

TEXAS REGISTER

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Office of the
Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(512) 463-5561
FAX (512) 463-5569

Secretary of State
Ronald Kirk

Director
Dan Procter

Assistant Director
Dee Wright

Circulation/Marketing
Roberta Knight
Jill S. Ledbetter

TAC Editor
Dana Blanton

TAC Typographer
Madeline Chriner

Documents Section
Supervisor
Patty Webster

Document Editors
Janene Allen
Robert Macdonald

Open Meetings Clerk
Jamie Alworth

Production Section
Supervisor
Ann Franklin

Production Editors/
Typographers
Carla Carter
Roy Felps
Mimi Sanchez

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How to Use the Texas Register

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

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

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

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

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date

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

Open Meetings - notices of open meetings.

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

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

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

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

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

Texas Administrative Code

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

The *TAC* volumes are arranged into Titles (using

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

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

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

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

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

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

How to update. To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 12, and October 11, 1994). In its second issue each month the *Texas Register* contains a cumulative *Table of TAC Titles Affected* for the preceding month. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

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The *Table of TAC Titles Affected* is cumulative to 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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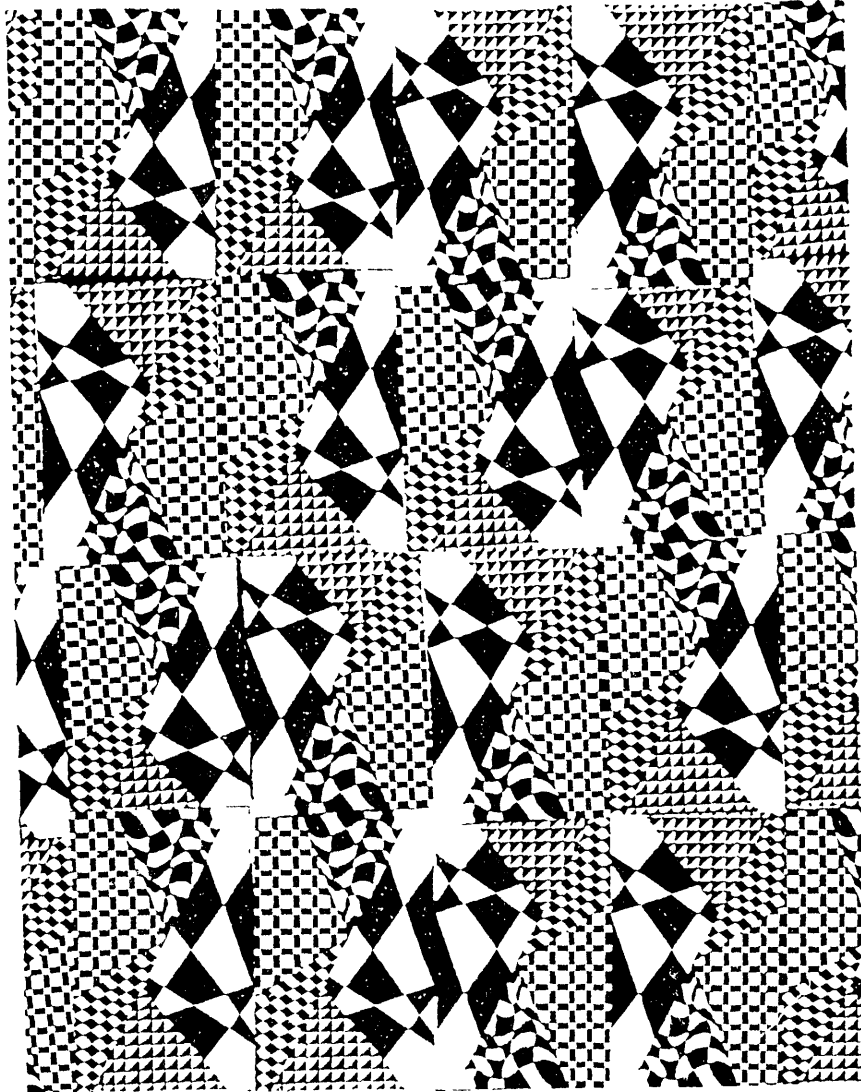
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Office of the Secretary of State

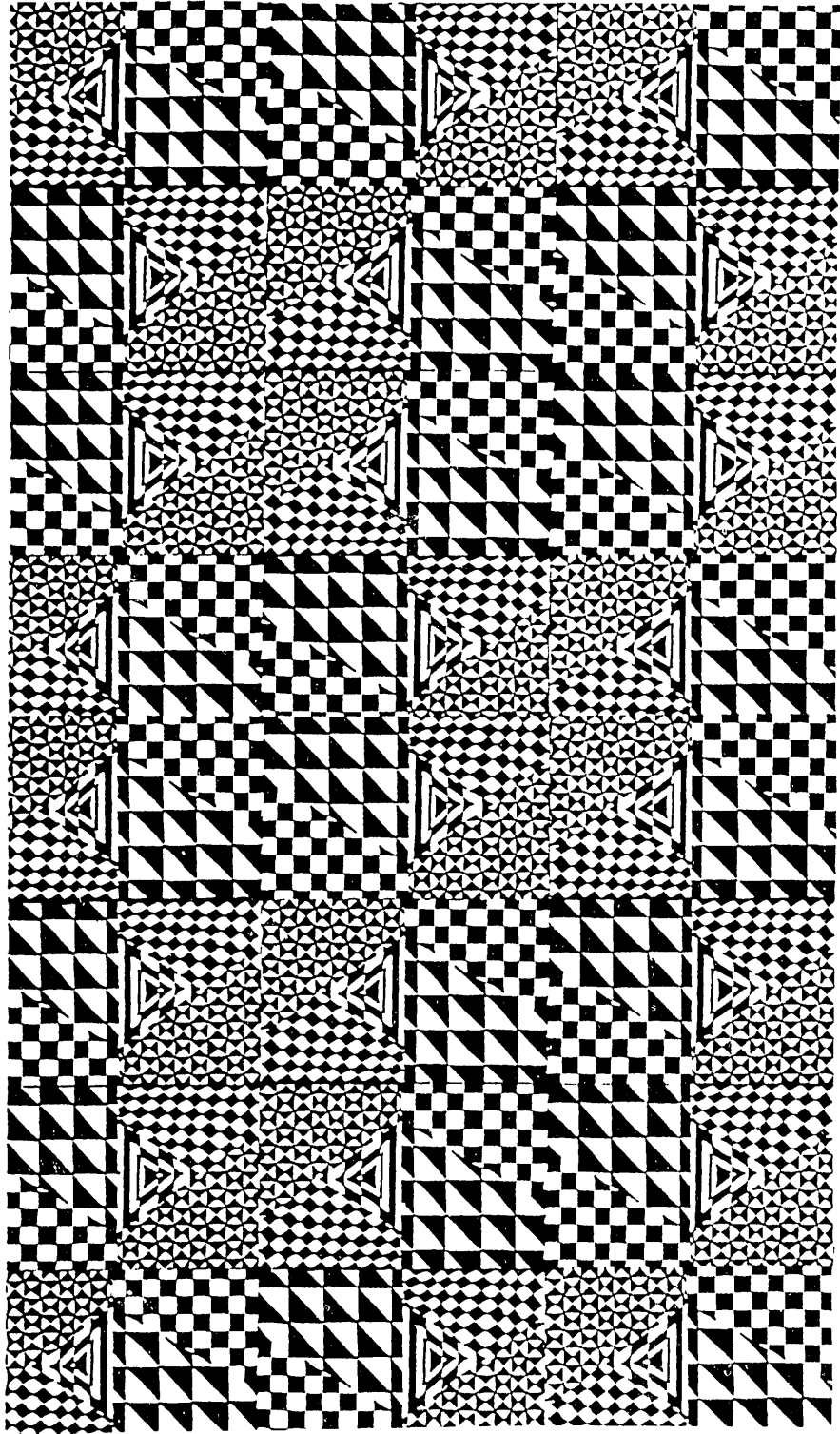
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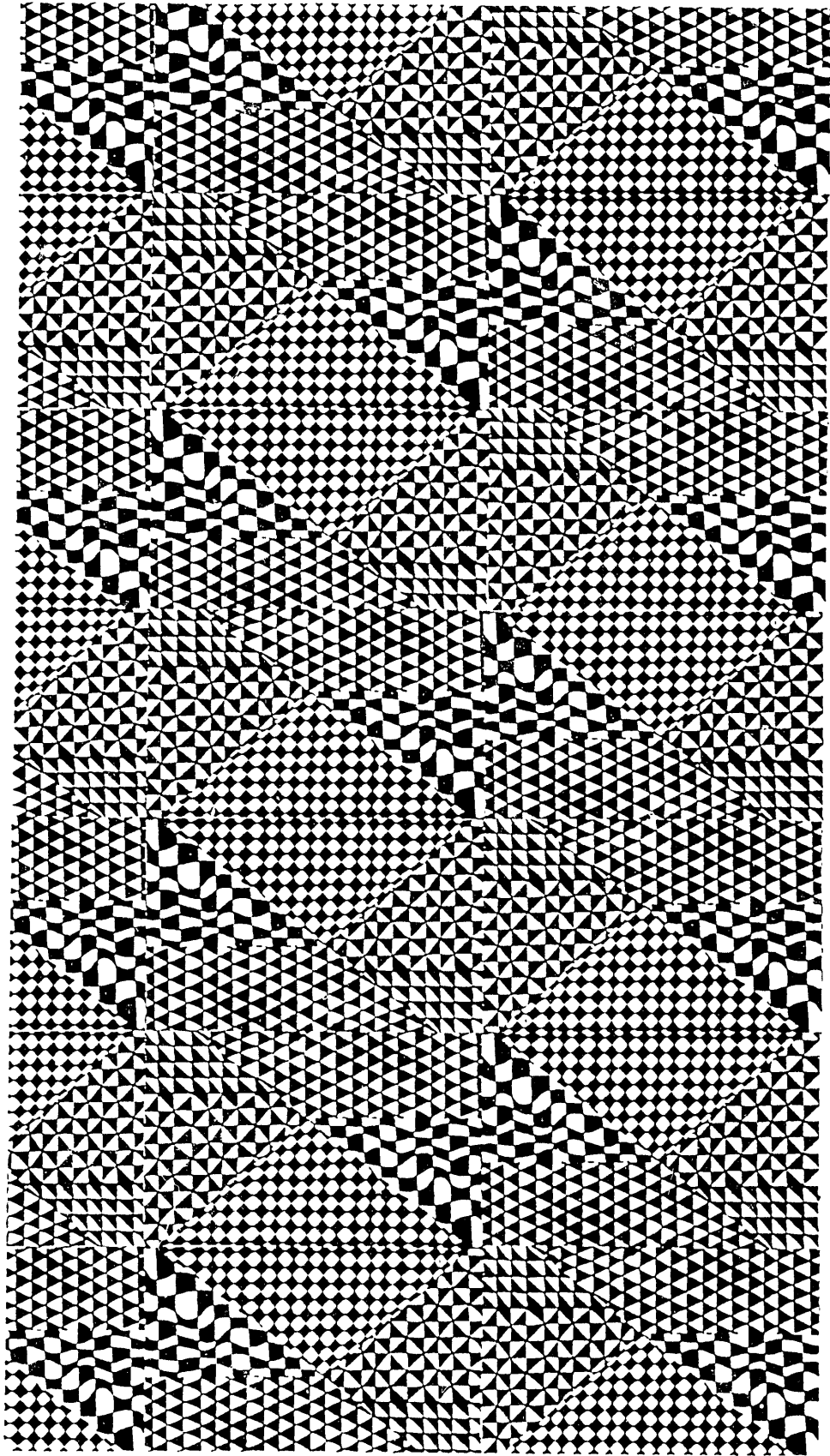
Name Carlos Garza
Grade 10
School Lopez High School, Brownsville ISD



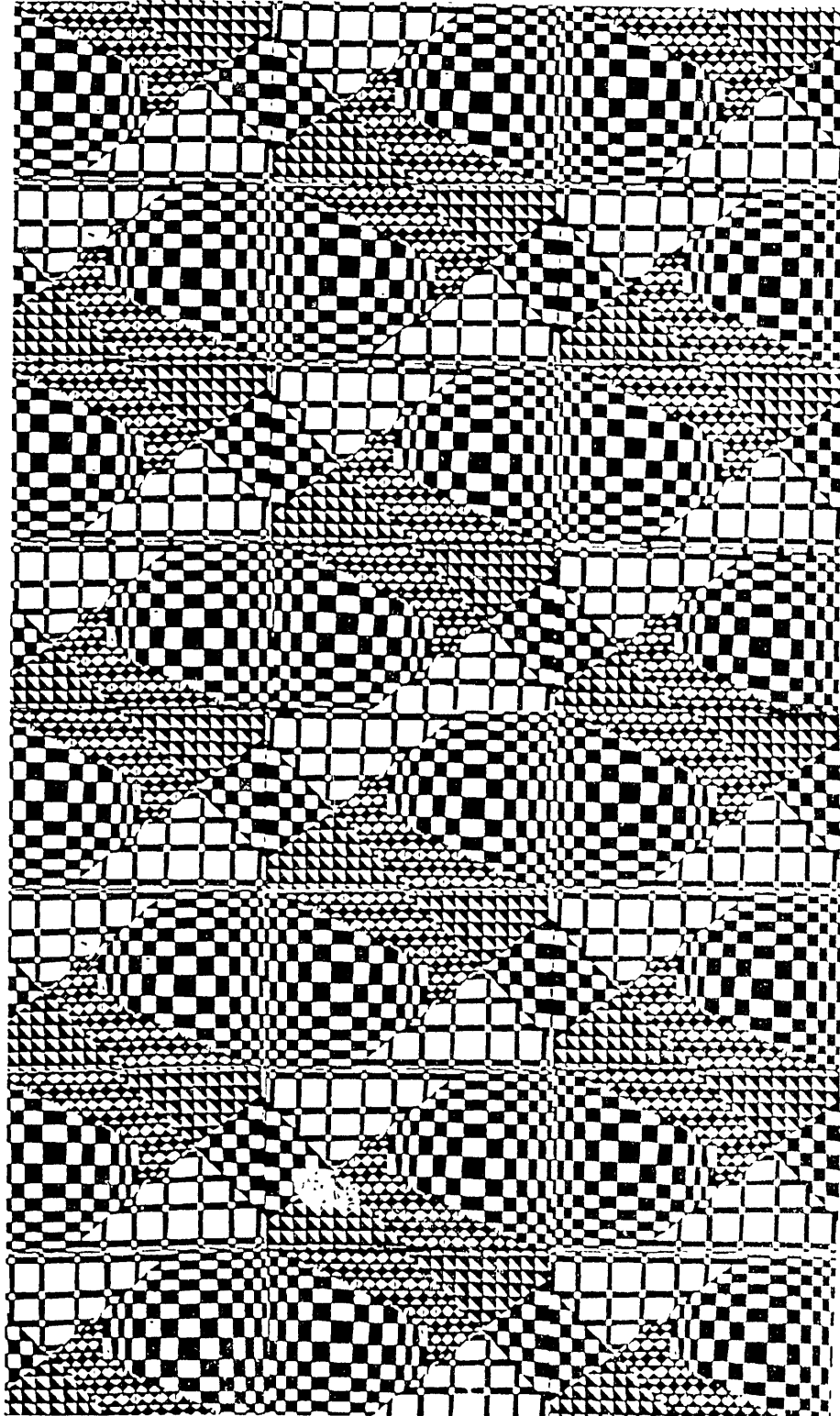
Name: Marizol Sifuentes

Grade: 9

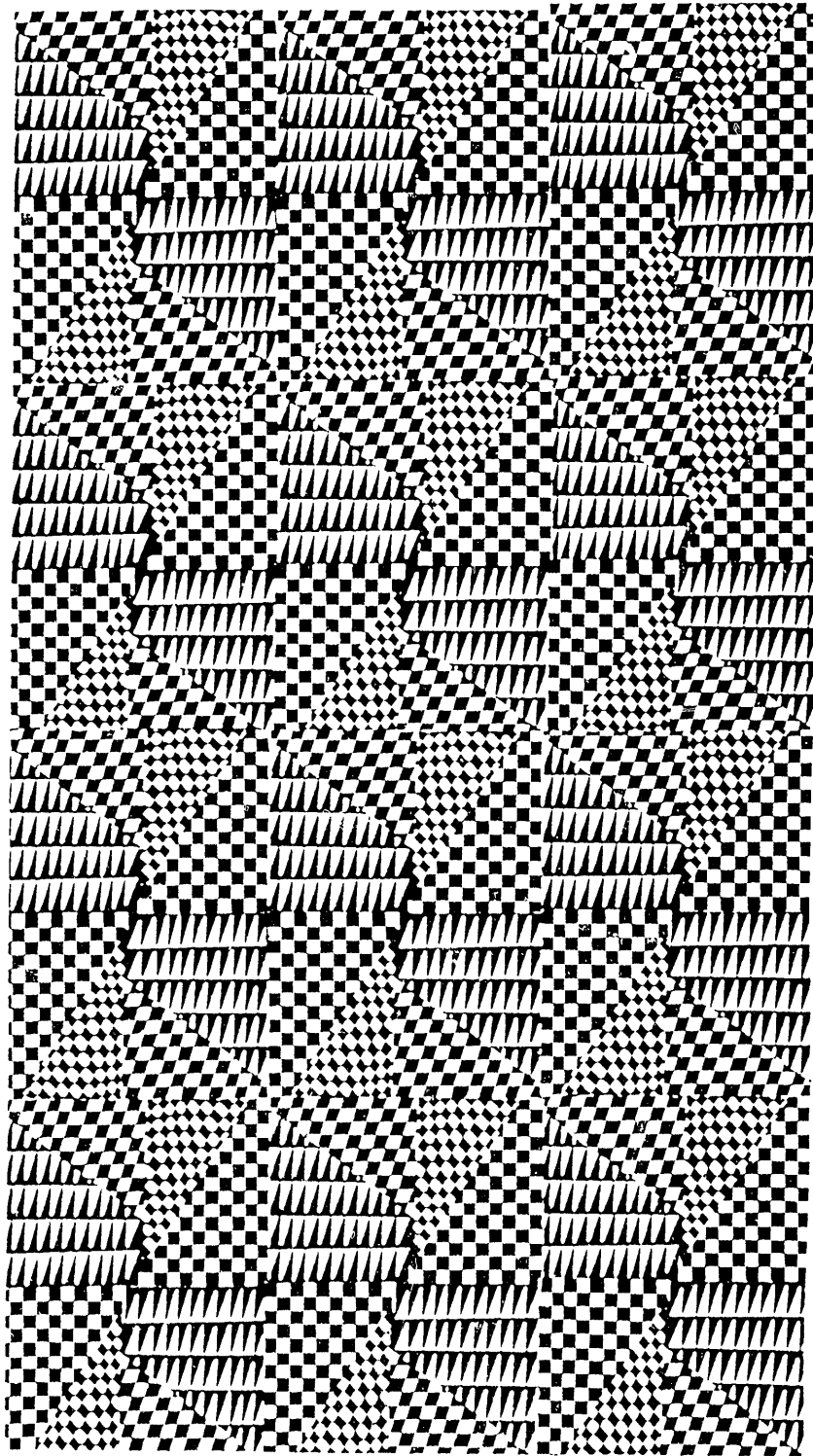
School: Lopez High School, Brownsville ISD



Name Sylvia Ayala
Grade 9
School Lopez High School, Brownsville ISD



Name: Rolando Rangel
Grade 9
School: Lopez High School, Brownsville ISD



Name Briana Arruaga
Grade 9
School Lopez High School - Brownsville ISD



Name Eino Steve Rodriguez
Grade 9
School Lopez High School, Brownsville ISD

CORRECTION

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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 May 26, 1994

To be a member of the **Texas Workers' Compensation Insurance Fund Board of Directors** for a term to expire February 1, 1997 Michael W Brest, 1801 Club House Lane, San Angelo, Texas 76904 Mr Brest will be replacing Glenn Biggs of San Antonio, who resigned

To be a member of the **Coastal Water Authority Board of Directors** for a term to expire April 1, 1995. Joseph G Soliz, 9406 Beverly Hill, Houston, Texas 77063 Mr Soliz will be replacing Elwood York, Jr of Houston, who resigned

To be a member of the **Coastal Water Authority Board of Directors** for a term to expire April 1, 1995. Johnnie G Jennings, 5049 FM 1405, Baytown, Texas 77520 Mr Jennings is being reappointed

To be a member of the **Coastal Water Authority Board of Directors** for a term to expire April 1, 1996 Buster E French, 345 Westlake Road, Dayton, Texas 77535 Mr French is being reappointed

Appointments Made May 27, 1994

To be a member of the **Texas Guaranteed Student Loan Corporation Board of Directors** for a term to expire January 31, 1997 Sharon Michael, 9527 Pagewood Lane, Houston, Texas 77063 Ms Michael will be filling unexpired term of Lee Elliott Brown of Houston, who resigned

To be a member of the **Produce Recovery Fund Board** for a term to expire January 31, 1995 Naomi S Kemp, 116 Carrell Avenue, Wharton, Texas 77488 Ms Kemp will be filling the unexpired term of Steven L Wellman of Houston, who resigned

To be a member of the **Board of Vocational Nurse Examiners** for a term to expire September 6, 1999 Susie Belle (Miller) Cheney, P O Box 201, Pittsburg, Texas 75686 Ms Cheney will be replacing Sandra Underwood Knight of Palestine, whose term expired

To be a member of the **Board of Vocational Nurse Examiners** for a term to expire September 6, 1999 Vargie F Perez, P O Box 414, Needville, Texas 77461 Ms Perez will be replacing Norma Jean Clark of Corinth, whose term expired

To be a member of the **Board of Vocational Nurse Examiners** for a term to expire September 6, 1999 Janet Wood-Yanez, P O Box 72, Mercedes, Texas 78570 Ms Wood-Yanez will be replacing Charlotte Jane Sifford of Adrian, whose term expired

To be a member of the **Board of Vocational Nurse Examiners** for a term to expire September 6, 1995 Rudolph Robert Willmann, Jr, 3832 Barrington, San Antonio, Texas 78217 Mr Willmann is being appointed to a new position pursuant to Texas Civil Statutes, Article 4528c

To be a member of the **Board of Vocational Nurse Examiners** for a term to expire September 6, 1999 Steven H Levin, 11705 Parwen Drive, Dallas, Texas 75230 Mr Levin is being appointed to a new position pursuant to Texas Civil Statutes, Article 4528c

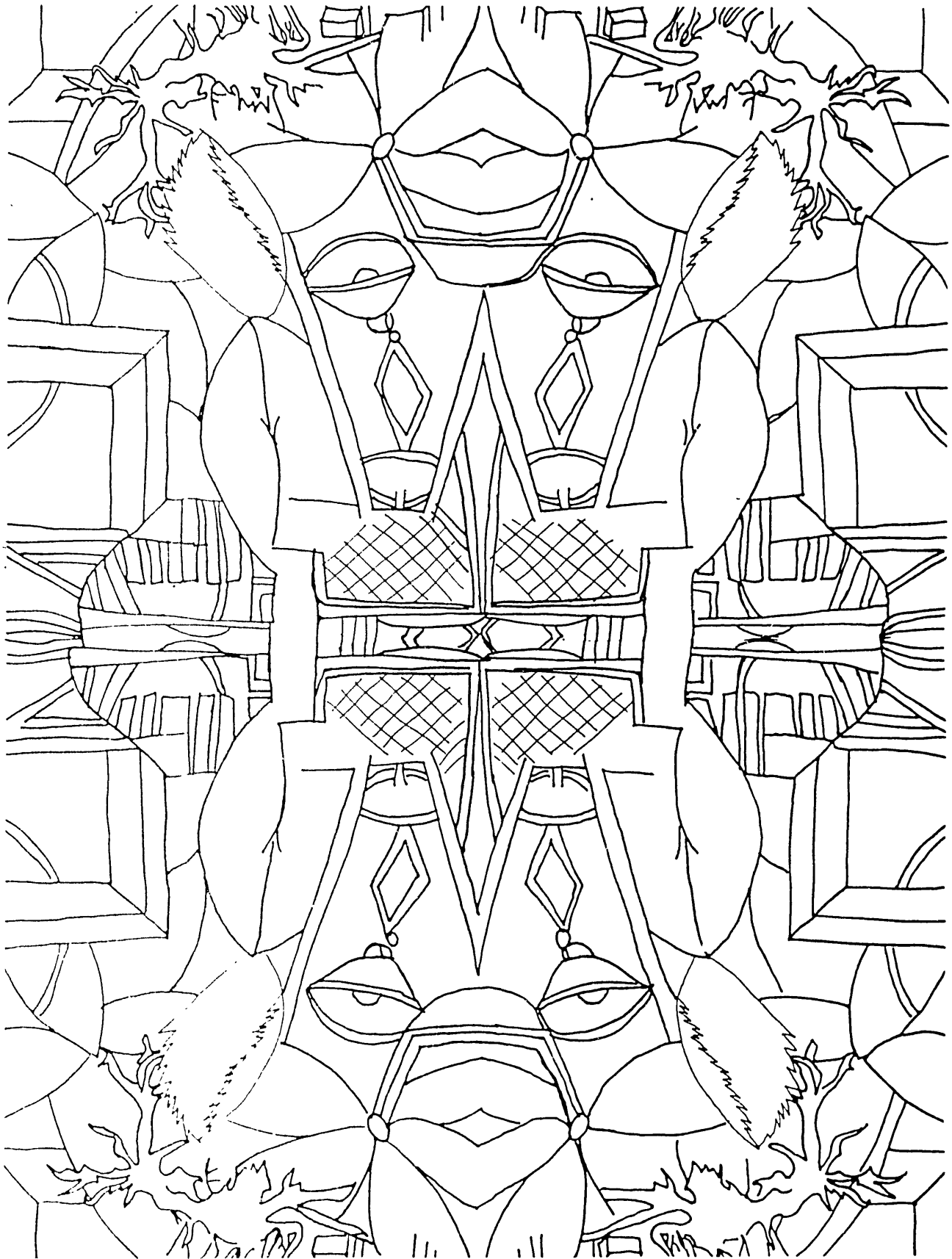
To be a member of the **Texas Cancer Council** for a term to expire February 1, 2000 Joseph S Bailes, M.D., 1700 Esperanza, McAllen, Texas 78501 Dr Bailes is being reappointed

Issued in Austin, Texas, on June 1, 1994

TRD-9441630

Ann W Richards
Governor of Texas





Name I mo Steve Rodriguez
Grade 9
School Lopez High School, Brownsville ISD

TEXAS ETHICS COMMISSION

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

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

Texas Ethics Commission

Opinions

AOR-242. The Texas Ethics Commission has been asked to consider whether an incorporated traded association may pay a late fine assessed against the treasurer of its affiliated general-purpose political committee.

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

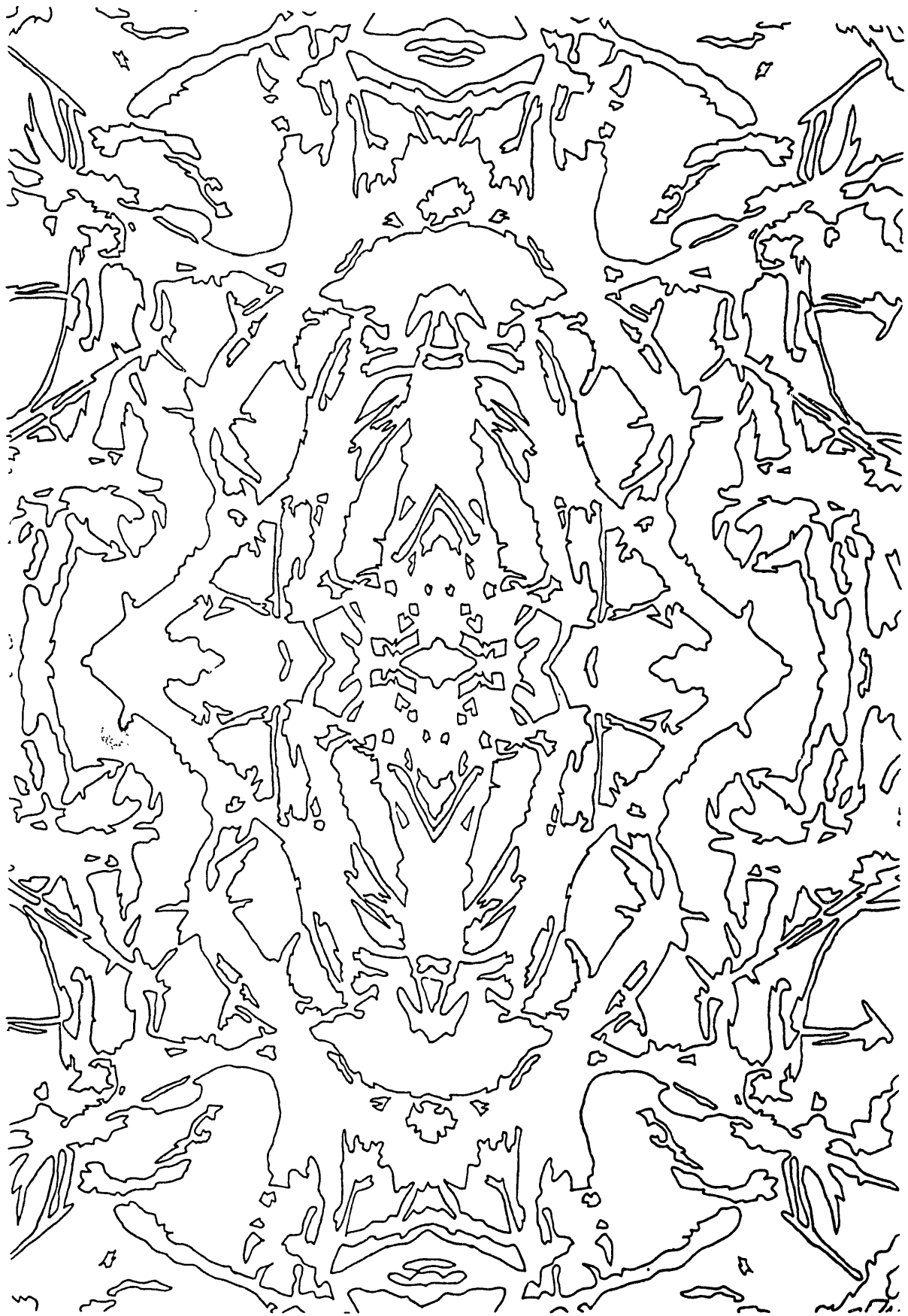
Issued in Austin, Texas, on June 1, 1994.

TRD-9441712

Sarah Woelk
Director, Advisory Opinions
Texas Ethics Commission

Filed: June 2, 1994





Name: Blanca Rodriguez
Grade: 10
School: Lopez High School, Brownsville 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 22. EXAMINING BOARDS

Part XI. Board of Nurse Examiners

Chapter 213. Practice and Procedure

• 22 TAC §213.33, §213.34

The Board of Nurse Examiners proposes new §213.33 and §213.34, concerning Schedule of Fines and Penalty/Sanction Factors. A significant part of the disciplinary case load involves non-practice errors such as practice on a delinquent license, failure to comply with continuing education requirements, and failure to verify licensure. These violations lend themselves to predetermined penalties. Changes made during the 73rd Legislative session require that complaints be categorized by priority; the adoption of this rule will enable those lower priority cases to be moved through the system quicker, thus enabling staff time to spend on higher priority cases. The deterrent effect of fines should increase the level of compliance and reduce the number of non-practice violations in the disciplinary case load.

Louise Waddill, Ph.D., R.N., executive director, has determined that there will be fiscal implications as a result of enforcing or administering the sections. Revenue will increase for state government, but we are unable to determine amount at this time. There will be no effect on local government for the first five-year period the sections are in effect.

Ms. Waddill also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to increase compliance through the deterrent effect of a fine, and to expedite disposition of non-practice violations and to provide notice through rule of the fine structure to be used in expedited and traditional discipline. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the sections as proposed is unable to determine, based on degree of violation.

Comments on the proposal may be submitted to Louise Waddill, Ph.D., R.N., Executive Director, Board of Nurse Examiners, Box

140466, Austin, Texas 78714.

The new sections are proposed under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

§213.33. *Schedule of Fines.* In disciplinary matters, the board may assess a monetary fine in the circumstances and amounts as described.

(1) The following violations may be appropriate for disposition by fine with or without educational stipulations:

(A) practice on a delinquent license for more than six months but less than two years:

(i) first occurrence.
\$250;

(ii) subsequent occurrence: \$500;

(B) practice on a delinquent license for two to four years:

(i) first occurrence:
\$500;

(ii) subsequent occurrence: \$1,000;

(C) practice on a delinquent license over four years: \$1,000 plus \$250 for each year over four years;

(D) aiding, abetting or permitting a registered nurse to practice on a delinquent license:

(i) first occurrence:
\$100-\$500;

(ii) subsequent occurrence: \$200-\$1,000;

(E) failure to comply with CE requirements:

(i) first occurrence:
\$100;

(ii) subsequent occurrence: \$250;

(F) failure to comply with mandatory reporting requirements:

(i) first occurrence:
\$100-\$500;

(ii) subsequent occurrence: \$200-\$1,000;

(G) failure to assure licensure/credentials of personnel for whom the nurse is administratively responsible:

(i) first occurrence:
\$100-\$500;

(ii) subsequent occurrence: \$200-\$1,000;

(H) failure to provide employers, potential employers or the board with complete and accurate answers to specific questions regarding employment or background (e.g., presenting incomplete employment history):

(i) first occurrence:
\$100-\$500;

(ii) subsequent occurrence: \$200-\$1,000;

(I) failure to report unauthorized practice:

(i) first occurrence:
\$100-\$500;

(ii) subsequent occurrence: \$200-\$1,000;

(J) em>failure to comply with board requirements for change of name/address:

(i) first occurrence: \$100;

(ii) subsequent occurrence: \$150;

(K) failure to develop, maintain and implement a peer review plan according to statutory peer review requirements:

(i) first occurrence: \$100-\$1,000;

(ii) subsequent occurrence: \$500-\$1,000;

(L) failure to file, or cause to be filed, complete, accurate and timely reports required by Board Order:

(i) first occurrence: \$100;

(ii) subsequent occurrence: \$250;

(M) failure to make complete and timely compliance with the terms of any stipulation contained in a Board Order:

(i) first occurrence: \$100;

(ii) subsequent occurrence: \$250; and

(N) other non-compliance with the NPA, board rules or orders which does not involve fraud, deceit, dishonesty, intentional disregard of the NPA, board rules, board orders, harm or substantial risk of harm to patients, clients or the public:

(i) first occurrence: \$100-\$500;

(ii) subsequent occurrence: \$200-\$1,000.

(2) The following violations may be appropriate for disposition by fine in conjunction with one or more of the penalties/sanctions listed in Texas Civil Statutes, Article 4525.1:

(A) violations other than those listed in paragraph (1)(A)-(N) of this section:

(i) first occurrence: \$100-\$1,000;

(ii) subsequent occurrence: \$200-\$1,000; and

(B) a cluster of violations listed in paragraph (1)(A)-(N) of this section: \$100-\$5,000.

(3) The Executive Director is authorized to dispose of violations listed in paragraph (1)(A)-(N) of this section, by fine, or by a combination of fine and stipulations for education, which shall be effective without ratification by the Board. The Executive Director shall report such cases to the Board at its regular meetings.

§213.34. Penalty/Sanction Factors.

(a) The following factors shall be considered by the Executive Director when determining whether to dispose of a disciplinary case by fine or by fine and educational stipulation and the amount of such fine. These factors shall be used by the State Office of Administrative Hearings and the Board in determining the appropriate penalty/sanction in disciplinary cases:

(1) evidence of actual or potential harm to patients, clients or the public;

(2) evidence of a lack of truthfulness or trustworthiness;

(3) evidence of misrepresentation(s) of knowledge, education, experience, credentials or skills which would lead a member of the public, an employer, a member of the health-care team, or a patient to rely on the fact(s) misrepresented where such reliance could be unsafe;

(4) evidence of practice history;

(5) evidence of present lack of fitness;

(6) evidence of prior disciplinary history by the Board or any other health care licensing agency in Texas or another jurisdiction;

(7) the length of time the licensee has practiced;

(8) the actual damages, physical or otherwise, resulting from the violation;

(9) the deterrent effect of the penalty imposed;

(10) attempts by the licensee to correct or stop the violation;

(11) any mitigating or aggravating circumstances; and

(12) the extent to which system dynamics in the practice setting contributed to the problem.

(b) Each day a continuing violation may be treated as a separate violation.

(c) Unless otherwise specified, fines shall be payable in full by cashier's check or money order not later than the 45th day following the entry of an Order.

(d) The payment of a fine shall be in addition to the full payment of all applicable fees and satisfaction of all other applicable requirements of the NPA and Board Rules.

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

Issued in Austin, Texas, on May 31, 1994.

TRD-8441641

Louise Waddill, Ph.D., R.N.
Executive Director
Board of Nurse Examiners

Proposed date of adoption: July 12, 1994

For further information, please call: (512) 835-8650

Chapter 215. Nurse Education

• 22 TAC §215.1, §215.14

The Board of Nurse Examiners proposes amendments to §215.1 and §215.14, concerning Definitions and Extended Campus/Extension Site. These amendments will provide guidance to those nursing programs that have previously used Extended campus(es) and wish to reactivate the use of a dormant campus. These rules will address the need in the community, nursing program and regulatory agencies that are involved at the time the extended campus is reactivated.

Louise Waddill, Ph.D., R.N., executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Dr. Waddill also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that nursing programs seeking to reactivate an extended campus will be required to meet certain criteria supporting the concept of planned growth, facilitate collaboration and encourage ongoing communication among nursing programs as they compete for scarce clinical and faculty resources. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Louise Waddill, Ph.D., R.N., Executive Director, Board of Nurse Examiners, Box 140466, Austin, Texas 78714.

The amendments are proposed under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

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

Dormant extended campus—An extended campus, approved by the board, that has no active enrollment for one academic year.

§215.14. Extended Campus Extension Site.

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

(j) When an extended campus has been dormant for more than two academic years, the director shall:

(1) submit a plan to close the dormant extended campus as outlined in

§215.20(a) of this title (relating to Closing of a Nursing Program); or

(2) reactivate the dormant extended campus by submitting a progress report to the board.

(A) The progress report shall be submitted to the board's office for staff review at least seven weeks prior to a regularly scheduled board meeting and shall:

(i) provide a summary of activities of the extended campus including numbers of graduates;

(ii) provide rationale for reactivation;

(iii) discuss the impact of extended campus reactivation on clinical and faculty resources in the community; and

(iv) include letters of support from existing programs in the area.

(B) Following staff review, the director will be notified as to whether or not clarification and/or revisions of the report are necessary.

(C) At least three weeks prior to a regularly scheduled board meeting, the director shall submit one copy of the report to the board's office and one copy to each board member.

(k) Extended campuses which have closed may be reactivated within three years of the date of closure by submitting to the board a progress report as outlined in subsection (j)(2) of this section.

(l) Extended campuses which have been closed for more than three years can only be reactivated by initiating a new proposal as addresses in subsections (a)-(i) of this section.

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

Issued in Austin, Texas, on June 1, 1994.

TRD-9441640 Louise Waddill, Ph.D., R.N.
Executive Director
Board of Nurse Examiners

Proposed date of adoption: July 12, 1994

For further information, please call: (512) 835-8650

◆ ◆ ◆
TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 14. County Indigent Health Care Program

Subchapter C. Providing Services

• 25 TAC §14.202

The Texas Department of Health (department) proposes an amendment to §14.202 concerning limitations on outpatient psychiatric services in the County Indigent Health Care Program. The amendment is proposed to comply with the Indigent Health Care and Treatment Act, Chapter 61, Health and Safety Code, which requires that the services and payment standards for these categories of services correspond with the Medicaid rules.

Section 14.202 as amended will limit psychiatric services or supplies provided to a patient who is not confined as a bed patient in a hospital to 30 visits instead of a specified amount of \$312.50 during any one calendar year. This amendment is in compliance with the Medicaid program.

Gary Bego, health care financing budget director, has determined that for the first five year period that the proposed 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. Bego also has determined that for each year of the first five years that the section is in effect the public benefit anticipated as a result of enforcing the section will be compliance with state law. Increased access to mental health in an outpatient setting is more cost effective than services provided in an inpatient hospital setting. 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 and no impact on local employment.

Comments on the proposed amendment may be submitted to Bonnie Magers, Program Specialist, Indigent Health Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3168, (512) 338-6458. Ms. Magers will accept comments for 30 days after publication of the proposed amendment in the *Texas Register*.

The amendment is proposed under Chapter 61 of the Health and Safety Code and Chapters 22 and 32 of the Human Resources Code. The authority to administer the County Indigent Health Care Program was transferred to the Texas Department of Health under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

§14.202. Exclusions and Limitations.

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

(e) Psychiatric services limitations.

(1) (No change.)

(2) Any psychiatric services or supplies provided to a patient who is not

confined as a bed patient in a hospital cannot exceed 30 visits [\$312.50] during any one calendar year. The county may choose to exceed this limit upon county review in an individual patient's case.

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

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

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

Issued in Austin, Texas, on June 6, 1994.

TRD-9441841 Susan Steeg
General Counsel, Office of
General Counsel
Texas Department of
Health

Earliest possible date of adoption: July 11, 1994

For further information, please call: (512) 338-6458

◆ ◆ ◆
Chapter 157. Emergency Medical Care

Emergency Medical Services Trauma Systems

• 25 TAC §157.121, §157.125

The Texas Department of Health (department) proposes amendments to §157.121 and §157.125, concerning emergency medical services trauma systems. Specifically the sections cover purpose (designation process basic (level IV) trauma facilities), and requirements for trauma facility designation.

The amendments update and clarify existing essential criteria for level IV trauma facility designation and requirements for site surveys of hospitals applying for designation. The department is amending the existing sections as a result of recommendations of the Trauma Technical Advisory Committee regarding level IV designation.

New subsection (d) under §157.121 includes essential criteria for the designation process (basic (level IV) trauma facilities). In February 1992 the department adopted by reference ten publications covering criteria and designation process. To comply with more rigid *Texas Register* restrictions with regard to adoption by reference material, the actual text of the proposed "Texas Trauma Facility Criteria, Basic" is published as new subsection (d) instead of adopted by reference under existing subsection (b) where other existing criteria is adopted by reference.

Gene Weatherall, chief, Bureau of Emergency Management, has determined that for each year of the first five years the sections as proposed are in effect, there will be no fiscal implications on state and local governments as a result of administering and enforcing these sections.

Mr. Weatherall also has determined that for each year of the first five years the sections as proposed are in effect the public benefit

anticipated is the assurance that adequate trauma care is available to the citizens of Texas. There is no anticipated cost/savings to small business to comply with the sections as proposed. The anticipated cost to persons required to comply with the proposal will be \$100. There will be no impact on local employment.

Comments on the proposed amendments may be submitted to Gene Weatherall, Chief, Bureau of Emergency Management, Texas Department of Health, 1100 West 49th Street,

Austin, Texas, 78756-3199, (512) 834-6740. Comments will be accepted for 90 days after publication of the amendments in the *Texas Register*.

The amendments are proposed under the Health and Safety Code, §773.115, which provides the Texas Board of Health with the authority to adopt rules for the designation of trauma facilities; and §12.001 which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

The amendments affect the Health and Safety Code, Chapter 773.

§157.121. Purpose.

(a) The purpose of these sections is to establish the procedures and standards for the implementation of a comprehensive statewide emergency medical services (EMS)/trauma system as mandated in the Health and Safety Code, Chapter 773, §§773.111-773.120 [§§773.081-773.090], in order to decrease morbidity and mortality which results from trauma.

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

(d) **Texas Trauma Facility Criteria, Basic.**

FACILITY CRITERIA BASIC

Basic Trauma Facility (Level IV) - provides resuscitation and stabilization and arranges for appropriate transfer of all patients with major and severe injuries to a higher level trauma facility.

<p>1. Emergency Room The emergency room staff should ensure immediate and appropriate care for the trauma patient. The emergency room physician should function as a designated member of the trauma team and the relationship between emergency room physicians and other participants of the trauma team must be established on an individual hospital basis, consistent with resources but adhering to established standards that ensure optimal care.</p>	E
<p>a. Personnel</p>	
<p>1) Designated physician director</p>	E
<p>2) Trauma team composition is based on historical volume and acuity data</p>	E
<p>3) A minimum of two registered nurses who have trauma nursing training will participate in initial major trauma resuscitations</p>	D
<p>b. Written protocols for:</p>	
<p>1) Trauma team activation</p>	E
<p>2) Identification of trauma team responsibilities during a resuscitation</p>	E
<p>3) Admission and transfer</p>	E
<p>c. A written plan for acquisition of additional staff on a 24 hour basis to support units with increased patient acuity, multiple emergency procedures and admissions (such as a written disaster plan)</p>	E
<p>d. Equipment for resuscitation and to provide life support for the critically or seriously injured shall include but not be limited to:</p>	
<p>1) Airway control and ventilation equipment such as laryngoscopes and endotracheal tubes of all sizes, bag/mask resuscitator, pocket masks and oxygen</p>	E
<p>2) Mechanical ventilator</p>	
<p>3) Suction devices</p>	D
<p>4) Electrocardiograph - oscilloscope - defibrillator</p>	E

E - Essential
D - Desired

5)	Apparatus to establish central venous pressure monitoring	D
6)	All standard intravenous fluids and administration devices, including intravenous catheters and rapid infusion devices	E
7)	Sterile surgical sets for procedures standard for the emergency room, such as thoracostomy, venesection, diagnostic peritoneal lavage, cricothyroidotomy, etc.	E
8)	Gastric lavage equipment	E
9)	Stabilization devices for cervical injuries	E
10)	Stabilization devices for long bones	E
11)	Thermal control equipment	
	a) for patient	E
	b) a warming device for blood and fluids	E
12)	Non-invasive continuous blood pressure monitoring device	E
13)	Transcutaneous oximeter	D
e.	Other	
1)	Radiological Services	
	a) Technician on call and promptly available within thirty minutes of request	E
	b) 24 hour coverage by in-house technician	D
	c) Computerized tomography	D
2)	Clinical Laboratory Services (available 24 hours per day)	
	a) Standard analyses of blood, urine and other body fluids	E
	b) Blood typing and cross-matching	E
	c) Coagulation studies	E

E - Essential
D - Desired

d)	Comprehensive blood bank or access to a community central blood bank and adequate hospital storage facilities	E
e)	Blood gases and pH determinations	E
f)	Drug and alcohol screening - toxicology screens need not be immediately available but are desirable (if available, this capability should be monitored in the quality improvement program)	D
3)	Two-way communication with prehospital emergency medical services vehicles	E
2. Physician Services		
a.	General Surgery Services	D
1)	If general surgery services are provided by the facility, the surgeon on-call will be immediately advised and will be available in-house within thirty minutes of request (this capability should be monitored in the quality improvement program)	E
b.	Non-Surgical Specialty Services On-call and promptly available from inside or outside the hospital:	
1)	Anesthesiology - requirements may be fulfilled by a member of the anesthesia care team credentialed in assessing emergent situations in trauma patients and providing any indicated treatment	D
2)	Emergency Medicine - this requirement may be fulfilled by a physician credentialed by the hospital to provide emergency medical services	E
a)	At least one staff physician is credentialed in ATLS or an equivalent course approved by the Texas Department of Health (TDH) within 6 months of the date of designation	E
b)	Any physician providing this coverage should be credentialed in ATLS or an equivalent TDH approved course at the time of re-designation	E
3)	Family Medicine - the patient's primary care physician should be notified at an appropriate time	D
4)	Internal Medicine - the patient's primary care physician should be notified at an appropriate time	D
5)	Pediatrics - the patient's primary care physician should be notified at an appropriate time	D
6)	Radiology	D
c.	Physician on-call schedule must be published	E

E - Essential
D - Desired

<p>3. Nursing Services</p>	<p>a. An identified Trauma Nurse Coordinator with overall management responsibility for the trauma program - the nursing functions of trauma coordination may be delineated in other positions within the organization</p> <p>b. A defined job description and organizational chart delineating the Trauma Nurse Coordinator's role and responsibilities - the nursing functions of trauma coordination may be delineated in other positions within the organization</p> <p>c. Written standards on nursing care for trauma patients in all areas of the trauma facility are to be documented</p> <p>d. All nurses caring for trauma patients have documented knowledge and skill in trauma nursing to include pediatric and burn patients (i.e. trauma specific orientation, skills checklist, continuing education, etc.)</p> <p>e. At least one member of the registered nursing staff has successfully completed an Advanced Cardiac Life Support (ACLS) course, or hospital equivalent, a nationally recognized pediatric advanced life support course [i.e. Pediatric Advanced Life Support (PALS)], and the Trauma Nurse Core Curriculum (TNCC) within 12-18 months of the date of designation</p> <p>1) Registered nurses who participate in staffing of the emergency room should have successfully completed ACLS, or equivalent, a pediatric advanced life support course, and the TNCC within 12-18 months of employment or the date of designation.</p> <p>f. 50% of nurses caring for trauma patients should be certified in their area of specialty (i.e. CEN, CCRN, CNRN, etc.)</p>	<p>E</p> <p>E</p> <p>E</p> <p>E</p> <p>E</p> <p>D</p> <p>D</p> <p>E</p>
<p>4. Operative Suite/Postanesthesia Recovery Room</p>	<p>(a surgical intensive care unit is an acceptable substitute for postanesthesia recovery)</p> <p>a. If operative/postanesthesia services are provided by the facility, the on-call staff will be available in-house within thirty minutes of request 24 hours per day (this capability should be monitored in the quality improvement program)</p> <p>b. Equipment - special requirements shall include but not be limited to:</p> <p>1) Thermal control equipment:</p> <p>a) for patient</p> <p>b) for blood and fluids</p> <p>2) Monitoring and resuscitative equipment</p> <p>3) Standard operative/postanesthesia recovery equipment</p> <p>c. Support Services - Clinical diagnostic services (blood gases, hematocrit and chest x-rays) should be available within thirty minutes of request (this capability should be monitored in the quality improvement program)</p>	<p>E</p> <p>E</p> <p>E</p> <p>E</p> <p>E</p>

E - Essential
D - Desired

5. Quality Improvement	
a. An organized quality improvement program, to include trauma indicators	E
1) Systematic documentation of trauma care which meets state trauma registry guidelines	E
2) Audit of trauma charts for completeness of care	E
3) Morbidity and mortality review, to include all trauma deaths	E
4) Multidisciplinary trauma conferences for quality improvement activities, continuing education and problem solving to include documented nursing and prehospital participation	D
b. Trauma registry - data will be forwarded to the state trauma registry	E
6. Regional Trauma System Hospital must participate in the regional trauma system	E
7. Transfer Agreements Hospital must have transfer agreements for patients needing higher level of, or specialty, care (i.e. surgery, burns, etc.)	E
8. Public Education Injury prevention in the home, in industry, in athletics and on the highways; standard first aid; problems confronting the public, medical profession and hospitals regarding optimal care for the injured. Participation in a regional program is acceptable.	E
9. Training Programs Formal training programs in trauma continuing education will be made available by the hospital to physicians, nurses and allied health personnel based on needs identified from the quality improvement program	E

F:\Bureau\Trauma\Designat\CRITERIA.BAS

E - Essential
D - Desired

§157.125. Requirements for Trauma Facility Designation.

(a)-(f) (No change)

(g) The survey team composition shall be as follows

(1)-(2) (No change)

(3) Basic trauma facility applicants shall be surveyed by a department [bureau] representative, registered nurse or licensed physician [or a bureau approved consultant]. A second surveyor may be requested by the hospital or the department. Non-department surveyors must meet the following criteria:

(A) have at least three years experience in the care of trauma patients;

(B) be currently employed in the coordination of care for trauma patients;

(C) have direct experience in the preparation for and successful completion of trauma facility verification/designation;

(D) have successfully completed the department Trauma Facility Site Surveyor Course;

(E) have current credentials as follows:

(i) Trauma Nurse Core Curriculum for nurses; or

(ii) Advanced Trauma Life Support for physicians; and

(iii) Advanced Cardiac Life Support; and

(iv) a pediatric advanced life support course; and

(F) have successfully completed a site survey internship with department staff.

(4) (No change)

(5) Any member of the survey team, except department staff, should come from a public health region outside the hospital's location and at least 100 miles from the applicant hospital

(h)-(j) (No change.)

(k) Findings of the survey team shall be forwarded to the bureau within 90 days

(1)-(2) (No change)

(3) In the event there is a problem area in which a hospital does not com-

ply with the criteria, the bureau shall notify the hospital of deficiencies and recommend corrective action

(A) The hospital shall submit a report to the bureau which outlines the corrective action taken. The bureau may require a second survey to insure compliance with the criteria. If the hospital and/or bureau report substantiates action that brings the hospital into compliance with the criteria, the bureau shall recommend designation to the commissioner.

(B)-(C) (No change)

(I) The bureau shall provide a copy of the survey report, for surveys conducted by department staff, and results to the applicant hospital

(m)-(u) (No change)

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

Issued in Austin, Texas, on June 2, 1994

TRD-9441693

Susan K Steeg
General Counsel, Office of
General Counsel
Texas Department of
Health

Proposed date of adoption September 8, 1994

For further information, please call (512) 834-6740

◆ ◆ ◆
TITLE 28. INSURANCE
Part I. Texas Department
of Insurance
Chapter 1. General
Administration

Subchapter B. Fees, Charges,
and Costs

• **28 TAC §1.301**

The Texas Department of Insurance proposes new §1.301, concerning charges for copies of public records. The new section provides a framework within which the department may recover the cost to provide copies of open records to persons requesting the copies. The section also provides that the department may waive these charges under certain circumstances.

Karen Phillips, chief financial officer for the department, has determined that for each year of the first five years the section is in effect the department will be able to recover costs for providing copies of public records in circumstances where such a practice would provide the most benefit to the department and the state. There will therefore be no fiscal impact on state or local government as a result of enforcing or administering the sec-

tion. Ms Phillips also has determined that there will be no effect on local employment or the local economy.

Ms Phillips also has determined that for each year of the first five years the section is in effect the public benefit anticipated is more efficient resource utilization, since the department will be able to recover costs for providing copies of public records as a result of uniform procedures throughout state government for recovery of costs associated with providing public information. There is no anticipated economic cost to persons who are required to comply with the section. Any compliance costs, which would result from adoption of the section, are the direct outgrowth of the legislative directive contained in House Bill 1009, not the result of the proposal and adoption of this section.

Comments on the proposal must be submitted within 30 days after publication of the proposed section in the *Texas Register* to the office of the chief clerk, P.O. Box 149104, MC# 113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Karen Phillips, chief financial officer, P.O. Box 149104, MC# 105-9A, Austin, Texas 78714-9104. Request for a public hearing on this proposal should be submitted separately to the office of the chief clerk.

The new section is proposed under House Bill 1009 and the Insurance Code, Article 1.03A. House Bill 1009 mandates each state agency to promulgate rules specifying the charges the agency will establish for copies of public information. Article 1.03A authorizes the commissioner to adopt rules and regulations for the conduct and execution of the duties and functions by the department.

The proposed new section affects agency operations under the following statutes: The Government Code, Chapter 552.

§1.301 Charges for Copies of Public Records

(a) The charge to any person requesting copies of any public record of the Texas Department of Insurance shall be the charge for such copy or copies as established by the General Services Commission in 1 TAC §§111.61-111.70.

(b) The Texas Department of Insurance may waive the charges addressed in subsection (a) of this section, at the discretion of the commissioner, or the commissioner's designee, if a public benefit would result from such waiver.

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 June 2, 1994

TRD-9441690

D J Powers
Legal Counsel to the
Commissioner
Texas Department of
Insurance

Earliest possible date of adoption: July 11, 1994

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

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 117. Control of Air Pollution From Nitrogen Compounds

The Texas Natural Resource Conservation Commission (TNRCC) proposes amendments to §§117.451, 117.510, 117.520, 117.530, and 117.601, concerning Control of Air Pollution From Nitrogen Compounds. The proposed changes have been developed in response to a requirement by the U.S. Environmental Protection Agency (EPA) and the 1990 Federal Clean Air Act (FCAA) Amendments for states to apply reasonable 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.

Section 182(f) of the 1990 FCAA requires states to adopt rules to apply RACT to major stationary sources of NO_x in certain ozone nonattainment areas, unless it can be demonstrated that reducing NO_x emissions would not contribute to attainment of the ozone standard in those areas. The TNRCC adopted NO_x RACT rules in Chapter 117, effective June 9, 1993, and revised August 30, 1993, for the Houston/Galveston and Beaumont/Port Arthur ozone nonattainment areas, based on the strength of preliminary indications of resulting benefits. By late March, 1994, initial results of photochemical grid modeling, using the Urban Airshed Model (UAM), became available which showed that NO_x reductions will not contribute to ozone attainment and, for the most part, will actually increase ozone levels in portions of the Houston/Galveston and Beaumont/Port Arthur areas.

The TNRCC is therefore proposing to revise the compliance schedules of §§117.510, 117.520, and 117.530, contained in Subchapter D, Administrative Provisions, to extend the final compliance dates from May 31, 1995 to May 31, 1997. This extension would delay the implementation of NO_x RACT in the Houston/Galveston and Beaumont/Port Arthur areas, and make the implementation of NO_x RACT contingent on UAM modeling using data from the Coastal Oxidant Assessment for Southeast Texas (COAST), an intensive 1993 field study.

If the UAM modeling results from the COAST study indicate that NO_x reductions do not contribute to attainment of the ozone standard, then the requirements of Chapter 117

will be proposed in rulemaking to address these findings and rescind the rule. Existing §117.560, relating to Rescission, details the procedures to be followed in this contingency.

If, however, the UAM modeling results show that NO_x reductions contribute to attainment of the ozone standard, then the requirements of Chapter 117 will be reevaluated, if necessary, and proposed in rulemaking. It is anticipated that such rulemaking would be finalized by November, 1995, thus providing a reasonable implementation schedule for sources required to attain rule compliance by May 31, 1997.

References to the final compliance date appear in §117.451 (relating to Applicability, Nitric Acid Manufacturing-General) and §117.601(a) (relating to Gas-Fired Steam Generation). These rule sections state that for emission units located in ozone nonattainment areas, the existing Chapter 117 emission specifications apply until superseded by the new emission specifications which become effective on the final rule compliance date. The TNRCC is proposing to change references to May 31, 1995 to May 31, 1997 in these sections.

The existing rule requirements for submitting initial control plans under §117.109 and §117.209 (relating to Initial Control Plan Procedures) by April 1, 1994 are not affected by this proposal. These rule sections require the submission of NO_x testing data and other information crucial to refining the modeling data to be used in the COAST study. In addition, revisions to §117.520(1) requiring the submission of certain initial control plan information by September 1, 1994 were adopted on May 25, 1994. The §117.520(1) compliance schedules for submitting initial control plans are not affected by this proposal.

Existing §117.540 (relating to Phased RACT) is not affected by this proposal. The phased RACT rule provides a mechanism whereby affected sources may petition the agency for additional time past May 31, 1995 to comply with the Chapter 117 requirements. The rule section was developed in response to companies' concerns that in spite of good faith efforts to achieve compliance by May 31, 1995, delays could be encountered, and that a procedure was needed to allow a phased approach to implementing the rule requirements. With the proposed extension of the compliance date to May 31, 1997, the need for further extensions by means of the phased RACT approach cannot be accurately determined at this time. Therefore, revisions to §117.540 are not being proposed.

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 potential NO_x emission reductions in ozone nonattainment areas which

are necessary for the timely attainment of the ozone standard.

Economic costs to businesses as a result of this proposal are not easily quantifiable. Extending the rule's final compliance dates will generally result in savings for affected companies which have not yet made large capital commitments to achieve rule compliance. However, for other companies which have already made substantial expenditures or entered into binding contractual agreements to install control equipment, economic impacts are expected to be greater.

A public hearing on this proposal will be held July 6, 1994 at 10:00 a.m. in Room 254S of TNRCC Building E, located at 12118 North IH-35, Park 35 Technology Center, Austin.

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 July 8, 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) 239-1459. Requests should be made as far in advance as possible.

Subchapter C. Acid Manufacturing

Nitric Acid Manufacturing-General

• 30 TAC §117.451

The amendment is proposed under the Texas Health and Safety Code (Vernon 1992), 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.

The proposed amendment affects the Health and Safety Code, §382.017.

§117.451. Applicability. The emission limitations specified in §117.455 of this undesignated head (relating to Emission Specifications) shall apply to all nitric acid production units in the state, with the exception that for nitric acid production units located in applicable ozone nonattainment areas, the emission limitations of §117.405 of this title (relating to Emission Specifica-

tions) shall apply after May 31, 1997 [1995].

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

Issued in Austin, Texas, on May 31, 1994.

TRD-9441672

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

Proposed date of adoption: August 31, 1994

For further information, please call: (512) 239-0615

Subchapter D. Administrative Provisions

• 30 TAC §§117.510, 117.520, 117.530

The amendments are proposed under the Texas Health and Safety Code (Vernon 1992), 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.

The proposed amendments affect the Health and Safety Code, §382.017.

§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, 1997 [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) according to the following schedules:

(A) (No change.)

(B) for units not required to install CEMS pursuant to the requirements of 40 CFR 75, no later than May 31, 1997 [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 no later than May 31, 1997 [1995];

(4) for units operating without CEMS or PEMS, 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 by April 1, 1994, or as early as practicable, but in no case later than May 31, 1997 [1995];

(5) for units operating with CEMS or PEMS and complying with the NO_x emission limit on a rolling 30-day average, conduct the applicable tests for the initial demonstration of compliance as specified in §117.111 of this title and submit the results of the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.113 of this title (relating to Continuous Demonstration of Compliance) no later than July 31, 1997 [1995].

(6) 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 §117.111 of this title and submit the results of the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.113 of this title by May 31, 1997 [1995];

(7) (No change.)

(8) no later than May 31, 1997 [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, 1997 [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) install all nitrogen oxides (NO_x) abatement equipment and implement all NO_x control techniques no later than May 31, 1997 [1995];

(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, 1997 [1995];

(4) for units operating with CEMS or PEMS and complying with the NO_x emission limit 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 31, 1997 [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, 1997 [1995]; and

(6) no later than May 31, 1997 [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, 1997 [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 testing as specified in §117.311 and §117.411 of this title, by:

(A) (No change.)

(B) no later than May 31, 1997 [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 and §117.409 of this title.

(3) (No change.)

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

Issued in Austin, Texas, on May 31, 1994.

TRD-9441673

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

Proposed date of adoption: August 31, 1994

For further information, please call: (512) 239-0615

Subchapter E. Gas-Fired Steam Generation

• 30 TAC §117.601

The amendment is proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendment affects the Health and Safety Code, §382.017.

§117.601. Gas-Fired Steam Generation.

(a) Subsections (b), (c), and (d) of this section shall apply only in the Dallas/Fort Worth Air Quality Control Region which consists of Collin, Cooke, Dallas, Denton, Ellis, Erath, Fannin, Grayson, Hood, Hunt, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell, Tarrant, and Wise counties and in the Houston/Galveston Air Quality Control Region which consists of Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Harris, Liberty, Matagorda, Montgomery, Waller, and Wharton counties. For gas-fired steam generators located in applicable ozone nonattainment areas, only the emission limitations of §117.105 of this title (relating to Emission Specifications), §117.107 of this title (relating to Alternative System-Wide Emission Specifications), §117.205 of this title (relating to Emission Specifications), and §117.207 of this title (relating to Alternative Plant-Wide Emission Specifications) shall apply after May 31, 1997 [1995].

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

This agency hereby certifies that the proposal has been reviewed by legal counsel and

found to be within the agency's authority to adopt.

Issued in Austin, Texas, on May 31, 1994.

TRD-9441674

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

Proposed date of adoption: August 31, 1994

For further information, please call: (512) 239-0615

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 81. Administrative Provisions

General

• 37 TAC §81.17

The Texas Youth Commission (TYC) proposes new §81.17, concerning research projects. The new rule will provide guidelines for TYC research projects as required by the Appropriations Act, §66.

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

Mr. Franks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure that TYC research projects provide benefits to TYC or the juvenile justice profession and ensure confidentiality of TYC youth. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The new section is proposed under the Human Resources Code, §61.041, which provides the Texas Youth Commission with the authority to conduct continuing inquiry into the effectiveness of the treatment methods it employs in the reformation of children.

The proposed rule implements the Human Resource Code, §61.034.

§81.17. Research Projects.

(a) Policy.

(1) The Texas Youth Commission (TYC) encourages and uses research to aid decision making for youth treatment pro-

grams and agency operations and collaborates with other agencies whenever possible. This policy sets forth procedures which comply with state and federal guidelines and accepted professional and scientific ethics.

(2) Any patentable product, process, or idea that might result from a research project funded by the Texas Youth Commission is the property of the Texas Youth Commission.

(3) Participation by TYC youth as research subjects is restricted as follows.

(A) TYC youth will not be used in experimental projects involving medical, pharmaceutical, or cosmetic research.

(B) TYC youth may participate in nonmedical, nonpharmaceutical or noncosmetic research on a voluntary, non-coercive basis.

(C) TYC youth who elect to participate in research projects will not be denied basic services available to other youth, nor participate in research activities which may accrue negative personal results.

(4) TYC staff, university faculty or students, or contracted firms or individuals may, if approved, conduct research if they:

(A) show that the proposed project will provide benefits to TYC or the juvenile justice profession;

(B) ensure confidentiality of TYC youth;

(C) do not place undue burden on TYC staff, youth or resources; and

(D) agree to comply with other agency rules of conduct for research as specified in subsection (b) of this section.

(b) Rules. Procedures for research projects are managed through the research and planning department according to the following rules.

(1) Research Proposals. Project directors other than those employed by the research and planning department must submit a research proposal to the research and planning department including:

(A) project title;

(B) names and qualifications of all project researchers;

(C) purpose (e.g., thesis, professional paper, dissertation);

(D) research design and methodology;

(E) number of and time required by each TYC youth if used in research;

(F) provisions for confidentiality of youth names and identification numbers;

(G) amount of TYC staff time needed;

(H) benefit to TYC or juvenile profession;

(I) research supervisor, if any (e.g., Chairman of Thesis Committee); and

(J) amount and source of funding, if any.

(2) Approval of Proposals.

(A) For research by project directors outside of the research and planning department, the research and planning department reviews proposals for determination of need for the research, resources available to conduct the research, and adequacy of proposal, and then disapproves the project or seeks agency approval.

(B) Proposals limited to topics requiring only routine TYC data may be approved by the director of research and planning.

(C) On-site research proposals are circulated to affected field administrators for their review, comment and approval.

(D) Proposals requiring use of TYC staff time and/or youth will be presented to the executive committee or to the executive director for approval.

(E) Approved non-TYC staff proposals requiring field work and interaction with youth and staff are presented to the board by the research and planning department for approval.

(3) Research Agreement. Commencement of an outside research project is authorized following entry into a research agreement by TYC and the research consultant. The agreement shall contain the

following:

(A) a description of the research project;

(B) an agreement to maintain the confidentiality of individual youth; and

(C) a clause providing that any patentable product, process, or idea that results from the performance of the research agreement, and for which TYC has expended appropriated funds, shall become the property of the Texas Youth Commission.

(4) Monitoring Projects. The research and planning department is responsible for monitoring of the project. Research and planning staff will monitor research projects and propose adjustments when necessary.

(5) Research Results. The research and planning department will:

(A) review research results and evaluate the conclusions;

(B) distribute the final research report to appropriate staff and to other interested parties;

(C) recommend to the executive director any changes in programs or operations that the research results indicate.

(6) Demonstration Programs.

(A) Demonstration (pilot) programs may be implemented as a result of research.

(B) Demonstration programs which are not based on TYC conducted research may also be implemented.

(C) Executive director approval is required for all demonstration programs.

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

Issued in Austin, Texas, on June 2, 1994.

TRD-9441706

Steve Robinson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: July 11, 1994

For further information, please call: (512) 483-5244



Part XIII. Texas Commission on Fire Protection

Chapter 401. Practice and Procedure

The Texas Commission on Fire Protection proposes a new Chapter 401, concerning practices and procedures for contested cases and rule making proceedings. New Subchapter A, §§ 401.1, 401.3, 401.5, 401.7, 401.9, 401.11, 401.13, and 401.15, concerning general provisions and definitions includes provisions for the chapter's purpose and scope, definitions, delegation of authority, construction, official action, presentations to the commission, computation of time, and written agreements.

New Subchapter B, §401.17 and §401.19, concerning rule making proceedings includes requirements and procedures for petitioning for adoption of new rules or rule changes.

New Subchapter C, §§401.21, 401.23, 401.25, 401.27, and 401.29, concerning parties includes provisions concerning appearances and right to an attorney in contested cases, classification of parties, intervention, consolidation and severance, and alignment of parties.

New Subchapter D, §§401.31, 401.33, 401.35, 401.37, and 401.39, concerning discovery outlines the forms and scope of discovery in contested cases, service and filing of discovery requests and responses, deadlines for responses, requests for admission, and discovery orders.

New Subchapter E, §§401.41, 401.43, 401.45, 401.47, and 401.49, concerning prehearing proceedings establishes requirements for preliminary staff conferences, prehearing conferences before an administrative law judge, interim orders, appeals of interim orders, and prehearing statements.

New Subchapter F, §§401.51, 401.53, 401.55, 401.57, 401.59, 401.61, 401.63, 401.65, 401.67, 401.69, 401.71, 401.73, 401.75, 401.77, 401.79, 401.81, 401.83, 401.85, 401.87, 401.89, 401.91, 401.93, 401.95, and 401.97, concerning contested cases establishes requisites for the initiation, conduct, and appeal of contested cases in accordance with the Texas Administrative Procedure Act.

New Subchapter G, §§401.101, 401.103, and 401.105, concerning conduct and decorum, sanctions, and penalties, outlines minimum standards of conduct and decorum in contested cases, discovery sanctions, and criteria for imposition of administrative penalties authorized by law.

New Subchapter H, §§401.111, 401.113, 401.115, 401.117, and 401.119, concerning reinstatement, outlines procedures for applying for reinstatement of a license or certificate, evaluation of such applications, and commission action possible upon reinstatement.

New Subchapter I, §§401.121, 401.123, 401.125, and 401.127, concerning notice and

processing periods for license applications, establish requirements for notice of deficiency, maximum time periods, and appeals for violating time periods.

Jack Woods, General Counsel, has determined that for the first five year period the new rules are in effect there will be no fiscal implications for state and local governments as a result of enforcing or administering the rules.

Mr. Woods also has determined that for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of enforcing the new rules will be clarification of procedures that will apply agency wide and provide consistent practice and procedure in cases all within the agency's jurisdiction. There will be no effect on small or large businesses. There are no additional economic cost of compliance for persons.

Comments on the proposal may be submitted to Jack Woods, General Counsel, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

Subchapter A. General Provisions and Definitions

- 37 TAC §§401.1, 401.3, 401.5, 401.7, 401.9, 401.11, 401.13, 401.15

The new sections are proposed under the Government Code, §419.008, which provides the commission with authority to adopt rules for the administration of its powers and duties; and Government Code, §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The Government Code, Chapter 419, §419.036 and §419.906 are affected by these new sections. In addition, the Government Code, Chapter 2001, §§2001.001-2001.147 are affected by these sections.

§401.1. Purpose and Scope.

(a) Purpose. The purpose of this chapter is to provide a system of procedures for practice before the Texas Commission on Fire Protection that will promote the just and efficient disposition of proceedings and public participation in the decision-making process. The provisions of this chapter shall be given a fair and impartial construction to attain these objectives.

(b) Scope.

(1) This chapter shall govern the initiation, conduct, and determination of proceedings required or permitted by law in matters regulated by the commission, whether instituted by order of the commission or by the filing of an application, complaint, petition, or any other pleading.

(2) This chapter shall not be construed so as to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the commission, its staff,

or the substantive rights of any person.

(3) This chapter shall not apply to applications or proceedings concerning Fire Department Emergency Program funds which are governed by Chapter 461 of this title (relating to General Administration), Chapter 463 of this title (relating to Application Criteria), and Chapter 465 of this title (relating to Equipment, Facilities, and Training Standards).

(4) This chapter shall not apply to matters related solely to the internal personnel rules and practices of this agency.

(5) To the extent that any provision of this chapter is in conflict with any statute or substantive rule of the commission, the statute or substantive rule shall control.

§401.3. Definitions. The following terms, when used in this chapter, shall have the following meanings, unless the context or specific language of a section clearly indicates otherwise.

Advisory Committee—An advisory committee or advisory council that is required to assist the commission in its rule-making function and whose members are appointed by the commission pursuant to Government Code, §419.018, or other law.

Agency—Includes the commission, the executive director, the state fire marshal, and all divisions, departments, and employees thereof.

APA—The Administrative Procedure Act, Chapter 2001, Government Code, as it may be amended from time to time.

Applicant—A person, including the commission staff, who seeks action from the commission by written application, petition, complaint, notice of intent, appeal, or other pleading that initiates a proceeding.

Application—A written request seeking a license from the commission, petition, complaint, notice of intent, appeal, or other pleading that initiates a proceeding.

Authorized Representative—A person who enters an appearance on behalf of a party, or on behalf of a person seeking to be a party or otherwise, to participate in a commission proceeding.

Chairman—The commissioner who serves as presiding officer of the commission pursuant to Government Code, §419.007.

Commission—The Texas Commission on Fire Protection.

Commissioner—One of the appointed members of the decision-making body defined as the commission.

Complainant—Any person, including the commission's legal staff, who files a signed written complaint intended to initiate a proceeding with the commission regarding any act or omission by a person subject to the commission's jurisdiction.

Contested Case—A proceeding, in-

cluding but not restricted to, the issuance of certificates, licenses, registrations, permits, etc., in which the legal rights, duties, or privileges of a party are to be determined by the Agency after an opportunity for adjudicative hearing.

Days—Calendar days, not working days, unless otherwise specified in this chapter or in the commission's substantive rules.

Division—An administrative unit for regulation of specific activities within the commission's jurisdiction.

Executive Director—The executive director appointed by the commission pursuant to Government Code, §419.009.

Fire Marshal—The state fire marshal appointed pursuant to Government Code, §417.002.

Hearings Officer—An administrative law judge on the staff of the State Office of Administrative Hearings assigned to conduct a hearing and to issue a proposal for decision, including findings of fact and conclusions of law, in a contested case pursuant to Government Code, Chapter 2003.

License—Includes the whole or part of any agency permit, certificate, approval, registration, license, or similar form of permission required or permitted by law.

Licensee—A person who holds an agency permit, certificate, approval, registration, license, or similar form of permission required or permitted by law.

Licensing—Includes the agency process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

Party—Each person or agency named or admitted as a party in a contested case.

Person—Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than the commission.

Pleading—A written document submitted by a party, or a person seeking to participate in a proceeding, setting forth allegations of fact, claims, requests for relief, legal argument, and/or other matters relating to a commission proceeding.

Presiding Officer—The chairman, the acting chairman, the executive director, the fire marshal, or a duly authorized hearings officer.

Proceeding—Any hearing, investigation, inquiry, or other fact-finding or decision-making procedure, including the denial of relief or the dismissal of a complaint.

Respondent—A person under the commission's jurisdiction against whom any complaint or appeal has been filed or who is under formal investigation by the commission.

§401.5. Delegation of Authority

(a) All decisions to suspend, revoke, or deny an application for any certifi-

cate or approval, to reprimand or place on probation the holder of such certificate or approval, or to impose an order for restitution, remedial action, or administrative penalties pursuant to Government Code, Chapter 419, shall be made by the executive director

(b) All decisions to suspend, revoke, or deny an application for any permit, license, certificate of registration, or testing laboratory approval, or to impose an order pursuant to Government Code, Chapter 417, to cease and desist, or for restitution, remedial action, or monetary forfeitures for violations of provisions of the Insurance Code, other laws, and regulations administered and enforced by the state fire marshal, shall be made by the state fire marshal.

§401.7 Construction.

(a) A provision of a rule referring to the commission, the executive director, or the fire marshal, or a provision referring to the presiding officer, is construed to apply to the commission or chairman if the matter is within the jurisdiction of the commission, to the executive director if the matter is within the jurisdiction of the executive director, or to the fire marshal if the matter is within the jurisdiction of the fire marshal.

(b) Unless otherwise provided by law, any duty imposed on the commission, the chairman, the executive director, or the fire marshal may be delegated to a duly authorized representative. In such case, the provisions of any rule referring to the commission, the chairman, the executive director, or the fire marshal shall be construed to also apply to the duly authorized representative of the commission, the chairman, the executive director, or the fire marshal.

§401.9 Records of Official Action. All official acts of the commission, the executive director, or the fire marshal shall be evidenced by a recorded or written record. Official action of the commission, the executive director, or the fire marshal shall not be bound or prejudiced by any informal statement or opinion made by any member of the commission, the executive director, the fire marshal, or the employees of the agency.

§401.11 Presentations to the Commission.

(a) Statements concerning items which are part of the commission's posted agenda. Persons who desire to make presentations to the commission concerning matters on the agenda for a scheduled commission meeting or advisory committee meeting shall complete registration cards which shall be made available at the entry to the place where the commission's sched-

uled meeting is to be held. The registration cards shall include blanks in which all of the following information must be disclosed:

(1) name of the person making a presentation;

(2) a statement as to whether the person is being reimbursed for the presentation; and if so, the name of the person or entity on whose behalf the presentation is made;

(3) a statement as to whether the presenter has registered as a lobbyist in relationship to the matter in question;

(4) a reference to the agenda item which the person wishes to discuss before the commission;

(5) an indication as to whether the presenter wishes to speak for or against the proposed agenda item;

(6) a statement verifying that all factual information to be presented shall be true and correct to the best of the knowledge of the speaker.

(b) Discretion of the chairman of the commission. The presiding officer of the commission or the advisory committee, as the case may be, shall have discretion in setting reasonable limits on the time to be allocated for each presentation. If several persons wish to address the commission or advisory committee on the same agenda item, it shall be within the discretion of the chair to request that persons who wish to address the same side of the issue coordinate their comments, or limit their comments to an expression in favor of views previously articulated by persons speaking on the same side of an issue.

(c) Requests that issues be placed on an agenda for discussion. Persons who wish to bring issues before the commission shall first address their request to the Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286. Such requests should be submitted at least 45 days in advance of commission meetings, but in no event less than 15 days. The decision whether to place a matter on an agenda for discussion before the full commission, or alternatively before a commission advisory committee, or with designated staff members, shall be within the discretion of the executive director.

§401.13. Computation of Time.

(a) Computing Time. In computing any period of time prescribed or allowed by these rules, by order of the Agency, or by any applicable statute, the period shall begin on the day after the act, event, or default in controversy and conclude on the last day of such computed period, unless it be a Saturday, Sunday, or a legal holiday, in

which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday. A party or attorney of record notified by mail under §401.61 of this title (relating to service of documents) is deemed to have been notified on the date on which notice is mailed.

(b) Extensions. Unless otherwise provided by statute, the time for filing any pleading, except a notice of protest, may be extended by order of the director, upon the following conditions.

(1) A written motion must be duly filed with the director prior to the expiration of the applicable period of time allowed for such filings.

(2) The written motion must show good cause for such extension and that the need is not caused by the neglect, indifference, or lack of diligence on the part of the movant.

(3) A copy of any such motion shall be served upon all other parties of record to the proceeding contemporaneously with the filing thereof.

§401.15. Agreements to be in Writing.

(a) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(b) No stipulation or agreement between the parties, their attorneys or representatives, with regard to any matter involved in any proceeding before the Agency, shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, or unless it shall have been dictated into the record by them during the course of a hearing, or incorporated in an order bearing their written approval. This rule does not limit a party's ability to waive, modify, or stipulate any right or privilege afforded by these rules, unless precluded by law.

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

Issued in Austin, Texas, on June 3, 1994.

TRD-9441799

Jack Woods
General Counsel
Texas Commission on Fire
Commission

Earliest possible date of adoption: July 11, 1994

For further information, please call: (512) 918-7184

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Subchapter B. Rulemaking Proceedings

• 37 TAC §401.17, §401.19

The new sections are proposed under the Government Code, §419.008, which provides the commission with authority to adopt rules for the administration of its powers and duties; and Government Code, §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The Government Code, Chapter 419, §419.036 and §419.906 are affected by these proposed sections. In addition, the Government Code, Chapter 2001, §2001.001-2001.147 are affected by these sections.

§401.17. Requirements. Except for the requirements of mandatory rule development by advisory committees provided for by law, the procedure for rulemaking is governed by Subchapter B of the Administrative Procedure Act.

§401.19 Petition for Adoption of Rules.

(a) Any person may petition the commission requesting the adoption of a new rule or an amendment to an existing rule as authorized by the APA, §2001.021.

(b) Petitions shall be sent to the executive director. Petitions shall be deemed sufficient if they contain:

(1) the name and address of the person or entity on whose behalf the application is filed;

(2) specific reference to the existing rule which is proposed to be changed, amended, or repealed;

(3) the exact wording of the new, changed, or amended proposed rule with new language underlined and deleted language dashed out;

(4) the proposed effective date; and

(5) a justification for the proposed action set out in narrative form with sufficient particularity to inform the commission and any other interested person of the reasons and arguments on which the petitioner is relying.

(c) The executive director shall direct that the petition for adoption of rules be placed on the next agenda for discussion by the commission or an advisory committee with subject matter jurisdiction in accordance with §401.11 of this title (relating to Presentations to the Commission).

(d) A request for clarification of a rule shall be treated as a petition for a rule change. The commission staff may request submission of additional information from the applicant to comply with the require-

ments of subsection (b) of this section.

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

Issued in Austin, Texas, on June 3, 1994.

TRD-9441800

Jack Woods
General Counsel
Texas Commission on Fire
Commission

Earliest possible date of adoption: July 11, 1994

For further information, please call: (512) 918-7184



Subchapter C. Parties

• 37 TAC §§401.21, 401.23, 401.25, 401.27, 401.29

The new sections are proposed under the Government Code, §419.008, which provides the commission with authority to adopt rules for the administration of its powers and duties and Government Code, §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The Government Code, Chapter 419, §419.036 and §419.906 are affected by these proposed sections. In addition, the Government Code, Chapter 2001, §§2001.001-2001.147 are affected by these sections.

§401.21. Appearances and Right to Attorney.

(a) A person appearing at any proceeding may be represented by a licensed attorney or by any duly authorized representative. The authorized representative is held to the same procedural and substantive standards as attorneys authorized to practice law. An appearance by an authorized representative may be entered in person or by subscribing the representative's name upon any pleading filed on behalf of the party or a person seeking to be a party or otherwise participate in the proceeding. The presiding officer may require a representative to submit proof of his or her authority to appear on behalf of another person. The authorized representative shall be considered to remain a representative of record unless a statement or pleading to the contrary is filed or stated in the record

(b) A party or the representative of a party shall enter an appearance in a contested case at least ten days before the initial hearing date of the contested case. The filing of a Notice of Hearing or a Request for Hearing or other pleading that commences a contested case shall be considered an entry of appearance. Failure to timely enter an appearance as provided herein shall entitle the opposing party to a reasonable continuance as determined by the Hearings Officer, but for not less than

ten days

(c) Lead counsel. A party represented by more than one attorney or authorized representative in a matter before the commission may be required to designate a lead counsel who is authorized to act on behalf of all of the party's representatives, but all other attorneys or authorized representatives for the party may take part in the proceeding in an orderly manner, as ordered by the presiding officer.

§401.23. Classification of Parties.

(a) Parties. Parties to proceedings before the commission shall be classified into the following categories:

- (1) applicants or complainants;
- (2) respondents,
- (3) intervenors; and
- (4) general Counsel or his designee.

(b) Rights of Parties. Subject to the alignment of the parties pursuant to §401.29 of this title (relating to Alignment of Parties), parties to proceedings have the right to present a direct case, cross-examine all witnesses, conduct discovery, make oral or written legal arguments, and otherwise fully participate in any proceeding. The legal staff shall have no right to seek judicial review of any commission decision.

(c) Protestants. Any person who has not intervened in a proceeding, or who has been denied permission to intervene, shall not be considered a party. The presiding officer may allow oral or written comments to be made by protestants.

§401.25 Intervention.

(a) Standing. The general counsel or his designee shall have standing in all proceedings before the commission, and need not file a notice of intervention. In order to be recognized as a party to a commission proceeding, a person must file a motion to intervene under this section. A person has standing to intervene if that person:

(1) has a right to participate which is expressly conferred by statute, commission rule or order or other law; or

(2) has a justiciable interest which may be directly affected by the outcome of the proceeding

(b) Necessity for Filing Motion to Intervene. Applicants, complainants, and respondents as defined in §401.3 of this title (relating to Definitions), are necessary parties to proceedings that they have initiated or which have been initiated against them, and need not file motions to intervene or notices of intervention in order to partici-

pate as parties in such proceedings.

(c) **Time for Filing Motion.** Motions to intervene shall be filed no less than 30 days from the initial hearing date of the proceeding, unless otherwise provided by statute, commission rule, or order of the presiding officer. The motion to intervene shall be served upon all parties to the proceeding and upon all persons that have pending motions to intervene.

(d) **Rights of Persons with Pending Motions.** Persons who have filed motions to intervene shall have all rights and obligations of a party pending the presiding officer's ruling on the motion to intervene.

(e) **Late Intervention.**

(1) A motion to intervene that was not timely filed may be granted at the discretion of the presiding officer. In acting on a late filed motion to intervene, the presiding officer shall consider.

(A) any objections that are filed,

(B) whether the movant had good cause for failing to file the motion within the time prescribed,

(C) whether any prejudice to, or additional burdens upon, the existing parties might result from permitting late intervention,

(D) whether any disruption of the proceeding might result from permitting the late intervention; and

(E) whether the public interest is served by allowing the intervention

(2) The presiding officer may impose limitations on the participation of an intervenor to avoid delay and prejudice to other parties

(3) Except as otherwise ordered, an intervenor shall accept the procedural schedule and the record of the proceeding as it existed at the time of filing the motion to intervene.

§401.27. Consolidation and Severance.

(a) **Consolidation.** A motion for consolidation of proceedings shall be in writing. With prior notice to the parties, the presiding officer may order the consolidation of proceedings on his or her own initiative. Proceedings may be consolidated if the presiding officer finds that: the proceedings involve common questions of law or fact; consolidation would serve the interest of efficiency or prevent unwarranted expense and delay; and the applicant's ability to

present its case and other parties' ability to respond to the applicant's case are not unduly prejudiced. Proceedings shall be consolidated if requested based on the agreement of all parties, and if such consolidation would not unreasonably curtail the time available to process one or more of the proceedings proposed for consolidation

(b) **Severance** A motion for severance of a proceeding or issue within a proceeding shall be in writing. With prior notice to the parties, the presiding officer may order the severance of proceedings on his or her own initiative. Proceedings or issues may be severed if the presiding officer finds that severance would serve the interest of efficiency or prevent unwarranted expense and delay; and the applicant's ability to present its case and other parties' ability to respond to the applicant's case would not be unduly prejudiced. Proceedings or issues within a proceeding shall be severed if requested based on the agreement of all parties.

§401.29. **Alignment of Parties.** Parties, except for the general counsel, may be aligned for the purposes of participating in a hearing if the parties have the same positions on issues of fact or law. To the extent that alignment is determined to be necessary, the presiding officer shall order alignment of the parties at the earliest reasonable opportunity so as to avoid unnecessary duplication of effort and to allow aligned parties an adequate opportunity to prepare for hearing. The presiding officer may limit the number of representatives of aligned parties who may conduct cross-examination of any particular witness during the hearing on the merits.

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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General Counsel
Texas Commission on Fire
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For further information, please call. (512) 918-7184

◆ ◆ ◆ Subchapter D. Discovery

• 37 TAC §§401.31, 401.33, 401.35, 401.37, 401.39

The new sections is proposed under the Government Code, §419.008, which provides the commission with authority to adopt rules for the administration of its powers and duties; and Government Code, §2001.004, which requires a state agency to adopt rules of prac-

tice stating the nature and requirements of all available formal and informal procedures.

The Government Code, Chapter 419, §419.036 and §419.906 are affected by these proposed sections. In addition, the Government Code, Chapter 2001, §§2001.001-2001.147 are affected by these sections.

§401.31. Forms and Scope of Discovery in Contested Cases.

(a) **Forms.** Permissible forms of discovery by parties are:

(1) oral depositions of a party or a nonparty;

(2) written interrogatories to a party,

(3) requests of a party for admission of facts or the genuineness or identity of documents or things;

(4) requests of a party for production of documents and things for examination and copying or photographing; and

(5) requests of a party for entry upon and examination of real or personal property, or both.

(b) **Scope.** The scope of discovery shall be the same as provided by the Texas Rules of Civil Procedure and shall be subject to the constraints provided therein for privileges, objections, protective orders and duty to supplement, as well as the proceedings provided in the APA, Government Code, §§2001.081-2001.103. All discovery may commence upon the filing of an action or proceeding. No discovery may be initiated by a party seeking discovery after the initial hearing date, unless allowed by the Hearing Officer upon a showing of good cause.

§401.33. Service and Filing of Discovery Requests and Responses

Requests for discovery and responses thereto shall be served in the manner provided by §401.61 of this title (relating to Service of Documents) and should not be filed with the State Office of Administrative Hearings except as provided in §401.39 of this title (relating to Discovery Orders). Depositions shall be returned in the manner provided in the APA, Government Code, §2001.100. Except for good cause shown, all request for discovery shall be timely made prior to the hearing

§401.35. Deadlines for Responses to Discovery Requests.

Responses to discovery requests shall be made within a reasonable time period of not less than 14 days after receipt of service as directed by the party seeking discovery. The Hearings Officer may shorten or lengthen such time periods as the interest of justice requires. Nothing within this section shall prevent the party

seeking discovery from extending response deadlines by agreement, but no such agreement shall be enforceable unless in writing and filed in the contested case that forms the basis for the discovery requests as provided in §401.15 of this title (relating to Agreements to be in Writing)

§401.37. Request for Admission. Except as otherwise provided, requests for admission shall be governed by the applicable provisions of the Texas Rules of Civil Procedure. Each matter for which an admission is requested shall be separately stated. The matter shall be deemed to be admitted without necessity for an order unless, within the prescribed time for responding, the party to whom the request is directed serves upon the requesting party a written answer or objection addressed to the matter. The Request for Admission document must clearly set forth this provision for deemed admissions, in bold print or by underlining, in a conspicuous location calculated to inform the opposing party of the consequences of a failure to respond within the prescribed time, as provided in §401.35 of this title (relating to Deadlines for Response to Discovery Request). The presiding officer may permit withdrawal or amendment of responses and deemed admissions upon a showing of good cause, if necessary in the interest of justice.

§401.39. Discovery Orders

(a) Commission to take Deposition. The Hearings Officer is authorized to issue a Commission to take a deposition, which shall authorize the issuance of any subpoenas necessary to require that the witness appear and produce, at the time the deposition is taken, books, records, papers, or other objects that may be necessary and proper for the purposes of the proceedings. Requests for issuance of a Commission to take deposition shall be filed with the Hearings Officer with a proposed Commission to take deposition only if the parties disagree on the scheduling or scope of the deposition.

(b) Other Discovery Orders. The Hearings Officer may issue protective orders and orders compelling discovery responses. Request for orders compelling discovery shall contain a statement that, after due diligence, the desired information cannot be obtained through informal means, good faith efforts at negotiation have failed to produce the requested discovery and that good cause exists for requiring discovery. The Hearings Officer may conduct in camera inspections of materials when requested by a party or when necessary to determine facts required to issue appropriate discovery orders, including protective orders. The request for discovery order may be denied if the request is untimely or un-

duly burdensome in light of the complexity of the proceeding, if the requesting party has failed to exercise due diligence, if the discovery would result in undue cost to the parties or unnecessary delay in the proceeding, or for other good cause in the interest of justice.

(c) Sanctions. After notice and opportunity for hearing, an order imposing sanctions, as are just, may be issued by the Hearings Officer for failure to comply with a discovery order, or subpoena issued pursuant to a commission for deposition or production of books, records, papers, or other objects, in accordance with §401.103 of this title (relating to Discovery).

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

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◆ ◆ ◆ Subchapter E. Prehearing Proceedings

• 37 TAC §§401.41, 401.43, 401.45, 401.47, 401.49

The new sections are proposed under the Government Code, §419.008, which provides the commission with authority to adopt rules for the administration of its powers and duties; and Government Code, §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The Government Code, Chapter 419, §419.036 and §419.906 are affected by these proposed sections. In addition, the Government Code, Chapter 2001, §2001.001-2001.147 are affected by these sections.

§401.41. Preliminary Staff Conference.

(a) General. After receipt of preliminary notice of alleged violations of laws or rules administered or enforced by the commission and its staff, the holder of the certificate or license may request a conference with the commission's enforcement staff for the purpose of showing compliance with all requirements of law, or to discuss informal disposition of any complaint or contested case, pursuant to the Government Code, §419.906(c) and §2001.056

(b) Representation. The licensee may be represented by counsel or by a representative of his or her choice. The

commission shall be represented by one or more members of its enforcement staff and by staff legal counsel.

(c) Informal Proceedings. The conference shall be informal, and will not follow procedure established in Subchapter F of this chapter (relating to Contested Cases) for contested cases. At the discretion of the commission representative(s), the licensee, the licensee's attorney or representative, and the commission staff may question witnesses, make relevant statements, present affidavits, reports, letters, or statements of persons not in attendance, and may present such other evidence as may be appropriate. The commission's representative(s) may prohibit or limit attendance by other persons and may prohibit or limit access to the commission's investigative file by the licensee, the licensee's representative, and the complainant, if present. At the discretion of the commission's representative(s) a recording may be made of none or all of the staff conference.

(d) Settlement Conference. At the discretion of the commission's representative(s), the preliminary staff conference may be concluded, and a settlement conference initiated to discuss staff recommendations for informal resolution of the issues. Such recommendations may include any disciplinary actions authorized by law, including restitution, remedial actions, or such reasonable restrictions that may be in the public interest. Recommendations for administrative penalties or monetary forfeitures shall be made in accordance with §401.105 of this title (relating to Administrative Penalties). These recommendations may be modified by the commission's representative(s) based on new information, a change of circumstances, or to expedite resolution in the interest of protecting the public. The commission's representative may also recommend that the investigation be closed or referred for further investigation.

(e) Proposed Consent Order. The licensee may accept or reject the settlement recommendations of the commission staff. If the licensee accepts the recommendations, the licensee shall execute a settlement agreement in the form of a proposed consent order as soon thereafter as practicable. If the licensee rejects the proposed agreement, the matter may be scheduled for a hearing as described in Subchapter F of this title, relating to Contested Cases.

(f) Approval of Consent Order. Following acceptance and execution of the settlement agreement recommended by staff, said proposed agreement shall be submitted to the executive director or the fire marshal, according to the nature of the case, for approval. If the order is approved, it shall be signed by the executive director or the fire marshal, as the case may be. If the proposed order is not approved, the licensee

shall be so informed and the matter shall be referred to the commission staff for appropriate action to include dismissal, closure, further negotiation, further investigation, or a formal hearing.

§401.43. Prehearing Conferences. The presiding officer shall schedule prehearing conferences as necessary for the efficient management of the proceedings. The presiding officer shall conduct prehearing conferences for any appropriate purpose, including consideration of the following:

- (1) motions and other preliminary matters related to the proceeding, including notice, discovery, and procedural schedules;
- (2) settlement of the case, or clarification and simplification of the issues;
- (3) the necessity or desirability of amended pleadings;
- (4) the possibility of obtaining stipulations that would avoid the unnecessary introduction of evidence;
- (5) evidentiary matters, including a request for interim relief;
- (6) the specific procedures to be followed at the hearing;
- (7) the scheduling of the hearing on the merits, and
- (8) any other matters as may assist the disposition of the proceeding in a fair and efficient manner.

§401.45. Interim Orders. The presiding officer shall issue orders covering procedural and discovery matters, requests for interim relief, and such other matters as may aid in the conduct of the hearing and efficient and fair disposition of the proceeding. Interim orders may be written or stated orally on the record.

§401.47. Appeal of an Interim Order.

(a) Availability of Appeal. Appeals are available for any order of the presiding officer that immediately prejudices a substantial or material right of a party, or materially affects the course of the hearing, other than evidentiary rulings. Interim orders shall not be subject to exceptions or applications for rehearing prior to issuance of a report of a hearing officer

(b) Procedure for Appeal. If the presiding officer intends to reduce an oral ruling to a written order, the presiding officer shall so indicate on the record at the time of the oral ruling and shall promptly issue the written order. Any appeal to the fire marshal or the executive director as to matters within their respective jurisdictions shall be filed within five working days of

the issuance of the written order or the appealable oral ruling. The appeal shall be served on all parties by hand delivery, facsimile transmission, or by overnight courier delivery.

(c) Contents. An appeal shall specify the reasons why the interim order is unjustified or improper.

(d) Responses. Any response to an appeal shall be filed within five working days of the filing of the appeal.

(e) Motions for Stay. Pending a ruling by the fire marshal or the executive director, the presiding officer may, upon motion, grant a stay of the interim order. A motion for a stay shall specify the basis for a stay. Good cause shall be shown for granting a stay. The mere filing of an appeal shall not stay the interim order or the procedural schedule.

(f) Denial. The fire marshal or the executive director, as the case may be, shall rule on the interim order within 20 days of the filing of the appeal. If the fire marshal or the executive director, as the case may be, does not rule on the appeal within 20 days of its filing, or extend the time for ruling, the interim order is deemed approved and any granted stay is lifted. The appeal may be carried with the underlying case provided the fire marshal or executive director does not act upon the appeal within the time provided in this section.

(g) Reconsideration. The presiding officer may treat an appeal as a motion for reconsideration and may withdraw or modify the order under appeal prior to a decision on the appeal.

§401.49. Prehearing Statements.

(a) Prehearing Statements Required. Each party shall file a prehearing statement no later than three days before the start of a hearing unless the presiding officer determines that such a requirement would add unjustified burden and expense to the proceeding, or that a different deadline should be imposed. The presiding officer may impose sanctions provided in §401.103 of this title (relating to Discovery Sanctions) against any party who fails to comply with the requirement that a prehearing statement be filed.

(b) Contents of Prehearing Statement. Unless otherwise provided by order of the presiding officer, the prehearing statement shall contain the following information:

- (1) a concise statement of the party's position in the proceeding;
- (2) a concise statement of each question of fact, law, or policy the party considers at issue;

(3) a concise statement of the party's position on each issue identified pursuant to paragraph (2) of this subsection;

(4) a statement of issues that have been resolved by agreement of the parties, including agreements that do not include all parties;

(5) a statement as to any requirement set forth in the prehearing order that cannot be complied with, and the reasons therefor; and such other information as will aid in achieving an orderly disposition of the proceeding.

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

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◆ ◆ ◆
Subchapter F. Contested Cases

- 37 TAC §§401.51, 401.53, 401.55, 401.57, 401.59, 401.61, 401.63, 401.65, 401.67, 401.69, 401.71, 401.73, 401.75, 401.77, 401.79, 401.81, 401.83, 401.85, 401.87, 401.89, 401.91, 401.93, 401.95, 401.97

The new sections are proposed under the Government Code, §419.008 which provides the commission with authority to adopt rules for the administration of its powers and duties; and Government Code, §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The Government Code, Chapter 419, §419.036 and §419.906 are affected by these proposed sections. In addition, the Government Code, Chapter 2001, §§2001.001-2001.147 are affected by these sections.

§401.51. Preliminary Notice and Opportunity for Hearing.

(a) In General. Except as otherwise provided by law, the procedure for the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license or certificate is governed by Government Code, §2001.054.

(b) Preliminary Notice. A revocation, suspension, annulment, or withdrawal of a certificate or license is not effective unless, before the institution of agency proceedings, the holder of the certificate or

license receives preliminary notice of the facts or conduct alleged to warrant the intended action and an opportunity to show compliance with all requirements of law, as required by Government Code, §2001.054(c).

(c) Staff Conference. The holder of the certificate or license may request a conference with the commission's enforcement staff for the purpose of showing compliance with all requirements of law, or to discuss informal disposition of any complaint or contested case, pursuant to the Government Code, §419.906(c) and §2001.056, and the procedures provided in §401.41 of this title (relating to Preliminary Staff Conferences).

(d) Request for Hearing. Except as otherwise provided by law, if an applicant's original application or request for a license or certificate is denied, he or she shall have 30 days from the date of denial to make a written request for a hearing and, if so requested, the hearing will be granted and the provisions of the APA and this chapter with regard to contested cases shall apply.

§401.53. Notice of Hearing.

(a) Notice in a contested case shall comply with the APA, §2001.051 and 2001.052.

(b) Deposit in the United States mails of a registered or certified letter, return receipt requested, containing a notice of a hearing in compliance with the requirements specified in this rule, or containing a copy of any decision or order addressed to the affected party or the attorney of record for the party at the party's last known address, shall constitute notice of the hearing or of such decision or order. The date of deposit as herein provided is the date of the act, after which any designated period begins to run as provided in § 401.13 of this title (relating to Computation of Time).

§401.55. Hearings Officer.

(a) The fire marshal or the executive director, as the case may be, may designate and appoint a hearings officer to act on his or her behalf in conducting any hearing or proceeding held under this chapter and to prepare proposals for decision on those hearings.

(b) The hearings officer has the authority to administer oaths; call and examine witnesses; issue subpoenas; make rulings on motions, admissibility of evidence, and amendments to pleadings; maintain decorum; schedule and recess the proceedings from day to day; and make any other orders as justice requires.

(c) If the hearings officer is unable to continue presiding over a case at any time before the final decision, another offi-

cer will be appointed who shall perform any remaining function without the necessity of repeating any previous proceedings.

§401.57. Classification of Pleadings. Pleadings filed with the commission shall include, but not be limited to, petitions, answers, replies, exceptions, and motions. Regardless of any error in its designation, the pleading shall be accorded its true status in the appeal in which it is filed.

§401.59. Form and Content of Documents.

(a) All pleadings, briefs, and exhibits filed with the commission shall be legibly handwritten, typewritten or printed on paper 8 1/2 inches wide by 11 inches long. Pleadings for which no other form is prescribed shall contain:

(1) the name of the party seeking to bring about or prevent action by the agency;

(2) the names of all other known parties,

(3) a concise statement of the facts relied upon by the pleader,

(4) a prayer stating the type of relief, action or order desired by the pleader;

(5) Any other matter required by statute;

(6) a certificate of service, as required by §401.61 of this title (relating to Service of Documents); and

(7) the signature of the submitting party or the party's authorized representative.

(b) Any pleading filed pursuant to notice of a hearing may be amended up to seven days prior to the hearing. Amendments after that time will be at the discretion of the presiding officer.

(c) Any pleading may adopt and incorporate, by specific reference thereto, any part of any document or entry in the official files and records of the agency.

§401.61. Service of Documents.

(a) Every pleading, plea, motion, or communication filed with the commission may be serviced by delivering a copy to all party representatives of record either in person or by agent or by courier receipted delivery or by first class, certified, or registered mail, to the party's last known address, or by facsimile to the recipient's current telecopier number.

(b) Service by mail shall be complete upon deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a

post office or official depository under the care and custody of the United States Postal Service.

(c) Service by facsimile completed after 5:00 p.m. local time of the recipient shall be deemed served on the following day.

(d) The party representative shall certify to the hearings officer compliance with this rule in writing over the signature of the party representative and on the filed instrument

§401.63. Filing of Documents

(a) All pleadings relating to any matter pending before the commission shall be filed with the executive director. Pleadings relating to any matter pending before the executive director or the fire marshal shall be filed with the State Office of Administrative Hearings.

(b) Any document shall be deemed filed only when actually received by the commission, the assigned hearings officer, or the designated docket clerk of the State Office of Administrative Hearings

(c) Documents may be filed by mail if sent by certified United States mail, return receipt requested, or by an overnight courier service. A document will be deemed timely filed if it is mailed on or before one day prior to the filing deadline as evidenced by a legible postmark placed on the envelope by the United States Postal Service and the document was received by the commission, the hearings officer, or the designated docket clerk by the closing of business on the third calendar day following the filing deadline

(d) Facsimile transmission of pleadings by telecopier to the commission or State Office of Administrative Hearings, in proper form, containing a facsimile of the signature of the party representative filing the pleading, constitutes filing. Parties shall not mail a duplicate of the transmitted document. Filing by facsimile completed after 5:00 p.m., Austin time, shall be deemed filed on the following business day.

§401.65. Answers

(a) The respondent shall file an answer within 20 calendar days after receiving notice from the commission staff that a formal proceeding has been initiated.

(b) The answer shall specifically admit or deny each allegation in the formal complaint and shall set forth all affirmative defenses.

(c) The answer shall contain the name of the respondent or the respondent's party representative, the mailing address, telephone number during business hours,

and facsimile number, if any.

(d) All well-pled factual allegations will be deemed admitted unless the respondent's answer, containing specific denials to each allegation, is filed within the time period prescribed in subsection (a) of this section. A general denial shall not be sufficient to controvert factual allegations contained in the notice of hearing.

§401.67 Failure to Appear at Hearing. Even though some or all of the parties fail to appear in person or through their duly authorized representative, the presiding officer, may consider fully and dispose of the matter pending if notice has been given in accordance with law. Such consideration and decision shall be on the basis of the entire record in the proceedings.

§401.69. Motions for Continuance. A motion for continuance shall specifically articulate grounds constituting good cause and shall be filed in writing.

§401.71. Dismissal Without a Hearing; Nonsuits.

(a) The commission or its designee may, on its own motion or the motion of a party, dismiss an appeal without a hearing for the following reasons: compromise, unnecessary duplication of proceedings, res judicata, withdrawal, mootness, untimely filing, lack of jurisdiction, failure of a party requesting relief from the commission to set forth facts in the pleadings that would support a decision in that party's favor, failure to state a claim for which relief can be granted, or failure to prosecute.

(b) The petitioner may nonsuit the proceeding at any time.

§401.73 Order of Procedure at Hearing.

(a) The petitioner may state briefly the nature of the claim or defense, what the petitioner expects to prove, and the relief sought. Immediately after, the respondent may make a similar statement, and the intervenors and other parties will be afforded similar rights as determined by the hearing officer.

(b) Evidence shall then be introduced by the petitioner. The respondent and intervenors shall have the opportunity to cross-examine each of the petitioner's witnesses.

(c) Cross-examination is not limited solely to matters raised on direct examination. Parties are entitled to redirect and recross examination.

(d) Unless the statement has already been made, the respondent may briefly state the nature of the claim or de-

fense, what the respondent expects to prove, and the relief sought.

(e) Evidence, if any, shall be introduced by the respondent. The petitioner and any intervenors shall have the opportunity to cross-examine each of the respondent's witnesses.

(f) The intervenor and other parties may make their statement, unless they have already done so, and shall introduce their evidence, if any. The petitioner and respondent shall have the opportunity to cross-examine the intervenor's witnesses.

(g) The petitioner may present rebuttal evidence.

(h) The parties may be allowed closing arguments at the discretion of the hearings officer.

(i) The hearings officer may permit deviations from this order of procedure in the interest of justice.

§401.75. Witnesses.

(a) *Testimony Under Oath.* In any hearing, the presiding officer shall administer an oath or affirmation before taking testimony from a witness.

(b) *Limitations on Number of Witnesses.* The presiding officer has the right in any proceeding to limit the number of witnesses whose testimony will be repetitious and to set time limits in order to exclude irrelevant, immaterial, or unduly repetitious testimony so long as all viewpoints are given a reasonable opportunity to be heard.

(c) *Prepared Testimony.* In all contested proceedings and after service of copies upon all parties of record at such time as may be designated by the presiding officer, the prepared testimony of a witness upon direct examination, either in narrative or question and answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness's being sworn and identifying the same. Such witness shall be subject to cross-examination and the prepared testimony shall be subject to a motion to strike in whole or in part.

(d) *Witness Placed Under Rule.* At the request of any party to a contested matter, or at the direction of the presiding officer, the witnesses may be sworn and removed out of the hearing room to some place where they cannot hear the testimony as delivered by any other witness in the cause. This is termed placing witnesses under the rule. No party to the proceeding shall be placed under the rule. Where a corporation or other legal entity is a party to the proceeding, the presiding officer may exempt from the rule an officer or other representative of such corporation or other legal entity to aid counsel in the presenta-

tion of the case. For good cause shown, the presiding officer may exempt other potential witnesses from the operation of this rule if the party requesting the exemption states that it will not call any such person as a witness. A request of an exemption precludes the requesting party from calling the exempted person as a witness. If any party be absent, the presiding officer, in his or her discretion, may exempt from the rule a representative of such party. Witnesses, when placed under the rule, shall be instructed by the presiding officer that they are not to converse with each other or with any other person about the proceeding other than the attorneys in the proceeding, except by permission of the presiding officer, and that they are not to read any report of or comment upon the testimony in the proceeding while under the rule.

§401.77. Witness Fees and Expenses.

(a) A witness or deponent in a contested case who is not a party and who is subpoenaed or otherwise compelled to attend a hearing or proceeding to give a deposition is entitled to receive compensation for mileage, transportation, meal, and lodging expenses, and a witness fee of \$10 a day (or a greater amount as prescribed by agency rule) in accordance with the APA, §2001.103 as amended by Acts 1993, 73rd Legislative, Chapter 1018, §11.

(b) Fees and expenses to which a witness is entitled under this rule shall be paid by the party at whose request the witness appears or the deposition is taken, on presentation of proper vouchers sworn by the witness and approved by the agency.

§401.79. Evidence. The introduction and admissibility of evidence in a contested case is covered by the APA, Subchapter D and by these rules.

§401.81. Exceptions to Evidentiary Rulings.

A formal exception to an evidentiary ruling of the presiding officer during a hearing of a contested matter is permissible but not required. Any ruling adverse to an objecting party automatically preserves the exception as if the exception had been made and noted.

§401.83. Excluded Testimony. When testimony is excluded by ruling of the presiding officer, the party offering such evidence shall be permitted to make an offer of proof by dictating or submitting in writing the substance of the proposed testimony, prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review by the agency. The presiding officer may ask such questions of the witness as he deems necessary to satisfy himself that the witness would testify as represented in the offer of proof. An alleged

error in sustaining and objection to questions asked on cross-examination may be preserved without making an offer of proof.

§401.85. Motions During Hearings. Except as provided in § 401.15 of this title (relating to Agreements to be in Writing), any motion made during a hearing need not be in writing unless the presiding officer so directs.

§401.87. Filing of Exceptions and Replies to Proposal for Decision.

(a) A copy of the proposal for decision in a contested case shall be simultaneously delivered or mailed by certified mail, return receipt requested, to each party representative of record.

(b) Exceptions to the proposal for decision shall be filed within ten calendar days of the date of the proposal for decision.

(c) Replies to exceptions shall be filed within 20 calendar days of the date of the proposal for decision.

(d) All disagreements with the factual finds of the proposal for decision must be made in the parties' exceptions to the proposal for decision or be waived.

(e) The exceptions shall be specifically and concisely stated. The evidence relied upon shall be stated with particularity, and any evidence or arguments relied upon shall be grouped under the exceptions to which they relate.

§401.89. Orders. After the time for filing exceptions and replies to exceptions expires, the hearing officer's proposal for decision will be considered by the fire marshal or the executive director, according to the nature of the case, and either adopted or modified and adopted. An order issued by the hearing officer may be modified or vacated only for reasons of policy, with the reasons and legal basis clearly stated in writing. All final decisions or orders of the commission, the fire marshal, or the executive director shall be in writing and signed. A final decision shall include findings of fact and conclusions of law separately stated. Findings of fact, if set forth in statutory language, shall be accomplished by a concise and explicit statement of the underlying facts supporting the findings. Parties shall be notified either personally or by certified mail of any decision or order, and a copy of the decision or order shall be delivered or mailed to any party and to his or her authorized representative.

§401.91. Record.

(a) The record in a contested case includes the matters listed in the APA, Gov-

ernment Code, §2001.060.

(b) Proceedings, or any part of them, shall be transcribed on written request of any party. The party requesting the proceeding to be transcribed shall bear the expense thereof in accordance with the usual and customary charges of a court reporter. Should two or more parties make such request, the cost shall be borne on a pro rata basis. This section does not limit the agency to a stenographic record of proceedings.

§401.93. Appeals to the Commission.

(a) In general. Any party aggrieved of a final decision or order of the executive director or the state fire marshal in a contested case may appeal to the commission after the decision or order complained of is final. An appeal to the commission for review of action of the executive director or the state fire marshal shall be made within 30 days from the date that the writing evidencing the official action or order complained of is final and appealable, but for good cause shown, the commission may allow an appeal after that date. A motion for rehearing is not a prerequisite for an appeal to the commission.

(b) Standard of Review. The review of decisions of the fire marshal or the executive director by the commission shall be based on the substantial evidence rule. In reviewing any final decision or order of the executive director or state fire marshal, the commission may consider the record in the contested case developed before the executive director, the state fire marshal, or the assigned examiner, and may not consider evidence not presented to or officially noticed by the executive director, the state fire marshal, or the hearing officer. A party may apply to the commission to present additional evidence. If the commission is satisfied that the additional evidence is material and that there were good reasons for the failure to present it in the proceeding before the fire marshal or the executive director, the commission may order that additional evidence be taken before the assigned hearing officer on conditions set by the commission. The executive director or the fire marshal, as the case may be, may change his or her findings and decision by reason of the additional evidence and shall file the additional evidence and any changes, new findings, or decisions with the commission.

(c) Oral argument. On the request of any party, the commission may allow oral argument prior to the final determination of an appeal of a decision or order of the executive director or the state fire marshal.

§401.95. Suspension of Orders. Pending appeal and final disposition of a matter, the

commission, for good cause, may suspend the effectiveness of the executive director's or the fire marshal's orders. A request for hearing does not of itself stay an official act or order unless the official act or order is stayed by controlling law.

§401.97. Motions for Rehearing.

(a) In the absence of a finding of imminent peril, a motion for rehearing is a prerequisite to a judicial appeal. A motion for rehearing must be filed by a party within 20 days after the date the party representative is notified of the final decision or order.

(b) Replies to a motion for rehearing must be filed with the agency within 30 days after the date the party representative is notified of the final decision or order.

(c) Agency action on the motion for rehearing must be taken within 45 days after the date a party representative is notified of the final decision or order. If agency action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date the party representative is notified of the final decision or order.

(d) The commission may rule on a motion for rehearing at a meeting or by mail, telephone, telegraph, facsimile transmission, or another suitable means of communication. The motion shall be deemed overruled by operation of law, unless a majority of the commissioners serving vote to grant the motion within the time provided by law for ruling on the motion for rehearing.

(e) The agency may, by written order, extend the period of time for filing the motions or replies and taking agency action, except that an extension may not extend the period for agency action beyond 90 days after the date a party representative is notified of the final order or decision.

(f) In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date the party representative is notified of the final decision or order.

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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Jack Woods
General Counsel
Texas Commission on Fire
Protection

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For further information, please call: (512) 918-7184

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Subchapter G. Conduct and Decorum, Sanctions, and Penalties

• 37 TAC §§401.101, 401.103, 401.105

The new chapter is proposed under the Government Code, §419.008 which provides the commission with authority to adopt rules for the administration of its powers and duties and Government Code, §2001.004 which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The Government Code, Chapter 419, §419.036 and §419.906 are affected by this proposed amendment. In addition, the Government Code, Chapter 2001, §2001.001-2001.147 are affected by this amendment.

§401.101. Conduct and Decorum.

(a) Standard of conduct during adjudicative proceedings.

(1) The hearings officer and the party representative should refer to the Texas Disciplinary Rules of Professional Conduct for guidance, regardless of whether all participants are licensed attorneys (Texas State Bar Rules, Article 10, §9).

(2) Party representatives shall maintain high standards of professionalism during the administrative process and promote an atmosphere of civility and fairness.

(3) A party representative shall use these rules for legitimate purposes and not for dilatory purposes or to harass or intimidate other participants.

(b) Exclusion or disqualification of party representatives.

(1) Contemptuous conduct. A hearings officer may exclude or disqualify a party representative from participating in an agency hearing for contemptuous conduct. The hearings officer shall warn the party representative prior to exclusion, if possible. Contemptuous conduct includes:

(A) actual or threatened physical assault of any participant to the proceeding;

(B) knowingly or recklessly making a false statement of material fact or law to the hearings officer.

(C) counseling or assisting a witness to testify falsely;

(D) knowingly or recklessly offering or using false evidence;

(E) filing a frivolous or

knowingly false pleading or other document, or filing a frivolous or knowingly false defense. A frivolous filing is one:

(i) primarily for the purpose of harassing or maliciously injuring another person; or

(ii) for which the party representative is unable to make a good faith argument for an extension, modification, or reversal of existing law;

(F) paying, offering to pay, or acquiescing in a payment or offer of payment to a witness based on the content of the witness' testimony or the outcome of the proceeding;

(G) continually violating an established rule of agency procedure or of evidence;

(H) raising superfluous objections or otherwise unreasonably delaying the proceeding or increasing the costs or other burdens of the proceeding;

(I) misrepresenting, mischaracterizing, or misquoting facts or law to gain unfair advantage;

(J) except as otherwise permitted by law, communicating or causing someone else to communicate with the hearings officer without the knowledge and consent of opposing party representatives in order to gain unfair advantage or to influence the proceeding;

(K) using vulgar or abusive language during the proceeding; and

(L) engaging in disruptive conduct.

(2) Conflicts of interest. A hearings officer may disqualify a party representative from participating in a proceeding if the hearings officer decides that the party representative has a conflict of interest. Conflicts of interest can be, but are not limited to, the following:

(A) when a party representative who previously acted as a public officer or employee on a matter later attempts to represent a private client on the same matter, unless the appropriate government agency consents;

(B) when a party representative who serves as a public officer or employee on a matter negotiates for private employment with a party or party representative involved in the same matter;

(C) when a party representative who serves as a public officer or employee participates in a matter involving a former private client whom he or she represented on the same matter, unless no one may legally act in the attorney's stead;

(D) when an attorney engages in the practice of law while under suspension or in violation of a disciplinary order or judgment; and

(E) any other conflict of interest that, in the opinion of the hearings officer, offends the dignity and decorum of the proceeding.

(3) Procedures for excluding or disqualifying a party representative.

(A) Notice. The hearings officer shall state the specific reason for excluding or disqualifying a party representative on the record or in a written order. The hearings officer shall notify the affected party and representative of the exclusion or disqualification personally or by certified mail.

(B) Reasonable time for substitution. After the hearings officer has excluded or disqualified a party representative, the affected party or party representative shall have reasonable time to appeal to the fire marshal or executive director, according to the nature of the case. If the exclusion or disqualification order is sustained, the party shall have a reasonable time to substitute a new representative. In determining a reasonable time, the hearings officer shall consider the right of opposing parties to have the proceeding resolved without undue delay. The hearings officer may therefore align the affected party with another party in interest instead of permitting a substitution.

(C) Appeal of exclusion or disqualification. A party or party representative may appeal the exclusion (if it is for a period of more than eight hours) or disqualification to the fire marshal or executive director, as the case may be, pursuant to §401.47 of this title (relating to Appeals of Interim Orders).

(D) No further participation. After being disqualified from the proceeding, a party representative may not provide further assistance, either directly or indirectly, to any party with regard to the proceeding, except to the extent reasonably necessary to make an appeal of the disqualification order pursuant to §401.47 of this title (relating to Appeals from Interim Or-

ders) and to complete the withdrawal and substitution of a new party representative.

(E) No recusal. The exclusion or disqualification of a party representative by a hearings officer is not a ground for recusal of the hearings officer in the same or any subsequent proceeding.

§401.103. Discovery Sanctions. After notice and opportunity for hearing, an order imposing sanctions, as are just, may be issued by the Hearings Officer for failure to comply with a discovery order, or subpoena issued pursuant to a commission for deposition or production of books, records, papers, or other objects. The order imposing sanctions may:

(1) disallow any further discovery of any kind or of a particular kind of disobedient party;

(2) require the party, the party's representative, or both to obey the discovery order;

(3) require the party, the party's representative, or both to pay reasonable expenses, including attorney fees, incurred by reason of the party's noncompliance;

(4) direct that the matters regarding which the discovery order was made shall be deemed established in accordance with the claim of the party obtaining the order;

(5) refuse to allow the disobedient party to support or oppose designated claims or defenses or prohibit the party from introducing designated matters into evidence;

(6) strike pleadings or parts thereof or abate further proceedings until the order is obeyed; or

(7) dismiss the action or proceeding or any part thereof or render a decision by default against the disobedient party.

(d) Appellate Review. Any discovery order or subpoena and any order imposing sanctions issued by the hearings officer is subject to review by an appeal to the fire marshal or executive director, according to the nature of the action or proceeding, in accordance with §401.45 of this title (relating to Appeal of an Interim Order).

§401.105. Administrative Penalties.

(a) The state fire marshal may, after notice and hearing required by the Administrative Procedure Act, Chapter 2001, Government Code, impose an order requiring payment of an administrative penalty or monetary forfeiture in an amount not to exceed \$10,000.00 for each violation of

law or rule enforced by or through the state fire marshal, as provided by §417.010, Government Code.

(b) The commission, acting through the executive director may, after notice and hearing required by the Administrative Procedure Act, Chapter 2001, Government Code, impose an order requiring payment of an administrative penalty or monetary forfeiture in an amount not to exceed \$1,000.00 for each violation of Government Code, Chapter 419, or rule promulgated thereunder, as provided by §419.906, Government Code.

(c) In determining the amount of the administrative penalty or monetary forfeiture the state fire marshal or the executive director, as the case may be, shall consider:

(1) the seriousness of the violation, including but not limited to the nature, circumstances, extent, and gravity of the prohibited act, and the hazard or potential hazard created to the health and safety of the public;

(2) the economic damage to property or the public's interests or confidences caused by the violation;

(3) the history of previous violations;

(4) any economic benefit gained through the violation;

(5) the amount necessary to deter future violations;

(6) the demonstrated good faith of the person, including efforts taken by the alleged violator to correct the violation;

(7) the economic impact of imposition of the penalty or forfeiture on the person; and

(8) any other matters that justice may require.

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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Jack Woods
General Counsel
Texas Commission on Fire
Protection

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For further information, please call: (512) 918-7184

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Subchapter H. Reinstatement

• 37 TAC §§401.111, 401.113,
401.115, 401.117, 401.119

The new sections are proposed under the

Government Code, §419.008, which provides the commission with authority to adopt rules for the administration of its powers and duties; and Government Code, §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The Government Code, Chapter 419, §419.036 and §419.906 are affected by these proposed sections. In addition, the Government Code, Chapter 2001, §§2001.001-2001.147 are affected by these sections.

§401.111. Application for Reinstatement of License or Certificate.

(a) At the expiration of one year from the date of revocation or suspension, or upon the conclusion of any specified period of suspension, the commission may consider a request for reinstatement by the former licensee or certificate holder (applicant).

(b) The request for reinstatement must be submitted to the commission office in writing and should include a short and plain statement of the reasons why the applicant believes the license should be reinstated.

(c) Upon denial of any application for reinstatement, the commission may not consider a subsequent application until the expiration of one year from the date of denial of the prior application.

(d) In taking action to revoke or suspend a license or certificate, the commission may, in its discretion, specify the terms and conditions upon which reinstatement shall be considered.

§401.113. Evaluation for Reinstatement. In considering reinstatement of a suspended or revoked license or certificate, the commission will evaluate:

(1) the severity of the act which resulted in revocation or suspension of the license or certificate;

(2) the conduct of the applicant subsequent to the revocation or suspension of the license or certificate;

(3) the lapse of time since revocation or suspension;

(4) the degree of compliance with all conditions the commission may have stipulated as a prerequisite for reinstatement;

(5) the degree of rehabilitation attained by the applicant as evidenced by sworn notarized statements sent directly to the commission from qualified people who have personal and professional knowledge of the applicant; and

(6) the applicant's present qualifications to perform duties regulated by the

§401.115. Procedure Upon Request for Reinstatement.

(a) An applicant for reinstatement of a revoked or suspended license or certificate must personally appear before an administrative law judge designated by the commission at a scheduled date and time to show why the license or certificate should be reinstated.

(b) Upon submission of proof of past revocation or suspension of the applicant's license or certificate, the applicant has the burden of proof to show present fitness and/or rehabilitation to perform duties regulated by the commission.

(c) Upon receipt of a written request for reinstatement as required by §401.111 of this title (relating to Application for Reinstatement of License or Certificate), the applicant will be notified of a date and time of an appearance before the administrative law judge.

§401.117. Commission Action Possible Upon Reinstatement. After evaluation, the commission may:

- (1) deny reinstatement of a suspended or revoked license or certificate;
(2) reinstate a suspended or revoked license or certificate and probate the practitioner for a specified period of time under specific conditions;
(3) authorize reinstatement of the suspended or revoked license or certificate;
(4) require the satisfactory completion of a specific program of remedial education approved by the commission; and
(5) require monitoring of the applicant's work activity as specified by the commission.

§401.119. Failure to Appear for Reinstatement. An applicant for reinstatement of a revoked or suspended license or certificate who makes a commitment to appear before the administrative law judge, and fails to appear at a hearing set with notice by the agency, shall not be authorized to appear before the administrative law judge before the expiration of six months. For good cause shown, the executive director may authorize an exception to this rule.

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 June 3, 1994.

TRD-9441806 Jack Woods General Counsel

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For further information, please call: (512) 918-7184

Subchapter I. Notice and Processing Periods for License Applications

- 37 TAC §§401.121, 401.123, 401.125, 401.127

The new sections are proposed under the Government Code, §419.008, which provides the commission with authority to adopt rules for the administration of its powers and duties; and Government Code, §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The Government Code, Chapter 419, §419.036 and §419.906 are affected by these proposed sections. In addition, the Government Code, Chapter 2001, §§2001.001-2001.147 are affected by these sections.

§401.121. Purpose of Establishing Time Periods. In order to minimize delays which hamper small businesses and other enterprises, this subchapter establishes time periods within which the Texas Commission on Fire Protection shall review and process license applications efficiently and provides for an appeal process should the agency violate these periods in accordance with the Government Code, Chapter 2005.

§401.123. Notice of Deficiency.

(a) Manner of Notice. Written notice that an application is complete or deficient must be mailed to the applicant or delivered by such means as will reasonably provide actual notice.

(b) Written Notice Not Required. Written notice that an application is complete shall not be required under this subchapter if an application is approved and a license issued during the notice period.

§401.125. Processing Periods.

(a) Notice to applicant. Within 30 days from receipt of an application for a certificate of registration, license, permit, or approval issued pursuant to the Insurance Code, Articles 5.43-1-5.43-4, or an application for a certificate or approval issued pursuant to the Government Code, Chapter 419, the agency shall determine a filing to be complete or deficient and immediately issue written notice to the applicant regarding the status of the application.

- (1) Complete application.

(A) The written notice for a complete application shall state that the application is complete and accepted for filing and shall advise the applicant of the time period in which the agency must deny or approve the application unless such information has previously been provided to the applicant.

(B) For purposes of this section, an application is complete upon agency determination that it is in compliance with the content and form prescribed by the agency.

- (2) Deficient application.

(A) The written notice for a deficient application shall state that the application is not complete, set out the specific additional information that is required for completion, and advise the applicant that the agency may disapprove an application that is not complete within 90 days of its original receipt. After one written notice of deficiency has been issued, another is not required for an application resubmitted in whole or in part with deficiencies.

(B) In addition to notice issued under subparagraph (A) of this paragraph, the agency may notify the applicant, in any manner, of deficiencies in the application.

(b) Processing of application. Within 60 days after receipt of a complete application, the agency shall:

(1) issue the license on payment of the appropriate fees and successful completion of all required examinations; or

- (2) deny the license.

(c) Application disapproved.

(1) The agency may disapprove an application for a license if the applicant fails to successfully complete all required examinations within one year of the receipt of the original application.

(2) The agency may disapprove an application that is not complete within 90 days of its original receipt by the agency.

§401.127. Appeal.

(a) Hearing.

(1) Notice. An applicant who does not receive notice as to the complete or deficient status of a license application within the period established in this subchapter for such application may petition for a hearing to review the matter.

- (2) Processing. An applicant

whose permit is not approved or denied within the period established in this subchapter for such license may petition for a hearing to review the matter

(3) Procedure. A hearing under this section shall be in accordance with the Administrative Procedure Act and Subchapter E of this chapter (relating to Contested Cases).

(b) Petition A petition filed under this section must be in writing and directed to the executive director. The petition shall identify the applicant, indicate the type of license sought and the date of the application, specify each provision in this subchapter that the agency has violated, and describe with particularity how the agency has violated each provision. The petition shall be filed with the office of the executive director.

(c) Decision An appeal filed under this section shall be decided in the applicant's favor if the executive director finds that

(1) the agency exceeded an established period under this subchapter, and

(2) the agency failed to establish good cause for exceeding the period.

(d) Good cause. The agency is considered to have good cause for exceeding a notice or processing period established for a permit if:

(1) the number of licenses to be processed exceeds by 15% or more the number of licenses processed in the same calendar quarter of the preceding year,

(2) the agency must rely on another public or private entity for all or part of its license processing, and the delay is caused by the other entity,

(3) the hearing and decision-making process results in reasonable delay under the circumstances,

(4) the applicant is under administrative review; or

(5) any other conditions exist giving the agency good cause for exceeding a notice or processing period.

(e) Commission review A permit applicant aggrieved by a final decision or order of the executive director concerning a period established by these sections may appeal to the commission in writing after the decision or order complained of is final, in accordance with §401.93 of this title (relating to Appeals to the Commission)

(f) Relief

(1) Complete or deficient status An applicant who maintains a successful appeal under subsection (c) of this section for agency failure to issue notice as to the complete or deficient status of an applica-

tion shall be entitled to notice of application status.

(2) License approval or denial An applicant who maintains a successful appeal under subsection (c) of this section for agency failure to approve or deny a license shall be entitled to such approval or denial of the license and to full reimbursement of all filing fees that have been paid to the agency in connection with the application.

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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Jack Woods
General Counsel
Texas Commission on Fire
Protection

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For further information, please call (512) 918-7184

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**Chapter 403. Criminal
Convictions and Eligibility
for Certification and
Licensure**

• 37 TAC §§403.1, 403.3, 403.5,
403.7, 403.9, 403.11

The Texas Commission on Fire Protection proposes new chapter §§403 1, 403 3, 403 5, 403.7, 403 9, and 403.11, concerning criminal convictions and eligibility for certification and licensure. The new chapter establishes guidelines and criteria on the types of convictions which directly relate to the occupations regulated by the commission and also establishes procedures for supervision, revocation, or denial of a certificate, permit or license held or applied for by persons with criminal convictions. The new rules include a procedure for seeking early review by paid and volunteer fire departments in order to assist those departments in avoiding the time and expense of training a person who is not eligible for certification due to a criminal conviction.

Alton Bostick, standards and licensing division director, has determined that for the first five year period the new rules are in effect there will be no fiscal implications for state government as a result of enforcing or administering the new chapter. Local governments may experience a cost savings as a result of the early review provisions in §403.5(d) ranging from \$600 to \$2,000 in training costs and \$4,000 to \$5,000 in salary costs by virtue of the early termination of persons not eligible for certification.

Mr. Bostick also has determined that for each year of the first five years the new rules are in effect the public benefit anticipated as a result of enforcing the new rules will be that guidelines will promote consistent decisions in con-

sideration of criminal histories of applicants and eliminate wasted training expense and salary costs through the early review process. There will be no effect on small or large businesses. There are no additional economic costs of compliance for persons required to comply with the rules as proposed.

Comments on the proposal may be submitted to T.R. Thompson, Staff Attorney, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 2286

The new sections are proposed under Texas Government Code, §419 008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties.

Articles 6252-13c and 6252-13d, Texas Civil Statutes, are affected by the proposal

§403 1 Purpose

(a) The purpose of this chapter is to establish guidelines and criteria on the eligibility of persons with criminal convictions for a certificate, permit, or license issued by the Texas Commission on Fire Protection (the commission) and to establish procedures for suspension, revocation, or denial of a certificate, permit, or license held or applied for by persons with criminal convictions pursuant to Texas Civil Statutes, Articles 6252-13c and 6252-13d.

(b) The duties and responsibilities of persons who hold certifications, licenses, and permits issued by the commission each involve matters that directly relate to public safety. Fire protection personnel, volunteer fire fighters, and installers of fire protection systems often have access to areas not generally open to the public. The public relies on the honesty, trustworthiness, and reliability of persons certified or licensed by the commission. Thus, crimes involving moral turpitude, including, but not limited to, fraud and dishonesty, are directly relevant. In addition, the ability of such persons to function unimpaired by alcohol or the illegal use of drugs, in dangerous or potentially dangerous circumstances, including but not limited to the operation of emergency or company vehicles or the manufacture, storage, sale, and use of fireworks, is paramount in light of the duty to protect the health and safety of the public.

§403 3. Scope.

(a) The guidelines established in this chapter apply to a person who holds or applies for any certificate, license, or permit issued under the commission's regulatory authority as follows.

(1) Government Code, Chapter 419, Subchapter B, regulating fully paid local fire protection personnel;

(2) Government Code, Chapter 419, Subchapter D, regulating volunteer fire fighters;

(3) Government Code, Chapter 419, Subchapter E, regulating paid fire fighters not connected with a local government;

(4) Insurance Code, Article 5.43-1, regulating fire extinguishers;

(5) Insurance Code, Article 5.43-2, regulating fire detection and alarm devices;

(6) Insurance Code, Article 5.43-3, regulating fire protection sprinkler systems; and

(7) Insurance Code, Article 5.43-4, regulating fireworks

(b) When a person's criminal conviction of a felony or misdemeanor directly relates to the duties and responsibilities of the holder of a certificate, license, or permit issued by the commission, the commission may:

(1) deny to a person the opportunity to be examined for a certificate or license;

(2) deny the application for a certificate, license, or permit;

(3) refuse to renew a certificate, license, or permit;

(4) suspend or revoke an existing certificate, license, or permit; or

(5) limit the terms or practice of a certificate, license, or permit to areas prescribed by the commission.

§403.5. Access to Criminal History Record Information.

(a) Criminal history record. The commission is entitled to obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation identification division, or another law enforcement agency to investigate the eligibility of a person applying to the commission for or holding a certificate, permit, or license.

(b) Confidentiality of information. All information received under this section is confidential and may not be released to any person outside the agency except in the following instances:

(1) a court order;

(2) with written consent of the person being investigated;

(3) in a criminal proceeding; or

(4) in a hearing conducted under the authority of the commission.

(c) Fire Department Access.

(1) A fire department operated by a municipality may, pursuant to the Government Code, §411.123, obtain from the

Department of Public Safety the conviction record of a person required to be certified by the commission that applies for a beginning position with the fire department.

(2) A volunteer fire department or a fire department operated by a rural fire prevention district may, pursuant to the Government Code, §411.1235, obtain from the Department of Public Safety the conviction record of a person that is an applicant for a beginning position with the fire department or that currently holds a position with that fire department.

(d) Early review. A fire department that employs a person regulated by the commission, a person seeking to apply for a beginning position with a fire department, a volunteer fire department with members participating in the commission volunteer fire fighter certification program, or an individual participating in the commission volunteer fire fighter certification program may seek the early review under this chapter of the person's present fitness to be certified prior to completing the requirements for certification by requesting such review in writing and providing the person's full name, birth date, and any additional identifying information requested by the commission. A decision based on an early review does not bind the commission if there is a change in circumstances.

§403.7 Criminal Convictions Guidelines.

(a) The following crimes are considered to relate directly to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of persons certified and licensed by the commission:

(1) offenses under the Government Code, Chapter 419, relating to the Texas Commission on Fire Protection;

(2) offenses under the Insurance Code, Articles 5.43-1, 5.43-2, 5.43-3, and 5.43-4;

(3) offenses under the Uniform Act Regulating Traffic on Highways, Texas Civil Statutes, Article 6701d, which are punishable by fines greater than \$200, or imprisonment, or both fine and imprisonment;

(4) offenses under the intoxicated driver provisions of Texas Civil Statutes, Article 67011-1;

(5) offenses under the Health and Safety Code, Chapter 481, relating to controlled substances;

(6) offenses under the Health and Safety Code, Chapter 483, relating to dangerous drugs;

(7) offenses under the following titles of the Texas Penal Code:

(A) Title 5-offenses against the person;

(B) Title 6-offenses against the family;

(C) Title 7-offenses against property;

(D) Title 8-offenses against public administration;

(E) Title 9-offenses against public order and decency;

(F) Title 10-offenses against public health, safety and morals;

(G) Title 11-offenses involving organized crime; and

(H) Title 4-offenses of attempting or conspiring to commit any of the offenses in subsection (b) of this section;

(8) the offenses listed in this subsection are not inclusive, in that the commission may consider other particular crimes in special cases in order to promote the intent of the statutes administered by the commission.

(b) In all cases the commission shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring the certificate or license issued by the commission;

(3) the extent to which the certificate or license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the certificate or license holder;

(5) the level and nature of supervision of the person by others; and

(6) the level and nature of access to public, commercial, and residential properties, including access after regular business hours and access to areas not open to the general public.

§403.9. Mitigating Factors.

(a) In addition to the factors that must be considered under §403.7 of this title (relating to criminal conviction guide-

lines), in determining the present fitness of a person who has been convicted of a crime, the commission shall consider the following evidence:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person at the time of the commission of the crime;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person prior to and following the criminal activity,

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

(6) other evidence of the person's present fitness, including letters of recommendation from

(A) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person,

(B) the sheriff or chief of police in the community where the person resides, and

(C) any other persons in contact with the convicted person

(b) It shall be the responsibility of the applicant to the extent possible to secure and provide to the commission the recommendations of prosecution, law enforcement, and correctional authorities as required by statute and these rules upon request by the commission staff. The applicant shall also furnish:

(1) a record of steady employment in the form of a letter from current or former employers;

(2) a record that the applicant has supported his or her dependents in the form of a letter from a person in the applicant's community with personal knowledge of the circumstances,

(3) evidence that the applicant has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted, in the form of copies of official records, documents, or a letter from the person's probation or parole officer where applicable concerning his or her current status.

§403.11 Procedures for Suspension, Revocation, or Denial of a Certificate or License to Persons with Criminal Backgrounds

(a) If the commission's Standards and Licensing Division (the division) proposes to suspend, revoke, limit, or deny a certificate or license, based on the criteria in this chapter, the division shall notify the individual at his or her last known address as shown in the commission's records, by registered or certified mail. The notice of intended action shall specify the facts or conduct alleged to warrant the intended action.

(b) If the proposed action is to limit, suspend, revoke, or refuse to renew a current certificate or license, the notice of intended action shall comply with the preliminary notice requirements of Government Code, §2001.054(c). The individual may request an informal conference with the commission staff in order to show compliance with all requirements of law for the retention of the certificate or license, pursuant to §2001.054(c), Government Code. The request for an informal staff conference must be submitted to the division director no later than 15 days after the date of the notice of intended action. If the informal staff conference does not result in an agreed consent order, a formal hearing shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

(c) An individual who does not hold a current certificate or license may request a formal hearing in order to contest the proposed action of the division. The request must be submitted in writing to the division director no later than 15 days after the date of the notice. A formal hearing shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

(d) If the individual does not request an informal staff conference or a formal hearing in writing within the time specified in this section, the individual is deemed to have waived the opportunity for a hearing, and the proposed action will be taken.

(e) If the commission limits, suspends, revokes, or denies a certificate or license under this chapter, the executive director shall give the person written notice:

(1) of the reasons for the decision;

(2) that the person may appeal the decision of the executive director or the state fire marshal, as the case may be, to the commission in accordance with §401.93 of this title (relating to Appeals to the Commission) within 30 days from the date the decision of the executive director or the state fire marshal is final and appealable;

(3) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County,

Texas, for judicial review of the evidence presented to the commission and its decision and that such petition must be filed with the court no later than 30 days after the commission's action is final and appealable.

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 June 3, 1994.

TRD-9441808

Jack Woods
General Counsel
Texas Commission on Fire
Protection

Earliest possible date of adoption: July 11, 1994

For further information, please call: (512) 918-7184

Chapter 405. Charges for Public Records

- 37 TAC §§405.1, 405.3, 405.5, 405.7, 405.9, 405.11, 405.13, 405.15, 405.17

The Texas Commission on Fire Protection proposes new §§405.1, 405.3, 405.5, 405.7, 405.9, 405.11, 405.13, 405.15, and 405.17, concerning charges for public records. The new chapter standardizes charges for public records throughout the various divisions of the agency and follows the guidelines recommended by the General Services Commission which promotes statewide consistency of copy charges.

Mike Hines, executive director, has determined that for the first five year period the proposal are in effect there will be no fiscal impact on state or local governments as a result of enforcing or administering these rules.

Mr. Hines also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated will be clearer and consistent agency wide guidelines for providing access to and charging for public records at reasonable amounts as determined by the General Services Commission. There will be no effect on small or large businesses. There are no additional economic cost of compliance for persons.

Comments on the proposal may be submitted to Jack Woods, General Counsel, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The new sections are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties and Texas Civil Statutes, Article 6252-17a, §9A(b), which require each state agency to specify by rule the charges the agency will make for copies of public records.

Article 6252-17a, §9A(b), is affected by the proposal.

§405.1. General.

(a) Chapter 428, Acts, 73rd Legislature, (1993) requires state agencies, including the Texas Commission on Fire Protection to adopt rules that specify the charges the agency will make for copies of public records. When a request for public records is made for more than 50 pages of readily available information, the commission is authorized to establish charges up to the full cost to the agency of providing the copies.

(b) The Texas Commission on Fire Protection is required by Chapter 28, Acts, 73rd Legislature, (1993) to review its procedures for providing access to, and copies of, public information and to analyze the charges the agency makes for providing copies. In adopting these rules specifying the charges the agency will establish for copies of public information, the Texas Commission on Fire Protection has considered and conformed its rules to the General Service Commission's rules for charges for public records. These rules may also be used to determine what the commission may charge another state agency for public information. The adoption of these rules by the commission should promote uniformity throughout state government for providing public information.

(c) Utilization of standard charges enhances the public's understanding of how costs for public information have been calculated. The charges for public information may not be excessive and should be reasonable and not effectively bar access to information.

(d) These rules adopted in this chapter supersede any other rules applicable to charges for public records adopted by the Texas Commission on Fire Protection or its predecessors and are intended to apply to all of the agency's programs and divisions

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

Commission—the Texas Commission on Fire Protection

Full cost—The sum of all direct costs plus a proportional share of overhead, or indirect costs. Full cost should be determined in accordance with rules adopted by the General Services Commission

Nonstandard-size copy—A copy of public information that is made available to a requestor in any format other than a standard-size paper copy. Microfiche, microfilm, diskettes, magnetic tapes, CD-ROM, and nonstandard-size paper copies are examples of nonstandard-size copies

Readily available information—Information that already exists in printed form,

or information that is stored electronically and is ready to be printed or copied without requiring any programming, or information that already exists on microfiche or microfilm. Information that requires a substantial amount of time to locate or prepare for release is not readily available information. The commission may compile and maintain information, especially information that is likely to be the subject of repeated requests for access or copies, in a manner that maximizes the ready availability of the information. In determining whether to charge for providing copies of public records, the commission may take into account not only whether the information is in fact readily available, but also whether, in the exercise of efficient recordkeeping, it could or should have been readily available.

Standard-size copy—A printed impression on one side of a piece of paper that measures up to 8 1/2 by 14 inches. Each side of a piece of paper on which an impression is made is counted as a single-copy. A piece of paper that is printed on both sides is counted as two copies.

§405.5 Charges for Providing Copies of Public Information

(a) The charges stated in this section to recover costs associated with providing public information are based on estimated average costs to state agencies.

(b) Copy charge.

(1) Standard-size paper copy—The charge for standard-sized paper copies reproduced by means of an office machine copier or a computer printer is \$ 10 per page

(2) Nonstandard-size copy—The charges for nonstandard copies are

(A)

Diskette—\$1 00/each;

(B) Magnetic

tape—\$10 00/each;

(C) VHS video cas-

sette—\$2.50/each;

(D) Audio cas-

sette—\$1 00/each;

(E) Paper copy—\$.50/each.

(3) The charges in this subsection are to recover the cost of materials onto which information is copied and do not reflect any additional charges that may be associated with a particular request.

(c) Personnel charge

(1) The charge for personnel

costs incurred by this agency in processing a request for public information is \$15 per hour, which is the average hourly cost, including fringe benefits, to the State for classified state employees as of May 31, 1993. Where applicable, the personnel charge should be prorated to cover the cost for personnel time spent to take requests, locate documents, and reproduce requested information.

(2) A personnel charge may not be billed in connection with complying requests that are for 50 or fewer pages of readily available information.

(3) Personnel time may not be recovered for any time spent by an attorney, legal assistant, or any other person who reviews the requested information:

(A) to determine whether the commission will raise any exceptions to disclosure of the requested information under Subchapter C of the Open Records Act; or

(B) to research or prepare a request for a ruling by the Attorney General's Office pursuant to subchapter G of the Open Records Act.

(d) Overhead charge

(1) In response to a request for information that is not readily available or for in excess of 50 pages of readily available information, the commission may include in the charges direct and indirect costs, in addition to the personnel charge. This overhead charge would cover such costs as depreciation of capital assets, rent, maintenance and repair, utilities and administrative overhead. If the commission chooses to recover such costs, a charge may be made in accordance with the methodology described in paragraph (3) of this subsection. Although an exact calculation of costs will vary from agency to agency, the use of a standard charge will avoid complication in calculating such costs and will provide uniformity for charges made statewide.

(2) An overhead charge should not be made for requests for readily available information of fewer than 50 pages.

(3) The overhead charge may be computed at 20% percent of any charge made to cover personnel costs associated with a particular request.

(e) Microfiche and microfilm.

(1) If the commission already has information that exists on microfilm and has microfilm copies available, the charge will be the total cost of making the copy of the film or fiche. If the requestor prefers to have a copy of the fiche or film, itself, and the information can be released in its en-

tirety, the commission may make a copy of the fiche or film available and charge for the actual cost of having such a copy made. The Texas State Library has the capacity to reproduce microfiche and microfilm for state agencies.

(2) If a master copy of information in microform is maintained, the charge is \$.10 per page for standard size paper plus a charge to cover any personnel time spent in making the paper copies.

(f) Remote document retrieval charge

(1) Due to limited on-site capacity of storage of documents, it is frequently necessary to store information that is not in current use in remote storage locations. Every effort should be made by the commission to store such documents with the Texas State Library which is equipped to provide such a service free of charge. To the extent that charges for retrieval of documents results in a charge to the agency to comply with a request, it is permissible for the agency to recover costs of such services. Where a charge is made for document retrieval, no additional personnel charge should be factored in for time spent locating documents

(2) Such charge may be waived if the request is for 50 pages or fewer of readily available information.

(g) Computer resource charge

(1) The computer resource charge is a utilization charge for computers based on the amortized cost of acquisition, lease, operation, and maintenance of computer resources, which might include, but is not limited to, some or all of the following: central processing units (CPUs), servers, disk drives, local area networks (LANs), printers, tape drives, other peripheral devices, communications devices, software, and system utilities.

(2) These computer resource charges are not intended to substitute for cost recovery methodologies or charges made by agencies for purposes other than responding to open records requests.

(3) The charges in this subsection are averages based on a survey of state agencies with a broad range of computer capabilities. The commission has determined that the category of computer type which most closely fits its existing system is a personal computer or local area network and has set its charge accordingly at \$ 50 per minute in accordance with General Service Commission rules.

(4) The charge made to recover the computer utilization cost is the actual time the computer takes to execute a particular program times the applicable rate. The CPU charge is not meant to apply to pro-

gramming or printing time, rather, it is solely to recover costs associated with the actual time required by the computer to execute a program. This time frame most frequently will be a matter of seconds. If programming is required to comply with a particular request, the appropriate charge that may be recovered for programming time is set forth in subsection (h) of this section. No charge should be made for computer print-out time. For example, the computer resource charge for a request that takes 20 seconds to execute on a PC or LAN would be \$.17

(h) Programming time. If a particular request requires a programmer to enter data in order to execute an existing program or to create a new program so that the requested information may be accessed, the commission may charge for the programmer's time. The average hourly salary of a programmer for the State of Texas is currently \$26.00 an hour, including fringe benefits, which is the charge to be used in these rules. Any charge for programming should be prorated. Only programming services should be charged at this hourly rate. Any personnel time spent in performing services other than programming should be charged at the rate for personnel as described in subsection (c)(1) of this section

(i) Miscellaneous supplies. The actual cost of miscellaneous supplies, such as labels, boxes, binders and other supplies used to produce the requested information may be added to the total charge for public information

(j) Postal and shipping charges. The commission may add any related postal or shipping expenses which are necessary to transmit the reproduced information to the requesting party may be added

(k) Fax charge. The charge for a fax transmitted locally is \$.10 per page. The charge for a long distance transmission is \$.50 per page for a fax sent within the agency's area code, and \$1.00 per page for a fax transmitted to a different area code

(l) Sales tax. Sales tax should not be added on charges for public information.

(m) The commission shall reevaluate and update annually the charges stated in this section

§405.7. Access to Information Where Copies Are Not Requested

(a) Access to information in standard-size form. The commission may not charge for making available for inspection information maintained in standard-size form. If, however, information is located at a remote document storage center and the agency will incur a retrieval charge in order to make the information available, the agency may charge the requesting party the

actual cost of retrieval.

(b) Access to information in other than standard-size form. In response to requests for access, for purposes of inspection only, to information where such information is maintained in other than standard-size form, the commission may charge the requesting party the cost of preparing and making available such information. Preparation might include retrieval of information from a database, and deletion of confidential information. In such a case, the commission may recover the cost of personnel as set forth in §405.5(c)(1) of this title (relating to Charges for Providing Copies of Public Information)

§405.9. Format for Copies of Public Information. To the extent possible the commission should attempt to accommodate a requesting party by providing information in the format requested. If a requesting party asks that information be provided on a diskette, and the requested information is electronically stored, the commission should provide the information on diskette. The extent to which a requestor can be accommodated will depend largely on the technological capability of the commission. The commission is not required to acquire software or programming capabilities that it does not already possess to accommodate a particular kind of request. However, the commission should take into account in its data processing planning the public's interest in obtaining access to information and the ways in which such access can be facilitated through acquisition of improved technology

§405.11. Estimates and Waivers of Public Information Charges

(a) A party requesting copies of public information will not always be aware of the amount of time and costs that may be involved in complying with a particular request. Where a particular request will involve considerable time and resources to process, the commission staff should advise the requesting party of what may be involved and to provide an estimate of date of completion and the charges that may result. All efforts should be made to process requests as efficiently as possible so that requested information will be provided at the lowest possible charge. When the commission charges for public information, full disclosure should be made to the requesting party as to how the charges were calculated.

(b) The commission shall furnish public records without charge or at a reduced charge if the agency determines that a waiver or reduction is in the public interest

(c) A deposit may be required in the amount of the estimated charges if such

charges exceed \$100.

§405.13. Examples of Charges for Copies of Public Information. The following tables present a few examples of the calculations of charges for information:

TABLE 1.

Readily Available Information (fewer than 50 pages):

\$.10 per copy x number of copies (standard-size copies) or

cost of nonstandard copy (e.g., diskette)

+Postage and shipping (if applicable)

\$ TOTAL CHARGE

TABLE 2.

Readily Available Information (50 pages or more):

\$.10 per copy x number of copies (standard-size copies) or cost of

nonstandard copy (e.g., diskette)

+Personnel charge (if applicable)

+Document retrieval charge (if applicable)

+Actual cost of miscellaneous supplies (if applicable)

+Postage and shipping (if applicable)

\$ TOTAL CHARGE

TABLE 3.

Information that is Not Readily Available:

Cost of copy (standard-size or nonstandard-size, whichever applies)

+Personnel charge

+Overhead charge

+Computer resource charge (if applicable)

+Programming time (if applicable)

+Document retrieval charge (if applicable)

+Actual cost of miscellaneous supplies (if applicable)

+Postage and shipping (if applicable)

\$ TOTAL CHARGE

§405.15. The Texas Commission on Fire Protection Charge Schedule. The following is a summary of the charges for copies of public information:

Service Rendered Charge.

(1) Standard-size paper copy \$.10 per page

(2) Non-standard size copy

(A) Diskette \$1.00 each

(B) Magnetic tape \$10 each

(C) VHS video cassette \$ 2.50 each

(D) Audio cassette \$ 1.00 each

(E) Paper copy \$.50 each

(F) Other Actual cost

(3) Personnel charge \$15 per hour

(4) Overhead charge 20% of personnel charge

(5) Microfiche or microfilm charge

(A) Paper copy \$.10 per page

(B) Fiche or film copy Actual cost

(6) Remote document retrieval charge Actual cost

(7) Computer resource charge PC or LAN \$.50 per minute

(8) Programming time charge \$26 per hour

(9) Miscellaneous supplies Actual cost

(10) Postage and shipping Actual cost

(11) Fax charge

(A) local \$ 10 per page

(B) long distance, same area code \$.50 per page

(C) long distance, different area code \$1.00 per page

(12) Other costs Actual cost

§405.17. Billing Form. The following billing form should be used to itemize charges made for public information.

PUBLIC RECORDS CHARGES

BILLING

Description of information: _____ DATE _____

Agency/Company: _____ METHOD OF PAYMENT:

Address: _____ Cash _____

_____ Check _____

Telephone: _____ Other _____

Fax: _____

	<u>Number</u>	<u>Total</u>
Standard-size Paper Copies	_____ @ \$.10/page	\$ _____
Nonstandard-size Copies:		
- Diskette	_____ @ \$1.00/ea.	\$ _____
- Magnetic Tape	_____ @ \$10.00/ea.	\$ _____
- VHS Video Cassette	_____ @ \$2.50/ea.	\$ _____
- Audio Cassette	_____ @ \$1.00/ea.	\$ _____
- Paper	_____ @ \$.50/ea.	\$ _____
- Other	_____ Actual cost	\$ _____
Personnel Charges:	_____ @ \$15.00/hr	\$ _____
Overhead Charges:		
(20% of Personnel Charge)	_____ x .20	\$ _____
Computer Resource Charge:		
- PC or LAN	_____ @ \$.50/min.	\$ _____
Programming Time	_____ @ \$26.00/hr.	\$ _____
Postage/ Shipping	(Actual cost)	\$ _____
Fax Charges:		
- Local	_____ @ \$.10/page	\$ _____
- Long Distance / Same Area Code	_____ @ \$.50/page	\$ _____
- Long Distance / Other Area Code	_____ @ \$1.00/page	\$ _____
Other Charges:		
(Description: _____)	_____	\$ _____
TOTAL CHARGES:		\$ _____

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 June 3, 1994.

TRD-9441809 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Earliest possible date of adoption: July 11, 1994

For further information, please call. (512) 918-7184

◆ ◆ ◆
Chapter 423. Fire Suppression
Subchapter A. Minimum Standards for Structure Fire Protection Personnel Certification

• 37 TAC §§423.1, 423.3, 423.5

The Texas Commission on Fire Protection proposes amendments to §§423.1, 423.3, and 423.5, concerning structural fire protection personnel. The amendments to Chapter 423 clarify the examination provisions to require examinations for all applicants for basic certification except that a certified part-time fire fighter who becomes employed in a full-time position may be certified without having to re-take the certification exam. The certified part-time fire protection employee is also exempted from current ECA certification requirements. Finally, changes to requirements for higher level certification concerning National Fire Academy Resident courses clarify those requirements to permit credit for "resident" courses delivered off campus and prohibit "double dipping."

Alton Bostick, standards and licensing division director, has determined that for the first five year period the sections are in effect there will be no fiscal implication for state government. There will be fiscal implications for local governments that employ full-time fire protection personnel who hold current part-time certifications. Those entities that pay examinations fees for those employees will save from \$15 to \$65 per examinee depending upon the discipline and location of the exam.

Mr Bostick also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated will be clearer guidelines for higher level requirements and elimination of duplicative examination requirements. There are no additional costs of compliance to persons or for small or large businesses required to comply with the sections.

Comments on the proposal may be submitted to Jim Fiero, Chairman, Fire Protection Personnel Advisory Committee, P O Box 2286, Austin, Texas 78768-2286

The amendments are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection

with authority to adopt rules for the administration of its powers and duties and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel and for advanced positions.

The Government Code, §419.022 is affected by the proposed amendments.

§423.1. Minimum Standards for Fire Protection Personnel.

(a) The effective date of this subchapter shall be April 1, 1992. Training programs that are intended to satisfy the requirements for basic structure fire protection personnel certification, that are started after the effective date of this subchapter must meet the curriculum, competencies, and hour [hours and examination] requirements of this subchapter. All applicants for certification must meet the examination requirements of this section.

(b) All full-time, full-paid employees of any local government entity, who are assigned structure fire protection duties must be certified by the commission within one year from the date of their employment in a structural fire protection personnel position. In order to be certified, structure fire protection personnel must:

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

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

(f) A person who holds or is eligible to hold a certificate upon employment as a part-time structural firefighter may be certified as a structural fire protection personnel, of the same level of certification, without meeting the applicable examination requirements.

(g) If a person holds a current certification as a part-time structural firefighter, the Texas Department of Health emergency care attendant certification may be satisfied by documentation of equivalent training or certification in lieu of current certification by the Texas Department of Health.

§423.3. Minimum Standards for Intermediate Structural Fire Protection Personnel Certification.

(a) Applicants for intermediate structural fire protection personnel certification must complete the following requirements:

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

(3) as part of the training specified in paragraph (2) of this subsection, complete the courses listed in one of the following options:

(A) (No change.)

(B) Option #2—complete a minimum of 80 hours of instruction in any National Fire Academy [on campus] resident program. This training must be in addition to any training used to qualify for structure fire protection personnel certification.

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

(b)-(d) (No change.)

§423.5. Minimum Standards for Advanced Structural Fire Protection Personnel Certification.

(a) Applicants for advanced structural fire protection personnel certification must complete the following requirements:

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

(3) as a part of the training specified in paragraph (2) of this subsection, complete the courses listed in one of the following options:

(A) (No change.)

(B) Option #2—complete a minimum of 80 hours of instruction in any National Fire Academy [on campus] resident program. This training must be in addition to any training used to qualify for intermediate structure fire protection personnel certification.

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

(b)-(d) (No change.)

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

Issued in Austin, Texas, on June 3, 1994.

TRD-9441830 Jack Woods
General Counsel
Texas Commission on Fire
Commission

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For further information, please call: (512) 918-7184

◆ ◆ ◆
Subchapter B. Minimum Standards for Aircraft Crash and Rescue Fire Protection Personnel

• 37 TAC §§423.201, 423.203, 423.205, 423.207

The Texas Commission on Fire Protection proposes amendments to §§423.201, 423.203, 423.205, and 423.207, concerning minimum standards for aircraft rescue and

fire protection personnel certification. The amendments allow certified part-time fire fighters to become certified full-time without further examination; deletes the "on-campus" requirement for National Fire Academy resident courses; and disallows National Fire Academy courses used to qualify for lower level certifications to be used for higher level certifications, consistent with changes to requirements for structural fire protection personnel.

Alton Bostick, standards and licensing division director, has determined that for the first five-year period the sections are in effect, there will be no fiscal implication for state government as a result of enforcing or amending the sections. There will be implications for local governmental entities that employ certified part-time fire protection employees who transfer to full-time positions in the amount of \$15 to \$65 per individual in examination fees that would otherwise have been required.

Mr. Bostick also has determined that for each year of the first five years the sections are in effect the public benefit anticipated will be clearer guidelines for higher level requirements and elimination of duplicative examination requirements. There are no additional costs of compliance to persons or for small or large businesses required to comply with the sections.

Comments on the proposal may be submitted to Jim Fiero, Chairman, Fire Protection Personnel Advisory Committee, P.O. Box 2286, Austin, Texas 78768-2286.

The amendments are proposed under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022 and §419.038 are affected by the amendments.

§423.201. Minimum Standards for Aircraft Crash and Rescue Fire Protection Personnel.

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

(c) All personnel identified as aircraft rescue and fire protection personnel must be certified to at least the basic level by the commission within two years from their employment in a aircraft crash and rescue fire protection personnel position.

(d)-(g) (No change.)

§423.203. Minimum Standards for Basic Aircraft Rescue and Fire Protection Personnel Certification.

(a) The effective date of this section shall be April 1, 1993. Training programs that are intended to satisfy the requirements for basic aircraft rescue and

fire protection personnel certification, that are stated after the effective date of this section, must meet the curriculum, competencies, and hour [hours, and examination] requirements of these sections. All applicants for certification must meet the examination requirements of this section.

(b) (No change.)

(c) A person who holds or is eligible to hold a certificate upon employment as a part-time aircraft crash and rescue firefighter may be certified as an aircraft crash and rescue fire protection personnel, of the same level of certification, without meeting the applicable examination requirements.

(d) If a person holds a current certification as a part-time aircraft crash and rescue firefighter, the Texas Department of Health emergency care attendant certification may be satisfied by documentation of equivalent training or certification in lieu of current certification by the Texas Department of Health.

§423.205. Minimum Standards for Intermediate Aircraft Rescue and Fire Protection Personnel Certification. Applicants for intermediate crash and rescue fire protection personnel certification must complete the following requirements:

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

(3) as part of the training specified in paragraph (2) of this section, complete the courses listed in one of the following options:

(A) (No change.)

(B) Option #2—complete a minimum of 80 hours of instruction in any National Fire Academy [on campus] resident program;

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

§423.207. Minimum Standards for Advanced Aircraft Crash and Rescue Fire Protection Personnel Certification.

(a) Applicants for advanced aircraft crash and rescue fire protection personnel certification must complete the following requirements:

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

(3) as a part of the training specified in paragraph (2) of this subsection, complete the courses listed in one of the following options:

(A) (No change.)

(B) Option #2—complete a minimum of 80 hours of instruction in any National Fire Academy [on campus] resident program. This training must be in addition to any training used to qualify for intermediate aircraft crash and rescue fire protection personnel certification;

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

(b)-(d) (No change.)

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

Issued in Austin, Texas, on June 3, 1994.

TRD-9441831

Jack Woods
General Counsel
Texas Commission on Fire
Commission

Earliest possible date of adoption: July 11, 1994

For further information, please call: (512) 918-7184

◆ ◆ ◆
Chapter 429. Minimum Standards for Fire Inspectors

• 37 TAC §§429.3, 429.5, 429.7

The Texas Commission on Fire Protection proposes amendments to §§429.3, 429.5, and 429.7, concerning minimum standards for basic fire inspector certification. The amendments allow certified part-time fire fighters to become certified full-time without repeating examination requirements; deletes the "on-campus" requirement for National Fire Academy resident courses, and disallows National Fire Academy courses used to qualify for lower level certifications to be used for higher level certifications, consistent with other disciplines.

Alton Bostick, standards and licensing division director, has determined that for the first five year period that the sections are in effect there will be no fiscal implication for state government. There will be fiscal implications for local governments that employ full-time fire protection personnel who hold current part-time certifications. Those entities that pay examinations fees for those employees will save \$15 per examinee.

Mr. Bostick also has determined that for each year of the first five years the sections as amended are in effect the public benefit anticipated will be clearer guidelines for higher level requirements and elimination of duplicative examination requirements. There are no additional costs of compliance to persons or for small or large businesses required to comply with the sections.

Comments on the proposal may be submitted to Jim Fiero, Chairman, Fire Protection Personnel Advisory Committee, P.O. Box 2286, Austin, Texas 78768-2286

The amendments are proposed under Texas

Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022(a)(5), which provides the commission with authority to establish minimum standards for admission to employment as fire protection personnel and for advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022 is affected by the proposed amendments.

§429.3. Minimum Standards for Basic Fire Inspector Certification.

(a) The effective date of this section shall be January 1, 1994. Training programs that are intended to satisfy the requirements of this section, that are started after the effective date of this section, must meet the curriculum, competencies, and hour [hours and examination] requirements of this section. All applicants for certification must meet the examination requirements of this section.

(b) (No change.)

(c) A person who holds or is eligible to hold a certificate upon employment as a part-time fire inspector may be certified as a fire inspector, of the same level of certification, without meeting the applicable examination requirements.

§429.5. Minimum Standards for Intermediate Fire Inspector Certification.

(a) Applicants for intermediate fire inspector certification must complete the following requirements:

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

(3) as part of the training specified in paragraph (3) of this section, complete the courses listed in one of the following options:

(A) (No change.)

(B) Option #2—complete a minimum of 80 hours of instruction in any National Fire Academy [on campus] resident program. The training must be in addition to any training used to qualify for intermediate fire inspector certification;

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

(b)-(d) (No change.)

§429.7. Minimum Standards for Advanced Fire Inspector Certification.

(a) Applicants for advanced fire inspector certification must complete the following requirements:

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

(3) as part of the training specified in paragraph (2) of this subsection, complete the courses listed in one of the following options:

(A) (No change.)

(B) Option #2—complete a minimum of 80 hours of instruction in any National Fire Academy [on-campus] resident program. This training must be in addition to any training used to qualify for any lower level of fire inspector certification;

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

(b)-(d) (No change.)

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

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Jack Woods
General Counsel
Texas Commission on Fire
Commission

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For further information, please call: (512) 918-7184

Chapter 431. Minimum Standards for Fire and Arson Investigator

• 37 TAC §§431.3, 431.5, 431.7

The Texas Commission on Fire Protection proposes amendments to §§431.3, 431.5, and 431.7, concerning minimum standards for fire and arson investigator. The amendments allow certified part-time fire fighters to become certified full-time without repeating examination requirements; deletes the "on-campus" requirement for National Fire Academy resident courses; and disallows National Fire Academy courses used to qualify for lower level certifications to be used for higher level certifications, consistent with other disciplines.

Alton Bostick, Standards and Licensing Division Director, has determined that for the first five-year period the sections are in effect there will be no fiscal implication for state government. There will be fiscal implications for local governments that employ full-time fire protection personnel who hold current part-time certifications. Those entities that pay examinations fees for those employees will save \$15 per examinee.

Mr. Bostick also has determined that for each year of the first five years the sections as amended are in effect the public benefit anticipated will be clearer guidelines for higher level requirements and elimination of duplica-

tive examination requirements. There are no additional costs of compliance to persons or for small or large businesses required to comply with the sections.

Comments on the proposal may be submitted to Jim Fiero, Chairman, Fire Protection Personnel Advisory Committee, P.O. Box 2286, Austin, Texas 78768-2286.

The amendments are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022(a)(5), which provides the commission with authority to establish minimum standards for admission to employment as fire protection personnel and for advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022 is affected by the proposed amendments.

§431.3. Minimum Standards for Fire and Arson Investigation Personnel.

(a) The effective date of this section shall be January 1, 1994. Training programs that are intended to satisfy the requirements of this section, that are started after the effective date of this section, must meet the curriculum, competencies, and hour [hours and examination] requirements of this section. All applicants for certification must meet the examination requirements of this section.

(b) (No change.)

(c) A person who holds or is eligible to hold a certificate upon employment as a part-time fire and arson investigator may be certified as a fire and arson investigator, of the same level of certification, without meeting the applicable examination requirements.

§431.5. Minimum Standards for Intermediate Fire and Arson Investigation Certification.

(a) Applicants for intermediate fire and arson investigator certification must complete the following requirements:

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

(5) as part of the training specified in paragraph (4) of this section, complete the courses listed in one of the following options:

(A) (No change.)

(B) Option #2—complete a minimum of 80 hours of instruction in any National Fire Academy [on-campus] resident program. This training must be in addition to any training used to qualify for any lower level of fire and arson investigator certification;

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

(b)-(d) (No change.)

§431.7. Minimum Standards for Advanced Fire and Arson Investigator Certification.

(a) Applicants for advanced fire and arson investigator certification must complete the following requirements.

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

(5) as a part of the training specified in paragraph (3) of this subsection, complete the courses listed in one of the following options:

(A) (No change.)

(B) Option #2—complete a minimum of 80 hours of instruction in any National Fire Academy [on campus] resident program. This training must be in addition to any training used to qualify for any lower level of fire and arson investigator certification;

(C)-(E) (No change.)

(b)-(d) (No change.)

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

Issued in Austin, Texas, on June 3, 1994.

TRD-9441833 Jack Woods
General Counsel
Texas Commission on Fire
Commission

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For further information, please call: (512) 918-7184



Chapter 447. Part-Time Fire Protection Employee

• 37 TAC §447.1

The Texas Commission on Fire Protection proposes an amendment to §447.1, concerning part-time fire protection employees. The amendment allows a person who is certified as a full-time fire protection employee to be certified as a part-time fire protection employee without repeating the requirement.

Alton Bostick, standards and licensing division director, has determined that for the first five-year period the section is in effect there will be no fiscal implication for state government as a result of enforcing or administering the section as amended. Local governmental entities that employ certified full-time fire protection personnel in part-time positions will save approximately \$15 to \$85 per individuals in examination fees.

Mr. Bostick also has determined that the public benefit anticipated as a result of administering and enforcing the section will be the elimination of unnecessary and duplicative examination costs for local governments. There are no additional economic costs of compliance for persons or small or large businesses required to comply with the section.

Comments on the proposal may be submitted to Jim Fiero, Chairman, Fire Protection Personnel Advisory Committee, P.O. Box 2286, Austin, Texas 78768-2286.

The amendment is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.0321, which provides that the commission shall create a separate certification class for part-time fire protection employees.

Texas Government Code, §419.0321 is affected by the amendment.

§447.1. Minimum Standards for Part-Time Fire Protection Employee.

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

(f) A person who holds or is eligible to hold a certificate upon employment as fire protection personnel may be certified in the same discipline as a part-time fire protection employee as set forth in subsection (b) of this section without meeting the applicable examination requirements.

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

Issued in Austin, Texas, on June 3, 1994.

TRD-9441834 Jack Woods
General Counsel
Texas Commission on Fire
Commission

Earliest possible date of adoption: July 11, 1994

For further information, please call: (512) 918-7184



Chapter 471. Standards for Volunteer Certification

• 37 TAC §471.5

The Texas Commission on Fire Protection proposes an amendment to §471.5, concerning standards for volunteer certification. The amendment deletes the numbering of each definition and adds the definition for "recognition of training."

Alton Bostick, Standards and Licensing Division Director, has determined that for the first five-year period the section as amended is in effect there will be no fiscal implication for state or local governments.

Mr. Bostick also has determined that the public benefit anticipated as a result of administering the section will be volunteer fire fighter training will be encouraged by recognizing completion of segmented portions of the basic volunteer fire fighter curriculum. 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 Jack Yates, Chairman, Volunteer Fire Fighter Advisory Committee, P.O. Box 2286, Austin, Texas 78768-2286.

The amendments are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification program.

Texas Government Code, § 419.071 is affected by the amendment.

§471.5. Definitions.

(a) (No change.)

(b) Definitions used include:

(1)-(30) ((No change.))

(31) Recognition of Training—A document issued by the commission stating that an individual has completed the training requirements of a specific Phase level of the Basic Volunteer Fire Fighter Curriculum.

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 June 3, 1994.

TRD-9441835 Jack Woods
General Counsel
Texas Commission on Fire
Commission

Earliest possible date of adoption: July 11, 1994

For further information, please call: (512) 918-7184



Chapter 473. Volunteer Fire Fighter

• 37 TAC §473.1

The Texas Commission on Fire Protection proposes an amendment to §473.1, concerning basic volunteer fire fighter. The changes to this section allow for a phase program to be implemented for the volunteer fire fighters, which will segment the basic volunteer fire fighter curriculum into four portions to allow testing after completion of a portion of the

curriculum as an alternative to 31 "module" tests or one comprehensive test. In addition, the changes eliminate duplicative training and examination for persons already trained or certified as full-time or part-time fire protection employees.

Brian McNevin, volunteer fire fighter field representative, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state government or local government.

Mr. McNevin also has determined that the public benefit anticipated as a result of administering the section will be that volunteer fire fighter training will be encouraged and duplicative training and examination costs for certifying full-time and part-time fire protection employees is eliminated. In addition, the public will benefit from the general encouragement of trained and certified volunteer fire fighters to provide fire protection to the public. There will be no additional costs of compliance for small or large businesses or for persons.

Comments on the proposal may be submitted to Jack Yates, Chairman, Volunteer Fire Fighter Advisory Committee, P.O. Box 2286, Austin, Texas 78768-2286.

The amendment is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification program.

The Texas Government Code, §419.071 is affected by the amendment.

§473.1. Minimum Standards for Basic Volunteer Fire Fighter.

(a) (No change.)

(b) In order to be certified under this chapter, a basic volunteer fire fighter must complete a commission approved basic volunteer fire fighter curriculum. An approved basic volunteer fire fighter curriculum shall consist of one of the following:

(1) (No change.)

(2) completion of the four Phase levels of the approved basic volunteer fire fighter curriculum as specified in Chapter 1, Basic Volunteer Fire Fighter Curriculum, of the commission's document titled "Commission Volunteer Certification Manual", as adopted by reference in §473.3 of this title (relating to Basic Volunteer Fire Fighter Curriculum) and successfully pass the commission examinations as specified in Chapter 479 of this title (relating to Examinations for Volunteer Certification); or

(3)[(2)] completion of an out-of-

state training program deemed equivalent to a commission approved basic volunteer fire fighter curriculum, and successfully pass the commission examinations as specified in Section 439.17, of this title (relating to Testing for Proof of Proficiency); or

(4)[(3)] completion of a military training program deemed equivalent to a commission approved basic volunteer fire fighter curriculum, and successfully pass the commission examination as specified in §439.17 of this title (relating to Testing for Proof of Proficiency);

(5) [(4)] documentation of the receipt of an Advanced certification from the State Firemen's and Fire Marshals' Association of Texas before September 1, 1993; or

(6)[(5)] completion of a training program that meets or exceeds the standards set for an approved basic volunteer fire fighter curriculum and successfully pass the commission examination as specified in Chapter 479 of this title (relating to examinations for volunteer fire fighter certification).

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

(e) A person who holds any level of Structure Fire Protection Personnel Certification issued by this commission as provided for in Chapter 423, Subchapter A or Part-time Fire Protection Employee certification as provided for in Chapter 447 of this title (relating to Minimum Standards) may be certified as a Basic Volunteer Fire Fighter. If the certificate has been inactive for more than one year, the person must complete the two additional subject areas as provided for in §473.3 of this title and successfully pass the examination(s) as provided for in Chapter 479 of this title. [A person who has completed a Structure Fire Protection Personnel Certification Recruit School prior to January 1, 1993, and has not been certified as provided for in Chapter 423 Subchapter A, may be certified as a Basic Volunteer Fire Fighter upon completion of the two additional modules as provided for in §473.3 of this title and successful completion of the examination provided for in Chapter 479 of this title.]

(f) A person may be certified as Basic Volunteer Fire Fighter, if the person meets the following requirements:

(1) has met the training requirements as set forth in §423.1(b) (1) of this title (relating to Minimum Standards for Structure Fire Protection Personnel Certification); and

(2) successfully passed the commission examinations as specified in Chapter 439 of this title (relating to Examinations for Certification); and

(3) complete as a minimum the certification requirements and be certified by the Texas Department of Health, as a Emergency Care Attendant. Any higher level of emergency medical certification recognized by the Texas Department of Health, such as EMT or paramedic may also be used to satisfy the emergency medical training requirements of this section; and

(4) complete as a minimum the training requirements and possess a certificate of completed training from the Texas forest Service or a commission approved course in nine hours of Wildland Fire Fighting.

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 June 3, 1994.

TRD-8441836 Jack Woods
General Counsel
Texas Commission on Fire
Commission

Earliest possible date of adoption: July 11, 1994

For further information, please call: (512) 918-7184

Chapter 481. Volunteer Fire Fighter Certification Fees

• 37 TAC §481.3

The Texas Commission on Fire Protection proposes an amendment to §481.3, concerning volunteer fire fighter certification fees. The amendment changes the one time \$10 certification fee to \$5.00 and deletes unnecessary language in §481.3(f).

Brian McNevin, volunteer fire fighter field representative, has determined that for the first five-year period that the section is in effect there will be fiscal implications for state and local governments. The commission will have a minor decrease in revenue as a result of the decrease in volunteer certification fees of approximately \$150. Local governmental entities that pay certification fees for volunteer fire fighters that provide fire protection to the community will experience a reduction in cost of \$5.00 per certification.

Mr. McNevin also has determined that for the first five years the section is in effect, the public benefit will be a reduction in cost to volunteer training facilities and individuals seeking volunteer certification from the commission, and generally encouragement of volunteer fire fighters providing services to their communities. There will be no additional economic costs of compliance to persons, or small or large businesses.

Comments on the proposal may be submitted to Jack Yates, Chairman, Volunteer Fire Fighter Advisory Committee, P.O. Box 2286, Austin, Texas 78768-2286.

The amendment is proposed under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and §419.073, which provides the Texas Commission on Fire Protection with authority to establish certification fees for the volunteer certification program.

Texas Government Code, §419.073 is affected by the proposed amendment.

§481.3. Fees-Participation and Certification.

(a) (No change.)

(b) A one time \$5.00 [\$10] certification fee is required for each certificate issued by the commission under the volunteer certification program.

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

[(f) The following are certificates issued by the Texas Commission on Fire Protection for which fees are required:

- [(1) Basic Volunteer Fire Fighter.
- [(2) Basic Volunteer Instructor.
- [(3) Intermediate Volunteer Instructor.
- [(4) Volunteer Instructor Specialist.
- [(5) Approved Training Facility.]

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 June 3, 1994.

TRD-9441837 Jack Woods
General Counsel
Texas Commission on Fire
Commission

Earliest possible date of adoption: July 11, 1994

For further information, please call: (512) 918-7184

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 3. Income Assistance Services

The Texas Department of Human Services (DHS) proposes amendments to §§3.2503, 3.2601, and 3.3402, and proposes new §§3.4001-3.4011, concerning issuance of Aid to Families with Dependent Children (AFDC) and Food Stamp Program benefits by elec-

tronic benefit transfer (EBT), in its Income Assistance Services rule chapter. The purpose of the proposal is to implement a recommendation of the Comptroller's Texas Performance Review.

The EBT process involves the issuance of an EBT card and a unique personal identification number (PIN) to each head of household or authorized representative. AFDC and Food Stamp benefits are accessed by using the EBT card to purchase food at USDA-certified retailers and to obtain cash or make purchases with AFDC benefits at USDA-certified retailers or other cash-back outlets approved by DHS.

The proposal eliminates the current policy of mailing AFDC warrants to recipients each month. It also eliminates the issuance of Food Stamp benefits by direct mail or mailing the recipient an Authorization to Participate (ATP) card that must be taken to contracted redemption centers and redeemed for Food Stamp coupons.

Burton F. Raiford, commissioner, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of enforcing or administering the proposal. Although there are no historical experiences with which to compare, the effect on state government for fiscal years 1995-1999, the first five-year period the sections are in effect, is an anticipated savings through reduction in issuance costs, reduction in fraud and program abuse, increased federal funding, and increased efficiency and accountability in program operations resulting from converting from a paper-based issuance system to a more cost-effective electronic method. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be improved client services and increased efficiency of program operations. The cost of compliance for small businesses will be reflected in the elimination of costs of handling Food Stamp coupons. There is no anticipated economic cost to persons who are required to comply with the sections.

Questions about the content of the proposal may be directed to Rita King at (512) 450-4148 in DHS's Client Self-Support Services. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services -176, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Subchapter Y. Issuing Benefits

• 40 TAC §3.2503

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public and financial assistance programs.

The amendment implements the Human Resources Code, §22.001 and §31.035.

§3.2503. Eligibility for Benefit [Warrant]. If an AFDC payee or certified child dies or leaves the home, the household is still eligible for the benefit [warrant] if the household was eligible the first of the month.

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 June 6, 1994.

TRD-9441861 Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Human Services

Proposed date of adoption: September 1, 1994

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

◆ ◆ ◆
Subchapter Z. Direct Mail Issuance

• 40 TAC §3.2601

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendment implements the Human Resources Code, §22.001 and §33.002.

§3.2601. Eligibility Requirements. DHS determines that the following households, in areas where electronic benefit transfer (EBT) is unavailable, are eligible for direct mail issuance (DMI) according to the requirements of 7 Code of Federal Regulations §274.1(a):

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

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

Issued in Austin, Texas, on June 6, 1994

TRD-9441862 Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Human Services

Proposed date of adoption: September 1, 1994

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

◆ ◆ ◆
Subchapter HH. Program Violations

• 40 TAC §3.3402

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22

§3.3402. *Food Stamps as Obligations of the United States.* Any unauthorized issuance, use, transfer, acquisition, alteration, possession, or presentation of food stamps or authorization to participate cards or other access device may subject any person, partnership, corporation, or other legal entity to prosecution under the Food Stamp Act or under any other applicable federal, state, or local law, regulation, or ordinance, as specified in 7 Code of Federal Regulations, §271.5(b).

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 June 6, 1994.

TRD-9441863 Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Human Services

Proposed date of adoption: September 1, 1994

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

◆ ◆ ◆
Subchapter NN. Electronic
Benefit Transfer

• 40 TAC §§3.4001-3.4011

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendment implements the Human Resources Code, §22.001 and §33.002.

§3.4001. *Issuance of Aid to Families with Dependent Children (AFDC) and Food Stamp Benefits via Electronic Benefit Transfer (EBT).*

(a) In areas of the state designated by the Texas Department of Human Ser-

(b) EBT is an alternative to paper issuance of AFDC and Food Stamp benefits. In an EBT issuance system, DHS uses a computer process to credit recipients' benefits in accounts maintained by the DHS vendor. Recipients access their benefits by an electronic debit process using debit cards and corresponding Personal Identification Numbers (PINs) issued to them by DHS or its vendor. The AFDC benefits are credited to the EBT cash account, and Food Stamp benefits are credited to the EBT food account.

(c) Food stamp recipients do not exchange Food Stamp coupons with retailers, nor do retailers return cash change to recipients for purchases from the food account.

§3.4002. *Primary Cardholder.*

(a) To enable a recipient to access benefits, the Texas Department of Human Services (DHS) provides one Electronic Benefit Transfer (EBT) card and corresponding Personal Identification Number (PIN) to the household's primary cardholder.

(b) The case name is the primary cardholder, except as follows:

(1) Food Stamp households that reside in an alcohol or drug treatment center and are represented by the center as provided in 7 Code of Federal Regulations (CFR) §273.11(e);

(2) Food Stamp households that reside in a group living arrangement and are represented as described in 7 CFR §273.11(f);

(3) Aid to Families with Dependent Children (AFDC) households with a protective payee or representative payee assigned by DHS as specified in DHS's Income Assistance Handbook.

(c) For households described in subsection (b)(1)-(3) of this section, DHS

§3.4003. *Secondary Cardholders.*

(a) If the primary cardholder is the case name and requests that another individual also be given access to his cash account or food account, the Texas Department of Human Services (DHS) provides a card and Personal Identification Number (PIN) to a secondary cardholder designated by the primary cardholder. The Texas Department of Human Services (DHS) allows access for only one secondary cardholder for a cash account and one for a food account.

(b) To minimize the risk of loss or abuse of a household's benefits, DHS allows a secondary cardholder only in situations in which the case name is the primary cardholder.

§3.4004. *PIN Assignment and Selection.* The Texas Department of Human Services (DHS) preassigns the Personal Identification Number (PIN) for each new cardholder. If a preassigned PIN compromises the client's ability to maintain security or access to the Electronic Benefit Transfer (EBT) account, DHS permits a cardholder to select a new PIN at the local card-issuance site or through its vendor.

§3.4005. *Benefit Availability Dates.* After certification, the Texas Department of Human Services (DHS) makes Aid to Families with Dependent Children (AFDC) and Food Stamp monthly benefits available to recipients via their Electronic Benefit Transfer (EBT) accounts on a staggered cycle over the first few calendar days of the month. The cycle is based on the last digit in the case number as follows:

AFDC - Last Digit of Case Number:	Availability Date:
0,1,2,3	1
4,5,6	2
7,8,9	3
Food Stamps - Last Digit of Case Number:	Availability Date:
0,1	1
2,3	2
4,5	3
6	4
7	5
8	6
9	7

§3.4006. Access to Benefits.

(a) Food Stamp recipients may make authorized purchases with benefits in their food account by using the Electronic Benefit Transfer (EBT) card at authorized food retailers as specified in 7 Code of Federal Regulations (CFR) §274.12(g).

(b) Aid to Families with Dependent Children (AFDC) recipients may make purchases of their choice with benefits in their cash account by using the EBT card at the authorized food retailers specified in 7 CFR §274.12(g). AFDC recipients may also obtain cash from their cash account by using the EBT card at businesses contracting for this purpose with the Texas Department of Human Services (DHS) vendor.

§3.4007. Benefit Conversion.

(a) When Food Stamp benefit conversion is required, as specified in 7 Code of Federal Regulations §274.12(f)(6), the Texas Department of Human Services (DHS) issues Food Stamp benefits by direct mail issuance of Food Stamp coupons within three business days after the recipient makes the request to the DHS vendor via the Electronic Benefit Transfer (EBT) toll-free number. DHS mails coupon-conversion issuances only to addresses outside of the EBT retailer area.

(b) When an Aid to Families with Dependent Children (AFDC) recipient moves out of the EBT area(s), he may use the EBT card to remove cash from the cash account anytime after a month's benefit becomes available. The AFDC recipient is responsible for taking this action when leaving the EBT area.

(c) DHS does not convert available AFDC benefits in an EBT account to a warrant if the recipient leaves the EBT area without using all the AFDC benefits in the EBT account which are available when the recipient leaves. If an eligible recipient moves out of the EBT area before a particu-

lar month's AFDC benefit is available, upon the recipient's request DHS converts that benefit to a warrant.

§3.4008. Electronic Benefit Transfer (EBT) Card and Personal Identification Number (PIN) Security.

(a) Cardholders are responsible for protecting the security of the cardholder's EBT card and PIN and for reporting a lost or stolen card or compromised PIN directly to the Texas Department of Human Services (DHS) vendor via the EBT toll-free number. When the household or its representative reports one of these events, the DHS vendor immediately places a hold on the card access as specified in 7 Code of Federal Regulations §274.12(f)(5) and initiates card or PIN replacement.

(b) For Aid to Families with Dependent Children (AFDC) recipients, DHS applies this same policy and procedure to EBT cash accounts.

§3.4009. Benefit Replacement.

(a) The Texas Department of Human Services (DHS) does not replace Food Stamp benefits issued by Electronic Benefit Transfer (EBT) which are obtained through use of a card provided to the household or the household's representative, unless the benefits are obtained after the household or representative reports to the DHS vendor that the card is lost or stolen or that the Personal Identification Number (PIN) is compromised.

(b) Once the household or representative has reported the event to the DHS vendor's toll-free number, DHS assumes liability for Food Stamp benefits subsequently debited from the account with the card in question and replaces any lost or stolen benefits as specified in 7 Code of Federal Regulations §274.12(f)(5).

(c) For replacement of Aid to Families with Dependent Children (AFDC) benefits issued by EBT, DHS follows the policy

and procedures stated in subsections (a) and (b) of this section.

§3.4010. Dormant Accounts.

(a) If the household fails to access the Electronic Benefit Transfer food account for three consecutive months, the vendor notifies the Texas Department of Human Services (DHS) that the account is dormant, as specified in 7 Code of Federal Regulations §274.12(f)(7). DHS immediately places a hold on future issuances which will not be released until the recipient contacts the eligibility worker.

(b) For Aid to Families with Dependent Children (AFDC) recipients receiving benefits via EBT, DHS follows the policy stated in subsection (a) of this section.

§3.4011. Expunging Benefits.

(a) The Texas Department of Human Services (DHS) expunges all the Food Stamp benefits in an Electronic Benefit Transfer (EBT) account in the following situations:

(1) the account has not been accessed by the household for one year, as specified in 7 Code of Federal Regulations (CFR) §274.12(f)(7);

(2) the EBT food account has been converted to Food Stamp coupons, and the client has not spent the remaining benefits in the account within one week after the conversion as specified in 7 CFR 274.12(f)(6); or

(3) a one-person Food Stamp household is denied due to the death of the recipient.

(b) At the end of each state fiscal year, DHS expunges any Aid to Families with Dependent Children (AFDC) monthly benefit in an EBT account that has not been used after its availability period. The availability period for an AFDC benefit is two fiscal years after the fiscal year that in-

cludes the month for which the benefit was issued.

(c) After benefits for AFDC or Food Stamps are expunged, the household loses its eligibility for the expunged benefits.

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 June 6, 1994

TRD-9441864

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

Proposed date of adoption: September 1, 1994

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

◆ ◆ ◆
Part XIX. Texas
Department of Protective
and Regulatory Services
Chapter 730. Legal Services

The Department of Protective and Regulatory Services (PRS) proposes amendments to §§730.401-730.403, and 730.405, and the repeal of §730.404, concerning definitions, general structure of department advisory committees, other committees and groups, and board-established and PRS-established advisory committees, in its Legal Services chapter. The purpose of the amendment to §730.401 is to add the definitions of department and executive director, and conform the name of the Board to that stated in the statute. The amendment to §730.402 adds the statutory requirements to the general structure of all agency advisory committees, including selection of presiding officers, legislatively mandated balanced representation, and a method for replacement of members, when necessary. The amendment to §730.403(1) adds the Strategic Directions Advisory Committee, the Advisory Committee for the Office of Protective Services for Families and Children, and the Advisory Committee for the Office of Adult Protective Services, and (2) deletes the Medical Care Advisory Committee and the Council for Social Work Certification because those committees are committees of other agencies. The amendment to §730.405 deletes the Council on Child Abuse and Neglect Prevention, which has been replaced by a state agency, and deletes the Texas Council on Child Welfare Boards, which is not a department committee, but a council formed by child welfare boards. Section 730.404 is repealed because the committee functions previously covered by that section are covered by existing committees in other agencies.

Jerry Abel, chief fiscal officer, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The effect on

state government for the first five-year period the sections are in effect is an estimated additional cost of \$36,000-\$45,000 for fiscal year (FY) 1995; \$36,000-\$45,000 for FY 1996; \$36,000-\$45,000 for FY 1997; \$36,000-\$45,000 for FY 1998; and \$36,000-\$45,000 for FY 1999. This includes the cost of any state staff support provided for these meetings. The payment of expenses for these committees is contingent upon budget execution approval. There will be no fiscal implications for local government.

Mr. Abel also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to maintain the public's ability to participate in PRS's rule-making process. There will be no effect on small businesses. The only anticipated economic cost to persons who are required to comply with the sections will be an annual cost of \$10-\$150 per individual committee member to cover the costs of expenses not reimbursed by the department.

Questions about the content of the proposal may be directed to Martha Allan at (512) 450-3854 in PRS's Legal Services Section. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-157, Department of Protective and Regulatory Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Subchapter E. Advisory Committees and Other Committees

• **40 TAC §§730.401-730.403, 730.405**

The amendments are proposed under Texas Civil Statutes, Article 6252-33, which govern state agency advisory committees and requires agencies to promulgate rules concerning such committees, and under Texas Civil Statutes, Article 4413 (503), historical note (Vernon Supplement 1993), 72nd Legislature, which transferred all functions, programs, and activities related to the child protective services program from the Texas Department of Human Services to PRS.

The amendments implement Texas Civil Statutes, Article 6252-33, and the Human Resources Code, §22.009 and §42.022.

§730.401 Definitions The following words and terms, when used in this subchapter [chapter], shall have the following meanings, unless the context clearly indicates otherwise.

Advisory committee—Any group established by the department, by statute, or by federally mandated regulations, to promote a broad range of citizen participation in the development of departmental [department sections or] policy.

Board—The [Texas] Board of Protective and Regulatory Services.

Department—The Department of Protective and Regulatory Services.

Executive director—The director of the Department of Protective and Regulatory Services.

§730.402. General Structure of Department Advisory Committees

(a) (No change.)

(b) General structure.

(1) An advisory committee includes, depending on its special area of interest, members representing the general public, service providers, consumers, minorities, concerned state agencies, and other groups with knowledge of or interest in the committee's field of work. Membership of each committee will be appropriately balanced between industries or occupations and consumers of services regulated by the department.

(2) Members are appointed by the Board, at the recommendation of the executive director of the [Texas] Department of Protective and Regulatory Services.

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

(c) **Presiding officer.** Each advisory committee shall select a presiding officer from its members who will preside over the committee and report to the Board.

(d) **Reports to Board.** Each advisory committee shall report to the Board through a written report signed by its members.

(e) **Appointment of new members.** If a member of an advisory committee no longer represents the interest for which he or she is appointed, resigns, or is unable to serve, the Board may, but is not required to appoint a new member to serve out the unexpired term.

(f) **Abolishment date.** Each advisory committee will be abolished effective January 1, 1997, unless the Board affirmatively votes to continue its existence.

§730.403 [Mandated] Advisory Committees

(a) (No change.)

(b) **Strategic Directions Advisory Committee.**

(1) **Purpose.** The committee shall advise the Board on policy development and issues with long-term strategic importance for the department.

(2) **Structure.**

(A) The committee shall be appointed by the Board on the recommendation of the executive director. The membership of the committee shall not exceed 24 members, representing the fol-

lowing groups:

(i) experts in academic disciplines concerned with public policy development;

(ii) chairpersons of the department's program advisory committees;

(iii) corporate executives with particular philanthropic interest in issues related to families and children;

(iv) the religious communities;

(v) parents, guardians or advocates for:

(I) persons with disabilities;

(II) foster and adoptive children;

(III) the elderly;

(IV) children in child-care; and

(V) foster parents and adoptive parents;

(vi) persons with significant prior legislative or executive experience within Texas state government;

(vii) a representative appointed by the Health and Human Services Commission;

(viii) the general public; and

(ix) representatives from the department's licensees.

(B) Members of the committee shall serve for two year terms.

(C) The department shall provide staff necessary for the committee.

(3) Number of meetings. The committee shall meet at least two, but no more than six, times a year.

(4) Subcommittees. The committee may designate subcommittees to advise on specific topics.

(c) Advisory Committee for the Office of Protective Services for Families and Children.

(1) Purpose. The Board shall appoint this committee to:

(A) advise the Board and

the office about program services, issues, and policy; and

(B) facilitate communication with the general public.

(2) Structure.

(A) The Board shall appoint 21 members to the committee representing:

(i) local child welfare boards;

(ii) the adoption program;

(iii) the substitute care program;

(iv) contractors and providers of service; and

(v) legal, medical, and other human services professionals with particular expertise in protective services or youth services issues whose practice involves them in statewide issues and concerns.

(B) Members of the committee serve four-year, rotating terms.

(C) Representatives of state agencies may be added to the committee as resource persons as needed. State agency members shall serve in an ex officio capacity, shall not be reimbursed for expenses, and shall not be considered as members of the committee.

(3) Subcommittees. The committee may establish subcommittees as needed. The committee shall establish a post-adoption services subcommittee and a youth services subcommittee.

(d) Advisory Committee for the Office of Adult Protective Services (APS).

(1) Purpose. The Board shall appoint a multi-disciplinary, cross-cultural, and state-wide network of individuals to:

(A) represent the interests of elderly and disabled APS clients;

(B) consult on APS policy development and issues of concern to the program;

(C) review and comment on program material being submitted to the Board;

(D) facilitate communication between APS and the general public;

and

(E) understand and advocate for the APS program.

(2) Structure.

(A) The committee shall include representatives from consumer/advocacy groups related to the APS program, professional groups with specialized training and experience in law, medicine, mental health, the religious community, schools of social work and gerontology, and public relations. The committee shall consist of up to 15 members. Ten members shall be appointed from the Health and Human Services Commission regions, with one member representing regions 2 and 9, and one member representing each of the other regions. Up to five members shall be selected to reflect statewide issues or concerns, in their professional capacities.

(B) Committee members serve two-year terms.

(C) The committee shall invite policymakers or representatives from other state agencies to serve as resource persons when the topics presented before the committee indicate that such assistance would be helpful. State agency representatives shall not be considered as members of the committee, will not be reimbursed for expenses, and shall serve in an ex officio capacity.

[(b) Medical Care Advisory Committee.

[(1) Legal base. The committee's legal base is HRC 32.022.

[(2) Responsibilities. The committee:

[(A) advises the Board and the department about developing and maintaining the Medical Assistance Program, and

[(B) works with the Board and the department to develop immediate and long-range plans for providing comprehensive medical and health-care services to needy Texans.

[(3) Structure.

[(A) The committee has 15 members, with a representative balance of service providers, consumers, concerned state agencies, and other groups with knowledge of or interest in the Medical Assistance Program or other aspects of health care for needy Texans.

[(B) The medical director of the Texas Department of Human Services' purchased health services contractor serves as an ex officio member of the committee.

[(C) Appointments are made by the Board, in compliance with the requirements of the federal agency administering medical assistance.

[(D) Members serve three-year rotating terms, with one-third of the committee membership rotating off service each year. Ex officio members serve as long as the Board directs them to do so.

[(E) At the executive director's recommendation, the Board may appoint regional and local medical care advisory committees and other advisory committees as necessary.

[(c) Council for Social Work Certification.

[(1) Legal base. The council's legal base is HRC 50.004.

[(2) Responsibilities. The council:

[(A) advises the Board and the department about issues related to the practice of social work;

[(B) reviews rules and minimum standards for social-work certification; and

[(C) recommends action on rules, standards, and social-work certification.

[(3) Structure.

[(A) The council has nine members, including three certified social workers, three social workers or social-work associates, and three consumers; with balanced representation according to race, gender, age, and geographic location.

[(B) Council members serve three-year rotating terms, with one-third of the council membership rotating off service each calendar year.]

§730.405. Research Review Committee [Other Committees and Groups].

[(a) Research Review Committee.]

[(a)[(1)] Legal base. The committee's legal base is 45 Code of Federal Regulations, Subtitle A, Part 46, Subpart A.

[(b)[(2)] Responsibilities. As required by the United States Department of Health and Human Services (HHS), the department must establish this committee for all special projects subject to HHS approval or funding. The committee reviews research and demonstration projects to determine whether the projects place human subjects at risk or harm.

[(c)[(3)] Structure.

[(1)[(A)] The committee has eight to ten members, including two to three professionals in relevant fields and representatives from each major program area.

[(2)[(B)] Members are appointed by the department's associate executive director for budget and economic analysis, with the advice and consent of the executive director.

[(b) Council on Child Abuse and Neglect Prevention.

[(1) Legal base. The council's legal base is HRC Chapter 74.

[(2) Responsibilities. The council:

[(A) develops policy, guidelines, and eligibility criteria for awarding grants for the children's trust fund;

[(B) recommends programs for children's-trust-fund grants and monitors use of the funds;

[(C) recommends proposed rules for Board approval;

[(D) solicits donations for child abuse prevention programs;

[(E) applies for and receives funds from private, federal, and state sources; and

[(F) submits an annual report to the Board.

[(3) Structure.

[(A) The council has nine members appointed by the governor. Members must have demonstrated a concern for prevention of child abuse and neglect.

[(B) Council members serve six-year rotating terms, with one-third of the membership rotating off service every two years.

[(C) Members may not be re-appointed after serving their full six-year terms.

[(c) Texas Council on Child Welfare Boards.

[(1) Responsibilities. The council:

[(A) advises the Board and the department about policy and issues related to children's protective services; and

[(B) promotes the health, education, and welfare of children.

[(2) Structure.

[(A) The council has 27 members representing regional councils of child welfare boards.

[(B) Members serve terms based on the membership requirements of their regional councils.]

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 June 6, 1994

TRD-9441858

Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Protective and
Regulatory Services

Proposed date of adoption: September 1, 1994

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

◆ ◆ ◆
• 40 TAC §730.404

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

The repeal is proposed under Texas Civil Statutes, Article 6252-33, which governs state agency advisory committees and requires agencies to promulgate rules concerning such committees; and under Texas Civil Statutes, Article 4413 (503), historical note (Vernon Supplement 1993), 72nd Legislature, which transferred all functions, programs, and activities related to the child protective services program from the Texas Department of Human Services to PRS.

The repeal implements Texas Civil Statutes, Article 6252-33, and the Human Resources Code, §22.009 and §42.022.

§730.404. Board-established and PRS-established Advisory Committees.

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 June 6, 1994.

TRD-9441859 Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Protective and
Regulatory Services

Proposed date of adoption: September 1,
1994

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



Texas Department of Insurance Exempt Filing

Notification Pursuant to the Insurance
Code, Chapter 5, Subchapter L

*(Editor's Note. As required by the Insurance
Code, Article 5.96 and 5.97, the Texas Register
publishes notices of actions taken by the Texas
Department of Insurance pursuant to Chapter 5,
Subchapter L, of the Code. Board action taken
under these articles is not subject to the Adminis-
trative Procedure Act.*

*These actions become effective 15 days after the
date of publication or on a later specified date*

*The text of the material being adopted will not be
published, but may be examined in the offices of
the Texas Department of Insurance, 333 Guada-
lupe, Austin.)*

The Texas Department of Insurance at a pub-
lic meeting held at 9:00 a.m., June 9, 1994, in
Room 100 of the Texas Department of Insur-
ance Building, 333 Guadalupe Street, Austin,
Texas, adopted a form filing by the Texas
Department of Human Services (Department)

for a revised surety bond form entitled "Resi-
dent Fund Surety Bond" (Bond). The Bond is
a requirement of 42 United States Code An-
notated §1396r (c) (6) (C) and 40 TAC
§9.204. The form was filed in the Chief
Clerk's Office on May 2, 1994.

The Bond, formerly entitled "Nursing Home
Surety Bond", has been re-titled and revised
for clarity with some minor changes and one
substantive change. Paragraph #10 has been
revised to add the following new language:
"However, claims may be filed for a period of
three years and 90 days after the effective
termination date in connection with any resi-
dent trust fund transactions occurring during
the effective period of the bond." This wording
meets the requirements of 40 TAC §19.1924
which requires the principal to keep financial
records of the facility for a minimum of three
years and 90 days after the termination of the
contract period and 40 TAC §19.1925 that
makes those records subject to audit by the
Department

The full text of the surety bond form filing
(Reference Number 0-0594-11-1), was pub-
lished in the May 10, 1994, issue of the
Texas Register (19 TexReg 3598)

The Texas Department of Insurance has ju-
risdiction over this matter pursuant to the
Insurance Code, Articles 5.13, 5.15 and 5.97.

The full text of the surety bond form entitled
"Resident Fund Surety Bond", as adopted by
the Texas Department of Insurance is filed
with the Chief Clerk under (Reference Num-
ber 0-0594-11-1) and is incorporated by refer-
ence by Commissioner Order Number
94-0611.

This notification is made pursuant to the In-
surance Code, Article 5.96, which exempts it
from the requirements of the Administrative
Procedure 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.

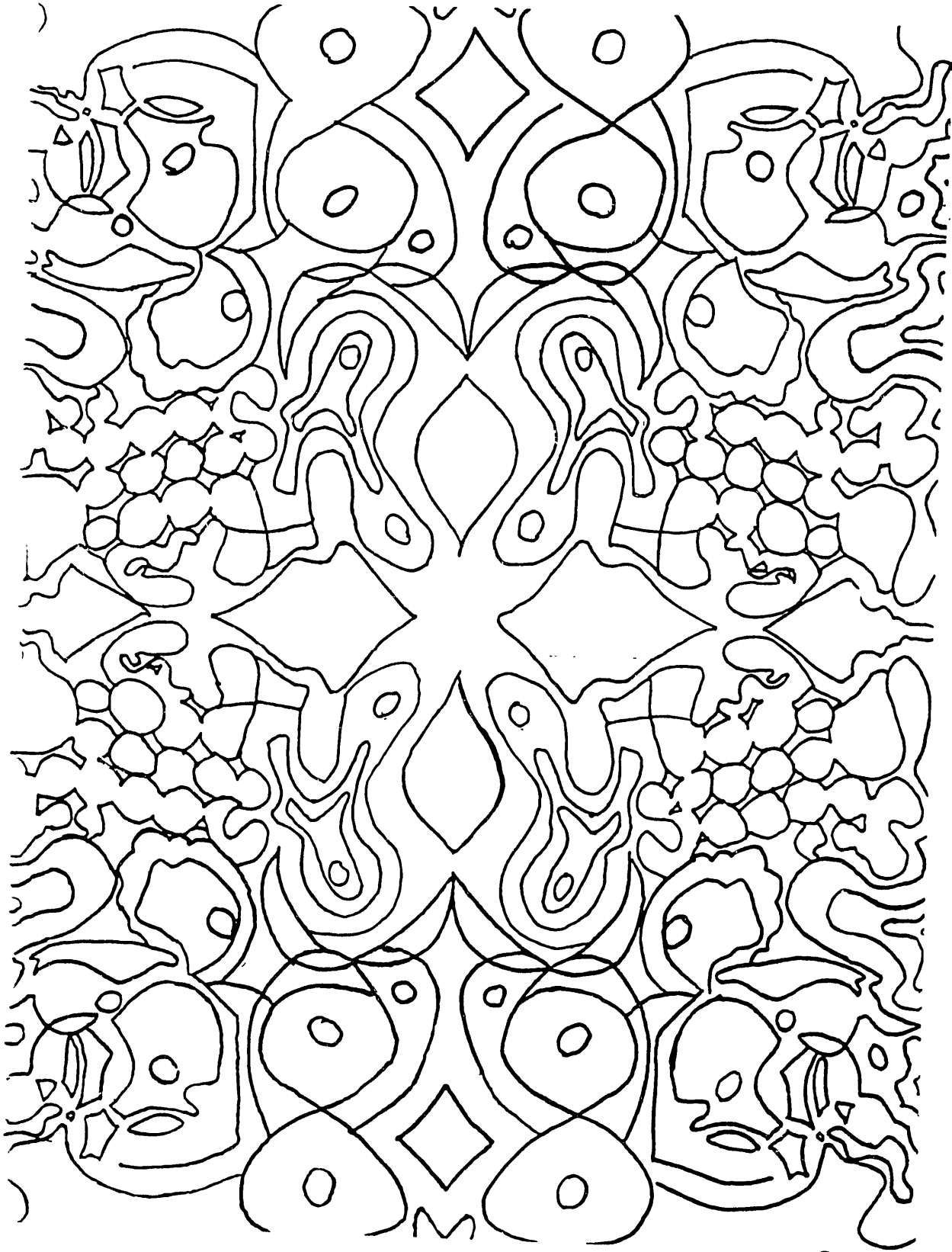
Issued in Austin, Texas, on June 6, 1994

TRD-9441855 D. J. Powers
Legal Counsel to the
Commissioner
Texas Department of
Insurance

Effective date: June 25, 1994

For further information, please call (512)
463-6328





Name: Conrado Gauma
Grade: 9
School: Lopez High School, Brownsville ISD

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 25. HEALTH SERVICES

Part VIII. Interagency Council on Early Childhood Intervention

Chapter 621. Early Childhood Intervention Program

Early Childhood Intervention Advisory Committee

- 25 TAC §621.64

The Interagency Council on Early Childhood Intervention (Council) adopts an amendment to §621.64, concerning advisory committee procedure, without changes to proposed text as published in the December 14, 1993, issue of the *Texas Register* (18 TexReg 9258).

The section covers policies and procedures for the ECI Advisory Committee. The amendments clarify reimbursement procedures for ECI Advisory Committee members for child care and attendant care when on official ECI business. There were also minor editorial changes made as a result of the recodification of references to articles previously made under Texas Civil Statutes.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resource Code, §73.003, which provides the Interagency Council on Early Childhood Intervention with the authority to establish rules regarding services provided for children with developmental delays. The amendments will effect the Health and Safety Code, Chapter 73.

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 June 2, 1994.

TRD-9441727

Tammy Thier, Ph.D.
Chairperson
Interagency Council on
Early Childhood
Intervention

Effective date: June 23, 1994

Proposal publication date: December 14, 1993

For further information, please call: (512) 502-4900

TITLE 30 ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 117. Control of Air Pollution from Nitrogen Compounds

The Texas Natural Resource Conservation Commission (TNRCC) adopts 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 and the repeal of 117.580, concerning Control of Air Pollution From Nitrogen Compounds. The TNRCC also adopts new §117.223, relating to Source Cap. Sections 117.10, 117.103, 117.105, 117.107, 117.109, 117.111, 117.113, 117.119, 117.203, 117.205, 117.207, 117.209, 117.211, 117.213, 117.215, 117.219, 117.223, 117.510, 117.520, and 117.540 are adopted with changes to the proposed text as published in the January 4, 1994, issue of the *Texas Register* (19 TexReg 33). Sections 117.115, 117.117, 117.121, 117.208, 117.217, 117.221, 117.311, 117.313, 117.319, 117.321, 117.411, 117.413, 117.419, 117.421, 117.530, 117.560, and the repeal are adopted without changes and will not be republished.

Revisions to Chapter 117 are adopted 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.

Certain general revisions have been made throughout Chapter 117, and are not specifically listed in the discussion of individual section revisions. References to the Texas Air Control Board (TACB) have been changed to the TNRCC to reflect consolidation of the TACB and Texas Water Commission (TWC) on September 1, 1993. Similarly, the word "Board" has been replaced with "Commission." New Title 30, Environmental Quality, was created in the Texas Administrative Code (TAC) effective September 1, 1993, to recodify regulations of the former TACB and TWC. All references to TACB Regulation VII have been changed to 30 TAC Chapter 117 to reflect this change.

The amendments to §117.10, concerning Definitions, add definitions for average activity level for fuel firing, functionally identical replacement, and low annual capacity factor stationary gas turbine or stationary internal combustion engine. The changes also revise the definitions of electric power generating system and low annual capacity factor boiler, process heater, or gas turbine supplemental waste heat recovery unit for clarity. Other changes revise the definitions of rich-burn and lean-burn engines so that the exhaust stream oxygen concentration at which the engine is capable of being operated, as originally designed by the manufacturer, determines rich- or lean-burn status. (Engines which cannot operate at or below 0.5% oxygen are defined as lean-burns; engines which can operate within these parameters are defined as rich-burn.) The definitions of system-wide emission limit and system-wide emission rate, applicable to utility sources only, are revised to reflect use of maximum rated capacities in calculation of the system-wide emission limit/rate, except for fuel oil firing, where average activity levels are to be used instead. The definition of unit is revised to reflect that a group of units may be replaced by a single new unit, which is thereby limited to the cumulative maximum rated capacity of the units replaced. Subparagraph C of the definition of unit has been deleted.

The changes to §117.103, concerning Exemptions, provide for exemption of utility fuel oil firing from the emission limitations of this subchapter under officially declared emergency conditions, and specify verbal and written notification procedures. Exemption criteria

for utility gas turbines have been extended to utility gas engines. Minor wording changes have been added for clarity.

The revisions to §117.105, concerning Emission Specifications, specify a carbon monoxide (CO) emission limit of 132 parts per million at 15% oxygen, dry basis, on a block one-hour average for certain utility gas turbines. Other revisions specify that the higher of any permit NO_x limit and the appropriate RACT limit applies to certain units placed into service as functionally identical replacements, and that compliance with this provision does not eliminate the requirement for new units to comply with Chapter 116 (new source review). Minor wording changes have been added for clarity.

Revisions to §117.107, concerning Alternative System-Wide Emission Specifications, specifies procedures for including oil-fired utility units in system-wide averaging plans, for the cases of oil firing only, and for combined gas and oil firing. Minor wording changes have been added for clarity. Revisions to §117.109, concerning Initial Control Plan Procedures, clarify requirements for listing emission units in the initial control plan, and incorporate minor wording changes for clarity.

Amendments to §117.111, concerning Initial Demonstration of Compliance, add references to predictive emissions monitoring systems (PEMS), thereby allowing an alternative to continuous emission monitoring systems (CEMS) already required. Other changes allow compliance with the NO_x emission limit for fuel oil firing to be determined based on the first 24 consecutive operating hours a utility unit fires fuel oil, and clarify procedures for determining compliance with NO_x limits on a block one-hour average and with CO limits on a rolling 24-hour average.

The revisions to §117.113, concerning Continuous Demonstration of Compliance, extend the provisions for use of PEMS to utility sources. Provisions are given for documenting low annual capacity factor status by use of either totalizing fuel flow meters or elapsed run time meters, as appropriate, as well as procedures to follow when the exemption criteria fail to be met. Minor wording changes have been added for clarity.

Changes to §117.115, concerning Final Control Plan Procedures, require a description of the NO_x control method and testing results to be submitted with the final control plan, and add minor wording changes for clarity. Revisions to §117.117, concerning Revision of Final Control Plan, clarify that new replacement units may be included in the final control plan.

The revisions to §117.119, concerning Notification, Recordkeeping, and Reporting Requirements, add references to PEMS and add minor wording changes for clarity. Revisions to §117.121, concerning Alternative Case Specific Specifications, add minor wording changes for clarity.

The amendments to §117.203, concerning Exemptions, clarify that certain new units placed into service as functionally identical replacement for existing units are not exempt

from rule requirements, and specify that emission credits resulting from operation of replacement units is limited to the cumulative maximum rated capacity of the units replaced. Minor wording changes have been added for clarity.

Revisions to §117.205, concerning Emission Specifications, include reorganization of existing subsections for clarity, and reintroduction of procedures for calculating NO_x emission limitations from existing permit limits (previously adopted, but deleted in the most recent proposal). Another amendment clarifies that compliance with the provision allowing the higher of any permit NO_x limit and the appropriate RACT limit, applied to certain units placed into service as functionally identical replacements, does not eliminate the requirement for new units to comply with Chapter 116 (new source review). For wood fuel-fired boilers or process heaters, a new carbon monoxide (CO) emission limitation of 775 ppmv at 7.0% O₂, dry basis has been added which reflects an achievable CO emission rate for these units. Minor wording changes have been added for clarity.

Changes to §117.207, concerning Alternative Plant-Wide Emission Specifications, clarify methods for applying emission limitations for the various categories of regulated equipment. A reference to certain boilers and industrial furnaces (BIF units) was added to the list of equipment classes eligible to participate in plant-wide averaging plans. Minor wording changes have been added for clarity.

Revisions to §117.209, concerning Initial Control Plan Procedures, clarify requirements for listing emission units in the initial control plan. Any major source of NO_x is required to submit an initial control plan, regardless of whether emission specifications apply to any unit within the source. A listing of units required to conduct NO_x testing has been moved from §117.211, concerning Initial Demonstration of Compliance, to §117.209 for better organization and clarity. For units which certify non-operation between June 9, 1993 (effective date of the rule) and April 1, 1994 (due date for initial control plans), a rule revision allows submission of required NO_x emissions testing within 90 days after the unit returns to operation. New listing requirements in the initial control plan pertain to operating modifications, installation and operating information for totalizing fuel flow meters, and documentation of early NO_x reduction projects.

The revisions to §117.211, concerning Initial Demonstration of Compliance, include references to PEMS, references to initial demonstration of compliance tests instead of performance tests, and corrected and updated test methods and test specifications. Conditions for approval of alternate test methods are specified, and other minor changes are added for clarity.

Amendments to §117.213, concerning Continuous Demonstration of Compliance, allow the use of PEMS as an alternative to CEMS. Revisions specify procedures for performing relative accuracy test audits and certain statistical tests. Other revisions specify the conditions for certain exceptions and alternatives to the requirements of 40 Code of Federal

Regulations 75, Subpart E. For certain gas turbines using steam or water injection, a revision allows the steam-to-fuel or water-to-fuel ratio monitoring data to constitute the method for demonstrating continuous compliance, with the steam or water injection control algorithms subject to Executive Director approval. Provisions are given for documenting low annual capacity factor status by use of either totalizing fuel flow meters or elapsed run time meters, as appropriate, as well as procedures to follow when the exemption criteria fail to be met. Minor wording changes have been added for clarity.

Revisions to §117.215, concerning Final Control Plan Procedures, require a description of the NO_x control method and testing results to be submitted with the final control plan, specify methods for assigning NO_x emission limits to the various categories of regulated equipment, and add minor wording changes for clarity. Revisions to §117.217, concerning Revision of Final Control Plan, clarify that new replacement units may be included in the final control plan.

The revisions to §117.219, concerning Notification, Recordkeeping, and Reporting Requirements, add references to PEMS, specify procedures for determining periods of excess emissions for gas turbines using steam or water injection, and add minor wording changes for clarity. Revisions to §117.221, concerning Alternative Case Specific Specifications, add minor wording changes for clarity.

New §117.223, concerning Source Cap, incorporates the requirements of §117.580, which is being repealed concurrently with this adoption. One revision to §117.223 addresses EPA concerns about RACT equivalency by changing the method of calculating the historical activity level by specifying the use of actual daily heat input, based on a two-year average heat input plus one standard deviation. Alternate methods are allowed, with Executive Director approval, for determining the daily heat input when sufficient historical data are not available. Other changes include the deletion of language duplicated in §117.113 and §117.213, and requirement 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. Nomenclature used in formulas has been revised for consistency with §117.570, concerning Trading, which is currently pending adoption.

Revisions to §§117.311, 117.313, 117.319, and 117.321 (concerning Adipic Acid Manufacturing) and §§117.411, 117.413, 17.419, and 117.421 (concerning Nitric Acid Manufacturing) add references to PEMS in addition to CEMS, and add minor wording changes for clarity.

Amendments to §117.510, concerning Compliance Schedule for Utility Generation, specify compliance schedules for certain utility units which depend on whether the units are required to install CEMS pursuant to 40 CFR 75. Other revisions specify a May 31, 1995 compliance date for submitting initial demonstration of compliance testing and CEMS or PEMS test results, for utility units not required to install CEMS or PEMS, and for units oper-

ating with CEMS or PEMS which comply on a block one-hour average. Units operating with CEMS or PEMS and complying on a rolling 30-day average are allowed to submit such results by July 31, 1995. In addition, initial demonstration of compliance testing for fuel oil firing is allowed to be submitted within 60 days after completion of such testing.

Revisions to §117.520, concerning Compliance Schedule for Commercial, Institutional, and Industrial Combustion Sources, require major NO_x sources which have units subject to emission specifications to submit an initial control plan by April 1, 1994. Major NO_x sources which have no units subject to emission specifications must submit an initial control plan by September 1, 1994. In addition, information required by certain provisions of §117.209 which are being added or amended with this adoption must be submitted by September 1, 1994. Other revisions require units operating with CEMS or PEMS which comply on a block one-hour average to submit applicable tests by May 31, 1995, and for those units operating with CEMS or PEMS and complying on a rolling 30-day average, to submit such results by July 31, 1995.

Revisions to §117.530, concerning Compliance Schedule for Nitric Acid and Adipic Acid Manufacturing Sources, include references to PEMS in addition to CEMS, and add minor wording changes for clarity.

In order to provide more flexibility for sources requesting additional time to implement NO_x RACT through the phased RACT petition process, new subsection (c) is added to §117.540, concerning Phased RACT, which allows a source to use mobile emission reduction credits (MERCs) from scrapped motor vehicles to offset NO_x emissions on an interim basis until compliance is achieved, up to a maximum period of 36 months. This revision was not part of the January 1994 rule proposal, but was added later to cross-reference separate rulemaking in §114.29 (Accelerated Vehicle Retirement Program), proposal pending, and §117.570 (Trading), adoption pending. Since §114.29 will specify the actual mechanism and procedures for MERC trading when adopted, the TNRCC believes that referencing this option in §117.540 with this adoption is timely and appropriate, since it increases rule flexibility while providing a potential net environmental benefit. The option to use MERCs may be useful for sources whose phased RACT petitions do not meet the rule criteria for approval.

The following commenters supported the Texas Chemical Council (TCC) and/or the Texas Mid-Continent Oil & Gas Association (TMOGA) comments: Amoco Chemical Company, Texas City (Amoco Chem Texas City), Amoco Chemical Company, Chocolate Bayou Plant (Amoco Chem Chocolate Bayou), Chevron, Dow Chemical, DuPont Gulf Coast Regional Manufacturing Services (DuPont), Exxon Chemical Americas, Exxon Company U.S.A. (Exxon), Fina Oil and Chemical Company (Fina), and Mobil Oil Corporation. In all instances where they agree, they will be referred to as TCC/TMOGA, et al., TCC et al., or TMOGA, et al. In instances where they differ or comment on other issues, the individual commenters will be specifically identified.

General Comments.

In order to provide more flexibility for sources requesting additional time to implement NO_x RACT through the phased RACT petition process, new subsection (c) was added to §117.540 (Phased RACT) providing the option for a source to use mobile emission reduction credits (MERCs) from scrapped motor vehicles to offset NO_x emissions on an interim basis until compliance is achieved, up to a maximum period of 36 months. This revision was not part of the January 1994 rule proposal, but was added later to cross-reference separate rulemaking in §114.29 (Accelerated Vehicle Retirement Program), proposal pending, and §117.570 (Trading), adoption pending. Since §114.29 will specify the actual mechanism and procedures for MERC trading when adopted, the staff believes that referencing this option in §117.540(c) with this adoption is timely and appropriate. The staff believes that the new provision in §117.540 increases rule flexibility while providing a potential net environmental benefit. The option to use MERCs may be useful for sources whose phased RACT petitions do not meet rule criteria for approval.

TCC/TMOGA et al. expressed support for the innovative nature of many of the proposed amendments, and for the manner in which the Texas Natural Resource Conservation Commission (TNRCC) has involved members of the regulated community in developing the nitrogen oxides (NO_x) reasonably available control technology (RACT) regulation, 30 TAC 117.

The staff acknowledges the support from the commenters.

The Galveston-Houston Association for Smog Prevention (GHASP) commented that the use of different terminology to express averaging periods is confusing and needs clarification. For example, various rule sections use the terms "rolling monthly average," "rolling 30-day average," and "30-day averaging period."

The staff acknowledges that there were inconsistencies in terminology in the proposed rule ("rolling monthly average" and "30-day averaging period"). The staff has specified averaging periods that take into account the data that are being reported and has used averaging periods that are in common usage in the air pollution control field. For low annual capacity boilers and heaters, the exemption period is based on one year's worth of heat input. The staff decided that the heat input data for a moving (or rolling) 12-month period is more appropriate for this case. The rolling 12-month year makes up-to-date enforcement determinations practical. The results of the last complete month are included in the average, so compliance status is not indeterminate for a long period of time. A rolling 30-day average means that the emission limits are applied to a 30 consecutive day period, consisting of a given day plus the previous 29 days. Likewise, a rolling 24-hour average means that the emission limits are applied to a 24 consecutive hour period, consisting of a given hour plus the previous 23 hours. The staff appreciates the commenter's response in pointing out the language inconsistencies, and has revised the references to "rolling monthly average" to "rolling 12-month average" and "30-day averaging period" to "rolling 30-day averaging period."

Texaco Chemical Company (Texaco) suggested that a typographical error, a parenthesis after "O_x" in the second sentence of proposed §117.213(b), be corrected. TCC/TMOGA et al. and Texaco noted a typographical error in proposed §117.213(k) pertaining to the term "hour-per-year."

The staff acknowledges these two typographical errors inadvertently added by the *Texas Register*, and has deleted the parenthesis after "O_x" in §117.213(b) and the term preceding "hour-per-year" in §117.213(k).

GHASP objected to the proposals in §117.105(n)(2), §117.203(b)(1), and §117.205(a)(2) allowing the higher of a permit limit or a RACT limit to apply to certain units. GHASP further commented that controls should be required for all grandfathered units in order to achieve maximum NO_x reductions.

The provision to allow certain units placed into service between June 9, 1993, and May 31, 1995, to use the higher of best available control technology (BACT) or RACT limitations creates an incentive to replace old units with new, cleaner, more efficient ones by allowing the resulting emission reductions to generate reduction credits for other NO_x RACT sources. The current version of the rule already requires certain existing sources to apply RACT controls, and the United States Environmental Protection Agency Region 6 Office (EPA) has previously commented that additional rules for certain currently exempted sources will be necessary.

GHASP commented that controls should be required for all grandfathered units in order to achieve maximum NO_x reductions.

The staff agrees that substantial NO_x reductions will likely be required in order to attain the ozone standard in the Houston/Galveston and the Beaumont/Port Arthur ozone nonattainment areas. However, there are practical technical and economic considerations in the implementation of a rule of this scope which point to phasing in progressively more restrictive standards over time. Regulation VII (30 TAC 117) as adopted on May 11, 1993, represents a significant step toward attaining the ozone standard. The staff estimates that the rules will result in NO_x reductions on the order of 10% to 15% from major stationary sources. As information becomes available from the emissions testing results required as part of the initial control plans due April 1, 1994, and the evaluation of Urban Airshed Modeling results, the staff will be able to determine further needed NO_x reductions and initiate the next round of rulemaking.

TCC/TMOGA et al. and Texaco recommended that in proposed §117.215(b)(4), relating to Final Control Plan Procedures, the reference should be "paragraphs (1)-(3)."

The staff agrees with the commenters and has changed the reference in §117.215(b)(4) as suggested to "paragraphs (1)-(3)."

GHASP objected to the use of predictive emissions monitoring systems (PEMS) as an alternative to continuous emissions monitoring systems (CEMS) throughout the proposed rules, stating concerns about equivalence to CEMS and enforceability.

The rule, in reflecting the staff's directive to implement NO_x RACT cost-effectively, provides for the use of PEMS as an alternative to CEMS. The staff has used guidelines for accepting alternatives to CEMS which the EPA has issued in 40 Code of Federal Regulations (CFR) 75, Subpart E. The rules are designed to ensure that PEMS provide data with the same precision, reliability, and timeliness as provided by CEMS. Data collection and recordkeeping for PEMS is done continuously by computer, as it is for CEMS, and is sufficient for enforcement purposes.

EPA commented that the undesignated head "Nitric Acid Manufacturing-General" in Subchapter C regarding Acid Manufacturing and Subchapter E regarding Gas-Fired Steam Generation were not referred to in the current proposal, and assumed that these portions of the rule remain unchanged.

The staff did not propose any changes to Subchapter E or the undesignated head "Nitric Acid Manufacturing-General" in Subchapter C. These portions of the rule remain as they were adopted on May 11, 1993.

GHASP objected to the use of system-wide emissions averaging, stating that it does not maximize emissions reductions and is difficult to enforce. The commenter emphasized the need for obtaining maximum reductions early in the control strategy process.

The staff supports the concept of system-wide averaging and has designed a cost-effective means of complying with the rule which assures that RACT-equivalent NO_x reductions are obtained. Enforcement is achieved by utilizing data (maintained by computers) which will demonstrate compliance.

GHASP commented that recordkeeping requirements of only two years were inadequate in proposed §§117.119, 117.219, 117.319, and 117.419, relating to Notification, Recordkeeping, and Reporting Requirements, and recommended that records be kept for at least five years.

The staff has maintained consistency with federal New Source Performance Standards (NSPS) Subpart A General Provisions, which require retaining two years of data. The adopted rule extends the NSPS recordkeeping requirements to existing sources. By following NSPS, the staff believes that burdensome recordkeeping requirements have been minimized.

GHASP commented on the inadequacy of only verbal notification before conducting emissions testing or CEMS or PEMS performance evaluation under proposed §117.119(b)(1) and (2), and elsewhere throughout the regulation. GHASP recommended requiring prior written notification as well to ensure proper documentation for enforcement purposes.

Verbal notice of testing allows the TNRCC the opportunity to witness emissions testing. The written documentation required after the completion of emissions testing serves the agency's enforcement purposes by creating a retrievable file record. Currently, the Beaumont and Houston regional offices use verbal notification as the initial contact by a com-

pany to report upset conditions; written notification follows after the initial phone call. This policy is retained for consistency in Chapter 117.

An individual representing GHASP commented that he made a telephone request to the TNRCC Austin office for a copy of the proposed regulation, but never received it. The commenter requested an explanation, since this has occurred on more than one occasion.

The staff apologizes for the error. The TNRCC makes available copies of proposed and adopted rules by various methods to the public. The agency has a new, free computer bulletin board service (BBS) which will contain text files of all the air, water, and waste rules, as well as other numerous documents to assist the public. The telephone number for the TNRCC ONLINE BBS is (512) 239-0700. The regional offices also have available adopted and proposed rules which can be copied for public distribution. Proposals are also published in the *Texas Register*. In addition, copies of air regulations can be obtained by calling staff of the Air Quality Planning Division, Regulation Development Section at (512) 239-1970 or 239-1986.

Comments received for §117.10 Definitions.

TCC/TMOGA et al. requested that the definition of "electric power generating system" be revised to clarify that the phrase "owned or operated by" in the definition refers to the listed emission units, not to the electric power generating system which they comprise.

The staff agrees with the commenters and has added the phrase "which are" before the phrase "owned or operated by" in the definition of "electric power generating system."

Texas Eastern Transmission Corporation (Texas Eastern) expressed support for the proposed revision to definitions of "lean-burn engine" and "rich-burn engine."

The new definitions are meant to clarify rule applicability rather than to change an underlying requirement. The intent was to require emission reductions on those engines which are relatively cost-effective to control. Conventional three-way catalytic converters are cost-effective. However, these converters only work on engines with less than 0.5% oxygen in the exhaust stream. The old definition, based on 4.0% oxygen in the uncontrolled exhaust stream, was concerned with circumvention of control requirements. The 4.0% level was selected as a level that a rich-burn engine cannot exceed in practice. The proposed definition, based on 0.5% oxygen, reflects whether an engine is capable of being controlled effectively. By basing the definition on original equipment manufacturer capability, issues of circumvention through manipulation of operated oxygen level are avoided.

TCC/TMOGA et al. commented on the proposed definitions of "low annual capacity factor boiler, process heater, or gas turbine supplemental waste heat recovery unit" and "low annual capacity factor stationary gas turbine or stationary internal combustion engine." They stated that the use of a rolling monthly average in determining the maximum

annual heat input and maximum annual hours of operation significantly lowers the cutoff level for qualifying for the low annual capacity factor exemption. They suggested that the phrase "based on a rolling monthly average" be deleted, and that the definition clarify that exemptions are based on data collected for a calendar year. Monsanto recommended the wording "...based on a rolling accumulative heat input over the most recent 12 complete months" to reflect the rule's intent that the rolling average consists of the current 12 months' worth of heat input data.

The rolling average is not meant to lower the cutoff point for qualifying for the low annual capacity factor exemption. The heat input or operating hours of a unit is meant to be cumulative during the 12-month window. At the end of each successive month, the new month's data is added and the oldest month's data is subtracted to create the new average. The time period from June 1, 1995-May 31, 1996, will constitute the first 12 months of data in verifying the low annual capacity factor status of a unit. The staff agrees with Monsanto's recommendation to clarify the averaging period for low annual capacity units, and has revised the phrase to read "based on a rolling 12-month average."

EPA commented on the definitions of "system-wide emission limit" and "system-wide emission rate," stating that the term "average activity level" is defined for fuel oil firing but not for other fuels. EPA recommended that these terms be clarified. EPA further commented that the option for sources to use either maximum rated capacity (MRC) or actual heat input in determining a system-wide emission limit or rate might not produce NO_x reductions equivalent to traditional RACT. EPA recommended that the TNRCC either demonstrate RACT equivalency with the proposed approach, or specify whether actual or maximum heat input may be used in system-wide averaging plans.

The definitions of "system-wide emission limit" and "system-wide emission rate" have been revised to eliminate the option of using average activity levels for gaseous and solid fuel firing for the purpose of calculating system-wide emission limits and system-wide emission rates.

Most utility boilers in Texas are designed to burn natural gas. Some were modified to allow for oil firing during emergency conditions and/or periods of natural gas supply limitation. System-wide emission limits and system-wide emission rates are best calculated using average activity levels, accounting for variations in historical capacity factors of individual units as part of the determination process. The staff believes it is unlikely that unit-specific emission limitations would be preferentially assigned based on the historical activity level of each unit. In fact, if historical activity levels are to be considered in the compliance planning process, it is likely that the most NO_x controls would be installed on units with the highest historical activity levels (highest capacity factors). The staff believes that determinations of system-wide emission rates and system-wide emission limits based on maximum rated capacity for units burning a primary fuel are essentially equivalent to

determinations based on average activity levels. In the State Implementation Plan (SIP) narrative to be submitted by November 15, 1994, EPA will be provided with a RACT equivalency demonstration audit of both scenarios. For utility boilers burning fuel oil, the possibility of prorating unit-specific emission limitations based on average activity levels is more probable. To ensure RACT equivalency, the use of average activity levels will be the only option allowed in determining system-wide emission limits and system-wide emission rates for units burning fuel oil.

TCC/TMOGA et al. and Texaco commented that subparagraph (B) of the proposed definition of "unit" and proposed §117.205(a)(2), relating to Emission Specifications, should be modified to reflect that a unit could replace more than one existing unit, in which case the new replacement unit should be limited to the cumulative capacity limit of the units replaced.

The staff agrees that a unit may replace more than one existing unit, and has modified language at §117.10 ("unit" definition, subparagraph (B)), §117.105(n)(2), and §117.205(a)(2) to reflect this concept. In addition, references to limitations of "capacity limit" of the unit replaced have been changed to "cumulative maximum rated capacity" in the cited rule sections and in §117.203(b)(1), relating to Exemptions, in order to accurately convey the staff's intent.

GHASP commented that the term "functionally identical replacement" in proposed §§117.105(n)(2), 117.203(b)(1), and 117.205(a)(2) needs to be defined.

A new definition for the term "functionally identical replacement" has been added to §117.10, as follows. "A unit that performs the same function as the existing unit which it replaces, with the condition that the unit replaced must be physically removed or rendered permanently inoperable before the unit replacing it is placed into service."

TCC/TMOGA et al. and Texaco recommended that in subparagraph (C) of the proposed definition of "unit," the definition be modified to include units placed into service before the dates specified in proposed §117.520 (relating to Compliance Schedules for Commercial, Institutional, and Industrial Combustion Sources) with the intent of complying with §117.223 (relating to Source Cap). The commenters stated that the definition as proposed would imply that NO_x RACT applies to any new source placed into service after June 9, 1993, when in fact more stringent BACT would apply.

After reconsidering this issue, the staff has deleted proposed subparagraph (C) from the definition of "unit," which would have required units placed into service after June 9, 1993, belonging to an equipment category which is complying with the source cap, to be included in the cap. Emission units placed into service after June 9, 1993 (effective date of the rule) are thus not required to participate in the source cap, since, as stated by the commenters, such units would be subject to new source review requirements (NSR) more stringent than RACT. Besides, establishing historical heat input rates for new units which

have not previously operated poses problems which §117.223 was not designed to address. Given the rigorous nature of NSR and the resultant environmental benefit, the staff believes that this approach is sound.

GHASP commented on the need for a uniform definition of the term "unit" without exemptions or exceptions.

Revisions to the definition of "unit" were proposed in order to address cases where equipment is placed in service after June 9, 1993, either as a replacement for existing equipment (subparagraph (B) of the definition) or as a part of an equipment category participating in a source cap (subparagraph (C)). By qualifying replacement equipment under certain conditions as a "unit," subparagraph (B) extends rule requirements to such equipment. As discussed in the previous response, subparagraph (C) has been deleted. The intent of these revisions is to clarify rule applicability to certain new sources, not to provide exemptions or exceptions to such sources.

Comments received for §117.103 Exemptions

EPA commented that proposed §117.103(c), which provides for emergency exemption from emission limitations for fuel oil firing, should specify a maximum limit for oil firing, in hours per year, which if exceeded would subject the unit to rule emission limitations.

The staff does not agree that the rule should specify a maximum time limit for fuel oil firing during emergency conditions. Since durations of emergency operating conditions are unpredictable, the staff believes that the maximum duration of these conditions need not be specified as long as they meet the criteria established by the rule.

Houston Lighting and Power (HL&P) expressed support for proposed §117.103(c), citing the cost savings of avoiding the selection of emission controls based on firing of fuel oil, which is historically an infrequent, emergency situation.

The staff acknowledges the support from the commenter.

GHASP commented that the TNRCC should verify the existence of emergencies requiring fuel oil firing.

Since §117.103(c) already requires that all emergency operating conditions be approved by the Executive Director, the staff believes that the commenter's concerns are adequately addressed.

EPA recommended that in the third sentence of proposed §117.103(c), language be added to specify that the Executive Director must be notified no later than 48 hours after declaration of emergency conditions. EPA further commented that the source should be required to submit written notification detailing the same information required in the verbal notification, no later than five calendar days after declaration of the emergency. This additional written notification would supplement, not replace, the summary notification to be submitted within two weeks after termination of emergency fuel oil firing. HL&P recommended deletion of the requirement to provide detailed verbal notification, stating that is

unreasonable to expect advance predictions of all the variables requested under the proposed rule. GHASP commented that written notification should be submitted within three days after the termination of emergency fuel oil firing.

The staff has revised the verbal notification requirements of §117.103(c) by adding the phrase "but no later than 48 hours after declaration of the emergency" at the end of the third sentence. In addition, the staff agrees with EPA that verbal notification must be followed up with a written notification within five days after the declaration of emergency conditions, and has made the recommended change.

The staff disagrees with HL&P that the requirement to provide verbal notification should be deleted on the basis that advance predictions of all variables are not possible. The rule requires that verbal notification shall identify anticipated emergency variables. Utilities will not be held liable for the accuracy of the information provided in their verbal notifications as long as the information is the best they can provide at the time the verbal notification was made.

The staff disagrees with GHASP that the written notification must be submitted within three days after termination of emergency conditions. The purpose of written notification is to identify the dates and times that oil firing began and ended, the duration of the emergency period, the affected oil firing equipment, and the quantity of oil fired in each boiler. The staff believes that three days does not provide sufficient time to generate a detailed report that includes this information. A two-week period will allow utilities more time to produce a more accurate and accountable report.

Comments received for §117.105 Emission Specifications

HL&P recommended that proposed §117.105(n) be deleted, noting that its requirements appear to be redundant with §117.105(e), pertaining to auxiliary boilers. Since the permitted NO_x limitations for three of its auxiliary boilers are already at or below the 0.12 pound per million British thermal units (lb/MMBtu) limitations specified in §117.105(n), this provision appears to be unnecessary. HL&P also commented that the reference to heaters is inappropriate since these units are not regulated under the utility rule.

Section 117.105(n), and its parallel for industrial units at §117.205(a)(1)(A), allows gas-fired boilers and heaters permitted after March 3, 1982, with an emission limitation of 0.12 lb NO_x/MMBtu to retain that limitation for purposes of rule compliance. This provision was primarily intended for certain industrial boilers and heaters which had received permits to install "first generation" low NO_x burners, and for which additional RACT controls to achieve only a slightly greater NO_x reduction would not be cost-effective. The rule provision was extended to utility units at §117.105(n), with the assumption that some of the affected units could benefit from the rule. Although there is some overlap with the provisions of §117.105(e), §117.105(n) has

been retained to maintain the requirement, in accordance with EPA guidance, that the lower of RACT or BACT emission limitations apply.

The reference to heaters in §117.105(n)(1) was inadvertently carried over from the corresponding industrial rule at §117.205(a)(1)(A). Since heaters are not regulated under the utility rule, this reference has been deleted.

In addition, language has been added to §117.105(n)(2) clarifying that the intent was not to limit the annual activity level of replacement units, but rather to restrict emission credits in averaging plans to the cumulative MRC of the units replaced, and that compliance with §117.105(n)(2) does not eliminate the requirement for new units to undergo NSR under Chapter 116

Comments received for §117.107 Alternative System-Wide Emission Specifications

EPA commented that proposed §117.107(a) specifies use of the MRC when calculating the system-wide emission limit and system-wide emission rate. This requirement appears to be inconsistent with the optional use of either MRC or average activity levels given in the definitions of "system-wide emission limit" and "system-wide emission rate" in §117.10. EPA also recommended that other subsections in the undesignated head pertaining to utility electric generation be re-evaluated in light of these comments.

The definitions of "system-wide emission limit" and "system-wide emission rate" were revised to eliminate the option of using average activity level for gaseous and solid fuel firing. This revision will ensure consistency with the proposed rule language of §117.107.

HL&P expressed support for proposed §117.107(b), which allows system-wide averaging for fuel oil firing in utility boilers capable of firing natural gas and fuel oil. HL&P stated that this amendment gives utilities more flexibility in implementing cost-effective NO_x control measures.

The staff acknowledges the support from the commenter.

Comments received for §117.109 Initial Control Plan Procedures

GHASP recommended revising the wording in the second sentence of proposed §117.109(a) to additionally require compliance with all TNRCC rules and regulations as a condition of approval of the initial control plan.

The purpose of the initial control plan is to document information about certain NO_x emission units at a source, in order that the staff can more accurately assess emissions from these units and determine whether any projected control methods and schedules appear adequate and reasonable. Information contained in the initial control plan is not enforceable, since it only represents a source's preliminary strategy for achieving compliance with the rule emission limits. The plan may be revised at any time before the final control plan is due on May 31, 1995, and the final control plan may subsequently be revised with approval of the Executive Director. Therefore, imposing the additional re-

quirement of compliance with all TNRCC rules and regulations as a condition of approval of the initial control plan would appear to be inconsistent with the purpose of the plan.

Gulf States Utilities Company (Gulf States) commented on the proposed requirement in §117.109(b)(8) that units required to install totalizing fuel flow meters must state in the initial control plan whether these devices have been placed in operation by April 1, 1994. The commenter recommended that the TNRCC clarify that totalizing fuel flow meters are required to be installed by May 31, 1995, rather than April 1, 1994.

The commenter is correct in stating that totalizing fuel flow meters are not required to be installed until May 31, 1995. The proposed requirement for listing installed meters in the initial control plan, due April 1, 1994, should not be construed as a requirement to have the meters installed by then.

Comments received for §117.111 Initial Demonstration of Compliance

HL&P recommended that proposed §117.111(d) be revised to include language specific to gas turbines. The current language applies only to rolling 30-day and 24-hour averages applicable to boilers, and should address the one-hour block averaging times required for gas turbines.

New §117.111(d)(3) has been added to address the one-hour block averaging times applicable to gas turbines. Existing paragraph (3) has been renumbered as (4).

Comments received for §117.113 Continuous Demonstration of Compliance

EPA recommended that the phrase "and operating" be added in the second sentence of proposed §117.113(a), after "The CEMS shall be installed."

The recommended wording has been added in order to clarify the rule's intent that CEMS should be operating by the final compliance date of May 31, 1995.

HL&P commented that language in proposed §117.113(a)(4) should reflect that CEMS are not equipped to measure fuel flow, but are able to accept measured data from other instruments which are capable of that function.

The staff agrees with the commenter and has made the recommended change. The last sentence of §117.113(a) was revised to read, "Each CEMS shall be able to monitor measured exhaust or fuel flow rate data obtained by a certified flow meter and have the capability of measuring the following." Existing §117.113(a)(4) was deleted since it pertains to CEMS measurement of fuel flow.

HL&P expressed general support for proposed §117.113(e), which would allow the use of PEMS as an alternative to CEMS, citing the high accuracy and cost-effectiveness afforded by PEMS.

The staff acknowledges the support from the commenter.

GHASP objected to the option allowed by proposed §117.113(e) for sources not subject to 40 CFR Part 75 (federal acid rain rules) to

use PEMS as an alternative to CEMS. GHASP commented that the proposed use of PEMS should be subject to public input through a hearing or meeting.

The proposed rule language of §117.113(e) may have led the commenter to conclude that the option of using PEMS as an alternative to CEMS is limited to sources that are not subject to 40 CFR 75. The 40 CFR 75 rules allow for the use of PEMS as an alternative to CEMS. The certification and performance testing requirements, however, are somewhat different from those proposed in this regulation. Sources which are subject to 40 CFR 75 are required to use the PEMS certification procedure of 40 CFR 75, Subpart E, while sources which are not subject to 40 CFR 75 are required to use the PEMS certification procedure of §117.213(c). With regard to receiving public input on the use of PEMS, the TNRCC has followed its customary rulemaking process of conducting public hearings, taking oral and written testimony, and evaluating public comments before final rule adoption.

HL&P recommended that §117.113(e) be amended to allow the use of PEMS on sources affected by 40 CFR 75. The commenter stated that the provision as proposed would defeat the purpose of developing cost-effective and innovative technologies such as PEMS, and could result in having to continually purchase CEMS to replace aging monitors.

The commenter may have interpreted proposed §117.113(e) to mean that sources subject to 40 CFR 75 do not have the option of using PEMS as an alternative to CEMS. Sources subject to 40 CFR 75 do have this option, but they must demonstrate equivalency of PEMS to CEMS using the certification procedure of 40 CFR 75, Subpart E in its entirety, rather than using the somewhat different certification procedure of §117.213(c). The staff has revised §117.113(e) by adding a statement which clearly identifies the option of using PEMS for sources subject to 40 CFR 75.

EPA recommended that proposed §117.113(e) be revised to clarify that any alternative methods to CEMS or PEMS also need to be approved by EPA.

Section 117.113(e) has been revised to require EPA approval for alternative monitoring methods other than PEMS and CEMS.

EPA commented that when its final Enhanced Monitoring rules are issued, the TNRCC will need to evaluate the rule's PEMS provisions to ensure consistency with the federal rules.

The staff is aware of the proposed enhanced monitoring rules, and is currently participating in an agency-wide implementation team to develop enhanced monitoring protocols for stationary sources. This approach should ensure that PEMS provisions in the rule are consistent with EPA's final enhanced monitoring rules.

HL&P commented that the reference to "subsection (e)" in proposed §117.113(a) should be changed to "subsection (f)" to reflect renumbering of the proposed rule.

The referenced rule citation has been changed to reflect the renumbering in this section.

EPA commented that proposed §117.113(i) should clarify whether a source that has exceeded its exemption limit would still be subject to enforcement action if it has submitted an acceptable compliance plan within the required 90-day time frame.

A company could be subject to enforcement action by the TNRC based on exceeding its exemption limit, even if the company had submitted an acceptable compliance plan by the required date. A claimed exemption for low annual capacity should be based on either current operating data which demonstrates low annual capacity, or else the company should account in its initial control plan the steps taken to decrease the unit's operating capacity to allow the unit to meet the exemption level. If the agency determines that the exemption was claimed without intent to operate the unit at or below the required low annual capacity level, then the TNRC may enter into an enforcement action under §101.3, relating to Circumvention.

Comments received for §117.115 Final Control Plan Procedures

HL&P commented on the need for consistent deadlines for submittal of initial demonstration of compliance test results. The commenter noted inconsistencies between §117.115(b)(4), which requires submittal of the final control plan by May 31, 1995, and §117.115(b)(3), which requires submittal by July 31, 1995. HL&P recommended that §117.115(b)(4) either be deleted or amended to reflect a consistent deadline of July 31, 1995.

The July 31, 1995, date for submittal of initial demonstration of compliance test results applies only to those units complying with a lb/MMBtu emission limit on a rolling 30-day average. For such units having NO_x controls installed as late as May 31, 1995, this extended schedule gives time to conduct testing over a 30-day period and submit the results. Submittal of compliance test results is required by May 31, 1995, for all other units. New §117.510(4), (5), and (6) have been added which clarify compliance schedules for units without CEMS or PEMS requirements, units operating with CEMS or PEMS and complying on a 30-day rolling average, and units operating with CEMS or PEMS and complying on a block one-hour average. Proposed §117.510(5) and (6) have been renumbered as §117.510(7) and (8), respectively.

Comments received for §117.119 Notification, Recordkeeping, and Reporting Requirements.

HL&P commented that written notification of the compliance test within 15 days after completion, as proposed in §117.119(b)(1), is unnecessary, and recommended that this requirement be eliminated.

The written documentation required after the completion of emissions testing is needed for agency enforcement purposes. If the final control plan is submitted within 15 days after testing, the notification in the final control plan satisfies the requirement of §117.119(b)(1).

HL&P commented that the requirement in proposed §117.119(b)(2) for submitting results of compliance testing within 60 days after completion is redundant, noting that §117.115(b)(3) already requires submittal of these results as part of the initial control plan. The commenter recommended that this requirement be eliminated.

The requirement to submit results of initial demonstration of compliance testing or CEMS or PEMS performance evaluation within 60 days is actually contained in §117.119(c). Also, it should be noted that §117.115(b)(3) refers to the final, not the initial, control plan. The intent of the rule is that these data be submitted within 60 days after completion of testing or evaluation, but no later than July 31, 1995. Therefore, the requirement in §117.119(c) has been retained.

HL&P commented that in proposed §117.119(e)(5)(B), the reference to "results of initial demonstration of compliance" should be replaced by "results of initial certification testing."

The purpose of recordkeeping requirements is to have relevant data accessible to regulatory agencies for at least two years after such data have been collected. The reference to "results of initial demonstration of compliance" has been replaced by "results of initial certification testing" in proposed §117.119(e)(5), since this paragraph pertains specifically to the operation and quality assurance of CEMS, PEMS, and steam- or water-to-fuel ratio monitoring. However, the need for maintaining performance test results, including initial demonstration of compliance, is valid. Therefore, this requirement has been moved from §117.119(e)(5) to new §117.119(e)(6).

Comments received for §117.121 Alternative Case Specific Specifications.

EPA commented that in proposed §117.121, a source's ability to use system-wide averaging at MRC under §117.107 may be weighed in considering whether the approval of alternative emission specifications is justified. EPA stated that this appeared inconsistent with the proposed definitions of "system-wide emission limit" and "system-wide emission rate" in §117.10, which allow use of either MRC or average activity levels in calculating the system-wide emission rate and limit.

The staff has revised §117.121 to read, "...meet emission specifications through system-wide averaging computed in accordance with §117.107." The recommended changes have been made to the definitions of "system-wide emission limit" and "system-wide emission rate" will ensure consistency with the proposed rule language of §117.107.

Comments received for §117.203 Exemptions.

EPA commented that the SIP submittal to EPA must provide a detailed analysis showing that any exemptions of major sources from NO_x RACT control requirements in proposed §117.203 and §117.205(g) are based on the TNRC's finding that such controls are not technically or economically feasible. EPA specifically commented on the need for justifying exemptions for chemical processing

gas turbines and stationary gas turbines and internal combustion engines used in agricultural operations.

The TNRC intends to submit documentation of rulemaking activities for certain sources currently exempt from NO_x RACT requirements in a future SIP submittal. This analysis would include the specific types of units identified by EPA.

TCC, Amoco Chem Texas City, Amoco Chem Chocolate Bayou, and Exxon Chem suggested language in proposed §117.203(b)(1) to emphasize that only replacement units not subject to Chapter 116 BACT review under a new source review permit or permit amendment, i.e., those installed under a Standard Permit, are subject to NO_x RACT rule requirements, including restrictions limiting operating capacity to that of the units replaced. Both Amoco companies commented that increases in production capacity without related emission increases could help offset the costs of modification, and should be allowed.

The staff disagrees with the commenters regarding the scope of standard permits granted pursuant to §117.550 (relating to Standard Construction Permits for NO_x RACT Projects). Standard permits do not authorize the construction of new production equipment, including replacement units, without undergoing new source review (NSR) and applying appropriate BACT or lowest achievable emission rate (LAER) controls. The use of standard permits is limited to NO_x abatement equipment or NO_x control techniques which are applied to existing emission units in order to comply with the NO_x RACT rule requirements.

With regard to limitations of operating capacity for replacement units, the intent of the rule was to restrict emission credits in averaging plans to the cumulative maximum rated capacity (MRC) of the units replaced, not to limit the annual activity level of the replacement units. Rule language in §117.203(b)(1) has been revised to clarify this point.

TCC/TMOGA et al. recommended deletion of the phrase "based on a rolling monthly average" in proposed §117.203(b)(6)(B) to clarify that exemptions are based on data collected for a calendar year.

The staff has revised the phrase to read "based on a rolling 12-month average."

Comments received for §117.205 Emission Specifications.

TCC/TMOGA et al. commented that existing §117.205(a)(2)(A) and (B) were deleted in the proposed version, thus eliminating important features in the rule concerning calculation procedures for NO_x emission rates from existing permitted units. They recommended reinstating the deleted provisions as renumbered §117.205(a)(2).

The staff agrees with the commenters, and has reinstated the deleted subparagraphs according to the commenters' suggestion by renumbering the proposed §117.205(a)(2) to §117.205(a)(3) and adding two subparagraphs as §117.205(a)(2)(A) and (B).

which will reinstate the original subparagraphs.

TCC/TMOGA et al. suggested adding language in proposed §117.205(a)(2) clarifying that restrictions which limit operating capacity to that of the replaced units do not apply to replacement units subject to BACT review under a new source review permit or permit amendment. They also recommended that proposed §117.205(a)(2) be modified to reflect that a unit could replace more than one existing unit, and to clarify that the optional inclusion of replacement units refers to the plant-wide average and source cap compliance options.

The intent of the referenced paragraph was not to limit the annual activity level of replacement units, but rather to restrict emission credits in averaging plans to the cumulative MRC of the units replaced. Language has been added to the referenced rule paragraph, now renumbered as §117.205(a)(3), addressing the commenters' suggestions. In addition, language has been added clarifying that compliance with §117.205(a)(3) does not eliminate the requirement for new units to undergo NSR under Chapter 116.

Inland Container Corporation commented that the current carbon monoxide (CO) emission limitation of 400 parts per million by volume (ppmv) at 3.0% oxygen (O₂) dry basis, in proposed §117.205(e) may not be achievable by their bark-fired boiler due to fluctuations in the moisture content, particle size, and Btu content of wood waste and bark fuel. They submitted data to document that the unit is designed to operate at 5.4% O₂. The commenter requested that wood-fired units be exempt from §117.205(e), or, if that is not possible, discussions be held to arrive at an achievable CO standard for these units.

The staff has reviewed the CO and O₂ emissions data provided by the commenter and agrees that bark- and wood-fired boilers do not attain the 400 ppm CO at 3.0% O₂ standard. The optimum level for excess air for bark-fired boilers typically is 7.0% O₂. The staff has revised the CO limit for bark-fired boilers to 775 ppm at 7.0% O₂ (1000 ppm at 3.0% O₂), which represents reasonably tuned boiler performance.

Texas Eastern and Trunkline Gas Company commented on the current exemption of lean burn engines and gas turbines less than 10 megawatt (MW) capacity under §117.205(g), expressing concern that EPA could require the TNRCC to adopt NO_x RACT rules for these sources, with an implementation date of May 31, 1995. The commenters requested information on the status of these exemptions.

In comments submitted in previous rounds of NO_x RACT rulemaking, EPA has stated that the rule would not be approvable until the TNRCC either adopts NO_x RACT rules for certain categories of currently exempt sources, or provides an analysis that such rules are technically and economically infeasible. Currently, the TNRCC does not plan to propose additional rules in the near future for the source categories listed by the commenter. Any additional NO_x RACT rules adopted at a future date would include a

reasonable schedule to achieve compliance with the rule. Thus, the final compliance date would necessarily be after May 31, 1995.

Comments received for §117.207 Alternative Plant-Wide Emission Specifications.

EPA commented on the need for TNRCC to commit to periodic evaluations of the plant-wide averaging program in its SIP submittal to EPA in order to conform with EPA's proposed Economic Incentive Program (EIP) rules. These periodic audits may correspond to the Reasonable Further Progress milestone demonstration requirements. EPA further commented that the TNRCC will need to consider the impact of forthcoming final EPA guidance on NO_x RACT Trading and the EIP on the §117.207 averaging rule.

The staff agrees with the concept of periodic audits to ensure the validity of NO_x reductions obtained using the plant-wide emissions averaging approach. These requirements may need to be addressed in future rulemaking and summarized in the SIP narrative, after clarification regarding their implementation is received from EPA.

TCC/TMOGA et al. and Texaco commented that the reference in §117.207(f)(3) should be changed from §117.205(a) to §117.205(b).

The staff agrees that the references in §117.207(f) are incorrect. The ability to opt in a permitted unit would require that the unit have its assigned §117.207 limit be no greater than its permit limit. Otherwise, the applicable emission specification for unpermitted units listed in §117.207(f)(1)-(5) are found in §117.205. The staff has revised the references at §117.207(f) to include the phrase "the lower of the emission specifications determined in accordance with §117.205(a)".

TCC/TMOGA et al. and Texaco suggested that the second sentence of §117.207(f) be revised to include boilers and industrial furnaces (BIF units) regulated under 40 CFR Part 266, Subpart H, since this equipment class was proposed for inclusion at §117.207(f)(5).

The staff agrees with the commenters and has revised §117.207(f) to list the inclusion of BIF units regulated by 40 CFR 266, Subpart H, as allowed by §117.207(f)(5).

TCC/TMOGA et al. commented that the equation for "NO_x (allowable)" in §117.207(g)(3) should reference §117.205(c) instead of "§117.105(f) or (g)" as proposed.

The staff acknowledges this publication error inadvertently made by the *Texas Register*. The staff has revised the reference in §117.207(g)(3) to read "§117.205(c)." This subsection is the correct location of the applicable NO_x emission specification for gas turbines.

Comments received for §117.209 Initial Control Plan Procedures.

After the period for receipt of written comments had ended, TMOGA and the Association of Texas Intrastate Natural Gas Pipelines requested a 120 day extension for certain sources with no units subject to emission specifications under §117.205 to submit an

initial control plan as required by §117.209. The commenters stated that the current wording of §117.209 does not appear to require such sources to conduct NO_x emissions testing, although proposed §117.209 clarifies that such requirements do in fact apply to these sources. Considering that the effective date of the newly adopted rule would be later than the April 1, 1994, deadline for submitting initial control plans, the commenters requested additional time to submit the plans.

The staff recognizes that the wording in the opening paragraph of current §117.209 appears to exempt sources with no units subject to emissions specifications under §117.205 or §117.207 from the requirement to submit an initial control plan. This was not the staff's intent. Although certain such emission units already are required to conduct initial control plan testing under current §117.211(c) (relating to Initial Demonstration of Compliance), the proposal was made to move these requirements to §117.209(b) for clarification.

In order to give a reasonable amount of time for these sources to submit initial control plans after rule adoption, §117.520 has been revised. The requirements of §117.520(1) have been divided into three parts. Subparagraph (A) requires major NO_x sources which have units subject to emission specifications under this chapter to submit an initial control plan for all such units no later than April 1, 1994. Subparagraph (B) requires major NO_x sources which have no units subject to emission specifications under this chapter to submit an initial control plan for all such units no later than September 1, 1994. Subparagraph (C) requires major NO_x sources subject to either (A) or (B) as defined above to submit the information required by §117.209(c)(6), (7), and (9) no later than September 1, 1994. It is important to note that for major NO_x sources which have both types of units (those which are subject to emission limitations and those which are not), the initial control plan due April 1, 1994, must include test results and other required information for all such units.

TCC/TMOGA et al. commented that, given the work already underway to meet the April 1, 1994 due date for submitting initial control plans under §117.209, it is too late to make substantive changes to the section. The commenters recommended that any new requirements be limited to those essential to effective implementation of the regulation.

The proposed revisions to §117.209 were intended primarily to clarify the section's requirements, add references to §117.223 (Source Cap) where applicable, and to provide staff with additional information in evaluating initial control plans. New requirements introduced in the current rulemaking consist of listing the following in the initial control plan: §117.209(6) - units requiring modifications to comply with §117.208 (Operating Requirements), §117.209(7) - past or anticipated shutdowns since November 15, 1990 as a result of rule compliance along with the shutdown date, and §117.209(9) - totalizing fuel flow meters currently in operation, and statement of whether rule compliance was the reason for installation. The staff has added new §117.520(1)(C) to provide an extension

until September 1, 1994, for sources to submit this additional information. This will give ample time for sources that have not already provided the information with the April 1, 1994, plan to do so. The original due date of April 1, 1994, still applies for all other information and test data required in the initial control plan.

TCC/TMOGA et al. stated that the proposed language in §117.209 would require every major source of NO_x to develop a plan to install NO_x control equipment, which is inconsistent with the intent of the regulation. Texaco recommended that the references to installation of NO_x control equipment and demonstration of anticipated compliance be deleted from the first sentence of §117.209(a).

The staff partially agrees with the commenters. The intent of the regulation is not that every major NO_x source develop a plan to install NO_x control equipment, but rather that every major source submit at least a listing of NO_x-emitting sources. The requirements of §117.209 to submit an initial control plan include the requirement to list equipment expected to install NO_x control equipment and the demonstration of anticipated compliance with the regulation; the proposed language is intended to clarify these requirements. Therefore, the staff has revised §117.209(a) by adding the phrase "(if required by the emission specifications of this subchapter)" after the phrase "NO_x emissions control equipment."

Fina commented that proposed §117.209 has been revised to require emissions testing by April 1, 1994, for all units subject to the requirements of §117.211, relating to Initial Demonstration of Compliance. Fina stated that §117.209(9), as adopted May 28, 1993, allowed heaters with a MRC greater than 100 MMBtu/hr to perform testing by May 31, 1995. Fina commented that this schedule change for testing requirements is unreasonable, and requested that the due date for submitting initial control plan test results be extended to June 1, 1994.

The proposed revisions to Chapter 117 do not affect the schedules or applicability for heaters rated 100 MMBtu/hr or greater which are required to submit initial control plan testing under §117.209 (due April 1, 1994), or initial determination of compliance testing under §117.211 (due May 31, 1995). Existing §117.209(9), effective June 9, 1993, requires submittal of test data in the initial control plan for "each unit subject to the testing requirements of §117.211." In existing §117.211(a), testing requirements are given for units "subject to the emission limitations of §117.205...or §117.207." Process heaters rated 100 MMBtu/hr or greater are therefore included in the original rule requirement to submit initial control plan test results by April 1, 1994. As discussed elsewhere in this evaluation of testimony, due dates for submittal of initial control plan test data have been extended in certain cases. However, the staff does not consider such an extension warranted for the case presented by the commenter.

The Johnson Space Center recommended that in cases where a standby or back-up unit

is identical to the primary unit in service, submission of initial control plan test results for only one unit be allowed, since emissions from identical units should be equivalent within an acceptable margin of error.

The staff's experience with "identical" pieces of equipment is that the emissions from them are not equivalent, with or without an acceptable margin of error. As an example, six ethylene cracking furnaces were tested for compliance and the testing revealed a range of NO_x emissions from 0.05 lb NO_x/MMBtu to 0.08 lb NO_x/MMBtu. This variability is large enough to warrant testing of each unit.

Units which are used as standby or back-up units may be able to claim a low annual capacity factor exemption. The low annual capacity factor units are not required to have emissions testing performed.

Texas Eastern and Trunkline Gas Company commented that the current rule proposal appears to remove the option of using portable testing equipment previously allowed in §117.211. They expressed concern about the impact on compliance testing, and requested that the TNRCC reconsider this issue.

Portable analyzers were never allowed to be used for compliance determinations. Portable analyzers are only to be used for gathering the emissions test data required for the initial control plans. Initial demonstration of compliance must be performed according to the provisions of §117.211(e). The staff's intent with the proposed rule language is to clarify the required testing methods by locating the initial control plan testing requirements in the initial control plan section.

TCC/TMOGA et al. and Texaco commented that it is unnecessary and impractical for the Executive Director of the TNRCC to approve initial control plans, given the short time frame between April 1, 1994 (due date for plan submittal) and May 31, 1995 (final compliance date). They suggested language in §117.209(a) whereby a company would consider its initial control plan approved if it had not received written objections from the Executive Director within 45 days of submitting the plan.

It is important that information and test data provided in initial control plans be reviewed and approved by TNRCC staff to determine whether companies' preliminary compliance assessments and control strategies appear adequate and appropriate. Also, since data contained in the initial control plans will be used to update and enhance the emissions inventory and Urban Airshed Model (UAM) efforts, some minimum quality assurance is essential. The staff intends to conduct timely review of all initial control plans in order to accomplish these objectives, thereby giving companies sufficient advance notice of any deficiencies in their plans.

Lyondell-Citgo Refining Company Ltd. requested consideration for postponing initial control plan testing due to special circumstances at its plant. Lyondell operates a reformer unit on a limited basis and as back-up during a magnaformer unit's turn-arounds which occur every two years. The commenter stated that it would cost an estimated

\$500,000 to start up the reformer solely to perform testing by April 1, 1994, and requested an allowance in the rule to permit testing when the unit is brought on line during the second quarter of 1994. Lyondell said that the reformer unit was last operated during the second quarter of 1993, before the TNRCC's Test Method Protocol guidance document was issued on September 3, 1993.

The staff agrees with the commenter about the difficulty of emissions testing equipment which is not operational. However, the unavailability of the Test Method Protocol until September 3, 1993, would not specifically hinder a company from obtaining emissions test results in time to submit the data with the initial control plan due April 1, 1994.

The staff has revised §117.209(b) to allow equipment which has not been in operation since the effective date of the original adoption of §117.209 (June 9, 1993) to be tested and the results submitted within 90 days after the equipment is brought back into operation. Certification of the equipment's shutdown period must also accompany the test results.

TCC/TMOGA et al. commented that proposed §117.209(b), by referring to §117.211(e) and (f), allows three one-hour emission test runs if EPA test methods are used instead of portable analyzer methods. They noted that the TNRCC's Test Method Protocol guidance document, dated September 3, 1993, allows three 20-minute tests regardless of whether portable analyzer or EPA test methods are used. They recommended that §117.209(b) be revised to allow substitution of three 20-minute tests for three one-hour tests using portable analyzers. Texaco recommended that proposed §117.209(b) be revised to allow alternatives to portable analyzer and reference method testing due to the shorter test times done by some testing contractors using EPA test methods.

The staff agrees with the substance of the comments made by Texaco, TCC/TMOGA, et al. However, allowing three 20-minute test runs for the initial control plan testing requirements means that the data collected are not acceptable for the initial demonstration of compliance for a unit. The Test Method Protocol was revised on January 21, 1994, to address the concerns of Texaco, insofar as alternatives to portable analyzer and reference method testing were recognized.

The staff has revised §117.209 to include the phrase "or reference method" directly following the word "portable" in the first sentence of §117.209(b) to address these concerns.

DuPont commented on the TNRCC staff interpretation that flares with MRC greater than 50 MMBtu/hr heat input should be listed in the initial control plan. DuPont suggested that, since flares most likely will not be controlled under the rule, and flare emissions are already reported in the TNRCC emissions inventory, language be added to §117.209(c)(1) excluding flares from initial control plan requirements. Exxon commented that any emission unit, including flares, exempted from NO_x emission specifications should not require listing in the initial control plan.

The requirements in proposed §117.209 for exempted emission units, including flares, are minimal, as such units need only be listed in the initial control plan. The listing threshold of 5.0 MMBtu/hr heat input, as applied to flares, refers to normal design heat input. Emergency release heat input for a flare, which is substantially greater than normal design heat input, is not considered in defining MRC. The staff believes that these requirements are useful and valid, therefore they have been retained in §117.209.

TCC/TMOGA et al. commented on the proposed requirement in §117.209(c)(6) for companies to list in the initial control plan all units requiring operating modifications under proposed §117.208(d), the type of modifications to be applied, and an anticipated construction schedule. They stated that since §117.208(d) requires compliance by May 31, 1995, and it is too late to modify initial control plan requirements at this time, the proposed requirement serves no useful purpose and should be deleted in the final rule.

The proposed requirement cited by the commenters will provide useful information to TNRCC staff in evaluating compliance strategies and in developing future rules. The staff has added new §117.520(1)(C) to provide an extension until September 1, 1994, for sources to submit information required in §117.209(c)(6), (7), and (9). The original due date of April 1, 1994, still applies for all other information and test data required in the initial control plan.

TCC/TMOGA et al. commented that proposed §117.209(c)(7) should not require a listing in the initial control plan of all units that have been shut down, regardless of the reason. They recommended revising the rule to require listing only those shutdown units which ceased operation as a result of compliance with the regulation, and suggested adding a reference to the anticipated shutdown date for clarity.

The staff agrees with the commenters, and has revised §117.209(c)(7) as suggested. In addition, language was added stating that such shutdowns occurring after November 15, 1990, are required to be listed in the initial control plan.

TCC/TMOGA et al. stated that proposed §117.209(c)(9), requiring companies to list in the initial control plan the totalizing fuel flow meters installed by April 1, 1994, and to state whether the devices were installed as a result of the rule, is not clear in its intent. They recommended deletion of this proposed requirement.

The staff's intent is to determine whether or not the totalizing fuel flow meters have been installed to aid the companies in performing the emissions testing (since fuel flow rates can be used to calculate the exhaust flow rate which can then be used to calculate the mass emissions rate for NO_x). The totalizing fuel flow meters do not have to be installed by April 1, 1994. The only rule requirements are to list the meters that are currently operating, and to identify whether the installation was performed as a result of the rule. Since there had been no initial control plans received by the date of the rule proposal, the additional

requirement of listing the installed fuel flow meters cannot be considered to be burdensome. Changes to §117.209(c)(9) have been made to clarify the requirement.

Comments received for §117.211 Initial Demonstration of Compliance.

TCC/TMOGA et al. and Texaco recommended that, for clarity, proposed §117.211(e) contain a reference to the source cap compliance option under §117.223.

The staff agrees with the commenters since §117.223 specifies that §117.211(e) is used to establish the emission limit for units not using a CEMS or PEMS. A change has been made in §117.211(e) to include a reference to §117.223.

TCC/TMOGA et al. recommended language in proposed §117.211(e) which would give companies the option to test at less than MRC for units operating without CEMS or PEMS. For companies electing this option, they suggested limiting the operating rate for such units to 110 percent of the operating rate during testing. EPA commented that since emissions testing at MRC is required by §117.211(e) and (f), these subsections should be revised to prohibit a source from operating above the level at which it demonstrated compliance during the initial determination of compliance test.

The staff disagrees with TCC's proposal to generally allow testing at less than MRC. EPA and the TNRCC staff are concerned that artificial claims of MRC can reduce or eliminate the need to make emission reductions, defeating the purpose of the rule. With multiple emission tests necessary to demonstrate plant-wide average emission compliance, the effect of inflated MRC's is multiplicative. For instance, allowing testing to be conducted at 90% of MRC or more could eliminate the need to make emission reductions at a plant which otherwise would be required by rule to make a plant-wide 10% NO_x emission reduction. This is why compliance testing is required to be conducted at MRC.

However, the staff also disagrees with EPA's recommendation that if a unit was tested at a heat input below its MRC, the unit would not be allowed to operate above its test level. Situations may arise which make testing at MRC impractical for a limited time period. Some types of equipment, such as gas turbines, are dependent upon ambient conditions to achieve MRC. The operator does not have control over ambient conditions and it is impractical to schedule testing to coincide with extreme ambient conditions. It also may be impractical, costly, and result in higher emissions to require operation with alternative liquid fuels simply to demonstrate initial compliance. The rule currently specifies that testing shall occur "at the MRC or as near thereto as practicable." This statement means that testing at less than MRC is not justified unless it can be shown to be the only practicable option at the time.

Language has been added to require retesting at MRC (within 90 days after exceeding the heat input of the initial demonstration of compliance test, or one year after the initial demonstration of compliance test, whichever

comes first), if the reason for not initially testing at MRC was not due to ambient conditions. The adopted rule allows flexibility to either assign an MRC which is readily achievable (sufficient to conduct testing at that level) prior to the initial demonstration of compliance date, or to assign a higher MRC which, nevertheless, must be achieved in a definite time period. Units which do not achieve MRC during the initial test must be tested again within one year at MRC.

EPA commented that any alternate methods allowed in proposed §117.211(e) (5) should also be approved by EPA.

The staff agrees with the commenter. The methods cited in §117.211(e)(5) pertain to fuel composition and calorific value; the EPA Administrator has the authorization in 40 CFR §60.13(i)(7) to approve alternate methods to American Society of Testing and Materials (ASTM) test methods that are specified by any subpart of 40 CFR 60. The staff revised §117.211(e)(5) by adding the phrase "and the EPA" after the phrase "Executive Director."

TCC/TMOGA et al. recommended changing citations of the ASTM methods in proposed §117.211(e)(5) to reflect the most recent revisions of these methods.

The staff cannot incorporate other rules, standards, or other guidance by reference. Any new revisions to the ASTM methods can be updated and included in later rulemaking. The proposed language does allow for alternate methods, as approved by the Executive Director and the EPA. A newer revision to the listed ASTM test methods would come into this category. The most recent revisions are D1945-91, D2650-93, and D3588-91 according to the *Annual Book of ASTM Standards*.

References to the three ASTM test methods have been updated. The staff also clarified that ASTM D3588-91 is for the purpose of determining the calorific value and relative density of gaseous fuels, and added a fourth ASTM test method to determine the gross calorific value, D1826-88 entitled Test Method for Calorific Value of Gases in Natural Gas Range by Continuous Recording Calorimeter.

EPA recommended deletion of language in proposed §117.211(e)(6) which would allow minor modifications to EPA-approved alternate test methods.

The staff disagrees with the commenter. The need for minor modifications of EPA test methods exists. Emissions testing of 1,600 units requires some flexibility in the application of test methods to this sizable number of units operating in their real world environments. Previous comments addressing this subject in earlier rule proposals have requested that there be flexibility in using modified test methods and for the inclusion of references to new, EPA-approved test methods.

The staff has worked with EPA to address these concerns, and has revised §117.211(e)(6) to include language providing criteria for allowing minor modifications.

TCC/TMOGA et al. suggested replacing the word "units" in proposed §117.211(f)(2) with

the specific equipment categories of boilers, process heaters, and gas turbines.

The staff agrees with the commenters. The suggested revision clarifies the term "unit" in this paragraph, since the affected equipment is limited to boilers, process heaters, and gas turbines. The staff revised §117.211(f)(2) by replacing the term "unit" with the phrase "boilers, process heaters, and gas turbines."

Comments received for §117.213 Continuous Demonstration of Compliance.

TCC et al. expressed support for the proposal to extend the use of PEMS beyond the source cap option to the compliance options contained in §117.205 (individual unit emission specifications) and §117.207 (alternative plant-wide emission specifications)

The staff acknowledges the support of the commenters. See the related comment by GHASP in the General Comments section

Applied Automation, Inc. commented on the distinctions between performance validation of CEMS compared to PEMS, stating that the existing certification requirements in the rule should not be relaxed until PEMS equivalency can be demonstrated. Applied Automation recommended that validation procedures be developed and made part of PEMS operational requirements.

PEMS is a new and promising technology that has yet to demonstrate its reliability over an extended length of time. The staff will constantly reevaluate the existing certification requirements of PEMS as the technology continues to demonstrate equivalence in performance and reliability to that of hardware CEMS. PEMS operators are required to develop a quality assurance and control manual for PEMS which includes daily, quarterly, and semiannual or annual assessment procedures to ensure continuous and reliable performance.

EPA recommended that the phrase "and operating" be added in the second sentence of proposed §117.213(a), after "The O₂ monitors and totalizing fuel flow meters shall be installed..."

The staff agrees with the commenter and has revised §117.213(a) by adding the phrase "and operating" after the phrase "The O₂ monitors and totalizing fuel flow meters shall be installed" in the second sentence of §117.213(a).

EPA commented that the TNRC must supply technical justification for the deletion of the annual relative accuracy test audit (RATA) requirements of 40 CFR Part 60, Appendix F, Section 5.1.1, and substitution with a cylinder gas audit, in proposed §117.213(b).

The staff's decision to allow substitution of the annual RATA with a cylinder gas audit check was based on discussions with the monitoring operations staff of the TNRC which indicated that daily calibration and quarterly cylinder gas audit checks are satisfactory to ensure accurate and reliable performance of hardware CEMS. Since the proposed enhanced monitoring rules (40 CFR 64) reference 40 CFR 60, Appendix F in its entirety, the staff will reevaluate its decision in

view of the final enhanced monitoring regulations and address this issue in the SIP narrative of the next round of NO_x RACT rulemaking.

TCC/TMOGA et al and Texaco recommended wording changes to proposed §117.213(c) to reflect that PEMS predicts rather than measures emissions, and to clarify that PEMS may be used to predict one or more gaseous components of the waste gas stream, with CEMS used to measure the remainder of the components

The staff agrees with the commenters that a PEMS predicts pollutant emissions and does not directly measure the gaseous concentration. The staff also agrees with the commenters that any combination of PEMS and CEMS may be used to determine the levels of the gaseous components in the exhaust stream. Section 117.213(c) was revised to include the recommended wording.

GHASP commented that the term "substantially equivalent" in proposed §117.213(c)(1) should be defined to avoid subjective interpretations of its meaning

Section 117.213(c)(1) allows the PEMS operator to propose alternatives to 40 CFR 75, Subpart E if such procedures are demonstrated to the satisfaction of the Executive Director to be substantially equivalent to the requirements of 40 CFR 75, Subpart E. The term "substantially equivalent" is not defined, since each proposed alternative will have to be evaluated on its own merits

EPA recommended that proposed §117.213(c) be revised to clarify that any alternative methods to CEMS or PEMS for measuring O₂ or CO also need to be approved by EPA. EPA further commented on the need for EPA approval of alternative methods or nonapplicability determinations under §117.213(c)(1) and (2). The staff agrees with the commenter as to the EPA's need to review and approve any alternative methods to PEMS or CEMS, or alternative methods or nonapplicability determinations under §117.213(c)(1) and (2)

The staff revised §117.213(c) to add the requirement that EPA approve any alternative methods to PEMS or CEMS for measuring O₂ or CO₂, alternative methods to 40 CFR 75, Subpart E, or nonapplicability determinations of the requirements of 40 CFR 75, Subpart E

TCC/TMOGA et al and Pavilion Technologies, Inc. (Pavilion) stated that performing RATA procedures at three load levels as required by proposed §117.213(c)(3)(A)(i) may not accomplish the desired effect of testing over a range of NO_x emissions. They recommended language which would allow the company to identify the most important control parameter affecting NO_x emissions, and to perform RATA tests at three different levels (low, medium, and high) of this parameter. TMOGA, et al. recommended RATA testing at low, medium, and high levels of historical operating rates

The staff agrees that basing RATA testing on the key operating parameter affecting NO_x emissions would be a better indicator of PEMS performance, and has revised the rule language of §117.213(c) accordingly. The

staff disagrees with TMOGA, et al., with regard to allowing RATA testing at low, medium, and high levels of historical operating rates. Historical operating rates do not necessarily guarantee testing of the performance of PEMS.

TCC et al. and Pavilion stated that the statistical tests required in proposed §117.213(c)(3)(A)(ii) are redundant, burdensome, and expensive, as the new technology of PEMS is held to more stringent RATA standards than CEMS, the established technology, can meet. They recommended that the statistical tests be eliminated entirely, since such requirements are not contained in EPA's proposed enhanced monitoring regulations.

The staff disagrees with the commenters. Parametric modeling generally falls into two main categories. The first category relies on physical principles which employs analytical methods to describe the dynamics of the process. These methods are derived from the physical equations or the laws of nature that govern the system. This category of models is generally expressed in nonlinear partial differential equations that are solved via numerical analysis techniques, as these equations are often too complicated to be solved via standard analytical methods. Errors are introduced into this category of models either by the assumptions made in simplifying the governing equations so they can be solved by standard analytical methods, or by the numerical discretization (approximation) of the nonlinear equations

The second category of models relies on linear or nonlinear regression analysis or curve fitting of historical data. These models mainly rely on computer software which, with the use of high quality historical data, interpolates and/or extrapolates over a wider range of operating conditions, or learns the dynamics of the process by developing statistical multi-variable mathematical functions that mask the dynamics of the process

These models do not rely on physical principles, nor do they guarantee long-term imitation of the actual dynamic process which is usually better represented when physical principles are applied.

The staff observed good model performance from both categories of models and decided to allow the use of any category of PEMS as long as it can demonstrate equivalent accuracy, precision, reliability, accessibility, and timeliness to that of hardware CEMS. Accuracy is demonstrated by a relative accuracy test audit. Precision is demonstrated via performing statistical analysis. Since PEMS accuracy and precision may not necessarily be accurately evaluated by relying on analytical methods, the staff decided to use a statistical approach in evaluating precision of the system. This approach is used in 40 CFR 75, Subpart E, which requires utility boilers to monitor NO_x and SO₂ emissions under Title IV of the 1990 FCAA.

Three statistical tests are required. The first is a t-test, designed to determine existence of any systematic error (bias) in the PEMS and provide a mechanism to adjust for that error. The second test is the F-test, which is a

statistical procedure designed to determine if both PEMS and hardware CEMS (or EPA-certified test method) have equal variability on the basis of chance. Thus, it specifically addresses random error of the PEMS and assures comparable random variations between the two systems. The third test is the correlation test, designed to determine how well the PEMS is able to track the hardware CEMS (or EPA test method) over time. It accounts for process changes and determines if the PEMS is able to respond properly to changes in operating conditions. The staff believes that all these statistical tests are important in evaluating the system, as each investigates the existence of a different type of error.

As stated by the commenters, no statistical testing is required under the proposed enhanced monitoring program. It should be pointed out, however, that the program is designed to demonstrate continuous compliance with applicable emission limitations or standards, with less emphasis on precision and accuracy of measurements. Air quality planning will always rely on emissions inventories for development of new control strategies. Measuring emissions accurately and demonstrating continuous compliance are both necessary, especially in ozone nonattainment areas or areas where marketable emissions trading is likely to be implemented.

Several commenters suggested certain changes to the statistical test requirements of §117.213(c)(3)(A)(ii) to make them more workable. These recommended changes are summarized in the comments which follow.

TCC, Pavilion, and HL&P recommended requiring only an r-correlation test using data from all three different ranges of the chosen control parameter. TMOGA, et al recommended performing the F-test, t-test, and correlation analysis, but at low, medium, and high levels of historical operating rates. TCC, Pavilion, and HL&P recommended removing the requirement for a bias test (t-test) to be performed at each load (control parameter) level, and requiring the t-test only at the normal parameter range. TCC and Pavilion commented that PEMS certification should be approved if the statistical tests are failed but the RATA tests are passed.

The staff disagrees with the commenters to require a correlation test only. The correlation test is important because it evaluates how well both the PEMS and the CEMS (or EPA reference method) are able to track each other and respond to changes in operating conditions over time. The correlation test alone, however, is not satisfactory to demonstrate precision of the PEMS. Moreover, when applied using all data points collected at all three tested levels, the correlation test's value as a good screening tool is diminished, even for investigating transient changes of process operating conditions. Uncorrelated data samples at each level are masked out by the overall pattern of the data distribution at all levels. A weighted correlation test that is dependent on the local mean of each level is a much better representative measure of correlation. Since data variability at each tested level is a combination of random variability

and process variability, the staff has found it is difficult to pass a weighted correlation test on data collected over a short period of time and instead, and has thus allowed the option of performing the less stringent correlation test using all data collected at all levels.

Each data sample is characterized by its mean, standard deviation (average variability about the mean), and correlation. The relative accuracy test measures the significance of the difference between two sample means, taking into account that some difference may be attributable to chance. The F-test is a measure of the difference between the standard deviations of two different sample means on the basis of chance. It is designed to guarantee comparable variability between the two samples. The correlation test measures the correlation between the two samples. Thus, the relative accuracy test, the F-test, and the correlation test are all important in characterizing the quality of a sample.

The staff believes that testing at low, medium, and high levels of historical operating rates may not necessarily test the performance of the PEMS. PEMS operators are allowed to specify the operating range of each parameter including the key operating parameter, but must guarantee future operation within the specified operating ranges. Future operations outside the operating range of any parameter would necessitate either recertification or additional testing of the PEMS.

The t-test is designed to determine the existence of systematic errors (bias) in the system and provides an adjustment mechanism for that error. Applying the t-test at each tested level would result in development of three adjustment factors. Rather than applying the t-test at the normal load level, staff recommends applying the t-test using all the data collected at all tested levels. This results in the development of one adjustment factor that can be applied to the system. For these reasons, the staff disagrees with the comment that PEMS certification should be approved if the statistical tests are failed but the RATA tests are passed.

TCC and Pavilion recommended revising the statistical tests defined in 40 CFR 75, Subpart E as follows: since the F-test is mathematically flawed if the standard deviation is zero, use three parts per million (ppm), a reasonable hardware standard, as the lower level of precision, and the precision of small measured values using reference methods is unsuitable because instrument noise dominates at these low ranges, making statistical conclusions meaningless. Waive the statistical test requirement if the average reference method emission rate is less than 5.0% of the emission standard, or 10 ppm, whichever is higher.

With regard to the first comment, the staff agrees with the commenters and has made the recommended change in the draft PEMS Guidance Document. Instead of three ppm, the guidance now specifies five ppm or 3.0% of span, whichever is higher, as the lower level of precision. With regard to the second comment, the staff agrees with the commenters and has made the recommended change in the draft PEMS Guidance Document. The decision to waive statistical

tests when the mean is below the cutoff level is applied separately to each tested level.

TCC, Pavilion, and HL&P commented that the requirement for "successive" data points with no allowance for data breaks may result in the use of costly redundant analyzers. They recommended allowing the use of RATA data within an acceptable downtime for reference method analyzers, defined as 30 more than one averaging period (20 or 60 minutes, as appropriate).

The staff agrees with the commenters. The draft PEMS Guidance Document has been revised to allow RATA data to be used as part of the statistical data. Staff and industry have agreed to increase the data collection requirement from 24 data points to 30 data points. The first nine data points of the required 30 are for the RATA, to be collected at intervals which allow time for calibration. The remaining 21 data points, which can be either 15-minute, 20-minute, or hourly averages, are to be collected continuously without calibration breaks.

TCC and Pavilion commented that, to be consistent with 40 CFR 75, Subpart E provisions, statistical tests should be required for PEMS initial certification only, with RATA tests every six-12 months thereafter. HL&P recommended that statistical tests be required for initial certification only, unless the PEMS is unable to pass the quarterly RATA tests in the first year of operation.

The staff disagrees with the commenters. The PEMS certification procedure of 40 CFR 75, Subpart E requires data collection of 720 paired hourly averages. The data sample is used for statistical evaluation of the performance of the PEMS by comparing it with the performance of a hardware CEMS. The excessive data collection requirement is aimed at providing performance evaluation of the PEMS over a sufficient time period to include load variability and operating and seasonal conditions. The staff found this data collection requirement impractical, and developed a more cost-effective approach that addresses these concerns. The staff's approach accelerates the experiment by forcing the occurrence of these variations over a much shorter testing period. Thirty paired data points, which can be either 15-minute, 20-minute, or hourly averages, need to be collected only at high, medium, and low test levels of the key operating parameter. Varying the key operating parameter over a short time provides satisfactory insight into PEMS response to variations in operating conditions. Reducing the testing period from 30 days to three days (if hourly averages are used) would not, however, allow for performance evaluation of the PEMS at different seasonal conditions. The 30-day data collection period required by Subpart E is long enough to allow some seasonal variations to be observed and evaluated.

The staff decided that reducing the testing period from 30 days to three days (one day if 20-minute averages are used) must be accompanied by additional requirements to test PEMS performance at different seasonal conditions. Quarterly statistical evaluation of the PEMS was added to address this concern. To ease the burden of performing these tests,

the staff has limited quarterly statistical evaluation requirements to a single unit in a given equipment category, and to no more than one year after initial certification. The staff believes this requirement is necessary since the three-day testing period does not allow for PEMS performance evaluation at different seasonal conditions.

A source which finds this additional requirement excessive has the option of using the certification procedure of 40 CFR 75, Subpart E in its entirety as an alternative. Affected sources not subject to 40 CFR 75 are allowed to choose either the certification procedure of §117.213(c) or 40 CFR 75, Subpart E. Once a choice is made, affected sources must be consistent in following the certification requirements of the chosen approach.

GHASP commented that under proposed §117.213(c)(3)(B)(i), all units must perform RATA and statistical tests to ensure compliance.

The staff disagrees with the commenter. The quarterly RATA and statistical tests required by §117.213(c)(3)(B)(i) are part of the initial certification and aimed at demonstrating that the PEMS could provide accurate predictions at different seasonal conditions. It is too costly to require these tests to be conducted every quarter, and on all units. If the PEMS for one unit in a category of units could demonstrate accuracy and reliability at different seasonal conditions, it is expected that PEMS serving other units of the same category are capable of providing comparable performance.

TCC/TMOGA et al. and Texaco recommended clarifying wording in proposed §117.213(c)(3)(B)(ii), concerning alternative fuels whose composition routinely varies. They suggested language requiring PEMS certification only for each alternative fuel which exceeds the modeled input range.

New §117.213(c)(3)(B)(iii) has been added to address this comment. PEMS does not need to be recertified if fuels of different compositions were considered as a parameter variable and addressed in the modeling process. Recertification will only be required for fuel compositions outside the modeled range.

HL&P commented that proposed §117.213(c)(3)(B)(ii), which requires separate PEMS certification for each alternative fuel, would adversely affect gas turbines which fire fuel oil only during emergency situations and monthly test procedures. The commenter requested that gas turbines be exempt during periods of fuel oil firing by applying the 850 hours per year exemption criterion for low annual capacity factor units to the period the unit actually fires fuel oil. Alternatively, TNRCC could amend §117.213(c)(3)(B)(ii) to allow PEMS certification based on all fuels for which models are trained.

The staff has decided to allow certification of PEMS for a range of fuels or fuel compositions provided that the PEMS was trained over that range. The staff agrees with the second alternative proposed by the commenter and has made the recommended change at new §117.213(c)(3)(B)(iii).

TCC/TMOGA et al. stated that the proposed requirement in §117.213(d)(1) for BIF units to

install totalizing fuel flow meters is not justified in terms of NO_x emissions reductions, since these units are exempt from emissions specifications. Moreover, the variable nature of the hazardous waste fuels creates technological and economic limitations to the effective fuel flow measurements. They recommended deletion of this proposed requirement.

The staff partially disagrees with the commenters, regarding deletion of the requirement in §117.213(d)(1) to install totalizing fuel flow meters on BIF units. BIF units, among others, are not totally exempt from the rule's requirements; the fuel flow data are important for air quality planning purposes and future rulemaking. The staff's intent is that the requirement to install totalizing fuel flow meters applies only for natural gas, process fuel gas, refinery fuel gas, and fuel oil used for primary or supplemental firing. The staff would like to point out that 40 CFR §266.103 requires monitoring and recording the feed rates and composition of hazardous waste, other fuels, and industrial furnace feed stocks. Therefore, the requirements to install totalizing fuel flow meters have been changed to require that totalizing fuel flow meters be installed only for the stated gaseous fuels and fuel oil in §117.213(a)-(d).

TCC/TMOGA et al. recommended that the requirement in proposed §117.213(d)(3) for lean-burn engines to install totalizing fuel flow meters should exclude low annual capacity factor engines.

The staff agrees with the commenters since the low annual capacity factor status for lean-burn engines is required to be demonstrated using elapsed run time meters in accordance with §117.213(g). The staff revised §117.213(d)(3) to exclude lean-burn engines operated less than 850 hours per year.

TCC/TMOGA et al. recommended that the requirement in proposed §117.213(d)(5) for fluid catalytic cracking unit (FCCU) boilers to install totalizing fuel flow meters be deleted because these units are already exempted from emissions specifications in the rule.

The staff's intent is that the requirement to install totalizing fuel flow meters applies only for natural gas, refinery fuel gas, process fuel gas, and fuel oil used for primary or supplemental firing in a FCCU CO boiler. Therefore, the staff revised the requirements to install totalizing fuel flow meters only for the stated fuels in §117.213(a)-(d).

TCC/TMOGA et al. stated that the provision in proposed §117.213(g) for the Executive Director to approve elapsed run time meters serves no useful purpose and should be eliminated from the rule.

The staff partially agrees with the commenters. The staff is aware that most of the elapsed run time meters which are available would suit the purposes of the requirements in §117.213(g).

The importance of the quality of the meters (in demonstrating low annual capacity factor status) would dictate that the meters meet certain standards. The standards for totalizing fuel flow meters and elapsed run time meters are expected to be developed by the TNRCC

staff for the Title V Enhanced Monitoring requirements. At this time, however, the approval of the elapsed run time meters is not warranted. The requirement for approval of the elapsed run time meters in §117.213(g) has been deleted as a result.

TCC/TMOGA et al. suggested changing the language in proposed §117.213(h) to reflect the most recent revisions of the listed ASTM methods. EPA commented that alternative test methods must also be approved by EPA.

The ASTM methods have been updated and the requirement for EPA approval has been added to §117.213(h).

EPA suggested replacing the last sentence of proposed §117.213(i) with the following. "For enforcement purposes, the Executive Director may also use other TNRCC compliance methods to determine whether the source is in compliance with applicable emission limitations." EPA commented that this change would clarify that the TNRCC may require compliance determinations by alternate methods.

The staff agrees with the commenter, since the suggested language clarifies without changing the intent of the sentence. The staff has replaced the last sentence of §117.213(i) with the language suggested by EPA.

Comments received for §117.219 Notification, Recordkeeping, and Reporting Requirements.

Rohm and Haas Texas Incorporated commented on the requirements in proposed §117.219(d)(1) for gas turbines using steam-to-fuel (or water-to-fuel) ratio monitoring to submit quarterly excess emission reports. Reports are required for any one-hour period in which the steam-to-fuel ratio is less than that level determined by testing at MRC to result in compliance. The commenter stated that variations in turbine load will change the steam-to-fuel ratio necessary to maintain compliance, resulting in incorrect levels of steam injection just to maintain the steam-to-fuel ratio at levels corresponding to MRC operating conditions. In order to remedy this situation, the commenter recommended revising the rule to require reporting those one-hour periods when the average steam or water injection rate is below the level determined necessary by the control algorithm.

The staff agrees that steam-to-fuel or water-to-fuel ratios need not be consistently maintained at MRC compliance levels in order to ensure compliance with the rule's emission limitations for gas turbines. Language in §117.219(d)(1) has been revised to reflect that excess emissions are computed as each one-hour period during which the average steam or water injection rate is below the level defined by the control algorithm as necessary to achieve compliance with the applicable emission limitations in §117.205. New language in §117.213(f)(2) requires Executive Director approval of steam or water injection control algorithms. Section 117.208(d)(4) already requires steam or water injection rates to be maintained to limit NO_x concentrations to less than or equal to the NO_x concentrations achieved at MRC.

Comments received for §117.223 Source Cap.

Energy Technology Consultants Inc. requested clarification of the distinction between "equipment category" in §117.223(a) and "equipment class." The specific example given was a crude heater and a coker pre-heat furnace operating in a refinery, and whether one of these units could be opted into the source cap without including the other.

The requirement that any equipment category brought into the source cap must include all emission units belonging to that category precludes shifting production to units outside the cap, which could compromise equivalency with unit-by-unit RACT. As defined in the rule, equipment categories include steam generation, electrical generation, and units with the same product output, such as ethylene cracking furnaces. In this sense, there is no real distinction between "equipment category" and "equipment class." The possibility for production to be shifted to non-cap units is the main criterion that will be applied in determining which units can be selectively opted into the source cap.

GHASP commented that the term "achieving equivalent nitrogen oxides emissions reductions" in proposed §117.223(a) should be defined to avoid subjective interpretations. GHASP objected to bubble-like strategies like the source cap, stating that they do not achieve sufficient emissions reductions.

Although the referenced term is not defined in the proposed rule, the staff intended that it mean "achieving the same nitrogen oxides emissions reductions." Strict adherence to EPA trading guidance throughout the development of the source cap rule has helped assure that RACT-equivalent NO_x reductions occur through use of the source cap.

TCC/TMOGA et al. and Texaco suggested revising the definition of "actual heat input" in §117.223(b). The commenters recommended clarifying language, and suggested allowing alternate methods for calculating the actual heat input, with Executive Director approval, in cases where data documenting daily heat input for 24 consecutive months are not available.

The phrase "average daily" has been added before "heat input" at its second occurrence in the definition in order to clarify the language. With regard to the second comment, there may be cases in which detailed fuel usage records are not available for each unit participating in the source cap. The calculation of representative actual heat inputs is crucial to the use of the source cap as a RACT-equivalent averaging method. Therefore, approval of other calculation methods could be granted by the Executive Director only upon a demonstration that such methods produce equivalent, representative heat input values. The definition of "actual heat input" has been revised to allow alternate calculation methods as suggested by the commenters.

In addition, the term "H" has replaced "Actual heat input" in the equation in §117.223(b)(1), and the term "H_u" has replaced "Maximum

daily heat input" in the equation in §117.223(b)(2). Units have been added in the definitions of H and R. These revisions were made to remain consistent with the terminology proposed in §117.570, relating to Trading, in separate rulemaking.

GHASP commented that in proposed §117.223(e), allowing a company 48 hours to report an exceedance of the source cap emission limit is too lenient, and recommended that the rule require reporting immediately (within three hours of exceedance).

The staff believes that 48 hours is a reasonable period of time in which to record and report exceedances of the source cap emission limit. The consequences of rule noncompliance are not alleviated regardless of the time allowed for reporting exceedances, and the staff sees no useful purpose in requiring such information to be reported immediately.

GHASP stated opposition to the inclusion of retired or decommissioned units in the source cap. The commenter pointed out an apparent rule inconsistency, in that §117.223(g) requires that participating units be permanently retired, whereas §117.223(g)(5) allows inclusion of units which have not been permanently retired. Texaco commented that a company using the source cap should be able to benefit from shutdowns occurring after June 9, 1993, and recommended deleting language in proposed §117.223(g) limiting the use of shutdown credits to units removed from service prior to June 9, 1993.

The restricted use of retired or decommissioned units in the source cap offers companies a greater degree of flexibility in achieving RACT-equivalent emission rates, while meeting EPA guidelines for alternative methods of RACT control. The apparent inconsistency has been resolved by moving §117.223(g) (5) to new subsection (h), and renumbering the subsequent subsections as (i) and (j). Current §117.223(g)(6) has been renumbered as (g)(5). With regard to Texaco's comment, the wording "after June 9, 1993" has been added to new §117.223(h). After this date (effective date of the rule), there are no limitations on the operating status of units participating in the cap, as long as the total cap emission limit is not exceeded. Therefore, a unit which operates at reduced rates, or not at all, can provide credit to other units participating in the source cap.

Pavilion commented that the provision in §117.223 allowing PEMS to be used as a backup when a CEMS is off-line should be included in §117.113 and §117.213 as well.

For source cap units equipped with CEMS, proposed §117.223(c)(2) requires emissions data to be collected for compliance purposes when the CEMS are off-line, using either PEMS or the maximum emission rate established by prior approved testing. This requirement is necessary to determine compliance with the source cap emission limit while one or more CEMS are off-line. Units subject to individual emission limitations which use CEMS under §117.113 or §117.213 are not required to provide backup data when CEMS are inoperative. Therefore, this requirement has not been extended to other rule sections.

Comments received for §117.510 Compliance Schedule for Electric Utility Generation.

HL&P and Gulf States commented on the requirement in proposed §117.510(2) for affected sources to install and certify CEMS or PEMS by January 1, 1995, which corresponds to the compliance date under the federal Title IV acid rain regulations. The commenters stated that, although most utility units are required to install NO_x monitoring systems under the Title IV regulations, other units such as auxiliary boilers and units less than 25 MW are not. Also, the federal rules do not require installation of CO monitors. HL&P and Gulf States recommended that the compliance date in §117.510(2) be changed to May 31, 1995, to remain consistent with §117.510(3) for utilities and §117.520 for industrial sources, which specify a final compliance date of May 31, 1995.

The staff agrees with the commenters and has revised §117.510(2) according to the commenters' suggestion.

Subchapter A. Definitions

• 30 TAC §117.10

The amendment is adopted under the Texas Health and Safety Code (Vernon 1992), 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.

Electric power generating system—All boilers, steam generators, auxiliary steam boilers, and gas turbines used in an electric power generating system which are owned or operated by a municipality or a Public Utility Commission of Texas regulated utility that are located within the Houston/Galveston or Beaumont/Port Arthur ozone nonattainment areas.

Functionally identical replacement—A unit that performs the same function as the existing unit which it replaces, with the condition that the unit replaced must be physically removed or rendered permanently inoperable before the unit replacing it is placed into service.

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 0.5% by volume, as originally designed by the manufacturer.

Low annual capacity factor boiler, process heater, or gas turbine supplemental waste heat recovery unit—A 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 12-month 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 12-month 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 12-month 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 less than 0.5% by volume, as originally designed by the manufacturer.

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 maximum rated capacity average activity levels to the total maximum rated capacities sum of average activity levels for those units. For fuel oil firing, average activity levels shall be used in lieu of maximum rated capacities 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 maximum rated capacity to the total maximum rated capacities for those units. For fuel oil firing, average activity levels shall be used in lieu of maximum rated capacities 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; or

(B) placed into service after June 9, 1993 as functionally identical replacement for an existing unit or group of units subject to the provisions of this chapter and limited to the cumulative maximum rated capacity of the units replaced.

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 May 25, 1994.

TRD-9441676

May Rose McDonald
Director, Legal Division
Texas Natural Resource
Conservation
Commission

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For further information, please call: (512) 239-0615

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 adopted under the Texas Health and Safety Code (Vernon 1992), 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.

§117.103. 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 and engines, which are:

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

(B) demonstrated to operate less than 850 hours per year, based on a rolling 12-month average.

(c) The fuel oil firing emission limitation of §117.105(c) or §117.107(b) of this title (relating to Emission Specifications and Alternative System-Wide Emission Specifications) 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 but no later than 48 hours 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, and shall be followed by written notification containing this information no later than five days after declaration of the emergency. The owner or operator of an affected unit shall give the Executive Director and any local air pollution control agency having jurisdiction final written notification as soon as possible but no later than two weeks after the termination of emergency fuel oil firing. Final 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.

§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 = the percentage of total heat input from natural gas.
b = 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 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% O₂ dry basis.

(l) 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) 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), (k), and (l) of this section shall apply at all times, except as specified in §117.103 of this title.

(n) For purposes of this subchapter, the following shall apply:

(1) 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 NO_x emission limits of subsections (a)-(i) of this section shall apply, except that gas-fired boilers 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 or group of units subject to the provisions of this chapter and limited to the cumulative maximum rated capacity of the units 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. Any emission credits resulting from the operation of such replacement units shall be limited to the cumulative maximum rated capacity of the units replaced. The inclusion of such new units is an optional method for complying with the emission limitations of §117.107 of this title. Compliance with this paragraph does not eliminate the requirement for new units to comply with Chapter 116 of this title.

§117.107. Alternative System-Wide Emission Specifications.

(a) An owner or operator of any gaseous- or coal-fired utility boiler or sta-

tionary 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 in subsection (d) of this section. An 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 rolling 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 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 NO_x per MMBtu based on a rolling 24-hour average.

(c) An owner or operator of any gaseous and liquid fuel-fired utility boiler, steam generator, or gas turbine 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) calculate the system-wide emission rate for liquid fuel while firing;
- (2) calculate the system-wide emission rate for liquid fuel only; and
- (3) calculate the system-wide emission rate with a limit calculated as the actual heat input weighted sum

of the assigned gas-firing allowable emission limit and the assigned liquid-firing allowable emission limit while operating on liquid and gaseous fuel concurrently.

(d) 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) 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) (10⁻⁶); Where:

$$\text{In-stack NO}_x = \text{NO}_x (\text{allowable}) \times (1 - \% \text{H}_2\text{O}/100) \times [20.9 - \% \text{O}_2 / (1 - \% \text{H}_2\text{O}/100)] / 5.9$$

 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)
 %H₂O = the volume percent water in the stack gases, as calculated from the manufacturer's data, or other data as approved by the Executive Director, at MW rating and ISO flow conditions.
 %O₂ = 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) 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. 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) 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 British thermal units (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 of the Texas Natural Resource Conservation Commission (TNRCC), and the emission point numbers as listed on the Maximum Allowable Emissions Rate Table of any applicable TNRCC permit for each unit;

(2) identification of all units subject to the emission specifications of §117.105 or §117.107 of this title (relating to Emission Specifications and Alternative System-Wide Emission Specifications);

(3) identification of all boilers and stationary gas turbines with a claimed exemption from the emission specifications of §117.105 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 a result of compliance with this regulation;

(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 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; and

(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 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-Wide Emission Specifications) shall be tested for nitrogen oxides (NO_x), carbon monoxide (CO), and oxygen (O₂) 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 specified in §117.510(4) 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 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 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) To comply with the 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 §117.113(b) of this title or PEMS certification testing required in

§117.213(c) of this title (relating to Continuous Demonstration of Compliance) is used to determine compliance with the NO_x emission limit.

(4) To comply with the CO emission limit in parts per million by volume on a rolling 24-hour average, CO emissions from a unit are monitored for 24 consecutive hours and the rolling 24-hour average emission rate is used to determine compliance with the CO emission limit. The rolling 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.

§117.113. Continuous Demonstration of Compliance.

(a) The owner or operator of each affected unit, as defined in §117.101 of this title (relating to Applicability), except for exempted units listed in §117.103 of this title (relating to Exemptions); peaking units as defined in §1.1 or §1.2 of Appendix E of 40 Code of Federal Regulations (CFR) Part 75, subject to the monitoring requirements of Appendix E; gas turbines monitored in accordance with subsection (f) of this section; and auxiliary boilers as defined in §117.10 of this title (relating to Definitions), monitored in accordance with subsection (d) of this section, shall install, calibrate, maintain, and operate an in-stack continuous emissions monitoring system (CEMS) to measure nitrogen oxides (NO_x) on an individual basis. The CEMS shall be installed and operating by the time of compliance with the emission limits specified in §117.105 of this title (relating to Emission Specifications) or §117.107 of this title (relating to Alternative System-Wide Emission Specifications). Each CEMS shall be able to use measured exhaust or fuel flow rate data obtained by a certified flow meter and be capable of measuring the following:

(1) NO_x;

(2) carbon monoxide (CO); and

(3) oxygen (O₂) or carbon dioxide (CO₂) as a diluent.

(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 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 (relating to Utility Electric Generation) 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 O₂ (or CO₂) 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 of this title. As an alternative to using PEMS to monitor O₂ (or CO₂), subsection (a) of this section or similar alternative method approved by the Executive Director and the United States Environmental Protection Agency may be used. Any PEMS for units subject to the requirements of 40 CFR 75 shall meet the requirements of §117.119 of this title (relating to Notification, Recordkeeping, and Reporting Requirements) and 40 CFR 75 Subpart E, §§75.40-75.48. Any PEMS for units not subject to the requirements of 40 CFR 75 shall meet the requirements of §117.119 of this title and either 40 CFR 75, Subpart E, §§75.40-75.48 or §117.213(c)(1)-(3) of this title.

(f) 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

(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 (relating to Exemptions) 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) After the initial demonstration of compliance required by §117.111 of this title (relating to Initial Demonstration of Compliance), compliance with either §117.105 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 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)

§117.119 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), 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

(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 as follows

(1) verbal notification of the date of any initial demonstration of compliance 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 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, 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 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) 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 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 "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. 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 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, 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, 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 certification testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring systems; and

(C) (No change.)

(6) the results of performance testing, including initial demonstration of compliance testing conducted in accordance with §117.111 of this title.

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.

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

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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 amendments and new sections are adopted under the Texas Health and Safety Code (Vernon 1992), 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

§117.203 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) of this title (relating to Initial Control Plan Procedures) and §117.213(d)(2) and (g) of this title (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. Any emission credits resulting from the operation of such replacement units shall be limited to the cumulative maximum rated capacity 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) demonstrated to operate less than 850 hours per year, based on a rolling 12-month average.

(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 purposes of calculating NO_x emission limitations under this section from existing permit limits, the following procedure shall be used:

(A) the limit explicitly stated in pound NO_x per MMBtu of heat input by permit provision (converted from low heat-

ing 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 million Btu 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.

(3) 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 or group of units subject to the provisions of this chapter, 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. Any emission credits resulting from the operation of such replacement units shall be limited to the cumulative maximum rated capacity of the units replaced. The inclusion of such new units is an optional method for complying with the emission limitations of §117.207 or §117.223 of this title. Compliance with this paragraph does not eliminate the requirement for new units to comply with Chapter 116 of this title.

(b) For boilers and process heaters 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 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 maximum rated capacity and its applicable limit in pound NO_x per MMBtu. 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) gas-fired boilers, as follows:

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

(B) low heat release boilers with preheated air greater than or equal to 200 degrees Fahrenheit and less than 400 degrees Fahrenheit, 0.15 lb NO_x /MMBtu of heat input;

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

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

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

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

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

(A) based on air preheat temperature:

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

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

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

(B) based on firebox temperature

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

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

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

(5) 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,

(6) for 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) 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 (O_2), dry basis.

(d) 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) 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 emissions in excess of the following limitations, based on a block one-hour average.

(1) for gas or liquid fuel-fired boilers or process heaters, 400 ppmv at 30% O₂, dry basis; or

(2) for wood fuel-fired boilers or process heaters, 775 ppmv at 7.0% O₂, dry basis.

(f) 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) 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, 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 Environmental Protection Agency at 40 Code of Federal Regulations Part 266, Subpart H;

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

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

§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 which oper-

ate 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 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) 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) 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, stationary gas turbines with a megawatt (MW) rating of greater than or equal to 10 MW and less than 10.0 MW, and boilers and industrial furnaces which are regulated as existing facilities by the United States Environmental Protection Agency (EPA) at 40 Code of Federal Regulations (CFR) Part 266, Subpart H Low annual capacity factor boilers, process heaters, gas turbines, or engines as defined in §117.10 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 the lower of the emission specifications determined in accordance with §117.205(a) of this title and the following, as applicable:

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

(5) boilers and industrial furnaces which are regulated as existing facilities by the EPA at 40 CFR 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 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 MW rating and International Standards Organization (ISO) flow conditions) and (46/28)(10⁻⁶), Where.

In-stack NO_x = NO_x (allowable) x (1 - %H₂O/100) x [20.9 - %O₂]/(1 - %H₂O/100)]/5.9

NO_x (allowable) = the applicable NO_x emission specification of §117.205(c) of this title (expressed in ppmv NO_x at 15% O₂, dry basis).

%H₂O = the volume percent of water in the stack gases, as calculated from the manufacturer's data, or other data as approved by the Executive Director, at MW rating and ISO flow conditions.

%O₂ = the volume percent of O₂ 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 MW rating and ISO flow conditions.

(4) The NO_x emission rate (in pounds per hour) for each affected gas-fired boiler and process heater firing gaseous fuel which contains more than 50% hydrogen (H₂) 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 H₂ content multiplier using this paragraph and §117.205(b)(6) 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% H₂ 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 H₂ volume in all gaseous fuel streams will be divided by the total gaseous fuel flow volume to determine the volume percent of H₂ in the fuel supply

§117.209. Initial Control Plan Procedures.

(a) The owner or operator of any major source of nitrogen oxides (NO_x) shall submit, for the approval of the Executive Director, an initial control plan for installation of NO_x emissions control equipment (if required in order to comply with the emission specifications of this subchapter) and demonstration of anticipated compliance with the applicable requirements of this subchapter. 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 or reference method analyzers or, as available, initial demonstration of compliance testing conducted in accordance with §117.211(e) or (f) of this title (relating to Initial Demonstration of Compliance) for NO_x, carbon monoxide (CO), and oxygen emissions while firing gaseous fuel (and as applicable, hydrogen (H₂) fuel for units which may fire more than 50% H₂ by volume) and liquid and/or solid fuel at the maximum rated capacity or as near thereto as practicable, for the units listed in this subsection. Previous testing documentation for any claimed test waiver as allowed by §117.211(d) of this title shall be submitted with the initial control plan. Any units which were not operated between June 9, 1993 and April 1, 1994 and do not have earlier representative emission test results available shall be tested and the results submitted to the TNRCC, with certification of the equipment's shutdown period, within 90 days after the date such equipment is returned to operation. Test results are required for the following units:

(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 capac-

ity 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) 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 50 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 of the Texas Natural Resource Conservation Commission (TNRCC), and the emission point numbers as listed on the Maximum Allowable Emissions Rate Table of any applicable TNRCC permit for each unit,

(2) identification of all units subject to the emission specifications of §117.205 of this title (relating to Emission Specifications), §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 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, 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) a list of any units which have been or will be retired, decommissioned, or shutdown and rendered inoperable after November 15, 1990 as a result of compliance with this regulation, indicating the date of occurrence or anticipated date of occurrence;

(8) 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, §117.207, or §117.223 of this title. For fluid catalytic cracking unit 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.

(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 are currently in operation, and if so, whether they have been installed as a result of the requirements of this chapter;

(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 subject to the emission limitations of §117.205 of this title (relating to Emission Specifications), §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 (O₂) emissions while firing gaseous fuel (and as applicable, hydrogen (H₂) fuel for units which may fire more than 50% H₂ 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 testing of these units shall be performed in accordance with the schedule specified in §117.520 of this title (relating to Compliance Schedule For Commercial, Institutional, and Industrial Combustion Sources).

(b) The initial demonstration of compliance tests required by subsection (a) of this section shall use the test methods referenced in subsection (e) or (f) of this section and shall be used for determination of initial compliance with either the emission limits of §117.205 of this title, 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) 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 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.

(d) Testing conducted prior to the effective date of this rule may be used to demonstrate compliance with the standards specified in §117.205, §117.207, or §117.223 of this title, or to satisfy the testing requirements of §117.209(b) of this title (relating to Initial Control Plan Procedures), if the owner or operator of an affected facility demonstrates to the Executive Director that the prior demonstration of compliance testing at least meets the requirements of subsections (a), (b), (c), (e), and (f) of this section. The Executive Director reserves the right to request demonstration of compliance testing or CEMS or PEMS performance evaluation at any time.

(e) Compliance with the emission specifications of §117.205, §117.207, or §117.223 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 the following test methods:

(1) Test Method 7E or 20 (40 Code of Federal Regulations (CFR), Part 60, Appendix A) for NO_x,

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

(4) Test Method 2 (40 CFR 60, Appendix A) for exhaust gas flow and following the measurement site criteria of Test Method 1, Section 2.1 (40 CFR 60, Appendix A), or Test Method 19 (40 CFR 60, Appendix A) for exhaust gas flow in conjunction with the measurement site criteria of Performance Specification 2, Section 3.2 (40 CFR 60, Appendix B);

(5) American Society of Testing and Materials (ASTM) Method D1945-91 or ASTM Method D3588-93 for fuel composition; ASTM Method D1826-88 or ASTM Method D3588-91 for calorific value, or alternate methods as approved by the Executive Director and the EPA; or

(6) EPA approved alternate test methods or minor modifications to these test methods as approved by the Executive Director, as long as the minor modifications meet the following conditions:

(A) the change does not affect the stringency of the applicable emission limitation, and

(B) the change affects only a single source or facility application.

(f) Initial compliance with the emission specifications of §117.205 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 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 boilers, process heaters, and gas turbines 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.

§117.213. Continuous Demonstration of Compliance.

(a) The owner or operator of units listed in this subsection and subject to the provisions of this undesignated head (relating to Commercial, Institutional, and Industrial Sources) shall install, calibrate, maintain, and operate an oxygen (O₂) monitor to measure exhaust O₂ concentration and a totalizing fuel flow meter to measure the fuel usage (for natural gas, refinery or process fuel gas, and fuel oil streams). The O₂ monitors and totalizing fuel flow meters shall be installed and operating by the time of compliance with the emission limits specified in §117.205 of this title (relating to Emission Specifications) or §117.207 of this title (relating to Alternative Plant-Wide Emission Specifications) for the following units:

(1) each commercial, institutional, and industrial boiler with a rated heat input greater than or equal to 100 million Btu per hour (MMBtu/hr) and less than 250 MMBtu/hr and an annual heat input greater than 2.2(10¹¹) Btu per year (Btu/yr); and

(2) each process heater with a rated heat input greater than or equal to 100 MMBtu/hr and less than 200 MMBtu/hr and an annual heat input greater than 2.2(10¹¹) Btu/yr.

(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 O₂ (or carbon dioxide (CO₂)) diluent monitor, and a totalizing fuel flow meter (for natural gas, refinery or process fuel gas, and fuel oil streams). The required continuous emissions monitoring systems (CEMS) and fuel flow meters will be used to measure NO_x, CO, and O₂ (or CO₂) 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, 3, and 4, and quality assurance procedures of 40 CFR 60, Appendix F, except that a cylinder gas audit may be performed in lieu of the annual relative accuracy test audit required in Section 5.1.1. 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 Amendments.

(1) The CEMS shall be installed by the time of compliance with the emission limits specified in §117.205 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 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) 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 (for natural gas, refinery or process fuel gas, and fuel oil streams). The required PEMS and fuel flow meters may be used to predict any or all of the variables of NO_x, CO, and O₂ (or CO₂) emissions and fuel flow for each affected unit and shall be used to demonstrate continuous compliance with the emission limitations of §117.205 and §117.207 of this title or §117.223 of this title (relating to Source Cap) as applicable. CEMS shall be used to monitor any of the variables of NO_x, CO, and O₂ (or CO₂) not monitored with PEMS. As an alternative to using PEMS to monitor O₂ (or CO₂), subsection (b) of this section or similar alternative method approved by the Executive Director, and the United States Environmental Protection Agency (EPA) 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 and the EPA 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; and

(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 O₂ or CO₂); and Performance Specification 4, and subsection 2.3 (pertaining to CO) at low, medium, and high levels of the key operating parameter affecting NO_x; and

(ii) conduct an F-test, a t-test, and a correlation analysis pursuant to 40 CFR 75, Subpart E at low, medium, and high levels of the key operating parameter affecting NO_x. Calculations shall be based on a minimum of 30 successive emission data points at each tested level which are either 15-minute averages, 20-minute averages, or hourly averages. The F-test shall separately be performed at each tested level while the t-test and the correlation analysis shall be performed using all data collected at the three tested levels; 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 paragraph (A) of this paragraph; and

(ii) for each unit and semiannually thereafter, conduct RATA pursuant to 40 CFR 60, Appendix B, Performance Specification 2, subsection 4.3 (pertaining to NO_x); Performance Specification 3, subsection 2.3 (pertaining to O₂ or CO₂); and Performance Specification 4, subsection 2.3 (pertaining to CO) at normal load operations. RATA may be performed on an annual basis rather than on a semiannual basis if the relative accuracy during the

previous audit for the NO_x, CO, and O₂ (or CO₂) monitors is less than or equal to 7.5%; and

(iii) for each alternative fuel fired in a unit, the PEMS shall be certified in accordance with subparagraph (A) of this paragraph unless the alternative fuel effects on NO_x, CO, and O₂ (or CO₂) emissions were addressed in the model training process.

(d) In addition to the totalizing fuel flow meters specified in subsections (a), (b), and (c) of this section, the owner or operator shall install and maintain totalizing fuel flow meters (for natural gas, refinery or process fuel gas, and fuel oil streams) 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 EPA 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, operated 850 or more hours per year;

(4) stationary gas turbines with a MW rating greater than or equal to 1.0 MW and less than 30.0 MW operated more than 850 hours per year; and

(5) supplemental fuel fed to fluid catalytic cracking unit boilers.

(e) The owner or operator of any stationary gas engine subject to the emission specifications of §117.205 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) 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 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) 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 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 or §117.207 of this title. Steam or water injection control algorithms are subject to Executive Director approval.

(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.

(h) The owner or operator of any gas-fired boiler or process heater firing gaseous fuel which contains more than 50% hydrogen (H₂) by volume, shall sample, analyze, and record every three hours the fuel gas composition to comply with the emission specifications of §117.205 or §117.207 of this title. The total H₂ 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 H₂ 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 D2650-83, or other methods which are demonstrated to the satisfaction of the Executive Director and the EPA to be equivalent. A gaseous fuel stream containing 99% H₂ 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 be performed initially using one of the test methods in this subsection to demonstrate that the gaseous fuel stream is 99% H₂ by volume or greater.

(2) The process flow diagram of the process unit which is the source of the H₂ shall be supplied to the TNRCC to illustrate the source and supply of the hydrogen stream.

(3) (No change.)

(i) After the initial demonstration of compliance required by §117.211 of this title, compliance with either §117.205 or §117.207 of this title, as applicable, shall be determined by the methods required in this section. For enforcement purposes, the Executive Director may also use other TNRCC compliance methods to determine whether the source is in compliance with applicable emission limitations.

(j) 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) of this title (relating to Final Control Plan Procedures).

(k) The owner or operator of any low annual capacity factor boiler, process heater, stationary gas turbine, or stationary internal combustion engine, as defined in §117.10 of this title, shall notify the Executive Director within seven days if the Btu/yr or hour-per-year (hr/yr) limit specified in §117.10 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 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.

§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) 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 Alterna-

tive 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) of this title. The owner or operator shall:

(1) assign to each affected boiler or process heater 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 horsepower-hour on a block one-hour average;

(4) submit a list to the Executive Director for approval of the maximum allowable NO_x emission rates identified in paragraphs (1)-(3) 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) submit a list summarizing the results of testing of each unit at maximum rated capacity, in accordance with the requirements of §117.211(e), (f)(2), and (f)(3) 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 requirements of §117.223 of this title by the date specified in §117.520(6) of this title.

§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), 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; and the date, time, and duration of the event.

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

(1) verbal notification of the date of any initial demonstration of compliance 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 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 results shall be submitted in accordance with the compliance schedule 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 post-marked 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) of this title, excess emissions are computed as each one-hour period during which the average steam or water injection rate is below the level defined by the control algorithm as necessary to achieve compliance with the applicable emission limitations in §117.205 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 "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. 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 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) of this title (relat-

ing to Operating Requirements) and the biennial emission testing required for demonstration of emissions compliance in accordance with §117.213(e) 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 demonstration of compliance 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, 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.)

§117.223. 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 of this title (relating to Alternative Plant-Wide Emission Specifications).

(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:

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

Where: i = each emission unit in the emission cap

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

H_i = The actual historical average of the daily heat input for each unit included in the source cap, in million British thermal units (MMBtu) per day, 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 average daily heat input for that period. All sources included in the source cap shall use the same 24 consecutive month period. If sufficient historical data are not available for this calculation, the Executive Director may approve another method for calculating H_i .

$R_i =$ (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 requirements, or emission units that have been subject to a New Source Performance Standard requirement of 40 CFR 60 prior to June 9, 1993, R_i is the lowest of the actual emission rate or all

applicable federally enforceable emission limitations as of June 9, 1993, in pounds (lb) NO_x per MMBtu, that apply to emission unit *i* in the absence of trading. All calculations of emission rates shall presume that emission controls in effect on June 9, 1993 are in effect for the two-year period used in calculating the actual heat input.

(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, in lb NO_x/MMBtu, that applies to emission unit *i* in the absence of trading.

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

$$\text{NO}_x \text{ maximum daily cap} \quad (\text{lb/day}) = \sum_{i=1}^N (H_{M_i} \times R_i)$$

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

H_{M_i} = The maximum daily 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 United States Environmental Protection Agency's proposed Economic Incentive Program rules for offset ratios for trades between RACT and non-RACT sources, as published in the February 23, 1993, *Federal Register* (58 FR 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 nitro-

gen oxides (NO_x) monitor, carbon monoxide (CO) monitor, an oxygen (O₂) (or carbon dioxide (CO₂)) 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 O₂ (or CO₂) 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 O₂ (or CO₂) 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 emis-

sion 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 subsection (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 average 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) 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) A unit which has been shut-down and rendered inoperable after June 9, 1993, but not permanently retired, should be identified in the initial control plan and may be included in the source cap.

(i) 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 subsection (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.

(j) 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 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 May 25, 1994

TRD-9441678 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource
Conservation
Commission

Effective date June 23, 1994

Proposal publication date January 4, 1994
For further information, please call (512) 239-0615

Subchapter C. Acid Manufacturing

Adipic Acid Manufacturing

• 30 TAC §§117.311, 117.313, 117.319, 117.321

The amendments are adopted under the Texas Health and Safety Code (Vernon 1992), 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.

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.

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Director, Legal Division
Texas Natural Resource
Conservation
Commission

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For further information, please call (512) 239-0615

Nitric Acid Manufacturing- Ozone Nonattainment Areas

• 30 TAC §§117.411, 117.413, 117.419, 117.421

The amendments are adopted under the Texas Health and Safety Code (Vernon 1992), 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.

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.

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TRD-9441680 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource
Conservation
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For further information, please call (512) 239-0615

Subchapter D. Administrative Provisions

• 30 TAC §§117.510, 117.520, 117.530, 117.540, 117.560

The amendments are adopted under the Texas Health and Safety Code (Vernon 1992), 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.

§117.510 Compliance Schedule For Utility Electric Generation All persons affected by the provisions of the undesignated head in Subchapter B of this chapter (relating to Utility Electric Generation) 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) according to the following schedules

(A) for equipment and software required pursuant to 40 Code of Federal Regulations (CFR) 75, no later than January 1, 1995; and

(B) for equipment and software not required pursuant to 40 CFR 75, no later than May 31, 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 no later than May 31, 1995;

(4) for units operating without CEMS or PEMS, 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 by April 1, 1994, or as early as practicable, but in no case later than May 31, 1995;

(5) for units operating with CEMS or PEMS and complying with the NO_x emission limit on a rolling 30-day average, conduct the applicable tests for the initial demonstration of compliance as specified in §117.111 of this title and submit the results of the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.113 of this title (relating to Continuous Demonstration of Compliance) no later than July 31, 1995,

(6) 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 §117.111 of this title and submit the results of the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.113 of this title by May 31, 1995,

(7) 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

(8) 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 in Subchapter B of this chapter (relating to Commercial, Institutional, and Industrial Sources) 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) submit a plan for compliance in accordance with §117.209 of this title (relating to Initial Control Plan Procedures) according to the following schedule:

(A) for major sources of nitrogen oxides (NO_x) which have units subject to emission specifications under this chapter, submit an initial control plan for all such units no later than April 1, 1994,

(B) for major sources of NO_x which have no units subject to emission specifications under this chapter, submit an initial control plan for all such units no later than September 1, 1994,

(C) for major sources of NO_x subject to either subparagraphs (A) or (B) of this paragraph, submit the information required by §117.209(c), (6), (7), and (9) of this title no later than September 1, 1994,

(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 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 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)

§117.540 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) 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 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 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 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 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) should be consulted for the method of requesting Commission 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 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), §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 (relating to Initial Control Plan Procedures). 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 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.

(c) The Executive Director may approve the use of a mobile source emission reduction credit (MERC) to achieve NO_x emissions reductions equivalent to those required by this chapter, on an interim basis from May 31, 1995 to the date of final compliance, for a period not to exceed 36 months. Any plan involving the use of a MERC may be approved if the Executive Director determines that it conforms to the provisions of §117.570 of this title (relating to Trading) and §114.29 of this title (relating to Accelerated Vehicle Retirement Program). Executive Director approval does not necessarily constitute satisfaction of all

federal requirements, nor eliminate the need for approval by the EPA.

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 May 25, 1994.

TRD-9441681 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource
Conservation
Commission

Effective date: June 23, 1994

Proposal publication date: January 4, 1994

For further information, please call: (512) 239-0615

◆ ◆ ◆
• 30 TAC §117.580

The repeal is adopted under the Texas Health and Safety Code (Vernon 1992), 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.

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 May 25, 1994.

TRD-9441675 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource
Conservation
Commission

Effective date: June 23, 1994

Proposal publication date: January 4, 1994

For further information, please call: (512) 239-0615

◆ ◆ ◆
Chapter 334. Underground and
Aboveground Storage Tanks

Suchapter A. General Provi-
sions

• 30 TAC §334.14

The Texas Natural Resource Conservation Commission (TNRCC) adopts new §334.14, concerning the adoption of a memorandum of understanding (MOU) between the Attorney General of Texas and the Texas Natural Resource Conservation Commission, with changes to the proposed text as published in the March 4, 1994, issue of the *Texas Register* (19 TexReg 1535).

The MOU complies with the Environmental Protection Agency's (EPA's) requirements as delineated in 40 Code of Federal Regulations, §281.42. This federal rule on state program approval requires states to provide for public intervention in the state civil enforcement process.

The TNRCC received one comment from Exxon Company, USA, who recommended

that the word "that" be deleted from the beginning of paragraphs 5, 6, 7, 8 and 9 for ease in reading and interpretation. The TNRCC has made this change as suggested so that each paragraph in the memorandum of understanding (MOU) is consistent and easier to understand.

The new section is adopted under the Texas Water Code, §5.103 (Vernon 1988), which provides the TNRCC with the authority to adopt any rules necessary to carry out the powers and duties under the Texas Water Code and other laws of this state, and Texas Water Code, and other laws of this state.

The section is also adopted under the Texas Water Code §5.104 (Vernon 1988), which provides the requirements for a memorandum of understanding between state agencies when the responsibilities addressed are not otherwise specified in the Texas Water Code.

§334.14. Memorandum of Understanding
Between the Attorney General of Texas and
the Texas Natural Resource Conservation
Commission.

(a) Applicability. This MOU applies to civil enforcement proceedings and complaints filed on storage tanks subject to this chapter. Pursuant to the Texas Water Code, §5.104, the Texas Natural Resource Conservation Commission adopts a MOU between the Texas Natural Resource Conservation Commission (TNRCC) and the Attorney General of Texas. The MOU contains the TNRCC's and the Attorney General's interpretation concerning intervention in the civil enforcement process under the Texas Water Code. This section applies as follows.

(1) The Texas Water Commission (now the Texas Natural Resource Conservation Commission, TNRCC) was designated as the state agency for the regulation of underground storage tanks by enactment of Senate Bill 779 of the 70th Texas Legislature, 1987.

(2) The Texas Water Code authorizes the Texas Natural Resource Conservation Commission to have instituted civil suits for injunctive relief and the assessment and recovery of a civil penalty, whenever it appears that a person has violated, or is violating or threatening to violate, any provision of the Texas Water Code, or of any rule, permit, or other order of the Texas Natural Resource Conservation Commission.

(3) The Texas Water Code provides that at the request of the executive director of the Texas Natural Resource Conservation Commission, the Attorney General of Texas shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover a civil penalty, or for both injunctive relief and penalty.

(4) Federal regulations promulgated by the United States Environmental Protection Agency pursuant to the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976. Subtitle I, require that any state agency administering the Underground Storage Tank Program authorized under that Act provide for public participation in the state enforcement process.

(5) All citizen complaints filed, either orally or in writing, that relate to underground storage tanks will be investigated timely and thoroughly by the Texas Natural Resource Conservation Commission. Citizen complaint responses will be first initiated by attempting to establish telephone contact with the complainant within 48 hours of receipt of the complaint, and concurrently beginning whatever records review is necessary. Upon completion of the investigation, the complainant will be informed in writing of the results. In addition, the complainant will be apprised of the ultimate resolution of the problem. The executive director of the Texas Natural Resource Conservation Commission shall keep a complaint file in accordance with §337.4 of this title (relating to Enforcement)

(6) Notice of proposed settlements of civil enforcement actions that relate to underground storage tanks will be published by the Attorney General of Texas in the *Texas Register* (except where immediate action is necessary to adequately protect human health and the environment) and that opportunity will be provided for the public to comment on such proposed settlements

(7) Nothing in this agreement shall be construed to limit or impair the Attorney General's right to control and direct litigation on behalf of the state

(8) The Attorney General will not oppose intervention where permissive intervention may be authorized by statute, rule, or regulation into any civil suit involving the State of Texas relating to violations of the Underground Storage Tank Program by any citizen having an interest which is or may be adversely affected

(9) The Attorney General, on behalf of the State of Texas, will consent to a proposed judgment in an action to enjoin violations of the Underground Storage Tank Program only after the publication of notice which provides at least 30 days for public comment on the proposed judgment prior to its entry by the court, provided that the Attorney General may permit an exception to the 30-day comment period if a settlement or judgment is required to avoid delays that would adversely affect public health or the environment.

(h) Execution by all signatories
After execution by all signatories, this

agreement shall remain in effect until rescinded by formal action of either agency.

(c) Effective date The effective date of the memorandum of understanding is the effective date of this rule adoption.

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 June 3, 1994

TRD-9441796 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource
Conservation
Commission

Effective date: June 24, 1994

Proposal publication date March 4, 1994

For further information, please call (512) 239-6087

◆ ◆ ◆
**TITLE 37. PUBLIC
SAFETY AND CORREC-
TIONS**

**Part XIII. Texas
Commission on Fire
Protection**

**Chapter 421. Standards for
Certification**

• 37 TAC §421.3

The Texas Commission on Fire Protection adopts an amendment to §421.3, concerning minimum standards set by the commission, without changes to the proposed text as published in the March 8, 1994, issue of the *Texas Register* (19 TexReg 1631)

The justification for the section will be that the public will be assured that testing of skills that are required to function safely and effectively as fire protection personnel will not be compromised

The change adds functional position descriptions for structural fire protection personnel and aircraft fire fighting and rescue personnel. The descriptions identify tasks and essential job functions necessary for fire protection personnel to perform safely and efficiently in order to justify examination procedures which test the capability of examinees to perform those functions

No comments were received regarding adoption of the amendment

The amendment is adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and the Texas Government Code, §419.022(a)(5), which provides the commission with authority to establish minimum standards for admission to employment as fire protection personnel and for advanced or specialized fire protection personnel positions

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 June 3, 1994.

TRD-9441811 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: June 24, 1994

Proposal publication date March 8, 1994

For further information, please call (512) 918-7184

◆ ◆ ◆
Chapter 423. Fire Suppression
**Subchapter B. Minimum Stan-
dards for Aircraft Crash and
Rescue Fire Protection Per-
sonnel**

• 37 TAC §423.203

The Texas Commission on Fire Protection adopts an amendment to §423.203, concerning minimum standards for basic aircraft rescue and fire protection personnel certification, without changes to the proposed text as published in the March 8, 1994, issue of the *Texas Register* (19 TexReg 1632)

The justification for the section will be that potential applicants for certification from other jurisdictions will have specific guidelines by which the commission staff will determine equivalency and local fire departments can eliminate duplication of training costs.

The amendment provides guidelines for the evaluation of military and out-of-state training for aircraft rescue and fire protection personnel consistent with similar guidelines for structure fire fighters

No comments were received regarding adoption of the amendment

The amendment is adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; the Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions

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 June 3, 1994

TRD-9441812 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: June 24, 1994

Proposal publication date March 8, 1994

For further information, please call (512) 918-7184

◆ ◆ ◆
Chapter 425. Fire Protection
Instructor

Subchapter A. Fire Service Instructor Certification

- 37 TAC §§425.1, 425.3, 425.5, 425.7

The Texas Commission on Fire Protection adopts the repeal of §§425.1, 425.3, 425.5, and 425.7, concerning Fire Service Instructor Certification, without changes to the proposed text as published in the March 8, 1994, issue of the *Texas Register* (19 TexReg 1634)

The justification for the new sections will be that potential applicants for certification from other jurisdictions will have specific guidelines by which the commission staff will determine equivalency and local fire departments can eliminate duplication of training costs

The repealed sections are replaced by new sections that provide guidelines for the evaluation of military and out-of-state training for fire service instructor certification consistent with similar guidelines for structure fire fighters and rennumbers the repealed sections without substantive change for administrative convenience.

No comments were received regarding adoption of the repeals

The repeals are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties, and Texas Government Code, §419.028(b)(3), which provides the commission the authority to certify persons as qualified fire protection personnel instructors under conditions the commission prescribes

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 June 3, 1994

TRD-9441813 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: June 24, 1994

Proposal publication date March 8, 1994

For further information, please call (512) 918-7184

- ◆ ◆ ◆
- 37 TAC §§425.1, 425.3, 425.5, 425.7, 425.9

The Texas Commission on Fire Protection adopts new §§425.1, 425.3, 425.5, 425.7, and 425.9, concerning Fire Service Instructor Certification, without changes to the proposed text published in the March 8, 1994, issue of the *Texas Register* (19 TexReg 1635)

The justification for the new sections will be that potential applicants for certification from other jurisdictions will have specific guidelines by which the commission staff will determine equivalency and local fire departments can eliminate duplication of training costs

In addition to providing guidelines for the evaluation of military and out-of-state training for fire service instructor certification consistent with similar guidelines for structure fire fighters, the new subchapter retains the text establishing certification requirements for various levels of fire service instructor certification, but rennumbers the sections for administrative convenience

No comments were received regarding adoption of the new sections

The new sections are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties, and Texas Government Code, §419.028(b)(3), which provides the commission the authority to certify persons as qualified fire protection personnel instructors under conditions the commission prescribes

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 June 3, 1994

TRD 9441814 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date June 24, 1994

Proposal publication date March 8, 1994

For further information, please call (512) 918-7184

◆ ◆ ◆
Subchapter C. Fire Education
Specialist Certification

- 37 TAC §§425.301, 425.303, 425.305, 425.307

The Texas Commission on Fire Protection adopts the repeal of §§425.301, 425.303, 425.305, and 425.307, concerning Fire Education Specialist Certification, without changes to the proposed text as published in the March 8, 1994, issue of the *Texas Register* (19 TexReg 1636)

The justification for the new sections replacing the repealed sections will be that potential applicants for certification from other jurisdictions will have specific guidelines by which the commission staff will determine equivalency and local fire departments can eliminate duplication of training costs

The repealed sections are replaced by new sections that provide guidelines for the evaluation of military and out-of-state training for fire education specialist certification consistent with similar guidelines for fire service instructors and rennumbers the repealed sections without substantive change for administrative convenience

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.028(b)(3), which provides the commission the authority to certify persons as qualified fire protection personnel instructors under conditions the commission prescribes

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 June 3, 1994

TRD-9441815 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date June 24, 1994

Proposal publication date March 8, 1994

For further information, please call (512) 918-7184

- ◆ ◆ ◆
- 37 TAC §§425.301, 425.303, 425.305, 425.307, 425.309

The Texas Commission on Fire Protection adopts new §§425.301, 425.303, 425.305, and 425.307, concerning Fire Education Specialist Certification, without changes to the proposed text as published in the March 8, 1994, issue of the *Texas Register* (19 TexReg 1637)

The justification for the sections will be that potential applicants for certification from other jurisdictions will have specific guidelines by which the commission staff will determine equivalency and local fire departments can eliminate duplication of training costs

In addition to providing guidelines for the evaluation of military and out-of-state training for fire education specialist certification consistent with similar guidelines for fire service instructors, the new subchapter retains the text establishing certification requirements for various levels of fire education specialist certification, but rennumbers the sections for administrative convenience

No comments were received regarding adoption of the new sections

The new sections are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.028(b)(3), which provides the commission the authority to certify persons as qualified fire protection personnel instructors under conditions the commission prescribes

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 June 3, 1994

TRD-9441816

Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: June 24, 1994

Proposal publication date: March 8, 1994

For further information, please call (512)
918-7184

◆ ◆ ◆
Subchapter D. Associate In-
structor Certification

• 37 TAC §425.401

The Texas Commission on Fire Protection adopts an amendment §425.401, concerning minimum standards for associate instructor certification, with change to the proposed text as published in the March 8, 1994, issue of the *Texas Register* (19 TexReg 1638) The change is a grammatical change to remove a dangling participle in subsection (d)(1)

The justification for the section will be that potential applicants for certification from other jurisdictions will have specific guidelines by which the commission staff will determine equivalency and local fire departments can eliminate duplication of training costs

The amendment provides guidelines for the evaluation of military and out-of-state training for associate instructor certification consistent with similar guidelines for fire service instructors and deletes an obsolete form number

No comments were received regarding adoption of the amendment

The amendment is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties, and Texas Government Code, §419.028(b)(3), which provides the commission the authority to certify persons as qualified fire protection personnel instructors under conditions the commission prescribes

§425.401. Minimum Standards For Associate Instructor Certification

(a) The Associate Instructor certificate is designed for individuals that are not full-time, full paid fire protection personnel, employees of a department of a state agency, an educational institution or political subdivision-devoting full time to fire service training or related responsibilities and who do not qualify for instructor certification in the other instructor categories

(b) An out-of-state or military instructor training program may be accepted by the commission as meeting the training and experience requirements for certification for evaluation and found to be equivalent to or to exceed the commission approved instructor course for that particular level of fire service instructor certification

(c) In order to be certified as an Associate Instructor the individual must

(1) have completed a commission approved "Methods of Teaching" course consisting of at least 40 class hours or three college semester hours, and

(2) submit an instructor application approved by a fire chief, training officer or coordinator, and

(3) submit an instructor application, with documentation to verify the aforementioned items to the commission for processing

(d) Approved Areas of Instruction Shall Include

(1) Individuals shall provide acceptable proof of training at the time of application in each basic and advanced subject area in which they desire to provide instruction Individuals must have completed the course they are seeking to instruct or have completed comparable training in the same subject area Proof of training in a subject need be submitted only once The following items are acceptable for proof of training

(A) submit a copy of a commission approved certificate of completion bearing the course approval number and course identification number,

(B) college semester courses of equivalent training identified on college transcripts, or

(C) provide complete written documentation of equivalent training for staff review

(2) individuals desiring to instruct in basic and advanced subjects they have not previously been approved for, must meet the requirements of §425.301(c) (1) of this title (relating to Minimum Standards for Basic Fire Education Specialist Certification) for acceptable proof of training Proof of training shall be attached and submitted with a Course/School Prior Approval Form when making application for course approval by the commission

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 June 3, 1994

TRD-9441817

Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: June 24, 1994

Proposal publication date: March 8, 1994

For further information, please call (512)
918-7184

Chapter 429. Minimum
Standards for Fire Inspectors

• 37 TAC §429.3

The Texas Commission on Fire Protection adopts an amendment to §429.3 concerning minimum standards for Basic Fire Inspector certification, with changes to the proposed text as published in the March 8, 1994, issue of the *Texas Register* (19 TexReg 1639) The change deletes the words "on campus" in describing resident National Fire Academy courses, to allow credit for resident courses delivered "off campus" but not for "hand-off" NFA courses

The justification for amending the section will be that potential applicants for certification will have an additional source of training required for certification as fire inspection personnel

The amendment to the section adds National Fire Academy resident courses as an alternative to the Basic Fire Inspection Personnel Curriculum for basic fire inspector certification The new language requires completion of the core course, Fire Inspection Principles (80 hours), and requires an additional two 80 hour courses from a selection of five specified courses

No comments were received regarding adoption of the amendment

The amendment is adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties, and the Texas Government Code, §419.022(a)(5), which provides the commission with authority to establish minimum standards for admission to employment as fire protection personnel and for advanced or specialized fire protection personnel positions

§429.3 Minimum Standards for Basic Fire Inspector Certification

(a) The effective date of this section shall be January 1, 1994 Training programs that are intended to satisfy the requirements of this section, that are started after the effective date of this section, must meet the curriculum, competencies, hours and examination requirements of this section

(b) In order to be certified by the commission as a Basic Fire Inspector an individual must

(1) complete a commission approved fire inspection program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification) within one year from the date of initial appointment to the position An approved basic fire inspection program shall consist of one of the following

(A) Completion of the commission approved Basic Fire Inspector Curriculum as specified in Chapter 4, of the commission's document titled "Commission Certification Curriculum Manual," as adopted by reference in §443.7 of this title, (relating to Basic Fire Inspector Curriculum); or

(B) Successful completion of an out of state training program which has been submitted to the commission for evaluation and found to meet the minimum requirements as listed in the Basic Fire Inspector Curriculum as specified in Chapter 4, of the commission's document titled "Commission Certification Curriculum Manual" as adopted by reference in §443.7 of this title (relating to Basic Fire Inspector Curriculum); or

(C) Possession, as a minimum, of an Associate Degree from an accredited college or university and successful completion of the following college courses: Fundamentals of Fire Protection-3 semester hours; Fire Protection Systems-3 semester hours; Fire Prevention-3 semester hours; Building Code-3 semester hours; Building Construction-3 semester hours; Hazardous Materials I-3 semester hours; Fundamentals of Speech-3 semester hours; TOTAL SEMESTER HOURS 21. NOTE- Building Code and Building Construction may be combined into a single 3 semester hour class. If this is the case, the total semester hours may be reduced to 18, or

(D) successful completion of a minimum of 240 hours of instruction in a National Fire Academy resident program for Fire Inspection. The resident program must include the basic course, Fire Inspection Principles (80 hours), and a minimum of 160 hours of instruction in at least two of the following courses:

- (i) Fire Prevention Specialist II (80 hours); or
- (ii) Plans Review for Inspectors (80 hours); or
- (iii) Code Management. A Systems Approach (80 hours); or
- (iv) Management of Fire Prevention Programs (80 hours); or
- (v) Strategic Analysis of Fire Prevention Programs (80 hours).

(c) National Fire Academy resident courses of equal or greater class hours that replace a course discontinued by the National Fire Academy may be used towards requirements for certification in place of the discontinued course.

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 June 3, 1994

TRD-9441818

Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date June 24, 1994

Proposal publication date. March 8, 1994

For further information, please call: (512) 918-7184

◆ ◆ ◆
Chapter 437. Fees

• **37 TAC §437.3**

The Texas Commission on Fire Protection adopts an amendment to §437.3, concerning certification fees, with changes to the proposed text as published in the December 14, 1993, issue of the *Texas Register* (18 TexReg 9293). The changes include the part-time fire protection employees in the certification fees and delete the "limited" categories of certification (which have been repealed) from the list of minimum level certification

The amendment is justified by administrative convenience of standardized time periods for submission of information to the commission, consistent with rules in other chapters of this title. The change applies certification fees to part-time fire protection employees is necessary to clarify fee requirements

The amendment changes from ten days to 14 calendar days in §437.3(h) and (i) the time period required for notice of re-employment. The result of enforcing this section will be a clearer understanding by regulated entities of time periods for reporting information and certification fees

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties, and Texas Government Code, §419.026, which authorizes the commission to establish fees relating to certification and basic certification tests

§437.3. Fees Certification

(a) A \$20 certification fee is required for each certificate issued by the commission, including certificates for part-time fire protection employees

(b)-(d) (No change.)

(e) The following are minimum level certificates as defined by the Government Code, Executive Branch, Chapter 419 and Commission rules as being required as a condition of assignment to the respective discipline

(1) Basic Structural Fire Protection Personnel;

(2) Basic Aircraft Crash and Rescue Fire Protection Personnel,

(3) Marine Fire Protection Personnel,

(4) Fire Inspector,

(5) Fire and Arson Investigator;

(6) Arson Investigator/Law Enforcement Personnel;

(7) Part-time Fire Protection Employees

(f)-(g) (No change)

(h) If a person who was placed on the Commission's inactive status list re-enters the fire service, with a break in service of less than one year, the employing entity must

(1) within 14 calendar days of employment, notify the Commission that the individual has been employed;

(2) within one year from the date of employment, make application for certification of the individual and pay the certification fee as required by subsection (a) of this section (concerning certification fees). Upon payment of the required fees, the certificates previously held by the individual, for which he or she continues to qualify, will be re-issued. The employing entity has the option of making the application and paying the fee at any time within the one-year period.

(i) If a person who was placed on the Commission's inactive status list re-enters the fire service, with a break in service of one year or longer, the employing entity must:

(1) within 14 calendar days of employment, notify the Commission that the individual has been employed;

(2) prior to assignment to any fire suppression duties, obtain documented proof that the individual has passed the written proficiency test as required by §439.17 of this title (relating to Testing for Proof of Proficiency) within one calendar year prior to the date of employment; and

(3) within one year from the date of employment, make application for certification of the individual and pay the certification fee as required by subsection (a) and (b) of this section (concerning certification fees). Upon payment of the required fees, the certificates previously held by the individual for which he or she continues to qualify, will be re-issued. The employing entity has the option of making the application and paying the fee at any time within the one-year period

(j)-(k) (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 June 3, 1994.

TRD-9441819 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: June 24, 1994

Proposal publication date: December 14, 1993

For further information, please call: (512) 918-7184

Chapter 439. Examinations for Certification

• 37 TAC §439.7

The Texas Commission on Fire Protection adopts an amendment to §439.7, concerning examination procedures, without changes to the proposed text as published in the March 8, 1994, issue of the *Texas Register* (19 TexReg 1640).

The justification for the amended section will be that potential applicants for certification receive necessary information about testing procedures and that the examination is administered in a consistent manner.

The amendment adds new subsections which distinguish between pilot questions on a certification examination and active questions and prescribe limits to the number of questions and the length of time allowed to take the written examination.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; Government Code, §419.032(b), concerning basic certification examinations; and Government Code, §419.034 (d) and (e), concerning proficiency examinations.

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 June 3, 1994

TRD-9441820 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: June 24, 1994

Proposal publication date: March 8, 1994

For further information, please call: (512) 918-7184

Chapter 443. Adoption by Reference

• 37 TAC §§443.1, 443.3, 443.7, 443.9

The Texas Commission on Fire Protection adopts amendments to §443.1, concerning the Basic Fire Suppression Curriculum, §443.3 concerning the Basic Aircraft Rescue and Fire Protection Personnel Curriculum, §443.7, concerning the Basic Fire Inspection Personnel Curriculum, and §443.9, concerning the Basic Fire and Arson Investigation Personnel Curriculum, without changes to the proposed text as published in the March 8, 1994, issue of the *Texas Register* (19 TexReg 1775)

The justification for the sections will be a clearer understanding in the fire service of that portion of the curricula that is subject to written and performance testing and more effective evaluation of fire service training

The amended sections reflect a change in the format of all of the chapters of the curriculum manual to allow written examination questions to be drawn from all competencies, whether or not the competency is also subject to performance skills testing. In addition, the amended sections include a new address for the commission

No comments were received regarding adoption of the amendments

The amendments are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties, and Texas Government Code, §419.002, which provides the commission with authority to establish minimum training standards for fire protection personnel

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 June 3, 1994

TRD-9441821 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: June 24, 1994

Proposal publication date: March 15, 1994

For further information, please call (512) 918-7184

Chapter 471. Standards for Volunteer Certification

• 37 TAC §471.5

The Texas Commission on Fire Protection adopts an amendment to §471.5 concerning standards for volunteer certification, without changes to the proposed text as published in the March 8, 1994, issue of the *Texas Register* (19 TexReg 1640)

The justification for this section is an increase in accessibility for recognized training for volunteer fire fighters

Section 471.5 conforms the definition of "approved training" to substantive rules which allow additional alternatives for training to be approved for use toward any level of certification

No comments were received regarding adoption of the amendment

The amendment is adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties, and §419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification 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 June 3, 1994

TRD 9441822 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: June 24, 1994

Proposal publication date: March 8, 1994

For further information, please call (512) 918 7184

Chapter 475. Volunteer Fire Fighter Instructor and Instructor Training

• 37 TAC §475.9

The Texas Commission on Fire Protection adopts the repeal of §475.9 concerning minimum standards for volunteer instructional specialist certification, without changes to the proposed text as published in the March 8, 1994, issue of the *Texas Register* (19 TexReg 1640)

The justification for this section will be an increase in the number of certified instructors available for volunteer fire fighters.

The repealed section will be replaced by a new section pertaining to volunteer associate instructor certification, which conforms the volunteer instructor rules to similar rules for instructors of paid fire protection personnel

No comments were received regarding adoption of the repeal

The repeal is adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties, and §419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and

testing procedures for the volunteer certification 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 June 3, 1994.

TRD-9441823 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: June 24, 1994

Proposal publication date: March 8, 1994

For further information, please call (512) 918-7184

◆ ◆ ◆
• 37 TAC §475.9

The Texas Commission on Fire Protection adopts new §475.9, concerning minimum standards for volunteer associate instructor certification, without changes to the proposed text as published in the *Texas Register* (19 TexReg 1641).

The justification for this section will be an increase in the population of certified instructors for the volunteer fire fighters.

The new §475.9 replaces the instructional specialist certification and is designed for individuals who do not qualify for instructor certification in other instructor categories. The new section conforms the volunteer instructor rules to similar rules for instructors of paid fire protection personnel.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and §419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification 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 June 3, 1994

TRD-9441824 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: June 24, 1994

Proposal publication date: March 8, 1994

For further information, please call: (512) 918-7184

Chapter 477. Volunteer Fire Fighter Training Facilities

• 37 TAC §477.1, 477.9, 477.11

The Texas Commission on Fire Protection adopts amendments to §§477.1, 477.9, and 477.11, concerning volunteer fire fighter training facilities, without changes to the proposed text as published in the March 8, 1994, issue of the *Texas Register* (19 TexReg 1641)

The justification for the sections will be a more efficient organization of the requirements for training facility resources and minimum acceptable levels of safety for live fire training evolutions.

Section 477.1 replaces the language requiring a "burn building" with language requiring a "building suitable for live fire training." The change is intended to clarify the resource requirements to permit a training facility to utilize a specially constructed burn building, as well as an acquired structure that is suitable for live fire training.

Section 477.9(g) adds the words "where applicable", dealing with commission approval for courses when it is needed. The change in §477.9(g) also changes the signature needed from certified instructor to chief training officer/coordinator. The changes to §477.11 clarifies the language dealing with certificates issued under Chapter 425 and clarifies the definition of Guest Instructors.

No comments were received regarding adoption of the amendments

The amendments are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and §419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification 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 June 3, 1994.

TRD-9441825 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: June 24, 1994

Proposal publication date: March 8, 1994

For further information, please call. (512) 918-7184

◆ ◆ ◆
Chapter 478. Volunteer Fire
Inspector

• 37 TAC §§478.1, 478.3, 478.5, 478.7, 478.9, 478.11

The Texas Commission on Fire Protection adopts new §§478.1, 478.3, 478.5, 478.7,

478.9, and 478.11 concerning volunteer fire inspectors, without changes to the proposed text as published in the March 15, 1994, issue of the *Texas Register* (19 TexReg 1642).

The justification for this section will be an increase in fire prevention and protection from volunteer personnel.

These new sections will allow the volunteer fire fighters to obtain a volunteer fire inspector certification on a voluntary basis. The requirements for basic and advanced levels of volunteer fire inspectors mirror the requirements for paid fire inspectors

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and §419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification 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 June 3, 1994

TRD-9441826 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: June 24, 1994

Proposal publication date: March 15, 1994

For further information, please call: (512) 918-7184

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Chapter 481. Volunteer Fire
Fighter Fees

• 37 TAC §481.11

The Texas Commission on Fire Protection adopts an amendment to §481.11, concerning volunteer fire fighter fees, without changes to the proposed text as published in the March 8, 1994, issue of the *Texas Register* (19 TexReg 1642).

The justification for the section will be a more equitable allocation of cost of conducting examinations

The new §481.11 establishes fees for the volunteer fire fighters to take written and skills examinations.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and §419.071(e), which provides the Texas Commission on Fire Protection with authority to

establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification 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 June 3, 1994

TRD-9441827

Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date. June 24, 1994

Proposal publication date March 8, 1994

For further information, please call. (512) 918-7184

Chapter 483. Volunteer Fire Fighter Safety

• 37 TAC §483.3

The Texas Commission on Fire Protection adopts an amendment to §483.3, concerning volunteer fire fighter safety, without changes to the proposed text as published in the March 8, 1994, issue of the *Texas Register* (19 TexReg 1643)

The justification for this rule amendment will be elimination of unnecessary costs to the public by reducing the frequency of air sample testing.

The amendment to §483.3 makes a grammatical change to begin a new sentence with the word "Samples" and changes the text to provide for air used to fill the cylinders of self-contained breathing apparatus to be tested at least semi-annually. The second change to the text is a correction to make the section the same as the paid fire protection personnel standard §435.3.

No comments were received regarding adoption of the amendment

The amendment is adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties, and §419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification 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 June 3, 1994

TRD-9441828

Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date. June 24, 1994

Proposal publication date: March 8, 1994

For further information, please call: (512) 918-7184

Chapter 487. Eligibility for Volunteer Fire Fighter Certification as Fire Protection Personnel

• 37 TAC §487.1

The Texas Commission on Fire Protection adopts as amendment to §487.1, concerning eligibility for volunteer fire fighter certification as fire protection personnel, without changes to the proposed text as published in the March 8, 1994, issue of the *Texas Register* (19 TexReg 1643)

The rule change is justified by the need to make rules consistent with the statutory changes

The amendment to §487.1 deletes old language that allowed a bridging mechanism between volunteer programs and provides new language that a volunteer must be certified through the commission to become certified as a fire protection personnel

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and §419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification 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 June 3, 1994.

TRD-9441829

Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date June 24, 1994

Proposal publication date: March 8, 1994

For further information, please call: (512) 918-7184

Chapter 503. Flammable Liquids Equipment Testing Laboratory Rules

• 37 TAC §§503.1-503.8

The Texas Commission on Fire Protection adopts new §§503.1-503.8, concerning requirements for testing laboratories that desire to obtain approval by the Texas Commission on Fire Protection to test flammable liquids equipment used in retail service stations. Section 503.6 is adopted with changes to the

proposed text as published in the March 15, 1994, issue of the *Texas Register* (19 TexReg 1780). Sections 503.1-503.5, and 503.7-503.8 are adopted without changes and will not be republished.

These sections are necessary to establish procedures and standards for approving laboratories that perform standardized tests on flammable liquids equipment used in retail service stations.

The effect of these sections will be the creation of procedures and standards for providing safety standards for flammable liquid equipment used in retail service stations.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties and Health and Safety Code, §753.003(a), which provides the commission with authority to establish rules for the safe storage, handling, and use of flammable liquids at retail service stations.

§503.6. Alternate Method for Approval. Testing laboratories seeking approval for product categories which are not within the product categories OSHA investigates and are therefore unable to obtain OSHA approval, may submit an application to the Commission as set forth in §503.7 of this title (relating to Applications). This alternate method of approval cannot be used by laboratories to obtain Commission approval for product categories that are within the scope of the OSHA Nationally Recognized Testing Laboratory program.

(1) General Requirements. A testing laboratory approval will be based on consideration of the following:

(A) organizational, managerial, and financial independence from clients;

(B) financial stability for continuing operations and to withstand the loss of a client;

(C) scope of testing operations including certification programs;

(D) training and experience of technical personnel; and

(E) physical facilities.

(2) Quality System. The testing laboratory shall maintain a quality system. The quality system shall describe the laboratory's commitment to good laboratory practice and quality test procedures. The laboratory must have a quality manager

who is responsible for implementing the quality system. The quality manager shall have access to upper management to ensure the quality system is maintained. The policies and procedures of the quality system shall be documented in a quality manual. The manual shall be clearly understood by all personnel involved in testing and certification. The quality manual shall also contain the following:

(A) a policy statement from the upper management to show their commitment to the quality system;

(B) procedures for documentation of measurements and test methods to ensure traceability;

(C) procedures for control of documentation;

(D) procedures for calibration and maintenance of testing equipment;

(E) procedures for handling unusual situations and departures from standard policies and procedures;

(F) procedures for audit and review; and

(G) procedures for developing new test methods for the testing of new products.

(3) Product testing and evaluation. A testing laboratory must demonstrate the ability to use recognized product standards in determining the acceptability of any product covered by the certification program.

(A) In the absence of a recognized product standard for a product category, the laboratory must develop a new product standard. The new product standard must be approved by a recognized product standards organization or the Commission before it can be used as a product standard. Once the new product standard is approved, the laboratory must submit an amendment to the original application requesting approval to test products using the new product standard. The application amendment should include any information not included in the original application that could substantiate the laboratory's ability to perform tests using the new product standard.

(B) When product standards are revised by the recognized product standards organization, the testing laboratory must be prepared to re-test all products

previously tested to reflect compliance with the revised product standards.

(C) The testing laboratory must utilize a documented system of periodic checks and calibrations of testing equipment to assure the proper degree of accuracy in measurements.

(D) The testing laboratory must be capable of observing the production of products to be tested and evaluated, to determine the adequacy of the manufacturer's quality assurance program.

(E) A formal report presenting test results must be prepared by the testing laboratory upon completion of tests and evaluations of each product.

(4) Factory follow-up inspection program. A testing laboratory must have established by written agreement with the manufacturer a follow-up program which addresses each of the following features required by subparagraphs (A)-(E) of this paragraph.

(A) The program requires assurance that the product, as manufactured, meets the recognized product standards and does not vary from the specimens as originally tested and certified by the testing laboratory.

(B) The program requires an inspection manual which states the conditions governing the use of the certification mark on every listed or approved product. The manual must include:

(i) identification of the product(s) authorized for application of the certification mark;

(ii) identification of the manufacturer and plant location(s) at which product manufacture and certification mark application is authorized;

(iii) descriptions, specifications, and requirements applicable to the manufacturer's quality assurance program when used as part of follow-up program;

(iv) description of inspections and tests to be conducted by the laboratory inspector and manufacturer;

(v) a description of countercheck tests to be conducted in the laboratory; and

(vi) the form and methods of applying the certification mark.

(C) The program requires that a manufacturer provide the laboratory inspector immediate access to plants where

the products are fabricated, processed, finished, stored, or located so that the inspector may perform the functions of the follow-up program.

(D) The program requires a periodic examination or test of the products at the factory by the laboratory inspector to determine compliance of products with product standards. The laboratory inspector may select samples of the product for countercheck tests at the laboratory.

(E) Under the program, the testing laboratory must inspect manufacturer's products and facilities not less than every 12 months, depending on the product category and conditions.

(5) Identification of approved or listed products

(A) The testing laboratory must have a written agreement with the manufacturer establishing a system for utilizing the certification mark for identifying approved or listed products which have been produced under the factory follow-up inspection program. The agreement must require the manufacturer to utilize a system for the manufacture, distribution, and use of the certification mark, including serial, issue, or control numbers together with appropriate records to guard against counterfeiting or other improper use of the certification mark.

(B) The certification program must provide for the removal of the certification mark from products which are found not to comply with the recognized product standards, and for the termination or suspension of the authority to use the certification mark when conditions precluding proper control of the mark prevail.

(6) Product directories. A testing laboratory must develop and publish an annual products directory and at least one midterm supplement which identifies the manufacturers, private labelers, and products that are authorized to bear the laboratory's certification mark.

(7) Complaints. A testing laboratory must have established procedures for investigating and responding to complaints. All complaints must be acknowledged and investigated promptly.

(8) Records. A testing laboratory must maintain records necessary to assure proper control of operations, including but not necessarily limited to the following categories, with review availability for a period of not less than five years.

(A) Records concerning laboratory tests on each product must include the following:

(i) product standard(s) used; and

(ii) initial qualification records must include the following:

(I) sample selection;

(II) receipt of samples;

(III) test and examination sheets; and

(IV) instrument calibration records.

(B) Records concerning follow-up service for each manufacturing facility must include the following:

(i) follow-up inspection manual;

(ii) dated and detailed records of all inspections; and

(iii) instrument calibration records.

(C) Records concerning the release of certification marks to manufacturers.

(D) Records concerning complaints must include documentation of all complaints and their resolution.

(9) Access to facilities and records. Access to facilities and records must be afforded in accordance with this subsection.

(A) Testing laboratories seeking approval of their certification program(s) under this section, must agree in writing to allow the Commission access to inspect testing facilities and procedures and to examine any and all non-confidential records of the certification program at any time during normal working hours without prior notice.

(B) Upon request, an approved testing laboratory shall provide the Commission access to all product reports, upon release from the manufacturer.

(C) An approved testing laboratory must provide the Commission with copies of all flammable liquids equipment product directories and supplements to the product directories immediately after they are completed or published.

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 June 3, 1994

TRD-9441810

Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date June 24, 1994

Proposal publication date. March 15, 1994

For further information, please call. (512) 918-7184

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OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours 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 of Agriculture

Thursday, July 21, 1994, 10:00 a.m.

Texas Department of Agriculture, 8918 Tesoro Drive, Suite 120
San Antonio

According to the complete agenda, the Office of Hearings will hold an administrative hearing to review alleged violation of Texas Agriculture Code, §§103 001-103 015 (Vernon 1982) by J A V A G, Inc. doing business as Van De Walle Vegetable, Inc. as petitioned by Colville & Wilson, Inc.

Contact: Barbara B Deane, P O Box 12347, Austin, Texas 78711, (512) 463-7448

Filed: June 3, 1994, 3 32 p m

TRD-9441787

Thursday, July 21, 1994, 11:00 a.m.

Texas Department of Agriculture, 8918 Tesoro Drive, Suite 120

San Antonio

According to the complete agenda, the Office of Hearings will hold an administrative hearing to review alleged violation of Texas Agriculture Code, §§103 001-103 015 (Vernon 1982) by J A V A G, Inc. doing business as Van De Walle Vegetable, Inc. as petitioned by Rio Fresh

Contact: Barbara B Deane, P O Box 12347, Austin, Texas 78711, (512) 463-7448

Filed: June 3, 1994, 3 33 p m

TRD-9441788

Texas Commission on Alcohol and Drug Abuse

Monday, June 13, 1994, 11:00 a.m.

710 Brazos, Eighth Floor Conference Room
Austin

According to the complete agenda, the Audit Committee will call to order, approval of April 11, 1994 minutes, overview by Coopers and Lybrand, discuss TCADA's response to the State Auditor's Office's Preliminary Issues, and adjourn

Contact: Otis E Williams, 710 Brazos, Austin, Texas 78701, (512) 867-8720

Filed: June 2, 1994, 4 16 p m

TRD-9441722

Texas Commission on Alcohol and Drug Abuse, Texas Board of Criminal Justice

Monday, June 13, 1994, 9:00 a.m.

Kyle Unit, 701 South Interregional Highway 35

Kyle

According to the complete agenda, the Criminal Justice Issues Committee, Subcommittee on Substance Abuse will call to order, approval of minutes, In-Prison Therapeutic Community Program/Substance Abuse Felony Punishment Facility Program recommendations, client selection, screening and assessment, update on women's programs; female substance abuse beds expansions, substance abuse felony punishment facilities update, in-prison therapeutic communities update, transitional treatment centers update, relapse program, Texas Commission on Alcohol and Drug Abuse Criminal Justice Training Center, Texas Department of Criminal Justice Outpatient Program update, schedule for future meetings, Texas Department of Criminal Justice aftercare update, prior pending business, new business, and adjourn

Contact: Ted Sellers, 710 Brazos, Austin, Texas 78701, (512) 867-8132

Filed: June 2, 1994, 4 11 p m

TRD-9441716

Texas Bond Review Board

Tuesday, June 14, 1994, 10:00 a.m.

Clements Building, Fifth Floor, Committee Room #5, 300 West 15th Street

Austin

According to the agenda summary, the Staff Planning will call to order, approval of minutes, discussion of proposed issues, other business, and adjourn

Contact: Albert L Bacarisse, 300 West 15th, Suite 409, Austin, Texas 78701, (512) 463-1741.

Filed: June 6, 1994, 3 10 p m.

TRD-9441890

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Texas Commission for the Deaf and Hearing Impaired

Saturday, June 11, 1994, 9:00 a.m.

TSD, 1102 South Congress, Building T-2
Austin

According to the complete agenda, the Board for Evaluation of Interpreters (BEI) will call to order, approval of April 30, 1994 minutes, public comments, chairperson's report; BEI report, TSID report, calendar update, preparation for evaluator training, executive session, review of applicant test materials, certification, recertification, revocation, old business, new business, and adjournment

Contact: Loyce Kessler, 4800 North Lamar Boulevard, Austin, Texas 78756, (512) 451-8494

Filed: June 3, 1994, 9 51 a m

TRD-9441749

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Texas Office for Prevention of Developmental Disabilities

Wednesday, June 8, 1994, 1:00 p.m.

Capitol Extension, Room E2-016

Austin

Emergency Revised Agenda

According to the complete agenda, the Executive Committee (Quarterly Meeting) called to order/roll call, meeting notes, welcome of governor's appointee, introductions, CDC representative's presentation, task force reports, support group reports, invitation to statewide safe kids coalition, status of state plan, and adjournment

Reason for Emergency Meeting Location Change

Contact: Jerry Ann Robinson, 4900 North Lamar Boulevard, Austin, Texas 78756, (512) 483-5042.

Filed: June 3, 1994, 1 06 p m

TRD-9441767

State Employee Charitable Campaign

Monday, June 6, 1994, 11:00 a.m.

2902 Leopard, LE Room

Corpus Christi

According to the complete agenda, the Local Employee Committee possibly selected/reviewed local federations and agencies for participation in State Employee Charitable Campaign for Fiscal Year 1994-1995

Contact: Aurelio "Ray" Valdez, Jr., P O Box 9297, Corpus Christi, Texas 78469

Filed: June 3, 1994, 9 44 a m

TRD-9441745

Tuesday, June 7, 1994, Noon

State Comptroller's Office, Eaden Park Plaza, 1202 Del Mar Boulevard

Laredo

According to the complete agenda, the Local Employee Committee-Laredo possibly selected/reviewed local federations and agencies for participation in State Employee Charitable Campaign for Fiscal Year 1994-1995

Contact: Dr Juan Lira, One West End Washington Street, Laredo, Texas 78040, (210) 722-8001, Ext 308

Filed: June 3, 1994, 9 44 a m

TRD-9441743

Tuesday, June 7, 1994, Noon

1212 North Velasco, Suite 110

Angleton

According to the complete agenda, the Local Employee Committee-Angleton possibly selected/reviewed local federations and agencies for participation in State Employee Charitable Campaign for Fiscal Year 1994-1995

Contact: Lupe Olivares, 1027 South Velasco, Angleton, Texas 77515, (409) 849-8680

Filed: June 3, 1994, 9 44 a m

TRD-9441748

Tuesday, June 7, 1994, 2:00 p.m.

501 Campus Drive, TSTC System Conference Room

Waco

According to the complete agenda, the Local Employee Committee-Waco possibly selected/reviewed local federations and agencies for participation in State Employee Charitable Campaign for Fiscal Year 1994-1995

Contact: Fred L. Williams, TSTC Campus, Waco, Texas 76705, (817) 799-3611, Ext 4892

Filed: June 3, 1994, 9.44 a.m.

TRD-9441747

Wednesday, June 8, 1994, 10:00 a.m.

United Way/Capital Area, 2000 East MLK Boulevard

Austin

According to the complete agenda, the Local Employee Committee-Austin possibly selected/reviewed local federations and agencies for participation in State Employee Charitable Campaign for Fiscal Year 1994-1995

Contact: Anne Murphy, P.O. Box 1925, Austin, Texas 78767, (512) 472-6267

Filed: June 3, 1994, 9:44 a m

TRD-9441746

Thursday, June 9, 1994, 4:00 p.m.

4000 Southpark Drive, #1200

Tyler

According to the complete agenda, the Local Employee Committee-Tyler possibly selected/reviewed local federations and agencies for participation in State Employee Charitable Campaign for Fiscal Year 1994-1995.

Contact: John Anderson, P O Box 2003, Tyler, Texas 75710, (903) 877-7734

Filed: June 3, 1994, 4 09 p m

TRD-9441791

Thursday, June 9, 1994, 4:00 p.m.

815 Market Street, Seventh Floor, Board Room

Galveston

According to the complete agenda, the Local Employee Committee-Galveston considered selection/review of local federations and agencies for participation in State Employee Campaign for fiscal year 1994-1995, call to order and welcome, complete review and selection of local applications, confirm next meeting, and adjourned

Contact: Dr Robert McCauley, 815 Market Street, Galveston, Texas 77550, (409) 770-6736

Filed: June 6, 1994, 11 31 a m

TRD-9441867

Friday, June 10, 1994, 1:00 p.m.

Texas Department of Public Safety, 2405 South Loop 250 West, New Classroom

Midland

According to the complete agenda, the Local Employee Committee-Midland will discuss selection/review of local federations and agencies for participation in State Employee Charitable Campaign for Fiscal Year 1994-1995

Contact: Kevin Scott Napier, 2405 South Loop, 250 West, Midland, Texas 79703-7410, (915) 694-9301.

Filed: June 3, 1994, 4:09 p.m.

TRD-9441792

Monday, June 13, 1994, 4:00 p.m.

United Way of Denton County, 525 North Locust Street

Denton

According to the complete agenda, the Local Employee Committee-Denton will discuss selection/review of local federations and agencies for participation in State Employee Charitable Campaign for Fiscal Year 1994-1995.

Contact: Darrell W. Bulls, 525 North Locust Street, Denton, Texas 76201, (817) 898-2102.

Filed: June 3, 1994, 9:44 a.m.

TRD-9441744

Texas Employment Commission

Tuesday, June 14, 1994, 9:00 a.m.

TEC Building, Room 644, 101 East 15th Street

Austin

According to the agenda summary, the Texas Employment Commission will discuss prior meeting notes; staff reports; internal procedures of commission appeals; consideration and action on tax liability cases listed on Commission Docket 24 and higher level appeals in unemployment compensation cases listed on Commission Dockets 23 and 24; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: June 6, 1994, 4:09 p.m.

TRD-9441893

Texas State Board of Registration for Professional Engineers

Tuesday, June 14, 1994, 8:30 a.m.

Omni Hotel, Four Riverway, Dorset Room
Houston

According to the agenda summary, the Texas State Board of Registration for Professional Engineers will receive reports from board members and staff; interview applicants; take action on applications for registration; reading of communications; and other related business in accordance with the agenda.

Contact: Charles E. Nemir, P.E., 1917 IH-35 South, Austin, Texas 78741, (512) 440-7723.

Filed: June 3, 1994, 1:44 p.m.

TRD-9441776

Finance Commission

Thursday, June 16, 1994, 1:00 p.m.

2601 North Lamar Boulevard

Austin

According to the complete agenda, the Finance Commission will discuss orientation for new Finance Commission members; legal briefing by Assistant Attorney General: Open Meetings Act, Open Records Act, and Administrative Procedure Act; and report by agency heads: Office of Consumer Credit, Savings and Loan Department, and Banking Department.

Contact: Janice Pennington, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1300.

Filed: June 7, 1994, 9:47 a.m.

TRD-9441909

Friday, June 17, 1994, 8:30 a.m.

2601 North Lamar Boulevard

Austin

According to the agenda summary, the Finance Commission will discuss Finance Commission matters including report by State Auditor's office and vote to approve new position in salary administration plan, report from the Office of Consumer Credit Commissioner including discussion of and vote on 7 TAC §82.2, re: Open Records photocopying and charges and to approve Credit Code interpretation of retail installment contracts; report from the Savings and Loan Department including discussion of and vote to adopt the final rule regarding Loan Documentation for Savings Banks, 7 TAC §77.31; regarding the application of the Statutory Parity Provision in the Texas Savings Bank Act, 7 TAC §79.121; regarding Open Records Act requests for Copies of Records for Savings and Loan Associations, 7 TAC §63.15; regarding Open Records Act Requests and Charges for Copies of Records for State Savings Banks, 7 TAC §79.108; to publish for comment a proposed rule regarding Loan Documentation for Savings and Loan Association, 7 TAC §65.17; report from the Department of Banking including items of current interest; discussion of and vote to publish in proposed form: 7 TAC §3.91-Branch Applications; repeal of and proposed new 7 TAC §3.92-Naming and Advertising of Branch Facilities; repeal of all sections of Chapter 15-orders of the Commissioner; proposed

new 7 TAC §15.1 and §15.2; proposed new 7 TAC §113.104-Conduct of Hearings by Hearings Officer; discussion of and vote to adopt in final form: amendment to 7 TAC §3.4-Foreign Banking; repeal of §3.21-State Owned Vehicles; repeal of 7 TAC §3.27-Enforcement of Final Judgement Against Bank; repeal of 7 TAC §3.27-Enforcement of a Final Judgement against a State Bank; repeal of 7 TAC §3.33-Application Processing Times; new 7 TAC §3.45-Application Processing Times for Foreign Bank Agencies; repeal of 7 TAC §3.36-Holiday Schedules for State Banks; repeal of 7 TAC §4.1-Provisional Currency Exchange Licenses; amendment to 7 TAC §4.7-Bond Requirements under the Currency Exchange Act; 7 TAC §11.27-Open Records Act Requests and Charges for Copies of Records; repeal of Chapter 13-Hearing Procedures (to be replaced by new Chapter 13); repeal of Chapter 17-Rulemaking (to be replaced by a new subchapter in new Chapter 13); new Chapter 13-Hearing Procedures; and withdrawal of 7 TAC §10.1-Minimum Equity Capital for a Trust Company.

Contact: Janice Pennington, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1300.

Filed: June 7, 1994, 9:52 a.m.

TRD-9441912

Texas Alternative Fuels Council

Friday, June 17, 1994, 10:00 a.m.

105 West 15th Street, Room 101, John H. Reagan State Office Building

Austin

According to the complete agenda, the Texas Alternative Fuels Council will call to order; consideration of minutes from April 24, 1994, council meeting; executive session (pending and proposed litigation); consideration of grants for Alternative Fuels Council Grant Program; information items, public comment; and adjournment

Contact: Craig Davis, 201 East 14th Street, Room 104, Austin, Texas 78701, (512) 463-3262.

Filed: June 2, 1994, 4:29 p.m.

TRD-9441724

Texas Growth Fund

Tuesday, June 14, 1994, 10:30 a.m.

1000 Red River

Austin

According to the agenda summary, the Board of Directors will review and approve minutes of the April 6, 1994, special meeting; review and approve treasurer's report; review and approve reimbursement expense reports from the current and former trustees, review and approve invoices from Vinson and Elkins L.L.P.; receive an activity report from TGF Management Corporation; review and approve third quarter 1994 budget request for TGF Management Corporation; review and approve proposed investment, and such other matters as may come before the Board of Trustees

Contact: Janet Waldeier, 100 Congress Avenue, Suite 980, Austin, Texas 78701, (512) 322-3100.

Filed: June 3, 1994, 1:00 p.m.

TRD-9441766

Health Professions Council

Wednesday, June 15, 1994, 9:30 a.m.

1812 Centre Creek Drive, Room 203

Austin

According to the agenda summary, the Health Professions Council will receive the minutes from the March 24, 1994 meeting, receive reports from the following committees: administration, budget and planning, board member training and bylaws, and receive an update on funding and statutory changes. New business to be considered will include discussion and action on the Dental Information Resource Center; CLEAR publication, complaint form, letterhead, Historically Underutilized Business; standard performance measures, and the hiring of an administrator for the Council

Contact: Louise Waddill, Box 140466, Austin, Texas 78714, (512) 835-8655.

Filed: June 2, 1994, 2:06 p.m.

TRD-9441705

Texas Department of Housing and Community Affairs

Thursday-Friday, June 16-17, 1994, 9:00 a.m.

500 East San Antonio

El Paso

According to the agenda summary, the Board will consider and possibly act upon the following: minutes of May 10-11, 1994 meeting, strategic plan, transfer of Low Income Housing Tax Credit and Mortgage Credit Certificate funds from Texas Commerce Bank to Safekeeping Trust Company at State Treasury Department; proposed

rules for charges for public records; HOME funding recommendations for fiscal year 1993 for owner-occupied rehabilitation applications, rental project specific applications, rental program applications, first-time homebuyer applications, and pre-development loans, issuance of application packet under 1994 Low Income Housing Tax Credit Program; revised Program 45, supplemental indenture on Residential Mortgage Revenue Bonds, insurance bid for Lincoln Terrace Apartments, executive session-THA MF Housing Revenue Bonds, Ethics Commission Advisory Opinion and anticipated litigation; approval of recommendations and information provided during executive session, tour of various projects in El Paso and executive director's report.

Individuals who require auxiliary aids or services for this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Contact: Henry Flores, 811 Barton Springs Road, Suite 500, Austin, Texas 78711 (512) 475-3934

Filed: June 6, 1994, 11:31 a.m.

TRD-9441868

Texas Commission on Human Rights

Monday, June 13, 1994, 10:00 a.m.

Office of Texas Commission on Human Rights, Conference Room, 8100 Cameron Road, Building B, Suite 525

Austin

According to the agenda summary, the Texas Commission on Human Rights agenda consists of call to order, roll call, recess into executive session, reconvene in open session to take action as necessary as required, and adjournment.

Contact: William M. Hale, P.O. Box 13493, Austin, Texas 78711, (512) 837-8534.

Filed: June 3, 1994, 3:41 p.m.

TRD-9441789

Texas Department of Human Services

Wednesday, June 15, 1994, 10:00 a.m.

8407 Wall Street, S-400

Austin

According to the complete agenda, the Advisory Committee for Personal Care Facilities will call the meeting to order, conduct a

roll call; hear comments from Mark Chouteau; and adjournment

Contact: Barbara Crenwelge, P.O. Box 149030, Austin, Texas 78714-9030, (512) 834-6697

Filed: June 6, 1994, 3:57 p.m.

TRD-9441891

Texas Commission on Law Enforcement Officer Standards and Education

Monday, June 13, 1994, 1:30 p.m.

Doubletree Hotel, 6505 IH-35 North
Austin

According to the agenda summary, the Texas Commission on Law Enforcement Officer Standards and Education will call to order and recognize visitors, recognition of employees for service awards, discuss final adoption of proposed new rules, §221 100-In-Service Training Requirements for Agencies that Appoint Peace Officers, Reserve Law Enforcement Officers, County Jailers and Public Security Officers, F094-1, §219 70-Minimum Training Standards for Reserves, F094-3, §215 66-Agreement Training, F094-5, §215 67-Training Provider Advisory Boards, F094-6, final adoption of repeal of §211 100-In-Service Training for Agencies that Appoint Peace Officers or Reserve F094-2, §211 70-Minimum Training Standards for Reserves, F094-4, §211 66-Agreement Training, and §211 67-Academy Advisory Boards, F094-7, and §211 75-Advisory Boards, F094-8; receive Committee reports from Basic County Corrections Curriculum Committee, Appointment and License Committee, Law Enforcement Training Provider Evaluation Task Force, update on test for new basic reserve officer course, Academy evaluations, receive comments concerning military service discharge requirement for licensing, discussion of cost recovery to issue non-mandatory certificates, reports and comments; and adjournment

Contact: Vera Kocian, 1033 LaPosada, Suite 175, Austin, Texas 78752, (512) 406-3613

Filed: June 2, 1994, 12:29 p.m.

TRD-9441697

Tuesday, June 14, 1994, 9:00 a.m.

Doubletree Hotel, 6505 IH-35 North
Austin

According to the agenda summary, the Texas Commission on Law Enforcement Officer Standards and Education will call to order, introductions, and election of office

(if new Commissioner(s) appointed); invocation; recognition of visitors; approval of minutes of Commission meetings; discussion and action on final adoption of proposed new rules, §221.100-In-Service Training Requirements for Agencies that Appoint Peace Officers, Reserve Law Enforcement Officers, County Jailers and Public Security Officers, F094-1; §219.70-Minimum Training Standards for Reserves, F094-3; §215.66-Agreement Training, F094-5; §215.67-Training Provider Advisory Boards, F094-6; discussion and action on final adoption of repeal of §211.100-In-Service Training for Agencies that Appoint Peace Officers or Reserves, F094-2; §211.70-Minimum Training Standards for Reserves, F094-4; §211.66-Agreement Training, and §211.67-Academy Advisory Boards, F094-7; and §211.75-Advisory Boards, F094-8; discussion and action on cost recovery to issue non-mandatory certificates; selection of meeting date and location for September 1994 meeting; discussion and action on recommendations contained in the Basic Peace Officer Curriculum Standing Revisions Committee report; consider license action on final orders for revocation and suspension of licenses, agreed final orders for revocation and suspension of licenses, and receive report on voluntary surrenders; reports and comment on any subject without discussion will be received; and adjourn.

Contact: Vera Kocian, 1033 LaPosada, Suite 175, Austin, Texas 78752, (512) 406-3613.

Filed: June 2, 1994, 12:29 p.m.

TRD-9441696

Texas Department of Licensing and Regulation

Thursday, June 16, 1994, 10:00 a.m.

John H. Reagan Building, 105 West 15th Street, Room 106

Austin

According to the complete agenda, the Board of Boiler Rules will call to order; roll call; introduction of visitors; adoption of agenda; approval of minutes of March 9, 1994; training and certification programs for operators of high capacity fossil fuel-fired plants as required under §129 of the Clean Air Act; and adjournment.

Contact: George Bynog, P.O. Box 12157, Austin, Texas 78711, (512) 463-2904.

Filed: June 3, 1994, 10:14 a.m.

TRD-9441752

Tuesday, June 21, 1994, 10:00 a.m.

920 Colorado, Tenth Floor, Room 1012

Austin

According to the complete agenda, the Policies and Standards Division will hear public comments on the proposal to adopt the following rules: Chapter 60-Texas Commission of Licensing and Regulation; Chapter 61-Boxing; Chapter 62-Career Counseling Services; Chapter 63-Personnel Employment Services; and Chapter 75-Air Conditioning and Refrigeration Contractor's License Law.

Contact: Jimmy G. Martin, 920 Colorado, Austin, Texas 78711, (512) 463-7348.

Filed: June 6, 1994, 3:10 p.m.

TRD-9441889

Texas State Board of Medical Examiners

Friday, June 10, 1994, 11:00 a.m.

1812 Centre Creek Drive, Suite 300

Austin

According to the complete agenda, the Hearings Division will discuss modification request-Keith E. Kesler, D.O., Austin, Texas.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: June 2, 1994, 4:16 p.m.

TRD-9441719

Tuesday, June 14, 1994, 10:30 a.m.

1812 Centre Creek Drive, Suite 203

Austin

According to the agenda summary, the Physician Assistant Advisory Council will discuss and possibly act on drug samples and proposed rules; review proposed licensure application; and approval of minutes from April 20, 1994, May 27, 1994, full board minutes and long range planning committee, licensure committee, and disciplinary committee.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: June 6, 1994, 9:13 a.m.

TRD-9441840

Wednesday, June 15, 1994, 9:00 a.m.

1812 Centre Creek Drive, Suite 300

Austin

According to the complete agenda, the Hearings Division agenda includes probation appearances, and termination requests.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: June 2, 1994, 4:15 p.m.

TRD-9441718

Texas Mental Health and Mental Retardation Board

Tuesday, June 14, 1994, 10:00 a.m.

909 West 45th Street (Auditorium)

Austin

According to the complete agenda, the Human Resources Committee will hear citizens comments; and consideration of approval of the appointment of a director for the Waco Center for Youth.

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 323-3255, (voice, TDD, RELAY TEXAS), Ernest Fuentes, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206-4506.

Filed: June 3, 1994, 1:38 p.m.

TRD-9441774

Tuesday, June 14, 1994, 10:30 a.m.

909 West 45th Street (Auditorium)

Austin

According to the complete agenda, the Business and Asset Management Committee will hear citizens comments; consideration of approval of fiscal year 1994 operating budget adjustments; consideration of approval of fiscal year 1995 operating budget; and discussion of the proposed fiscal year 1996-1997 legislative appropriations request.

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 323-3255, (voice, TDD, RELAY TEXAS), Ernest Fuentes, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206-4506.

Filed: June 3, 1994, 1:38 p.m.

TRD-9441773

Tuesday, June 14, 1994, 2:00 p.m.

909 West 45th Street (Auditorium)

Austin

According to the complete agenda, the Texas Mental Health and Mental Retardation Board will take roll call; citizens comments; and issues to be considered: consideration of approval of the appointment of a director for the Waco Center for Youth, consideration of approval of fiscal year 1994 operating budget adjustments, and consideration of approval of fiscal year 1994 operating budget.

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 323-3255, (voice, TDD, RELAY TEXAS), Ernest Fuentes, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206-4506.

Filed: June 3, 1994, 1:37 p.m.

TRD-9441772

◆ ◆ ◆
Texas Natural Resource Conservation Commission

Wednesday, June 15, 1994, 8:00 a.m.

1700 North Congress Avenue, Room 118, Stephen F. Austin Building

Austin

Revised Agenda

According to the complete agenda, the Compost Regulations Development Ad Hoc Group will review and discuss the draft compost facility regulations. Open files consisting of meeting notes and any additional associated material will be maintained at the Colonnade Building, 12015 Park 35 Circle, Room 1151, Austin, Texas 78753. These files will listed as "Compost Regulations Development Group"; and discussion of draft compost facility regulations.

Contact: Composting Team, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6750.

Filed: June 3, 1994, 3:31 p.m.

TRD-9441786

Tuesday, June 28, 1994, 10:00 a.m.

Stephen F. Austin State Office Building, Room 1028A, 1700 North Congress Avenue

Austin

According to the agenda summary, the Office of Hearings Examiners will meet for a hearing before a hearings examiner on David L. Kelley and wife, Suzanne S. Kelley's application Number 4419-B to amend Water Use Permit Number 4091, as amended. This hearing will be held under the authority of Chapter 11, Texas Water Code, and rules of the Texas Natural Resource Conservation Commission.

Contact: Elizabeth Todd, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875.

Filed: June 6, 1994, 11:49 a.m.

TRD-9441874

Wednesday, June 29, 1994, 8:00 a.m.

12015 Park 35 Circle, Room 201S, Building E

Austin

Revised Agenda

According to the complete agenda, the Compost Regulations Development Ad Hoc Group will review and discuss the draft compost quality standards. Open files consisting of meeting notes and any additional associated material will be maintained at the Colonnade Building, 12015 Park 35 Circle, Room 1151, Austin, Texas 78753. These files will listed as "Compost Regulations Development Group"; discussion of draft compost quality standards.

Contact: Composting Team, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6750.

Filed: June 3, 1994, 3:31 p.m.

TRD-9441785

Thursday, June 30, 1994, 9:00 a.m.

Stephen F. Austin State Office Building, Room 1028A, 1700 North Congress Avenue

Austin

According to the agenda summary, the Office of Hearings Examiners will meet for a hearing before a hearings examiner on V. H. Skaggs and Leroy Skaggs' application Number 14-1571A. This hearing will be held under the authority of Chapter 11, Texas Water Code, and rules of the Texas Natural Resource Conservation Commission.

Contact: Nina Fantl, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875.

Filed: June 6, 1994, 11:49 a.m.

TRD-9441872

Thursday, June 30, 1994, 10:00 a.m.

12118 North IH-35, TNRCC Building D, Room 10013N

Austin

According to the agenda summary, the Texas Natural Resource Conservation Commission will discuss an application by Oxy Petrochemicals, Inc. to renew permit number 5633A authorizing continued operation of a marine barge loading operation. The existing plant is located adjacent to the Ship Channel, east of Suntime Road on the Corpus Christi Inner Harbor and eight miles north of the Oxy Petrochemical plant located at 1501 McKenzie Road in Corpus Christi, Nueces County, Texas.

Contact: John Vermillion, P.O. Box 13087, Austin, Texas 78711, (512) 239-1292.

Filed: June 6, 1994, 11:50 a.m.

TRD-9441877

Thursday, June 30, 1994, 1:00 p.m.

Stephen F. Austin State Office Building, Room 211, 1700 North Congress Avenue

Austin

According to the agenda summary, the Office of Hearings Examiners will meet for a hearing before a hearings examiner on Steven R. Sprinkel and wife, Marianne S. Sprinkel's Application Number 4457A to amend Permit Number 4143. This hearing will be held under the authority of Chapter 11, Texas Water Code, and rules of the Texas Natural Resource Conservation Commission.

Contact: Jim Bateman, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875.

Filed: June 6, 1994, 11:49 a.m.

TRD-9441873

Monday, July 11, 1994, 10:00 a.m.

Colonnade/Building F, Room 31034, 12015 Park 35 Circle

Austin

According to the agenda summary, the Texas Natural Resource Conservation Commission will hold a public hearing on request for reimbursement from petroleum storage tank remediation fund by Plastics Manufacturing Company.

Contact: Leslie Limes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: June 6, 1994, 11:50 a.m.

TRD-9441878

Wednesday, July 13, 1994, 9:00 a.m.

Stephen F. Austin Building, Room 118, 1700 North Congress Avenue

Austin

According to the agenda summary, the Texas Natural Resource Conservation Commission will meet for an agenda hearing on the Union Pacific Railroad Company's application for approval of preliminary plans for construction of a levee system in the 100-year floodplain of Las Raices Creek, tributary of the Nueces River, Nueces River Basin, pursuant to §16.236 of the Texas Water Code. Proposed project is located approximately 2.1 miles south of the town of Artesia Wells in La Salle County, Texas. Docket Number RE-0292.

Contact: James Mirabal, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8185.

Filed: June 6, 1994, 11:49 a.m.

TRD-9441876

◆ ◆ ◆
Board of Nurse Examiners

Thursday, June 16, 1994, 9:00 a.m.

9101 Burnet Road, Suite 104

Austin

According to the agenda summary, the Eligibility and Disciplinary Committee will review and take action on eight ALJ proposals for decision and 32 agreed orders.

Contact: Erlene Fisher, Box 140466, Austin, Texas 78714, (512) 835-8675.

Filed: June 2, 1994, 4:11 p.m.

TRD-9441717

Friday, June 17, 1994, 10:00 a.m.

1812 Centre Creek Drive

Austin

According to the complete agenda, the ANP Advisory Committee will discuss the term "Advanced Nurse Practitioner (ANP)" or alternate terms for advanced practice nurses; and discussion of requirements for recognition and recertification of ANPs.

Contact: Diane E. Powers, Box 140466, Austin, Texas 78714, (512) 835-8661.

Filed: June 3, 1994, 9:51 a.m.

TRD-9441750

◆ ◆ ◆
Texas Board of Pardons and Paroles

Monday-Friday, June 13-17, 1994, 9:30 a.m.

1212 North Velasco, Suite 201

Angleton

According to the agenda summary, the Parole Board Panel(s) (composed of three board member(s)) will receive, review and consider information and reports concerning prisoners/inmates and administrative releaseses 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: June 2, 1994, 2:05 p.m.

TRD-9441699

Monday-Wednesday, June 13-15, 1994, 1:30 p.m.

1550 East Palestine, Suite 100

Palestine

According to the agenda summary, the Parole Board Panel(s) (composed of three board member(s)) will receive, review and consider information and reports concerning prisoners/inmates and administrative releaseses 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: June 2, 1994, 2:05 p.m.

TRD-9441701

Monday-Friday, June 13-17, 1994, 1:30 p.m.

2503 Lake Road, Suite #2

Huntsville

According to the agenda summary, the Parole Board Panel(s) (composed of three board member(s)) will receive, review and consider information and reports concerning prisoners/inmates and administrative releaseses 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: June 2, 1994, 2:05 p.m.

TRD-9441702

Thursday-Friday, June 16-17, 1994, 9:30 a.m.

1550 East Palestine, Suite 100

Palestine

According to the agenda summary, the Parole Board Panel(s) (composed of three board member(s)) will receive, review and consider information and reports concerning prisoners/inmates and administrative releaseses 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: June 2, 1994, 2:06 p.m.

TRD-9441703

Thursday-Friday, June 16-17, 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) (composed of three board member(s)) will receive, review and consider information and reports concerning prisoners/inmates and administrative releaseses 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: June 2, 1994, 2:05 p.m.

TRD-9441700

◆ ◆ ◆
Public Utility Commission of Texas

Monday, June 13, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a prehearing conference in Docket Number 12900: application of Texas-New Mexico Power Company for authority to change rates.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 2, 1994, 4:16 p.m.

TRD-9441721

Tuesday, July 26, 1994, 2:00 p.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a prehearing conference in Docket Number 12456-application of 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: June 7, 1994, 9:07 a.m.

TRD-9441906

Tuesday, August 2, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Rescheduled from June 16, 1994

According to the complete agenda, the Hearings Division will hold a hearing on the merits in Docket Number 12456-application of 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.

Filed: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 7, 1994, 9:07 a.m.

TRD-9441905

Tuesday, August 9, 1994, 10:30 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 12738: complaint of Claybar Concrete Products, Inc. against Jasper-Newton Electric Cooperative.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 6, 1994, 11:48 a.m.

TRD-9441870

Tuesday, August 23, 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 13020-application of Texas Utilities Electric Company for authority to implement rate WPC1-wholesale power service-Cap Rock.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 2, 1994, 12:29 p.m.

TRD-9441695

◆ ◆ ◆
Railroad Commission of Texas

Monday, June 13, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the agenda summary, the Railroad Commission of Texas will consider various applications and other matters within the jurisdiction of the agency including oral arguments at the time specified on the agenda. The Railroad Commission of Texas may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received.

The commission may meet in executive session on any items listed above as authorized by the Open Meetings Act.

Contact: Carole J. Vogel, P.O. Box 12967, Austin, Texas 78711, (512) 463-6921.

Filed: June 3, 1994, 10:54 a.m.

TRD-9441761

Monday, June 13, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on the Personnel Division director's report on division administration, budget, procedures, and personnel matters. The commission will meet in executive session to consider the appointment, employment, evaluation, reassignment, duties, discipline and/or dismissal of personnel. The following matters will be taken up for consideration and/or decision by the commission: commission budget, fiscal, administrative or procedural matters, strategic planning; and personnel and staffing, including restructuring or transferring the Oil Field Theft Division.

Contact: Mark Bogan, P.O. Box 12967, Austin, Texas 78711, (512) 463-6981.

Filed: June 3, 1994, 10:53 a.m.

TRD-9441760

Monday, June 13, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on the division director's report on budget, personnel, and policy matters related to operation of the Alternative Fuels Research and Education Division.

Contact: Dan Kelly, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7110.

Filed: June 3, 1994, 10:53 a.m.

TRD-9441759

Monday, June 13, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on the agency budget, fiscal and administrative matters and the Administrative Services Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Roger Dillon, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7257.

Filed: June 3, 1994, 10:53 a.m.

TRD-9441758

Monday, June 13, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on the director's report on division administration, budget, procedures, and personnel matters.

Contact: Melvin B. Hodgkiss, P.O. Box 12967, Austin, Texas 78711, (512) 463-6901.

Filed: June 3, 1994, 10:53 a.m.

TRD-9441757

Monday, June 13, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on the Automatic Data Processing Division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters. The commission will consider and act on the Information Resource manager's report on information resource planning documents.

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78701, (512) 463-7251.

Filed: June 3, 1994, 10:52 a.m.

TRD-9441756

Monday, June 13, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on the Office of Information Services director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Box 12967, Austin, Texas 78701, (512) 463-6710.

Filed: June 3, 1994, 10:52 a.m.

TRD-9441755

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Texas State Soil and Water Conservation Board

Thursday, June 16, 1994, 8:00 a.m.

311 North Fifth Street, Conference Room

Temple

According to the complete agenda, the Texas State Soil and Water Conservation Board will review and take appropriate ac-

tion on the following minutes from May 18, 1994 board meeting; District Director appointments; 1996-1997 biennium legislative appropriation request; 1995 fiscal year operating budget; fiscal year 1994 state grant funds, expenditure report for nine-month period ending May 31, 1994; board member travel; information/education report; recruiting update, annual state meeting of Soil and Water Conservation District directors; Conservation Awards Program, reports from agencies and guests, nonpoint source status report; implementation of Senate Bill 503; Coastal Zone Management Program, proposed USDA reorganization, Clean Water Act reauthorization, report on special election for Mustang SWCD #242, request for waiver for Conservation Assistance Grant Fund rules, next regular board meeting—July 20, 1994

Contact: Robert G Buckley, P.O. Box 658, Temple, Texas 76503, (817) 773-2250, TEX-AN 820-1250

Contact: June 6, 1994, 9.52 a.m.

TRD-9441854

Texas Guaranteed Student Loan Corporation

Friday, June 10, 1994, 9:30 a.m.

13809 North Highway 183

Austin

According to the agenda summary, the Budget/Finance/Audit Committee will discuss approval of minutes of November 30, 1993, fiscal year 1993 auditor presentation, internal audit report; contract execution resolution discussion and possible approval, review of projected year end financials, budget transfers request, compensation (executive session); and adjourn

Contact: Peggy Irby, P.O. Box 15996, Austin, Texas 78761, (512) 835-1900

Filed: June 2, 1994, 2:07 p.m.

TRD-9441710

Friday, June 10, 1994, 11:00 a.m.

13809 North Highway 183

Austin

According to the agenda summary, the Executive Committee will discuss approval of minutes of April 14, 1994, reengineering update; guarantee fee cap, budget/finance/audit committee report; contract execution resolution approval; budget transfers approval; compensation; and adjourn

Contact: Peggy Irby, P.O. Box 15996, Austin, Texas 78761, (512) 835-1900

Filed: June 2, 1994, 2:07 p.m.

TRD-9441709

Texas Sustainable Energy Development Council

Friday, June 17, 1994, 7:30 a.m.

1000 Red River, Teacher Retirement System Cafeteria

Austin

According to the complete agenda, the Texas Sustainable Energy Development Council will call to order; discuss strategic planning; discuss administrative matters; and adjourn

Contact: Charlotte Banks, 1700 North Congress Avenue, Room 850, Austin, Texas 78701 (512) 463-1745

Filed: June 6, 1994, 11:31 a.m.

TRD-9441866

Friday, June 24, 1994, 7:30 a.m.

3635 Ranch Road 620, The Balcones Canyonlands, Reicher Ranch, The Cana House

Austin

According to the complete agenda, the Texas Sustainable Energy Development Council will call to order, discuss strategic planning, and adjourn

Contact: Charlotte Banks, 1700 North Congress Avenue, Room 850, Austin, Texas 78701, (512) 463-1745

Filed: June 6, 1994, 11.31 a.m.

TRD-9441865

Teacher Retirement System

Friday, June 10, 1994, 8:30 a.m.

1000 Red River

Austin

According to the agenda summary, the Board of Trustees will take roll call of Board of Trustees, public comments; approval of minutes, report of Budget Committee—Mr. Crowson; consideration of transfer of funds from interest account to expense account—Mr. Barron; certification of estimate of state contributions to be received by the Retired School Employees Group Insurance Fund for the fiscal year ending August 31, 1995—Mr. Barron; report of Audit Committee—Mr. Riter; report of General Policy Committee and consideration of proposed changes to bylaws of the Board of Trustees—Mr. Crowson; report of Ethics Policy Committee—Mr. Camp; report of Real Estate Committee—Mr. Riter; report of Nominations Committee and consideration of appointment to Medical Board—Mrs. McGarvey, consideration of selection of actuary—Mr. Barron; consideration of selection of custodian for domestic securities—Mr. Barron, consideration of

modifications to actuarial assumptions—Dr. Blevins; consideration of TRS Legislative Policy for the 74th Legislative Session—Dr. Thompson; consideration of procedural guidelines for the use of fiduciary counsel—Dr. Williams; consideration of signature authorization to approve and sign vouchers—Dr. Blevins; consideration of proposed rules and amendments to rules—Mr. Baker; review and consideration of report on health insurance for public school employees and retirees as required by House Bill 2711, 73rd Session of the Texas Legislature—Mr. Douglas; report of Texas Public School Retired Employees Group Insurance Program—Mr. Blake; review of investments for the quarter ending May 31, 1994—Mr. Young; review and consideration of discussion and recommendations of Investment Advisory Committee—Mr. Wise; report of Member Benefits Division—Mr. Mercer; report of executive director—Dr. Blevins; comments by board members; report of general counsel on litigation—Mr. Baker; and update on forensic analysis of real estate portfolio being conducted by Coopers and Lybrand and potential resulting litigation

Contact: Mary Godzik, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6400.

Filed: June 2, 1994, 4:17 p.m.

TRD-9441723

The Texas A&M University System, Board of Regents

Wednesday, June 13, 1994, 9:30 a.m.

Texas A&M University, Board Meeting Room, Clark Street

College Station

According to the complete agenda, the Board of Regents (Special Telephone Meeting) will receive and act on bids received for the Phase III-vehicular/pedestrian infrastructure at Texas A&M University-Corpus Christi.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: June 7, 1994, 8:41 a.m.

TRD-9441902

Texas Southern University

Thursday, June 9, 1994, 2:30 p.m.

3100 Cleburne, Texas Southern University, Hannah Hall, Room 111

Houston

According to the complete agenda, the Board of Regents, Legislative (Ad Hoc)

Committee considered discussion of legislative appropriation requests.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: June 6, 1994, 1:10 p.m.

TRD-9441880

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Texas State University System

Thursday, June 9, 1994, 9:00 a.m.

333 Guadalupe, Tower III, Suite 810 (speaker phone available.)

Austin

According to the complete agenda, the Board of Regents considered approval of personnel changes at Sam Houston State University, the purchase of property at Southwest Texas State University, the Capital Campaign Contract at Sid Ross State University, and meeting dates for the August and November board meetings. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects.)

Contact: Lamar Urbanovsky, 333 Guadalupe, Tower III, Suite 801, Austin, Texas 78701, (512) 463-1808

Filed: June 3, 1994, 4:20 p.m.

TRD-9441794

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Texas Workers' Compensation Commission

Wednesday, June 8, 1994, 1:30 p.m.

Southfield Building, Room 910-911, 4000 South IH-35

Austin

According to the agenda summary, the Texas Workers' Compensation Commission called to order; public comments were taken on proposed rule §133 206, proposed rule §134 1000, and proposed rule §134 1001, and adjournment.

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 440-5890.

Filed: June 3, 1994, 1:16 p.m.

TRD-9441770

Thursday, June 9, 1994, 9:00 a.m.

Southfield Building, Room 910-911, 4000 South IH-35

Austin

According to the agenda summary, the Texas Workers' Compensation Commission called to order; approval of minutes; possi-

ble action on applications for Certificate of Authority to Self-Insure; possible action on requests for renewal of Certificate of Authority to Self-Insure; possible action on the Information Resource Security Policy; possible action on issues concerning the Extra-Hazardous Employer Program and the next notification cycle, commissioner subcommittee reports and possible discussion, decisions, and action on related rules; possible action on any issues regarding rules or policy; executive session; action on matters considered in executive session; general reports and action on issues relating to commission activities; confirmation of future public meetings; and adjournment.

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 440-5890.

Filed: June 3, 1994, 4:48 p.m.

TRD-9441797

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Texas Council on Workforce and Economic Competitiveness

Monday-Tuesday, June 13-14, 1994, 1:00 p.m. and 8:30 a.m. respectively.

Austin Community College, 5930 Middle Fiskville Road, Room 233C

Austin

According to the agenda summary, the Apprenticeship and Career Pathways Programs Design Committee items on the agenda includes opening remarks; public testimony, approval of the minutes of the May 16-17, 1994, meeting; staff report, update on activities of the Texas Council on Workforce and Economic Competitiveness; an update on apprenticeship training by the U.S. Department of Labor Bureau of Apprenticeship and Training; briefing by legislative staff on the process of issues involved in developing legislation and how to address topics through legislation and/or policymaking, a briefing on the format for previous reports sent to the Legislature and examples of school-to-work legislation adopted by other states, discussion on business involvement in school to work system, briefing on the Certificate of Initial Mastery; briefing on career majors; a software demonstration on curriculum development/skill standards, a panel presentation on secondary/postsecondary articulation initiatives and ways to link secondary and postsecondary studies, a briefing on the integration of academic and occupational education, a briefing by the Texas Higher Education Coordinating Board and Texas Education Agency on guidelines to infuse career development into the curriculum and career/educational planning of all students, discussion on building local school-to-work partnerships; and other business.

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 Val Blaschke, (512) 305-7008 (or Relay Texas 800-735-2988), at least two days before this meeting so that appropriate arrangements can be made.

Contact: Val Blaschke, P.O. Box 2241, Austin, Texas 78768, (512) 305-7008.

Filed: June 3, 1994, 2:48 p.m.

TRD-9441781

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Texas Youth Commission

Thursday, June 23, 1994, 8:30 a.m.

4900 North Lamar Boulevard, Brown-Healy Building, Room 2301

Austin

According to the complete agenda, the Education Department will make introductions and hear opening remarks; brief overview of enabling legislation (Public Law 100-297); goal of Chapter II Program, and designated targeted assistance areas; proposed use of funds; rationale, and discussion, and closing remarks.

Contact: Leann Bourque, 4900 North Lamar Boulevard, Austin, Texas 78765, (512) 483-5162.

Filed: June 2, 1994, 4:16 p.m.

TRD-9441720

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Regional Meetings

Meetings Filed June 2, 1994

The Aqua Water Supply Corporation Board of Directors met at 305 Eskew (Aqua Office), Bastrop, June 6, 1994, at 7:30 p.m. Information may be obtained from Adlinie Rathman, P.O. Drawer P, Bastrop, Texas 78602, (512) 303-3943. TRD-9441704.

The Brazos Valley Development Council Brazos Valley Regional Advisory Committee on Aging met at the Council Offices, 1706 East 29th Street, Bryan, June 7, 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-9441711.

The Brazos Valley Development Council Board of Directors met in the BVDC Conference Room, 1703 East 29th Street, Bryan, June 9, 1994, at 1:30 p.m. Information may be obtained from Tom Wilkinson, Jr. P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9441714

The Education Service Center Region 10 Board of Directors met at 400 East Spring

Valley, Region 10 Board Room, Richardson, June 8, 1994, at 12:30 p.m. Information may be obtained from Joe Farmer, 400 East Spring Valley, Richardson, Texas 75081, (214) 231-6301 TRD-9441728.

The Erath County Appraisal District Board of Directors will meet in the Board Room, 1390 Harbin Drive, Stephenville, June 14, 1994, at 7:00 a.m. Information may be obtained from Jerry Lee, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434 TRD-9441713

The Hays County Appraisal District Board of Directors met at 21001 North IH-35, Kyle, June 9, 1994, at 3:30 p.m. Information may be obtained from Lynnell Sedlar, 21001 North IH-35, Kyle, Texas 78640, (512) 268-2522 TRD-9441725.

The Lampasas County Appraisal District Appraisal Review Board met at 109 East Fifth, Lampasas, June 7, 1994, at 9:00 a.m. Information may be obtained from Janice Henry, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9441708

The Nortex Regional Planning Commission General Membership Committee will meet at the Galaxy Center, Suite 200, 4309 Jacksboro Highway, Wichita Falls, June 16, 1994, at Noon. Information may be obtained from Dennis Wilde, P.O. Box 1544, Wichita Falls, Texas 76307-5144, (817) 322-5281, Fax (817) 322-6743. TRD-9441698

The Tax Appraisal District of Bell County (Revised Agenda) Board of Directors met at the Tax Appraisal District Building, 411 East Central Avenue, Belton, June 8, 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-9441694

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Meetings Filed June 3, 1994

The Archer County Appraisal District Appraisal Review Board-Mineral met at 101 South Center, Archer City, June 9, 1994, at 10:00 a.m. Information may be obtained from Edward H. Trigg, III, P.O. Box 1141, Archer City, Texas 76351, (817) 574-2172 TRD-9441783.

The Barton Springs/Edwards Aquifer Conservation District Board of Directors met at 1124-A Regal Row, Austin, June 9, 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 (512) 282-7016. TRD-9441768.

The Capital Area Rural Transportation System CARTS Board of Directors, Executive Committee met at 2010 East Sixth Street (via Conference Call), Austin, June 9, 1994, at 3:00 p.m. Information may be obtained from Edna Burroughs, P.O. Box

6050, Austin, Texas 78702, (512) 389-1011. TRD-9441733.

The Central Appraisal District of Taylor County Board of Directors met at 1534 South Treadaway, Abilene, June 8, 1994, at 3:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381. TRD-9441798

The Coleman County Water Supply Corporation Board of Directors met at the Corporation Office, 214 Santa Anna Avenue, Coleman, June 8, 1994, at 1:30 p.m. Information may be obtained from Davey Thweatt, 214 Santa Anna Avenue, Coleman, Texas 76834, (915) 625-2133 TRD-9441753.

The Comal Appraisal District Appraisal Review Board will meet at 178 East Mill Street #102, New Braunfels, June 16, 1994, at 9:00 a.m. Information may be obtained from Lynn E. Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222, (210) 625-8597. TRD-9441737

The Comal Appraisal District Appraisal Review Board will meet at 178 East Mill Street #102, New Braunfels, June 21-23, 1994, at 9:00 a.m. Information may be obtained from Lynn E. Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222, (210) 625-8597 TRD-9441738

The Comal Appraisal District Appraisal Review Board will meet at 178 East Mill Street #102, New Braunfels, July 7, 1994, at 9:00 a.m. Information may be obtained from Lynn E. Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222, (210) 625-8597 TRD-9441739.

The Comal Appraisal District Appraisal Review Board will meet at 178 East Mill Street #102, New Braunfels, July 14, 1994, at 9:00 a.m. Information may be obtained from Lynn E. Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222, (210) 625-8597. TRD-9441740.

The Dallas Area Rapid Transit Committee-of-the-Whole will meet in Conference Room C, 1401 Pacific Avenue, Dallas, June 7, 1994, at 1:00 p.m. Information may be obtained from Nancy McKethan, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9441778.

The Denton Central Appraisal District Appraisal Review Board will meet at 3911 Morse Street, Denton, June 15, 1994, at 9:00 a.m. Information may be obtained from John Brown, 3911 Morse Street, Denton, Texas 76202, (817) 566-0904 TRD-9441779.

The East Texas Council of Governments Executive Committee met at the ETCOG Office, Kilgore, June 9, 1994, at 2:30 p.m. Information may be obtained from Glynn

Knight, 3800 Stone Road, Kilgore, Texas 75662 TRD-9441731.

The Erath County Appraisal District Appraisal Review Board met at 1390 Harbin Drive, Stephenville, June 7-9, 1994, at 9:00 a.m. Information may be obtained from Mutzi Meekins, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434, Fax (817) 965-5633. TRD-9441782.

The Fisher County Appraisal District Appraisal Review Board will meet in the Fisher County District Clerk-Jury Room, Fisher County Courthouse, Roby, June 13, 1994, at 8:00 a.m. Information may be obtained from Betty Mize, P.O. Box 516, Roby, Texas 79543, (915) 735-2578. TRD-9441730

The Fisher County Appraisal District Board of Directors will meet at the Fisher County Tax/Appraisal Office, Roby Courthouse, Roby, June 17, 1994, at 7:30 a.m. Information may be obtained from Betty Mize, Route 1, Box D, 38-B, Rotan, Texas 79546, (915) 735-2578. TRD-9441780.

The Grand Parkway Association met at 5757 Woodway, Suite 140 East Wing, Houston, June 9, 1994, at 8:15 a.m. Information may be obtained from Jerry L. Coffman, 5757 Woodway, 140 East Wing, Houston, Texas 77057, (713) 782-9330. TRD-9441777

The Hickory Underground Water Conservation District Number One Board and Advisors met at 2005 South Bridge Street, Brady, June 9, 1994, at 7:00 p.m. Information may be obtained from Lorna Moore, P.O. Box 1214, Brady, Texas 76825, (915) 597-2785. TRD-9441784.

The Hunt County Appraisal District Board of Directors met in the Hunt County Appraisal District Boardroom, 4801 King Street, Greenville, June 9, 1994, at Noon. Information may be obtained from Shirley Smith, 4801 King Street, Greenville, Texas 75401, (903) 454-3510 TRD-9441762.

The Lower Rio Grande Valley Tech Prep/Associate Degree Consortium (also known as Tech Prep of the Rio Grande Valley, Inc.) Board of Directors met in the Board Room, Conference Center, Texas State Technical College, Harlingen, June 8, 1994, at 2:30 p.m. Information may be obtained from Pat Bubb, Tech Prep, TSTC Conference Center, Harlingen, Texas 78550, (210) 425-0729. TRD-9441754.

The Montague County Tax Appraisal District Board of Directors met at the Appraisal District Office, 312 Rusk Street, Montague, June 8, 1994, at 4:00 p.m. Information may be obtained from Wanda Russell, P.O. Box 121, Montague, Texas 76251, (817) 894-2081. TRD-9441839.

The Montague County Tax Appraisal District Board of Directors met at the Ap-

raisal District Office, 312 Rusk Street, Montague, June 8, 1994, at 5:00 p.m. Information may be obtained from Wanda Russell, P.O. Box 121, Montague, Texas 76251, (817) 894-2081. TRD-9441838.

The Sabine Valley Center Executive Committee met at the Administration Building, 107 Woodbine Place, Longview, June 9, 1994, at 6:00 p. m. Information may be obtained from Mack Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9441763.

The Sabine Valley Center Finance Committee met at the Administration Building, 107 Woodbine Place, Longview, June 9, 1994, at 6:00 p. m. Information may be obtained from Mack Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9441764.

The Sabine Valley Center Board of Trustees met at the Administration Building, 107 Woodbine Place, Longview, June 9, 1994, at 7:00 p. m. Information may be obtained from Mack Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9441765.

The South Texas Development Council Board of Directors met in the Commissioners Courtroom, Courthouse Annex, Zapata, June 9, 1994, at 11:00 a.m. Information may be obtained from Julie Saldana, P.O. Box 2187, Laredo, Texas 78044-2187, (210) 722-3995. TRD-9441741

The STED Corporation Board of Trustees met in the Commissioners Courtroom, Courthouse Annex, Zapata, June 9, 1994, at 9:30 a.m. Information may be obtained from Robert Mendiola, P.O. Box 2187, Laredo, Texas 78044-2187, (210) 722-3995. TRD-9441742

The Sulphur-Cypress Soil and Water Conservation District Number 419 met at 1809 West Ferguson, Suite B, Mt. Pleasant, June 9, 1994, at 8. 30 a.m. Information may be obtained from Beverly Amerson, 1809 West Ferguson, Suite B, Mt. Pleasant, Texas 75455-2921. TRD-9441735.

The Swisher County Appraisal District Board of Directors met at 130 North Armstrong, Tulia, June 9, 1994, at 7:30 a.m. Information may be obtained from Rose Lee Powell, P.O. Box 8, Tulia, Texas 79088, (806) 995-4118. TRD-9441734.

The Texas Automobile Insurance Plan Association will meet in the Lonestar Room, Omni Austin Hotel, 701 San Jacinto, Austin, June 15-16, 1994, at 9:30 a.m. and 8.30 a.m. respectively. Information may be obtained from Marilyn Kinsey, P.O. Box 18447, Austin, Texas 78760-8447, (512) 444-5999. TRD-9441775.

The Trinity River Authority of Texas Legal Committee will meet at 5300 South Collins, Arlington, June 10, 1994, at 10:30

a.m. Information may be obtained from James L. Murphy, 5300 South Collins, Arlington, Texas 76018, (817) 467-4343 TRD-9441771

The Tyler County Appraisal District Board of Directors met at 806 West Bluff, Woodville, June 6, 1994, at 5 00 p.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736 TRD-9441751

The Wise County Appraisal District Appraisal Review Board met at 206 South State Street, Decatur, June 9, 1994, at 9 00 a.m. Information may be obtained from LaReesea North, 206 South State Street, Decatur, Texas 76234, (817) 627-3081 TRD-9441732.

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Meetings Filed June 6, 1994

The Brazos River Authority Audit Committee, Board of Directors will meet at 4400 Cobbs Drive, Waco, June 14, 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-9441850

The Brazos River Authority Lake Management Committee, Board of Directors will meet at the Lake Supervisor's Office, Possum Kingdom Lake, June 17, 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-9441851.

The Callahan County Appraisal District Board of Directors will meet at the Appraisal District Office, 130-A West Fourth Street, Baird, June 13, 1994, at 8.00 p.m. Information may be obtained from Jane Ringhoffer, P.O. Box 806, Baird, Texas 79504, (915) 854-1165. TRD-9441888.

The Central Appraisal District of Nolan County Board of Directors will meet at the Nolan County Courthouse, Third Floor, 100 East Third Street, Sweetwater, June 10, 1994, at 7:00 a.m. Information may be obtained from Ansa Lee Lane, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421. TRD-9441852.

The Central Appraisal District of Rockwall County Appraisal Review Board met at the Rockwall County Appraisal Office, 106 North San Jacinto, Rockwall, June 8, 1994, at 8:30 a.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, (214) 771-2034. TRD-9441856.

The Dallas Central Appraisal District (Emergency Meeting.) Board of Directors met in the Community Room, Second Floor, 2949 North Stemmons Freeway, Dallas, June 8, 1994, at 8.30 a.m. The emergency meeting was necessary-to fill vacated

positions on Appraisal Review Board to hear protest appeals in progress. Information may be obtained from Rick L. Kuehler, 2949 North Stemmons, Dallas, Texas 75247, (214) 631-0520. TRD-9441883.

The Ellis County Appraisal District Appraisal Review Board will meet at 406 Sycamore Street, Waxahachie, June 10, 1994, at 8:30 a.m. Information may be obtained from Dorothy J. Phillips, P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552. TRD-9441899

The Golden Crescent Private Industry Council Quality Work Force Planning Full Committee will meet at the Student Center, Victoria College, 2200 East Red River, Victoria, June 14, 1994, at 3:30 p.m. Information may be obtained from Carol Matula, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9441895.

The Kendall County Appraisal District Appraisal Review Board met in the Conference Room, 121 South Main Street, Boerne, June 9, 1994, at 9:00 a. m. Information may be obtained from Joe P. Davis, Box 788, Boerne, Texas 78006, (210) 249-8012. TRD-9441848.

The Lavaca County Central Appraisal District Appraisal Review Board will meet at 113 North Main Street, Hallettsville, June 16, 1994, at 8. 00 a.m. Information may be obtained from Diane Munson, P.O. Box 338, Hallettsville, Texas 77964, (512) 798-4396. TRD-9441892.

The Lee County Appraisal District Appraisal Review Board will meet at 218 East Richmond Street, Giddings, June 13, 1994, at 9:00 a.m. Information may be obtained from Delores Shaw, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618 TRD-9441897.

The Lee County Appraisal District Appraisal Review Board will meet at 218 East Richmond Street, Giddings, June 15, 1994, at 9:00 a.m. Information may be obtained from Delores Shaw, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618. TRD-9441896.

The Manville Water Supply Corporation Board of Directors met at the Manville Office off Highway 95 on Spur 277, Coupland, June 9, 1994, at 7. 00 p.m. Information may be obtained from LaVerne Rohlack, P.O. Box 248, Coupland, Texas 78615, (512) 272-4044. TRD-9441849.

The Mills County Appraisal District met in the Jury Room, Mills County Courthouse, Goldthwaite, June 9, 1994, at 6.30 p.m. Information may be obtained from Cynthia Partin, P.O. Box 565, Goldthwaite, Texas 76844, (915) 684-2253. TRD-9441869.

The Riceland Regional Mental Health Authority Board of Trustees will meet at

3007 North Richmond Road, Wharton, June 16, 1994, at Noon. Information may be obtained from Marjorie Dornak, P.O. Box 869, Wharton, Texas 77488, (409) 532-3098.

The San Antonio River Authority Board of Directors will meet in the Boardroom, 100 East Guenther Street, San Antonio, June 15, 1994, at 2:00 p. m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas

78283-0027, (210) 227-1373. TRD-9441853.

The Trinity River Authority of Texas Utility Services Committee will meet at 5300 South Collins, June 13, 1994, at 10:00 a.m. Information may be obtained from James L. Murphy, 5300 South Collins, Arlington, Texas 76018, (817) 467-4343. TRD-9441884.

Meetings Filed June 7, 1994

The Gillespie Central Appraisal District Board of Directors will meet in the County Courtroom, Gillespie County Courthouse, Fredericksburg, June 15, 1994, at 9:00 a.m. Information may be obtained from Mary Lou Smith, P. O. Box 429, Fredericksburg, Texas 78624, (512) 997-9807. TRD-9441907.





Name: Oscar Arteaga

Grade: 10

School: Lopez High School, Brownsville 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.

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

as and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formu-

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer ⁽³⁾/Agricultural/ Commercial ⁽⁴⁾ thru \$250,000</u>	<u>Commercial⁽⁴⁾ over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	06/06/94-06/12/94	18.00%	18.00%
Monthly Rate - Art. 1.04 (c) ⁽¹⁾	06/01/94-06/30/94	18.00%	18.00%
Standard Quarterly Rate - Art. 1.04(a)(2)	07/01/94-09/30/94	18.00%	18.00%
Retail Credit Card Quarterly Rate - Art. 1.11 ⁽³⁾	07/01/94-09/30/94	18.00%	N.A.
Lender Credit Card Quarterly Rate - Art. 15.02(d) ⁽³⁾	07/01/94-09/30/94	14.00%	N.A.
Standard Annual Rate - Art 1.04(a)(2) ⁽²⁾	07/01/94-09/30/94	18.00%	18.00%
Retail Credit Card Annual Rate - Art. 1.11 ⁽³⁾	07/01/94-09/30/94	18.00%	N.A.
Judgment Rate - Art 1.05, Section 2	06/01/94-06/30/94	10.00%	10.00%

⁽¹⁾For variable rate commercial transactions only. ⁽²⁾Only for open-end credit as defined in Art. 5069-1.01(f) V.T.C.S. ⁽³⁾Credit for personal, family or household use. ⁽⁴⁾Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on May 31, 1994.

TRD-9441715 Al Endsley
Consumer Credit Commissioner

Filed: June 2, 1994

Request for Interpretation of Article 79

Under provisions of §10, Article 2.02A, Title 79, Revised Statutes (Texas Civil Statutes, Article 5069-2.02A), the consumer credit commissioner may issue interpretations of Title 79, Revised Statutes (Texas Civil Statutes, Article 5069-1.01 et seq). The consumer credit commission has received the following requests for interpretations.

Request Number 94-3. A bank holds a first Deed of Trust on a residential lot. The lot owner executes a Mechanic's Lien Contract and Note payable to a builder to construct a residence on the lot. The builder executes a non-liability note to the bank for construction financing. The builder's note is secured by an assignment of the Mechanic's Lien Contract and Note and a guaranty of the lot owner/future

home owner. Can the bank legally charge an origination fee or any or all of the following: the lot loan, the construction loan, and a permanent mortgage loan, notwithstanding the provisions of Texas Civil Statutes, Article 342-508?

Request Number 94-4. Are retail installment sales of motor vehicles, which would otherwise clearly come within the scope of Chapter 7 but for the purported absence of any time price differential, finance charge, or interest, subject to Texas Civil Statutes, Article 5069-7.01 et seq, including the requirement that the seller register with the Office of Consumer Credit Commissioner?

Pursuant to 7 TAC §1.305, interested parties may submit briefs and proposals pertaining to these requests for 30 days following the date of this publication. Briefs and proposals may be mailed to 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or may be transmitted by facsimile machine to (512) 479-1293.

Issued in Austin, Texas, on June 1, 1994.

TRD-9441646 Al Endsley
Commissioner
Office of Consumer Credit Commissioner

Filed: June 1, 1994

**Texas Commission for the Deaf and
Hearing Impaired
Request for Proposals-Extension of
Submission Deadline**

In reference to the Request for Proposals posted by the Texas Commission for the Deaf and Hearing Impaired in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2989), the deadline for submission has been extended to June 25, 1994, at 5:00 p.m.

Issued in Austin, Texas, on June 3, 1994.

TRD-9441789 David W. Myers
Executive Director
Texas Commission for the Deaf and
Hearing Impaired

Filed: June 3, 1994



NEW LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
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Throughout Texas	Adams Brothers, Inc.	L04771	Athens	0	05/25/94

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
Amarillo	St. Anthony's Hospital	L01242	Amarillo	45	05/24/94
Austin	Austin Heart, P.A.	L04623	Austin	2	05/16/94
Austin	Austin Heart, P.A.	L04623	Austin	1	05/11/94
Austin	Austin Radiological Association	L00545	Austin	69	05/25/94
Austin	Allan Shivers Radiation Therapy Center	L01761	Austin	30	05/27/94
Channelview	Lyondell Petrochemical Company	L00064	Channelview	30	05/19/94
Dallas	North Texas Heart Center, P.A.	L04608	Dallas	4	05/13/94
Decatur	Decatur Community Hospital	L02382	Decatur	8	05/23/94
El Paso	The University of Texas at El Paso	L00159	El Paso	32	05/19/94
El Paso	BRK Brands, Inc.	L03725	El Paso	7	05/24/94
Fort Worth	All Saints Hospital Cityview	L04105	Fort Worth	6	05/20/94
Galveston	The University of Texas Medical Branch	L01299	Galveston	39	05/26/94
Grand Prairie	Loral Vought Systems Corporation	L02670	Dallas	18	05/04/94
Henderson	Henderson Memorial Hospital	L03466	Henderson	11	05/27/94
Houston	Hermann Hospital	L00650	Houston	45	05/13/94
Houston	University of Texas M.D. Anderson Cancer Center	L02972	Houston	14	05/13/94
Houston	The U.T. Health Science Center at Houston	L03685	Houston	15	05/16/94
Houston	Texas Southern University	L03121	Houston	10	05/23/94
Houston	Twelve Oaks Hospital	L02432	Houston	15	05/23/94
Houston	Baylor College of Medicine	L00680	Houston	50	05/12/94
Houston	Mallinckrodt Medical, Inc.	L03008	Houston	35	05/25/94
Houston	Baylor College of Medicine	L00680	Houston	51	05/25/94
Mansfield	Vencor Hospital - Fort Worth	L03490	Mansfield	11	05/17/94
McAllen	Rio Grande Regional Hospital	L03288	McAllen	26	05/18/94
Missouri City	Durwood Greene Construction Company	L04753	Stafford	2	05/24/94
Pittsburg	Pilgrim's Pride Corporation	L04150	Pittsburg	4	05/20/94
Plainview	Methodist Hospital - Plainview	L02493	Plainview	12	05/04/94

**Texas Department of Health
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.

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Richardson	The University of Texas at Dallas	L02114	Richardson	38	05/26/94
San Antonio	Baptist Memorial Hospital System	L00455	San Antonio	60	05/20/94
San Antonio	Alfred L. Burden, Jr., M.D.	L01025	San Antonio	15	05/24/94
The Woodlands	Memorial Hospital - The Woodlands	L03772	The Woodlands	12	05/12/94
Throughout Texas	Goolsby Testing Laboratories, Inc.	L03115	Humble	43	05/16/94
Throughout Texas	Global X-Ray & Testing Corp.	L03663	Aranas Pass	37	05/16/94
Throughout Texas	Longview Inspection, Inc.	L03720	Longview	51	05/16/94
Throughout Texas	PMI Specialists, Inc.	L04686	Liberty	3	05/18/94
Throughout Texas	Fugro-McClelland (Southwest), Inc.	L03461	Dallas	12	05/18/94
Throughout Texas	Logtech Wireline Services, Inc.	L02501	Tyler	20	05/18/94
Throughout Texas	X-Ray Equipment Company	L01485	Mansfield	23	05/18/94
Throughout Texas	Texas Department of Health	L01155	Austin	68	05/18/94
Throughout Texas	South Texas Construction Company	L04229	Midland	3	05/20/94
Throughout Texas	METCO	L03018	Houston	32	05/19/94
Throughout Texas	L. A. Fuller & Sons Construction, Inc.	L04170	Amarillo	2	05/23/94
Throughout Texas	ATL Laboratories, Inc.	L03924	Arlington	7	05/20/94
Throughout Texas	Logtech Wireline Services, Inc.	L02501	Tyler	21	05/23/94
Throughout Texas	Warrington, Inc.	L03074	Austin	19	05/23/94
Throughout Texas	Computalog Wireline Services, Inc.	L04286	Houston	21	05/23/94
Throughout Texas	W. H. Henken Industries, Inc.	L00967	Arlington	31	05/24/94
Throughout Texas	Western Stress, Inc.	L04084	Houston	11	05/25/94
Throughout Texas	Rogers Engineering Services	L03733	Brenham	10	05/26/94
Throughout Texas	Rone Engineers	L02356	Dallas	13	05/26/94
Throughout Texas	Great Guns, Inc.	L01990	Sour Lake	22	05/26/94
Throughout Texas	Master Wireline Services, Inc.	L04161	Wichita Falls	3	05/23/94
Webster	Clear Lake Regional Medical Center	L01680	Webster	33	05/19/94
Wichita Falls	Wichita Falls Clinic	L00523	Wichita Falls	25	05/25/94

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
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San Antonio	Bexar County Forensic Center	L04313	San Antonio	3	05/16/94
Victoria	Victoria Regional Medical Center	L03575	Victoria	10	05/19/94

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
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Denison	Ag Processing, Inc.	L03553	Denison	7	05/27/94
Houston	NDRC Laboratories, Inc.	L04491	Houston	1	05/27/94
Throughout Texas	Davis Great Guns Logging, Inc.	L04604	Victoria	4	05/16/94
Throughout Texas	Western Waste Industries	L04230	New Boston	2	05/18/94
Throughout Texas	Radiation Physics Associates	L01955	Waco	6	05/19/94
Throughout Texas	Comal County Unit Road System	L03388	New Braunfels	7	05/25/94

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., 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 June 1, 1994.

TRD-9441736 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: June 3, 1994

Nominations for, and Feedback on, Regional HIV Planning Coalitions

The Texas Department of Health (TDH) is soliciting nominations for, and feedback on, regional HIV planning coalitions to be established in each of the 11 public health regions of Texas. The planning coalitions, mandated by the United States Centers for Disease Control and Prevention, are essential components for future planning of HIV prevention initiatives in Texas. Though the planning coalitions will not make funding decisions, they will identify and place priorities on proposed HIV prevention activities.

Membership selection will be from organizations serving, or representatives from, groups at risk of HIV infection.

An individual may nominate himself or herself or another individual in the open nominations process. Nominations must be received by June 26, 1994.

Regional coalitions will be comprised of from 11 to 18 members and must represent the following groups: substance abusers; adolescents; racial/ethnic minority men; racial/ethnic minority women; persons HIV-infected or living with AIDS; gay, lesbian or bisexual individuals; HIV prevention professionals (from one to four members); a TDH staff member (to serve as chair); representatives of projected HIV-infected populations characteristic of the region (from one to five members); additional members to ensure adequate representation of projected populations at risk of HIV infection.

Additionally, TDH is requesting comments regarding the structure, bylaws, nomination process, needs assessment and proposed conflict resolution process developed by a statewide pre-planning group for the regional coalitions. Comments must be received by June 26, 1994, and should be addressed to: Texas Department of Health, HIV Community Planning, 1100 West 49th Street, Austin, Texas 78756.

An information packet containing the components for the HIV planning coalitions and applications for nominations may be obtained by calling: (512) 458-7456 or (512) 458-7304.

Issued in Austin, Texas, on June 2, 1994.

TRD-9441726 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: June 2, 1994

Notices of Emergency Cease and Desist Order

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Dawn P. Gayken, D.D.S. (registrant-UNREGISTERED) of Spring to cease and desist from operating any source of radiation to perform dental intraoral x-ray procedures until all health-related violations found during a recent inspection of the facility are corrected. The bureau determined that continued radiation exposure to patients in excess of that required to produce a diagnostic image constitutes an immediate threat to public health and safety, and the existence of an emergency. Doctor Gayken is further required to provide evidence satisfactory to the bureau regarding the actions taken to correct these violations and the methods used to prevent their recurrence.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on June 6, 1994.

TRD-9441843 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: June 6, 1994

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Daniel C. Bush, D.D.S. (registrant-R14144) of Arlington to cease and desist using the Ritter dental x-ray units (Model 2B-Serial Number 7029 and Model B-Serial Number BD2529) to perform dental intraoral x-ray procedures until all health-related violations found during a recent inspection of the facility are corrected. The bureau determined that continued radiation exposure to patients in excess of that required to produce a diagnostic image constitutes an immediate threat to public health and safety, and the existence of an emergency. The registrant is further required to provide evidence satisfactory to the bureau regarding the actions taken to correct these violations and the methods used to prevent their recurrence.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on June 6, 1994.

TRD-9441844 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: June 6, 1994



Notice is hereby given that the Bureau of Radiation Control (bureau) ordered National Fabricators, Inc. of Baton Rouge, Louisiana, to cease and desist operating any sources of radiation at any location in Texas until the company has been granted reciprocal recognition by the bureau to perform the service in Texas. The bureau determined that the use of radiation sources for industrial radiographic services that have not been granted reciprocal recognition constitutes an immediate threat to public health and safety and the existence of an emergency.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on June 6, 1994.

TRD-9441845 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: June 6, 1994



Notice of Intent to Revoke Certificates of Registration

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Repka and Associates PC, Pleasanton, R10960; J. Scott Jones, D.D.S., Waco, R06291; B. J. Fuller, D.D.S., P.C., Arlington, R09536; Stephen Ratcliff, D.D.S., Arlington, R12888; William Love James, D.D.S., San Angelo, R17855; Daniel T. Carrier, D.D.S., Richardson, R16478; Southwest Orthodontic Lab, Fort Worth, R17300; Medical Diagnostics, Inc., Houston, R12887; ChiroSpecialists, Inc., Humble, R10029; Carl M. Nachritz, III, D.C., Fort Worth,

R17898; Valley Ranch Chiropractic Clinic, Irving, R15710; Anthony O'Dwyer, M.D., P.A., Pearland, R13887; Northwest Airlines, Inc., Houston, R09561; H L Electronic, Tucson, Arizona, Z00806; Laser Arts, Corcoran, California, Z00807.

The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on June 6, 1994.

TRD-9441846 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: June 6, 1994



Notice of Intent to Revoke Radioactive Material Licenses

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following licensees: Sam Houston State University, Huntsville, L00873; Southwest Texas State University, San Marcos, L03321; Tracer Service, Inc., Kilgore, L03526; Cappsco International Corporation, Aledo, L03999; Browning Construction Company, San Antonio, L04537.

The department intends to revoke the radioactive material licenses; order the licensees to cease and desist use of such radioactive materials; order the licensees to divest themselves of the radioactive material; and order the licensees to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the licensees for a hearing to show cause why the radioactive material licenses should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E.,

Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material licenses will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on June 6, 1994.

TRD-9441847 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: June 6, 1994

Notice of Rescission of Orders

Notice is hereby given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following orders: Emergency Cease and Desist Order and Notice of Violation issued March 7, 1994, to Richard E. Burt, D.D.S., Inc., 71 Richardson Heights Village, Richardson, Texas 75080, holder of Certificate of Registration Number R05311; Emergency Cease and Desist Order and Notice of Violation issued February 25, 1994, to Clinica Del Sol, 6206 Dashwood, Houston, Texas 77081, holder of Certificate of Registration Number R13201.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on June 6, 1994.

TRD-9441842 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: June 6, 1994

Texas House of Representatives Business and Industry Committee Requests for Comments

To all interested parties.

Pursuant to the public notice posted, the House Business and Industry Committee, Subcommittee on Public Insurance Pools, met in a public hearing on May 25, 1994, to study the various insurance pools and self-insured insurance funds that provide workers' compensation coverage for public entities (such as cities, counties, school districts, water districts, etc.) to determine whether regulation is needed to protect members and claimants, or to otherwise protect the integrity of the pool or self-insured fund.

At the close of the meeting, the Chair instructed committee staff to send interested parties a letter asking for the submission of written statements concerning the direction the committee has taken. Staff was also instructed to have this letter published in the *Texas Register*.

Written responses should include your rationale for why or why not insurance pools and self-insured funds that provide workers' compensation to public entities should be

regulated. We would also appreciate your thoughts on the regulation of third party administrators used by insurance pools and self-insured public entities. Included in your written statements should be any and all evidence needed to support your statements. The Chair has asked that this information be submitted no later than July 1, 1994. The information should be sent to: Mance Bowden, Committee Clerk, Committee on Business and Industry, P.O. Box 2910, Austin, Texas 78768-2910.

The information received will be used to help formulate a plan of action to be used by the committee.

Issued in Austin, Texas, on June 6, 1994.

TRD-9441857 Tim Dudley
Committee Services
Texas House of Representatives

Filed: June 6, 1994

Texas Department of Insurance Company Licenses

The following applications have been filed with the Texas Department of Insurance and are under consideration.

1. Application for admission in Texas for ADVANTA Insurance Company, a foreign fire and casualty company. The home office is in Phoenix, Arizona.
2. Application for admission in Texas for Conestoga Life Assurance Company, a foreign life company. The home office is in Broomall, Pennsylvania.
3. Application for name change by Lincoln National Reinsurance Company, a foreign fire and casualty insurance company. The proposed new name is Linsco Reinsurance Company. The home office is in Fort Wayne, Indiana.
4. Application for name change by Investors Mortgage Insurance Company, a foreign stock casualty company. The proposed new name is CMG Mortgage Insurance Company. The home office is in Naperville, Illinois.
5. Application for incorporation in Texas for HMO Texas, Inc., a domestic health maintenance organization. The home office is in Houston, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Cindy Thurnan, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

Issued in Austin, Texas, on June 2, 1994.

TRD-9441691 D. J. Powers
Legal Counsel to the Commissioner
Texas Department of Insurance

Filed: June 2, 1994

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

1. Application for admission in Texas for Delta Dental Plan of New Mexico, Inc., a foreign third party administrator. The home office is in Albuquerque, New Mexico.
2. Application for a name change in Texas for Anchor Benefit Consulting, Inc., a foreign third party administrator.

tor. The proposed new name is Anchor Benefit Administrator, Inc. The home office is in Miami, Florida.

3. Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 105-6A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on June 2, 1994.

TRD-9441692

D. J. Powers
Legal Counsel to the Commissioner
Texas Department of Insurance

Filed: June 2, 1994

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**Texas Natural Resource Conservation
Commission**

**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 conditions 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 protests 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 Number 23-538D by Milton H. West, Jr., et al. An amendment to Certificate of Adjudication Number 23-538C pursuant to TWC §11.122. For Executive Director's Consideration. Applicants seek to combine into Certificate of Adjudication Number 23-538D water rights presently held by them under Certificates 23-538C (2197.15 acre-feet of Class "B" water) and 23-551 (495 acre-feet of Class "B" water), in the Rio Grande Basin, Hidalgo County. The two Certificates are appurtenant to lands (total 1,523 acres) that are adjacent and are served by the same irrigation diversion system.

Approval of Application Number 30456-Q of Belleau Wood East Property Owners Association to Cancel Water Certificate of Convenience and Necessity Number 11718 in Harris County, Texas.

Application of Maxwell Water Supply Corporation to amend Water Certificate of Convenience and Necessity Number 10293 in Caldwell County, Texas.

Application by Mobil Chemical Company, Inc. for a minor amendment to Permit Number 00462 in order to delete the drainage area reference contained in the sample point description. The permit currently authorizes an intermittent, flow variable discharge of stormwater associated with industrial activity, which will remain the same. The applicant operates the Beaumont Plant, a petrochemical plant manufacturing olefins and aromatics. The plant site is at a site between State Highway 347 and the Neches River, which is southeast of the City of Beaumont, Jefferson County, Texas.

Application by Newpark Shipbuilding and Repair, Inc. for a minor amendment to Permit Number 02034 to authorize the discharge of additional treated wastewaters from off-site sources via Outfall 001. These wastewaters are similar to the treated wastewaters from on-site sources which are currently authorized for discharge via Outfall 001. The permit authorizes: a discharge of treated process wastewater at a volume not to exceed an average flow of 100,000 gallons per day via Outfall 001; and an intermittent, flow variable discharge of uncontaminated stormwater runoff via Outfall 002. The flow volumes for these outfalls will remain the same. The applicant operates a facility for construction, repairing, cleaning, and gas-freeing of ships, barges, tugs, tank trucks, and from similar off-site sources. The plant site is on Brady Island between the Houston Ship Channel and Old Buffalo Bayou in the City of Houston, Harris County, Texas.

Issued in Austin, Texas, on June 3, 1994.

TRD-9441790

Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: June 3, 1994

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Notice of Public Hearing

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code, §382.017 (Vernon's 1992); 30 Texas Administrative Code (TAC) §103.11(4); Texas Government Code, Subchapter B, Chapter 2001 (Vernon's 1993); 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 amendments to §§117.451, 117.510, 117.520, 117.530, and 117.601, concerning Control of Air Pollution From Nitrogen Compounds. The proposed changes have been developed 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 TNRCC is proposing to revise the compliance schedules contained in Chapter 117 to extend the final compliance dates from May 31, 1995 to May 31, 1997. This extension would delay the implementation of NO_x RACT in the Houston/Galveston and Beaumont/Port Arthur areas, and make the implementation of NO_x RACT contingent on Urban Airshed Modeling using data from the Coastal Oxidant Assessment for Southeast Texas (COAST), an intensive 1993 field study.

A public hearing on the proposal will be held on July 6, 1994, at 10:00 a.m. in Room 254S of TNRCC Building E, located at 12118 North IH-35, Park 35 Technology Center, Austin. 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 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 July 8, 1994. Material received by the TNRCC Regulation Development Section by 4:00 p.m. on July 8, 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 mail written comments to Randy Hamilton, Regulation Development Section, Air Quality Planning Division, P.O. Box 13087, Austin, Texas 78711-3087. 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 hearing should contact the agency at (512) 239-1459. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on May 31, 1994.

TRD-9441671 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation
Commission

Filed: June 2, 1994

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Texas Parks and Wildlife Department Notice for Request for Public Comment Regarding Draft-Texas Recreation and Parks Account Program

Introduction. The Texas Recreation and Parks Account (TRPA) was established by House Bill 706 in the 73rd State Legislature in 1993 (Parks and Wildlife Code, Chapter 24). TRPA provides 50% matching grant assistance to eligible local governments throughout Texas for the acquisition and development of public recreation areas and facilities. TRPA funding is received from a portion of the state sales tax on sporting goods.

The Parks and Wildlife Code, §24.005(b), authorizes the Parks and Wildlife Department to adopt rules and regulations for TRPA grant assistance. The Grants Manual establishes procedures and rules for program administration. The Project Priority Scoring System will be used to prioritize (score) TRPA proposals to be presented to the Parks and Wildlife Commission for award consideration.

TPWD staff have completed draft documents regarding scoring and administration of these programs and the agency is soliciting public comments on the TRPA Grants Manual and Project Priority Scoring System.

Persons interested in obtaining copies of the TRPA Grants Manual or Project Priority Scoring System, information about the programs, or interested in providing comment regarding the drafts, should contact Stephen A. Bosak, Grants-In-Aid Program, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or telephone (512) 389-4947.

Issued in Austin, Texas, on May 31, 1994.

TRD-9441689 Paul M. Shinkawa
Acting General Counsel
Texas Parks and Wildlife Department

Filed: June 2, 1994

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Texas Department of Protective and Regulatory Services Request for Proposal

Texas Department of Protective and Regulatory Services (PRS) announces this request for proposal (RFP) to provide a "Levels of Care (LOC) Service Support System" pertaining to Child Protective Services (CPS).

Description: Services to be provided under this RFP include making clinical determinations of the level of care necessary to meet the child's treatment and services needs; service authorizations and reauthorizations, including those covered by Medicaid; utilization reviews; quality assurance monitoring of residential care; and related resource information and reporting services.

Limitations: Eligible applicants include public or private profit or non-profit agencies and individuals with demonstrated knowledge, competence, and qualifications in providing similar residential facility quality assurance monitoring services. Funds provided through this project may not be used to replace existing federal, state, or local funding. Eligible applicants who may also be Historically Underutilized Businesses or Small Business are encouraged to apply by notifying the contact person named in this notice. PRS reserves the absolute right to amend, prolong, cancel, or rescind this RFP at any time and to reject any and all offers received.

Term and Total Value: The contract period is projected from September 1, 1994, through August 31, 1995. Funding will not exceed \$900,000.

Evaluation and Selection: A PRS state agency panel of program and administrative staff will rank and score the proposals. The screening and evaluation method and criteria are predetermined. Criteria include detailed service description, relevant organizational experience and staff qualifications, and cost.

Deadline: The last day to receive offers is Thursday, July 11, 1994. Proposals received after this deadline will be accepted only if mailed via next day mail and postmarked no later than two days prior to the deadline. Modifications to the original proposal must also be received by deadline.

Offerors' Conference: An offeror's conference is scheduled to held on Friday, June 24, 1994, from 9:00 a.m. to 10:00 a.m., at PRS headquarters in Austin, Texas, 701 West 51st Street, 5th Floor, East Tower, Section G. All

potential providers are invited to attend and to present inquiries pertaining to the RFP at that time. Persons with disabilities who may need auxiliary aids or services are requested to contact the designated procurement officer, Charles Gembinski at (512) 450-3861 or (512) 450-3299, within 72 hours of conference.

Contact Person: To obtain a complete copy of the RFP, please contact Charles Gembinski, Jr.; P.O. Box 149030 (Mail Code E-559), Austin, Texas 78714-9030.

Issued in Austin, Texas, on June 6, 1994.

TRD-9441860 Nancy Murphy
Section Manager, Policy and Document
Support
Texas Department of Protective and
Regulatory Services

Filed: June 6, 1994

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Public Utility Commission of Texas
Notices 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 Birdville ISD, Fort Worth, Texas.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for Birdville ISD pursuant to Public Utility Commission Substantive Rule 23.27. Docket Number 13070.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Birdville ISD. The geographic service market for this specific service is the Fort Worth, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on May 31, 1994.

TRD-9441647 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: June 1, 1994

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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 the Museum of Fine Arts, Houston, Texas.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for the Museum of Fine Arts pursuant to Public Utility Commission Substantive Rule 23.27. Docket Number 13063.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for the

Museum of Fine Arts. 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, 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on May 31, 1994.

TRD-9441648 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: June 1, 1994

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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 Datapoint Corporation, San Antonio, Texas.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of a 44-Station Addition to the Existing Plexar-Custom Service for Datapoint Corporation pursuant to Public Utility Commission Substantive Rule 23.27. Docket Number 079.

The Application. Southwestern Bell Telephone Company is requesting approval of a 44-station addition to the existing Plexar-Custom Service for Datapoint Corporation. The geographic service market for this specific Service is the San Antonio, 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) 458-0388, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on June 3, 1994.

TRD-9441793 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: June 3, 1994

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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 an amendment to a customer-specific service for MCI Telecommunications Corporation.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for Approval of an Amendment to a Customer-Specific Contract for MCI Telecommunications Corporation Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 084.

The Application. Southwestern Bell Telephone Company is requesting approval of an amendment to a customer-specific contract for Billing and Collections Services with MCI Telecommunications Corporation. Billing and Collection Services include four general categories of services: Recording Services, Billing Service, Billing Analysis Services, and Billing Information Service. The geographic service market for this specific service is anywhere within the State of Texas where MCI Telecommuni-

cations Corporation provides services to Southwestern Bell end user customers.

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) 458-0388, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on June 3, 1994.

TRD-9441882 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: June 3, 1994

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Petition of City of Troup Exchange for Expanded Local Calling Service to the Tyler Exchange; Docket Number 12335

On September 22, 1993, a Petition to Extend Local Service (ELS) was filed by the City of Troup on behalf of the Troup Exchange for ELS service to the Tyler Exchange. The Troup Exchange is served by United Telephone Company of Texas. The Tyler Exchange is served by Southwestern Bell Telephone Company (SWB).

In connection with the anti-trust case which was initiated by the United States Justice Department against AT&T breaking up the Bell System, Judge Harold Greene of the U.S. District Court for the District of Columbia entered a Modified Final Judgment which created Local Access Transport Areas (LATAs). The Court ruled that Bell Operating Companies like SWB could not carry traffic across a LATA boundary without permission of the Court. The Troup Exchange is in the Dallas LATA and the Tyler Exchange is in the Longview LATA. In order for SWB to carry traffic from the Tyler Exchange to the Troup Exchange, calls must be transported across a LATA boundary.

The purpose of this docket is to take evidence on the community of interest which the Troup Exchange has with the Tyler Exchange and to consider whether to direct SWB to apply for a waiver of the restriction precluding SWB from transporting interLATA traffic.

The deadline for intervention in Docket Number 12335 is June 13, 1994. Persons who wish to intervene or comment on these proceedings should notify the Commission by June 13, 1994. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757. Further information may also be obtained by calling the Public Utility Commission's Public Information Office at (512) 458-0388, or (512) 458-0221 teletypewriter for the deaf.

Issued in Austin, Texas, on June 3, 1994.

TRD-9441881 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: June 3, 1994

Office of the Secretary of State Voter Registration Task Force

The Secretary of State has appointed a task force to discuss implementation of the National Voter Registration Act. The first task force discussion will be held at 10:00 a.m. on Monday, June 13, 1994, at the House Appropriations Meeting Room, E 1.030, Capitol Extension.

Discussions will include registration at motor vehicle offices, public assistance offices, and any office in the state that provides state-funded programs primarily engaged in providing services to persons with disabilities, and designations of additional voter registration agencies. Other topics will include fail-safe voting and list maintenance.

For any information regarding the above, please contact Melinda Nickless or Ann McGeehan toll free 1-(800) 252-8683 or (512) 463-5650.

Issued in Austin, Texas, on June 6, 1994.

TRD-9441894 Machree Garrett Gibson
Assistant Secretary of State
Office of the Secretary of State

Filed: June 6, 1994

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The University of Texas System Request for Proposal

The University of Texas System (the UT System) requests proposals from law firms interested in representing the UT System and its component institutions in certain environmental permitting and regulatory matters. This RFP is issued for the purpose of establishing (for the fiscal year commencing September 1, 1994) a panel from which the UT System, by and through its Office of General Counsel, will select appropriate counsel for representation in environmental permitting and regulatory matters, as the need arises.

Description. The UT System operates 15 institutions located in Arlington, Austin, Brownsville, Dallas, El Paso, Edinburg, Galveston, Houston, Odessa, San Antonio, and Tyler, Texas. The UT System anticipates the need to engage outside counsel with experience in environmental permitting and regulatory matters to assist its Office of General Counsel. Outside counsel must have a working knowledge of state and federal environmental laws and regulations and significant experience in environmental permitting and regulatory matters. The UT System invites responses to this RFP from qualified firms for the provision of such legal services under the direction and supervision of the UT System's Office of General Counsel.

Responses. Responses to this RFP should include at least the following information: a description of the firm or attorney's qualifications for performing the legal services including the firm's prior experience in environmental permitting and regulatory matters; the names, experience, and expertise of the attorneys who may be assigned to work on such matters; the availability of the lead attorney and others assigned to a project; appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of legal services; fee information (either in the form of hourly rates for each attorney who may be assigned to perform services, comprehensive flat fees, or other fee arrangements directly related to the achievement

of specific goals and costs 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; disclosure of conflicts of interest, if any (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the UT 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 UT 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. The proposal should be sent by mail or delivered in person, marked "Response to Request for Proposal," and addressed to Pamela S. Bacon, Office of General Counsel, The University of Texas System, 201 West Seventh Street, Austin, Texas 78701 (Telephone: (512) 499-4462 for questions).

Deadline for Submission of Response. All proposals must be received by the Office of General Counsel of the UT System at the previous address set forth not later than 5:00 p.m. Friday, July 18, 1994.

Issued in Austin, Texas, on June 1, 1994.

TRD-9441645 Arthur H. Dilly
Executive Secretary to the Board
The University of Texas System

Filed: June 1, 1994



1994 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1994 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week preceding publication. No issues will be published on March 11, July 22, November 11, and November 29. An asterisk beside a publication date indicates the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
1 Tuesday, January 4	Wednesday, December 29	Thursday, December 30
2 Friday, January 7	Monday, January 3	Tuesday, January 4
3 Tuesday, January 11	Wednesday, January 5	Thursday, January 6
4 Friday, January 14	Monday, January 10	Tuesday, January 11
5 Tuesday, January 18	Wednesday, January 12	Thursday, January 13
Friday, January 21	1993 ANNUAL INDEX	
6 Tuesday, January 25	Wednesday, January 19	Thursday, January 20
7 Friday, January 28	Monday, January 24	Tuesday, January 25
8 Tuesday, February 1	Wednesday, January 26	Thursday, January 27
9 Friday, February 4	Monday, January 31	Tuesday, February 1
10 Tuesday, February 8	Wednesday, February 2	Thursday, February 3
11 Friday, February 11	Monday, February 7	Tuesday, February 8
12 Tuesday, February 15	Wednesday, February 9	Thursday, February 10
13 Friday, February 18	Monday, February 14	Tuesday, February 15
14 Tuesday, February 22	Wednesday, February 16	Thursday, February 17
15 *Friday, February 25	Friday, February 18	Tuesday, February 22
16 Tuesday, March 1	Wednesday, February 23	Thursday, February 24
17 Friday, March 4	Monday, February 28	Tuesday, March 1
18 Tuesday, March 8	Wednesday, March 2	Thursday, March 3
Friday, March 11	NO ISSUE PUBLISHED	
19 Tuesday, March 15	Wednesday, March 9	Thursday, March 10
20 Friday, March 18	Monday, March 14	Tuesday, March 15
21 Tuesday, March 23	Wednesday, March 16	Thursday, March 17
22 Friday, March 25	Monday, March 21	Tuesday, March 22
23 Tuesday, March 29	Wednesday, March 23	Thursday, March 24
24 Friday, April 1	Monday, March 28	Tuesday, March 29
25 Tuesday, April 5	Wednesday, March 30	Thursday, March 31
26 Friday, April 8	Monday, April 4	Tuesday, April 5
27 Tuesday, April 12	Wednesday, April 6	Thursday, April 7
Friday, April 15	FIRST QUARTERLY INDEX	
28 Tuesday, April 19	Wednesday, April 13	Thursday, April 14