a correctional facility authorized by the Government Code, Chapter 494; or

(F) is an individual who meets the current low income or moderate income limits developed under the United States Housing Act of 1937, §8 (42 United States Code, §1437f).

(11) Eligible taxable proceeds-means taxable proceeds generated, paid, or collected by a qualified hotel project or a business at a qualified hotel project including hotel occupancy taxes, ad valorem taxes, sales and use taxes, and mixed beverage taxes.

(12) Enterprise project-A qualified business designated by the department as an enterprise project under the Act, §10, and §176.5 of this title (relating to Requirements for Designation of Enterprise Projects) that is eligible for the state tax incentives provided by law for an enterprise project.

(13) Enterprise zone-An area of the state designated by the department as an enterprise zone under the Act, §9, and §176.3 of this title (relating to Eligibility Requirements for Designation of an Enterprise Zone).

(14) Enterprise project eligible enterprise zone-means a state- designated enterprise zone that meets economic distress levels set forth in the Act, §10(a).

(15) Executive director-The executive director of the department or his or her authorized designee.

(16) Extraterritorial jurisdiction-Territory in the extraterritorial jurisdiction of a municipality that is considered to be in the jurisdiction of the municipality. Except in a county with a population of 750,000 or more, according to the most recent federal census, the governing body of a county may not nominate territory in a municipality or in the extraterritorial jurisdiction of a municipality to be included in an enterprise zone unless the governing body of the municipality also nominates the territory pursuant to a joint application made with the county.

(17) Governing body-The governing body of a municipality or county that has applied to have an area within its jurisdiction designated as an enterprise zone.

(18) Local Government-A municipality or county.

(19) Neighborhood enterprise association-A private sector neighborhood organization within an enterprise zone that meets the criteria set forth in the Act, §21, and §176.7 of this title (relating to Certification of Neighborhood Enterprise Associations).

(20) New permanent job-A new employment position created by a qualified business that has provided employment to a qualified employee of at least 1,040 hours annually and intended to be an employment position retained during the period the business is designated as an enterprise project.

(21) Qualified business-A person, including a corporation or other entity that the department, for purposes of state benefits under the Act, and a governing body, for purposes of local benefits, certifies to have met the following criteria:

(A) the person is engaged in or has provided substantial commitment to initiate the active conduct of a trade or business in the zone; and

(B) at least 25% of the business's new employees in the zone are residents of any zone within the governing body's or bodies' jurisdiction or economically disadvantaged individuals; and

(C) a franchise or subsidiary of a new or existing business may be certified by the governing body or an enterprise zone as a qualified business if the franchise or subsidiary is located entirely in the zone and maintains separate books and records of the business activity conducted in the zone; or

(D) as a builder that has demonstrated proficiency in residential construction, financial stability, and participation in a 10-year insured warranty program in accordance with the Act and §176.10(f) of this title (relating to Certification of Qualified Business); or

(E) is a qualified hotel project that is owned by a municipality with a population of 1,500,000 or more or a nonprofit municipality sponsored local government corporation created pursuant to the Texas Transportation Corporation Act (Texas Civil Statutes, Article 1528(l)) proposed to be constructed within 1,000 feet of a convention center owned by a municipality having a population of 1,500,000 or more, including all facilities ancillary thereto such as shops and parking facilities.

(22) Qualified employee-An employee who works for a qualified business and who performs at least 50% of his service for the business within the enterprise zone.

(23) Qualified property-Any one or more of the following:

(A) tangible personal property located in the zone that was acquired by a taxpayer not earlier than the 90th day before the date of designation of the area as an enterprise zone or enterprise project, as applicable, and was used predominantly by the taxpayer in the active conduct of a trade or business;

(B) real property located in a zone that:

(i) was acquired by the taxpayer not earlier than the 90th day before the date of designation of the zone or enterprise project, as applicable, and used predominantly by the taxpayer in the active conduct of a trade or business; or

(ii) was the principal residence of the taxpayer on the date of the sale or exchange, or

(C) interest in a corporation, partnership or other entity if, for the most recent taxable year of the entity ending before the date of sale or exchange, the entity was a qualified business.

(24) Recycling market development loan or grant-means a loan or grant that may be made by the department to the governing body of an enterprise zone designated as a recycling market development zone to fund an activity that sustains or increases recycling efforts.

(25) Recycling market development zone-means an enterprise zone that the department may designate for the development of local business and industry in the zone to recycle materials that have served their intended use or that are scrapped, discarded, used, surplus, or obsolete by collecting, separating or processing the materials for use in the production of new products.

(26) Retained job-means a job that existed with a business prior to designation as an enterprise project or certification as a qualified business that has provided employment to a qualified employee of at least 1,820 hours annually intended to be an employment position retained during the period the business is designated as an enterprise project or certified as a qualified business in accordance with Texas Tax Code, Chapter 151.

(27) Staff-The staff of the department.

(d) Amendment and suspension of rules. These sections may be amended by the executive director at any time in accordance with the Administrative Procedure Act, Texas Government Code, Subchapter B, as amended. The executive director may suspend or waive a section, not statutorily imposed, in whole or in part, upon the showing of good cause or when, at the discretion of the executive director, the particular facts or circumstances render such waiver of the section appropriate in a given instance.

(e) Application of sections. All sections shall be applied collectively, to the extent relevant, in connection with specific determinations made by the department in the course of its administrative functions. The department will make its determination on the basis of specific characteristics and circumstances of the individual application, and in light of the basic statutory purposes in the particular area.

(f) Examination of records. Any party requesting the examination of records pursuant to the Texas Open Records Act, Texas Government Code, Chapter 552, shall indicate in writing the specific nature of the documents to be viewed, and if photocopying is desired, the prevailing standard fee of the department will be charged to cover the cost of the request.

(g) Written communication with the department. Applications and other written communications to the department should be addressed to the attention of the Texas Enterprise Zone Program, Business Development Division, Texas Department of Commerce, P.O. Box 12728, Austin, Texas 78711.

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

Issued in Austin, Texas, on December 23, 1993.

TRD-9333939 Cathy Bonner
Executive Director
Texas Department of Commerce

Effective date: January 13, 1993

Proposal publication date: August 31, 1993

For further information, please call: (512) 320-9401

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• 10 TAC §§176.5-176.10

The Texas Department of Commerce adopts the repeal of §§176.5-176.10, concerning Enterprise Zone Program Rules, without changes to the proposed text as published in the August 31, 1993, *Texas Register* (18 TexReg 5826). The repeal is necessary due to new and amended final rules being adopted simultaneously with the repeal. No comments were received regarding adoption of the repeal(s).

The repeal is authorized by Texas Government Code, Chapter 2303; Texas Civil Statutes, Article 5190.7 as amended; Texas Government Code, §481.005, and Texas Government Code Subchapter B.

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

Issued in Austin, Texas, on December 23, 1993.

TRD-9333938 Cathy Bonner
Executive Director
Texas Department of Commerce

Effective date: August 31, 1993

Proposal publication date: January 13, 1994

For further information, please call: (512) 320-9401

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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

Conservation Rules and Regulations

• 16 TAC §3.31

The Railroad Commission of Texas adopts an amendment to §3.31, regarding gas well allowables. The amendments are adopted with changes to the proposed text as published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8071). The amendment is adopted to increase the accuracy and efficiency of the proration system. The amendment will enable the commission to fulfill its statutory mandate to accurately determine market demand, set the reservoir allowable to market demand, and protect correlative rights.

The commission has made changes to the proposed rule based on comments received. The changes are as follows:

The first change is to §3.31(d)(E)(i)-(iii) which "reset" the Forecast Correction Adjustment. These changes will negate the effect on the Forecast Correction Adjustment of underage accumulated by wells not capable of making up underage. The change will result in a more accurate assignment of allowables.

The second change is to add the word "allowable" in §3.31(d)(E)(iv) for clarification.

The third change is to §3.31(j)(3)(A). The change deletes the requirement that operators provide a written explanation for substantial fluctuations in production from wells in a field with a suspended allocation formula. The commission has determined that this proposed section would have placed a heavy burden on both operators and the commission without significantly advancing the purpose of the rule. Furthermore, the

commission has determined that internal auditing of production records from fields with suspended allocation formulas will allow the commission to protect the correlative rights of the field's mineral interest owners. The change also places a continuing duty on the operator to inform the commission of a loss of market and provides for reinstatement of the allocation formula on such notice.

The fourth change is to §3.31(j)(4) which provides that a hearing may be requested if the commission reinstates the allocation formula and deletes the word "administratively." These changes are for procedural clarity.

The fifth, sixth, and seventh changes are to §3.31(k)(2). The term "cut off" has been changed to one word, the initial cutoff set at 70%, and administrative special allowable wells qualifying under §3.31(k)(1) are exempted from consideration under §3.31(k)(2). The initial cutoff change is necessary as a starting point and the other changes are for clarification.

The adopted amendment better enables the commission to protect the correlative rights of mineral interest owners in a common reservoir by insuring a more accurate assignment of allowables in a reservoir. The adopted amendment also better enables the commission to determine when suspension of the allocation formula is warranted. This determination allows reservoirs that can, and do, produce at a rate equal to their current deliverability, and therefore ratably, to have the flexibility to do so without unnecessary regulatory burdens while assuring the protection of the correlative rights of the fields mineral interest owners.

The following is a summary of comments.

One commenter suggested that one-well gas fields have as a maximum allowable the greater of the latest G-10 deliverability or the field's most recently reported production. The Commission disagrees. Such a change could result in over-assigning allowables and might be detrimental to the proration system goals of accurately assigning allowables.

Several commenters opposed, as unnecessary, the requirement of §3.31(j) (3) which requires operators of fields with suspended allocation formulas to report substantial production deviations. These commenters also consider the terms "substantially" and "immediately" to be vague. The commission agrees. The commission has determined through internal auditing of production data that the proposed reporting requirement would be prohibitively burdensome and that the goals of the proposed reporting requirement can be met by computer monitoring of fields with suspended allocation formulas and by more detailed inquiry as necessary.

One commenter proposed that transporters of gas be required to certify that they have pipeline capacity for 100% of a field's production prior to suspension of that field's allocation formula. This commenter is concerned that a field's producing at capacity under §3.31(j) may cause a pipeline limitation to another field. If that curtailed field is prorated, the correlative rights of the mineral interest owners are protected by the proration system. If the curtailed field is operating with a suspended allocation formula, the commission's production monitoring of fields with suspended allocation formulas will allow the commission to recognize this situation and reinstate the allocation formula if warranted.

One commenter objected to requiring consent from operators in a field prior to suspension of the allocation formula. The commission believes it is appropriate for an operator who is waiving correlative rights protection under the gas proration rules to do so affirmatively.

Several commenters proposed that the reinstatement of the allocation formula occur only after an opportunity for a hearing. The commission disagrees. The commission will reinstate the allocation formula only if the correlative rights of the mineral interest owners are considered to be in jeopardy. An operator can request a hearing to consider suspension of the allocation formula at this time and the correlative rights of all parties will be protected by the proration system during the pendency of the hearing.

Several commenters proposed that the requirement for allocation formula suspension under §3.31(j)(1)(A) be changed from deliverability to capability. The commission disagrees. The commission's statutory mandate is to prorate whenever demand falls below a point that may allow for nonratable production from a common reservoir. Nonratable production from a nonprorated reservoir threatens the correlative rights (i.e. the right of all gas owners to have an opportunity to produce and use or sell gas their gas) of the owners of the gas in that reservoir. Because using capability would allow a well's production to be restricted (for instance, by a substitute capability determination) the commission cannot meet its statutory mandate if capability is substituted for deliverability in §3.31(j)(1)(A).

One commenter proposed that fields operating with a suspended allocation formula be required to renew the exception annually due to the possibility of changed conditions. The commission disagrees. The commission's production monitoring of fields with suspended allocation formulas will allow the commission to recognize changed conditions that warrant reinstatement of the allocation formula.

One commenter proposed that applications for suspension of the allocation formula be sent to gatherers and first purchasers in the field prior to suspension of the formula so that the gatherers and purchasers might inform the commission of potential curtailments that will occur in other fields as a result of the requested suspension. The commission disagrees. An operator cannot make application for suspension of the allocation formula unless that operator has the ability to market 100% of the field's deliverability. If a pipeline limitation occurred, the operator could not meet this requirement.

One commenter proposed that the amendments be adopted as an emergency measure. The commission believes that normal rulemaking procedures are adequate for the amendments.

One commenter proposed to exclude administrative special allowable wells under §3.31(k)(1) from consideration under §3.31(k)(2). The commission agrees. The commenter's language is more precise and the change has been made.

Several commenters proposed that the commissions ability to change the cutoff percentage for administrative special allowable wells under §3.31(k) (2) be limited to twice a year, with most commenters suggesting the change coincide with balancing periods. The commission disagrees. These commenters are concerned that the commission will change this cutoff percentage monthly. No such frequent change in the cutoff percentage is anticipated. However, the commission must have the flexibility to react to changes when necessary.

One commenter proposed that administrative special allowable wells under §3.31(k)(2) not qualify for Category Five priority under §3.34 because the changing of the cutoff percentage at the monthly statewide hearing would make it impossible for a purchaser to keep track of the wells that change priority. The commission disagrees. As stated in the previous paragraph, the cutoff percentage is not anticipated to fluctuate unless changes in the production environment so warrant.

One commenter proposed that the Forecast Correction Adjustment be augmented when an operator of overproduced wells voluntarily reduces the rate of production to make up overproduction. The commenter believes this is necessary to prevent a reduction in reservoir allowable. The commission disagrees. While it is true that, all other things being equal, the reservoir allowable will be reduced, this reduction merely offsets the increased allowable that resulted from a positive Forecast Correction Adjustment from the months when the overproduction occurred. If the positive effect on the Forecast Correction Adjustment is allowed to occur during overproduction but the negative effect is not allowed to occur when the overproduction is made up, wells that overproduce are given an advantage to the detriment of other wells in the reservoir. An operator can request field balancing if the situation so warrants.

One commenter proposed that limited wells not be allowed to accrue underproduction because these wells cannot make up the underage. The commission disagrees. The provisions of proposed subparagraph §3.31(k)(2) will allow the commission the flexibility to prevent limited wells from accruing underage that they cannot make up. This commenter also suggested that an operator be allowed to cancel underage on request. The commission disagrees. An operator may request field-wide balancing as needed, and the adopted §3.31(k)(2) will greatly reduce or eliminate the accumulation of underproduction that cannot be produced.

One commenter proposed that the Forecast Correction Adjustment be defined as the difference between the allowables assigned and the production reported from the most recent production month. The commission disagrees. Allowables are assigned based on the forecast and the forecast must be as accurate as possible because individual well

allowables are based on the forecast. The proposed change would not foster the goal of the Forecast Correction Adjustment which is to refine the forecast so that accurate allowables are assigned. The proposed change would be detrimental to correlative rights because any production in excess of, or less than, the forecasted amount would not be accounted for ratably.

One commenter proposed that the filing of a substitute capability determination for a well be accepted only from the operator of record for that well. The commission considers this proposal unnecessary. The required form expressly limits such a filing to those who are duly authorized to make the filing.

One commenter proposed that the allowable for an administrative special allowable well under §3.31(k)(1) receive the lesser of 100 MCFPD or the allowable calculated by the field's allocation formula if that formula contained an acreage factor. The commission disagrees. The commission considers it inappropriate to limit these low volume wells by a statewide rule. If individual situations warrant such a limitation, they can be considered on a case-by-case basis.

One commenter proposed that the forecast for special administrative allowable wells with no production in the most recently reported production month be equal to the lowest reported monthly production during any of the three most recently reported production months rather than to the highest. The commenter believes the forecast could be greater than capability. The commission disagrees. If such a situation arose, it would be rectified by the reduction to capability required by §3.31(d)(1)(B).

The Permian Basin Petroleum Association filed comments supporting the adoption of the rule. The following entities filed comments generally supporting adoption of the rule but with suggested changes to the rules as published: Shell Western E and P Inc., Mesa, TransTexas Gas Corporation, Mobil Exploration and Production U.S. Inc., Conoco, Amoco, Texas Mid-Continent Oil and Gas Association, Maxxus Exploration Company, Chevron U.S.A. Production Company, Union Pacific Resources Company, Phillips Petroleum Company, Goldston Oil Corporation, Amax Oil and Gas Inc., and Association of Texas Intrastate Natural Gas Pipelines.

These amendment is adopted under the Texas Natural Resources Code, §§81. 051, 81.052, 85.046, 85.053, 85.055, 85.201-85.203, 86.011, 86.012, 86.041, 86 042, 86.081, 86.083-86.090, 86.094, 111.083, 111.090 and 111.133, which provide the Railroad Commission of Texas with the authority to adopt rules for the following purposes: to govern and regulate persons and their operations under the jurisdiction of the commission; to prevent waste of oil and gas in drilling and producing operations; to determine the status of gas production from all gas reservoirs; to distribute, prorate, and apportion allowable production; to determine the lawful market demand for gas to be produced from each reservoir; to adjust correlative rights and opportunities; to determine the daily allowable production for each gas well; to effectuate the provisions and purposes of the Texas Natural Resources Code, Chapter 86; to conserve and prevent waste of gas; to prevent discrimination in the production and purchasing of gas; to prevent monopolistic practices which may be injurious to the general public; and to regulate common purchasers of gas to achieve the prior purposes.

§3.31. Gas Reservoirs and Gas Well Allowable.

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

(d) Determining prorated reservoir allowable and lawful market demand.

(1) On or before the 25th day of each month, the commission will determine the lawful market demand for gas to be produced from each reservoir during the upcoming allowable month. The monthly reservoir allowable shall be equal to the lawful market demand for that reservoir. The lawful reservoir market demand for prorated reservoirs shall be equal to the adjusted reservoir market demand forecast adjusted by a forecast correction adjustment, and a commission adjustment (i.e., lawful reservoir market demand = adjusted reservoir market demand forecast + forecast correction adjustment + commission adjustment).

(A) (No change.)

(B) Adjusted reservoir market demand forecast-the sum of all operator reservoir market demand forecasts for a reservoir after any necessary downward adjustments have been made to individual operator reservoir market demand forecasts and optional operator forecasts so that no such forecast will exceed the total capability of the operator's wells for the reservoir during the allowable month.

(C) Operator reservoir market demand forecast-the sum of the operator's well forecasts for a reservoir determined by the commission pursuant to this subsection.

(i) The commission will determine a forecast for each well that will be active during the allowable month that:

(I) for prorated and limited wells is equal to the well's production during the same allowable month in the prior year; and

(II) for special or administrative special allowable wells is equal to the well's production during the most recently reported production month.

(ii) If the well had no reported production during the same allowable month in the prior year or if a special or administrative special allowable well had no reported production in the most recently reported production month, the forecast shall be equal to:

(I) the well's highest reported monthly production during any of the three most recently reported production months; or, if no production has been reported for those months;

(II) the well's capability.

(iii) Alternatively, the operator reservoir market demand forecast may be determined by an optional operator forecast.

(D) Optional Operator Forecast-the commission designated operator may file an optional market demand forecast for all of the operator's wells in the reservoir that is equal to the anticipated market demand for the production from the operator's wells in the field during the allowable month. The optional operator forecast for the operator's wells in the reservoir can be no greater than the total capability of the operator's wells or less than zero. An optional operator forecast must be filed by the tenth day of the month preceding the allowable month.

(E) Forecast Correction Adjustment-

(i) The February 1994 Forecast Correction Adjustment shall be the reservoir market demand for November 1993 for all wells in a reservoir that are not administrative special allowable wells for February 1994, subtracted from the production reported for November 1993 for those wells;

(ii) The March 1994 Forecast Correction Adjustment shall be the reservoir market demand for December 1993 for all wells in a reservoir that are not administrative special allowable wells for March 1994, subtracted from the production reported for December 1993 for those wells;

(iii) The April 1994 Forecast Correction Adjustment shall be the reservoir market demand for January 1994 for all wells in a reservoir that are not administrative special allowable wells for April 1994, subtracted from the production reported for January 1994 for those wells;

(iv) For May 1994 and subsequent months, the Forecast Correction Adjustment shall be equal to the total reservoir production from most the recent reported month, minus (total adjusted reservoir market demand forecast for the production month + supplemental change

adjustment for that month + commission adjustment for that month), minus (production from all special and administrative special allowable wells minus allowable assigned to those special wells for that month).

(F)-(G) (No change.)

(2) (No change.)

(e) Well Capability.

(1) No gas well shall be given an initial allowable in excess of its capability.

(A) Except as provided in subparagraphs (1)(B) and (C) of this subsection, a well's capability is defined as the lesser of:

(i) the well's latest deliverability test on file with the commission; or

(ii) the well's highest monthly production during any of the three most recently reported production months.

(B) If a well is a special or an administrative special allowable well, its capability is defined as the lesser of:

(i) the well's latest deliverability test on file with the commission; or

(ii) the well's most recently reported monthly production.

(C) If a well is new to a reservoir and has been active for less than six months, its capability shall be defined as the well's latest deliverability test on file with the commission.

(2) An operator may submit a substitute capability determination for any well in a prorated field that represents the maximum monthly production capability of the well under normal operating conditions for a specific six-month period.

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

(C) The capability determined pursuant to this paragraph shall be used as the well's capability for a period of six months from the effective date of the determination unless:

(i) the operator files a written request that the substitute capability determination be cancelled If such a request is submitted, the substitute capability may be cancelled by the commission or commission designee, or

(ii) an affected person files a protest alleging, with specificity, the inaccuracy or invalidity of the determination If a protest is filed, the commission may set the matter for hearing. A protested substitute capability determination shall be effective on the intended effective date, unless the commission orders otherwise. If the commission determines that the protested substitute capability was incorrect, appropriate allowable or status adjustments will be made for the affected well.

(f) Fields operating under statewide rules.

(1) (No change.)

(2) A statewide exempt field is any gas field in which no special field rules have been adopted and in which no well in the field has a current reported deliverability test of greater than 200 Mcf a day. Wells in statewide exempt fields shall be assigned allowables equal to their capability to produce but in no event greater than 200 Mcf a day.

(g) Definitions of prorated and nonprorated wells and fields.

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

(7) An administrative special allowable well is a nonprorated well that has been granted an allowable pursuant to subsection (k) of this section.

(8) The maximum allowable for a well is the largest allowable that can be assigned under applicable rules. For a limited well, the maximum allowable is the allowable the well would receive under the allocation formula. For a special allowable well, the maximum allowable is the allowable assigned pursuant to subsection (g)(6) of this section. For administrative special allowable wells, the maximum allowable is 100 Mcf/day for wells qualifying as administrative special allowable wells under subsection (k)(1) of this section and is the allowable the well would receive under the allocation formula for wells qualifying as administrative special allowable wells under subsection (k) (2) of this section. For a well in a one-well field, the maximum allowable is the well's deliverability based on the latest deliverability test of record. For an associated gas well, the maximum allowable is the gas well allowable calculated by §3.49(b)(1) or (2) of this title (relating to Gas-Oil Ratio)

(h) Allowable adjustments and balancing provisions for nonprorated wells.

(1) (No change.)

(2) If the most recent production figures reported to the commission show a nonprorated well to be overproduced, the allowable will be revised to cover overproduction that is in excess of the well's accumulated underproduction, up to the maximum allowable. A nonprorated well with accumulated overproduction will be assigned a supplemental allowable that will balance the accumulated overproduction or a supplemental allowable equal to the well's maximum allowable, whichever is smaller.

(3) The allowable for wells in nonprorated fields, except for special and administrative special allowable wells, shall be limited to the lesser of:

(A) the wells maximum allowable;

(B) the well's capability as determined by subsection (e) of this section.

(4) The initial allowable for special and administrative special allowable wells shall be the least of the well's:

(A) capability;

(B) its amount of production during the most recently reported production month; or

(C) the amount provided for by the allocation formula.

(i) (No change)

(j) Suspension of allocation formula.

(1) The commission or a commission designee may administratively suspend the allocation formula for a particular gas field if:

(A) each operator from that field has a market, for 100% of the deliverability, as determined by the deliverability tests on file with the commission, for its respective wells, and

(B) all operators in the field consent to suspension of the formula.

(2) Suspension of the allocation formula may be initiated by the commission or a commission designee, or by one of the operators in the field. The commission or a commission designee will determine which fields are appropriate for suspension utilizing the criteria of paragraph (1) of this subsection. The allocation formula may be administratively suspended if the applicant provides the commission with a declaration, subject to the false filing penalties provided for in the Natural Resources Code, §91.143, from all operators in the field stating that they have a market for 100% of the deliverability of their wells. If the commission or a commission designee declines to administratively suspend the allocation formula, the applicant may request a hearing as provided for in paragraph (4) of this subsection.

(3) Reinstatement of the allocation formula may be initiated by the commission, commission designee, or by one of the operators in the field

(A) If, for any month, the market for gas production from a well in a field with a suspended allocation formula is less than 100% of the wells deliverability as determined by the deliverability tests on file with the commission, the operator of the field must inform the commission or a commission designee; upon such notification, the commission or commission designee will, with prior notice to the operators in the field, reinstate the allocation formula.

(B) The allocation formula will be reinstated at the request of an operator from a field with a suspended allocation formula or at any time the commission deems reinstatement necessary to protect correlative rights or prevent waste.

(4) If the commission or a commission designee reinstates the allocation formula or denies a request to suspend or reinstate the allocation formula in a particular field, the applicant may request a hearing. In addition to the criteria set forth in paragraph (1) of this subsection, the commission will consider whether suspension or reinstatement is necessary to prevent waste or protect correlative rights. An applicant may also request a hearing when unable to obtain written consent from all operators in a field pursuant to subparagraph (1)(B) of this subsection.

(5) Suspension of the allocation formula will balance the fields production status at zero, and provide for a 100% capacity allowable.

(k) Administrative Special Allowable.

(1) A well which has a deliverability, capability, and six consecutive months of production of 100 Mcf per day or less will be assigned an administrative special allowable pursuant to subsection (h) of this section.

(2) A well, other than an administrative special allowable well defined in subparagraph (k)(1), in a prorated field whose average monthly production during the last six consecutive months falls below the cutoff percentage (determined by the commission at the monthly statewide hearing) of the well's top allowable averaged over that six-month period, will be assigned an administrative special allowable pursuant to subsection (h) of this section. The initial cutoff percentage is 70% and will remain at 70% until changed in accordance with this subparagraph. Administrative special allowable wells under this subsection will remain administrative special allowable wells until:

(A) they overproduce the top allowable available under the applicable allocation formula; or

(B) they receive a substitute capability pursuant to subsection (e) of this section; or

(C) the commission resets the cutoff percentage below the well's average production level for the last six consecutive months.

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

Issued in Austin, Texas, on December 20, 1993.

TRD-9333859 Mary Ross McDonald
Assistant Director, Legal Division-Gas Utilities/LP Gas Division
Railroad Commission of Texas

Effective date: January 11, 1994

Proposal publication date: November 2, 1993

For further information, please call: (512) 463-6923

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Chapter 5. Transportation Division

Subchapter Q. Miscellaneous Provisions

• 16 TAC §§5.303, 5.308, 5.312

The Railroad Commission of Texas adopts the repeal of §5.303, relating to interstate commerce proceedings; §5.308, relating to affidavits in exempt commodity applications; §5.312, relating to requirements and additional fee for temporary emergency authority in interstate commerce, without changes to the proposed text as published in the October 26, 1993, issue of the *Texas Register* (18 TexReg 7451); and the repeal of §5.333, relating to the registration of ICC operating authority, and §5.346, relating to evidence of self-insurance, and adopts, amendments to §5.334, relating to registration of motor carrier operations exempt from economic regulation by the ICC; §5. 335, relating to designation of process agent; §5.337, relating to form and execution of application for identification stamps; §5.344, relating to evidence of liability insurance; and §5.347, relating to certificated interstate operations by intrastate carriers, without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7338).

Existing §§5.303, 5.308, and 5.312 have become obsolete as a result of enactment of House Bill 1590, 73rd Legislature, 1993, which authorizes the commission to participate in the new federal single-state registration system established by the Intermodal Surface Transportation Act of 1991 (49 United States Code §11506) and Interstate Commerce Commission rules in 49 Code of Federal Regulations, Part 1023, Standards for Registration with States. These federal statute and regulations require all motor carriers licensed by the Interstate Commerce Commission to comply with the single-state registration standards in one participating state. The amendments reflect changes made to the authority of the Railroad Commission by House Bill 1590, 73rd Legislature, 1993, which authorizes the commission to implement the new single-state registration system provided by 49 United States Code, §11506 and Interstate Commerce Commission (ICC) rules at 49 Code of Federal Regulations, Part 1023, Standards for Registration with States

Under the new standards, ICC-licensed motor carriers can comply with the statutory requirements by registering with one state participating in the single-state registration system. Upon compliance with the program requirements, the motor carriers are authorized to operate in all states of travel for which they paid registration fees. The new sections relating to single-state registration have been published as Subchapter T of this title. In addition, the repeals are adopted so that all necessary rules for interstate motor carriers which are exempt from economic regulation by the Interstate Commerce Commission will be contained in Subchapter R of this title.

No comments were received regarding adoption of the repeals.

The repeals are adopted pursuant to Texas Civil Statutes, Article 911b, §4(a) and §18(a), which authorize the Railroad Commission of Texas to prescribe all rules and regulations necessary for the government of motor carriers and to take all actions necessary to participate to the fullest extent possible in the federal single-state registration system.

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

Issued in Austin, Texas, on December 20, 1993.

TRD-9333848 Mary Ross McDonald
Assistant Director, Legal Division-Gas Utilities/LP Gas Division
Railroad Commission of Texas

Effective date: January 10, 1994

Proposal publication date: October 26, 1993

For further information, please call: (512) 463-7096

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Subchapter R. Registration of Operations Exempt from ICC Regulations

• 16 TAC §5.333, §5.346

The repeals are adopted under Texas Civil Statutes, Article 911b, §4(a) and §18a, which vest the commission with power and authority to prescribe all rules and regulations necessary for the government of motor carriers and to take all actions necessary to participate to the fullest extent possible in the single state registration system.

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

Issued in Austin, Texas, on December 20, 1993.

TRD-9333849 Mary Ross McDonald
Assistant Director, Legal Division-Gas Utilities/LP Gas Division
Railroad Commission of Texas

Effective date: January 10, 1994

Proposal publication date: October 22, 1993

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

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• 16 TAC §§5.334, 5.335, 5.337, 5.344, 5.347

The amended sections are adopted pursuant to Texas Civil Statutes, Article 911b, §4(a) and §18(a), which vest the commission with power and authority to prescribe all rules and regulations necessary for the government of motor carriers and to take all actions necessary to participate to the fullest extent possible in the single-state registration system.

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

Issued in Austin, Texas, on December 20, 1993.

TRD-9333850 Mary Ross McDonald
Assistant Director, Legal-Gas Utilities/LP Gas Division
Railroad Commission of Texas

Effective date: January 10, 1994

Proposal publication date: October 22, 1993

For further information, please call: (512) 463-7096

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Subchapter T. Standards for Registration of ICC Motor Carriers

• 16 TAC §§5.371-5.381

The Railroad Commission of Texas adopts new §5.373 concerning Single-State Registration of Interstate Motor Carrier Operations, with changes to the proposed text as published in the October 26, 1993, issue of the *Texas Register* (18 TexReg 7451). Sections 5.371, 5.372, and 5.374-5.381 are adopted without changes and will not be republished.

The adoption of the proposed rules is necessary to allow ICC-licensed motor carriers to register with the commission those operations authorized by the Interstate Commerce Commission. The rules conform with House Bill 1590, 73rd Legislature, 1993, which authorizes the commission to implement the single state registration system provided by 49 United States Code, §11506 and Interstate Commerce Commission (ICC) rules at 49 Code of Federal Regulations, Part 1023, Standards for Registration with States. These federal statutes and regulations require all ICC-licensed motor carriers to comply with the single-state registration standards to operate in all states of travel for which the motor carrier paid registration fees.

Two comments regarding the proposed rules were received at a public hearing called by the commission and held on November 3, 1993. The commenters stated that under the proposed rules a motor carrier would have to pay two fees to register each motor vehicle in intrastate and interstate commerce. The commission agrees. To eliminate two payments by motor carriers, the commission revised the adopted rules by adding the following language to the second sentence of §5.373(c), relating to payment of fees: "on all of its vehicles for which an annual fee has not been paid to the commission pursuant to §5. 152(f) of this title (relating to cab cards)."

The ICC rules governing the single-state registration system are currently under appeal in federal district court, in the District of Columbia, in two cases styled *NARUC, et al v. ICC, et al*, Number 93-1362 and *American Insurance Association, et al. v ICC, et al.*; Number 93-1450. The commission is a party appealing the ICC rules in case Number 93-1362. Issues in these appeals include the validity of the ICC's rules on the maximum fee that participating states may charge carriers and the type of documents that each carrier must carry in vehicles as proof of registration. The rules follow and are consistent with the ICC rules; however, the commission in no way is waiving any issue or claim that it may assert in the above-styled litigation. The proposed fee schedule in §5.373 reflects the maximum amounts determined proper by the ICC. This proposed fee schedule will be adopted pending resolution of the appeal of the ICC rules. The commission gives notice that it reserves the right to readjust these fees if the ICC rules are determined by the court to be invalid. Similarly, other amendments to the commission's rules may be made pursuant to a final court ruling

§5.373. The Registration Process.

(a) Initial Registration. To register under the single-state registration system for a first time, a motor carrier shall file with the commission a complete application on the commission's Forms RRC-1 and RRC-1A prescribed for registering all ICC motor carriers. The application must include:

(1) a copy of the applicant's full interstate authority, unless the commission waives such requirement,

(2) a copy of ICC form BOC-3 concerning applicant's designation of agent(s) for service of process or a completed ICC form BOC-3; and

(3) the original signature of an authorized representative or its agent. In addition, the applicant must file proof of insurance showing its business address. The proof of insurance must be filed with the application form or that form will remain incomplete until proof of insurance is filed with the commission. The applicant shall indicate its legal status as a sole proprietor, partnership, corporation, or other valid legal entity and the type of authority issued by the ICC. The application must contain the names of all owners, partners, officers, or persons with operation control; any d/b/a (doing business as) name it uses; and its business address. The applicant shall include in the application form whether it will be transporting hazardous commodities in interstate or foreign commerce. All information that the applicant submits to the commission must agree with information in the most recent ICC certificate or permit issued to the applicant.

(b) Renewal of Registration. To renew its registration, a registrant shall follow the procedure outlined in subsection (a) of this section during the registration period before December 1st of the existing registration period. To renew its registration, the registrant will not be required to refile a full copy of its ICC authority.

(c) Payment of Fees. An applicant or registrant must submit with its original, renewal, or supplemental application the commission's Forms RRC-1 and RRC-1A with applicable information completed for all vehicles, whether owned or leased, that the applicant or registrant operates under ICC authority. The applicant or registrant shall remit to the commission the appropriate total fees due as indicated in the commission's Form RRC-1A, by cashier's check or money order in U.S. dollars, payable to the Texas State Treasurer, on all of its vehicles for which an annual fee has not been paid to the commission pursuant to §5.152(f) of this title, relating to cab cards. If an applicant or registrant has evidence of fees, collected or charged as of November 15, 1991, which are different from the fees specified in the commission's Form RRC-1A, the applicant or registrant should submit such evidence to the commission with the application. After considering any such evidence, the commission will notify the applicant or registrant if the proper fee has not been paid.

(d) Fees from Other States. Each participating state, in computing the appropriate portion of the revenue due the commission for its registrants, may utilize the commission's Form RRC-2 to determine the registrant's per-vehicle fee.

(e) Temporary and Emergency Authorities. A motor carrier that receives emergency temporary autority (ETA) or temporary authority (TA) from the ICC for 120 days or less must comply with all the commission's registration requirements, except filing a copy of the authority granted

by the ICC. However, within 120 days after receiving an ETA or TA, the motor carrier shall comply with all registration procedures, or its registration may be revoked or suspended.

(f) Waiver of Filing Complete ICC Authority. If the commission waives, in writing, the filing of the complete ICC authority that is longer than 20 pages, the applicant shall:

(1) provide the commission a copy of the portion of the ICC order that shows the service date and order section; and

(2) file a prepared synopsis of the ICC authority.

(g) Documents Improperly Filed. If an applicant files or causes to be filed any document that contains any misrepresentation, misstatement, or omission of required information, ow which does not include the payment of fees, the document shall be deemed to be incomplete and will not be processed by the commission until all items have been corrected.

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

Issued in Austin, Texas, on December 20, 1993.

TRD-9333847 Mary Ross McDonald
Assistant Director, Legal Division-Gas Utilities/LP Gas
Railroad Commission of Texas

Effective date: January 10, 1994

Proposal publication date: October 26, 1993

For further information, please call: (512) 463-7095

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Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Customer Service and Protection

• 16 TAC §23.55

The Public Utility Commission of Texas adopts an amendment to §23.55, concerning Live Operator Service, with changes to the proposed text as published in the September 24, 1993 issue of the *Texas Register* (18 TexReg 6507). The purpose of the amendment is to reflect changes in state law, enacted by Senate Bill 162 (73rd Texas Legislature, Regular Session.) That bill amends §18A of the Public Utility Regulatory Act (Article 1446c, Texas Civil Statutes).

Adoption of the amendment will benefit the general public by allowing a caller in distress to access a live operator from a automated operator service simply by pressing a "0", thereby reaching a human being capable of responding to the circumstances.

The telecommunications utility that provides operator service must ensure that a caller reach a live operator at the beginning of all automated operator assisted calls through a method easily and clearly understandable to the caller.

Three commenters filed comments in response to the September 24, 1993, issue of the *Texas Register*. GTE Southwest Incorporated and Contel of Texas, Inc. (GTE/Contel); AT&T Communications of the Southwest, Inc. (AT&T); and MCI Telecommunications Corporation (MCI).

The comments generally support the amendment but two commenters, AT&T and MCI, suggested the inclusion of some clarifying language. There were no comments opposing the amendment. In addition, there were no further comments received in response to the initial recommendation filed on November 18, 1993.

GTE/Contel stated that it supports the proposed amendment as drafted and believes that it is in compliance with the proposed rule. However, the bill as passed requires that a live operator be made available at the beginning of all automated operator service before any other automated message is provided.

GTE's comments demonstrate that a live operator is not made available before other automated messages are provided and therefore the Commission wishes to clarify that in order to comply with this rule a live operator must be made available before any other automated message is provided. Additionally, the Commission is concerned that the automated operator services provide a message that is understandable to all Texas citizens, including those who speak Spanish exclusively. The Commission has concluded that this is a concern that is applicable to all operator services and should be addressed in a separate rulemaking. The Commission is also concerned that amending the rule to require the message be provided in Spanish may be beyond the scope of notice provided in this rulemaking. Accordingly, the Commission declines to add this requirement at this time and will address it in a separate rulemaking project. However, the Commission strongly encourages all telecommunication utilities who utilize an automated operator service to provide notification of the availability of, and the procedure for obtaining, a live operator in Spanish as well as English.

MCI and AT&T commented that clarifying language was necessary in order to give full effect to the intent of the amendment to Section 18A of the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes). Both commenters suggested that language be added stating clearly that a live operator is to be accessed when a caller specifically dials "0". A live operator need not be provided when a caller dials a 10-digit access code.

The commission agrees that such clarifying language is reasonable in order to give the proper effect to §18A of the Public Utility Regulatory Act (Article 1446c, Texas Civil Statutes) and therefore, has incorporated such language into §23.55(j)(2).

The amendment is adopted under Texas Civil Statutes, Article 1446c, §16(a) , which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§23.55. Operator Services.

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

(j) Access to a live operator.

(1) Each telecommunications utility that provides operator services shall ensure that a caller may access a live operator at the beginning of all automated operator-assisted calls through a method designed to be easily and clearly understandable and accessible to the caller. This requirement applies only to "0-" calls where the caller reaches an automated operator. By February 1, 1994, or within 30 days of initially providing operator services, whichever date comes later, each such telecommunications utility shall file in the Central Records Office of the Commission, for review, a document describing the method by which the utility is providing access to a live operator, as provided by Senate Bill 162 (73rd Legislature).

(2) This subsection applies regardless of the method by which the telecommunications utility provides the operator service.

(3) The requirements of this subsection shall not apply to telephones located in confinement facilities.

(k) Local exchange carrier requirements.

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

(l) Call splashing. Call splashing shall not be allowed unless a waiver of the access requirements in subsection (i)(1) (A) of this section has been granted pursuant to subsection (i)(3) of this section and unless:

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

(m) Other requirements.

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

(n) Enforcement. The commission may investigate any complaint against any OSP, interexchange carrier or local exchange carrier alleged to have violated the provisions of this section. The company shall be given an opportunity to informally resolve any complaint involving violation of these rules. If no resolution is achieved informally, the commission may upon its own motion or upon request of the original complaint formally investigate the complaint, and, upon proper notice, evidentiary hearing, and determination that a violation has occurred or is about to occur, may take

action to stop, correct or prevent the violation.

(o) Severability. If any provision of this section or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application. It is the intent of the commission that the provisions of this section are severable.

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

Issued in Austin, Texas, on December 21, 1993.

TRD-9333937 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Effective date: January 13, 1994

Proposal publication date: September 24, 1993

For further information, please call: (512) 458-0100

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Part IX. Texas Lottery Commission

Chapter 401. Administration of State Lottery Act

(Editor's Note: House Bill 1587, §38 and §39, 72nd Legislature, created the Texas Lottery Commission and transferred all duties and functions of the lottery from the Comptroller of Public Accounts to the new agency effective December 27, 1993.

The Texas Register is administratively transferring the following rules listed in the table below from Title 34., Part I. Comptroller of Public Accounts to Title 16., Part IX. Texas Lottery Commission. The table lists the old rule numbers and the new rule numbers that correspond to them.)

Texas Lottery Commission
Rules
Transferred from the Comptroller of Public Accounts

Old Rules	New Rules
TITLE 34. PUBLIC FINANCE	**TITLE 16. ECONOMIC REGULATIONS**
Chapter 7. Administration of State Lottery Act	**Chapter 401. Administration of State Lottery Act**
Subchapter A. Procurement	Subchapter A. Procurement
§7.101	§401.101
Subchapter B. Licensing of Sales Agents	Subchapter B. Licensing of Sales Agents
§§7.151 - 7.159	§§401.151 - 401.159
Subchapter C. Practice and Procedure	Subchapter C. Practice and Procedure
§§7.201 - 7.227	§§401.201 - 401.227
Subchapter D. Lottery Game Rules	Subchapter D. Lottery Game Rules
§§7.301 - 7.307	§§401.301 - 401.307
Subchapter E. Retailer Rules	Subchapter E. Retailer Rules
§§7.351 - 7.366	§§401.351 - 401.366

TITLE 22. EXAMINING BOARDS

Part XXIV. Texas Board of Veterinary Medical Examiners

Chapter 573. Rules of Professional Conduct

Other Provisions

• 22 TAC §573.64

The Texas Board of Veterinary Medical Examiners adopts new §573.64, concerning Continuing Education, without changes to the proposed text as published in the November 19, 1993, issue of the *Texas Register* (18 TexReg 8506)

This continuing education requirement will ensure that practitioners are aware of current advances in the field of veterinary medicine.

The new section will require that licensees obtain a minimum of 15 hours of continuing education within the 12-month period immediately preceding renewal of their license to practice veterinary medicine in the State of Texas.

No comments were received concerning adoption of this rule

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

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

Issued in Austin, Texas, on December 20, 1993.

TRD-9333921 Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners

Effective date: January 13, 1994

Proposal publication date: November 19, 1993

For further information, please call: (512) 447-1183

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• 22 TAC §573.65

The Texas Board of Veterinary Medical Examiners adopts new §573.65, concerning Definitions, without changes to the proposed text as published in the November 19, 1993, issue of the *Texas Register* (18 TexReg 8507).

The new section will provide consumers and practitioners with a definition for terms utilized in the revised Veterinary Licensing Act when determining compliance with the Act

The new section will provide interested individuals with definitions for terms which require clarification as they are utilized in the Veterinary Licensing Act.

There were no comments received concerning adoption of the rule.

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

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

Issued in Austin, Texas, on December 20, 1993.

TRD-9333920 Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners

Effective date: January 13, 1994

Proposal publication date: November 19, 1993

For further information, please call: (512) 447-1183

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• 22 TAC §573.66

The Texas Board of Veterinary Medical Examiners adopts new §573.66, concerning Monitoring Licensees' Compliance With Article 8890, without changes to the proposed text as published in the November 19, 1993, issue of the *Texas Register* (18 TexReg 8507).

The new section reduces to writing the Board's current compliance program in which licensees' veterinary practices are inspected for compliance with the Licensing Act and Rules of Professional Conduct.

The new section will provide interested parties with written guidelines for the compliance program and ensure that licensees are adhering to the laws and regulations pertaining to the practice of veterinary medicine

There were no comments received concerning adoption of the rule.

The new section is adopted under the Veterinary Licensing Act, Article 8890, §7(a), which provides the Texas Board of Veterinary Medical Examiners with the authority to make, alter, or amend such rules and regulations as may be necessary or desireable to carry into effect the provisions of this Act.

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

Issued in Austin, Texas, on December 20, 1993.

TRD-9333919 Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners

Effective date: January 13, 1994

Proposal publication date: November 19, 1993

For further information, please call: (512) 447-1183

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• 22 TAC §573.67

The Texas Board of Veterinary Medical Examiners adopts new §573.67 concerning Temporary Suspension of License, without changes to the proposed text as published in the November 19, 1993, issue of the *Texas Register* (18 TexReg 8506).

The new section will provide the consumer with protection against licensed practitioners which represent imminent peril to the public.

The new section will function by providing the Board with the authority to temporarily suspend the license of any practitioner representing imminent peril to the public, in a timely and efficient manner.

No comments were received concerning adoption of the rule.

The new section is adopted under the Veterinary Licensing Act, Article 8890, §7(a), which provides the Texas Board of Veterinary Medical Examiners with the authority to make, alter, or amend such rules and regulations as may be necessary to carry into effect the provisions of this Act

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

Issued in Austin, Texas, on December 20, 1993.

TRD-9333918 Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners

Effective date: January 13, 1994

Proposal publication date. November 19, 1993

For further information, please call: (512) 447-1183

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 1. Texas Board of Health

Procedures and Policies

The Texas Department of Health (department) adopts the repeal of existing §§1.1-1.11 and adopts new §§1.1-1 8 concerning the policies and procedures of the Board of Health Section 1.5 and §1.6 are adopted with changes to the proposed text as published in the September 28, 1993 issue of the *Texas Register* (18 TexReg 6601) Sections 1 1-1.4 and 1.7-1 8 are adopted without changes and will not be republished.

The new sections will replace and update the existing sections in order to assist the new Board of Health in implementing its responsibilities under House Bill 7, 72nd Legislature, 1991; House Bill 1510, 73rd Legislature, 1993; and the Health and Safety Code, Chapters 11 and 12. The new sections cover the following areas: purpose; membership; organization; general powers and duties; meetings; actions requiring approval; responsibilities of the Commissioner of Health; and press and public relations.

No public comments were received; however, department staff have made some nonsubstantive changes to the rules as follows.

In §1.5(c), the legal citation has been changed to Government Code, Chapter 551, because of recent legislative codification of the open meetings law.

In §1.6(a), the provisions concerning the strategic plan have been modified for clarification purposes.

• 25 TAC §§1.1-1.11

The repeals are adopted under the Health and Safety Code, §12.001, which provides the Board of Health with authority to adopt rules for its own procedure and for the performance of every duty imposed by law on the Board of Health, the Department of Health, and the Commissioner of Health.

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

Issued in Austin, Texas, on December 21, 1993.

TRD-9333877 Susan K. Steeg
General Counsel
Texas Department of Health

Effective date: January 11, 1994

Proposal publication date: September 28, 1993

For further information, please call: (512) 458-7236

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• 25 TAC §§1.1-1.8

The new rules are adopted under the Health and Safety Code, §12.001, which provides the Board of Health with authority to adopt rules for its own procedure and for the performance of every duty imposed by law on the Board of Health, the Department of Health, and the Commissioner of Health.

§1.5. Meetings of the Board of Health.

(a) The board shall meet in the city of Austin or in other places determined by the board.

(b) The board shall meet at least once each calendar quarter on dates determined by the board and shall hold special meetings at the call of the chair. The chair shall give timely notice to each member of any special meeting.

(c) All meetings shall comply with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

(1) The department shall post notice of each meeting with the Secretary of State's Office at least seven days prior to the date of the meeting. The notice shall specify the date, time and subject(s) of the meeting.

(2) Special rules exist for a meeting which needs to be convened in a case of emergency or urgent public necessity.

(A) A case of emergency or urgent public necessity is limited to imminent threats to public health and safety or reasonably unforeseeable situations requiring immediate action.

(B) The department shall post notice of a meeting involving an emergency or urgent public necessity with the Secretary of State at least two hours before the meeting is convened.

(3) All meetings shall be open to the public, except for executive sessions which are discussed in paragraph (4) of this subsection. All or any part of the public meeting may be recorded by any person in attendance by means of tape recorder, video camera, or any other means of sonic or visual reproduction. The chair will determine the location of any such equipment and the manner in which the recording is conducted, provided that the determination does not prevent or unreasonably impair camera coverage or tape recording.

(4) Executive sessions are closed meetings of the board which may be held only as expressly authorized by the Open Meetings Act (Act). Persons who may attend and subjects which may be discussed are described in the Act.

(5) The board must have a quorum present to convene a meeting and to conduct official business. A quorum of the board is four members.

(6) The board shall conduct a meeting in accordance with Robert's Rules of Order, latest edition, unless there are rules or statutes that require otherwise.

(7) An affirmative vote by a majority of the board membership present and voting is required for the adoption of a rule, policy, or procedure.

(8) During a meeting, a board member may dissent against any board action and may enter a written statement of such dissent into the official minutes of the meeting.

(9) The board shall keep official minutes of the meetings as required by the Open Meetings Act. The Office of the Board of Health prepares the minutes, the board approves them, and the chair and vice-chair sign them. Before the board approves them, the minutes are sent to each member for review, comment or correction prior to approval. The official minutes of all board meetings are kept in the Office of the Board Health and are available for public review as authorized by the Open Meetings Act.

(10) Board members, in performing official duties, shall receive no fixed salary but shall be paid compensatory per diem and reimbursed for meals, lodging, and transportation in accordance with the General Appropriations Act.

§1.6. Actions Requiring Board Approval.

(a) Strategic plan. The strategic plan is subject to approval by the Board of Health.

(b) Appropriation request. The department's appropriation request and annual operating budget are subject to approval by the board prior to submission to the Legislature.

(c) Rules. The board shall adopt rules for its own procedure and for the performance of each duty imposed by law on the board, the department, and the Commissioner.

(d) Appointment of the Director of the Internal Audit Division. The appointment or removal of the Director of the Internal Audit Division by the commissioner is subject to approval by the board.

(e) Other actions. The board may approve any other action by the commissioner or the department where the approval of the board is required by law or requested by the commissioner.

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

Issued in Austin, Texas, on December 21, 1993.

TRD-9333878 Susan K Steeg
General Counsel
Texas Department of Health

Effective date January 11, 1994

Proposal publication date: September 28, 1993

For further information, please call: (512) 458-7236

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Chapter 28. Third-Party Resources

Program Requirements

- **25 TAC §§28.101, 28.111, 28.121, 28.131**

On behalf of the State Medicaid Director, the Texas Department of Health (department) submits adopted new §§28.101, 28.111, 28.121, and 28.131 concerning Third Party Resources. The rules for the operation of the Third Party Resource Program were inadvertently repealed in 1990 with the adoption of the Omnibus Budget Reconciliation Act of 1990 nursing home standards. These sections are adopted without changes to the proposed text as published in the July 27, 1993 issue of the Texas Register (18 Tex Reg 4942).

The new sections will enable the department to collect funds from third-party resources to reduce Medicaid cost.

These sections describe Medicaid's right of assignment of funds paid by third-party resources and the provider's and recipient's rights for recovery of payments for medical expenses from third-party resources. Third-party resources include payments for both private and public health insurance and from other liable third parties that can be applied toward a Medicaid recipient's medical and health benefit expenses.

One comment was received from the American Health Services, Inc. recommending that the state continue to "pay and chase" nursing home claims. The department made no changes as a result of the comment. The department, however, changed all references to the Department of Human Services to the Texas Department of Health to reflect the administrative transfer of these rules to the Texas Department of Health from the Department of Human Services.

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

§28.101. Basis and Scope.

(a) Reimbursement from third-party resources for medical care services paid on behalf of a Texas Medical Assistance (Medicaid) Program recipient is assigned to the Texas Department of Health (department) or its health insuring agent under Human Resources Code §32.033. Third-party resources include, but are not limited to, the following:

(1) health and accident insurance;

(2) workers' compensation;

(3) casualty insurance including uninsured/underinsured motorist coverage;

(4) assignable indemnity contracts;

(5) health maintenance organizations;

(6) Employee Retirement Income Security Act (ERISA) health plans;

(7) no-fault automobile insurance including Personal Injury Protection (PIP) and automobile medical insurance;

(8) another person for personal injury caused by that person's negligence or wrong; and

(9) any claim filed on behalf of or payment made to a Medicaid recipient for injuries requiring Medicaid services including payments for mental anguish, pain and suffering, and future medical expenses when the injury causing the need for Medicaid services was the basis for those claims or payments.

(b) The right of recovery by the department is limited to the amount of the cost of medical services paid by the department or its health insuring agent on behalf of the recipient. Amounts available from third-party resources in excess of payments made by the department or its health insuring agent are available to the recipient.

(c) The right of recovery by the department includes any amounts paid to a recipient's parent or legal guardian for Medicaid-covered services.

§28.111. Provider Right of Recovery.

(a) The Texas Medical Assistance (Medicaid) Program pays medical claims only after all other available resources have been exhausted.

(b) Medicaid providers must collect and/or recover funds from any source to which the Texas Department of Health (department) has a right of recovery under §28.101 of this title (relating to Basis and Scope), before submitting Medicaid claims for reimbursement.

(c) The department authorizes Medicaid providers to collect and/or recover funds for recipients' medical expenses claimed from any other source.

(d) When the payment by a third-party resource is equal to or greater than the amount allowable by the department or its health insuring agent for covered services, Medicaid recipients are not liable for charges billed in excess of the amount paid by the third-party for the medical care and services within the amount, duration, and scope of benefits provided by Medicaid.

§28.121. Recipient Right of Recovery.

(a) The Texas Department of Health (the department) is not responsible for pursuing claims against third-party resources outside the limits of the recovery that the department is authorized to seek. The recipient is responsible for pursuing these claims.

(b) The department's right of recovery does not include recovery from the following:

(1) Texas Rehabilitation Commission;

(2) Texas Commission for the Blind;

(3) Texas Kidney Health Care Program;

(4) Muscular Dystrophy Association;

(5) Chronically Ill and Disabled Children's Services;

(6) Texas Band of Kickapoo Equity Health Program;

(7) Maternal and Child Health (Title V);

(8) State Legislative Impact Assistance Grant (SLIAG);

(9) Crime Victim's Compensation Program; and

(10) adoption agencies or adopting parents with medical contractual obligations to the Medicaid client.

§28.131. Notice of Assignment.

(a) The Texas Department of Health (department) will provide information about third-party resources for individual recipients on the monthly medical care identification card. This information includes a code indicating whether the recipient has a third-party resource. Recipients must sign a statement on the back of the card acknowledging that they are aware that assignment of third-party resources has been made to the department, and they must show the card to Texas Medical Assistance (Medicaid) Program providers before receiving medical services.

(b) Medicaid providers must indicate on the third-party resources claim form that the recipient has Medicaid coverage and must indicate the recipient's individual identification number.

(c) Medicaid payments and reasonable attorney fees, not to exceed 10% of the recouped amount, may be recouped from a provider who was aware of third-party resources when the services were provided.

(d) Neither the department, nor its health insuring agent will seek to recover from third-party resources any payments made to the recipient in good-faith prior to the department's notification of claim.

(e) Notification by the department of its right of assignment, as authorized under Article 3.76 of the Insurance Code, is made when the department's claim is submitted to the third-party.

(f) If a recipient, an insurer, agent, or attorney receives a notice of assignment and then releases funds without paying Medicaid's claim, they are liable to the department for the full amount of the Medicaid claim plus reasonable attorney fees necessary for recovering the money.

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

Issued in Austin, Texas, on December 27, 1993.

TRD-9333961 Susan K. Steeg
General Counsel
Texas Department of Health

Effective date: January 27, 1994

Proposal publication date: July 27, 1993

For further information, please call: (512) 338-6518

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 293. Water Districts

Appeal of Decision Regarding Facilities Constructed

- **30 TAC §293.180**

The Texas Natural Resource Conservation Commission (TNRCC) adopts new §293.180, which provides for the appeal of a municipal utility district board decision concerning the cost, purchase, or use of facilities constructed for the district. New §293.180 is adopted with changes to the proposed text as published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6916). The section establishes an appeals procedure, outlines minimum criteria to be considered by the commission, establishes a mechanism for the agency to recover the costs associated with processing the appeals, and provides a public hearing notice form.

A public hearing was held on November 3, 1993, and no persons wishing to give testimony appeared.

The Commission received several comment letters during the comment period. One commenter questioned the applicability of the rule when a developer happens to be the only property owner in the district or when a developer has completely sold off property in a district, and also requested that the rule reflect a petitioner's ability to seek alternative forms of relief. The Commission agreed with this comment and modified the rule to more clearly identify persons qualified to prosecute these appeals. The question of allowing a petitioner to seek alternative forms of relief is addressed in §293.180(a)(1), which states that a petition may seek "appropriate relief". The commission does not recommend changes to the rule in regard to these comments. Two commenters requested that specific processing timelines be set forth in the rule. The Commission has rules and guidelines in place to timely process these appeals.

A commenter requested that language be added to allow charging district expenses incurred in defense of an appeal to an unsuccessful appellant. The authorizing statute allows for the Commission to recover from a petitioner the costs of notice and hearing. Awarding of legal and consultant fees is not authorized, so no change is recommended.

A commenter expressed concern that the proposed deposit amount ($10,000) serves to exclude persons with legitimate grievances to appeal a board decision. The commenter suggested a revision that requires a deposit in the amount of $5,000 upon filing, and that the remaining portion of the deposit be required if a settlement is not negotiated. The Commission considered this a reasonable suggestion and revised the rule accordingly.

One commenter requested that the rule require an affidavit from a petitioner affirming that the same issues concerning cost, purchase of use of facilities are not already pending in another forum. This comment reflects an issue often encountered by the Commission's hearings examiners. Existing Commission procedural rules and rules applicable to civil suites are available to determine whether a matter in the civil courts should also be litigated at the Commission. Therefore, no change is recommended.

The commneter also suggested the rules require verification that the facilities made the subject of an appeal were constructed pursuant to an agreement between the petitioner and district to ensure the district is made of and can monitor development within its boundaries. The Commission revised the rule to make clear that such documents will be required with a filing.

The commenter requested that the rule include provisions allowing dismissal or refusal to docket if a petition is frivolous, such as an instance where the district did not approve construction of the facilities made the subject of the appeal. The Commission has adopted procedural rules to address issues of this type and where Commission rules are silent the Commission can and has relied on procedural rules applicable in civil suits. Therefore, no change is necessary based on this comment.

The final issue raised by this commenter is that the notice requirements imposed on a district are onerous and costly, and suggests that only newspaper publication be required. The rules require that a certification of mailing from the postal service be obtained to verify the mailing. This is different from a "certified return receipt" mailing and the related cost is minimal; therefore, no change is recommended.

Comments were received from the following: Milburn Investments, Inc.; Leonard, Hurt, Terry and Blinn; Butler, Porter, Gay and Day; and Cliff Johnson, Consultant.

The new section is adopted under the Texas Water Code, §5.103 and §5. 105, which authorizes the Texas Natural Resource Conservation Commission to adopt any rules necessary to carry out its powers, duties, and policies, and Texas Water Code, §54.238, concerning appeal of municipal utility district board decisions regarding facilities constructed for the district.

§293.180. Appeal of a Decision of the Board of a Municipal Utility District Regarding Facilities Constructed for the District.

(a) A person aggrieved by a decision of a board of directors of a Municipal Utility District operating under the Water Code, Chapter 54 may appeal a decision that involves the cost, purchase, or use of improvements constructed by a developer for the district to the commission. Before such an appeal will be considered the following must be submitted:

(1) A petition signed by the present or former property owners affected by the decision of the district board of directors must be filed with the commission seeking appropriate relief within 30 days after the date of the decision. The petition shall contain:

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

(2) an initial deposit in the amount of $5,000 to be applied toward the commission's estimated costs to initiate the hearing on the appeal. An additional deposit in the amount of $5,000 shall be submitted by petitioner prior to an evidentiary hearing.

(3)-(7) (No change.)

(8) copies of any agreements with the district or other documentation from the district authorizing the petitioner to construct the improvements or to enter into contracts for the improvements.

(9) copies of any reimbursements agreements executed by the district involving the improvements in question.

(b)-(d) (No change.)

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

Issued in Austin, Texas, on December 20, 1993.

TRD-9333904 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Effective date: January 12, 1994

Proposal publication date: October 8, 1993

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

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Title 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter O. State Sales and Use Tax

• 34 TAC §3.333

(Editor's note: The text of the following section was erroneously left out of the November 12, 1993 issue.)

The Comptroller of Public Accounts adopts an amendment to §3.333, concerning security services, with changes to the proposed text as published in the August 3, 1993, issue of the *Texas Register* (18 TexReg 5059). For purposes of clarification, grammatical changes have been made to subsections (n) and (o)(4).

The amendment deletes the distinction between guarding, surveillance, and security services and courier services since all these services require a license under Texas Civil Statutes, Article 4413(29bb), Private Investigators and Private Security Agencies Act, §13. The amendment also adds a subsection on the provision of temporary security services and a discussion of multistate benefit of services.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2. The amendment implements the Texas Tax Code, §§151.0075, 151.0101, and 151.047.

§3.333. Security Services.

(a) What a security service is. Security service means any service for which a license is required under the Texas Civil Statutes, Article 4413(29bb), Private Investigators and Private Security Agencies Act, §13, and includes any service provided within the scope of the required license as an investigations company, guard company, alarm systems company, armored car company, courier company, guard dog company, security services contractor, private security officer, detective service, or private investigator.

(b) Hold permits. A provider of security services must obtain a Texas sales and use tax permit and collect tax on the total amount charged for security services, or accept a properly completed resale or exemption certificate in lieu of collecting tax. See §3.285 of this title (relating to Resale Certificate; Sales for Resale), and §3.287 of this title (relating to Exemption Certificates).

(c) Employees. Security services performed by an employee for his employer in the regular course of business, within the scope of the employee's duties, and for which the employee is paid his regular wages or salary are not taxable.

(d) Temporary security service personnel. A security service is taxable even when provided on a temporary basis unless:

(1) the security service is performed by a temporary help service for an employer to supplement the employer's existing security service personnel on a temporary basis;

(2) the security service is normally performed by the employer's own employees;

(3) the employer provides all supplies and equipment necessary; and

(4) the temporary employee is under the direct or general supervision of the employer to whom the security service is furnished.

(e) Security services provided in Texas. Charges for providing security service to property or persons located in Texas are subject to Texas sales tax. Unless a customer claims multistate benefit as provided in subsection (o) of this section, if any portion of the security service originates in Texas, Texas sales tax is due even though a portion of the service may be performed in another state. Credit will not be allowed against Texas sales tax for use tax imposed by another state when the service benefit location is in Texas. Detective and investigation services of corporate locations or premises located outside Texas are not taxable if the investigation is unrelated to any investigation of corporate locations in Texas.

(f) Credit for security services originating in another state. If a security service originates in another state and sales tax is legally paid on that service in the other state, credit against the Texas use tax will be allowed. See §3.340 of this title (relating to Multistate Tax Credits).

(g) Resale certificates.

(1) A seller of a security service may issue a resale certificate in lieu of tax to a supplier of tangible personal property only if care, custody, and control of the property will be transferred to the service provider's client. For example, a security service provider purchases magnetic tape to transfer the results of an investigation to a customer. The tape is transferred to the customer, and the customer owns and uses the tape to review the results of the security service. The security service provider may purchase the tape tax free by issuing a resale certificate. Tax is due on the total amount charged the customer, including amounts for the tape and for the services.

(2) A resale certificate may be issued for a taxable service if the buyer intends to transfer the service as an integral part of a taxable service. A service will be considered an integral part of a taxable service if the service purchased is essential to the performance of the taxable service and without which the taxable service could not be rendered.

(3) A resale certificate may be issued for a taxable service if the buyer intends to incorporate the service into tangible personal property that will be resold. If the entire service is not incorporated into the tangible personal property, it will be presumed the service is subject to tax and the service will be exempt only to the extent the buyer can establish the portion of the service actually incorporated into the tangible personal property. If the buyer does not intend to incorporate the entire service into the tangible personal property, no resale certificate may be issued, but credit may be claimed at the time of sale of the tangible personal property to the extent the service was actually incorporated into the tangible personal property.

(h) Unrelated services.

(1) A service will be considered unrelated if:

(A) it is not a security service, nor a service taxable under other provisions of the Tax Code, Chapter 151;

(B) it is of a type that is commonly provided on a stand-alone basis; and

(C) the performance of the unrelated service is distinct and identifiable. Examples of unrelated services that may be excluded from the tax base include a service for which no license is required, such as coin-wrapping services by a courier or armored car service, or providing court testimony, training, or filing legal documents.

(2) Where nontaxable unrelated services and taxable services are sold or purchased for a single charge and the portion relating to taxable services represents

more than 5.0% of the total charge, the total charge is presumed to be taxable. The service provider may overcome the presumption by separately stating to the customer at the time the transaction occurs a reasonable charge for the taxable services. The service provider's books must support the apportionment between taxable and nontaxable activities based on the cost of providing the service or on a comparison to the normal charge for each service if provided alone. If the charge for nontaxable services is unreasonable when the overall transaction is reviewed, the comptroller will adjust the charges and assess additional tax, penalty, and interest on the taxable services.

(3) Charges for services or expenses directly related to and incurred while providing a taxable service are taxable and may not be separated for the purpose of excluding those charges from the tax base. Examples include charges for meals, telephone calls, hotel rooms, or airplane tickets.

(i) Excepted persons. Persons excepted from the licensing requirements of the Private Investigators and Private Security Agencies Act, §13, are not providing security services subject to the sales tax because they are not required to hold a license to provide their services. Examples include, but are not limited to:

(1) persons employed exclusively and regularly by one employer in connection with the affairs of the employer;

(2) officers or employees of the United States, this state, or a political subdivision of either, while engaged in the performance of official duties;

(3) persons who have full-time employment as peace officers as defined by Code of Criminal Procedure, Article 2.12, and who receive compensation for private employment on an individual or an independent contractor basis as patrolmen, guards, or watchmen;

(4) locksmiths who do not install or service detection devices, do not conduct investigations, and are not security service contractors;

(5) persons who sell burglar alarm or other protective devices exclusively over-the-counter or by mail order; and

(6) persons who sell or install automobile burglar alarm devices.

(j) Taxable under other provisions. Persons whose activities are not defined as security services may nonetheless be performing a service that is taxable under other provisions. Examples include, but are not limited to:

(1) persons engaged in the business of obtaining and furnishing credit information. See §3.343 of this title (relating to Credit Reporting Services) ;

(2) insurance adjusters, insurance investigators, and/or claims processors performing services in connection with a policy of insurance. Although not taxable as security services, some insurance services are subject to sales and use tax. See §3.355 of this title (relating to Insurance Services).

(k) Undercover agents. The fact that a security service provider may be performing his services by furnishing an undercover agent will not affect the applicability of sales tax to the service transaction between the employer and the consumer. The employer of the undercover agent is considered to be providing security services to a client, and that transaction is subject to the sales tax.

(l) Local taxes. Local sales and use taxes (city, county, transit authority, and special purpose district) apply to services in the same way as they apply to tangible personal property. Generally, a service provider must collect local sales taxes if the service provider's place of business is within a local taxing jurisdiction, even if the service is actually provided at a location outside that jurisdiction. However, transit sales taxes do not apply to services provided outside the boundaries of the transit area. If the place of business is outside such a jurisdiction but the service is provided to a customer within a local taxing jurisdiction, local use taxes apply and the service provider is responsible for collecting them. For information on the collection and reporting responsibilities of providers and purchasers of taxable services, see §3.374 of this title (relating to Collection and Allocation of the City Sales Tax), §3.375 of this title (relating to City Use Tax), §3.424 of this title (relating to Collection and Allocation of Transit Sales Tax), and §3.425 of this title (relating to Transit Use Tax)

(m) Use tax. If a seller of a service is not doing business in Texas or in a specific local taxing jurisdiction and is not required to collect Texas state or local tax, it is the Texas customer's responsibility to report the use tax directly to this office.

(n) Service benefit location. If the security service provider is in Texas and the customer is located only in Texas, Texas tax is due.

(o) Service benefit location-multistate customer.

(1) To the extent a security service is provided for a separate, identifiable segment of a customer's business, the service is presumed to benefit the location where that part of the customer's business is conducted.

(2) To the extent the use of the service cannot be assigned to an identifiable segment of a customer's business, the service is presumed to be used to support the administration or operation of the customer's business generally. The security service is presumed to be used at the customer's principal place of business. The principal place of business means the place from which the trade or business is directed or managed.

(3) If a multistate customer claims that part of the security service benefits the customer's business at locations both within and outside the state, the customer must provide the security service provider with an exemption certificate in lieu of tax. It will then be the customer's responsibility to report the tax to this office for that portion of the security service that benefits Texas locations. The security service will not be taxable to the extent the customer can establish benefit outside Texas. A multistate customer may use any reasonable method for allocation that is supported by business records.

(4) A security service provider who accepts an exemption certificate in good faith is relieved of responsibility for collecting and remitting tax on transactions to which the certificate relates.

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

Issued in Austin, Texas, on November 5, 1993.

TRD-9331609

Martin E. Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: November 26, 1993

Proposal publication date: August 3, 1993

For further information, please call: (512) 463-4028

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Chapter 7. Administration of State Lottery Act

(Editor's Note. House Bill 1587, §38 and §39, 72nd Legislature, created the Texas Lottery Commission and transferred all duties and functions of the lottery from the Comptroller of Public Accounts to the new agency effective December 27, 1993

The Texas Register is administratively transferring the following rules listed in the table below from Title 34, Part I Comptroller of Public Accounts to Title 16, Part IX Texas Lottery Commission The table which lists the old rule numbers and the new rule numbers that correspond to them is being published in this section of the Register under Title 16. Part I. Texas Lottery Commission)

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Part III. Teacher Retirement System of Texas

Chapter 25. Membership Credit

Military Service

• 34 TAC §25.67

The Teacher Retirement System of Texas (TRS) adopts new §25.67, without changes to the proposed text as published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8166)

The 73rd Texas Legislature, Regular Session, added Government Code, §823. 3021, which offers TRS retirement credit incentives to attract into Texas public education employment United States military personnel who cannot otherwise qualify for retirement because of an early separation from military duty under reduction in force policies of the federal government. The statute conditions this special TRS service credit upon payment to TRS of the actuarial cost of the credit. This section provides for the determination of the actuarial cost of the credit

The adopted rule adopts by reference the specific actuarial tables, published by the TRS actuary, The Wyatt Company, which make the actuarial cost for this service credit a definitely determinable amount. The adopted rule also clarifies how the amount of the service credit is to be determined and the elements of the costs required to purchase the credit The rule was first adopted as an emergency basis on September 10, 1993

No comments were received regarding adoption of the rule.

The new section is adopted under the Texas Government Code, §823.3021(f) (1), which specifically provides for adoption of actuarial rates and tables for the purchase of the special military service credit, and §825.102, which authorizes TRS to adopt rules governing the administration of its funds and the transaction of its business

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

Issued in Austin, Texas, on December 20, 1993

TRD-9333907 Wayne Blevins
Executive Director
Teacher Retirement
System of Texas

Effective date: January 12, 1994

Proposal publication date: November 9, 1993

For further information, please call: (512) 370-0506

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Joint Service with Employees Retirement System

• 34 TAC §25.113

The Teacher Retirement System of Texas (TRS) adopts new §25.113, without changes to the proposed text as published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8167). Section 25 113 concerns the transfer of credit between TRS and the Employees Retirement System (ERS) implementing Government Code, Chapter 805, which allows persons with both TRS and ERS credit to retire under one system.

The rule clarifies the benefits available under the transfer legislation and the procedures by which the legislation is to be implemented.

The rule establishes the procedures for eligible members to apply for the transfer of credit and to establish credit for withdrawn accounts in the respective systems. It provides procedures for determining the amount of average salary and service credit for those transferring credit between the systems. It applies the respective systems' laws requiring one month's separation from employment after an effective retirement date to those with transferred credit. It provides special provisions necessary for certain state employees subject to a mandatory transfer from TRS to ERS membership and for participants in the Optional Retirement Program The rule states necessary conditions for applying the transfer law to death benefits. Finally, the rule provides for the interagency procedures to administer the law, including provisions for the determination of the funds to be transferred between the agencies. The rule was adopted on an emergency basis on September 10, 1993, except that subsection (i) relating to cancellation of retirement upon employment within 30 days has been substantially reworded.

No comments were received regarding adoption of the rule

The new section is adopted under the Texas Government Code, §805 009, which authorizes the Board of Trustees to adopt rules to administer the transfer law. The new section is also adopted under the Texas Government Code, §825 102, which authorized the Board of Trustees of the Teacher Retirement System to adopt rules for eligibility for membership, administration of the funds of the system and the transaction of its business.

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

Issued in Austin, Texas, on December 20, 1993.

TRD-9333908 Wayne Blevins
Executive Director
Teacher Retirement
System of Texas

Effective date· January 12, 1994

Proposal publication date· November 9, 1993

For further information, please call: (512) 370-0506

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Chapter 41. Insurance

• 34 TAC §41.11

The Teacher Retirement System of Texas (TRS) adopts new §41.11, without changes to the proposed text as published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8168). The section concerns the collection by TRS of an annual fee required by law to be paid by each person employed full-time by a public school district in order to obtain funds to initiate a possible statewide group health insurance program for public school district employees.

The rule clarifies who is to pay the fee and how it is to be submitted to TRS.

Section 44(d), Chapter 812 (House Bill 2711), Acts of the 73rd Texas Legislature, Regular Session 1993, requires a study of group health insurance for public school employees, with a report due June 30, 1994, to be funded in whole or in part by a portion of these funds. Further, the funds will be placed in a trust fund to establish the insurance reserves which may be needed if a public school employees group health insurance program is implemented by the 74th Texas Legislature. The rule clarifies who is a full-time employee, what is a public school district, how the fees are to be obtained by the school districts from their employees, and how they are to be submitted to TRS The rule was first adopted on an emergency basis on September 10, 1993.

No comments were received regarding adoption of the rule

The new section is adopted under §44(d), Chapter 812, Acts of the 73rd Texas Legislature, Regular Session, 1993, which specifically authorizes adoption of rules for the collection of these fees and under the Texas Government Code, §824.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for eligibility for membership administration of the funds of the system and the transaction of its business.

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

Issued in Austin, Texas, on December 20, 1993

TRD-9333909 Wayne Blevins
Executive Director
Teacher Retirement
System of Texas

Effective date. January 12, 1994

Proposal publication date November 9, 1993

For further information, please call: (512) 370-0506

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• 34 TAC §41.12

The Teacher Retirement System of Texas (TRS) adopts new §41.12, without changes to the proposed text as published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8169). The section concerns the certification by school districts of their compliance with §13 913(a), Education Code, which requires Texas public school districts to provide employee health insurance coverage to its employees comparable to that provided by the State of Texas to its employees.

Section 32, Chapter 812 (House Bill 2711), Acts of the 73rd Texas Legislature, Regular Session, 1993, requires each school district to certify compliance with Education Code, §13.913(a) to the executive director of TRS in the manner required by the TRS board of trustees.

The adopted rules establishes February 1 of each year as the deadline by which the certification for a school year must be filed and provides that the TRS executive director may promulgate the specific format of the certification.

No comments were received regarding adoption of the rule.

The new section is adopted under Education Code, §13.913(a), which authorizes the TRS board of trustees to specify the manner of the certification and under the Texas Government Code, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for eligibility for membership, administration of the funds of the system and the transaction of its business.

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

Issued in Austin, Texas, on December 20, 1993.

TRD-9333910 Wayne Blevins
Executive Director
Teacher Retirement System of Texas

Effective date: January 12, 1994

Proposal publication date: November 9, 1993

For further information, please call: (512) 370-0506

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Chapter 51. General Administration

• 34 TAC §51.1

The Teacher Retirement System of Texas (TRS) adopts new §51.1, without changes to the proposed text as published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8169). The section concerns the determination of the amount and manner of compensation to its various advisory committee members.

This section is being adopted to comply with state law that may require a rule governing payments of members of these committees in order for TRS to continue to receive these services which the board has found to be necessary for the performance of its duties. The rule was adopted on an emergency basis on September 10, 1993.

The section recognizes four TRS advisory committees: a medical board, an investment advisory committee, a real estate finance committee, and a retired public school employee health insurance advisory committee. All but the latter committees are composed of consultants paid in accordance with their contracts. The health insurance advisory consultant is to receive reimbursement for actual expenses only.

No comments were received regarding adoption of the rule.

This new section is adopted under the Texas Government Code, §825.102, which authorizes TRS to adopt rules governing the administration of its funds and the transaction of its business, and Government Code, §825.114, which specifically authorizes the rule.

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

Issued in Austin, Texas, on December 20, 1993.

TRD-9333911 Wayne Blevins
Executive Director
Texas Retirement System of Texas

Effective date: January 12, 1994

Proposal publication date: November 9, 1993

For further information, please call: (512) 370-0506

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 91. Discipline and Control

Disciplinary Practices

• 37 TAC §91.3

The Texas Youth Commission (TYC) adopts an amendment to §91.3, concerning rules of conduct, contraband, and dress, without changes to the proposed text as published in the November 2, 1993, issue of the *Texas Register* (18 TexReg 7917).

The justification for amending the section is to provide a safe environment for TYC staff and visitors, and Youth in the custody of the Texas Youth Commission.

The amendment allows individual superintendents or the facility administrator with approval of the director of institutions or director of community services, to prohibit symbolic expressions that have been shown to precipitate violence or potentially violent behavior which presents an imminent peril to the health and safety of our youth, staff, and visitors.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

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

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

TRD-9333989 Steve Robinson
Executive Director
Texas Youth Commission

Effective date: January 18, 1994

Proposal publication date: November 2, 1993

For further information, please call: (512) 483-5244

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• 37 TAC §91.10

The Texas Youth Commission (TYC) adopts an amendment to §91.10, concerning protective custody for treatment, without changes to the proposed text as published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8170).

The justification for amending the section is to have a more efficient method of treating youth at risk of causing substantial bodily injury to himself or herself.

The amendment clarifies that procedures herein apply to youth in community placements rather than TYC institutions. Existing procedures provide for movement of a TYC youth to a residential treatment center or psychiatric hospital.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

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

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

TRD-9333988 Steve Robinson
Executive Director
Texas Youth Commission

Effective date: January 18, 1994

Proposal publication date: November 9, 1993

For further information, please call: (512) 483-5244

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 4. Medicaid Programs–Children and Pregnant Women

Eligibility Requirements

• 40 TAC §4.1006

The Texas Department of Human Services (DHS) adopts an amendment to §4. 1006, concerning requirements for application, in its Medicaid Programs-Children and Pregnant Women rule chapter.

The purpose for the amendment is to comply with federal regulations that mandate states to apply the Aid to Families with Dependent Children (AFDC) resource policy to loans when determining Medicaid program eligibility, because AFDC policy is less restrictive.

The amendment will function by making DHS's Medicaid Program-Children and Pregnant Women rules consistent with federal regulations

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds The amendment implements the Human Resources Code, §22.002 and §32.001 The amendment is adopted in compliance with federal requirements to be effective January 1, 1994.

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

Issued in Austin, Texas, on December 21, 1993.

TRD-9333854 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Effective date: February 1, 1994

For further information, please call: (512) 45-3765

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Chapter 27. Intermediate Care Facilities for the Mentally Retarded (ICFs-MR)

Subchapter G. Additional Facility Responsibilities

• 40 TAC §27.719

The Texas Department of Human Services (DHS) adopts new §27.719, concerning consent to treatment by surrogate decision-makers, in its Intermediate Care Facilities for the Mentally Retarded (ICFs-MR) rule chapter. The section is adopted without changes to the proposed text as published in the November 12, 1993, issue of the *Texas Register* (18 TexReg 8350).

The justification for the new section is to comply with Senate Bill 1142. This legislation requires the Texas Department of Mental Health and Mental Retardation (TXMHMR) to implement a surrogate decision-making process in which clients deemed incompetent by the interdisciplinary team may have individuals appointed to make specific decisions for them.

The new section will function by increasing protection of clients' rights in ICFs-MR

No comments were received regarding adoption of the new section

The new section is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds The new section implements the Health and Safety Code, Title 7, Subtitle D, §§597 001-597.055

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

Issued in Austin, Texas, on December 21, 1993

TRD-9333855 Nancy Murphy
Section Manger, Policy and Document Support
Texas Department of Human Services

Effective date February 1, 1994

Proposal publication date November 12, 1993

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

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Chapter 90. Nursing Facilities and Related Institutions

Subchapter C. Standards for Licensure

• 40 TAC §90.41

The Texas Department of Human Services (DHS) adopts an amendment to §90. 41, concerning standards for nursing facilities, in its Nursing Facilities and Related Institutions rule chapter The amendment is adopted without changes to the proposed text as published in the November 19, 1993, issue of the *Texas Register* (18 TexReg 8508).

The justification for the amendment is to allow nurse aides actively employed at non-Medicaid-certified nursing facilities as of September 1, 1993, to challenge the nurse aide competency test once during the 12-month period beginning on that date and ending August 31, 1994 Persons who challenge the test and fail must go through a complete training course.

The amendment will function by improving quality of care provided at non- Medicaid-certified nursing facilities.

During the public comment period, DHS received comments from the Texas Health Care Association. A summary of the comment and DHS's response follow:

Comment: The commenter suggested adding clarifying language to indicate that nurse aides failing the competency test must complete a training course by August 31, 1994.

Response: The intent of the amendment is not to expect nurse aides failing the competency test to complete the competency training by August 31, 1994. The August 31, 1994, deadline only refers to the date by which nurse aides must challenge the competency exam, therefore, DHS is adopting the amendment as proposed

The amendment is adopted under the Health and Safety Code, Chapter 242 which provides the department with the authority to license long-term care nursing facilities and under Texas Civil Statutes, Article 4413 (502), 72nd Legislature, which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services. The amendments implement the Health and Safety Code, §§242 001-242.186.

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

Issued in Austin, Texas, on December 22, 1993

TRD-9333893 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Effective date. January 15, 1994

Proposal publication date November 19, 1993

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

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Chapter 101. General Rules

• 40 TAC §101.10

The Texas Rehabilitation Commission (TRC) adopts an amendment to §101 10, concerning Confidentiality, without changes to the proposed text as published in the November 26, 1993, issue of the *Texas Register* (18 TexReg 8777)

The justification for the new section is to implement Texas Human Resource Code, §111 057.

The section will function by providing the Texas Rehabilitation Commission with the authority to make regulations governing personnel standards, the protection of records and confidential information, the manner and

form of filing applications, eligibility, investigation, and determination for rehabilitation and other services, procedures for hearings, and other regulations subject to this section as necessary to carry out the purposes of this chapter.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 7, 111 058, which provides the Texas Rehabilitation Commission with the authority to make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for rehabilitation and other services, procedures for hearings, and other regulations subject to this section as necessary to carry out the purposes of this chapter.

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

Issued in Austin, Texas, on December 28, 1993.

TRD-9334007 Charles W Schiesser
Associate Commissioner
for Legal Services
Texas Rehabilitation
Commission

Effective date January 18, 1994

Proposal publication date November 26, 1993

For further information, please call (512) 483-4051

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TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 1. Administration

The Texas Department of Transportation adopts amendments to §§1.80-1.82, and §1.84, new §1.83 and §1.85, and the repeal of §1.83, without changes to the proposed test as published in the October 15, 1993, issue of *Texas Register* (18 TexReg 7142)

Senate Bill 383, 73rd Legislature, 1993, added Texas Civil Statutes, Article 6252-33, to require the department to adopt rules that state the purpose of each of its advisory committees and describe each committee's task and the manner in which it will report to the agency; and establish a date on which each committee will automatically be abolished unless continued in existence by affirmative vote of the Texas Transportation Commission. These rules were adopted on an emergency basis in order to comply with the mandates of Senate Bill 383, which became effective on September 1, 1993, to provide for flexibility in the process for statutory advisory committee review of department rules, to clarify existing provisions, and to assure that critical roles of the advisory committees continue without interruption, thereby protecting the vital interests, safety and welfare of the taxpayers and the travelling public

The repeal of §1.83 is necessary because of the contemporaneous of new §1.83, which incorporates the provisions of the repealed section as rewritten and expanded Section 1.80 is amended to include advisory committees created by the department Section 1.81 is amended by deleting some unnecessary terms and also by adding definitions of department advisory committee, district engineer, and statutory advisory committee Section 1.82 is amended to clarify that the section only applies to statutory advisory committees, remove the requirement that the commission designate the chair of the aviation and bicycle rules committees and allow those committees to elect a chair and vice-chair, remove provisions concerning the frequency of meetings, lower the advance notice of meetings from 14 to 10 days, and require the department to report advice of statutory advisory committees to the commission and to invite the committee chair to appear before the commission Section 1.84 is amended by adding a provision for the department to submit emergency rules to the commission without prior review by the advisory committee, by authorizing the committee to waive preliminary or final review of draft rules, and by authorizing the committee to defer the committee's review of rules until the public comment period

New §1.83 replaces the existing section and outlines the duties of the statutorily appointed advisory committees, the frequency of meetings, and the expiration date of each committee New §1.85 lists committees created by the department and states their purpose, duties, and manner of reporting, and provides for membership requirements, frequency of meetings, requisites for formal committee action, election of officers, and duration of existence of committees

On October 25, 1993, the department conducted a public hearing on the proposed sections No written or oral comments were received concerning adoption of the proposed rules

Advisory Committees

• 43 TAC §§1.80-1.82, 1.84

The repeal, amendments, and new sections are adopted under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically by Texas Civil Statutes, Articles 46c-3, 6663b, 6673g, and 6673h, which create four specific advisory committees and authorizes the commission to adopt rules to govern the operations of those committees In addition, Texas Civil Statutes, Article 6252-33, direct state agencies to adopt rules concerning the operation of advisory committees

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

Issued in Austin, Texas, on December 23, 1993

TRD-9333932 Diane L Northam
Legal Administrative
Assistant
Texas Department of
Transportation

Effective date January 13, 1994

Proposal publication date October 15, 1993

For further information, please call (512) 463-8630

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• 43 TAC §1.83

The repeal is adopted under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically by Texas Civil Statutes, Articles 46c-3, 6663b, 6673g, and 6673h, which create four specific advisory committees and authorizes the commission to adopt rules to govern the operations of those committees In addition, Texas Civil Statutes, Article 6252-33, direct state agencies to adopt rules concerning the operation of advisory committees

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

Issued in Austin, Texas, on December 23, 1993

TRD-9333933 Diane L Northam
Legal Administrative
Assistant
Texas Department of
Transportation

Effective date. January 13, 1994

Proposal publication date. October 15, 1993

For further information, please call: (512) 463-8630

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• 43 TAC §1.83, §1.85

The new sections are adopted under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically by Texas Civil Statutes, Articles 46c-3, 6663b, 6673g, and 6673h, which create four specific advisory committees and authorizes the commission to adopt rules to govern the operations of those committees In addition, Texas Civil Statutes, Article 6252-33, direct state agencies to adopt rules concerning the operation of advisory committees.

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

Issued in Austin, Texas, on December 23, 1993.

TRD-9333931 Diane L. Northam
Legal Administrative Assistant
Texas Department of Transportation

Effective date: January 13, 1994

Proposal publication date: October 15, 1993

For further information, please call: (512) 463-8630

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Chapter 31. Public Transportation

General

• 43 TAC §31.3

The Texas Department of Transportation adopts an amendment to §31.3, without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7144).

The definition of "new start" is being replaced with the broader term "service expansion," which encompasses both new starts as well as existing transit systems. A definition is being added for RPT (rural public transportation) as that is a common short-form reference used by the department as well as the transit industry.

This action is necessary to explain contemporaneous amendments to §31.36 of this chapter concerning the §18 grant program.

A public hearing was held on November 2, 1993, and no comments were received regarding adoption of the proposed amendment.

The amendment is adopted under Texas Civil Statutes, Articles 6666, 6663b, and 6663c, which provide the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation, and specifically to administer the state public transportation fund and state and federal public transportation programs.

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

Issued in Austin, Texas, on December 23, 1993.

TRD-9333934 Diane L. Northam
Legal Administrative Assistant
Texas Department of Transportation

Effective date: January 13, 1994

Proposal publication date: October 15, 1993

For further information, please call: (512) 463-8630

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State Programs

• 43 TAC §31.11

The Texas Department of Transportation adopts an amendment to §31.11, without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7144).

This action is necessary to conform to language contained in House Bill 1942, 73rd Legislature, Regular Session, which amended Article 6663c, Texas Civil Statutes.

Formula program funding for urbanized areas is based on population and population density. Amendments enacted by the 72nd Legislature resulted in the inclusion of large unincorporated areas which were not served by transit systems and which skewed the formula program funding. The 73rd Legislature addressed this problem by defining more carefully the populations and densities to be used in such instances.

The amendment adds new subsection (b)(1)(A)(iii) and (iv) to describe the calculations of population and population density. There are also a number of technical corrections to update the name of the federal enabling legislation and grantor agency. Those corrections do not alter the original intent of the existing rules.

A public hearing was held on November 2, 1993, and no comments were received regarding adoption of the proposed amendment.

The amendment is adopted under Texas Civil Statutes, Articles 6666, 6663b, and 6663c, which provide the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation, and specifically to administer the state public transportation fund and state and federal public transportation programs.

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

Issued in Austin, Texas, on December 23, 1993.

TRD-9333935 Diane L. Northam
Legal Administrative Assistant
Texas Department of Transportation

Effective date: January 13, 1994

Proposal publication date: October 15, 1993

For further information, please call: (512) 463-8630

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Federal Programs

• 43 TAC §31.36

The Texas Department of Transportation adopts an amendment to §31.36, with changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7146). The adoption of this amended section is necessary to establish an alternate to the current funding allocation methodology in §31.36. Transit industry representatives have made a compelling argument in favor of system-specific performance goals and management objectives that will ensure that the public's interests are protected. It is also important to provide for service expansions by existing operators as well as new starts. The amended section establishes a process by which the Texas Transportation Commission can terminate funding to a transit operator that does not make a good-faith effort to meet the performance goals and management objectives.

On November 2, 1993, the department held a public hearing to receive data, comments, views, and/or testimony concerning the proposed amendment. The following groups and associations commented in opposition to proposed changes: Public Transportation Advisory Committee, Texas Transit Association; Capital Area Rural Transportation System; Kaufman County Senior Citizens Services, Inc., Ark-Tex Council of Governments, Community Transit Service/Community Services, Inc., Rolling Plains Management Corporation; Hill Country Transit, and Caprock Community Action Association, Inc. The department's responses to the comments are presented in the order in which they appear in the proposed rules.

Various parties indicated support for the department's decision, discussed in the proposed preamble, to establish an ad hoc advisory committee to work with staff in developing a new methodology for the allocation of Section 18 funds. However, those commenters also expressed objections to the way that advisory process concluded. As these comments are not germane to the proposed text, they will be addressed separately to the individual commenters.

Several commenters challenged statements in the proposed preamble as being inconsistent with or more lenient than the text of the proposed rules. Another interpreted the fiscal implications cited in the proposed preamble as evidence that the department has excess staff and/or excess administrative funds.

As the responses to other comments will indicate, the department believes that the statements in the preamble were consistent with the proposed rules. Additional language has been added to clarify those points that were specifically questioned. With respect to the implication that TxDOT has excess staff and/or funds, the proposed policy and companion procedures would replace those currently in place. The department and the RPT contractors presently devote certain resources to the allocation of funds and monitoring of performance. The proposed revisions are not expected to increase the resources needed to address these requirements.

Several commenters expressed concern over the reference in §31.36(c)(3)(A) to funds awarded for fiscal year 1994. They noted that certain monies appropriated for the fiscal 1994-1995 biennium were restricted and rec-

ommended that the text be clarified to eliminate the effect of those restrictions.

The earlier language in §31 36(c)(3) cites the "annual §18 federal apportionment and any state funds appropriated specifically for the purpose of funding nonurbanized public transportation service." Subparagraph (A) refers to the same pool of funds. However, it must be noted that administrative rules do not take precedence over statutes or other legislative actions. The allocations approved by the Texas Transportation Commission on July 29, 1993, and October 28, 1993, mitigated the impact of the appropriation constraints and established an equitable funding base for fiscal year 1994. This comment prompted changes in subsection (c)(2) and (3) to explicitly include carryover funds from previous federal apportionments. The amounts available from these sources is expected to be limited, as they are dependent on deobligations from earlier projects, but it is important to specify how those dollars will be applied.

A number of comments suggested tabling the revisions proposed in §31 36(c) (4). Some favored the establishment of another ad hoc advisory committee. Several recommended that the categories of measures listed in the clauses under subparagraphs (A) and (B) be eliminated in favor of a more general reference. Questions were posed as to why approval of performance goals and management objectives is reserved to the commission and the department rather than negotiated with each RPT contractor.

The department has been designated to administer the Section 18 program and cannot delegate those fiduciary responsibilities to another entity. In promulgating these rules, the commission establishes priorities for staff as well as external contractors. None of the commenters took exception to a specific category of performance goals or management objectives. One may conclude that the categories are, in fact, reasonable and appropriate.

The department values its partnership with transit operators in meeting the mobility needs of the public. The language in §31.36(c)(4) outlines the framework for a process of continuous improvement in providing those transit services. Subparagraphs (A) and (B) have been revised to specify that measures must also be deemed appropriate by the contractors and that each RPT contractor will be consulted. Department staff will meet with each operator to discuss improvements that would enhance service to the public. Local input is critical to the ultimate success of this continuous improvement effort. Although the commission must retain final approval authority in this matter, it is important that the measures and targets also represent the RPT contractor's priorities.

The department believes the revised text is a significant improvement over current rules. Although further refinements are always possible, it does not appear reasonable to defer final adoption and create another advisory panel. The implementation of this process should allay those concerns as that will be the ultimate test of all parties' good faith.

Other comments on §31.36(c)(4) indicated that TxDOT had not, as stated in the preamble, allowed for system-specific goals and objectives The reference in subparagraph (A) "for that RPT contractor" indicates that system-specific goals will be developed. Similar language was inadvertently left out of subparagraph (B) and has now been added.

Several commenters took exception to the phrase "but not limited to" in clauses under subparagraphs (A) and (B). The category for other measures in §31.36(c)(4)(A)(iv) was particularly troublesome to some. Another asked that a maximum number of measures be specified to deter TxDOT from imposing a burdensome number of goals and objectives on each operator.

The examples listed in the clauses are for purposes of illustration because of the large number of possibilities that exist within each category The department believes flexibility on the total number of measures is important as a particular RPT contractor may identify several priorities within the same category. For example, the transit operator may seek to improve the revenue recovery ratio by 5.0% and reduce the cost per vehicle mile by $0 05 during the year.

In most cases, however, the department and the operator may agree to focus on a single target for each category. Section 31 36(c)(4)(A) has been revised to clarify that measures will be selected from each of the categories listed in clauses (i)-(iii). This conforms to the language in subparagraph (B). The need for other measures, as provided in §31 36(c)(4)(A)(iv), is expected to be apparent to both the RPT contractor and the department. This clause has also been revised to specify the contractor's role in developing such measures.

As noted in response to an earlier comment, the department views this as a means of helping each RPT contractor continuously improve so as to provide better service to the public. The flexibility to tailor these measures for individual transit systems will yield tangible benefits for each. If this process instead becomes burdensome, the RPT contractor should bring that to TxDOT's attention immediately and ask that the measures be reviewed.

A number of commenters viewed the proposed text in §31.36(c)(4) as evidence of the department's intent to "micromanage" the rural transit systems. Others asked how the objectives would be measured and who would determine if the measures are being met.

Previous responses have described the continuous improvement process and the opportunity for RPT contractors to contribute their opinions. The department agrees that most decisions are best left to local officials as long as program requirements are met. The rules establish the commission's priorities in the categories of performance goals and management objectives

Precise numerical targets will be established for each category along with the methodology for tracking performance. For example, an RPT contractor's target for cost effectiveness may be to reduce the cost per passenger trip by 5.0%. In approving that target, the department and the contractor would also agree that performance statistics would be derived from the standard quarterly operations reports. The department is responsible for determining if targets are met. However, the use of precise numerical indicators will eliminate any subjective judgments.

The department does not propose to tell a transit manager how to meet the agreed-upon targets but will instead focus upon providing the technical assistance requested by that manager. However, this is another concern that perhaps can only be laid to rest when the process is implemented.

Other comments stated that the proposed rule would duplicate or even supplant existing statutory requirements specified in Texas Civil Statutes, Article 6663c. It was noted that RPT contractors already submit regular performance reports and that the current measures are adequate.

The rule clearly cannot supplant statutory requirements Instead, TxDOT will use those requirements as a guide in consultations with the RPT contractors. Data that is currently being provided will receive priority consideration as a means of complying with §31.36(c)(4) The department also intends to consolidate the performance goals and management objectives reports into the existing reporting processes. TxDOT staff can then perform various calculations using the same baseline information from the RPT contractor and track progress toward the annual targets.

The comment that current performance measures are adequate is contradicted by statements from other parties, both in response to the proposed rule and in ongoing discussions since §31 36 was adopted in 1989.

There was also concern over the interpretation of "good-faith effort" as stipulated in §31.36(c)(4)(C). Several suggested that decisions to terminate funding be made only after a public hearing was conducted. The determination of "good-faith effort" is admittedly subjective. However, the provisions for a grace period and technical assistance, as described in §31.36(c)(4)(C)(i) are evidence that the department would consider terminating financial support as the last option. Although the opportunity for a public hearing was implicitly considered part of the termination process, an explicit reference to the provisions of 43 TAC §1.5 has been added to §31.36(c)(4)(C)(ii).

In order to accommodate this rulemaking process, the effective dates and due dates in subsection (c) and paragraph (2) of subsection (c) have been revised to January 15, 1994.

The amendments are adopted under Texas Civil Statutes, Articles 6666, 6663b, and 6663c, which provide the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation, and specifically to administer the state public transportation fund and state and federal public transportation programs.

§31.36. Section 18 Grant Program.

(a) Purpose. The Federal Transit Act of 1964, Section 18, as amended (49 United States Code, §1614), authorizes the Secretary of the United States Department of Transportation to make grants for public transportation projects in nonurbanized areas. The department has been designated by the governor to administer the Section 18 program.

(b) Eligible recipients. State agencies, local public bodies, private nonprofit organizations, Indian tribes and groups, and operators of public transportation services are eligible to receive Section 18 funds through the department. Private for-profit operators of public transportation services may participate in the program through contracts with eligible recipients.

(c) Allocation of funds. As part of its administration of the Section 18 program, the department is charged with ensuring that there is a fair and equitable distribution of program funds within the state (FTA Circular 9040.1C, Chapter 1, §4). Effective January 15, 1994, the department will allocate Section 18 funds to local contractors in the following manner.

(1) Unless the governor certifies to the Secretary of the United States Department of Transportation that the intercity bus service needs of the state are being adequately met, the department will reserve not less than 5.0% of the fiscal year 1992 Section 18 federal apportionment for the development and support of intercity bus transportation. The percentage to be reserved for intercity bus transportation will rise to 10% in fiscal year 1993 and 15% in fiscal year 1994 and beyond unless the governor certifies that such expenditures are not necessary. If it is determined that all or a portion of the set-aside monies are not required for intercity bus service, those funds shall be applied to the formula apportionment process described in paragraph (3) of this subsection.

(2) An amount not to exceed 10% of the balance of the annual Section 18 federal apportionment, after the set-aside for intercity bus service described in paragraph (1) of this subsection and department administrative expenses are deducted, and 10% of the remaining balance of previous Section 18 federal apportionments shall be reserved for the expansion of nonurbanized public transportation services. No later than January 15 of each year, all applicants requesting funding under this paragraph shall file a notice of their intentions to expand services. All service expansions shall be initiated on September 1 following the filing of the notice of intent unless otherwise authorized by the department. The amounts to be awarded for each service expansion shall be determined by the commission. After receiving an award under this paragraph, service expansions shall become subject to the funding allocation process described in paragraph (3) of this subsection in succeeding fiscal years. If it is determined that all or a portion of the funds made available under this paragraph are not needed for the purposes described, those monies shall be distributed in accordance with the provisions of paragraph (3) of this subsection.

(3) Except as provided in paragraphs (1) and (2) of this subsection, the balance of the annual Section 18 federal apportionment, plus the remaining balance of previous Section 18 federal apportionments, and any state funds appropriated specifically for the purpose of funding nonurbanized public transportation services will be allocated to existing RPT contractors as described in this paragraph. No later than June 1 of each calendar year, the department will announce the allocations for the fiscal year beginning on September 1 of the same year.

(A) Subject to the following limitations and adjustments, each RPT contractor shall receive the same percentage of funds as were awarded to that contractor by the commission for fiscal year 1994.

(i) The percentage awards to each RPT contractor will be adjusted annually to include any projects funded under paragraph (2) of this subsection during the previous fiscal year.

(ii) If a portion of an RPT contractor's service area is declared an urbanized area by the United States Census Bureau or the service area is otherwise reduced, the department and that contractor shall negotiate an appropriate adjustment in the award of nonurbanized public transportation funding to that contractor.

(iii) If a previously designated urbanized area is declared nonurbanized by the United States Census Bureau, a public transportation contractor serving that area shall apply for funds in accordance with paragraph (2) of this subsection

(B) Prior to receiving funds, a contractor must complete and comply with all application requirements, rules and regulations applicable to the Section 18 program, and must negotiate a contract with the department pursuant to paragraph (4) of this subsection.

(4) A contract for the allocation of funds pursuant to paragraph (3) of this subsection shall have an effective date of September 1, shall be for a 12-month period unless otherwise authorized by the department, and shall provide for performance goals and management objectives for the RPT contractor that are acceptable to the commission.

(A) Performance goals for each fiscal year shall at a minimum include at least one measure deemed appropriate by that RPT contractor and the department after consultation with the affected RPT contractor from each of the categories listed in clauses (i)-(iii) of this subparagraph and may include at least one measure as provided in clause (iv) of this subparagraph.

(i) Cost efficiency. Examples include, but are not limited to, specific performance targets related to revenue recovery ratio, cost per vehicle mile, or cost per service hour.

(ii) Cost effectiveness. Examples include, but are not limited to, specific performance targets related to cost per passenger trip or cost per passenger mile.

(iii) Service utilization. Examples include, but are not limited to, specific performance targets related to passenger trips per capita passenger trips per mile, or passenger trips per hour.

(iv) Other measures The department and the RPT contractor may also adopt other performance goals that are deemed appropriate by the department and that RPT contractor to address particular operational issues. For example, if an RPT contractor has experienced a number of vehicular accidents during the preceding year, the department and that RPT contractor might agree to institution of a safety program with the goal of reducing the number of accidents by a specified percentage.

(B) Management objectives for each fiscal year shall at a minimum include at least one measure deemed appropriate by that RPT contractor and the department after consultation with the affected RPT contractor from each of the following categories.

(i) Training Examples include, but are not limited to, a target for hours of training to be provided to drivers, renewal of first aid and related certifications for all drivers and management employees, or completion of a total quality management course by a specified number of supervisory staff members.

(ii) Marketing and public involvement. Examples include, but are not limited to, the expenditure of a specified budget percentage or amount on marketing activities, the completion of a specified number of public meetings to obtain comments on system operations, or the administration of a passenger survey on quality of service.

(iii) Disadvantaged business enterprise participation. Examples include, but are not limited to, achievement of a specified percentage increase in the use of disadvantaged business enterprises, or recruitment and certification of a specified number of disadvantaged business enterprises.

(iv) General management activities. Examples include, but are not limited to, the automation of all financial and personnel records, preparation of a business plan to foster private sector partnerships, or completion of a staffing plan that identifies funding resources for anticipated personnel increases.

(C) A contractor's performance goals and management objectives will serve as a basis for the department's annual review of the contractor's efficiency and effectiveness in providing public transportation services. If the contractor fails to meet those goals or objectives, and fails to demonstrate a good faith effort for their accomplishment, the commission may rule the contractor ineligible to receive nonurbanized public transportation funding. However, the department will make all possible efforts to ensure continuity of service in that area to accommodate the needs of public transportation riders.

(i) The department will notify the contractor of any deficiencies noted in the annual review, and will allow the contractor a minimum grace period of one calendar year from the date of notification to correct those deficiencies. During the grace period, the department will make every reasonable effort to provide appropriate technical assistance to the RPT contractor.

(ii) If at the end of the grace period the deficiencies have not been corrected, the commission may by written order authorize the department to terminate funding to the RPT contractor. The RPT contractor may request a public hearing before the commission to present input on why termination is not warranted in accordance with the provisions of §1.5 of this title (relating to Public Hearing).

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

Issued in Austin, Texas, on December 23, 1993.

TRD-9333936

Diane L. Northam
Legal Administrative Assistant
Texas Department of Transportation

Effective date: January 13, 1994

Proposal publication date: October 15, 1993

For further information, please call: (512) 463-8630

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Contour:

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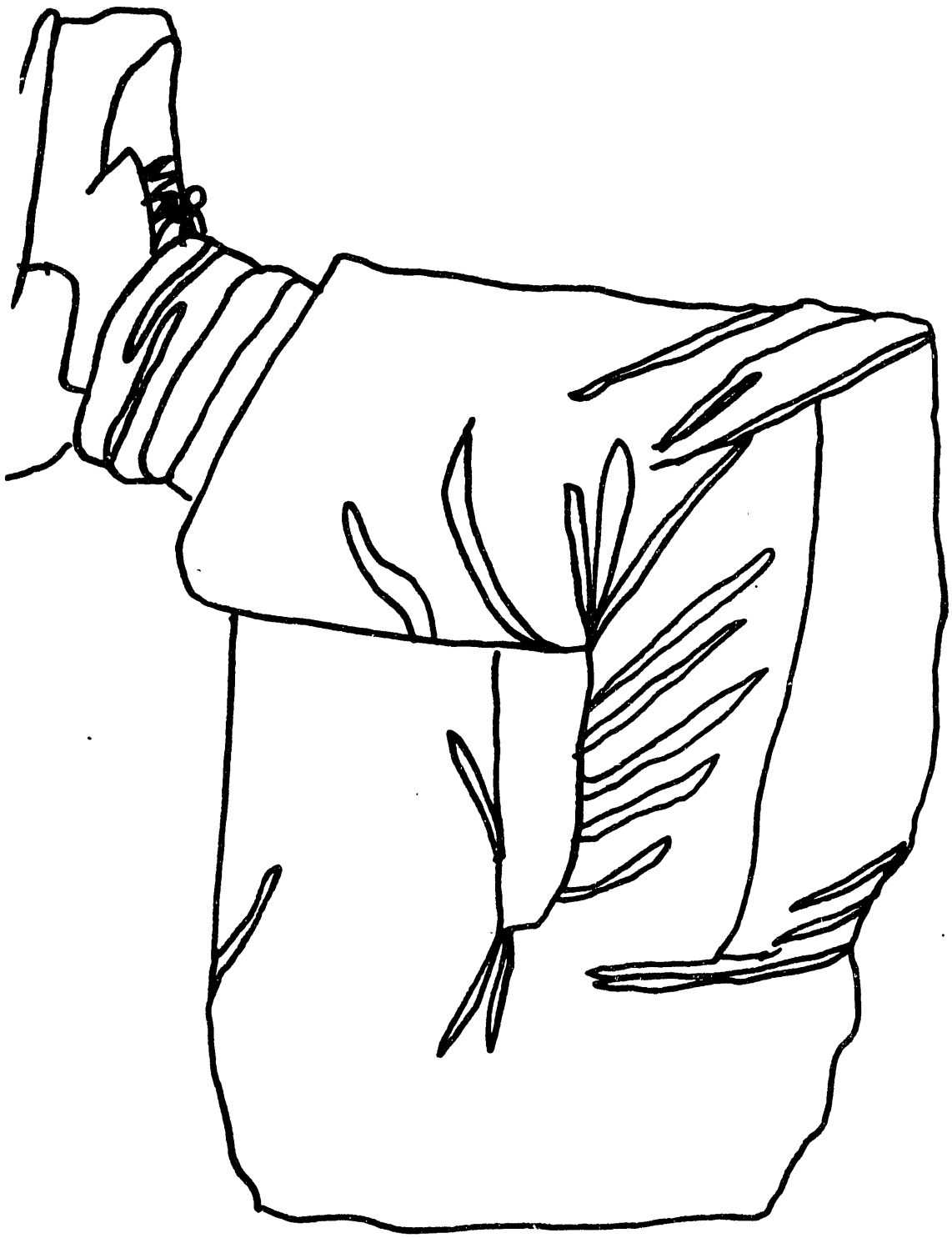

Name: Marcia Wooten
Grade: 9
School: Skyline High School, Dallas ISD

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the *Texas Register*.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas Department on Aging

Wednesday, January 5, 1994, 1:00 p.m.

1949 South IH-35, Third Floor Small Conference Room

Austin

According to the complete agenda, the Networking/Advocacy/Legislation Committee will consider and possibly act on: call to order; minutes of the November 17 and December 2, 1993 meetings; develop an agency position on health care reform and make recommendation to Board on Aging; develop a methodology to invite potential members of the Senior Advocacy Coalition and assign members of the committee their contact responsibilities; set date and agenda for first Senior Advocacy Coalition; general announcements; and adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: December 27, 1993, 10:05 a.m.

TRD-9333963

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Texas Department of Agriculture

Monday, January 10, 1994, 10:00 a.m.

Trans-Pecos Cotton Association, 2205 Bickley Avenue

Pecos

According to the complete agenda, the department will hold a public hearing to take public comment on proposed changes to the department's Pink Bollworm Quarantine regulations as published in the *Texas Register* on December 17, 1993 (18 TexReg 9961).

Contact: David Davis, P.O. Box 12847, Austin, Texas 78711, (512) 463-0709.

Filed: December 29, 1993, 3:58 p.m.

TRD-9334070

Tuesday, January 11, 1994, 8:00 a.m.

St. Ambrose Hall, Highway 87

Wall

According to the complete agenda, the Texas Boll Weevil Eradication Foundation will hold a public hearing in accordance with the Texas Agriculture Code Annotated, §74.114 (1994 Supplement), to provide information to the public regarding the proposed eradication program to be implemented in the proposed Southern Rolling Plains Boll Weevil Eradication Zone.

Contact: Frank Myers, Route 1, Box 7, Reydon, Oklahoma 73660, (405) 655-4621.

Filed: December 29, 1993, 3:58 p.m.

TRD-9334069

Tuesday, January 11, 1994, 3:00 p.m.

TexaSweet Building, 3301 North Ware Road

McAllen

According to the complete agenda, the Texas Citrus Producers Board will call the meeting to order; approval of minutes of last meeting; review and approval of financial statements; discussion and action: consultant expenses; employment of technician; review status and possible role of TCPB in national effort to renew registration of SOPP/OPP; and other business.

Contact: Ray Prewett, P.O. Box 2648, McAllen, Texas 78502-2648, (512) 463-7583.

Filed: December 29, 1993, 3:05 p.m.

TRD-9334064

Thursday, January 13, 1994, 8:00 a.m.

O.D.H.S. Hall, FM 2133

Rowena

According to the complete agenda, the Texas Boll Weevil Eradication Foundation will hold a public hearing in accordance with the Texas Agriculture Code Annotated, §74.114 (1994 Supplement), to provide information to the public regarding the proposed eradication program to be implemented in the proposed Southern Rolling Plains Boll Weevil Eradication Zone.

Contact: Frank Myers, Route 1, Box 7, Reydon, Oklahoma 73660, (405) 655-4621.

Filed: December 29, 1993, 3:58 p.m.

TRD-9334068

Tuesday, January 18, 1994, 10:00 a.m.

Board Room, 233 West Twohig

San Angelo

According to the complete agenda, the Texas Sheep and Goat Commodity Board will hear opening remarks; review and approval: minutes of last meeting; fiscal affairs; reports and election of officers for 1994 fiscal year; discussion and action: new business; unfinished business; scheduling of next meeting; discussion: other business; and adjourn.

Contact: Minnie Savage, 233 Twohig, San Angelo, Texas, (915) 659-8777.

Filed: December 29, 1993, 3:05 p.m.

TRD-9334065

Tuesday, February 15, 1993, 10:00 a.m. (Rescheduled from Tuesday, December 21, 1993, 10:00 a.m.)

Texas Department of Agriculture, 1700 North Congress Avenue, Room 928B

Austin

According to the agenda summary, the Office of Hearings will hold an administrative hearing to review alleged violation of 4 TAC §§6.1-6.4 by Joe Losack.

Contact: Joyce C. Arnold, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668.

Filed: December 21, 1993, 2:02 p.m.

TRD-9333857

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Texas Commission on Alcohol and Drug Abuse

Wednesday, January 5, 1994, 5:30 p.m.

710 Brazos, Perry Brooks Building, Eighth Floor Conference Room

Austin

According to the complete agenda, the Grant and Contract Review Committee and Criminal Justice Review Committee will call the meeting to order; noncompetive negotiation of award; treatment alternatives to incarceration fiscal year 1993; and adjourn.

Contact: Steve Castilas and Lynn Brunn-Shank, 710 Brazos, Austin, Texas 78701-2576, (512) 867-8265.

Filed: December, 28, 1993, 9:17 a.m.

TRD-9333987

Wednesday-Thursday, January 5-6, 1994, 9:00 a.m.

710 Brazos, Perry Brooks Building,

Austin

According to the complete agenda, the Board of Commissioners will call to order; meet in executive session to interview applicants for the executive director position, reconvene and adjourn.

Contact: Carmelita Cabello, 710 Brazos, Austin, Texas 78701-2576, (512) 867-8710

Filed: December 22, 1993, 2.18 p m.

TRD-9333899

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Texas Commission for the Blind

Friday-Saturday, January 14-15, 1994, 10:00 a.m. and 8:30 a.m. respectively.

Doubletree Hotel, 6505 IH-35 North

Austin

According to the complete agenda, the Consumer Advisory Committee will welcome and Housekeeping by CAC Chairman; review and approval of minutes; committee planning session, review proposed revisions to CAC organization and policy; meet with executive director; report from TCB simplification task force; committee work session, review agency response to consumer comments in 1993 strategic plan; regional issues; report on consumer/family training at CCRC; consumer affairs update; and on Saturday: housekeeping by CAC Chairman; CAC discussion/recommendations for consumer forums; and CAC report to the executive director.

Contact: Andrew A. Wier, 4800 North Lamar Boulevard, Austin, Texas 78756, (512) 459-2615.

Filed: December 23, 1993, 9:12 a.m.

TRD-9333913

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Texas Certified Self-Insurer Guaranty Association

Wednesday, January 5, 1994, 1:00 p.m.

Rooms 910-911, Southfield Building, 4000 South IH-35

Austin

According to the agenda summary, the association will call the meeting to order; approval of minutes; hear discussion and possible act on the following applicants: Willamette Industries, Inc., AAA Cooper Transportation, VF Corporation, The Sherwin-Williams Company, American Telephone and Telegraph Company, Union Pacific Resources Company and Subsidiary, and International Paper Company and Subsidiary; hear discussion on rules for action including approval and/or adoption; bylaws of the Association; hear discussion of future public meetings; and adjourn.

Contact: Todd K Brown, 4000 South IH-35, Austin, Texas 78704, (512) 440-5690

Filed: December 28, 1993, 1:28 p.m.

TRD-9333997

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Council on Competitive Government

Wednesday, December 29, 1993, 3:00 p.m.

Central Services Building, Room 402

Austin

Emergency Meeting

According to the agenda summary, the Council on Competitive Government considered protest regarding the Council's award of the contract to the General Services Commission relating to the transfer of the Comptroller's print shop operations; and public comment.

Reason for Emergency: It was critical that the proposed contract be implemented by January 1, 1994. In order to commence the contract by that date the Council must meet to resolve the protest. There was no way to anticipate a protest being filed in this matter.

Contact: Judith M. Porras, 1711 San Jacinto, Austin, Texas 78701, (512) 463-3446.

Filed: December 28, 1993

TRD-9334003

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Texas State Board of Examiners of Professional Counselors

Friday, January 7, 1994, 9:00 a.m.

Suite 256, 420 Decker Drive

Irving

According to the complete agenda, the Complaints Committee will discuss and possibly act on: agreed order concerning the license of D.S.T.; and pending complaints.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: December 21, 1993, 4:00 p.m.

TRD-9333873

Saturday-Sunday, January 8-9, 1994, 8:30 a.m.

Room S-402, The Exchange Building, 8407 Wall Street

Austin

According to the complete agenda, the Rules Committee will discuss and possibly act on: comments on proposed rule amendments and changes to proposed rules (22 TAC, Chapter 681); and submission of proposed rules to the Texas State Board of

Examiners of Professional Counselors for final adoption. (Note: The committee will meet on Sunday, January 9, 1994 only if there is pending business from Saturday, January 8, 1994).

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: December 21, 1993, 3:59 p.m.

TRD-9333872

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Texas Department of Criminal Justice

Tuesday, December 28, 1993, 10:00 a.m.

Telephone conference call open to the public in Austin at 209 West 14th Street, Room 500 and in Huntsville at the Texas Department of Criminal Justice, Administrative Complex, Spur 59 off Highway 75 North, Room 203.

Austin and Huntsville

Emergency Meeting

According to the complete agenda, the Board of Criminal Justice, Subcommittee on Construction, will hold an emergency telephone conference call to discuss staff recommendations and approve contract awards for construction management firms. Conference call authorized under Section 551.123, Texas Government Code.

Reason for Emergency: The emergency status was necessary due to urgent necessity for expedited action on all aspects of prison consturction to alleviate dangerously high levels of crowding in county jails.

Contact: Susan Power-McHenry, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250

Filed: December 27, 1993, 3:26 p.m.

TRD-9333983

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Texas Education Agency (TEA)

Thursday, January 6, 1994, 9:00 a.m.

Room 2-170, William B. Travis Building, 1701 North Congress Avenue

Austin

According to the complete agenda, the State Board of Education (SBOE) Ad Hoc Committee on Communications will discuss the charge of the committee; and the establishment of effective communication and exchange of information among entities involved with public education.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: December 29, 1993, 3:58 p.m.

TRD-9334067

Thursday, January 6, 1994, 10:30 a.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

According to the agenda summary, the State Board of Education (SBOE) Committee of the Whole will hear public testimony; commissioner's overview of January 1994 SBOE meeting; academic excellence indicator system parent/family report card advisory committee; presentation of report of SBOE Task Force on Early Childhood and Elementary Education; discussion of SBOE procedures for taking public testimony; discussion of teacher and administrator proficiencies for educator preparation programs; request for approval for education for Self-Responsibility supplementary materials addressing drug abuse prevention and nutrition education; request for approval of action to direct the commissioner of education to cease work on the revision of education for Self-Responsibility I; prevention of school-age pregnancy and education for Self-Responsibility III; prevention of HIV/AIDS and other communicable diseases; and discussion of pending litigation. This discussion of pending litigation will be held in executive session in accordance with §551.071(1) (A), Texas Government Code, and will be held in Room 1-103.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: December 23, 1993, 3:42 p.m.

TRD-9333953

Thursday, January 6, 1994, 1:00 p.m.

Room 1-111, William B Travis Building, 1701 North Congress Avenue

Austin

According to the agenda summary, the State Board of Education (SBOE) Committee on Personnel will hear public testimony; 19 TAC Chapter 97, Planning and Accreditation; petition for adoption of a rule change in the Nomination of trustee candidates for Fort Sam Houston ISD; request for SBOE confirmation of the membership for the committee on teacher appraisal/assessment; initial approval requests from Region 19 Education Service Center (ESC) and from Texas A&M University for an alternative certification program for teachers; recommendation for appointment to the Lackland ISD Board of Trustees; recommendation for appointment to the Fort Sam Houston ISD Board of Trustees; 19 TAC §137.414, Teaching Certificates for Persons with a Criminal Background; request from Region IV ESC for approval of additional alternative certification endorsement in driver education; request approval of education preparation programs for Our Lady of the Lake University; The University of Texas at Brownsville, and the University of Houston, Clear Lake; progress reports on Fort Worth ISD and Prairie View A&M University alternative certification programs; announcement of the request for applications for centers for professional development and technology; status report on the accreditation of school districts.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: December 23, 1993, 3:43 p.m.

TRD-9333954

Thursday, January 6, 1994, 1:00 p.m.

Room 1-100, William B. Travis Building, 1701 North Congress Avenue

Austin

According to the agenda summary, the State Board of Education (SBOE) Committee on Students will hear public testimony; 19 TAC Chapter 101, Assessment; adoption of five-year plan for assessment and procedures for setting standards; approval of objectives for English II end-of-course examination; 19 TAC Chapter 89, Subchapter G, Special Education; 19 TAC §61. 49, Safe School Checklist; 19 TAC §89.6, Testing and Classification of Students; 19 TAC §89.120, Equivalency Examination Pilot Program; bilingual education update; report on status of recommended high school program; discussion of proposed new 19 TAC §75.197, Texas Advanced Placement Incentive Program; proposed advanced high school program; and discussion of amendments to the University Interscholastic League (UIL) constitution and contest rules to be effective 1994-1995.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: December 23, 1993, 3:43 p.m.

TRD-9333955

Thursday, January 6, 1994, 1:00 p.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

According to the agenda summary, the State Board of Education (SBOE) Committee on School Finance will hear public testimony; school finance update; 19 TAC §175.127, Minimum Standards for Operation of Proprietary Schools; 19 TAC Chapter 61, Subchapter H, School Facilities Standards; report on status of back-ordered textbooks;

proposed changes to textbook adoption process; status report of the financial accountability project; annual report of the school financial audits division; and status report on proprietary schools.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: December 23, 1993, 3:43 p.m.

TRD-9333956

Friday, January 7, 1994, 8:30 a.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

According to the agenda summary, the State Board of Education (SBOE) Committee on Long-Range Planning will hear public testimony; expert session-technological futures in education; "School-to-Work Transition: A Texas Perspective"; proposal for development of the SBOE long-range plan for public education, 1995-1998; update on high school policy statement; school safety and violence prevention initiatives; update on revision of the Texas Education Code; and discussion of federal governmental relations activities.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: December 23, 1993, 3:44 p.m.

TRD-9333957

Friday, January 7, 1994, 8:30 a.m.

Room 1-109, William B. Travis Building, 1701 North Congress Avenue

Austin

According to the agenda summary, the State Board of Education (SBOE) Committee on the Permanent School Fund (PSF) will hear public testimony; recommend PSF Investment program for January and the funds available for the program; discussion on asset allocation study to establish strategic and tactical operational procedures for the PSF; review of PSF securities transactions and the investment portfolio; and report of the PSF executive administrator.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: December 23, 1993, 3:44 p.m.

TRD-9333958

Friday, January 7, 1994, 1:00 p.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

According to the agenda summary, the State Board of Education (SBOE) will discuss approval of the November 12, 1993 SBOE minutes; public testimony; SBOE resolutions; approval of consent agenda; academic excellence indicator system parent/Family Report Card Advisory Committee, education for Self-Responsibility (ESR) supplementary materials addressing drug abuse prevention/nutrition education; request for approval to direct the commissioner of education to cease work on revision of ESR I-prevention of school-age pregnancy and ESR III-prevention of HIV/AIDS and other communicable diseases; 19 TAC Chapter 97, Planning and Accreditation; petition for adoption of a rule change in nomination of trustee candidates for Fort Sam Houston ISD; request for SBOE confirmation of membership for committee on teacher appraisal/assessment; alternative certification programs for Region 19 Education Service Center and Texas A&M University; 19 TAC Chapter 101, Assessment; adoption of vie-year plan for assessment and procedures for setting standards; approval of objectives for English II end-of-course examination; 19 TAC Chapter 89, Subchapter G, Special Education; 19 TAC §61. 49, Safe School Checklist; 19 TAC §89.6, Testing and Classification of Students; 19 TAC §89.120, Equivalency Examination Pilot Program; 19 TAC §175.127, Minimum Standards for Operation of Proprietary Schools; 19 TAC Chapter 61, Subchapter H, School Facilities Standards; report on status of back-ordered textbooks; recommended Permanent School Fund Investment Program for January and the funds available for the program; and information on agency administration.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: December 23, 1993, 3:44 p.m.

TRD-9333959

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Advisory Commission on State Emergency Communications

Wednesday, January 5, 1994, 8:30 a.m.

John H. Reagan Building, Room 104, 15th and Congress Avenue

Austin

According to the complete agenda, the Poison Control Coordinating Committee will call the meeting to order; recognize guests; hear public comment; discuss and consider mission of committees and its short-term goals (Fiscal Year 1995) and long-term goals (1996-2001); discuss and consider priorities for first available surcharge monies; review and discuss proposed rule on ACSEC/TDH criteria and process for contractual arrangements with Poison Control Centers; review and discuss Poison Control Answering Points (PCAPs) telephone network planning and system design; discuss and consider adoption of committee bylaws; finalize advisory committee comments to be presented at ACSEC commission meeting on January 12, 1994, and adjourn. Persons requesting interpreter services for the hearing- and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: December 28, 1993, 1:34 p.m.

TRD-9333999

Wednesday, January 5, 1994, 10:00 a.m.

John H. Reagan Building, Room 104, 15th and Congress Avenue

Austin

According to the complete agenda, the Poison Control Coordinating Committee will call the meeting to order; recognize guests; hear public comment, hear staff report on current status of poison control program; overview of various poison control committees and their roles; discuss and consider filing as proposed rule ACSEC/TDH criteria and process for contractual arrangements with Poison Control Centers; discuss and consider Poison Control Answering Points (PCAPs) telephone network planning and system design, discuss and consider travel reimbursement for PCAP (Poison Control Centers) personnel, discussion of other ACSEC/Poison Activities, and adjourn Persons requesting interpreter services for the hearing- and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: December 28, 1993, 1.34 p.m.

TRD-9333998

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Texas Employment Commission

Tuesday, January 4, 1994, 9:00 a.m.

101 East 15th Street, Texas Employment Commission Building, Room 644

Austin

According to the agenda summary, the Texas Employment Commission will hold a meeting to consider prior meeting notes, executive session to consider Fannie B Agbasoga v. Texas Employment Commission; and Bernardino Gonzales, et al v. James Kaster, et al; actions, if any, resulting from executive session, staff reports; inter-

nal procedures of commission appeals; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Dockets 52 and one; and set date of the next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: December 27, 1993, 4:10 p.m.

TRD-9333982

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Texas Commission on Fire Protection

Wednesday-Saturday, January 12-15, 1994, 9:00 a.m.

3006B Longhorn Boulevard

Austin

According to the agenda summary, the Funds Allocation Advisory Committee will discuss approval of minutes of previous meeting; election of committee chairman and vice-chairman; discussion of monitoring reports; discussion and possible action on applications previously reviewed by the committee for which no recommendations were made to the commission; discussion and possible action on applications for assistance submitted by August 27, 1993; discussion and recommendation on the interest rate to be used for loans under the Fire Department Emergency Board; discussion and possible action on changes to the rules of the Fire Department Emergency Program; discussion and possible action regarding changes to the instructions, application, and contract forms used in the Fire Department Emergency Program; and discussion of equipment donation program.

Contact: Jack Woods, 3006B Longhorn Boulevard, Austin, Texas 78758, (512) 873-1700.

Filed: December 28, 1993, 4:01 p.m.

TRD-9334012

Wednesday-Friday, January 13-15, 1994, 9:00 a.m.

3006B Longhorn Boulevard

Austin

According to the complete agenda, the Fire Alarm Advisory Council will discuss and possibly act on proposed rule amendments, new sections, or repeals under 37 TAC Chapter 531 concerning fire detection and fire alarm devices and systems.

Contact: Jack Woods, 3006B Longhorn Boulevard, Austin, Texas 78758, (512) 873-1700.

Filed: December 28, 1993, 4:02 p.m.

TRD-9334013

Thursday-Saturday, January 13-15, 1994, 9:00 a.m.

3006B Longhorn Boulevard

Austin

According to the agenda summary, the commission will meet in executive sessions; hear discussion regarding impact of Senate Bill 383; discussion/possible action regarding new or reappointments to advisory councils and committees; matters from the Fire Protection Personnel Advisory Committee; discussion/possible action regarding rules relating to eligibility of persons with criminal backgrounds for certification, registration, licensing, or holding a permit; discussion/possible action regarding new rules under 37 TAC 401; discussion regarding intent of Senate Bill 1110; discussion/possible action regarding adoption of general policy or resolution relating to rule-making authority, frequency, effective dates, and appropriateness of all rules; discussion/possible action regarding policies and procedures concerning fire department inspections/investigations of complaints; recommendations regarding staffing studies; recommendations from the Funds Allocation Advisory Committee; final adoption of amendments to rules under 37 TAC 521 and 37 TAC 531; amendments to rules under 37 TAC 501; final adoption of new rules under 37 TAC 503; reports/discussion from Mutual Aid Committee, Firemen's Training School Advisory Board rep; discussion/possible action regarding formation of a statewide fire code committee; matters from the Volunteer Fire Fighter Advisory Committee; matters from the executive director; new matters from the public; and discussion/possible action on future meeting dates.

Contact: Carol Menchu, 3006B Longhorn Boulevard, Austin, Texas 78758, (512) 873-1700.

Filed: December 28, 1993, 4:01 p.m.

TRD-9334010

Friday-Sunday, January 14-16, 1994, 9:00 a.m.

3006B Longhorn Boulevard

Austin

According to the agenda summary, the Volunteer Fire Fighter Advisory Committee will call the meeting to order; hear discussion/approval of previous minutes; election of officers; discussion/possible action on recommendations from meeting with St. Firemen's and Fire Marshals' Association certification board; consideration/discussion of matters from committee members and public; discussion/possible action on proposed new rules and rule changes; discussion and possible action: concerning rules for volunteer fire and arson investigators; concerning rules for volunteer fire inspectors; on report requested from staff concerning possible incentives for participation in commission volunteer certification program; concerning contract to administer the commission volunteer certification program; concerning possible rule changes required by Senate Bill 1110; on recommendation to authorize publication of draft of committee minutes on commission bulletin board system prior to approval by the committee; and future meeting dates, times, and agenda items.

Contact: Jack Woods, 3006B Longhorn Boulevard, Austin, Texas 78758, (512) 873-1700.

Filed: December 28, 1993, 4:01 p.m.

TRD-9334011

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General Land Office

Tuesday, January 4, 1994, 10:00 a.m.

1700 North Congress Avenue, Stephen F. Austin Building, Room 831

Austin

According to the complete agenda, the School Land Board will hold a meeting for approval of previous board meeting minutes; pooling applications, Huff (2, 920' Sand), Refugio County; Big S(Strawn) and GG (Strawn 5400), King County; applications to lease highway rights of way for oil and gas, Washington, Robertson and Fayette Counties; coastal public lands; commercial lease application, assignment, renewals, Clear Lake Channel, Harris County; Clear Lake, Galveston County; Lavaca Bay, Calhoun County; Clear Lake, Harris County; easement applications and renewals, Aransas Bay, Aransas County; Laguan Madre, Cameron County; Galveston Bay, Chambers County; Clear Lake, Harris County; structure permit terminations, Laguna Madre, Cameron County; Laguan Madre, Kenedy County; structure permit requests, Laguna Madre, Cameron County; Laguna Madre, Kenedy County; structure permit renewals. Aransas Bay, Aransas County; Bastrop Bay, Brazoria County; Chocolate Bay, Brazoria County; Espiritu Santo, Calhoun County; Laguna Madre, Kenedy County; Laguna Madre, Kleberg County; Laguna Madre, Nueces County; Laguna Madre, Willacy County; Titlum Tatlum, Brazoria County; West Bay, Brazoria County; structure permit amendment, Laguna Madre, Kenedy County; Executive Session-pending and proposed litigation; executive session-direct sale, El Paso County; open session-direct sale, El Paso County; Executive Session-direct sale, Hidalgo County; open session-direct sale, Hidalgo County; executive session-acquisition, Hidalgo County open session-acquisition, Hidalgo County; executive session-land trade/acquisition, Cameron

County; open session-land trade/acquisition, Cameron county.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836. Austin, Texas 78701, (512) 463-5016.

Filed: December 27, 1993, 2:55 p.m.

TRD-9333975

Wednesday, January 12, 1994, 3:00 p.m.

1700 North Congress Avenue, Stephen F. Austin Building, Room 831

Austin

According to the complete agenda, the Veterans Land Board will discuss approval of the December 8, 1993, minutes of the Veterans Land Board meeting; approval of the appointment of assistant executive secretary to the board; consideration of the request of Christopher Megliorino, for reinstatement of his eligibility to participate as a first time buyer in the land program; consideration of and action on Resolution: authorizing the issuance and sale of State of Texas Veterans Housing Assistance Refunding Bonds, Series 1995, in an amount not to exceed $88,490,000 (the "Bonds"); approving the sale of bonds pursuant to a bond purchase contract to the following underwriting syndicate: Smith Barney Shearson Inc.; Alex, Brown and Sons, Inc.; Artemis Capital Group, Inc.; and R. Beal and Company; authorizing preparation of a preliminary official statement with respect to the bonds; designating the treasurer of the State of Texas as the initial paying agent with respect to the bonds; designating Smith Barney Shearson, Inc. as initial remarketing agent and approving remarketing agreement; designating the Treasurer of the State of Texas as initial liquidity provider and approving liquidity agreement; designating AIG Financial Products Corporation as qualified swap provider and approving interest rate swap agreement; and authorizing other matters in connection therewith; consideration of an action on Resolution authorizing staff to: proceed with the signing of documents to enter into an interest rate swap agreement with AIG Financial Products Corporation; including the collateral custodian agreement required thereby; designate a tender agent and approve and execute a tender agent agreement; take all action necessary to complete the issuance and sale of State of Texas Veterans Housing Assistance Refunding Bonds, Series 1995; and consideration of bond counsel fees with respect to the State of Texas Veterans Housing Assistance Bonds, Series 1994A/B transactions.

Contact: Karen Pratt, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-5171.

Filed: December 28, 1993, 2:33 p.m.

TRD-9334001

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Office of the Governor

Friday, January 7, 1994, 10:00 a.m.

Capitol La Quinta Inn, 300 East 11th Street, Room 310

Austin

According to the complete agenda, the Texas Crime Stoppers Advisory Council, Criminal Justice Division will call the meeting to order; approval of minutes; report on public speaking school; state conference update; program manager's report; report on special topics school; report on regional training schools; and adjourn.

Contact: Paula Crampton, P.O. Box 12428, Austin, Texas 78711, (512) 463-1784.

Filed: December 28, 1993, 8:24 a.m.

TRD-9333985

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Texas Department of Health, Home and Community

Friday, January 14, 1994, 10:00 a.m.

Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

According to the complete agenda, the Support Services Advisory Council will discuss approval of the minutes from the previous meeting; discuss and possibly act on: public comments to proposed home and community support services agency rules; criminal history checks for home and community support services agency; memorandums of understanding required by Health and Safety Code, Chapter 142; attendant care programs and home and community support services agency licensure; and discussion and comments not requiring council action.

Contact: Sharon Murdoch, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6670. For ADA assistance, call Richard Butler at (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: December 21, 1993, 4:00 p.m.

TRD-9333874

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Health and Human Services Commission

Thursday, January 13, 1994, 9;15 a.m.

701 West 51st Street, Winters Building

Austin

According to the complete agenda, the Medical Care Advisory Committee will make opening comments; state medicaid director's comments; approval of minutes; nursing facility waiver rule changes and additions; amendment to the reimbursement methodology rules for the community living assistance and support services (CLASS) waiver program and CLASS task force recommendations; early periodic screening, diagnosis, and treatment (EPSDT) program; private duty nursing provided by home health agencies; outpatient mental health benefits; consent to medical treatment in nursing facilities; income producing property in the AFDC and food stamp programs; adjustment to the needs amount in the AFDC program; technical amendments to the LTC nursing facility requirements for licensure and medicaid certification; status report on implementation of nursing facility waiver program; open discussion; next meeting; and adjournment.

Contact: Geri Willems, 4807 Spicewood Springs Road, Building 4, Austin, Texas 78759, (512) 502-3256.

Filed: December 29, 1993, 3:05 p.m.

TRD-9334063

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Texas Higher Education Coordinating Board

Friday, January 7, 1994, 9:00 a.m.

University of North Texas Campus, Administration Building

Denton

According to the complete agenda, the Campus Planning Committee will view and/or hear presentations from the University of North Texas and Midwestern State University, who have proposals to be considered at the January 20-21, 1994, Coordinating Board meeting.

Contact: Landrum Hickman, P.O. Box 12788, Austin, Texas 78711, (512) 483-6110.

Filed: December 29, 1993, 9:37 a.m.

TRD-9334042

Friday, January 7, 1994, 12:30 p.m.

San Angelo State University Campus, Administration Building

San Angelo

According to the complete agenda, the Campus Planning Committee will view/hear institutional presentations from San Angelo State University, Sam Houston State University, and Southwest Texas State University who have proposals to be considered at the January 20-21, 1994, Coordinating Board meeting.

Contact: Landrum Hickman, P.O. Box 12788, Austin, Texas 78711, (512) 483-6110.

Filed: December 29, 1993, 9:38 a.m.

TRD-9334043

Friday, January 7, 1994, 2:45 p.m.

University of Texas at San Antonio Campus, Administration Building

San Antonio

According to the complete agenda, the Campus Planning Committee will view/hear institutional presentations, via video hookup, from UT-San Antonio, UT-MB-Galveston, and UT System who have proposals to be considered at the January 20-21, 1994, Coordinating Board meeting.

Contact: Landrum Hickman, P.O. Box 12788, Austin, Texas 78711, (512) 483-6110.

Filed: December 29, 1993, 9:38 a.m.

TRD-9334044

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Texas Department of Human Services

Thursday, January 6, 1994, 9:30 a.m.

701 West 51st Street, Fifth Floor, West Tower, Conference Room 5W

Austin

According to the complete agenda, the Subcommittee meetings held between 9:30-10:50 a.m., room numbers will be posted on the First Floor of the Winters Building. The Client Self-Support Services Advisory Council convenes at 11:00 a.m., agenda follows: call to order; approval of minutes; deputy commissioner's remarks; San Antonio AFDC Post-Employment Services demonstration grant-rule amendment; memorandum of understanding between DHS and the Department of Commerce on coordination of workforce development activities; income producing property in the AFDC and Food Stamp programs; adjustments to the needs amounts in the AFDC program; video-Making Connections; photos for identification cards; CSSAC member goals for 1994/1995; strategic plan; and adjourn.

Contact: Toni Lemm, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-4147.

Filed: December 29, 1993, 11:20 a.m.

TRD-9334048

Thursday, January 6, 1994, 10:00 a.m.

701 West 51st Street, First Floor, Public Hearing Room

Austin

According to the complete agenda, the Services to Persons with Disabilities Subcommittee will welcome everyone and make introductions and will consider: approval of minutes; comments by chair; strategic planning; comments by civil rights director; DATCIL contract update; nursing facility waiver update; OSPD activities; ADAC agenda items; next meeting; and adjournment.

Contact: D. J. Johnson, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3533.

Filed: December 22, 1993, 1:20 p.m.

TRD-9333894

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Texas Department of Insurance

Wednesday, January 5, 1994, 9:00 a.m.

333 Guadalupe Street, Tower II, Fourth Floor

Austin

According to the agenda summary, the department will consider whether disciplinary action should be taken against Great American Life Insurance Company, Dallas, which holds a Certificate of Authority.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: December 23, 1993, 10:04 a.m.

TRD-9333923

Wednesday, January 5, 1994, 1:00 p.m.

333 Guadalupe Street, Tower II, Fourth Floor

Austin

According to the agenda summary, the department will consider whether disciplinary action should be taken against Larry Loyd Mead, Sulphur Springs, who holds a Group I, Legal Reserve Life Insurance Agent's license, a Local Recording Agent's License and a Variable Contract Agent's license.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: December 23, 1993, 10:04 a.m.

TRD-9333922

Thursday, January 6, 1994, 1:00 p.m.

300 West 15th Street, Fourth Floor, Suite 408

Austin

According to the agenda summary, the department will consider whether disciplinary action should be taken against Troy Williams, Dallas, who holds a Group I, Legal Reserve Life Insurance Agent's license and a Local Recording Agent's license.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: December 23, 1993, 10:04 a.m.

TRD-9333924

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Bill Blackwood Law Enforcement Management Institute of Texas

Friday, January 14, 1994, 8:30 a.m.

Criminal Justice Center, Sam Houston State University

Huntsville

According to the complete agenda, the Advisory Board will call the meeting to order; introduction of board members; opening remarks and other introductions; overview of agenda; historical perspective on LEMIT; approve minutes of last meeting; rules for board operation; role of the advisory board; report on transition from TCLEOSE to Sam Houston State University; financial report; report on Graduate Management Institute; upcoming events, activities, and programs; issues for board consideration; election of chairperson, vice-chair, secretary; open discussion; dates of next board meetings; closing remarks; and adjourn.

Contact: Dr. Gerald Williams, P.O. Box 2296, Huntsville, Texas 77341-2296.

Filed: December 23, 1993, 2:45 p.m.

TRD-9333849

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Texas State Library and Archives Commission

Thursday, January 6, 1994, 9:00 a.m.

Joe C. Thompson Conference Center, 26th and Red River Streets, Room 3.102

Austin

According to the complete agenda, the Library Systems Act Advisory Board will make introductions and welcome; discussion of Access Texas document; discussion of proposed implementation plan; discussion of initiatives for next legislative session; discussion of Sunset review; discussion of project link; and adjournment.

Contact: Ed Seidenberg, P.O. Box 12927, Austin, Texas 78711, (512) 463-5459.

Filed: December 22, 1993, 1:41 p.m.

TRD-9333895

Thursday, January 6, 1994, 9:00 a.m.

Joe C. Thompson Conference Center, 26th and Red River Streets, Room 3.102

Austin

According to the complete agenda, the Library Services and Construction Act Advisory Council will make introductions and welcome; discussion of Access Texas document; discussion of proposed implementation plan; discussion of initiatives for next legislative session; discussion of Sunset review; discussion of project link; and adjournment.

Contact: Ed Seidenberg, P.O. Box 12927, Austin, Texas 78711, (512) 463-5459.

Filed: December 22, 1993, 1:41 p.m.

TRD-9333895

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Texas Natural Resource Conservation Commission

Thursday, January 13, 1994, 10:30 a.m.

Earl Rudder Conference Center, Texas A&M University

College Station

According to the agenda summary, the Weather Modification Advisory Council will review the minutes of the September 9, 1993, council meeting; discuss re-establishment of the Weather Modification Council; discuss commission resolution in response to Senate Bill 383; discuss appointment of new member; discuss council's role within watershed management division; discuss staff reports; discuss commission action on 1994 weather modification license renewal applications; discuss summary of operations of the Colorado River Municipal Water District (Big Spring) during 1993; discuss status of weather modification research program; discuss summary of research activities in 1993; discuss outlook for research in 1994; award of NOAA funds for research in 1994; discuss status of Bureau of reclamation's weather modification research program; review of Rosenfeld-Woodley paper, "Effects of Cloud Seeding in West Texas: Additional Results and New Insights," published in the December 1993 issue of the Journal of Applied Meteorology; discuss other business including resolution honoring former Vice-Chairman James R. Scoggins; and scheduling of next meeting, in conjunction with the annual meeting of the Weather Modification Association in San Antonio, May 11-13, 1994.

Contact: George W. Bomar, P.O. Box 13087, Austin, Texas 78711-3087, (512) 371-6382.

Filed: December 22, 1993, 3:16 p.m.

TRD-9333903

Tuesday, January 14, 1993, 9:00 a.m.

John H. Reagan Building, 105 West 15th Street, Room 103

Austin

According to the agenda summary, the Waste Reduction Advisory Committee will discuss the following: administrative items; subcommittee reports; subcommittee reports; implementation of Waste Reduction Policy Act; Clean Texas 2000; and activities of the Committee for 1994.

Contact: Selma D'Mello, 1700 North Congress Avenue, Suite 237-1, Austin, Texas 78701, (512) 463-8794 or Fax (512) 475-4599.

Filed: December 30, 1993, 9:13 a.m.

TRD-9334073

Tuesday, January 25, 1994, 3:30 p.m.

505 North Avenue Q, Sheraton Inn, Mesa Room

Lubbock

According to the agenda summary, the commission will consider an application by Innovex, Inc. for Proposed Permit Number MSW2230 authorizing a Type V (grease and grit trap) municipal solid waste management facility. The waste management facility is to be located on a 1.14 acre site at 501 North Avenue K in Lubbock, Lubbock County, Texas

Contact: Ann Scudday or Charles Stavley, P.O. Box 13087, Austin, Texas 78711, (512) 239-6687 or (512) 239-6688.

Filed: December 28, 1993, 4:50 p.m.

TRD-9334016

Friday, January 28, 1994, 10:00 a.m.

Humble Civic Center-located in the Main Street Park-at the intersection of Main Street and Houston Avenue

Humble

According to the agenda summary, the Office of Hearings Examiners will hold a hearing on Windy Hill Utilities, Inc.'s water and sewer rate increase effective October 25, 1993 for its service area located in Chambers, Harris, and Liberty Counties, Texas. Docket Number 30207-R.

Contact: Elizabeth Todd, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875.

Filed: December 29, 1993, 10:00 p.m.

TRD-9334071

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Board of Nurse Examiners

Tuesday-Wednesday, January 11-12, 1994, 8:00 a.m.

1812 Centre Creek Drive, Suite 203

Austin

According to the agenda summary, the Board of Nurse Examiners will receive minutes from the November meeting; September and November financial statement; 100 day report for Fiscal Year 1993; consider practice and compliance issues; consider education matters and receive a report from the Executive Director. The Board will receive reports from outside agency committees; hold an open forum on January 11, 1994, from 1:30-2:00 p.m., to receive input from interested parties; consider adoption of an amendment to rule 213; review the strategic plan; consider proposed amendment to §211, Bylaws; and consider ratification of proposed board orders. On January 12, 1994, from 10:00 a.m.-2: 00 p.m., the board will receive information on a legislative workshop.

Contact: Erlene Fisher, Box 140466, Austin, Texas 78714, (512) 835-8675.

Filed: December 22, 1993, 2:15 p.m.

TRD-9333897

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Texas Board of Pardons and Paroles

Monday-Wednesday, January 5, 1994, 1:30 p.m.

1550 East Palestine, Suite 100

Palestine

According to the agenda summary, the parole Board panel(s) of the Texas Board of Pardons and Paroles composed of three Board member(s) will hold a meeting to receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the Board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: December 23, 1993, 10:04 a.m.

TRD-9333926

Monday-Friday, January 3-7, 1994, 1:30 p.m.

2503 Lake Road, Suite #2

Huntsville

According to the agenda summary, the parole Board panel(s) of the Texas Board of Pardons and Paroles composed of three Board member(s) will hold a meeting to receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the Board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: December 23, 1993, 10:04 a.m.

TRD-9333927

Thursday, January 6, 1994, 9:30 a.m.

1212 North Velasco, Suite 201

Angleton

According to the agenda summary, the parole Board panel(s) of the Texas Board of Pardons and Paroles composed of three Board member(s) will hold a meeting to receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the Board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5407.

Filed: December 23, 1993, 10:05 a.m.

TRD-9333929

Thursday-Friday, January 6-7, 1994, 9:30 a.m.

1550 East Palestine, Suite 100

Palestine

According to the agenda summary, the parole Board panel(s) of the Texas Board of Pardons and Paroles composed of three Board member(s) will hold a meeting to receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the Board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: December 23, 1993, 10:04 a.m.

TRD-9333925

Thursday-Friday, January 6-7, 1994, 1:00 p.m. and 9:00 a.m. respectively.

Route 5, Box 258-A

Gatesville

According to the agenda summary, the parole Board panel(s) of the Texas Board of Pardons and Paroles composed of three Board member(s) will hold a meeting to receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the Board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: December 23, 1993, 10:05 a.m.

TRD-9333928

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Texas Parks and Wildlife Department

Tuesday, January 11, 1994, 9:00 a.m.

Parks and Wildlife Headquarters, Executive Office Conference Room, 4200 Smith School Road

Austin

According to the agenda summary, the Policy and Planning Committee of the Texas Parks and Wildlife Commission will hold a workshop; review of Parks and Wildlife Department Commission policy manual; and other business.

Contact: Andrew Samson, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: December 21, 1993, 4:46 p.m.

TRD-9333876

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Texas State Board of Plumbing Examiners

Monday, January 10, 1994, 9:00 a.m.

929 East 41st Street

Austin

According to the agenda summary, the Board will take roll call; recognize visitors; minutes of November meeting; hardship cases; Chris Maczka-Assistant Attorney General; interpretation of Rule 363.11(a)(5); endorsement of plumbers to install LP gas under contract with Texas Railroad Commission; report of approved schools teaching medical gas-PHCC and Texas Pipe trades; consideration of approval of certain groups to teach medical gas classes including curriculum and instructors; backflow prevention testing/testing programs, Austin facility/mobile unit; request for reassignment of master license number; financial report; administrator's report-master meter Texas Railroad Commission; examination report; field department report; request for staff travel approval; and continuing education for board members.

Contact: Mary Lou Lane, 929 East 41st Street, Austin, Texas 78751, (512) 458-2145.

Filed: December 23, 1993, 3:41 p.m.

TRD-9333952

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Texas State Board of Examiners of Psychologists

Tuesday, January 7, 1993, 4:00 p.m.

University of Texas, Education Building, Al Kiva Room, Martin Luther King and Speedway

Austin

According to the complete agenda, the Search Committee of the Board will meet to discuss applicants for the position of executive director.

Contact: Rebecca E. Forkner, 9101 Burnet Road, Suite 212, Austin, Texas 78758, (512) 835-2036.

Filed: December 27, 1993, 3:23 p.m.

TRD-9333977

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Public Utility Commission of Texas

Wednesday, January 5, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the commissioners will consider Docket Number 11735-application of Texas Utilities Electric Company for authority to change rates and investigation of the general counsel into the accounting practices of Texas Utilities Electric Company.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 28, 1993, 2:41 p.m.

TRD-9334004

Thursday, January 6, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the agenda summary, the commission will consider the following dockets: P-11445, P-11541, P-11833, 11769, 12118, 12206, and 12213.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 29, 1993, 11:34 a.m.

TRD-9334049

Thursday, January 6, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Revised agenda

According to the complete revised agenda, the commissioners will also Consider Docket 11819-petitions of South Texas Electric Cooperative, Inc. et al for authority to implement economic incentive riders.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 29, 1993, 1:55 p.m.

TRD-9334058

Friday, January 7, 1994, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a rescheduled prehearing conference on the merits in Docket Number 12495-complaint of absolute refrigeration mechanical service against United Telephone Company of Texas.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 23, 1993, 11:38 a.m.

TRD-9333943

Thursday, January 27, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Rescheduled from Wednesday, January 12, 1994

According to the complete agenda, the Hearings Division will hold a rescheduled prehearing conference in Docket Number 12362-TEX-LA Electric Cooperative of Texas, Inc. complaint against Texas Utilities Electric Company.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 29, 1993, 10:23 a.m.

TRD-9334047

Tuesday, February 1, 1994, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a second prehearing conference in Docket Number 12508-petition of the General Counsel to inquire into the reasonableness of the rates and services of United Telephone Company of Texas, Inc.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 28, 1993, 1:44 p.m.

TRD-9334000

Monday, February 7, 1994, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a hearing on the merits in Docket Number 11840-petition of Southwestern Bell Telephone Company and GTE Southwest, Inc. to provide extended area service to certain communities in the Lower Rio Grande Valley.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 22, 1993, 9:46 a.m.

TRD-9333886

Monday, May 2, 1994, 1:30 p.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a prehearing conference on the merits in Docket Number 12456-application on East Texas Electric Cooperative, Inc. to amend certificate of convenience and necessity for a proposed transmission line within Anderson, Houston, Cherokee, Smith, and Van Zandt counties.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 23, 1993, 11:36 a.m.

TRD-9333940

Monday, May 16, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a hearing on the merits in Docket Number 12456-application on East Texas Electric Cooperative, Inc. to amend certificate of convenience and necessity for a proposed transmission line within Anderson, Houston, Cherokee, Smith, and Van Zandt counties.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 23, 1993, 11:36 a.m.

TRD-9333941

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Railroad Commission of Texas

Wednesday, January 5, 1994, 8:30 a.m.

1701 North Congress Avenue, 12th Floor, Conference Room 12-126

Austin

According to the agenda summary, the commission will hold a hearing on the merits in Transportation Docket Number 0036670B9A, Application of 5-Byrd Enterprises, Inc, doing business as R&J Trucking Company, to amend SMC Certificate Number 36670, consideration of motion of rehearing. Discuss Motor Freight Circular Number 36089; Transportation Docket Number 0031658ZZT, Application Number 2 of Barbour Trucking Company, Inc., concerning various items in BMCB Tariffs 4-K and 35-K; TMTA Tariffs 6-G and 101-G; RCT Tariffs 8-P, 12-J, and 32-L-add Barbour Trucking Company as a participating carrier.

Contact: Craig Smith, P.O. Box 12967, Austin, Texas 78711, (512) 463-6702.

Filed: December 23, 1993, 11:36 a.m.

TRD-9333942

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Tuesday, January 18, 1994, 9:00 a.m.

1701 North Congress, 11th Floor, Conference Room 11-111

Austin

According to the complete agenda, the Liquefied Petroleum Gas Advisory Committee will call the meeting to order; presentation of National Fire Protection Association (NFPA) 54 and 58, presented by Gordon Frey of Enderby Gas; discuss training hours; including mandatory training; discuss reorganization of advisory committee memberships, and adjourn.

Contact: Thomas D. Petru, P.O. Box 12967, Austin, Texas 78711, (512) 463-6949.

Filed: December 28, 1993, 9:16 a.m.

TRD-9333986

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Texas Real Estate Research Center

Thursday, January 20, 1994, 9:00 a.m.

Clayton W. Williams Jr. Alumni Center, George Bush Drive

College Station

According to the complete agenda, the Advisory Committee will hear opening remarks; approval of minutes; progress report; strategy-needs assessment; current budget report; election of chairperson; date of next meeting; other business; and adjourn.

Contact: James Christian, Texas A&M University, College Station, Texas 77843, (409) 845-2031.

Filed: December 27, 1993, 9:54 a.m.

TRD-9333962

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Texas Senate

Monday, January 24, 1993, Noon

El Paso City Hall, Mayor's Conference Room, Second Floor, 2 Civic Center Plaza

El Paso

According to the agenda summary, the Senate Interim Committee on Home Equity Lending will consider public testimony.

Contact: Lisa Mayes, P.O. Box 12068, Austin, Texas 78711, (512) 463-0370.

Filed: December 21, 1993, 4:29 p.m.

TRD-9333875

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Teacher Retirement System of Texas

Tuesday, January 11, 1994, Noon

1000 Red River Street, Room 420E

Austin

According to the complete agenda, the Medical Board will discuss the files of members who are currently applying for disability retirement; and the files of disability retirees who are due a re-examination report.

Contact: Don Cadenhead, 1000 Red River Street, Austin, Texas 78701-2698, (512) 370-0506.

Filed: December 22, 1993, 3:31 p.m.

TRD-9333906

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The Texas A&M University System, Board of Regents

Tuesday, January 18, 1994, 9:00 a.m.

1700 Bank One Center, 910 Travis-Conference Room B

Houston

According to the complete agenda, the Executive Committee will interview candidates for the position of General Counsel of the Texas A&M University System and consider any and all things leading to the selection of the General Counsel of the Texas A&M University System.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: December 22, 1993, 2:45 p.m.

TRD-9333902

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Texas Department of Transportation

Wednesday, January 12, 1994, 9:00 a.m.

200 East Riverside Drive, Building 200

Austin

According to the agenda summary, the Environmental Advisory Committee will approve minutes; preliminary review of proposed rulemaking concerning environmental review of transportation projects and concerning the use of state-owned rights-of-way by others during remediation of contaminated sites. Briefing on current status/commission action of rules previously reviewed by committee; and staff presentations on overview of Environmental Affairs Division proposed organizational structure and congestion management requirements in air quality non-attainment areas.

Contact: Dianna Noble, 125 East 11th Street, Austin, Texas 78701, (512) 416-3001.

Filed: December 29, 1993, 9:20 a.m.

TRD-9334039

Monday, January 24, 1994, 10:00 a.m.

200 East Riverside Drive, Building 102

Austin

According to the agenda summary, the Bicycles Rules Advisory Committee will make open remarks and introduction of committee members; approve minutes; and preliminary review of proposed rulemaking concerning bicycle road use on the state highway system.

Contact: Paul Douglas, 125 East 11th Street, Austin, Texas 78701, (512) 416-3125.

Filed: December 29, 1993, 9:21 a.m.

TRD-9334040

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The University of Texas Health Center at Tyler

Thursday, January 6, 1994, 11:30 a.m.

Biomedical Research Building, Room 116, UTHCT, Highway 155 at 271

Tyler

According to the complete agenda, the Animal Research Committee will discuss approval of minutes; acting chair report; veterinarian report; new business: addenda #87A amphetamine stereotpy; addenda #87B open field study; addenda #87C dominance hierarchy; addenda #112A protocol 112 positive controls; and adjournment.

Contact: Louisa Schmid, Ph.D, DVM, P.O. Box 2003, Tyler, Texas 75710, (903) 877-7657.

Filed: December 23, 1993, 2:14 p.m.

TRD-9333947

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Texas Workers' Compensation Insurance Fund

Wednesday, January 5, 1994, 11:30 a.m.

100 Congress Avenue, Suite 600

Austin

According to the agenda summary, the Organization Effectiveness Committee of the Board of Directors will call the meeting to order; selection of committee chairperson; executive session; action items resulting; and adjourn.

Contact: December 29, 1993, 2:55 p.m.

Filed: December 29, 1993, 2:55 p.m.

TRD-9334062

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Texas Workers' Compensation Research Center

Wednesday, January 5, 1994, 10:00 a.m.

300 West 15th Street, Committee Room 5, William P. Clements, Jr. Building

Austin

According to the agenda summary, the Board of Directors will discuss and act on the following items: call to order; approval of minutes of meeting of December 3, 1993; announcements; public participation; research progress report; appointment of subcommittee for policy recommendations on fees for open records and publications; executive session; election of officers; confirm meeting of February 2, 1994; and adjournment. Individuals who may require auxiliary aids or services for this meeting should contact Lavon Guerrero at (512) 346-6197 at least two days prior to the meeting so that appropriate arrangements can be made.

Contact: Lavon Guerra, 3636 Executive Center Drive, Suite G-22, Austin, Texas 78731, (512) 346-6197.

Filed: December 28, 1993, 4:05 p.m.

TRD-9334014

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Texas Council on Workforce and Economic Competitiveness

Friday, January 7, 1994, 10:00 a.m.

1100 West 49th Street, Sixth Floor Board Room

Austin

According to the complete agenda, the Five Region Task Force will call the meeting to order; opening remarks; public comment; organizational discussion: discussion of functions and duties of Task Force; presentation and discussion of options for remaining workforce development area designation; and adjournment.

Contact: Alexa Ray, P.O. Box 2241, Austin, Texas 78769, (512) 305-7007.

Filed: December 27, 1993, 1:32 p.m.

TRD-9333970

Wednesday, January 12, 1994, 10:00 a.m.

816 Congress Avenue, 11th Floor Board Room (Next to Suite 1100)

Austin

According to the complete agenda, the Strategic Plan Task Force will call the meeting to order; public comment; review of current draft; review of information for defining the problem; lunch and informal discussion; review of timelines and tasks for implementation of the strategic plan; core measures and standards-presentation by State Occupational Information Coordinating Committee; task force/committee discussion and questions; process for presentation to full council and next steps; and adjourn. Notice: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, or persons who need assistance in having English translated into Spanish, should contact Alexa Ray, (512) 305-7007 (or Relay Texas 1-800-735-2988), at least two days before this meeting so that appropriate arrangements can be made.

Contact: Alexa Ray, P.O. Box 2241, Austin, Texas 78769, (512) 305-7007.

Filed: December 27, 1993, 1:32 p.m.

TRD-9333971

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Regional Meetings

Meetings Filed December 22, 1993

The Central Appraisal District of Nolan County Appraisal Review Board met at the Nolan County Courthouse-Third Floor, 100 East Third Street, Sweetwater, December 29, 1993, at 8:00 a.m. Information may be obtained from Steven G. Beck, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421. TRD-9333901.

The Dallas Central Appraisal District Board of Directors will meet at 2949 North Stemmons Freeway, Dallas, January 5, 1994, at 7:30 a.m. Information may be obtained from Rick L. Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9333900.

The Dewitt County Appraisal District Board of Directors will meet at 103 Bailey Street, Cuero, January 5, 1994, at 7:30 p.m. Information may be obtained from Kay Rath, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753. TRD-9333892.

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Meetings Filed December 23, 1993

The Gonzales County Appraisal District Appraisal Review Board met at the Appraisal District Office, 928 Saint Paul Street, Gonzales, December 30, 1993, at 9:00 a.m. Information may be obtained from Glenda Strackbein, 928 Saint Paul Street, Gonzales, Texas 78629, (210) 672-2879. TRD-9333960.

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Meetings Filed December 27, 1993

The Brazos River Authority Audit Committee Board of Directors met at 4400 Cobbs Drive, Waco, January 3, 1994, at 10:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9333965.

The Brazos River Authority Administrative Policy Committee Board of Directors met at 4400 Cobbs Drive, Waco, January 3, 1994, at 11:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9333966.

The Dawson County Central Appraisal District Board of Directors will meet at 1806 Lubbock Highway, Lamesa, January 5, 1994, at 7:00 a.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060. TRD-9333969.

The Millersview-Doole Water Supply Corporation Board of Directors met at the Corporation's Business Office, One Block West of FM 765 and FM 2134 in Millersview, January 3, 1994, at 7:00 p.m. Information may be obtained from Glenda M. Hampton, P.O. Box E, Millersview, Texas 76862-1005, (915) 483-5438. TRD-9333967.

The San Antonio-Bexar County Metropolitan Planning Organization Bicycle Mobility Plan Oversight Committee will meet at 233 North Pecos-La Trinidad, Vista Verde Building, Room 420, San Antonio, January 5, 1994, at 2: 00 p.m. Information may be obtained from Charlotte A. Roszelle, 434 South Main Street, Suite 205, San Antonio, Texas 78204, (210) 227-8651. TRD-9333968.

The Swisher County Appraisal District Board of Directors will meet at 130 North Armstrong, Tulia, January 6, 1994, at 7:00 p.m. Information may be obtained from R. L. Powell, P.O. Box 8, Tulia, Texas 79088, (806) 995-4118. TRD-9333964.

The Tax Appraisal District of Bell County Board of Directors will meet at the Tax Appraisal District Building, 411 East Central Avenue, Belton, January 12, 1994, at 7:00 p.m. Information may be obtained from Mike Watson, P.O. Box 390, Belton, Texas 76513-0390, (817) 939-5841, Ext. 29. TRD-9333972.

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Meetings Filed December 28, 1993

The Fisher County Appraisal District Board of Directors will meet at the Fisher County Appraisal/Tax Office, Roby, January 10, 1994, at 6: 00 p.m. Information may be obtained from Betty H. Mize, P.O. Box 516, Roby, Texas 79543, (915) 776-2733. TRD-9333993.

The Harris County Appraisal District Board of Directors will meet at 2800 North Loop West, Eighth Floor, Houston, January 4, 1994, at 9:30 a.m. and January 5-7, 1994, at 9:00 a.m. Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292-0975, (713) 957-5291. TRD-9334008.

The Lower Neches Valley Authority Board of Directors met at the LNVA Office Building, 7850 Eastex Freeway, Beaumont, January 3, 1994, at 1:00 p.m. Information may be obtained from A. T. Hebert, Jr., P.O. Drawer 3464, Beaumont, Texas 77704, (409) 892-4011. TRD-9334002.

The Tyler County Appraisal District Board of Directors will meet at 806 West Bluff, Woodville, January 6, 1994, at 4:00 p.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9334006.

The Upshur County Appraisal District Board of Directors will meet at the Upshur County Appraisal District Office, Warren and Trinity Streets, Gilmer, January 10, 1994, at 1:00 p.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644-0280, (903) 843-3041. TRD-9333992.

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Meetings Filed December 29, 1993

The Aqua Water Supply Corporation Board of Directors met at 305 Eskew (Aqua Office, Bastrop, January 3, 1994, at 7:30 p.m. Information may be obtained from Carol Kadura, P.O. Drawer P, Bastrop, Texas 78602, (512) 303-3943. TRD-9334041.

The Brazos River Authority Lake Management Committee, Board of Directors will meet at the Lake Supervisor's Office, Possum Kingdom Lake, January 6, 1994, at 10:00 a.m. Information may be obtained from Mike Bukala, P. O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9334060.

The Brazos River Authority Water Utilization Committee, Board of Directors will meet at the Lake Supervisor's Office, Possum Kingdom Lake, January 6, 1994, at 11:00 a.m. Information may be obtained

from Mike Bukala, P. O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9334061.

The Brazos Valley Development Council Brazos Valley Regional Advisory Committee on Aging will meet at the Council Offices, 1706 East 29th Street, Bryan, January 4, 1994, at 2:30 p.m. Information may be obtained from Roberta Lindquist, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9334045.

The Creedmoor Maha Water Supply Corporation Board of Directors will meet at 1699 Laws Road, Mustang Ridge, January 5, 1994 and January 12, 1994, at 7:00 p.m. Information may be obtained from Charles Laws, 1699 Laws Road, Buda, Texas 78610, (512) 243-1991 or (512) 243-2113. TRD-9334052.

The East Texas Council of Governments JTPA Board of Directors will meet at the Kilgore Community Inn, Kilgore, January 6, 1994, at 11:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9334050.

The Hockley County Appraisal District Appraisal Review Board will meet at 1103-C Houston, Levelland, January 4, 1994, at 7:00 a.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654. TRD-9334066.

The Lamar County Appraisal District Regular Board met at the Lamar County Appraisal District Office, 521 Bonham Street, Paris, January 3, 1994, at 1:30 p.m. Information may be obtained from Joe Welch, 521 Bonham Street, Paris, Texas 75460, (903) 785-7822. TRD-9334059.

The Upshur County Appraisal District Appraisal Review Board will meet at the Upshur County Appraisal District Office, Warren and Trinity Streets, Gilmer, January 10, 1994, at 9:00 a.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644-0280, (903) 843-3041. TRD-9334051.

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Meetings Filed December 30, 1993

The Barton Springs/Edwards Aquifer Conservation District Board of Directors will meet at 1124-A Regal Row, Austin, January 4, 1994, at 5:30 p. m. Information may be obtained from Bill E. Couch, 1124-A Regal Row, Austin, Texas 78748, (512) 282-8441, Fax: 282-7016. TRD-9334075.

The Bell-Milam-Falls Water Supply Corporation Board of Directors will meet at the WSC Office, FM 485 West, Cameron, January 6, 1994, at 8:30 a. m. Information may be obtained from Dwayne Jekel, P.O. Drawer 150, Cameron, Texas 76520, (817) 697-4016. TRD-9334072.

The East Texas Council of Governments Executive Committee will meet at the ETCOG Office, Kilgore, January 6, 1994, at 2:00 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9334076.

The Montague County Tax Appraisal District Board of Directors will meet at the Montague County Tax Appraisal District Office, 312 Rusk Street, Montague, January 5, 1994, at 5:00 p.m. Information may be obtained from Wanda Russell, P.O. Box 121, Montague, Texas 76251, (817) 894-2081. TRD-9334077.

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CONTOUR 10-8-93

Name: Milton Campos
Grade: 9
School: Skyline High School, Dallas ISD

IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Board of Architectural Examiners

Correction of Errors

The Texas Board of Architectural Examiners proposed amendments to 22 TAC §3.21 and §3.25, concerning eligibility of applicants and deadline for examination. The rules appeared in the December 21, 1993, issue of the *Texas Register* (18 TexReg 9813).

On page 9813, column 3, 3rd paragraph, 2nd line, "Article 249" should read "Article 249c".

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The Texas Board of Architectural Examiners proposed an amendment to 22 TAC §5.31, concerning the registration of applicants. The rule appeared in the December 21, 1993, issue of the *Texas Register* (18 TexReg 9815).

On page 9815, column 1, paragraph 5, line 2, "Article 249c" should read "Article 249e".

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Texas Department of Banking

Correction of Error

The Texas Department of Banking adopted amendments to 7 TAC §31.5 and §35.6. The rules appeared in the December 24, 1993, issue of the *Texas Register* (18 TexReg 9927).

Both rules were filed December 16, 1993, §31.5 shows "January 14, 1994" for the effective date and it should be "January 5, 1994". Section 35.6 shows "January 14, 1993" for the effective date and it should be "January 5, 1994".

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Texas Bond Review Board

Bi-Weekly Report on the 1993 Allocation of the State Ceiling on Certain Private Activity Bonds

The information that follows is a report of the allocation activity for the period of December 4, 1993 through December 17, 1993. Pursuant to §2(d) of Article 5190.9a, on September 1, any amounts of volume cap remaining in the separate subceilings are combined under one ceiling. All applications that have not received volume cap are placed on one list in an order determined by a lottery number received in January, or by date of application, regardless of project type. On September 1 reservations for the remaining volume cap are given.

Total amount of the $882,800,000 state ceiling remaining unreserved as of December 17, 1993: $29,008,750.

Following is a comprehensive listing of applications which have received a reservation date pursuant to the Act from December 4, 1993 through December 17, 1993: None.

Following is a comprehensive listing of applications which have issued and delivered the bonds and received a Certificate of Allocation pursuant to the Act from December 4, 1993 through December 17, 1993:

ISSUER	USER	DESCRIPTION	AMOUNT
1) Corpus Christi HFC	Eligible Borrowers	Mortgage Credit Certificates	$19,308,975

Following is a comprehensive listing of applications which were either withdrawn or canceled pursuant to the Act from December 4, 1993 through December 17, 1993:

ISSUER	DESCRIPTION	AMOUNT
1) San Antonio HFC	Santa Fe Apts./Residential Rental	$ 2,050,000

Following is a comprehensive listing of applications which released a portion of their reservation pursuant tot he Act from December 4, 1993 through December 17, 1993: None.

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

TRD-9333984 Albert L. Bacarisse
Executive Director
Texas Bond Review Board

Filed: December 27, 1993

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Central Texas Council of Governments

Consultant Proposal Request

The Central Texas Council of Governments is soliciting proposals from qualified firms of certified public accountants to audit the Council's financial statements for the fiscal year ending June 30, 1994, with the option of auditing the Council's financial statements for the two subsequent fiscal years.

Requests for proposal packages may be obtained by contacting Michael Irvine, Director of Administration, at Central Texas Council of Governments, 100 South East Street, Belton, Texas 76513. All proposals must be received no later than 3:00 p.m. on January 24, 1994. For further information, call (817) 939-1801.

Issued in Belton, Texas, on December 22, 1993.

TRD-9333948 R. Michael Irvine
Director of Administration
Central Texas Council of Governments

Filed: December 23, 1993

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Office of Consumer Credit Commissioner

Notices of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04 and 1.05, as amended (Texas Civil Statutes, Articles 5069-1.04 and 1.05).

Types of Rate Ceilings	Effective Period (Dates are Inclusive)	Consumer (1)/Agricultural/ Commercial (2) thru $250,000	Commercial(2) over $250,000
Indicated (Weekly) Rate - Art. 1.04(a)(1)	12/27/93-01/02/94	18.00%	18.00%
Judgment Rate - Art. 1.05, Section 2	01/01/94-01/31/94	10.00%	10.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on December 20, 1993.

TRD-9333883 Al Endsley
Consumer Credit Commissioner

Filed: December 22, 1993

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The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Article 1.04, as amended (Texas Civil Statutes, Article 5069-1.04).

Types of Rate Ceilings	Effective Period (Dates are Inclusive)	Consumer [1]/Agricultural/ Commercial [2] thru $250,000	Commercial[2] over $250,000
Indicated (Weekly) Rate - Art. 1.04(a)(1)	01/03/94-01/09/94	18.00%	18.00%
Monthly Rate - Art. 1.04 (c)[3]	01/01/94-01/31/94	18.00%	18.00%

[1]Credit for personal, family or household use. [2]Credit for business, commercial, investment or other similar purpose. [3]For variable rate commercial transactions only.

Issued in Austin, Texas, on December 27, 1993.

TRD-9334046 Al Endsley
Consumer Credit Commissioner

Filed: December 29, 1993

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Texas Education Agency

Notice of Consultant Contract Award

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Education Agency publishes this notice of consultant contract award. The consultant proposal request appeared in the July 27, 1993, issue of the *Texas Register* (18 TxReg 4959). The consultant is to conduct a needs assessment study of the Texas public school financial accountability system.

The consultant selected to perform this study is a team led by Deloitte and Touche, CPAs, 801 Cherry Street, Suite 2340, Fort Worth, Texas 76102. The maximum amount of this contract is $300,000. The contract was signed December 15, 1993, with a starting date of September 1, 1993, and will terminate by February 1, 1994. The contract also has an extension provision to implement recommendations contained in the needs assessment study under a maximum total contract of $2,405,000 and a final determination date of August 31, 1995.

The consultant will prepare a final report for the first phase and submit it to the Texas Education Agency no later than February 1, 1994. The documentation of this report will include, but is not limited to findings, conclusions, and recommendations reflective of the needs assessment phase of the study.

Issued in Austin, Texas, on December 22, 1993.

TRD-9333887 Lionel R Meno
Commissioner of Education
Texas Education Agency

Filed: December 22, 1993

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Request for Public Comment

Pursuant to the requirements of Public Law 100-297, the Texas Education Agency is providing notice and requesting public comment regarding the recommendations made by the Chapter 2 State Advisory Committee on the use of Chapter 2 federal funds for the 1994-1995 school year, specifically the formula for distributing entitlement funds to local school districts and the special discretionary projects to be conducted by the agency.

The State of Texas will receive approximately $27,231,850 from Chapter 2 of the ESEA for 1994-1995. Of the total amount received, the law requires that not less than 80% (approximately $21,785,480) should be distributed to public school districts on a formula entitlement basis and that no more than 20% (approximately $5,446,370) be reserved by the state education agency to fund special discretionary projects at the state level, provide technical assistance to school districts, and administer Chapter 2 programs.

The proposed formula to be used to allocate the 80% entitlement funds to local school districts (as constrained by ESEA, Chapter 2 law, Public Law 100-297, §1512) is: Step 1-determine number of students enrolled in public and private nonprofit schools for each local education agency (LEA) and for the state; Step 2-determine number of high cost students (those on free and reduced price lunch) for each LEA and for the state. Compare each LEA's number and percentage of high cost students to the statewide average number and percentage of high cost students. Only those LEAs having numbers or percentages in excess of the average statewide number or percentage shall be eligible to include high cost students in the computations; Step 3-calculate the per capita amount for the state by dividing the total number enrolled from Step 1 plus eligible high cost students from Step 2 into 80% of the state grant award for Chapter 2; Step 4-multiply the per capita amount computed in Step 3 times the total eligible students (public and private enrolled plus eligible high cost) for each LEA. Based upon the most recent data available, the per capita amount for fiscal year 1994 (school year 1994-1995) is approximately $4.33.

The special discretionary projects and funding amounts recommended by the Chapter 2 State Advisory Committee on December 1-2, 1993, for 1994-1995 are as follows: Evaluation of Prekindergarten Programs and School Counseling and Guidance Services ($52,147); Texas School Improvement Initiative ($172,000): Initiative on School Effectiveness and Accountability ($186,362); Using Technology for Access to Problem Solving ($559,000); Effective Middle Schools Project ($592,540); Texas Excellence and Equity Initiative (TEEI) ($1,847,729); Partnership Schools Initiative ($331,000); Accelerated Tutorial Program for Students in At-Risk Situations ($344,000); and State Administration-a maximum of $1,361,592 (approximate) may be reserved by the agency for administrative expenditures related to planning, supervising, monitoring, evaluating, and operating Chapter 2 programs; to provide technical assistance in implementing targeted assistance programs; and for activities to carry out effective schools programs. The Chapter 2 Advisory Committee recommended not funding the Texas Education Agency Staff Development and Training project ($137,600).

The State Board of Education will consider funding for projects recommended by the Advisory Committee at the March 1994 board meeting. Any comments received from the public regarding the formula for distributing the 80%

funds to school districts or for the funding of special discretionary projects will be submitted to the board at that time. These special discretionary projects do not impact the allocation or use of formula funds at the local school district level.

Comments regarding the use of the Chapter 2 funds for 1994-1995 or requests for additional information on the special projects should be addressed to Earin Martin, Chapter 2 State Coordinator, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, and must be received by Tuesday, February 1, 1994. Questions regarding this matter should be directed to Ms. Martin at (512) 463-9269.

Issued in Austin, Texas, on December 28, 1993

TRD-9334037 Lionel R. Meno
Commissioner of Education
Texas Education Agency

Filed: December 29, 1993

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Texas Environmental Awareness Network

Notice of Monthly Meeting

The Texas Environmental Awareness Network, an association of state agencies and environmental and educational organizations, will meet Wednesday, January 12, 1994, at 9:00 a.m. at Texas Parks and Wildlife Department, Wild Basin Preserve Offices, 805 South Capital of Texas Highway, Austin, Texas 78746.

For information about the meeting, or to place an item on the agenda, contact Bob Murphy, TEAN Chair, by mail at 4200 Smith School Road, Austin, Texas 78744, (512) 389-4360; or by fax at (512) 389-4394.

Issued in Austin, Texas, on December 20, 1993

TRD-9333858 John Williams
Secretary
Texas Environmental Awareness Network

Filed: December 21, 1993

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Office of the Governor

Solicitation Language

Notice of Opportunity to Comment:

Chapter 2056 of the Government Code (Texas Civil Statutes, Article 6252-31) requires the Governor, in cooperation with the Legislative Budget Board, to develop a strategic plan for state government. A period for public comment will initiate the process of developing a document for state agencies to use in developing individual agency strategic plans.

Comment is requested primarily on the planning elements in the current state plan for state government known as *Texas Tomorrow*, a copy of which can be obtained at either of the addresses below. *Texas Tomorrow* consists of the following planning elements: a statewide vision, mission, and philosophy and a set of functional goals defining the purposes of state government.

Comments are also solicited on the following planning elements, slated to be added to *Texas Tomorrow*:

External/Internal Assessment of key factors that influence the success of state government in achieving its mission and goals. External factors may include but are not limited to economic conditions, demographic changes, and technological advances. Internal factors may include management policies, resource constraints, organizational structure, automation, personnel, and operational procedures.

Outcome Measures of state progress in meeting its key goals. An outcome measure is a statistical indicator to assess the actual impact of a policy or action. Outcome measures are the quantified results-both intended and unintended-of government action on a particular population or problem area.

Comment may be provided in written form or at public hearings. A series of public hearings will be held by functional area of state government in Austin in January. Comment is requested on the statewide vision, mission, philosophy and on the functional goals relevant to that hearing, as well as on the *Texas Tomorrow* document itself. Comments are solicited on the following:

how *Texas Tomorrow* can be made more useful in developing agency strategic plans;

the appropriateness of the current statewide mission statements and functional area goals contained in *Texas Tomorrow;*

whether additional functional area goals are needed;

how progress towards meeting the goals of state government should be measured; and

other issues relevant to the strategic planning process.

Hearings will be conducted by functional area as follows:

AREA	DATE
Public Education	To Be Determined
Higher Education	January 19, 1994
Natural Resources	To Be Determined
General Government	January 26, 1994
Health and Human Services	January 25, 1994
Public Safety and Corrections	January 20, 1994

Unless otherwise indicated, all hearings will be held at the John H. Reagan State Office building in Austin, Texas, beginning at 10.00 a.m. Other dates will be published and/or posted as soon as they are determined.

Written comments must be categorized by functional area in separate documents and submitted by January 28, 1994. A copy of your comments should be sent to both addresses below:

Legislative Budget Board
Strategic Planning Steering Committee
PO Box 12666, Capitol Station
Room 300, Reagan Building
Austin, Texas 78711
(512) 463-1200
FAX: (512) 475-2902

Governor's Office of Budget and Planning
Strategic Planning Steering Committee
PO Box 12428
7th Floor, Sam Houston Building
Austin, Texas 78711
(512) 463-1778
FAX: (512) 463-1880

Issued in Austin, Texas, on December 28, 1993.

TRD-9334009 David A. Talbot, Jr.
General Counsel
Office of the Governor

Filed: December 28, 1993

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Texas Department of Health

Extension of Comment Period

The Texas Department of Health is extending the comment period for proposed amendments to 25 Texas Administrative Code §§141.1-141.6, 141.8, 141.10-141.13, 141.15, and 141.20 concerning the regulation of massage therapists, massage establishments, massage schools, and instructors; and §141.23 concerning workshop and seminars. The sections were published in the November 9, 1993 issue of the *Texas Register* (18 TexReg 8105). Comments will be accepted through January 7, 1994.

Comments on the proposal may be submitted to Becky Berryhill, Program Director, Massage Therapy Registration Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756-3183, (512) 834-6616.

Issued in Austin, Texas, on December 21, 1993.

TRD-9333879 Susan K. Steeg
General Counsel
Texas Department of Health

Filed: December 21, 1993

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Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Corpus Christi	Bay Area Medical Center	L04723	Corpus Christi	0	12/08/93
Dallas	Neosho Construction Co., Inc.	L04742	Dallas	0	12/13/93
Lolita	AMTOPP Corporation	L04720	Lolita	0	12/10/93
Throughout Texas	Glenn Fuqua, Inc.	L04736	Navasota	0	12/01/93
Throughout Texas	Hansbury Enterprises, Inc.	L04737	Stafford	0	12/01/93

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Austin	Texas Department of Health	L01594	Austin	19	11/24/93
Beaumont	St. Elizabeth Hospital	L00269	Beaumont	58	12/09/93
Big Spring	Fina Oil and Chemical Company	L04002	Big Spring	3	12/01/93
Bridgeport	Gifford-Hill & Company, Inc.	L01635	Dallas	12	12/13/93
Brownwood	3M/Health Physics Services	L00918	St. Paul, MN	23	12/10/93
Conroe	Conroe Radiology Associates	L04083	Conroe	6	12/13/93
Corpus Christi	City of Corpus Christi	L02284	Corpus Christi	13	12/09/93
Corpus Christi	Doctors Regional Medical Center	L02816	Corpus Christi	28	12/14/93
Dallas	Humana Hospital Medical City Dallas	L01976	Dallas	79	12/09/93
Deer Park	Occidental Chemical Company	L00155	Deer Park	31	12/13/93
Edinburg	The University of Texas - Pan American	L00656	Edinburg	15	12/06/93
El Paso	Sun Towers Hospital	L02715	El Paso	10	12/03/93
Grand Prairie	POLY-AMERICA, INC.	L03001	Grand Prairie	14	12/09/93
Houston	Spring Branch Memorial Hospital	L02473	Houston	23	12/01/93
Houston	Positron Corporation	L03806	Houston	16	12/02/93
Houston	Bellaire General Hospital	L02038	Houston	23	12/01/93
Houston	Weatherford U.S., Inc.	L02756	Houston	12	12/01/93
Houston	Lyndon B. Johnson General Hospital	L04412	Houston	6	12/07/93
Houston	Texas Southern University	L03121	Houston	9	12/08/93
Kenedy	Otto Kaiser Memorial Hospital	L04453	Kenedy	1	12/06/93
Kingwood	Kingwood Plaza Hospital	L04482	Kingwood	8	12/09/93
La Grange	Fayette Memorial Hospital	L03572	La Grange	6	12/02/93
La Porte	Dow Chemical Company U.S.A.	L00510	La Porte	50	12/09/93

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Longview	King Tool Company	L02750	Longview	13	12/06/93
Lubbock	Methodist Diagnostic Imaging	L03948	Lubbock	15	12/02/93
Midland	Isotech Laboratories, Inc.	L04283	Midland	8	12/13/93
Paris	St. Joseph's Hospital and Health Center	L03199	Paris	8	12/08/93
Plano	ARCO Exploration and Production Technology Company	L00134	Plano	54	12/13/93
Point Comfort	Formosa Plastics Corporation Texas	L03893	Point Comfort	7	12/07/93
San Angelo	Ethicon, Inc.	L00720	San Angelo	38	12/09/93
San Antonio	Santa Rosa Health Care Corporation	L02237	San Antonio	32	12/06/93
San Antonio	Alamo Diagnostic Imaging Center	L04181	San Antonio	9	12/06/93
San Antonio	Advanced Medical Imaging	L04305	San Antonio	7	12/06/93
Texarkana	Alumax Mill Products, Inc.	L04663	Texarkana	1	12/10/93
Texas City	Phibro Energy USA, Inc.	L02578	Texas City	14	12/10/93
The Woodlands	Genosys Biotechnologies, Inc.	L04555	The Woodlands	1	11/30/93
The Woodlands	BETZ Laboratories	L03377	The Woodlands	11	12/10/93
Throughout Texas	Midland Inspection and Engineering, Inc.	L03724	Odessa	45	12/03/93
Throughout Texas	ETTL Engineers & Consultants Inc.	L01423	Tyler	27	12/02/93
Throughout Texas	Radiation Consultants, Inc.	L02179	Houston	29	12/07/93
Throughout Texas	Western Stress, Inc.	L04084	Houston	10	11/24/93
Throughout Texas	Professional Service Industries, Inc.	L00931	Lombard, Illinois	96	11/23/93
Throughout Texas	Raba-Kistner Consultants, Inc.	L01571	San Antonio	33	12/07/93
Throughout Texas	Pro-Technics II, Inc.	L03835	Houston	18	12/03/93
Throughout Texas	Capitol Aggregates, Inc.	L04208	Austin	5	12/10/93
Throughout Texas	Non-Destructive Inspection Corporation	L02712	Lake Jackson	36	12/10/93
Throughout Texas	Longview Inspection	L01774	Houston	76	12/10/93
Throughout Texas	AnAid, Inc.	L03171	Dickinson	32	12/10/93
Throughout Texas	Global X-Ray & Testing Corp.	L03663	Aransas Pass	34	12/10/93
Throughout Texas	Texas Industrial X-Ray Inc.	L01851	Pasadena	56	12/10/93
Throughout Texas	ASOMA Instruments, Inc.	L02788	Austin	30	12/10/93
Throughout Texas	Koch Engineering Company Inc.	L03913	La Porte	36	12/13/93
Throughout Texas	NDE, Inc.	L02355	Fort Worth	17	12/13/93
Throughout Texas	ICI Tracerco	L03096	Houston	40	12/13/93
Throughout Texas	Blazer Inspection	L04619	Texas City	4	12/13/93
Throughout Texas	W. H. Henken Industries, Inc.	L00967	Arlington	30	12/15/93
Throughout Texas	Technical Welding Laboratory, Inc.	L02187	Pasadena	87	12/08/93

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Big Spring	Scenic Mountain Medical Center	L00763	Big Spring	28	12/08/93
Fort Worth	Huguley Memorial Medical Center	L02920	Fort Worth	13	12/14/93
Irving	Irving Healthcare System	L02444	Irving	19	12/02/93
Kingsville	Spohn Kleberg Memorial Hospital	L02917	Kingsville	11	12/09/93
Pasadena	Gulf Coast Waste Disposal Authority	L02890	Pasadena	6	12/10/93
San Antonio	SmithKline Beecham Clinic Laboratories	L02417	San Antonio	18	12/09/93
San Antonio	City Public Service	L02876	San Antonio	11	12/09/93
Temple	Ralph Wilson Plastics Company	L02857	Temple	7	12/13/93
Throughout Texas	Digital Surveys, Inc.	L01611	Alvin	22	11/29/93
Throughout Texas	Master Wireline Services, Inc.	L04161	Wichita Falls	2	12/14/93

TERMINATIONS OF LICENSES ISSUED:

Location	Name
Corpus Christi	Ohmstede, Inc.
Houston	University of St. Thomas
Houston	Exploration Technologies, Inc.
Liberty	Baptist Hospital Liberty
Victoria	City of Victoria

License#	City	Amendment #	Date of Action
L04471	Corpus Christi	2	12/13/93
L00460	Houston	14	12/01/93
L03981	Houston	4	12/10/93
L03539	Liberty	6	12/07/93
L04425	Victoria	4	12/09/93

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with **Texas Regulations for Control of Radiation** in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the **Texas Regulations for Control of Radiation.**

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or person affected may request a hearing by writing Richard A. Ratliff, P.E., Acting Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas, 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, from 8:00 a.m. to 5:00 p.m., Monday-Friday (except holidays).

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

TRD-9333856 Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Filed: December 21, 1993

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Texas Higher Education Coordinating Board

Notices of Hearings

A public hearing will be conducted by the Texas Higher Education Coordinating Board, State Postsecondary Review Entity (SPRE) program on Friday, January 7, 1994 from 9:00 a.m. until 1:00 p.m. at the Holiday Inn-Airport, 6655 Gateway West, El Paso, Texas. The purpose of the hearing is to gather additional comments to use in developing Texas review standards and procedures to determine if postsecondary education institutions are in compliance with federal student aid standards. In addition, comments on developing a complaint system will be gathered. For additional information, please contact Colleen Klein at (512) 483-6207.

Issued in Austin, Texas, on December 22, 1993.

TRD-9333914 Sharon Jahsman
Administrative Secretary
Texas Higher Education Coordinating Board

Filed: December 23, 1993

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A public hearing will be conducted by the Texas Higher Education Coordinating Board, State Postsecondary Review Entity (SPRE) program on Thursday, January 13, 1994 from 9:00 a.m. until 2:00 p.m. at the University Hilton, 4800 Calhoun, Houston, Texas. The purpose of the hearing is to gather additional comments to use in developing Texas review standards and procedures to determine if postsecondary education institutions are in compliance with federal student aid standards. In addition, comments on developing a complaint system will be gathered. For additional information, please contact Colleen Klein at (512) 483-6207.

Issued in Austin, Texas, on December 22, 1993.

TRD-9333915 Sharon Jahsman
Administrative Secretary
Texas Higher Education Coordinating Board

Filed: December 23, 1993

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A public hearing will be conducted by the Texas Higher Education Coordinating Board, State Postsecondary Review Entity (SPRE) program on Friday, January 14, 1994 from 9:00 a.m. until 1:00 p.m. at the Save Inn, 1800 West Harrison, Harlingen, Texas. The purpose of the hearing is to gather additional comments to use in developing Texas review standards and procedures to determine if postsecondary education institutions are in compliance

with federal student aid standards. In addition, comments on developing a complaint system will be gathered. For additional information, please contact Colleen Klein at (512) 483-6207.

Issued in Austin, Texas, on December 22, 1993.

TRD-9333916 Sharon Jahsman
Administrative Secretary
Texas Higher Education Coordinating Board

Filed: December 23, 1993

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A public hearing will be conducted by the Texas Higher Education Coordinating Board, State Postsecondary Review Entity (SPRE) program on Monday, January 24, 1994 from 9:00 a.m. until 2:00 p.m. at the Holiday Inn-Northwest, 3233 Northwest Loop 410, San Antonio, Texas. The purpose of the hearing is to gather additional comments to use in developing Texas review standards and procedures to determine if postsecondary education institutions are in compliance with federal student aid standards. In addition, comments on developing a complaint system will be gathered. For additional information, please contact Colleen Klein at (512) 483-6207.

Issued in Austin, Texas, on December 22, 1993.

TRD-9333917 Sharon Jahsman
Administrative Secretary
Texas Higher Education Coordinating Board

Filed: December 23, 1993

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Texas Department of Human Services

Correction of Error

The Texas Department of Human Services proposed new 40 TAC §§708.1-708.4, concerning the introduction eligibility criteria, services, and providers of service, in new Chapter 708, Medicaid Targeted Case Management Program. The rules appeared in the December 17, 1993, issue of the *Texas Register* (18 TexReg 9703).

On page 9703, the statutory authority paragraph should read:

"The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413 (503), which transferred all functions, programs, and activities related to the child protective services program from the Texas Department of Human Services to TDPRS; and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds."

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Public Notice of Closed Solicitation

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2004, in the September 11, 1990, issue of the *Texas Register* (15 TexReg 5315), the Texas Department of Human Services (TDHS) is closing the solicitations for new Medicaid beds in Reeves County, County Number 195, which appeared in the January 28, 1992, issue of the *Texas Register* (17 TexReg 725) and Armstrong County, County Number 006, which appeared in the July 14, 1989, issue of the *Texas Register* (14 TexReg 3427). These solicitations are being closed effective the date of this public notice.

Issued in Austin, Texas, on December 22, 1993.

TRD-9333891 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Filed: December 22, 1993

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Public Notice of Open Solicitation

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2004, in the September 11, 1990, issue of the *Texas Register* (15 TexReg 5315), the Texas Department of Human Services (TDHS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for Real County, County Number 193, identified below, where Medicaid-contracted nursing facility occupancy rates exceed the threshold (90% occupancy) in each of six months in the continuous May-October 1993, six-month period. Potential contractors seeking to contract for existing beds which are currently licensed as nursing home beds or hospital beds in the county identified in this public notice must submit a written reply (as described in 40 TAC §19.2004) to TDHS, Gary L. Allen, Certification, Enrollment and Billing Services, Long-Term Care-Regulatory, Mail Code (Y-976), P.O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by TDHS by 5 p.m., February 3, 1994, the last day of the open solicitation period. Potential contractors will be placed on a waiting list for the primary selection process in the same order that the beds which were being proposed for Medicaid certification were initially licensed. The primary selection process will be completed on February 13, 1994. If there are insufficient available beds after the primary selection to reduce occupancy rates to less than 90%, TDHS will place a public notice in the Texas Register announcing an additional open solicitation period for those individuals wishing to construct a facility.

County Number	County Name	Number of Months Over	MAY	JUN	JUL	AUG	SEP	OCT
193	Real	6	90.7	90.5	94.8	95.1	98.6	98.7

Issued in Austin, Texas, on December 22, 1993.

TRD-9333889 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Filed: December 22, 1993

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Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2004, in the September 11, 1990, issue of the *Texas Register* (15 TexReg 5315), the Texas Department of Human Services (TDHS) is announcing an open solicitation period of 30 days (starting the date of this public notice) for the construction of a 90-bed nursing facility in Wilson County, County 247, identified in the November 19, 1993, issue of the *Texas Register* (18 TexReg 8622). That county is also listed in this public notice. Potential contractors desiring to construct a 90-bed nursing facility in the county identified in this public notice must submit a written reply (as described in 40 TAC §19.2004) to TDHS, Gary L. Allen, Certification, Enrollment, and Billing Services, Long-Term Care-Regulatory, Mail Code (Y-976), P.O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by TDHS by 5 p.m., February 3, 1994, the last day of the open solicitation period. Potential contractors will be allowed 90 days to qualify and qualified potential contractors will be placed on a secondary-selection waiting list in the order that their applications are received. To qualify, potential contractors must demonstrate an intent and ability to begin construction of a facility and to complete contracting within specified time frames. They must submit a letter of application to TDHS with the following documentation: First, there must be acceptable written documentation showing the ownership of or an option to buy the land on which the proposed facility is or will be located. Second, documentation must include a letter of finance from a financial institution. Third, documentation must include a signed agreement stating that, if selected, the potential contractor will pay liquidated damages if the 180-day and/or 18-month deadline(s) described in 40 TAC §19.2004(q) are not met. The signed agreement must also require the potential contractor to provide, within 10 working days after the date of selection, a surety bond or other financial guarantee acceptable to TDHS ensuring payment in the event of default. If the 180-day deadline is not met, liquidated damages are 5.0% of the estimated total cost of the proposed or completed facility. If the 18-month deadline is not met, liquidated damages are an additional 5.0% of the estimated total cost of the proposed or completed facility. Fourth, there must be acceptable written documentation that the preliminary architectural plans for the proposed or completed facility have been submitted to the Architectural Section of TDHS. Each application must be complete at the time of its receipt. TDHS accepts the first qualified potential contractor on the secondary-selection waiting list. If no potential contractors submit replies during this open solicitation period, TDHS will place another public notice in the *Texas Register* announcing the reopening of the open solicitation period until a potential contractor replies.

Occupancy rates for identified threshold counties are listed below:

County Number	County Name	Number of Months Over	MAY	JUN	JUL	AUG	SEP	OCT
247	Wilson	6	90.4	90.9	90.7	92.9	92.2	92.0

Issued in Austin, Texas, on December 22, 1993.

TRD-9333890 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Filed: December 22, 1993

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Texas Department of Insurance

Company License

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for admission in Texas for American Health, Inc. (doing business under the assumed name of Texas American Health, Inc.), a foreign third-party administrator. The home office is in Downey, California.

Application for admission in Texas for Bertholon-Rowland Corp. (doing business under the assumed name of Bertholon-Rowland Insurance Brokers), a foreign third-party administrator. The home office is in New York, New York.

Application for Incorporation in Texas for Heritage Insurance Managers, Inc. , a domestic third-party administrator. The home office is in San Antonio, Texas.

Application for name change in Texas for American Defender Life Insurance Company, a foreign life, accident, and health company. The proposed new name is MAMSI Life and Health Insurance Company. The home office is in Rockville, Maryland.

Application for name change in Texas for Employee Benefit Plans of Oklahoma, (doing business under the assumed name of Lone Star Administrators, Inc.), a foreign third-party administrator. The proposed new name is Managed Benefit Administrators, Inc. (doing business under the assumed name of Lone Star Administrators, Inc.). The home office is in Tulsa, Oklahoma.

Application for name change in Texas for Zurich Reinsurance Company of America, a foreign fire and casualty company. The proposed new name is Zurich Reinsurance Centre, Inc. The home office is in Stamford, Connecticut

Issued in Austin, Texas, on December 23, 1993.

TRD-9333944 Linda K von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Filed: December 23, 1993

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Texas Commission on Law Enforcement Officer Standards and Education

Texas Peace Officers' Memorial Description of the Eligibility Determination Process

The Texas Peace Officers' Memorial Advisory Committee considers information concerning Texas peace officers who die in the line of duty, conforming to the Eligibility Criteria Rule, §§229.1 through 229.20, published in the March 26, 1993, issue of the *Texas Register* (18 TexReg 1940). Information is accepted by the Director of the Memorial, in Austin, from any source and a pending file is created. Each case is researched and verified, and recommendations are made by the Director to the Committee at regularly scheduled meetings. Law enforcement agencies and families of the officers are asked to help document the life and career of each officer, as well as the fatal incident. Actions taken by the Committee are printed in the *Texas Register*, the officers' agencies are notified, and family members are contacted, if known and if appropriate. Each of the procedures in the eligibility process is briefly outlined below and each indicates the verification status of the individual case.

CASE STATUS.

Pending-Information has been received by the Director of the Memorial and research and verification is in progress.

Enrollment-The facts of the case have been verified and sufficient documentation has been submitted to cause the Director to recommend to the Committee that the officer's name be registered on the Honor Roll. The Committee has taken official action consistent with the recommendation.

Induction-The officer's name has been considered at a previous meeting of the Committee and was enrolled at that meeting. Upon induction, the officer is formally installed and part of the Memorial. Induction is an official action taken by the Committee on the recommendation of the Director.

Memorialized-The officer's name has been inscribed on the Memorial and a dedication service has been held in the officer's name. (This procedure cannot take place until funds for the construction of the Memorial, approximately $2, 000 per name, $1,680,000 total, are obtained and the Memorial is built. The Committee urgently requests donations for this purpose.)

Deferred-The facts of the case do not conform to the Eligibility Criteria Rule, the Director has informed the Committee, and the Committee has taken action consistent with the Director's recommendation. This deferment may, in some instances, be reversed if additional information or documentation is obtained.

Removal-If induction has occurred or the officer has been memorialized and substantial information and documentation is obtained to indicate the action of the Committee was in error, the name of the officer is removed following the recommendation of the Director and official action by the Committee consistent with the recommendation.

The Committee met on December 10, 1993, to consider the first sixteen names for enrollment. The following list shows the action taken by the Committee in each case. The Committee will meet again on March 7, 1994, to consider the fourteen enrolled names for induction and to consider other names for enrollment.

Any person who has information concerning the fatal incidents or the lives and careers of the persons listed, or any Texas Peace Officer who has died in the line of duty since August 5, 1823, should contact Edward T. Laine, Director-Special Programs, Texas Commission on Law Enforcement Officer Standards and Education, 1033 LaPosada, Suite 240, Austin, Texas 78752, prior to February 7, 1994.

Officer's Name, Position, and Agency	Date of Death	Committee Action
Dan L. McDuffie Texas Ranger Texas Department of Public Safety	July 7, 1931	Enrollment
Louis Mackey Chaudoin Deputy Sheriff Cameron County Sheriff's Department	February 19, 1936	Enrollment
Henry R. Taylor Assistant Chief of Police Brenham Police Department	September 14, 1941	Enrollment
Albert Walter Jakubek Chief Deputy Sheriff Lavaca County Sheriff's Department	October 12, 1969	Enrollment
Travis Ed Williams Police Officer Mesquite Police Department	September 23, 1974	Enrollment
William Riley Mullins, Jr. Patrol Officer Yorktown Police Department	July 12, 1976	Enrollment
Bennie Royce Everett Lieutenant Athens Police Department	January 6, 1977	Enrollment
William Thomas Laws Patrolman Cedar Park Police Department	December 20, 1979	Enrollment
Gordon Terry Toal Police Corporal Odessa Police Department	August 19, 1982	Enrollment
Ed Holcomb, Jr. Sergeant Conroe Police Department	September 14, 1982	Enrollment
Michael Ray Williamson, Sr. Police Officer Euless Police Department	November 28, 1982	Enrollment
Lowell C. Tribble Police Officer Farmers Branch Police Department	August 27, 1983	Enrollment
Robert Darrell Wright Deputy Sheriff Williamson County Sheriff's Department	August 6, 1985	Enrollment

Officer's Name, Position, and Agency	Date of Death	Committee Action
Larry J. Miller Deputy Sheriff Hood County Sheriff's Department	January 26, 1992	Enrollment
David Robert DeLitta Special Agent Environmental Protection Agency	October 28, 1988	Deferred
Douglas Lee Dodson Police Dispatcher Harlingen Police Department	October 2, 1974	Deferred

Issued in Austin, Texas, on December 21, 1993.

TRD-9333898 Fred Toler
Interim Executive Director
Texas Commission on Law Enforcement
Officer Standards and Education

Filed: December 22, 1993

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Texas Natural Resource Conservation Commission

Correction of Error

The Texas Natural Resource Conservation Commission adopted amendments to 30 TAC §§336.1-336.6, concerning disposal of radioactive substances and source material recovery and processing. The rules appeared in the December 17, 1993, issue of the *Texas Register* (18 TexReg 9766).

On page 9769 in the header of the second table, the last line of the first column (Only) should be moved to the bottom of the fourth column. The first column should read "New Application." The fourth column should read "Restoration or Reclamation Only."

On page 9769 in the first column, under subsection (a)(3), the second and third lines read "...of the following items listed after..." These should read "...of the following items after..."

On page 9770 in the second column, under subsection (a)(1)(D), the fifth line reads "...Obtaining approval of Proposed Disposal..." The letter "a" in "approval" should be capitalized.

On page 9770 in the third column, under subsection (f)(1)(B), the fourth line reads "...TRCR< Ap-..." The symbol "<" should be removed.

On page 9770 in the third column, under subsection (f)(1)(b), the fourth and fifth lines read "...or subsection (f)(3) of this section." They should read "...or paragraph (3) of this subsection."

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Notice of Application for Municipal Solid Waste Management Facilities

Attached are Notices of Applications for municipal solid waste permits issued during the period of December 27-31, 1993.

These applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of this notice.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address, and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing;" a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. In the event of hearing is held, the Office of Hearings Examiners will submit a recommendation to the Commission for final decision. If no protest or requests for hearing are filed, the Executive Director will sign the permit 30 days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Innovex, Inc.; Lubbock; Type V (Grease and Grit Trap); 501 North Avenue K, Lubbock County, Lubbock, Texas; new; MSW2230.

Issued in Austin, Texas, on December 28, 1993.

TRD-9334015 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: December 28, 1993

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Notice of Applications For Waste Disposal Permits

Attached are Notices of Applications for waste disposal permits. These notices were issued during the period of December 13-December 23, 1993.

These applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within 30 days of the date of newspaper publication of notice concerning the application(s).

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. IF one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protest or requests for hearing are filed, the Executive Director will sign the permit 30 days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing on this application should be submitted in writing to Kerry Sullivan, Assistant Chief Hearings Examiner, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7908.

Addicks Utility District; the South Wastewater Treatment Facilities; approximately two miles north of the intersection of Interstate Highway 10 and Barker-Cypress Road and approximately 1.3 miles east of the intersection of Barker-Cypress Road and Morton Road (Groschke Road) adjacent to Morton Road (Groschke Road) in Harris County, Texas; renewal; 11696-02.

Brazoria County Municipal Utility District Number Two; wastewater facilities; approximately 3,800 feet south of FM Road 3334 and approximately 1. 9 miles east of State Highway 288 in Brazoria County, Texas; renewal; 12705-01.

Cantex Chemicals, Inc.; a storage and shipping terminal at an inactive nitrogen fertilizer plant; on the west bank of the Neches River, approximately three miles east of the intersection of U.S. Highway 90 and State Highway 380, and southeast of the City of Beaumont, Jefferson County, Texas; renewal; 01202.

Chevron Chemical Company; a plant recycling scrap and off-specification polyethylene plastics; approximately 20 miles east of the City of Houston, Texas, and approximately 1.5 miles south of Interstate 10 on 1515 South Sheldon Road in the City of Channelview, Harris County, Texas; renewal; 01310.

Chevron USA Products Company; a petroleum products terminal; at 2525 Brennan Avenue in the City of Fort Worth, Tarrant County, Texas; new; 03605.

Gifford-Hill-American, Inc.; a plant which manufactures concrete pressure pipe; at 1624 Marshall Street in the City of Lubbock, Lubbock County, Texas; new; 03622.

A. P. Green Industries, Inc.; a facility manufacturing refractory products. The plant site is approximately seven miles southeast of the City of Sulphur Springs on State FM Road 1870, Hopkins County, Texas; renewal; 02581.

City of League City; the Countryside Wastewater Treatment Facilities; on the western bank of Magnolia Creek; approximately 1,200 feet south of Clear Creek, approximately 2,200 feet north of FM Road 518 and approximately 3.0 miles west of Interstate Highway 45 in Galveston County, Texas; renewal; 10568-03.

City of Leonard; wastewater treatment facilities; approximately 300 feet west of the intersection of U.S. Highway 69 and the Missouri, Kansas and Texas Railroad, southeast of the City of Leonard in Fannin County, Texas; renewal; 10920-01.

Montgomery County Municipal Utility District Number 8; the Walden Wastewater Treatment Facility; approximately six miles northwest of the City of Conroe, approximately 300 feet east of the Lake Conroe Shoreline on the north side of Old River Road in the eastern section of the Walden Subdivision in Montgomery County, Texas; renewal; 11371-01.

Nueces County Water Control and Improvement District Number 4; the Mustang Island North Wastewater Treatment Facilities; approximately 1/4 mile of the intersection of Sixth Street and Avenue I, west of the City of Port Aransas in Nueces County, Texas; renewal; 10846-01.

OXY Petrochemicals, Inc.; non-process areas of an organic chemical manufacturing facility; 0.5 of a mile north of Red Bluff Road in the City of Pasadena, Harris County, Texas; renewal; 03029.

City of Point Comfort; wastewater treatment facilities; at the intersection of Murrah and Pease Streets, approximately 2,900 feet northwest of the intersection of FM Road 1593 and State Highway 35 in Calhoun County, Texas; renewal; 10599-01.

Remington Municipal Utility District Number One; the Remington Plant #2 Wastewater Treatment Facilities; approximately 2.3 miles due south of the intersection of U.S. Highway 290 and Barker Cypress Road in Harris County, Texas; renewal; 13328-01.

City of San Marcos; the Plant Number Two Wastewater Treatment Facilities; on the north bank of the San Marcos River, approximately 4,000 feet east of the intersection of State Highway 123 and Interstate Highway 35 in the City

of San Marcos, Hays County, Texas; renewal; 10273-02.

San Miguel Electric Cooperative, Inc.; the San Miguel Steam Electric Station; approximately four miles east of State Highway 16 and sixteen miles south (via State Highway 16) of the City of Jourdanton, Atascosa County, Texas; renewal; 02601.

Sunnyside Pork Producers doing business as Thunder Valley Farms; a swine farm; on a private road just off County Road 512, approximately 2.5 miles west of the Community of Sunnyside, Castro County, Texas; new; 03634.

Texas Utilities Electric Company; the Monticello Steam Electric Station; on the east shore of Monticello Reservoir which is approximately one mile south of FM Road 127 and five miles southwest of the City of Mount Pleasant, Titus County, Texas; renewal; 01528.

Chemical Waste Management, Inc. (CWMI); waste disposal well and surface facilities; located south of State Highway 73, approximately 11.5 miles west of the City of Port Arthur in Jefferson County, Texas; renewal and amendment; WDW-160; 45-day.

Pride Refining, Inc.; two inactive surface impoundments and a closed hazardous waste landfill; located north of the City of Abilene, on the east side of U.S. Highway 277 in Jones County, Texas; new; HW-50125; 45-day.

Issued in Austin, Texas, on December 23, 1993.

TRD-9333945 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: December 23, 1993

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Notice of Opportunity to Comment on Permitting Actions

The following applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within ten days of the date notice concerning the application(s) is published in the *Texas Register*.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. IF one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protest or requests for hearing are filed, the Executive Director will sign the permit ten days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing on this application should be submitted in writing to the Chief Clerk's Office, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Application by Phillips Petroleum Company, for a minor amendment to Permit Number 01852 to eliminate discharges of certain wastewaters via Outfall 001 and 003. Freeport Terminal I's domestic wastewater will be routed from Outfall 001 to Outfall 004. The permit authorizes intermittent flow variable discharges of stormwater, washwater and treated domestic wastewater. The proposed amendment will enforce more stringent requirements as needed in order to meet existing applicable rules and regulations. The Freeport Terminal I plant is at the north end of County Road 731 about one mile northeast of the intersection of County Road 713/FM Road 1495 southeast of the City of Freeport. The Freeport Terminal II plant is on the north shore of the peninsula separating the Intracoastal Waterway and Freeport Harbor (Old Brazos River Channel) and approximately two miles southwest of the City of Freeport. The Jones Creek Terminal is about 1.5 miles southeast of the Town of Jones Creek and approximately five miles west of the City of Freeport. These terminals are in Brazoria County, Texas.

Issued in Austin, Texas, on December 23, 1993.

TRD-9333946 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: December 23, 1993

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Public Hearing Notices

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code, §384.015(c), the Texas Natural Resource Conservation Commission will conduct a public hearing to receive testimony concerning the petition of the South East Texas Regional Planning Commission to create an Area Emission Reduction Credit Organization (AERCO).

The petition proposes to create an Area Emission Reduction Credit Organization (AERCO) with the powers and duties specified in Texas Health and Safety Code, Chapter 384. The proposal affects the following counties: Jefferson, Orange and Hardin.

A public hearing on the proposal will be held January 27, 1994, at 10:00 a. m. in the Media Room of the New Jefferson County Airport Terminal, located on the Airport Access road off of U.S. 69, between Beaumont and Port Arthur, Texas.

The hearing is structured for the receipt of oral or written comments by interested persons. Interrogation or cross-examination is not permitted; however, a TNRCC staff member will discuss the proposal 30 minutes prior to the hearing and will be available to answer questions informally.

Written comments not presented at the hearing may be submitted to the TNRCC Central Office in Austin through February 4, 1994. Material received by the TNRCC Marketable Permits Section by 4:00 p.m. on February 4, 1994,

will be considered by the Commission prior to any final action on the proposal. Copies of the petition are available at the central office of the TNRCC, located at 12124 North IH-35, Park 35 Technology Center, Building C, Room 324 West, Austin, at the TNRCC regional offices in Beaumont located at 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703 and at the South East Texas Regional Planning Commission located at 3501 Turtle Creek Drive, Port Arthur. Please mail written comments to James Dodds, Marketable Permits Section, Air Policy Division, Office of Air Quality, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

For further information contact James Dodds at (512) 239-1119.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 475-2245. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on December 27, 1993.

TRD-9334021 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: December 29, 1993

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Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code, §384.015(c), the Texas Natural Resource Conservation Commission (TNRRCC or Commission) will conduct a public hearing to receive testimony concerning the petition of the Houston-Galveston Area Council to create an Area Emission Reduction Credit Organization (AERCO).

The petition proposes to create an Area Emission Reduction Credit Organization (AERCO) with the powers and duties specified in Texas Health and Safety Code, Chapter 384. The proposal affects the following counties: Harris, Fort Bend, Brazoria, Galveston, Chambers, Liberty, Montgomery and Waller.

A public hearing on the proposal will be held on January 26, 1994, at 1:30 p.m. at the Houston-Galveston Area Council, Meeting Room A, located at 3555 Timmons Lane, Houston, Texas 77027. The hearing is structured for the receipt of oral or written comments by interested persons. Interrogation or cross-examination is not permitted; however, a TNRCC staff member will discuss the proposal 30 minutes prior to the hearing and will be available to answer questions informally.

Written comments not presented at the hearing may be submitted to the TNRCC Central Office in Austin through February 4, 1994. Material received by the TNRCC Marketable Permits Section by 4:00 p.m. on February 4, 1994, will be considered by the Commission prior to any final action on the proposal. Copies of the petition are available at the central office of the TNRCC, located at 12124 North IH-35, Park 35 Technology Center, Building C, Room 324 West, Austin, at the TNRCC regional office in Houston located at 5555 West Loop, Suite 300, Bellaire, Texas 77401 and at the Houston-Galveston Area Council located at 3555 Timmons Lane, Houston, Texas 77027. Please mail written comments to James Dodds, Marketable Permits Section, Office of Air Quality, P. O. Box 13087, Austin, Texas 78711-3087.

For further information contact James Dodds at (512) 239-1119.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 475-2245. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on December 20, 1993.

TRD-9334022 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: December 29, 1993

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Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code, §382.017, (Vernon's 1992); Texas Government Code, Subchapter B, Chapter 2001 (Vernon's 1993); 30 Texas Administrative Code, §103.11(4) (West Publishing Company 1992) (Types of hearings); and 40 Code of Federal Regulations, §51.102 of the United States Environmental Protection Agency (EPA) regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission (TNRCC) will conduct public hearings to receive testimony concerning a revision to its rules and the SIP.

The TNRCC proposes revisions to 30 Texas Administrative Code (TAC) Chapter 117 regarding Control of Air Pollution from Nitrogen Compounds in response to a requirement by the EPA and the 1990 Federal Clean Air Act (FCAA) Amendments for states to apply reasonably available control technology (RACT) requirements to major sources of nitrogen oxides (NO_x) in the following ozone nonattainment counties: Brazoria, Chambers, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, and Waller. The proposed revisions include: allowing companies the option to use predictive emission monitoring systems (PEMS) in lieu of continuous emission monitoring systems (CEMS); resolving a conflict between the current method of calculation of the allowable emission rate in the Source Cap and EPA's preferred method; allowing electric utilities more flexibility in complying with the oil-fired NO_x emission limits; requiring that electric utility gas turbines be limited to the same carbon monoxide emission limit as for industrial gas turbines; and allowing optional inclusion of replacement facilities in the plant-wide emissions averaging compliance option and mandatory inclusion in the source cap compliance option. It has also been determined that it would be administratively more efficient to propose new §117.223 and to propose concurrently the repeal of existing §117.580 concerning Source Cap, since it pertains only to commercial, institutional, and industrial sources. Other proposed changes are administrative in nature which update names and titles to reflect the organizational structure of the TNRCC, change language to conform with *Texas Register* style conventions, reorganize rule language for clarity, and correct typographical and other errors in the current rule.

Public hearings on the proposal will be held on January 26, 1994, at 7:00 p. m. at the John Gray Institute, 855 Florida Avenue, Beaumont, and on January 27, 1994, at 11:00 a.m. in the City of Houston Pollution Control Building Auditorium, 7411 Park Place Boulevard, Houston. The hearings are structured for the receipt of oral or written comments by interested persons. Interrogation or cross-examination is not permitted; however, a TNRCC staff

member will discuss the proposal 30 minutes prior to the hearings and will be available to answer questions informally.

Written comments not presented at the hearings may be submitted to the TNRCC central office in Austin through January 28, 1994. Material received by the TNRCC Regulation Development Section by 4:00 p.m. on January 28, 1994, will be considered by the Commission prior to any final action on the proposal. Copies of the proposal are available at the central office of the TNRCC located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, and at the TNRCC regional office in Houston at 5555 West Loop, Suite 300, Bellaire. Please submit written comments to Randy Hamilton, Regulation Development Section, Office of Air Quality, P.O. Box 13087, Austin, Texas 78711-3087. For further information contact Randy Hamilton at (512) 239-1514.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 475-2245. Requests should be made as far in advance as possible.

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

TRD-9334023 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: December 29, 1993

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Texas State Board of Pharmacy

Correction of Error

The Texas State Board of Pharmacy adopted an amendment to 22 TAC §281.48, concerning informal disposition of contested cases. The rule appeared in the December 21, 1993, issue of the *Texas Register* (18 TexReg 9852).

On page 9852, §281.48(b): The word "and" should be deleted so that the text reads .. "the Administrative Procedure Act,"....

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Public Utility Commission of Texas

The General Counsel of the Public Utility Commission of Texas Request for Comments Concerning the Staff Evaluation of the Incentive Regulation Plan Established in Docket Number 8585

The General Counsel of the Public Utility Commission of Texas (General Counsel) has established a Staff-level project (Project Number 12562), to evaluate the four-year incentive regulation plan established by the Commission's Final Order in Southwestern Bell Telephone Company's most recent full rate case, Docket Number 8585. Throughout Docket Number 8585 and thereafter, General Counsel and Staff have viewed the incentive regulation plan as an experiment, the results of which would be reviewed before committing to any similar incentive regulation plans. Although the plan does not expire until November 29, 1994, General Counsel and Staff believe that it is appropriate to begin reviewing the plan now, based upon the first three years of operation, so that the initial evaluation and any resultant recommendations will be available either prior to, or contemporaneous with, the end of the incentive regulation period.

This project is being conducted pursuant to the General Counsel's investigatory authority under PURA, §8(c). It is not a contested case and will not require the Commission to issue a Final Order or decision. The project is designed solely for the General Counsel to accumulate and evaluate information concerning the effectiveness of the incentive regulation plan. Although any final report will represent the views of General Counsel and Staff, General Counsel invites public comments on the scope and/or focus of the evaluation. A list identifying various objectives of the plan and areas chosen for review is available for public inspection at the Commission Central Records Office, 7800 Shoal Creek Boulevard, Austin, Texas. Interested persons are invited to provide comments or suggestions on revisions or additions to the list of objectives and review areas. Any such comments should contain a reference to Project Number 12562 and should be submitted by January 24, 1994, to John M. Renfrow, Secretary of the Commission, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757. Additionally, nine copies of the comments should be provided to Patrick J. Sullivan, Assistant General Counsel at the same address.

Questions concerning the effectiveness of the incentive regulation plan will probably be raised in SWB's next rate case. This project is not intended to be a substitute for, or in lieu of, consideration of these questions by the Public Utility Commission in a contested case. Instead, this project will be used to help the General Counsel develop its position on issues related to the incentive regulation plan.

Issued in Austin, Texas, on December 20, 1993.

TRD-9333861 John M Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: December 21, 1993

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Notices of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 16, 1993, to amend a Certificate of Convenience and Necessity pursuant to §§16(a), 17(e), 50, 52, and 54 of the Public Utility Regulatory Act. A summary of the application follows.

Docket Title and Number. Application of West Texas Utilities Company to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line Within Tom Green County, Docket Number 12585 before the Public Utility Commission of Texas.

The Application. In Docket Number 12585, West Texas Utilities Company requests approval of its application to construct approximately 0.39 mile of 69-kV transmission line in Tom Green County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512)

458-0227 within 15 days of this notice.

Issued in Austin, Texas, on December 21, 1993.

TRD-9333862 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: December 21, 1993

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 16, 1993, to amend a Certificate of Convenience and Necessity pursuant to §16(a), 17(e), 50, 52, and 54 of the Public Utility Regulatory Act. A summary of the application follows.

Docket Title and Number. Application of Central Power and Light Company to Amend a Certificate of Convenience and Necessity for Proposed Transmission Line with Maverick County, Docket Number 12586 before the Public Utility Commission of Texas.

The Application. In Docket Number 12586, Central Power and Light Company requests approval of its application to construct approximately 4.59 miles of 138-kV transmission line within Maverick County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas at 7800 Shoal Creek Boulevard, Suite 400 North, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas, on December 22, 1993.

TRD-9333978 John M Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed. December 27, 1993

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Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Shell Oil Company, Houston, Texas.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for Shell Oil Company pursuant to Public Utility Commission Substantive Rule 23.27(k). Docket Number 12580.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Shell Oil Company. The geographic service market for this specific service is the Houston, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on December 21, 1993

TRD-9333863 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: December 21, 1993

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Notice of Public Hearing

The Public Utility Commission of Texas will hold a public meeting for the purpose of discussing with members of the public a Staff proposal for a rule on integrated resource planning for electric utilities.

The meeting will be held on Monday, January 10, 1994, at 9:00 a.m. at the offices of the Public Utility Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757.

All parties who are interested in this proposed rule are invited to attend. The meeting will be conducted by the Commission Staff and will not be an open meeting of the Commission.

For additional information, please contact Assistant General Counsel Jess Totten, at the listed address or at (512) 458-0365.

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

TRD-9333841 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: December 20, 1993

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Railroad Commission of Texas

Notice of Hearing

The Railroad Commission of Texas will conduct a public hearing to receive comments on proposed amendments to §5.233, concerning charter and special party bus service, on January 21, 1994, at 9:00 a.m., in Room 12-126 of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Written comments will be accepted through noon on January 21, 1994, and should be submitted to Hearings Examiner Carrie L. McLarty at the above address or by telephone at (512) 463-7094.

The text of the proposed rule is published in the August 31, 1993, issue of the *Texas Register* (18 TexReg 5828).

The commission invites comments on the following specific issues:

1. Each regular route carrier's specific revenues and costs for its intrastate regular route passenger service, and a designation, by revenue and costs, of those routes which are not profitable. Also, frequency of operation and average daily passenger count for each regular route in the most recent twelve-month period.

2. Each regular route carrier's specific revenues and costs for charter or special party service, its total intrastate revenues and costs, and its total system-wide revenues and costs. Also, average passenger count per trip in the most recent twelve-month period.

3. Estimates or projections by any regular route carrier on whether, and if so, why, it would cease providing all or a portion of its regular route service if the proposed rule is adopted, including such estimations or projections.

Any interested person may appear and offer comments; however, questioning of persons making presentations will

be reserved for the commission. Depending upon the number of persons requesting oral presentations, the commission may limit the time for individual comments. The commission may determine the order of speakers and the issues which may be presented by the speakers. The commission may decline to hear repetitive testimony. A person may not be permitted to assign a portion of his or her time to another speaker. Organizations, associations, and groups are encouraged to present their commonly held views and identical or similar comments through a single representative or member where possible.

Submissions of written comments five days prior to the hearing are encouraged. Any suggestions or requests for alternative language or other revisions in the text of the proposed rule should be submitted in written form.

Any person with a disability who needs auxiliary aids and/or services in order to have an equal opportunity to communicate and participate effectively in this public hearing must request such aids or services by 5:00 p.m. on January 14, 1994, by notifying the Personnel Office of the Railroad Commission by mail at P.O. Box 12967, Austin, Texas 78711-2967, or by telephone at (512) 463-7327 or TDD Number (512) 463-7284.

Issued in Austin, Texas, on December 20, 1993.

TRD-9333851 Mary Ross McDonald
Assistant Director, Legal Division, Gas Utilities/LP-Gas Section
Railroad Commission of Texas

Filed: December 20, 1993

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Texas Rehabilitation Commission
Intent to Award Grants

On behalf on the Council as its designated state agency the Texas Rehabilitation Commission intends to award a grant to United Cerebral Palsy of Texas, Austin, Texas, to expand their efforts to implement the Technology-Learning-Collaboration (TLC) Project. The TLC Project was made possible through a grant from the U.S. Department of Education. The intent of the project is to implement a set of training strategies designed to foster service delivery practices for babies with disabilities age three years and younger.

The Developmental Disabilities Assistance and Bill of Rights Act of 1990 (P. L. 100-496), authorizes funds to be provided for studies, analysis, development of model policies, and technical assistance to providers with respect to "priority area activities" adopted by the Council, and information dissemination to local, state and federal policymakers. One purpose of the DD Act is to provide assistance to states to assure that all people with developmental disabilities receive the services and other assistance and opportunities needed to achieve their potential through increased independence, productivity and integration into the community. Consistent with that purpose and with an on-going commitment to the welfare of people with disabilities and to community inclusion, the Texas Planning Council for Developmental Disabilities announces its intention to provide funds to expand the efforts otherwise available with Department of Education funding. Given the relatedness of this project to the Council's current State Plan, the direction of the new Strategic Plan, and overall discussions within the Planning and Evaluation Committee and the Council, the Council voted to approve funding of this project.

Description of Project. The TLC Project is designed to coordinate with the personnel development activities of Massachusetts and Texas in implementing the Individuals With Disabilities Education Act (IDEA). The project, conceived as a capacity building project for the two states, is funded for three years, and is based on collaboration with United Cerebral Palsy Association, Early Childhood Intervention Council (ECI), the UAP at U.T. Austin, and UCP of Texas. The TLC Model is a set of training strategies designed to foster service delivery practices that result in the careful integration of readily available technology into comprehensive early intervention programs for babies with disabilities ages three years and younger, as well into the array of family support activities available to their families. United Cerebral Palsy of Texas seeks participation and support from the Texas Planning Council for Developmental Disabilities in the planning, implementation and evaluation of the Technology-Learning-Collaboration Project, and is requesting assistance for the following activities: assistance in facilitating linkages with existing Council grantees involved in ECI or assistive technology projects; access to Council mailing lists for recruitment to trainings around the state; printing of training materials, recruitment information and follow-up packets of materials; assistance with travel expenses incurred by parents attending training sessions; computer equipment for project staff; support for long distance calls on a 1-800 line; and assistance in locating accessible meeting space in various communities that is free-of-charge or low cost.

Terms and Funding. The project will be funded for a 3-year period. The initial budget period will be from January 1, 1994 to May 31, 1994. The level of funding is expected to be in the range of $30,000 annually. A 25% non-federal match is requested. Continuation funding will be contingent upon satisfactory performance and will be based on an annual review of project performance by the Council staff.

For information on any aspect of this announcement, contact: Lester Sanders, Texas Planning Council for Developmental Disabilities, 4900 North Lamar Boulevard, Austin, Texas 78751-2399, (512) 483-4084.

Issued in Austin, Texas, on December 23, 1993.

TRD-9333990 Charles Schiesser
Associate Commissioner for Legal Services
Texas Rehabilitation Commission

Filed: December 28, 1993

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On behalf on the Council as its designated state agency the Texas Rehabilitation Commission intends to award a grant to Advocacy, Inc., 7800 Shoal Creek Boulevard, Austin, Texas, which is the designated Client Assistance Program in Texas and as such is responsible to provide information about the Rehabilitation Act to individuals seeking or receiving services funded under the Rehabilitation Act.

The Developmental Disabilities Assistance and Bill of Rights Act of 1990 (P. L. 100-496), authorizes funds to carry out systemic change, capacity building and advocacy activities which assist in developing a comprehensive system of services, supports and other assistance for individuals with developmental disabilities and their families. One purpose of the DD Act is to provide assistance to states to assure that all people with developmental disabilities receive the services and other assistance and opportunities needed to achieve their potential through increased inde-

pendence, productivity and integration into the community.

Consistent with that purpose and with an on-going commitment to the welfare of people with disabilities and to community inclusion, the Texas Planning Council for Developmental Disabilities announces its intention to provide funds for training to consumers and families on the Rehabilitation Act Amendments of 1992. The training will allow people to more effectively participate in the VR process and to benefit from changes in the Rehabilitation Act.

Description of Project. The training project will do statewide dissemination of information about the Rehabilitation Act Amendments and will provide training to individuals with disabilities and their families. Components of the training will include: the new eligibility criteria for vocational rehabilitation; the greater flexibility in provision of supported employment; and the increased emphasis on the provision of assistive technology, transition services, personal assistance and independent living. Particular effort will be made to reach individuals who have been unserved or underserved by the rehabilitation system. The project will collaborate with the Council, the Texas Rehabilitation Commission, the Texas Commission for the Blind, and the University Affiliated Program at UT-Austin.

Terms and Funding. The Project will be funded for up to 18 months. Funding for the first 12 months will be $85,000 to $100,000 and $45,000 to $50, 000 for the final six months. Total funding is not expected to exceed $150,000 and is contingent on the availability of funds. The initial budget period will be determined by the TPCDD and the grantee.

Criteria for Award. Eligible applicants must have previous experience in providing information to vocational rehabilitation consumers, applicants and prospective applicants and be involved in statewide advocacy on behalf of individuals with developmental disabilities and their families. By this notice of intent, any organization may submit a desire to apply in writing on or before January 31, 1994 indicating their qualifications to carry out this activity.

For information on any aspect of this announcement, contact: Lester Sanders, Texas Planning Council for Developmental Disabilities, 4900 North Lamar Boulevard, Austin, Texas 78751-2399, (512) 483-4084.

Issued in Austin, Texas, on December 23, 1993.

TRD-9333991 Charles Schiesser
Associate Commissioner for Legal Services
Texas Rehabilitation Commission

Filed: December 28, 1993

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State Securities Board

Correction of Errors

The State Securities Board proposed an amendment to 7 TAC §127.3, concerning the meaning of the term "state seal". The rule appeared in the December 7, 1993, issue of the *Texas Register* (18 TexReg 9039).

Section 127.3–The phrase "The term" in the first line of the rule text should not be in italics.

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The Texas A&M University System

Request for Proposal

The Texas A&M University System (A&M System) requests proposals from law firms interested in representing the A&M System and its component members in certain tax matters.

Description. The A&M System is composed of 17 members supported by legislative appropriations, tuition, fees, income from auxiliary enterprises, the Permanent University Fund, the Available University Fund, grants, gifts, sponsored research and other sources of revenues, all of which may be impacted by the Internal Revenue Code and Regulations of the Internal Revenue Service. For assistance with such issues, the A&M System will engage outside counsel for review of and advice regarding tax matters including, but not limited to the following: Retirement Programs; unrelated business income tax; personal income tax issues as they relate to donors; and tax matters regarding compensation issues.

The A&M System invites proposals in response to this RFP from qualified firms for the provision of such legal and tax services under the direction and supervision of the A&M System Office of the System Comptroller and Director of Administrative Reporting.

Responses. Responses to this RFP should include at least the following information: a description of the firm's or attorney's qualifications for performing the legal services, including the firm's prior experience in tax-related matters and retirement plans as they relate specifically to universities, the names and experience of the attorneys who will be assigned to work on such matters, the availability of the lead attorney and others assigned to the project and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of legal services; the submission of fee information (either in the form of hourly rates for each attorney who may be assigned to perform services in relation to the A&M System federal tax matters, comprehensive flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; a comprehensive description of the procedures to be used by the firm to supervise the provision of legal services in a timely and cost-effective manner, disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, representing any entity or individual with an interest adverse to the A&M System or to the State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials); and confirmation of willingness to comply with policies, directives and guidelines of the Texas A&M University System and the Attorney General of the State of Texas.

Format and Person to Contact. Three copies of the proposal are requested. The proposal should be typed, preferably double spaced, on 8-1/2 by 11 inch paper with all pages sequentially numbered, and either stapled or bound together. They should be sent by mail or delivered in person, marked "Response to Request for Proposal" and addressed to Linda N. Johnson, Office of the Comptroller and Director of Administrative Reporting, Texas A&M University System, Headquarters Building, Room 419, College Station, Texas 77843-1118.

Evaluation. Proposals sent in response to this RFP will be evaluated in light of several criteria. The criteria are

expertise, prior experience in handling tax matters, participation of women and minorities in delivering legal services, and reasonableness of fees. Although the fee structure and overall cost of this representation will be an extremely important factor in evaluating proposals submitted in response to this RFP, the successful firm(s) will clearly demonstrate exceptional expertise and experience with the federal tax matters made the subject of this RFP, as well as a commitment to participation by minorities and women in the provision of legal services.

Deadline for submission of Response. All proposals must be received by the Office of Comptroller and Director of Administrative Reporting of the A&M System at the address set forth above not later than 5:00 p.m., January 31, 1994.

Issued in College Station, Texas, on December 22, 1993.

TRD-9333951 Vickie Running
Secretary to the Board
The Texas A&M University System

Filed: December 23, 1993

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Texas Department of Transportation

Public Notice

Notice of Invitation. The Texas Department of Transportation (TxDOT), hereinafter called the department, is seeking competitive bids for a project manager on a large department automated system development project. The project is referred to as the Registration and Title System (RTS) project. It was initiated in September, 1986, and is an automated "point of sale" system for processing motor vehicle title and registration data. The estimated total cost of the system is $33,685,000. The RTS system will be installed in approximately 400 county tax assessor-collector offices and Vehicle Titles and Registration Division (VTRD) regional office locations in all areas of the state. There are about 1,500 users of the system to be trained prior to installation. About 2,200 microcomputer workstations will be installed and connected to the central processor and data base (ABABAS) in Austin via the department's LU 6.2 SNA teleprocessing network.

Schedule. Critical RTS project implementation timeframes are as follows: Phase I-February, 1994, RTS data base conversion and VTRD production; Phase II-June, 1994, implement pilot production; Phase III-November, 1994, begin full statewide implementation; Phase IV-September, 1995, end statewide implementation; and Phase V-October, 1995, begin critical enhancements.

Pre-Bid Conference. A pre-bid conference is scheduled for 9:00 a.m. , January 6, 1994 at 200 East Riverside Drive, Room 207, Austin, Texas. An overview and demonstration of the RTS system will be presented. The department will read answers to questions submitted in advance. Questions shall be received by the department no later than 3:00 p.m. CTZ, on January 4, 1994.

Request for Invitation for Bids and Agency Contact. The purpose of this notice is to solicit bids from interested vendors. The invitations for bid will be available from the department beginning December 22, 1993. Interested firms may request that a bid package be mailed to them by contacting the General Services Division, Attention: Varinia Gann at (512) 416-2062.

Issued in Austin, Texas, on December 21, 1993.

TRD-9333930 Diane L Northam
Legal Administrative Assistant
Texas Department of Transportation

Filed: December 23, 1993

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Texas Department of Transportation, Division of Aviation

Notice of Contract Award

Under the provisions of Texas Civil Statutes, Article 664-4, the Texas Department of Transportation publishes this notice of a consultant contract award for providing professional engineering services.

The request for qualifications for professional engineering services was published in the September 14, 1993, issue of the *Texas Register* (18 TexReg 6239).

The consultant will provide professional engineering services for the design and construction administration phases for the following TxDOT Project: Number 95-05-031, Dimmit County Airport.

The engineering firm for these services is: P S A Engineering, 13747 Montfort Drive, Suite 204, P.O. Box 802307, Dallas, Texas 75240.

The total value of the contract is $106,650 and the contract period starts on December 22, 1993, until the completion of the project.

Issued in Austin, Texas, on December 27, 1993.

TRD-9334038 Diane L. Northam
Legal Administrative Assistant
Texas Department of Transportation

Filed: December 29, 1993

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Texas Workers' Compensation Commission

Notice to Non-Covered Employers

Effective January 1, 1994, if you are not covered by workers' compensation insurance and you employ five or more employees who are not exempt from the Act, you must report to the Texas Workers' Compensation Commission all injuries that result in more than one day lost time. You must also report any occupational disease or fatality. This requirement is established in the Texas Labor Code, §411.002 and §411.031, and in Commission Rule 164.13.

Issued in Austin, Texas, on December 27, 1993.

TRD-9333973 Ken Forbes
Policy and Rules Administrator
Texas Workers' Compensation Commission

Filed: December 27, 1993

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