TEXAS REGISTER

IN THIS ISSUE

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Texas Register

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POSTMASTER: Please send form 3579 changes to the *Texas Register*, P.O. Box 13824, Austin, TX 78711-3824.

How to Use the Texas Register

Information Available: The 11 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Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

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*, publishes on an annual basis.

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.

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

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

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

In Addition Sections

Comptroller of Public Accounts

Interagency Council on Early Childhood

Texas Education Agency

Texas Department of Health

Texas Department of Human Services

Texas Department of Insurance

Executive and Legislative Budget Board

Texas Natural Resource Conservation Commission

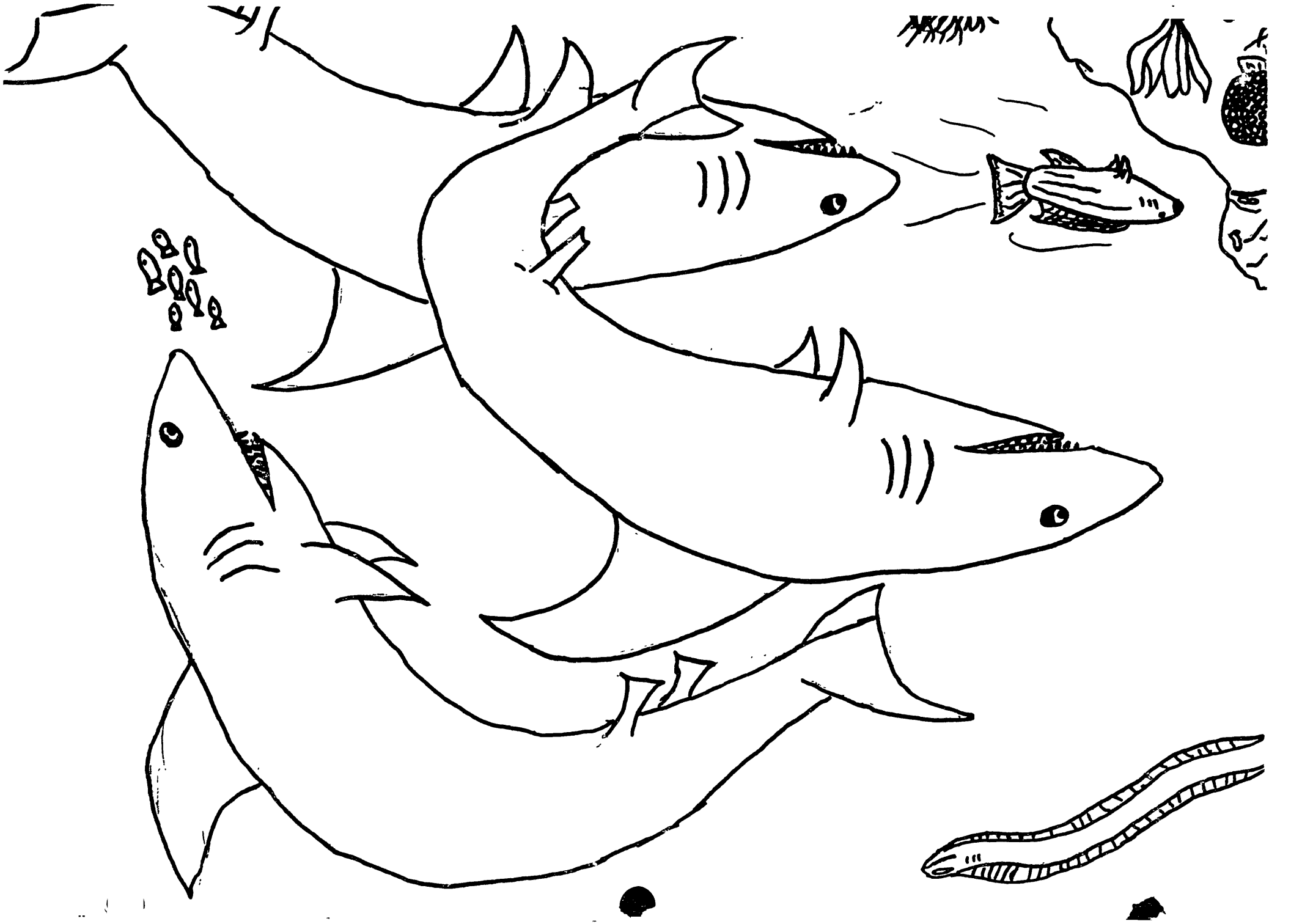
North Central Texas Council of Governments

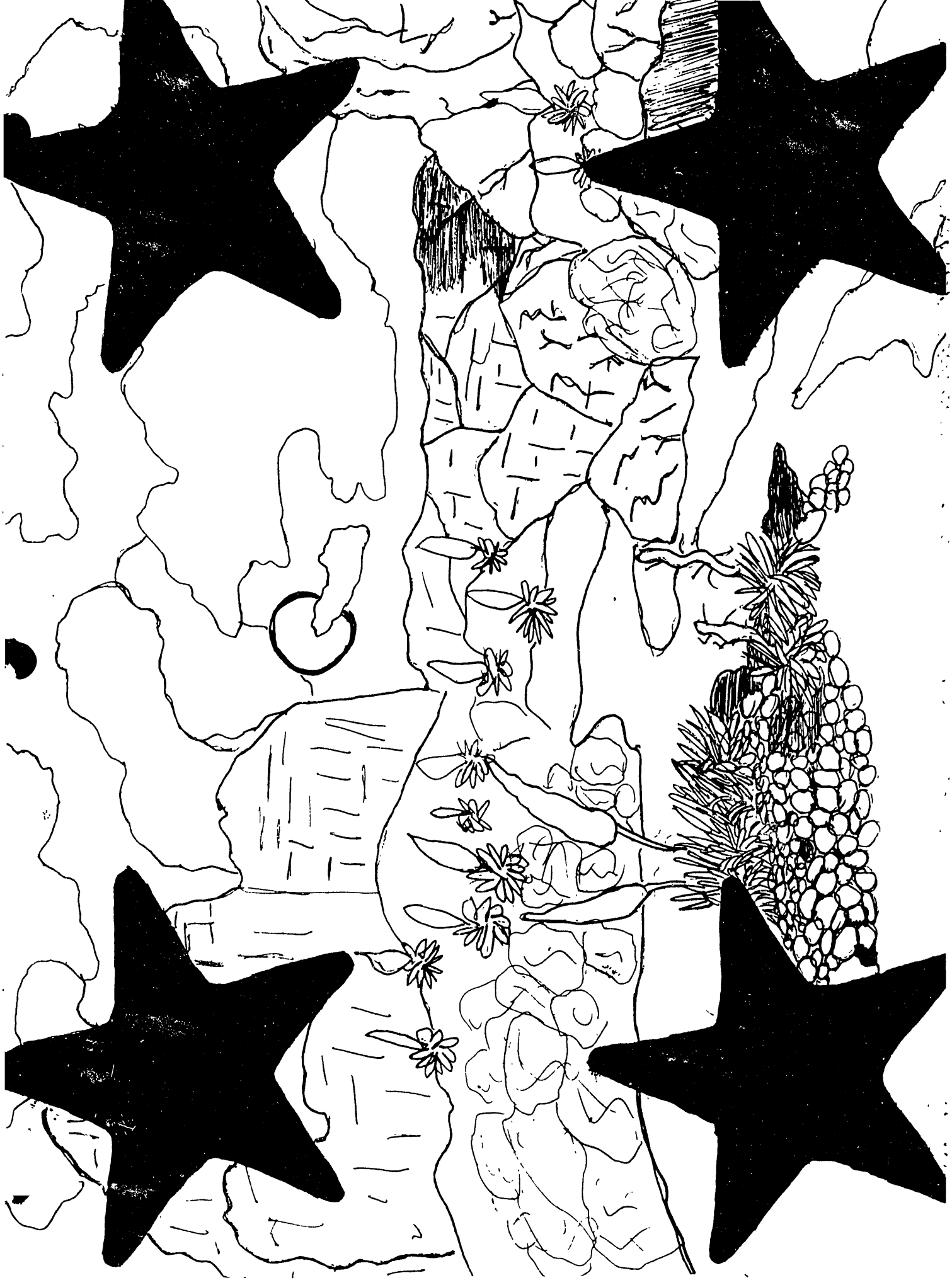
Public Utility Commission of Texas

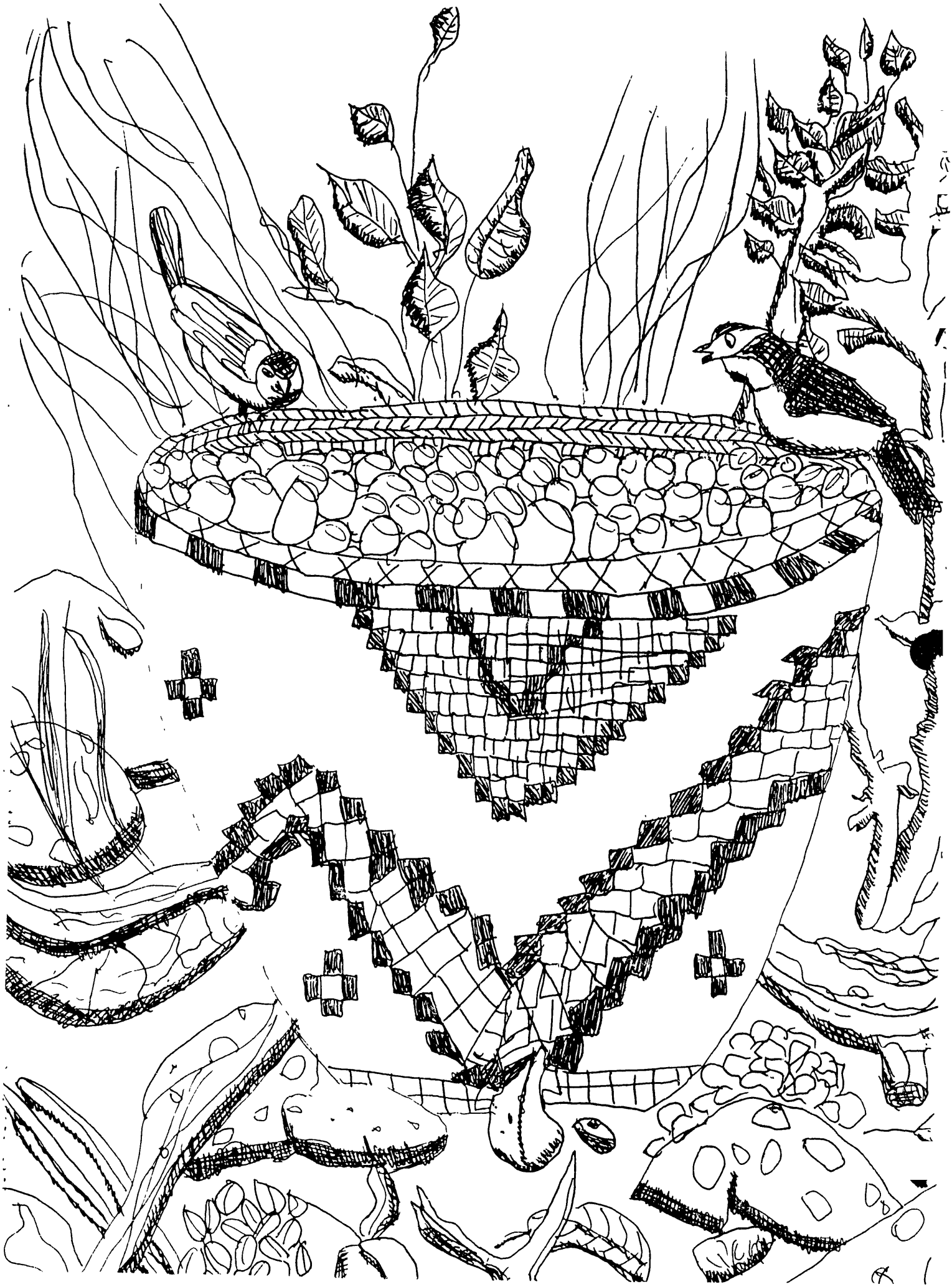
Railroad Commission of Texas

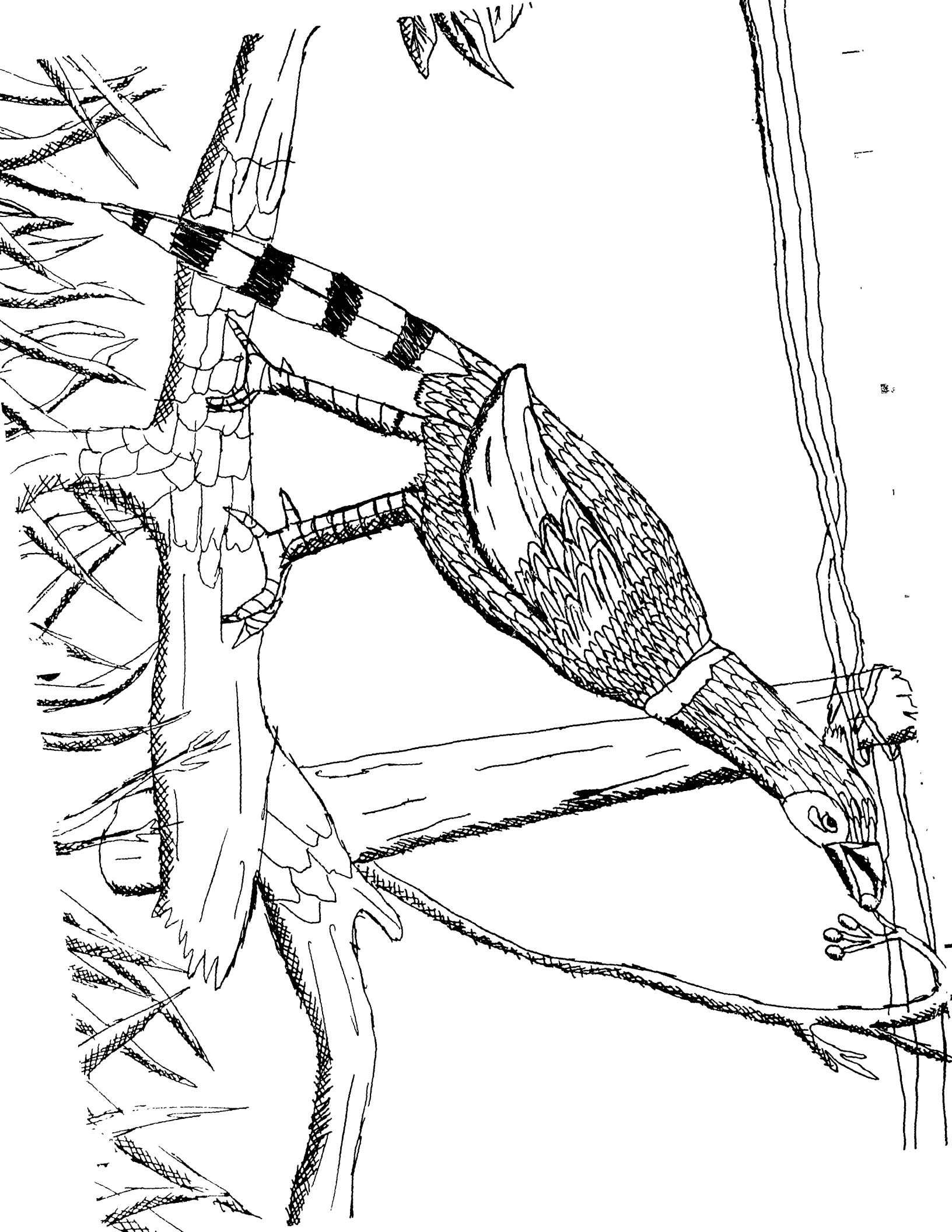
Center for Rural Health Initiatives

Texas Workers' Compensation Commission









ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the *Texas Register*. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record.

Letter Opinions

LO-94-057-(RQ-659). Request from Rufus J. Cormier, Chair, Texas Southern University, Board of Regents, 3100 Cleburne Avenue, Houston, Texas 77004, concerning whether a state university may include prayers at commencement ceremonies and other official university events

Summary of Opinion. Texas Southern University's practice of beginning convocations, faculty meetings, and commencement ceremonies with a prayer raises difficult constitutional issues of first impression. A court considering the constitutionality of this practice would have to decide whether to apply one of two analytical approaches applied by the United States Supreme Court in Establishment Clause cases Compare Lemon v. Kurtzman, 403 U. S. 602 (1971) with Marsh v. Chambers, 463 U S. 783 (1983). A court would also have to resolve factual questions Given the host of difficult legal issues involved, the Texas Southern University should closely scrutinize its practice.

TRD-9446020

LO-94-058-(ID# 24829). Request from Honorable Ann W. Richards, Governor, State of Texas, Office of the Governor, P O Box 12428, Austin, Texas 78711, concerning authority of municipal police to enforce truancy laws, and related questions

Summary of Opinion. Municipal police of a municipality in which school district territory is included have authority to enforce the truancy laws in such district, "where no attendance officer has been elected " In addition, law enforcement officers, including city police, have authority to take a child into custody for truancy within the definition of "conduct indicating a need for supervision" under Family Code, §51 03(b)(2) even if there is an attendance officer serving the district Truancy in itself would not be grounds for a school's refusing to re-admit a child after he had been taken into custody for truancy. A court may require a parent found to have committed the offense set out in Education Code, §4 25, repeated failure to require a child to attend school, to render personal services to a charitable or educational institution as a condition of probation. A juvenile court in a proceeding against a juvenile for violation of Education Code, §4.251, for the offense of failure to attend school for the periods set out therein, may impose reasonable community service work on a juvenile Where a case has been transferred under section Family Code 54.021 from a juvenile to a justice court and the child found to have been truant within the definition of "conduct indicating need for supervision" in §51 03(b)(2), the justice court may require that "the child complete reasonable community service requirements " Id. §54.021(d)(4). The offense provided for in Education Code, §4.25, a parent's continued failure to require a child's school attendance, is punishable, pursuant to Education Code, §4 25, as amended by Senate Bill 7, 73d Legislature, by a fine of not less than $10 nor more than $50 for the first offense, not less than $20 nor more than $100 for the second offense, and not less than $50 nor more than $200 for a subsequent offense

TRD-9446021

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Open Records Decisions

ORD-624-(RQ-561). Request from John Sharp, Comptroller of Public Accounts, Capitol Station, Austin, Texas 78774, concerning whether all identifying information about persons liable for state sales tax or franchise tax and their business operations is confidential under the Tax Code, §§111. 006, 151.027, and 171 206, clarification of Attorney General Opinion H-223 (1974)

Summary of Decision. The Tax Code, §§111 006, 151 027, and 171 206 prohibit the release of information from or derived from taxpayer reports under the sales and use or franchise tax laws and from audits of taxpayers. The conclusion in Attorney General Opinion H-223 (1974) that the taxpayer's identity may not be disclosed in a final administrative decision is reaffirmed To the extent that language in Attorney General Opinion H-223 and Attorney General Opinion JM-590 (1986) suggests that the comptroller may not disclose any information about the taxpayer's business affairs despite its lack of connection with the subject matter of the Tax Code, §§111 006, 151 027, and 171.206, those opinions are modified.

TRD-9446022

ORD-625-(RQ-635). Request from Craig Anthony, Arnold Matthews & Branscomb, P.C , One Alamo Center, 106 South Saint Mary's Street, San Antonio, Texas 78205-3692, Ruben R Barrera, Davidson & Troilo, P.C , 613 N W. Loop 410, Suite 1000, San Antonio, Texas 78216-5584, Beverly J. Landers, Senior Supervising Attorney, Department of Law-Claims Division, City of Austin, P O Box 96, Austin, Texas 78767-2910, concerning the construction of House Bill 859, Acts 1993, 73d Legislature, Chapter 473 (now codified at Texas Civil Statutes, Article 1446h)

Summary of Decision. House Bill 859, Acts 1993, 73d Legislature, Chapter 473 (now codified at Texas Civil Statutes, Article 1446h), does not authorize a government-operated utility to withhold information about a customer that is a corporation, partnership, or other business association House Bill 859 permits a government-operated utility to withhold an "individual's" address, telephone number, and social security number, and corporations, partnerships, and other business associations do not qualify as individuals in this context A government-operated utility must, in response to a request for information, release personal information about its customers even before it has notified them of their rights under House Bill 859, §4 and given them time to request confidentiality House Bill 859 provides only that a

government-operated utility may not disclose personal information about a customer if the customer requests that the information be kept confidential. The Open Records Act does require a government-operated utility to release personal information about a customer to the persons and entities listed in House Bill 859, §5, even if the customer has requested confidentiality. Although House Bill 859, §5, appears to give government-operated utilities the discretion to release the information, the Open Records Act requires them to release information to the persons and entities listed in §5 The Open Records Act requires that a government-operated utility determine, at least tentatively, whether House Bill 859 permits it to withhold requested information before asking for an attorney general's opinion. The Open Records Act does not, however, prescribe the procedure that the government-operated utility must use to make this determination. The government-operated utility may use whatever process it deems appropriate provided that it does not violate or require anyone else to violate any provision of law.

TRD-9446023

ORD-626-(RQ-576). Request from Charles Karakashian, Assistant General Counsel, Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0001, concerning whether notes and evaluations prepared before an employee promotional board are "test items" within the meaning of the Texas Open Records Act, §552.122 Government Code, Chapter 552.

Summary of Decision. The term "test item" in the Texas Open Records Act, §552 122 Government Code, Chapter 552, includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated. It does not encompass evaluations of an employee's overall job performance or suitability. Whether information falls within the §552. 122 exception must be determined on a case-by-case basis.

TRD-9446024

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Requests for Opinions

(RQ-710). Request from Fred Hill, Chairman Committee on Urban Affairs, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning jurisdiction of a public housing authority.

RQ-711. Request from Thomas Cameron, Winkler County Attorney, P.O. Box 1015, Kermit, Texas 79745, concerning whether a jail facility is exempt from ad valorem taxation when it is occupied for county purposes under a lease-purchase contract.

RQ-712. Request from Gerald Alan Joy, Potter County Auditor, 601 South Taylor, Amarillo, Texas 79101, concerning whether a county may pay the travel expenses of an applicant for the position of county forensic pathologist.

RQ-713. Request from Anthony Grigsby, Executive Director, Texas Natural Resource Conservation Commission, P.O Box 13087, Austin, Texas 78711-3087, concerning enforceability of financial responsibility mechanisms required by federal law of owners and operators of municipal landfills

RQ-714. Request from Garry Mauro, Commissioner, Texas General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701-1495, concerning whether Government Code, §403.0195, which permits the state to contract for the receipt of information regarding the recovery of revenue, and to pay a "reward" if collection if successful and applicable to the recovery of funds committed to the Public Free School Fund

RQ-715. Request from Ray Farabee, Vice Chancellor and General Counsel, University of Texas System, 201 West Seventh Street, Austin, Texas 78701-2981, concerning authority of El Paso County Water District Number 1 to impose a "benefit assessment" on realty owned by the Permanent University Fund.

RQ-716. Request from Mr. Charles E Griffith, III Deputy City Attorney, City of Austin, P.O. Box 1088, Austin, Texas 78767-8828, concerning whether advice, recommendations, and opinions regarding the selection of a police chief constitute material related to the policymaking processes of the city, which would be excepted from disclosure by Goverment Code, §552.111

RQ-717. Request from Leonard W Peck, Jr., Assistant General Counsel, Legal Affairs Division, Texas Department of Criminal Justice, P.O Box 99, Huntsville, Texas 77342-0099, concerning whether grievances filed by inmates in the custody of the Institutuional Division of the Texas Department of Criminal Justice are confidential under §1997e of title 42, United States Code, and regulations promulgated under this section

RQ-718. Request from Keith Oakley, Chair, Texas House of Representatives, P O Box 2910, Austin, Texas 78768-2910, concerning whether a law enforcement agency is required to provide fingerprinting services to the public, and related questions

RQ-719. Request from Lynn Ellison, 81st Judicial District Attorney, Atascosa County Courthouse, Circle Drive, Number 5A, Jourdanton, Texas 78026, concerning jurisdiction of peace officers

TRD-9446019

EMERGENCY RULES

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the ***Texas Register***, or on a stated date less than 20 days after filing and remaining in effect no more than 120 days. The emergency action is renewable once for no more than 60 additional days.

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

TITLE 1. ADMINISTRATION

Part VII. State Office of Administrative Hearings

Chapter 161. Requests for Records

• 1 TAC §161.1

The State Office of Administrative Hearings adopts on an emergency basis §161.1, concerning charges for copies of public records Section 161 1 provides a framework within which the State Office of Administrative Hearings may recover the cost to provide copies of open records to persons requesting the copies The section also sets forth the State Office of Administrative Hearings' option to waive these charges

The section is adopted on an emergency basis to comply with actions taken by the 73rd Legislature in House Bill 1009 in relation to Texas Civil Statutes, Article 6252-17a, which requires agencies to adopt rules specifying charges for copies of open records, and to comply with 1 TAC §111.64, which requires the adoption of such rules no later than August 31, 1994

§161 1 Charges for Copies of Public Records

(a) The charge to any person requesting photocopied reproductions of any readily available record of the State Office of Administrative Hearings will be the charges established by the General Services Commission which are codified at 1 TAC §§111 61-111 70 (effective April 22, 1994)

(b) The State Office of Administrative Hearings may waive these charges if there is a public benefit. The Chief Administrative Law Judge is authorized to determine whether a public benefit exists on a case-by-case basis.

Issued in Austin, Texas, on August 2, 1994

TRD-9446028 Shella A Bailey
Deputy Chief Administrative Law Judge
State Office of Administrative Hearings

Effective date August 3, 1994

Expiration date: December 1, 1994

For further information, please call: (512) 475-4993

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part XI. Texas Juvenile Probation Commission

Chapter 345. Community Corrections Assistance Program

• 37 TAC §345.2

The Texas Juvenile Probation Commission (TJPC) adopts on an emergency basis an amendment to §345 2, concerning the setting of commitment performance targets for each juvenile board. The section adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register*.

The section is adopted on an emergency basis to ensure that a greater number of juvenile-age children are immediately impacted by the allocation of the Community Corrections Funds

The amendment is adopted on an emergency basis under Texas Human Resources Code, §§141.001, 141.041, and 141.042 which provides the commission with the authority to improve the effectiveness of juvenile services, provide alternatives to commitment of juveniles by providing financial aid to juvenile boards to establish and improve probation services, and adopt rules for these purposes

§345 2 Purpose.

(a)-(g) (No change)

(h) **TJPC will annually calculate the commitment performance target for each juvenile board based on a formula to be selected by the Commission. TJPC shall provide proper notice and public hearing to all juvenile probation departments affected by said performance targets prior to adoption of any new performance target calculation formula.** [TJPC determines the commitment performance target for each juvenile board based on the board's average number of commitments to TYC for the years 1988-1991. The commitment performance target begins at a 10% reduction of this average, but the reduction may increase, depending on the juvenile board's past performance, measured in three ways

[(1) if 75% or less of a juvenile board's commitments for 1991 were within the ideal criteria for commitment, then two percentage points are added to the juvenile board's percent reduction,

[(2) if a juvenile board's actual average number of commitments in the years 1988-1991 is greater than the number derived when the whole state's average number of commitments for 1988-1991 is multiplied by the juvenile board's percent of the state's juvenile age population, then two percentage points are added to the juvenile board's percent reduction, and

[(3) if a juvenile board's average number of commitments for the years 1988-1991 is more than 3.0% of its average number of delinquent referrals for those years, then one and one-half percentage points are added to the juvenile board's percent reduction

[(4) TJPC will annually adjust individual juvenile board's performance targets according to fluctuations in the number of delinquent referrals]

(i) (No change)

Issued in Austin, Texas, on August 2, 1994

TRD-9445962 Bernard Licarione
Executive Director
Texas Juvenile Probation Commission

Effective date August 2, 1994

Expiration date December 1, 1994

For further information, please call (512) 443-2001

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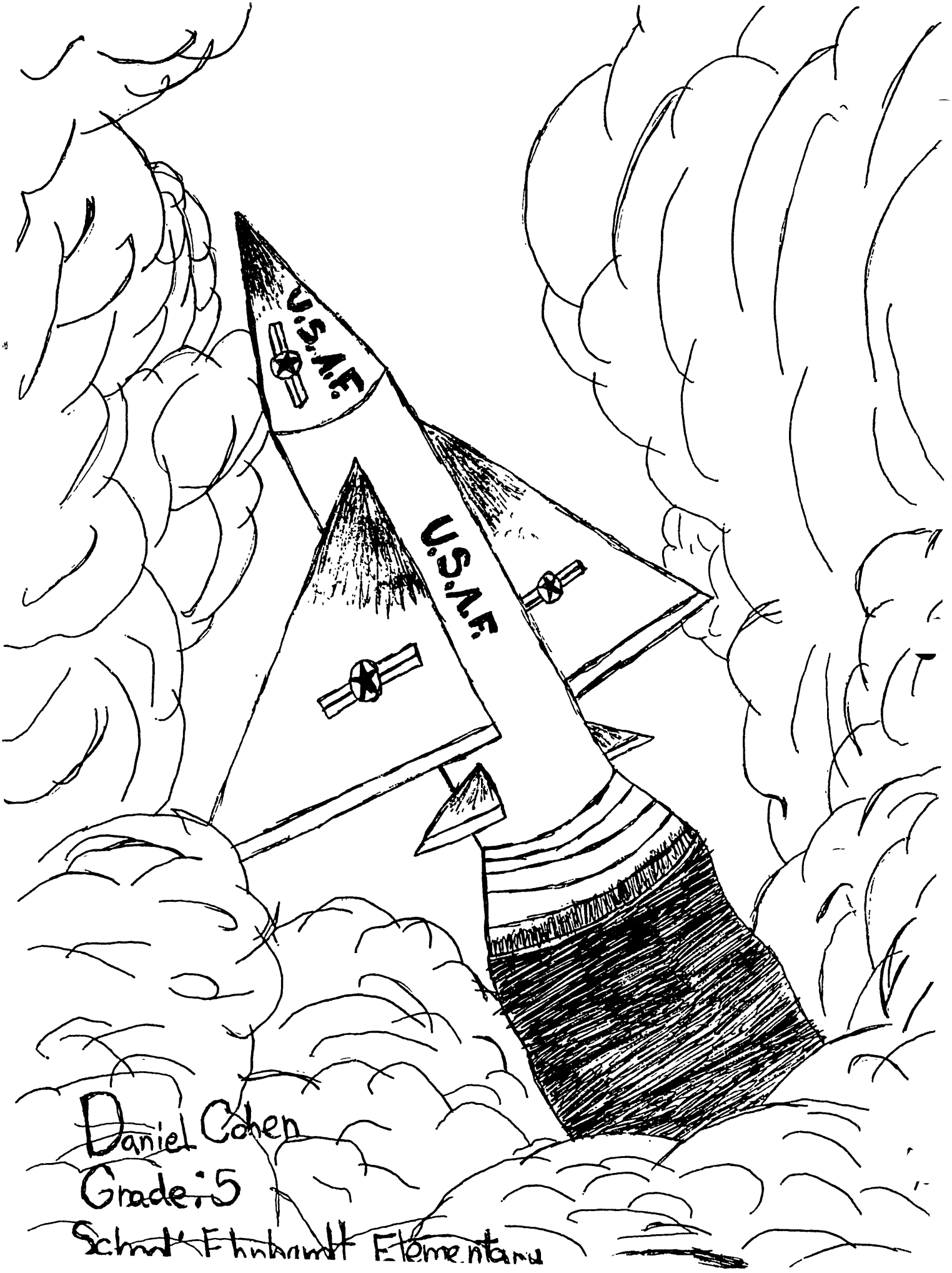

Daniel Cohen
Grade: 5
School: Thurbrandt Elementary

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 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 3. Boll Weevil Eradication Program

Subchapter D. Collection of Assessments and Assessment Penalties

• **4 TAC §3.80, §3.81**

The Texas Department of Agriculture (the department) proposes new §3 80 and §3 81, concerning the placing of liens on harvested cotton for failure to pay assessments due under the boll weevil eradication program The new sections are proposed to implement the Texas Agriculture Code, §74 115 (Vernon Supplement 1994), which authorizes the department to place a lien on cotton grown and harvested on acreage subject to assessment by the Texas Boll Weevil Eradication Foundation when the grower fails to pay assessments and penalties due to the foundation New §3 80 provides procedures for placing a lien, including notice provisions and provisions for a lender to cure a delinquency New §3 81 provides procedures for obtaining judicial action and foreclosure of a lien by the department

Rick Smathers, coordinator for cotton programs, 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 Smathers also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be full participation and compliance by cotton producers in the boll weevil eradication program, resulting in decrease in boll weevil populations and a decrease in the use of pesticides for boll weevil control There will be no effect on small or large businesses It is not possible to determine the anticipated economic cost to persons who are required to comply with the rules as proposed, as such cost will be determined by several factors, including the amount of the assessment established for the zone in which the cotton on which a lien is being placed is grown, the amount of acreage that the cotton grower has in production, the amount of penalty, if any, assessed by the foundation, and possibly the lending agreement between the grower and his or her lending institution

Comments on the proposal may be submitted to Rick Smathers, Coordinator for Cotton Programs, P O Box 12847, Austin, Texas 78711 Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*

The new sections are proposed under the Texas Agriculture Code, §74 115, which provides the Texas Department of Agriculture with the authority to place and perfect a lien on cotton produced and harvested from acreage that is subject to an assessment established by the Texas Boll Weevil Eradication Foundation and that is due and unpaid, §12 016, which provides the department with the authority to adopt rules as necessary for the administration of the Texas Agriculture Code, and the Texas Government Code, §2001 004, which authorizes the department to adopt rules stating its requirements and procedures

The code sections that will be affected by the proposal are found in the Texas Agriculture Code, Chapter 74, Subchapter D

§3 80. Placing Lien on Harvested Cotton

(a) Authority In accordance with the Texas Agriculture Code Annotated (the Code), §74.115 (Vernon Supplement 1994), when a grower subject to an assessment established by the Texas Boll Weevil Eradication Foundation (the foundation) in accordance with the Code, Chapter 74, Subchapter D (Vernon Supplement 1994), fails to pay all assessments and penalties before the 31st day after receiving notice of a delinquency, the department may place and perfect a lien on cotton grown and harvested on acreage subject to the assessment "Grower," for purposes of these sections, has the same definition as that found at §3 1(a) of this title (relating to Voter Eligibility)

(b) Notice of delinquency Upon notice by the foundation that a cotton grower, following notice and an opportunity to cure, has failed to pay an assessment, the department shall notify the grower by certified mail, return receipt requested, that.

(1) the assessment is delinquent and the notice is a demand for payment of the assessment;

(2) the grower has seven days in which to cure the delinquency by paying the assessment to the foundation; and

(3) if the grower fails to pay the assessment the department will exercise its authority to place and perfect a lien on any harvested cotton and take any other necessary action to collect the assessment

(c) Notice of failure to cure and placement of lien

(1) If a grower fails to pay the assessment within seven days of receipt of the notice described in subsection (b) of this section, the department shall notify the grower by certified mail, return receipt requested, that

(A) the grower has failed to cure the delinquency,

(B) the department is placing a lien, effective immediately, on any cotton harvested from the land subject to the assessment,

(C) the department intends to enforce the debt and foreclose on the lien, and

(D) the grower is to provide the department, within seven days of receipt of the notice, with a list of any known potential buyers of the cotton and of any lien holders on the cotton

(2) Upon request by the department, a grower shall provide a list of any known potential buyers and lien holders of cotton grown on and harvested from land subject to the foundation's assessment

(3) Upon receiving the grower's list of potential buyers and lien holders, the department shall provide written notice of

the placement of the lien to each person or entity on the list. In addition, the department shall notify in writing the foundation, any lender or lender organization that has requested notice, and the Agricultural Stabilization and Conservation Service County Committee (ASCS) of any lien placed on harvested cotton.

(d) Opportunity to cure delinquency. Upon receiving a delinquency notice or notice of lien placement in accordance with this section, a lender may cure the delinquency by paying the full amount of the assessment and any penalties due by a grower. A lien placed by the department on harvested cotton in accordance with this section shall be released upon notice from the foundation that full payment of the assessment and penalties has been received. A lien released under this subsection shall be released within 15 days of notice by the foundation that full payment has been received.

(e) Receipt of notice.

(1) Notice of delinquency and/or notice of failure to cure and of the department's placing of a lien sent to a grower in accordance with subsection (b) of this section is deemed received when sent to the grower's last known address on record with the ASCS or the foundation, or when personally delivered to a grower or a grower's representative.

(2) Written notice of placement of a lien in accordance with subsection (b) of this section to a potential buyer is deemed received when sent to the potential buyer's last known address, as provided by the grower or on file with the foundation or the ASCS, and accepted by a person at that address who is over the age of 18 years. A potential buyer is deemed to have received actual notice if such notice is provided by phone, by personal contact, by verifiable telecommunications contact (i.e., computer), or by any other reasonable, verifiable means available to the department.

(f) Status of lien. A lien placed in accordance with this section is not a priority lien, and does not have superior status to prior liens on the harvested cotton on which a lien is placed under this section. Accordingly, any proceeds from the sale of harvested cotton in accordance with §3 81 of this title (relating to Judicial Action and Foreclosure of Lien) shall first be paid to any prior lien holders, with any proceeds remaining after other, prior liens have been satisfied going to the foundation for payment of the delinquent assessment and/or penalties due and owing

§3 81. Judicial Action and Foreclosure of Lien

(a) Within 30 days of the date of the placing of a lien on harvested cotton as provided in §3.80 of this title (relating to Placing Lien on Harvested Cotton), the department may file suit in a court of competent jurisdiction for collection of the debt and foreclosure of the lien. Notice of any such suit shall be provided to any lien holders known to the department at the time suit is filed.

(b) Posting of bond will not be required.

(c) Once a judgment in favor of the department is obtained, and the property (cotton) seized, the department shall monitor the progress of any public sale and notify any known lien holders of any such sale.

(d) Any proceeds obtained by the department as a result of foreclosing on a lien on harvested cotton shall be forwarded to the foundation, minus any administrative expenses incurred by the department in enforcing and foreclosing the lien.

(e) Collection under these sections does not prevent the department or the foundation from seeking other remedies under the Texas Agriculture Code, Chapter 74, Subchapter D.

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

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

TRD-9445955 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Earliest possible date of adoption: September 9, 1994

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

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TITLE 10. COMMUNITY DEVELOPMENT

Part VII. Texas Council on Workforce and Economic Competitiveness

Chapter 251. Administration

• 10 TAC §251.1

The Council on Workforce and Economic Competitiveness proposes new §251. 1 concerning the charges for public records. This rule would adopt by reference the rules adopted by the General Services Commission on this subject. The General Services Commission rules provide guidelines for determining when charges should be made for copying public records, a schedule for calculating costs when an agency determines that it is appropriate to charge for copies of public records, and procedures for handling the transactions

Chapter 428, Acts of the 73rd Legislature, 1993, requires each state agency to adopt a rule establishing a policy for charging for agency records that are public information. This rule would adopt by reference the rules adopted by the General Services Commission on this subject.

Joe Thrash, general counsel, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. There will be fiscal implications for state government as a result of enforcing or administering the rule. The Council will be able to recover a portion of the cost of reproducing documents for the public and will not have to bear this cost from its budget. There will be no fiscal effect on local government for the first five-year period the rule will be in effect: There will be fiscal implications for small business as a result of enforcing or administering the rule. Those businesses choosing to purchase documents will have to bear the expense of copying those documents. Since the purchase of documents is voluntary, it is not possible to estimate the fiscal impact.

Barbara Cigainero, executive director, has determined for the first five years the sections as proposed will be in effect. The public benefit anticipated as a result of enforcing the section will be recovery of costs associated with the reproduction of documents for the general public. There will be a minor cost of compliance with this section for small businesses. Those businesses desiring copies of public records of the Council will have to bear the expense of the reproduction of those documents. There will be a minor economic cost to persons who are required to comply with the section as proposed. Those persons desiring copies of public records of the Council will have to bear the expense of the reproduction of those documents.

Comments on the proposal may be submitted to Barbara Cigainero, Texas Council on Workforce and Economic Competitiveness, P.O. Box 2241, Austin, Texas 78768.

The new section is proposed under the Workforce and Economic Competitiveness Act, Chapter 668, Acts of the 73rd Legislature, 1993, which grants the Council on Workforce and Economic Competitiveness authority to issue rules, and Chapter 428, Acts of the 73rd Legislature, 1993, which requires each state agency to adopt a rule establishing a policy for charging for agency records that are public information

§251.1 Administration.

(a) The Council on Workforce and Economic Competitiveness adopts by reference Title 1, Texas Administrative Code, sections 111.61-111.71 concerning Charges for Public Records (effective April 22, 1994)

(b) Nothing in subsection (a) of this section shall be construed to prevent the Council, when it is determined to be appropriate, from distributing copies of public records without charge.

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 August 1, 1994.

TRD-9445996 Barbara Cigainero
Executive Director
Texas Council on
Workforce and
Economic
Competitiveness

Earliest possible date of adoption: September 9, 1994

For further information, please call: (512) 305-7007

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TITLE 16. ECONOMIC REGULATIONS

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

Conservation Rules and Regulations

- **16 TAC §3.101**

The Railroad Commission of Texas proposes new §3.101, relating to certification for severance tax exception for gas produced from high-cost gas wells. The purpose of the new section is to place the state severance tax exemption rule in chronological order in the commission oil and gas rules and to reflect that the previously applicable federal laws and rules are no longer in existence.

Rita E. Percival, systems analyst for the Oil and Gas Division, has determined that for the first five-year period the proposed rule adoption will be in effect, there will be no fiscal implications as a result of enforcing or administering it. There will be no fiscal implications for local government. There will be no cost of compliance with the proposed rule for small businesses.

Jim McDougal, hearings examiner, has determined that for each year of the first five years the rule is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be a more efficient processing of state severance tax exemption applications.

Comments on the proposal may be submitted to David Clarkson, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*.

The new section is proposed pursuant to Texas Natural Resources Code, §81. 052, which authorizes the commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the commission.

The following is the code that is affected by this rule: Texas Natural Resources Code, §81.052.

§3.101. Certification for Severance Tax Exception for Gas Produced from High-Cost Gas Wells.

(a) Purpose. To provide a procedure by which an operator can obtain Railroad Commission certification that natural gas from a particular gas well qualifies as high-cost natural gas under the Texas Tax Code, Chapter 201, Subchapter B, §201.057, and that such gas is therefore exempt from the severance tax imposed by the Texas Tax Code, Chapter 201.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commission–The Railroad Commission of Texas.

(2) Completion–The act of making a well capable of producing gas from a particular commission designated or new field

(3) Completion date–The date on which a well is first made capable of producing oil or gas from a particular commission-designated or new field, as shown on the completion report filed by the operator with the commission.

(4) Comptroller–The Comptroller of Public Accounts of the State of Texas.

(5) Director–The director of the Oil and Gas Division or the director's delegate. Any authority given to the director in this section is also retained by the commission. Any action taken by the director pursuant to this section is subject to review by the commission.

(6) High-cost gas–Natural gas which the commission finds to be.

(A) produced from any gas well, if production is from a completion which is located at a depth of more than 15,000 feet;

(B) produced from geopressured brine;

(C) occluded natural gas produced from coal seams;

(D) produced from Devonian shale; or

(E) produced under such other conditions as the commission determines to present extraordinary risks or costs (including tight sands and production enhancement).

(7) Operator–The person responsible for the actual physical operation of a gas well.

(8) Spud date–The date of commencement of drilling, as shown on commission records.

(c) Applicability.

(1) This section applies to high-cost gas produced from a well that is spudded or completed between May 24, 1989, and September 1, 1996

(2) The plug back or deepening of an existing wellbore qualifies as a completion under this section:

(A) if it is the initial completion in a commission-designated or new field that has not been previously produced from that wellbore, or

(B) the operator can demonstrate that the strata between the completion locations contain a minimum of 20 vertical feet of impermeable strata, or

(C) the operator submits the results of bottom hole pressure surveys, gas analyses or other methods or calculations comparing the completion locations which are the subject of the application and any completion locations in the wellbore which were completed for production prior to May 24, 1989, with an explanation of the engineering principles, calculations, and reasoning used in making the judgment that these comparisons demonstrate that the gas to be produced from the subject completion locations could not have been produced from any completion locations in existence prior to May 24, 1989

(3) Eligible high-cost gas will be exempt from the tax imposed by the Texas Tax Code, Chapter 201, during the period beginning September 1, 1991, and ending August 31, 2001.

(4) If the operator determines that a gas well previously certified as producing high-cost gas no longer produces high-cost gas or if the operator takes any action or discovers any information that affects the eligibility of gas for an exemption under Texas Tax Code, §201 057, the operator must notify the commission in writing within 30 days after such an event occurs.

(5) If the commission determines that a gas well previously certified as producing high-cost gas no longer produces high-cost gas or it the commission takes any action or discovers any information that affects the eligibility of gas for an exemption under Texas Tax Code, §201.057, the commission will notify the comptroller, all first purchasers (if known), and the operator in writing immediately.

(d) Application procedure.

(1) An application for a state severance tax exemption may be made only by the operator of a well. The operator shall file only one copy of any required document. Submission of a legible copy of a required document originally submitted to the commission will comply if the application includes a statement signed by the operator that copies of commission documents attached to the application are true and correct copies of the documents originally filed with the commission. The commission may require an operator to file certified copies of documents from commission files or of other documents necessary for a determination.

(2) Filings and correspondence on high-cost gas state severance tax applications should be addressed to the Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967, Attention: High-Cost Gas Severance Tax Section. No filings may be made at the district offices.

(e) Individual well filing requirements. To qualify for the severance tax exemption, the operator must prove that the gas produced is high-cost gas by providing the following information.

(1) Applications for wells producing deep high-cost gas shall include:

(A) the completed applicable commission form; and

(B) copies of all G-1s ever filed on the subject well.

(2) Applications for wells producing geopressured brine shall include:

(A) the completed applicable commission form;

(B) copies of all G-1s ever filed on the subject well;

(C) a bottom-hole pressure test report and other information establishing the initial reservoir pressure gradient; and

(D) evidence to establish that, before production, the gas from the well was in solution in a brine aquifer with at least 10,000 parts of dissolved solids per million parts of water.

(3) Applications for wells producing coal seam gas shall include:

(A) the completed applicable commission form;

(B) copies of all G-1s ever filed on the subject well if the gas is produced through a wellbore, or a detailed description of the production process if the gas is not produced through a wellbore;

(C) a radioactivity, electric or other log which will define the coal seams or, if such logs are not reasonably available, a detailed lithologic description of the gas-producing interval; and

(D) evidence to establish that the natural gas was produced from coal seam.

(4) Applications for wells producing Devonian shale gas shall include:

(A) the completed applicable commission form;

(B) copies of all G-1s ever filed on the subject well;

(C) an environmentally corrected, calibrated gamma ray log with values greater than 100 API units over the Devonian age stratigraphic section, or a gamma ray log with superimposed indications of the shale base line and the gamma ray index of 0.7 over this section or, if the gamma ray log is not reasonably available, a driller's log or similar report indicating the general characteristics of the strata penetrated and the corresponding depths at which they are encountered throughout the Devonian age stratigraphic section;

(D) information which calculates the percentage of footage of the producing interval which is not Devonian shale as indicated by the gamma ray log, driller's log, or similar report;

(E) information which demonstrates that the percentage of potentially disqualifying nonshale footage for the stratigraphic section selected is equal to or less than 5.0% of the Devonian stratigraphic age interval; and

(F) reference to a standard stratigraphic chart or text establishing that the producing interval is a shale of Devonian age.

(5) Applications for wells producing designated tight formation gas shall include:

(A) the completed applicable commission form;

(B) copies of all G-1s ever filed on the subject well; and

(C) specific reference to the commission docket number assigned to the tight sands area designation along with a copy of the map outlining the designated tight formation as approved by the commission with the location of the subject well shown.

(6) Applications for wells producing production enhancement gas shall include:

(A) the completed applicable commission form;

(B) copies of all G-1s ever filed on the subject well;

(C) a description of the production enhancement work that has been performed on the well, including the dates the work was commenced and completed, or that will be performed on the well;

(D) an itemized statement of costs incurred in performing the production enhancement work, including copies of invoices and bills for such work, or, if the work has not yet been completed, estimates of such costs;

(E) a statement estimating, for a five-year test period beginning from the month in which the application is filed, the increase in gas production resulting from the application of production enhancement work;

(F) calculations showing that the projected increase in revenue does not exceed 200% of the §103 price;

(G) the renegotiated price;

(H) a copy of that portion of the sales contract that authorizes collection of the renegotiated price; and

(I) the properly executed statement under oath made by the purchaser of natural gas which states that there is a reasonable basis for the statements and estimates made by the applicant.

(f) Tight sands area designation filing requirements.

(1) If the application for a "tight sands" approval is on a well that is not within an area previously designated as a tight formation by the Federal Energy Regulatory Commission under the Natural Gas

Policy Act or by the Railroad Commission of Texas, the operator must first apply for a new tight formation area designation.

(2) An applicant requesting a tight formation designation must submit a written request to the High-Cost Gas Severance Tax Section of the Oil and Gas Division for a determination that a named formation or a specific portion thereof is a tight formation. The applicant must supply a list of the names and addresses of all affected persons. For purposes of this subsection, "affected persons" means all first purchasers, as indicated in current commission records, from all wells (regardless of operator) within the specific portion of the named formation and all operators in the same field or fields involved. The staff shall mail notice of the tight sands application to all affected persons. If the technical staff finds that the data submitted with the application are complete and comply with the requirements set out in paragraph (3) of this subsection, and if no protest is filed within 21 days of the notice, the application will be presented to the commission for approval. If the technical staff finds the data submitted are incomplete, or if a protest is filed within the 21-day notice period, the applicant may request a hearing to consider the application. If the applicant does not request such a hearing, the application shall be dismissed. Any such hearing shall be held only after at least ten days notice to all affected persons. If no protestant appears at the hearing, the application shall be presented to the commission for approval if the application and any evidence presented at the hearing establishes that the subject formation meets the requirements for a tight formation determination

(3) In addition to the written request and list of affected persons, the applicant must submit the following information in duplicate:

(A) a geographical and geological description of the formation, including.

(i) a map outlining the geographic limits of the formation, counties involved, boundaries, abstract numbers, survey names, and field name(s),

(ii) a list of the counties involved, abstract numbers, survey names, geologic formation markers, and any other descriptive information that will aid in identifying the subject formation; and

(iii) a structure map contoured on the top of the formation, a regional cross-section to depict upper and lower limits of the formation, and depositional history

(B) engineering and geological data, including a written explanation of each exhibit, establishing the following:

(i) that in situ permeability throughout the pay zone is 0.1 millidarcy or less, as determined by geometric mean or median methodology,

(ii) that a stabilized production rate, without stimulation, against atmospheric pressure, of wells completed for production in the formation is not expected to exceed the production rate determined in accordance with the following table: Figure 1. 16 TAC 3.101(f)(3)(B)(ii) and

(iii) that no well drilled into the formation is expected to produce, without stimulation, more than five barrels of crude oil per day.

(C) a map or list of the wells that are currently producing in the formation

(g) Commission action on well applications

(1) Each application will be assigned a docket number identifying it as a severance tax application A notice of receipt will be sent to the applicant, indicating the assigned docket number and receipt date. All further correspondence shall include this number.

(2) The director may administratively approve the application if the forms and information submitted by the operator establish that the gas qualifies as high-cost gas eligible for the severance tax exemption If the director denies administrative approval, the applicant shall have the right to a hearing.

(3) A notice of hearing will be issued only for complete applications and will be furnished to the applicant, to any other person the commission deems necessary, and to the commission secretary Persons claiming a justiciable or administratively cognizable interest may intervene to support or oppose the application

(4) The hearings in dockets in which an intervention in opposition is entered prior to or at the scheduled hearing will be recessed to a time designated by the examiner If the applicant did not appear at the hearing initially, the examiner will give notice of the opposition and recess Failure of the intervenor to appear at the subsequent hearing will be deemed a withdrawal.

(5) If the parties do not waive issuance of a proposal for decision and the examiner's recommendation is adverse to a party in the docket, the examiner will issue a proposal for decision The parties shall file any exceptions to the proposal within 20 days after service of the proposal, and any replies to exceptions within 30 days after service of the proposal The parties shall serve copies of exceptions and replies to exceptions on all other participants and must be received by the commission within these times in order to be considered.

(6) If a person alleging a justiciable or administratively cognizable interest was not given notice, the person may file a written motion in intervention any time prior to the date of commission consideration in open meeting The motion shall set forth facts showing good cause for the commission to grant the intervention or take other appropriate action.

(h) Reporting. To qualify for the exemption provided by Texas Tax Code, §201 057, the person responsible for paying the tax must apply to the comptroller. The application shall contain the certification of the commission that the well produces or will produce high-cost gas, and may be filed with the Comptroller between January 1, 1990, and December 31, 1998, for exemption from the natural gas severance tax provided in the Texas Tax Code, Chapter 201

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 28, 1994

TRD-9445807 Mary Ross McDonald
Assistant Director, Legal Division Gas Utilities/LP Gas
Railroad Commission of Texas

Earliest possible date of adoption September 9, 1994

For further information, please call: (512) 463-7008

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TITLE 22. EXAMINING BOARDS

Part X. Texas Funeral Service Commission

Chapter 201. Licensing and Enforcement–Practice and Procedure

- **22 TAC §201.17**

The Texas Funeral Service Commission (the Commission) proposes to adopt a new rule, §201 17, to establish written guidelines and criteria for determining the eligibility of individuals with criminal backgrounds to obtain and to retain licenses as a funeral director, embalmer, provisional funeral director, or provisional embalmer

Wayne L Goodrum, general counsel for the Texas Funeral Service Commission, 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 Goodrum also has determined that, for each year of the first five-year period the

proposed rule will be in effect the public benefit anticipated as a result of the rule is the protection of the general public from the exposure of unreasonable risk of harm which otherwise might exist if persons with criminal convictions retained or obtained licenses to engage in the practices of funeral directing and embalming. An additional public benefit which is anticipated as a result of the rule is a uniform procedure whereby persons with criminal convictions may be informed as to the criteria which will be used in determining whether they may obtain or retain a license from the commission; and no additional economic cost is anticipated for persons who are required to comply with the proposed rule. There will be no effect on small businesses

Comment on the proposed rule may be submitted to Wayne L. Goodrum, General Counsel, Texas Funeral Service Commission, 8100 Cameron Road, Suite 550, Austin, Texas 78753

The new rule is proposed pursuant to Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with the authority to adopt rules to administer Article 4582b

The following is the article that is affected by this rule Article 4582b, Texas Civil Statutes

§201.17 Criminal Offense Licensing Guidelines

(a) Purpose This section establishes the guidelines and criteria for determining the eligibility of individuals with criminal backgrounds to obtain and to retain licenses as a funeral director, embalmer, provisional funeral director, or provisional embalmer As used in this section, the terms "license" and "licensee" include the terms "provisional license" and "provisional licensee," respectively

(b) Conviction of Felony. Pursuant to the criteria in this rule, the commission may revoke or suspend existing licenses or may refuse to issue a license to an applicant if the licensee or applicant has been convicted of any felony

(c) Conviction of Misdemeanor Pursuant to the criteria in this rule, the commission may revoke or suspend existing licenses, and may refuse to issue a license to a person making an application for such, where the licensee or applicant has been convicted of a misdemeanor related to the practice of embalming or funeral directing

(1) The commission considers the practices of embalming and funeral directing to be professions where complete trustworthiness, honesty, integrity, and full compliance with all laws and regulations affecting those practices is required to protect the public from injury

(2) Based on considerations listed in Texas Civil Statutes, Article 6252-13c, §4(b), the commission concludes that the following misdemeanors are related to the practice of embalming and funeral directing and that conviction of such a misdemeanor demonstrates an inability to comport with the required standards of conduct:

(A) any violation of Texas Civil Statutes, Article 4582b, which is classified as a misdemeanor;

(B) any violation of Texas Civil Statutes, Article 548b, which is classified as a misdemeanor;

(C) any violation of Chapter 195 of Texas Health and Safety Code, which is classified as a misdemeanor;

(D) any violation of Texas Penal Code, §42.10, and

(E) any misdemeanor involving moral turpitude, theft, fraud, forgery, falsification, misrepresentation, deception, breach of fiduciary responsibility, falsification of a document filed with or to be filed with a governmental body, or possession or delivery of marijuana, a controlled substance, or any other unlawful drug for the purpose of obtaining pecuniary gain

(d) Effect Given Evidence. Evidence of criminal conviction and evidence of mitigating factors will be given the following effect by the commission

(1) Evidence of the conviction of a licensee or an applicant for a license of a misdemeanor related to the practice of embalming or funeral directing, as such misdemeanors are identified under subsection (c)(2) of this rule, or of any felony, shall be prima facie evidence that an unreasonable risk of harm to the consuming public would be presented if such an application for a license was granted or if such an existing license was not revoked or suspended

(2) To overcome such prima facie evidence, mitigating evidence of the type described in subsection (e) of this rule must affirmatively show, by a preponderance of all the evidence, that no unreasonable risk of harm to the consuming public would be presented if such an application for a license was granted or if such an existing license was not revoked or suspended

(3) Notwithstanding subsection (d)(1) of this rule, the commission may find that an unreasonable risk of harm to the consuming public may be sufficiently reduced by issuing a license, or by allowing retention of an existing license, with terms and conditions of probation attached The conditions of probation in such cases shall specify the duration of such probation (which may be from three to ten years) and may include requirements that:

(A) the licensee shall not work alone, not supervise others, and/or work only under the supervision of a designated licensee;

(B) the licensee shall complete specified continuing education, in addition to all other requirements imposed by statute, rule, or otherwise, in specified areas of study, such as mortuary law or professional ethics; and/or

(C) the licensee shall file periodic reports with the commission.

(e) Mitigating Factors. Where evidence is presented that a licensee or an applicant for a license has been convicted of a misdemeanor related to the practice of embalming or funeral directing, or has been convicted of a felony, the commission will consider evidence of the following as factors which may mitigate against the denial of an application for licensing or against the revocation or suspension of an existing license:

(1) the extent and nature of the person's past criminal activity; provided, evidence of multiple convictions shall mitigate against issuance of a license and in favor of revoking or suspending a license,

(2) the age of the person at the time of the commission of the crime, provided, attainment or non-attainment of any particular age will only be considered as a mitigating factor when such age was an element of the crime for which the person was convicted or was a factor considered in the sentence imposed, as revealed from the court's sentencing orders,

(3) the amount of time that has elapsed since the person's last criminal activity; provided, such amount of time shall not be considered as a mitigating factor until it exceeds by at least one year the period of any sentence imposed, including any probation, and at least two years have elapsed since the last criminal activity;

(4) the conduct and work activity of the person prior to and following the criminal activity, provided, conduct and work activity following the criminal activity shall be given greater weight than conduct and work activity prior thereto, and provided further, that evidence of steady employment, support for the person's dependents, non-imposed community service, a record of good conduct, and payment of all outstanding court costs, supervision fees, fines, and restitution as was ordered in all criminal cases in which the person was convicted will be considered as mitigating factors;

(5) evidence of the person's rehabilitation, including rehabilitative effort

while on any probation, while incarcerated, and/or following release from incarceration; and

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

(A) the prosecution, law enforcement, probation, and/or correctional officers who prosecuted, arrested, or had supervision or custodial responsibility of the person;

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

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

(f) Proof of Mitigating Factors To the extent the applicant or licensee desires such to be considered, it shall be that person's responsibility to obtain and offer at hearing any evidence of the type listed under subsection (e) of this rule To the extent such evidence is available, copies shall be provided to the commission at least 30 days prior to hearing, or such time prior to the hearing as the evidence becomes available

(g) Notice to Commission and Employers Every licensee who has been convicted of a felony or who has been convicted of a misdemeanor identified in subsection (c)(2) of this rule shall provide notice of such conviction to the commission, each funeral establishment by whom the licensee is currently employed, and each funeral establishment with which the licensee seeks employment Notice shall be given in accordance with the following

(1) Notice to Commission and Existing Employers For convictions which occurred prior to the effective date of this rule, the notice shall be given within 14 days from such effective date For convictions which occur after the effective date of this rule, the notice shall be given within 14 days from the date of such conviction

(2) Notice to Prospective Employers Notice of a licensee's conviction shall be given at the time of submission of any application for employment with a funeral establishment, but in any ever, such notice shall be given by a licensee prior to entering into an employment relationship with a funeral establishment

(h) Provision of Documents and Information. Within 14 days of a request for such, it shall be the responsibility of the applicant or licensee to secure and provide the commission with the following.

(1) a certified copy of the judgement of each of the person's felony convictions and of each misdemeanor conviction identified under subsection (c) (2) of this rule; and

(2) information to permit a request to be made for a criminal history check, including the person's full name, all aliases used by the person, the person's date of birth, race, sex, current driver's license number and state of issuance, and Social Security number

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 30, 1994

TRD-9445959 Wayne L Goodrum
General Counsel
Texas Funeral Service Commission

Earliest possible date of adoption September 9, 1994

For further information, please call (512) 834-9992

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Chapter 203. Licensing and Enforcement-Specific Substantive Rules

• 22 TAC §203.27

The Texas Funeral Service Commission (the Commission) proposes an amendment to §203 27, concerning policy and procedures pertaining to failure of a licensee to comply with the continuing education requirements of §203 27 The amendment is being proposed to eliminate a provision under which a license would be cancelled where a licensee failed to so comply In lieu of such, the proposed amendment provides that an application for renewal of such a license will be rejected where a licensee fails to so comply In conjunction with this change, the proposed amendment will eliminate the imposition of a reinstatement fee, which is currently applicable where a license is cancelled for noncompliance, and, in lieu of such, will impose a late compliance fee

Wayne L Goodrum, general counsel for the Texas Funeral Service Commission, 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 Goodrum also has determined that, for each year of the first five-year period the proposed rule will be in effect the public benefit anticipated as a result of the rule is a more effective procedure for enforcing the requirements of §203 27 and the renewal of licenses, and no additional economic cost is anticipated for persons who are required to comply with the proposed rule There will be no effect on small businesses

Comment on the proposed rule may be submitted to Wayne L Goodrum, General Counsel, Texas Funeral Service Commission, 8100 Cameron Road, Suite 550, Austin, Texas 78753

The amendment is proposed pursuant to Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with the authority to adopt rules to administer Article 4582b

The following is the article that is affected by the proposed rule §203 27–Article 4582b, Texas Civil Statutes

§203 27 Continuing Education as a Condition for License Renewal

(a)-(g) (No change)

(h) Failure to comply Failure by any licensee to comply fully **and in a timely manner** with the continuing education requirements as presented in this section, will result in **rejection of any application for renewal of a license.** [cancellation of his or her license(s) and the commission will notify the licensee of the cancellation in writing] **If a renewal application is rejected, the individual will be notified, the rejected application will be held, and any renewal fee submitted with the rejected application will be returned. A rejected renewal application will be processed only after the commission has received satisfactory documentation that the continuing education required during the prior licensing period has been completed and payment of all required fees and/or penalties have been received. If a license is not renewed prior to expiration because of non-compliance with continuing education requirements, a late compliance fee of $250 must be paid in addition to the renewal fee applicable to such license and the appropriate penalty fee for renewing after expiration of the license.** [An individual will be allowed to reinstate his or her license(s) only after application to the commission, satisfactory completion of the required continuing education, payment of a reinstatement fee of $250, and passing of the Texas Mortuary Law Examination An application for reinstatement may not be made prior to 30 days after notice of cancellation is mailed and shall be made in such a manner as the commission 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

Issued in Austin, Texas, on July 29, 1994

TRD-9445961 Wayne L Goodrum
General Counsel
Texas Funeral Service Commission

Proposed date of adoption September 14, 1994

For further information, please call (512) 834-9992

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 5. Property and Casualty

Subchapter E. Texas Catastrophe Property Insurance Association

- **28 TAC §5.4001**

The Texas Department of Insurance proposes an amendment to §5 4001, the plan of operation of the Texas Catastrophe Property Insurance Association (TCPIA), concerning an increase in the maximum limits of liability for property insurance coverage available from the TCPIA for mobile homes and their contents Created by the Texas legislature in 1971, the TCPIA is composed of all property insurers authorized to transact property insurance in Texas and provides windstorm and hail insurance coverage to coastal residents who are unable to obtain such coverage in the voluntary market The Office of Public Insurance Counsel (OPIC) and Herbert Emerick, a consumer and chair of the Recreation Vehicle/Mobile Home Owners Association of the Rio Grande Valley petitioned for the publication and adoption of the proposed amendments pursuant to the Administrative Procedure Act, §2001 021 (Government Code title 10, subtitle A, Chapter 2001) The proposed rule would increase the maximum limit of liability for mobile homes from $15,000 to $52,500 and the maximum limit of coverage on household goods, which includes all personal property usual to the mobile home residence, from $16,000 to $100,000 The increased limits are necessary to bring the maximum level of coverage offered by the TCPIA for mobile homes and contents into line with current mobile home values and the contents coverage for apartments and condominiums and thus increase the availability of windstorm and hail coverage for mobile homes in the 14 first tier coastal counties insured by the TCPIA, as provided by the Catastrophe Property Insurance Pool Act (the Insurance Code, Article 21 49) These 14 counties are Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio and Willacy Counties The proposed rule also provides that the limit of liability for mobile homes shall be adjusted annually for inflation at a rate that reflects any change in the BOECK Index or other index that may accurately reflect changes in the cost of construction or residential values in the catastrophe area, and that such adjustment shall be made by the Commissioner as part of the annual rate hearings held pursuant to Article 5 101 of the Insurance Code

Lyndon Anderson, associate commissioner, property and casualty program, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal implications to state government

Mr Anderson also has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal implications to local government nor to small business as a result of enforcing or administering the section, and there will be no effect on local employment or local economy

Mr Anderson has determined that for each year for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the section will be the availability of mobile home coverage by the TCPIA that provides limits of liability that are more in line with current mobile home values and personal property coverage that is at a level similar to that offered by the TCPIA for contents of an apartment, condominium, or townhouse that is owner-occupied Under the proposal, there will be an increase in the amount of liability exposure to the TCPIA based on the number of mobile home risks insured by the TCPIA under the new maximum limits of liability However, this increase in exposure will be accompanied by a corresponding increase in premium volume to offset the increase in exposure For mobile home owners who opt for increased coverage limits, there will be a corresponding increase in premium costs

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, Texas Department of Insurance, P O Box 149104, MC #113-2A, Austin, Texas, 78714-9104 An additional copy of the comment is to be submitted to Lyndon Anderson, Associate Commissioner, Property and Casualty Program, Texas Department of Insurance, P O Box 149104, MC #103-1A, Austin, Texas, 78714-9104 Any request for a public hearing on this proposal should be submitted separately to the Office of the Chief Clerk

The amendment is proposed pursuant to the Insurance Code, Articles 21 49 and 1 03A, and the Government Code, §2001 004 et seq Article 21 49, §5(c) of the Insurance Code provides that the Commissioner of Insurance by rule shall adopt the TCPIA plan of operation with the advice of the TCPIA board of directors Section 5(f) of Article 21 49 provides that any interested person may petition the Commissioner to modify the plan of operation in accordance with the Administrative Procedure Act (Government Code title 10, subtitle A, Chapter 2001) Section 8D(b) of Article 21 49 provides that liability limits for insurable property that is not covered under §8D(a), which specifies liability limits for dwellings and buildings and their contents, shall be established by the plan of operation Article 21 49, §8D(c) provides that the Commissioner, as part of the annual rate hearings, shall adjust the liability limits, including the limits set by §8D(a), for inflation at a rate that reflects any change in the BOECK Index or other index that may accurately reflect changes in the cost of construction or residential values in the catastrophe area Article 21 49, §5, subsections (c) and (f) and §8D(c) by their terms delegate the foregoing authority to the State Board of Insurance However, under Article 1 02 of the Insurance Code, as amended by the 73rd Texas Legislature in House Bill 1461 (Acts 1993, 73rd Legislature, Chapter 685, §1.01), a reference in the Insurance Code or another insurance law to the State Board of Insurance means the Commissioner of Insurance or the Texas Department of Insurance, as consistent with the respective powers and duties of the Commissioner and the Department under Article 1.02 Section 1 23(c) of House Bill 1461 provides that on September 1, 1993, the Board shall relinquish authority over all areas of activity of the Texas Department of Insurance except the promulgation and approval of rates and policy forms and endorsements and hearings, proceedings, and rules related to these activities; such authority shall be exercised by the Board until no later than September 1 1994. Section 1 23(d) of House Bill 1461 provides that on and after the date a Commissioner of Insurance is appointed under §1.23(a) the Commissioner shall cooperate with the Board to assume the authority granted to the Board under §1.23(c) and shall adopt rules as necessary to govern those activities. Section 1.23(d) further provides that as soon as possible after the appointment of the Commissioner under §1.23(a) but not later than September 1, 1994, the Commissioner shall assume the authority granted to the Board under §1 23(c) Pursuant to Board Order Number 60574, November 29, 1993, the State Board of Insurance transferred the authority granted to the Board under §1.23(c) of House Bill 1461 to the Commissioner of Insurance, effective December 16, 1993. Article 1.03A, as enacted by the 73rd Texas Legislature in House Bill 1461 (Acts 1993, 73rd Legislature, Chapter 685, §1 03), provides that the Commissioner of Insurance may adopt rules and regulations, which must be for general and uniform application, for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by a statute The Government Code, §2001 004 et seq (Administrative Procedure Act) authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and to prescribe the procedures for adoption of rules by a state agency

The following statute is affected by this rule Insurance Code, Article 21 49

§5 4001 Plan of Operation

(a)-(e) (No change)

(f) Mobile Homes

(1)-(2) (No change)

(3) Underwriting requirements In order for a mobile home to be insured by the association, it must meet the following underwriting requirements

(A)-(J) (No change)

(K) Catastrophe insurance shall not provide insurance coverage for any one insurable risk in excess of **$52,500** [$15,000] on the mobile home and **$100,000** [$6,000] on household goods contained therein, which shall include all personal property usual to a residence of the insured and the insured's [his] family

(L) The limit of liability for mobile homes shall be adjusted annually for inflation at a rate that reflects any change in the BOECK Index or other index that may accurately reflect changes in the cost of construction or residential values in the catastrophe area. Such adjustment shall be made by the Commissioner as part of the annual rate hearings held pursuant to Article 5.101 of the Insurance Code.

(4) (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 August 3, 1994.

TRD-9446051 D. J. Powers
General Counsel and Chief
Texas Department of
Insurance

Earliest possible date of adoption: September 9, 1994

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

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 101. General Rules

• 30 TAC §101.30

The Texas Natural Resource Conservation Commission (TNRCC) proposes new §101.30 concerning criteria and procedures for determining the conformity of general federal actions with the State Implementation Plan (SIP). The new section is proposed as a revision to the SIP for the control of criteria pollutants (ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, particulate matter, and lead) in the nonattainment areas. These revisions required by the Federal Clean Air Act (FCAA) Amendments of 1990 and the subsequent November 30, 1993, general conformity rulemaking by the United States Environmental Protection Agency (EPA). The EPA required that a SIP revision and an enforceable rule be adopted concerning general conformity no later than November 30, 1994.

This new rule is necessary to implement procedures for determining the general conformity of federal actions in nonattainment areas with the SIP in force in those areas. The rule is necessary to allow the EPA to make a finding that the general conformity SIP meets the requirements of the FCAA, and the final EPA rule on general conformity in the Code of Federal Regulations, 40 CFR Part 51. The new rule is essentially an adoption of the federal general conformity rules for the State of Texas. The federal rule allows the state, or the state's designated agency (TNRCC), to adopt a rule which is more stringent than the federal rule, if the state also applies the rule to all nonfederal (state agency) actions within the nonattainment areas. The TNRCC chose not to pursue a more stringent general conformity rule at this time, although the TNRCC reserves the right to increase the stringency with future rulemaking. The EPA is currently discussing the relationship between §182(f) and general conformity. At some point in the future, a *Federal Register* notice addressing the extent to which conformity determinations may still be required with respect to the levels assumed in attainment and maintenance demonstrations and other emissions budgets, for areas exempt from nitrogen oxides (NO_x) reduction requirements, may be published.

Under the provisions of general conformity, any federal agency that is considering an action in a nonattainment area which will cause the emissions of a criteria pollutant (or a precursor of that criteria pollutant) to increase above the *de minimis* level, will be required to mitigate that increase back to zero. The federal agency will also have to document the conformity analysis to demonstrate to the TNRCC that the action conforms to the applicable SIP for the nonattainment area. In cases where the federal agency does not have, or cannot purchase, sufficient emissions reduction credits to mitigate the proposed increase, the agency may petition the TNRCC to amend the applicable SIP to make the reductions elsewhere in the nonattainment area. If the TNRCC does not agree to amend the SIP and the agency cannot find mitigation reductions, then the action will be denied. There are many federal actions, such as procurement actions, which have been determined to be exempt from these rules. Agencies must make their conformity determinations available for public review and comment.

With the exception of Federal Highways Administration (FHWA) and Federal Transit Authority (FTA) transportation actions, this rule applies to all federal agencies in nonattainment areas that either directly fund, or have approval control, for actions within those areas. Typical agencies and actions that will be affected by this rule include the Federal Aviation Administration, with airport actions, and the Department of Defense, with military installation closures and realignments.

This proposed rule contains definitions specific to general conformity, the applicability of federal actions to the rule, exemptions of several federal actions from the rule, and the procedures for determining general conformity with the SIP. The procedures specify the requirements of the general conformity determinations, the analysis procedure, the reporting and public comment requirements, the frequency or conformity determinations, the criteria by which conformity is determined, and the process of emissions mitigation. The rule also contains a savings provision which specifies when a federal agency shall follow the federal rule and when a federal agency shall follow the state rule.

Stephen Minick, Budget and Planning Division, has determined that for the first five-year period the new rule is in effect, there will not be fiscal implications anticipated for state government. The existing personnel who review the National Environmental Policy Act documents for the TNRCC will review the general conformity submittals. There are no revenues associated with this rule.

There will be significant fiscal implications anticipated for federal agencies as a result of implementing this new rule. Each general conformity action that exceeds the level of significance will require a documented general conformity determination. Cost estimates based on actions completed in other states range from $30,000 to $250,000, depending upon the level of complexity of the action.

There will be minimal fiscal implications anticipated for local governments as a result of implementing this new rule. There will be no fiscal implications anticipated for small business or persons as a result of implementing this new rule.

Public hearings on this proposal will be held at the following times and locations: August 31, 1994, at 10:00 a.m. at the City of El Paso Council Chambers, 2 Civic Center Plaza, El Paso; August 31, 1994, at 11:00 a.m. at the Central Library Auditorium, 801 West Irving Boulevard, Irving; September 1, 1994, at 6:00 p.m. at the John Gray Institute, 855 Florida Avenue, Beaumont, and September 2, 1994 at 10:00 a.m. at the Houston-Galveston Area Council, 3555 Timmons Lane, Houston.

Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearings; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearings.

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 September 14, 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 regional offices. For further information, contact Alan J. Henderson, P.E. at (512) 239-1510.

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.

The new section 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.

§101.30. Conformity of General Federal and State Actions to State Implementation Plans (SIP).

(a) Purpose.

(1) The purpose of this rule is to implement §176(c) of the Federal Clean Air Act (FCAA), as amended (42 USC 7401 et seq) and regulations under the Code of Federal Regulations (CFR) 40 CFR part 51 subpart W, with respect to the conformity of general federal actions with the applicable state implementation plan (SIP). Under those authorities, no department, agency, or instrumentality of the federal government shall engage in, support in any way or provide financial assistance for; license or permit; or approve any activity which does not conform to an applicable SIP This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such action to the applicable SIP.

(2) Under FCAA §176(c) and 40 CFR part 51 subpart W, a federal agency must make a determination that a federal action conforms to the applicable SIP in accordance with the requirements of this rule before the action is taken, with the exception of federal actions where either:

(A) a National Environmental Policy Act (NEPA) analysis was completed as evidenced by a final environmental assessment (EA), environmental impact statement (EIS), or finding of no significant impact (FONSI) that was prepared prior to January 31, 1994; or

(B) prior to January 31, 1994, an EA was commenced or a contract was awarded to develop the specific environmental analysis, and sufficient environmental analysis is completed by March 15, 1994, so that the federal agency may determine that the federal action is in conformity with the specific requirements and the purposes of the applicable SIP pursuant to the agency's affirmative obligation under the FCAA §176(c), and a written determination of conformity under the FCAA §176(c) has been made by the federal agency responsible for the federal action by March 15, 1994

(3) Notwithstanding any provision of this rule, a determination that an action is in conformity with the applicable SIP does not exempt the action from any other requirements of the applicable SIP, the NEPA, or the FCAA.

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

(1) Affected federal land manager the federal agency or the federal official charged with direct responsibility for management of an area designated as Class I under the FCAA (42 USC 7472) that is located within 100 kilometers of the proposed federal action.

(2) Applicable state implementation plan (SIP) the portion (or portions) of the SIP, or most recent revision thereof, which has been approved under the FCAA §110, or promulgated under the FCAA §110(c) (Federal Implementation Plan or FIP), or promulgated or approved pursuant to regulations promulgated under the FCAA §301(d) and which implements the relevant requirements of the FCAA.

(3) Areawide air quality modeling analysis an assessment on a scale that includes the entire nonattainment or maintenance area which uses an air quality dispersion model to determine the effects of emissions on air quality.

(4) Cause or contribute to a new violation a federal action that

(A) causes a new violation of a national ambient air quality standard (NAAQS) at a location in a nonattainment or maintenance area which would otherwise not be in violation of the standard during the future period in question if the federal action were not taken, or

(B) contributes, in conjunction with other reasonably foreseeable actions, to a new violation of a NAAQS at a location in a nonattainment or maintenance area in a manner that would increase the frequency or severity of the new violation

(5) Cause by, as used in the terms "direct emissions" and "indirect emissions," emissions that would not otherwise occur in the absence of the federal action

(6) Criteria pollutant or standard any pollutant for which there is established a NAAQS in 40 CFR part 50

(7) Direct emissions those emissions of a criteria pollutant or its precursors that are caused or initiated by the federal action and occur at the same time and place as the action

(8) Emergency a situation where extremely quick action on the part of the federal agencies involved is needed, and where the timing of such federal activities makes it impractical to meet the requirements of this rule, such as natural disasters like hurricanes or earthquakes, and civil disturbances such as terrorist acts and military mobilizations.

(9) Emissions budgets those portions of the total allowable emissions defined for a certain date in a revision to the applicable SIP for the purpose of meeting reasonable further progress milestones, attainment demonstrations, or maintenance demonstrations; for any criteria pollutant or its precursors allocated by the applicable implementation to mobile sources, to any stationary source or class of stationary sources, to any federal action or class of actions, to any class of area sources, or to any subcategory of the emissions inventory. An emissions budget may be expressed in terms of an annual period, a daily period, or other period established in the applicable SIP

(10) Emissions offsets, for purposes of subsection (h) of this section emissions reductions which are quantifiable; consistent with the applicable SIP attainment and reasonable further progress demonstrations, surplus to reductions required by and credited to other applicable SIP provisions, enforceable under both state and federal law; and permanent within the time frame specified by the program. Emissions reductions intended to be achieved as emissions offsets under this rule must be monitored and enforced in a manner equivalent to that under EPA's new source review requirements

(11) Emissions that a federal agency has a continuing program responsibility for emissions that are specifically caused by an agency carrying out its authorities, but does not include emissions that occur due to subsequent activities, unless such activities are required by the federal agency Where an agency, in performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a nonfederal entity taking subsequent actions, such emissions are covered by the meaning of a continuing program responsibility

(12) Federal action any activity engaged in by a department, agency, or instrumentality of the federal government, or any activity that a department, agency, or instrumentality of the federal government supports in any way, provides financial assistance for; licenses, permits, or approves. Activities related to transportation plans, programs, and projects developed, funded, or approved under Title 23 USC or the Federal Transit Act (49 USC 1601 et seq) are not considered to be federal actions under general conformity. Where the federal action is a permit, license, or other approval for some aspect of a nonfederal undertaking, the relevant activity is the part, portion, or phase of the nonfederal undertaking that required the federal permit, license, or approval.

(13) Federal agency a federal department, agency, or instrumentality of the federal government.

(14) Increase the frequency or severity of any existing violation of any standard in any area to cause a nonattainment area to exceed a standard more often or to cause a violation at a greater concentration than previously existed or would otherwise exist during the future period in question, if the project were not implemented.

(15) Indirect emissions This term does not have the same meaning as given to an indirect source of emissions under the FCAA §110(a)(5), but for general conformity are those emissions of a criteria pollutant or its precursors that·

(A) are caused by the federal action, but may occur later in time or may be farther removed in distance from the action itself but are still reasonably foreseeable; and

(B) the federal agency can practicably control and will maintain control over due to a continuing program responsibility of the federal agency, including, but not limited to:

(i) traffic on or to, or stimulated or accommodated by, a proposed facility which is related to increases or other changes in the scale or timing of operations of such facility;

(ii) emissions related to the activities of employees of contractors or federal employees;

(iii) emissions related to employee commutation and similar programs to increase average vehicle occupancy imposed on all employers of a certain size in the locality,

(iv) emissions related to the use of federal facilities under lease or temporary permit,

(v) emissions related to the activities of contractors or leaseholders that may be addressed by provisions that are usual and customary for contracts or leases or within the scope of contractual protection of the interests of the United States

(16) Local air quality modeling analysis an assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, which uses an air quality dispersion model to determine the effects of emissions on air quality.

(17) Maintenance area any geographic region of the United States previously designated nonattainment pursuant to the FCAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under the FCAA §175A

(18) Maintenance plan a revision to the applicable SIP, meeting the requirements of the FCAA §175A

(19) Metropolitan Planning Organization (MPO) that organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 USC 134 and 49 USC 1607

(20) Milestone has the meaning given in the FCAA §182(g)(1) and §189(c)(1) A milestone consists of an emissions level and the date on which it is required to be achieved

(21) National Ambient Air Quality Standards (NAAQS) those standards established pursuant to the FCAA, §109 and include standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO_2), ozone, particulate matter (PM_{10}), and sulfur dioxide (SO_2)

(22) NEPA the National Environmental Policy Act of 1969, as amended (42 USC 4321 *et seq*.)

(23) Nonattainment area (NAA) any geographic area of the United States which has been designated as nonattainment under the FCAA §107 and described in 40 CFR Part 81

(24) Precursors of a criteria pollutant are

(A) For ozone, nitrogen oxides (NO_x) [unless an area is exempted from NO_x requirements under the FCAA §182(f)] and volatile organic compounds (VOC), and

(B) For PM_{10}, those pollutants described in the PM_{10} nonattainment area applicable SIP as significant contributors to the PM_{10} levels

(25) Reasonably foreseeable emissions projected future indirect emissions that are identified at the time the conformity determination is made, the location of such emissions is known to the extent adequate to determine the impact of such emissions, and the emissions are quantifiable, as described and documented by the federal agency based on its own information and after reviewing any information presented to the federal agency

(26) Regionally significant action a federal action for which the direct and indirect emissions of any pollutant represent 10% or more of a nonattainment or maintenance area's emissions inventory for that pollutant

(27) Regional water or wastewater projects projects which include construction, operation, and maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment or maintenance area.

(28) Total of direct and indirect emissions the sum of direct and indirect emissions increases and decreases caused by the federal action; i.e., the "net" emissions considering all direct and indirect emissions. Any emissions decreases used to reduce such total shall have already occurred or shall be enforceable under state and federal law. The portion of emissions which are exempt or presumed to conform under subsections (c)(3), (4), (5), or (6) of this section are not included in the "total of direct and indirect emissions," except as provided in subsection (c)(10) of this section. The "total of direct and indirect emissions" includes emissions of criteria pollutants and emissions of precursors of criteria pollutants The segmentation of projects for conformity analyses, when emissions are reasonably foreseeable, is not permitted by this rule.

(c) Applicability

(1) Conformity determinations for federal actions related to transportation plans, programs, and projects developed, funded, or approved under Title 23 USC or the Federal Transit Act (49 USC 1601 *et seq*.) shall meet the procedures and criteria of §114 27, regarding Transportation Conformity, and the Transportation Conformity SIP, in lieu of the procedures set forth in this rule

(2) For federal actions not covered by paragraph (1) of this subsection, a conformity determination is required for each pollutant where the total of direct and indirect emissions in a nonattainment or maintenance area caused by a federal action would equal or exceed any of the rates in paragraph (2)(A) or (B) of this subsection

(A) For purposes of paragraph (2) of this subsection, the following rates apply in nonattainment areas (NAAs) Figure 1 30 TAC §101 30(c)(2)(A)

(B) For purposes of paragraph (2) of this subsection, the following rates apply in maintenance areas Figure 2 30 TAC §101 30(c)(2)(B)

(3) The requirements of this rule shall not apply to

(A) actions where the total of direct and indirect emissions are below the emissions levels specified in paragraph (2) of this subsection,

(B) the following actions which would result in no emissions increase or an increase in emissions that is clearly *de minimis*:

(i) judicial and legislative proceedings;

(ii) continuing and recurring activities, such as permit renewals, where activities conducted will be similar in scope and operation to activities currently being conducted;

(iii) rulemaking and policy development and issuance;

(iv) routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities,

(v) civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law enforcement personnel;

(vi) administrative actions such as personnel actions, organizational changes, debt management or collection, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties, and fees,

(vii) the routine, recurring transportation of material and personnel,

(viii) routine movement of mobile assets, such as ships and aircraft, in home port reassignments and stations (when no new support facilities or personnel are required) to perform as operational groups, or for repair or overhaul;

(ix) maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site,

(x) with respect to existing structures, properties, facilities, and lands where future activities conducted will be similar in scope and operation to activities currently being conducted at the existing structures, properties, facilities, and lands, actions such as relocation of personnel, disposition of federally-owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or conservatorship authority, assistance in purchasing structures, and the production of coins and currency;

(xi) the granting of leases, licenses such as for exports and trade, permits, and easements where activities conducted will be similar in scope and operation to activities currently being conducted,

(xii) planning, studies, and provision of technical assistance,

(xiii) routine operation of facilities, mobile assets, and equipment;

(xiv) transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer;

(xv) the designation of empowerment zones, enterprise communities, or viticultural areas;

(xvi) actions by any of the federal banking agencies or the Federal Reserve Banks, including actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions or depository institution holding companies, access to the discount window, or the provision of financial services to banking organizations or to any department, agency, or instrumentality of the United States,

(xvii) actions by the Board of Governors of the Federal Reserve System or any Federal Reserve Bank to effect monetary or exchange rate policy,

(xviii) actions that implement a foreign affairs function of the United States,

(xix) actions (or portions thereof) associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and where the federal agency does not retain continuing authority to control emissions associated with the lands, facilities, titles, or real properties,

(xx) transfers of real property, including land, facilities, and related personal property from a federal entity to another federal entity and assignments of real property, including land, facilities, and related personal property from a federal entity to another federal entity for subsequent deeding to eligible applicants,

(xxi) actions by the Department of the Treasury to effect fiscal policy and to exercise the borrowing authority of the United States,

(C) actions where the emissions are not reasonably foreseeable, such as the following actions as indicated in 40 CFR §93.153(c)(3)

(i) initial Outer Continental Shelf lease sales which are made on a broad scale and are followed by exploration and development plans on a project level,

(ii) electric power marketing activities that involve the acquisition, sale, and transmission of electric energy;

(D) individual actions which implement a decision to conduct or carry out a program that has been found to conform to the applicable SIP, such as prescribed burning actions which are consistent with a land management plan that has been found to conform to the applicable SIP. Such land management plan shall have been found to conform within the past five years;

(4) Notwithstanding the other requirements of this rule, a conformity determination is not required for the following federal actions (or portion thereof):

(A) the portion of an action that includes major new or modified stationary sources that require a permit under the new source review (NSR) program (FCAA §173) or the prevention of significant deterioration (PSD) program (Title I, part C of the FCAA);

(B) actions in response to emergencies or natural disasters such as hurricanes, earthquakes, etc., which are commenced on the order of hours or days after the emergency or disaster and, if applicable, which meet the requirements of paragraph (5) of this subsection;

(C) research, investigations, studies, demonstrations, or training other than those exempted under paragraph (c)(3)(B) of this subsection, where no environmental detriment is incurred or the particular action furthers air quality research, as determined by the state agency primarily responsible for the SIP,

(D) alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations, e.g., hush houses for aircraft engines and scrubbers for air emissions,

(E) direct emissions from remedial and removal actions carried out under the CERCLA and associated regulations to the extent such emissions either comply with the substantive requirements of the NSR/PSD permitting program or are exempted from other environmental regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.

(5) Federal actions which are part of a continuing response to an emergency or disaster under paragraph (4)(B) of this subsection and which are to be taken more than 6 months after the commencement of the response to the emergency or

disaster under paragraph (4)(B) of this subsection are exempt from the requirements of this section only if:

(A) the federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional six months, it is impractical to prepare the conformity analyses which would otherwise be required and the actions cannot be delayed due to overriding concerns for public health and welfare, national security interests, and foreign policy commitments, or

(B) for actions which are to be taken after those actions covered by paragraph (5)(A) of this subsection, the federal agency makes a new determination as provided in paragraph (5)(A) of this subsection.

(6) Notwithstanding other requirements of this rule, individual actions or classes of actions specified by individual federal agencies that have met the criteria set forth in either paragraph (7)(A) or (B) of this subsection and the procedures set forth in paragraph (8) of this subsection are presumed to conform, except as provided in paragraph (10) of this subsection

(7) The federal agency must meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in either paragraph (7)(A) or (B) of this subsection

(A) the federal agency must clearly demonstrate using methods consistent with this rule that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not.

(i) cause or contribute to any new violation of any standard in any area,

(ii) interfere with provisions in the applicable SIP for maintenance of any standard,

(iii) increase the frequency or severity of any existing violation of any standard in any area, or

(iv) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area including, where applicable, emission levels specified in the applicable SIP or purposes of.

(I) a demonstration of reasonable further progress,

(II) a demonstration of attainment, or

(III) a maintenance plan, or

(B) the federal agency shall provide documentation that the total of direct and indirect emissions from such future actions would be below the emission rates for a conformity determination that are established in paragraph (2) of this subsection, based, for example, on similar actions taken over recent years.

(8) In addition to meeting the criteria for establishing exemptions set forth in paragraphs (7)(A) or (B) of this subsection, the following procedures must also be complied with to presume that activities will conform

(A) the federal agency shall identify through publication in the *Federal Register* its list of proposed activities that are presumed to conform and the analysis, assumptions, emissions factors, and criteria used as the basis for the presumptions,

(B) the federal agency shall notify the appropriate EPA Regional Office, TNRCC, local air quality agencies and, where applicable the Texas Department of Transportation (TxDOT) and the MPO, and provide at least 30 days for the public to comment on the list of proposed activities presumed to conform,

(C) the federal agency shall document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request, and

(D) the federal agency shall publish the final list of such activities in the *Federal Register*

(9) Notwithstanding the other requirements of this rule, when the total of direct and indirect emissions of any pollutant from a federal action does not equal or exceed the rates specified in paragraph (2) of this subsection, but represents 10% or more of a nonattainment or maintenance area's total emissions of that pollutant, then the action is defined as a regionally significant action and the requirements of subsections (a) and subsections (e) -(j) of this section shall apply for the federal action

(10) Where an action, presumed to be *de minimis* under paragraphs (3)(A) or (B) of this subsection, or otherwise presumed to conform under paragraph (6) of this subsection is a regionally significant action or does not in fact meet one of the criteria in paragraph (7)(A) of this subsection, that action shall not be considered *de minimis* or presumed to conform and the requirements of subsection (a) and subsections (e) -(j) of this section shall apply for the federal action

(11) The provisions of this section shall apply in all nonattainment and maintenance areas.

(12) Any measures used to affect or determine applicability of this rule, as determined under this subsection, must result in projects that are in fact *de minimis*, must result in such *de minimis* levels prior to the time the applicability determination is made, and must be state or federally enforceable Any measures that are intended to reduce air quality impacts for this purpose must be identified (including the identification and quantification of all emission reductions claimed), and the process for implementation (including any necessary funding of such measures and tracking of such emission reductions) and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation Prior to a determination of applicability, the federal agency making the determination must obtain written commitments from the appropriate persons or agencies to implement any measures which are identified as conditions for making such determinations Such written commitment shall describe such mitigation measures and the nature of the commitment, in a manner consistent with the previous sentence After this implementation plan revision is approved by EPA, enforceability through the applicable SIP of any measures necessary for a determination of applicability will apply to all persons who agree to reduce direct and indirect emissions associated with a federal action for a conformity applicability determination

(d) Conformity analysis Any federal department, agency, or instrumentality of the federal government taking an action subject to 40 CFR Part 51 Subpart W and this section shall make its own conformity determination consistent with the requirements of this rule In making its conformity determination, a federal agency must consider comments from any interested parties Where multiple federal agencies have jurisdiction for various aspects of a project, a federal agency may choose to adopt the analysis of another federal agency (to the extent the proposed action and impacts analyzed are the same as the project for which a conformity determination is required) or develop its own analysis in order to make its conformity determination

(e) Reporting requirements

(1) A federal agency making a conformity determination under subsection (h) of this section shall provide to the appropriate EPA Regional Office, the

TNRCC, local air quality agencies and, where applicable, affected federal land managers, TxDOT and the MPO, a 30-day notice which describes the proposed action and the federal agency's draft conformity determination on the action,

(2) A federal agency shall notify the appropriate EPA Regional Office, TNRCC, local air quality agencies and, where applicable, affected federal land managers, TxDOT and the MPO within 30 days after making a final conformity determination under subsection (h) of this section

(3) As a matter of policy, the state will not make any determination under subsection (h)(1)(E)(i)(I) of this section or any commitment under subsection (h)(1)(E)(i)(II) of this section, unless the federal agency provides to the TNRCC information on all projects or other actions which may affect air quality or emissions in any area to which this rule is applicable, whether such project or action is determined to be subject to this rule under subsection (c) of this section As a matter of policy, the emissions budget that would otherwise be available for projects of any federal agency under subsection (h) of this section shall be reduced by 50% (or other percentage as the state determines) in the case of any federal agency that does not provide to the TNRCC information on all projects or other actions which may affect air quality or emissions in any area to which this rule is applicable, regardless of whether such project or action is determined to be subject to this rule under subsection (c) of this section

(f) Public participation and consultation

(1) Upon request by any person regarding a specific federal action, a federal agency shall make available for review its draft conformity determination under subsection (h) of this section with supporting materials which describe the analytical methods, assumptions, and conclusions relied upon in making the applicability analysis and draft conformity determination

(2) A federal agency shall make public its draft conformity determination under subsection (h) of this section by placing a notice by prominent advertisement in a daily newspaper of general circulation in the areas affected by the action and by providing 30 days for written public comment prior to taking any formal action on the draft determination This comment period may be concurrent with any other public involvement, such as occurs in the NEPA process

(3) A federal agency shall document its response to all the comments received on its draft conformity determination under subsection (h) of this section and make the comments and responses available, upon request by any person regarding a specific federal action, within 30 days of the final conformity determination.

(4) A federal agency shall make public its final conformity determination under subsection (h) of this section for a federal action by placing a notice by prominent advertisement in a daily newspaper of general circulation in the areas affected by the action within 30 days of the final conformity determination

(g) Frequency of Conformity Determinations.

(1) The conformity status of a federal action automatically lapses five years from the date a final conformity determination is reported under subsection (e) of this section, unless the federal action has been completed or a continuous program has been commenced to implement that federal action within a reasonable time.

(2) Ongoing federal activities at a given site showing continuous progress are not new actions and do not require periodic redetermination so long as the emissions associated with such activities are within the scope of the final conformity determination reported under subsection (e) of this section.

(3) If, after the conformity determination is made, the federal action is changed so that there is an increase in the total of direct and indirect emissions above the levels in subsection (c)(1) of this section, a new conformity determination is required

(h) Criteria for Conformity Determination of General Federal Actions

(1) An action required under subsection (c) of this section to have a conformity determination for a specific pollutant, will be determined to conform to the applicable plan if, for each pollutant that exceeds the rates of subsection (c)(2) of this section, or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of paragraph (3) of this subsection, and meets any of the following requirements

(A) for any criteria pollutant, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable SIP or maintenance demonstration,

(B) for ozone or NO_2, the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area through a revision to the applicable SIP or a measure similarly enforceable under state and federal law that effects emission reductions so that there is no increase in emissions of that pollutant;

(C) for any criteria pollutant, except ozone and NO_2, the total of direct and indirect emissions from the action shall meet the requirements:

(i) specified in paragraph (2) of this subsection, based on areawide air quality modeling analysis and local air quality modeling analysis; or

(ii) specified in paragraph (1)(E) of this subsection and, for local air quality modeling analysis, the requirement of paragraph (2) of this subsection;

(D) For CO or PM_{10}:

(i) where the TNRCC determines, in accordance with subsections (e) and (f) of this section and consistent with the applicable SIP, that an areawide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (2) of this subsection, based on local air quality modeling analysis, or

(ii) where the TNRCC determined, in accordance with subsections (e) and (f) of this section and consistent with the applicable SIP, that an areawide air quality modeling analysis is appropriate, and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (2) of this subsection, based on areawide modeling, or meet the requirements of paragraph (1)(E) of this subsection,

(E) for ozone or nitrogen dioxide, and for purposes of paragraph (1)(C)(ii) and (D)(ii) of this subsection, each portion of the action or the action as a whole meets any of the following requirements:

(i) where EPA has approved a revision to an area's attainment or maintenance demonstration after 1990, and the state makes a determination as provided in subclause (I) of this clause, or where the state makes a commitment as provided in subclause (II) of this clause Any such determination or commitment shall be made in compliance with subsections (e) and (f) of this section

(I) The total of direct and indirect emissions from the action, or portion thereof, is determined and documented by the TNRCC to result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed the emissions budgets specified in the applicable SIP

(II) The total of direct and indirect emissions from the action, or portion thereof, is determined by the TNRCC to result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would exceed an emissions budget specified in the applicable SIP and the TNRCC makes a written commitment to EPA which includes the following:

(-a-) a specific schedule for adoption and submittal of a revision to the applicable SIP which would achieve the needed emission reductions prior to the time emissions from the federal action would occur;

(-b-) identification of specific measures for incorporation into the applicable SIP which would result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable SIP;

(-c-) a demonstration that all existing applicable SIP requirements are being implemented in the area for the pollutants affected by the federal action, and that local authority to implement additional requirements has been fully pursued;

(-d-) a determination that the responsible federal agencies have required all reasonable mitigation measures associated with their action. As a matter of TNRCC policy, a commitment will be made only if the TNRCC determines that the project sponsors and responsible federal agencies have sought all available emissions offsets and made all reasonably available modifications of the action to reduce emissions]; and

(-e-) written documentation including all air quality analyses supporting the conformity determination.

(III) Where a federal agency made a conformity determination based on a state commitment under paragraph (1)(E)(i)(II) of this clause, such a state commitment is automatically deemed to call for a SIP revision by EPA under the FCAA §110(k)(5), effective on the date of the federal conformity determination and requiring response within 18 months or any shorter time within which the state commits to revise the applicable SIP.

(ii) the action or portion thereof, as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable SIP under §114.27, concerning Transportation Conformity, or the Transportation Conformity SIP, or 40 CFR Part 93, Subpart A;

(iii) the action, or portion thereof, fully offsets its emissions within the same nonattainment or maintenance area through a revision to the applicable SIP, or an equally enforceable measure that effects emission reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant;

(iv) where EPA has not approved a revision to the relevant SIP, attainment demonstration, or maintenance demonstration since 1990, the total of direct and indirect emissions from the action for the future years as described in subsection (i)(4) of this section do not increase emissions with respect to the baseline emissions, and:

(I) the baseline emissions reflect the historical activity levels that occurred in the geographic area affected by the proposed federal action during:

(-a-) calendar year 1990;

(-b-) the calendar year that is the basis for the classification (or, where the classification is based on multiple years, the year that is most representative in terms of the level of activity), if a classification is promulgated in 40 CFR Part 81; or

(-c-) the year of the baseline inventory in the applicable PM_{10} SIP;

(II) the baseline emissions are the total of direct and indirect emissions calculated for the future years, described in subsection (i)(4) of this section using the historic activity levels described in paragraph (1)(E) (iv)(I) of this subsection and appropriate emission factors for the future years; or

(v) where the action involves regional water or wastewater projects, such projects are sized to meet only the needs of population projects that are in the applicable SIP, based on assumptions regarding per capita use that are developed or approved in accordance with subsection (i)(1) of this section.

(2) The areawide and local air quality modeling analyses must:

(A) meet the requirements in subsection (i) of this section: and

(B) show that the action does not:

(i) cause or contribute to any new violation of any standard in any area; or

(ii) increase the frequency or severity of any existing violation of any standard in any area.

(3) Notwithstanding any other requirements of this section, an action subject to this rule may not be determined to conform to the applicable SIP, unless the total of direct and indirect emissions from the action is in compliance or consistent with all relevant requirements and milestones contained in the applicable SIP, such as elements identified as part of the reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice requirements; and such action is otherwise in compliance with all relevant requirements of the applicable SIP.

(4) Any analyses required under this section shall be completed, and any mitigation requirements necessary for a finding of conformity shall be identified in compliance with subsection (j) of this section, before the determination of conformity is made.

(i) Procedures for Conformity Determination of General Federal Actions.

(1) The analyses required under this rule shall be based on the latest planning assumptions.

(A) All planning assumptions (including, but not limited to, per capita water and sewer use, vehicle miles traveled per capita or per household, trip generation per household, vehicle occupancy, household size, vehicle fleet mix, vehicle ownership, wood stoves per household, and the geographic distribution of population growth) shall be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or the state agency authorized under state law to make such estimates.

(B) Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, shall be approved by the MPO or other agency authorized to make such estimates for the area.

(2) The analyses required under this rule must be based on the latest and most accurate emission estimation techniques available as described below, unless such techniques are inappropriate. If such techniques are inappropriate and written approval of the EPA Regional Administrator is obtained for any modification or substitution, they may be modified or another technique substituted on a case-by-case basis or,

where appropriate, on a generic basis for a specific federal agency program.

(A) For motor vehicle emissions, the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in the state or area shall be used for the conformity analysis specified as follows:

(i) The EPA must have published in the *Federal Register* a notice of availability of any new motor vehicle emissions model.

(ii) A grace period of three months shall apply during which the motor vehicle emissions model previously specified by EPA as the most current version may be used. Conformity analyses for which the analysis was begun during the grace period, or no more than three years before the *Federal Register* notice of availability of the latest emission model, may continue to use the previous version of the model specified by EPA, if a final determination as to conformity is made within three years of such analysis.

(B) For nonmotor vehicle sources, including stationary and area source emissions, the latest emission factors specified by EPA in the "Compilation of Air Pollutant Emission Factors (AP-42)" shall be used for the conformity analysis unless more accurate emissions data are available, such as actual stack test data for stationary sources which are part of the conformity analysis.

(3) The air quality modeling analyses required under this rule must be based on the applicable air quality models, data bases, and other requirements specified in the most recent version of the "Guideline on Air Quality Models (Revised)" (1986), including supplements (EPA publication number 450/2-78027R), unless:

(A) the guideline techniques are inappropriate, in which case the model may be modified or another model substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific federal agency program; and

(B) written approval of the EPA Regional Administrator is obtained for any modification or substitution.

(4) The analyses required under this rule shall be based on the total of direct and indirect emissions from the action and shall reflect emission scenarios that are expected to occur under each of the following cases:

(A) the FCAA mandated attainment year or, if applicable, the farthest year for which emissions are projected in the maintenance plan;

(B) the year during which the total of direct and indirect emissions from the action for each pollutant analyzed is expected to be the greatest on an annual basis; and

(C) any year for which the applicable implementation plan specifies an emissions budget.

(j) Mitigation of air quality impacts.

(1) Any measures that are intended to mitigate air quality impacts shall be identified (including the identification and quantification of all emissions reductions claimed); and the process for implementation (including any necessary funding of such measures and tracking of such emissions reductions), and enforcement of such measures shall be described, including an implementation schedule containing explicit timelines for implementation.

(2) Prior to determining that a federal action is in conformity, the federal agency making the conformity determination shall obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity determinations. Such written commitment shall describe such mitigation measures and the nature of the commitment, in a manner consistent with paragraph (1) of this subsection.

(3) Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations shall comply with the obligations of such commitments.

(4) In instances where the federal agency is licensing, permitting, or otherwise approving the action of another governmental or private entity, approval by the federal agency shall be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination, as provided in paragraph (1) of this subsection.

(5) When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination in accordance with subsections (h) and (i) of this section and this paragraph. Any proposed change in the mitigation measures is subject to the reporting requirements of subsection (e) of this section and the public participation requirements of subsection (f) of this section.

(6) Written commitments to mitigation measures shall be obtained prior to positive conformity determination and such commitments must be fulfilled.

(7) After this implementation plan revision is approved by EPA, any agreements, including mitigation measures, necessary for a conformity determination will be both state and federally enforceable. Enforceability through the applicable SIP will apply to all persons who agree to mitigate direct and indirect emissions associated with a federal action for a conformity determination.

(k) Savings Provisions. The federal conformity rules under 40 CFR Part 51 Supbart W establish the conformity criteria and procedures necessary to meet the requirements of the FCAA §176(c) until such time as this conformity SIP revision is approved by EPA. Following EPA approval of this SIP revision (or a portion thereof), the approved (or approved portion of the) state criteria and procedures would govern conformity determinations, and the federal conformity regulations contained in 40 CFR Part 93 would apply only for the portion, if any, of the state's conformity provisions that is not approved by EPA.

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 July 27, 1994.

TRD-9445987 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Proposed date of adoption: November 3, 1994

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

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Chapter 327. Spill Prevention and Control

Spill Response

• 30 TAC §§327.1-327.9

The Texas Natural Resource Conservation Commission (TNRCC) proposes new §§327.1-327.9, concerning the prevention, control, and management of discharges or spills. Preventing discharges or spills and expeditiously removing discharges or spills is necessary to protect and maintain the quality of the waters in this state.

The TNRCC is proposing these Spill Prevention and Control Rules in a new Chapter 327 to effectuate its powers, responsibilities, and authorities regarding discharges or spills under the Texas Water Code, Chapter 26 and the Texas Health and Safety Code, Solid Waste Disposal Act, Chapter 361 et seq. The Commission believes that such rules are nec-

essary in order to improve the timeliness, adequacy, coordination, efficiency and effectiveness of the response to discharges or spills subject to the commission's regulatory jurisdiction.

These proposed rules are designed to achieve the policy stated in the Texas Water Code, Texas Hazardous Substances Spill Prevention and Control Act, §26. 262, which is to prevent the discharge or spill of hazardous substances into the waters in the state and to cause the removal of discharges or spills without undue delay. Also, the TNRCC serves as a member of the State Emergency Response Commission established under the authorities of Title III of the Superfund Amendments and Reauthorization Act of 1986. In this capacity, the TNRCC was designated to receive the Title III, Section 304 hazardous substance release reports beginning with the May 21, 1987 effective date for reporting to the state

These rules establish a comprehensive reporting and response program applicable to all discharges or spills subject to the regulatory authority of the TNRCC The TNRCC is the state's lead agency for the response to all hazardous substance discharges or spills, and discharges or spills of other substances and certain inland oil discharges or spills which may cause pollution. This authority is derived from the Texas Water Code, §26 039, and the Texas Hazardous Substances Spill Prevention and Control Act, §§26. 261-26.268 These rules will also apply to discharges or spills of solid waste pursuant to the Commission's authority to promulgate minimum standards for these materials as expressed in the Texas Health and Safety Code, Solid Waste Disposal Act, §361 024.

These proposed rules will generally apply to discharges or spills and contamination under the regulatory jurisdiction of the TNRCC Specifically, these rules will not apply to oil discharges or spills that enter or threaten to enter coastal waters of the state All response and cleanup operations resulting from such unauthorized discharges of oil are administered by the Texas General Land Office pursuant to Texas Natural Resources Code, Oil Spill Prevention and Response Act of 1991, Chapter 40

Likewise, the Railroad Commission of Texas (RRC) is generally the agency to respond to discharges or spills from activities associated with the exploration, development, or production (including storage or transportation) of oil, gas and geothermal resources, under Texas Natural Resources Code, §85 042, §91.101, and §91 601 Discharges or spills from brine mining or surface mining are also under the jurisdiction of the RRC and will not be subject to these rules In general, the RRC has jurisdiction over discharges or spills associated with the transportation of crude oil before refining of the oil and of natural gas before its use in a manufacturing process or as a residential or industrial fuel As a result, discharges or spills from crude oil or natural gas pipelines are under the jurisdiction of the RRC and will not be subject to these proposed rules However, discharges or spills from pipelines transporting refined products such as gasoline, diesel, or other fuel oils fall under the regulatory jurisdiction of the TNRCC and will be subject to these rules.

Also, as specified in the "State of Texas Oil and Hazardous Substances Spill Contingency Plan," the TNRCC is the lead agency in directing and approving the response for the discharge or spill of a harmful quantity of crude oil (defined as five or more barrels discharged or spilled on the ground or any quantity discharged or spilled into water) during highway or rail transportation. These rules will apply to such occurrences.

The Texas Hazardous Substances Spill Prevention and Control Act, Texas Water Code, §26 263 broadly defines "discharge or spill" to mean, in part, "an act or omission by which hazardous substances in harmful quantities are spilled, leaked, pumped, poured, emitted, entered, or dumped onto or into waters in this state or by which those substances are deposited where, unless controlled or removed, they may drain, seep, run or otherwise enter water in this state."

The definition continues by stating that discharge or spill does not apply to "any discharge which is authorized by a permit issued pursuant to federal law or any other law of this state". As a result, these rules will not apply to either permitted storm water runoff or process water discharges into ditches, sewers, or impoundments ancillary to permitted wastewater treatment systems, or to the discharge from these systems into the receiving surface water body. These rules will, however, apply to discharges from the components of a permitted wastewater treatment system that may "drain, seep, run or otherwise enter water in this state" in a manner not authorized by a permit. For instance, seepage from a permitted wastewater treatment impoundment to underlying ground water or leakage that is not authorized by a federal or State permit or "grandfathered" facility will constitute historic contamination and will be subject to the notification and response provisions of §327.8 of this title (relating to Historical Contamination) of these proposed rules The definition continues further to state "those substances are deposited where, unless controlled or removed, they may drain, seep, run or otherwise enter water in this state." Additionally, the Texas Water Code, Chapter 26 states that "Water" or "water in the state" means "groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state".

Therefore, discharges or spills to waters such as industrial noncontact cooling water ponds, Resource Conservation and Recovery Act (RCRA) impoundments, and stormwater pathways that meet the conditions of §327 3(b) (2)(a)-(c) of this title (relating to Notification) are not subject to the reporting requirements of these proposed rules. However, the agency does not necessarily conclude that every spill or discharge to soil of contaminants in any amount (no matter how small) will result in a discharge to water in the state. It is expected that the responsible person will make a realistic judgement about the likelihood of pollution occurring based on circumstances including, but not necessarily limited to, the chemical and physical characteristics of the spilled material, the soil characteristics of the area where the spill or discharge occurred, and the distance to the surface water or groundwater which could potentially be affected.

However, discharges or spills to on-site facility surface impoundments reservoirs and/or drainage ways which are in direct contact with surface water in the state are subject to the notification and response provisions of these rules.

Some responsible persons have, in the past, failed to comply with their obligations under the Texas Water Code, Chapter 26 This chapter is intended to ensure that responsible persons fully comply with the requirements of Texas Water Code, Chapter 26 The commission wishes to make clear that any violation of this chapter could subject the responsible person to a civil penalty of up to $10,000 for each act of violation and each day of violation as provided in Texas Water Code, §26.268 This chapter provides for immediate reporting, efficient, effective, and coordinated responses, determination of the adequacy of any response or removal actions, and prevention of undue delay in removal actions This chapter is also intended to improve and facilitate the enforcement of the provisions of this chapter and the Texas Water Code provisions applicable to discharges or spills.

In these proposed rules, the commission defines terms applicable to the Texas Water Code, §26.039, Texas Hazardous Substances Spill Prevention and Control Act, §§26.261-26.268, and the provisions of these proposed rules. Standards and requirements for activities covered by this chapter are established Specifically, these proposed rules establish reporting requirements and notification procedures, describe and set forth requirements and standards for timely and adequate responses to discharges or spills, require preparedness for the occurrence of discharges or spills, and prohibit certain activities

In addition, these proposed rules are intended for coordination with the Risk Reduction Rules (30 TAC §335 8). Although there may have been some confusion in the past, the commission wishes to make clear that the constituent-specific cleanup standards enumerated in the Risk Reduction Rules apply to cleanups of discharges or spills Even though the Risk Reduction Rule procedures (including sampling, analysis, notification, deed recordation, and reporting) are not triggered under §327.4(d)(1) or (2), of this title (relating to Action Required) the constituent-specific cleanup standards of the Risk Reduction Rules (30 TAC §§335.554, 335.556, 335.559, and 335 563) apply to all cleanup activities for discharges or spills, whether conducted during or after the 180-day period discussed in §327.4(d)(2). The commission believes the Risk Reduction Rule cleanup standards to be

protective of public health and the environment and are appropriate for application to the cleanup of discharges or spills.

Section 327 1 will set forth the applicability of this chapter Subsection (a) of this section clarifies that this chapter applies to all discharges or spills as defined in Texas Water Code §26.039 and §§26.262-268 and 30 TAC §335 1, as well as to the discovery of historical contamination as defined in this chapter. Under subsection (b) of this section, discharges or spills that are continuous and stable in nature, and are reported to the United States Environmental Protection Agency (EPA) under 40 Code of Federal Regulations, §302 8, are exempt from the requirements of this chapter, except for the requirements of §327 3(i) of this title (relating to Notification Requirements)

Subsection (c) of this section exempts the lawful placement of waste in a solid waste management unit, or in an industrial solid or municipal hazardous waste management unit, regulated under 30 TAC Chapter 335, Subchapter A It also exempts units and activities regulated under the Texas Water Code, Chapter 26, Subchapter I (Underground Storage Tanks). Subsection (d) of this section specifies that this chapter does not apply to authorized discharges from a federally or State-permitted facility or grandfathered facility.

Section 327.2 will define the terms necessary to implement the provisions of the Texas Water Code, Chapter 26, Subchapter G, the Texas Hazardous Substances Spill Prevention and Control Act, §§26 261-26.268, and this chapter Figure 5: 30 TAC §§327 2 Appendix V contains the names and phone numbers of the Regional Response Team

Section 327.3 proposes to require responsible persons to notify the Commission, property owners and local governmental authorities of the occurrence of any discharge or spill Subsection (a) of this section defines reportable discharges or spills Subsection (b) of this section is proposed to address problems that result from delayed notification or lack of notification by responsible persons It requires that responsible persons notify the Commission immediately Subsection (b) also references a discharge or spill notification guidance flow-chart in Figure 2· 30 TAC §327 3(e)(3) Appendix II Subsection (c) of this section is proposed to address problems resulting from the failure of responsible persons to provide complete and adequate information concerning the occurrence of a discharge or spill It specifies that the telephone report required by subsection (b) of this section must completely address all known factors concerning a discharge or spill Subsection (d) of this section is intended to ensure that the responsible party immediately notifies local governmental authorities who can timely implement the Emergency Management Plan required by Texas Government Code, §418 106

Subsection (e) of this section is intended to protect the health and safety of both the owner of the property upon which the discharge or spill occurred, and residents of affected property. Subsection (e) also requires the responsible person to promptly notify these persons. Subsection (f) requires proof of compliance with the notification requirements of subsection (e) of this section.

Subsection (g) of this section explains that complying with the reporting requirements in this section does not fulfill any other reporting requirements imposed by law or permit. The commission recognizes that the reporting requirements in these rules may overlap with reporting requirements in other rules. The commission intends to address these differences in a future rulemaking. In the meantime, responsible persons should follow the requirements of all applicable rules when reporting spills and discharges, even if this results in duplicative reports.

Subsection (h) of this section allows Alternate Notification Plans with the executive director's written approval before implementation. Subsection (i) requires concurrent and duplicate reporting to the TNRCC of continuous discharges or spills that are reported to EPA pursuant to 40 CFR §302 8.

Section 327.4 will require the responsible person to cooperate with the commission on-scene coordinator and/or the local incident command system during the initial response, to provide reports of planned and completed response actions, and to undertake certain actions in response to a discharge or spill. Although the responsible person may be required to submit various work plans to the commission, the commission expects the responsible person to proceed with the response action at all times without any unnecessary interruptions. The responsible person will not be justified in interrupting a response action to wait for the executive director's approval of a work plan.

Subsection (a) of this section proposes to require the responsible person to begin adequate response actions immediately after the occurrence of the discharge or spill. This subsection is intended to prevent undue delay in the removal of discharges or spills. Subsection (b) of this section will require the responsible person to take steps to ensure that personnel responding to a discharge or spill are properly trained and are provided with proper equipment.

Subsection (c) of this section will require the responsible person to provide a report of past and planned response actions upon reasonable request by the executive director or local government responders. This subsection is intended to ensure that response actions are adequate to prevent or minimize pollution into the waters of the state and to facilitate commission oversight of the response action.

Subsection (d) of this section proposes to require the responsible person to provide a written report containing information about the response action within ten working days after the occurrence of the discharge or spill. This subsection is intended to ensure that the responsible person appropriately assesses, removes, and disposes of the discharge or spill in a timely manner. This subsection is also intended to ensure that the responsible person properly assesses the impacts of the discharge or spill, and to facilitate Commission oversight of the removal action.

Section 327.5 sets forth emergency planning requirements. Subsection (a) of this section proposes to require most facilities and vessels engaged in the storage, processing or transportation of materials or substances that could cause or result in pollution to prepare and maintain an emergency planning form. The form may be prepared so that it covers all vehicles or vessels in a responsible person's fleet and/or all vessels located at a facility. This section is intended to improve preparedness for a discharge or spill.

Subsection (b) refers to Figure 1, which lists the information required on the emergency planning form. Figure 1: 30 TAC §327.5(b) Appendix I contains an example fill-in-the-blanks form that will meet the requirements of this section if it is completed properly and accurately. The emergency planning form requires certain notification information, and for stationary facilities only, some site-specific information.

The form includes a section for listing the hazardous materials that may be present at stationary facilities. The form should list the chemicals and other materials at the site which site owners are currently required to identify in the Workplace Chemical List, under the "Community Right-to-Know" provisions of Superfund Amendments and Reauthorization Act Title III. The list need only include materials found at the site and stored in bulk in containers with capacities of 500 gallons or more. However, because the purpose of this form is to facilitate effective response in the case of an emergency, it may be prudent for the site owner to list other dangerous materials that exist at the site in lesser quantities. In this regard, an easy way to ensure that the form is complete will be to attach to the emergency planning form a copy of the Workplace Chemical List required by the Texas Department of Health.

Subsection (c) of this section proposes to require that the most recent emergency planning form is available to facility or vessel personnel at all times. Subsection (d) of this section requires that owners and operators of existing facilities and vessels satisfy the emergency planning requirements of this section within 90 days of the effective date of this chapter. Subsection (e) of this section will require that owners and operators of new facilities and vessels comply with the emergency planning requirements of this chapter before storage, processing or transportation of any substances that are capable of causing or resulting in pollution.

Subsection (f) of this section exempts facilities or vessels engaged in transportation from the requirements of this section if the facility or vessel is not engaged in transportation of goods in commerce. The purpose of this subsection is to avoid imposing these requirements on owners and operators who use their facilities or vessels for strictly private or recreational transportation.

Additionally, the commission recommends that facilities that handle oil and hazardous substances, including industrial and hazardous wastes, prepare and maintain a spill contingency plan. Figure 4: 30 TAC §327.6 Appendix IV contains recommended contingency plan guidance for spill response/cleanup actions.

Section 327.6 will require that emergency planning forms be updated. This section is intended to ensure that the emergency planning form serves its function as an up-to-date tool for initial response.

Section 327.7 proposes to require the availability of at least one emergency coordinator who is able to respond immediately, coordinate any necessary measures, and commit any resources necessary to comply with the requirements of this chapter in connection with a discharge or spill at each facility or vessel subject to the requirements of §327.5 of this title (relating to Emergency Planning Form Requirements). This section will also provide that the emergency coordinator is responsible for response actions both on-site and off-site. The purpose of this section is to ensure coordinated and organized responses and to clarify that the obligations of the emergency coordinator may extend beyond property lines.

Section 327.8 regarding notification requirements for the discovery of historical contamination is included in these rules in response to an increasing number of reports to the commission of documented contamination discovered during property transfer site assessments as well as a similar number of requests for information regarding the presence or absence of contamination by adjacent or prospective property owners. Based upon the number of inquires and requests, the commission believes there is a need to document the location and nature of contamination discovered during routine site assessments and any other investigation that documents contamination on land or in the groundwater. The commission wishes to maintain a clear distinction and prevent duplication between reports of current or ongoing discharges or spills requiring immediate response and cleanup, and reports of historical contamination that are not an immediate threat to surface or ground waters. The commission requests reports of historical contamination in writing rather than the telephone notification required of current or ongoing discharges or spills.

The term historical contamination is defined in §327.2 of this title (relating to Definitions). Historical contamination is not considered attributable to any known discharge or spill incident and discovery of historical contamination will usually be determined by the receipt of site sample analyses. In addition, the entity discovering historical contamination is considered the entity that has received analytical results or has firsthand knowledge of site circumstances. However, the discovery of any ongoing discharge or spill where the source or nature of the discharge or spill is unknown and the discharge or spill has entered, is entering, or may enter the water of the state is not considered historical contamination and is subject to the notification requirements of §327.3. The notification requirements for the discovery of historical contamination (see §327.8) are applicable where there is no imminent and substantial endangerment to public health or public safety. Residual contamination from a discharge or spill previously reported to the TNRCC or a predecessor agency is not reportable as historical contamination under these rules.

Section 327.9 will authorize members of the commission and employees and agents of the commission to enter any public or private property at any reasonable time to inspect or investigate conditions or actions relating to discharges or spills or to investigate compliance with this chapter. Specifically, the use of audio-visual equipment to depict and record site conditions is authorized. The purpose of this section is to make clear that commission representatives investigating conditions or actions relating to discharges or spills or investigating compliance with this chapter have the right to enter any public or private property to do so as well as the corresponding right to take pictures, film, or record any conditions or activities.

Mr. Stephen Minick, division of budget and planning, has determined that for the first five-year period the sections as proposed are in effect, there will be fiscal implications as a result of enforcement and administration of the sections. The effect on state government will be an increase in cost of approximately $225,000 in fiscal year 1995 and $200,000 in each of the fiscal years 1996-1999. No increases in revenue to state government are anticipated and any increases in cost will be met within existing financial resources of the state. There are no fiscal implications for local governments anticipated except for those associated with a local government that is a responsible person within the meaning of these proposed sections. To the extent that a local government may be a waste generator or a person responsible for the reporting of and response to a discharge or spill, the fiscal implications would be equivalent to those for any other group or class of affected party.

The proposed rules will clarify current policy, strengthen existing regulations and establish more detailed and specific requirements for compliance with existing statutory authority for the prevention, control and management of discharges and spills. These sections do not represent substantially new or increased compliance efforts, however, and significant cost effects on responsible persons and those affected by these sections are not anticipated. Some moderate increases in fixed costs are associated with procedural requirements, such as those for documentation of emergency planning and the requirements to ensure the availability of emergency coordination personnel. These costs will vary with individual operators based on the size of the facility, the amounts of regulated materials handled and the number of potential sources of release or discharge. Other potential costs are prospective and based on the occurrence of events subject to the proposed sections, such as a spill or other release of a hazardous substance. The most significant implication of these potential costs may be associated with the proposed requirements for notification of historical contamination The actual costs of providing such notice are not anticipated to increase substantially under these sections; however, the clarification of the responsible parties under the proposed rule may result in these costs being imposed on additional entities.

In addition to potential costs, the coordination of the proposed rules with the rules for specific-constituent cleanup standards (Risk Reduction Rules, 30 TAC §335.8) may represent significant cost savings. The clarification of the application of site-specific, health-based standards for cleanup of spills will reduce the potential costs of response to such discharges relative to absolute cleanup criteria. Actual cost savings will vary with specific sites and circumstances and cannot be predetermined. The magnitude of these cost savings that may occur will likely exceed the moderate costs that are otherwise anticipated as a result of compliance these sections

Businesses affected by these rules will include small businesses Costs to small business will be equivalent to those imposed on larger concerns and will vary based on the same factors–the size of the facility, the amounts of regulated materials handled and the number of potential sources of release The effects of these rules, while not considered to be substantial for any class of business, may have some disproportionate impact on small businesses if certain fixed costs must be distributed over a smaller workforce or recovered from lower gross revenues.

Mr Minick has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be improvement in the prevention, control and management of spills and releases of hazardous substances, efficiency and effectiveness of actions taken in response to spill events, notification of historical contamination and existing releases of hazardous substances and compliance with statutory provisions for protection of public health and safety There are no anticipated costs to any person required to comply with these proposed sections except those identified above for parties subject to these rules

Comments on the proposal may be submitted to Marianne M. Baker, Staff Attorney, Legal Division, Texas Natural Resource Conservation Commission, P O. Box 13087, Austin, Texas 78711-3087, (512) 239-0475 All comments must be received by 5 00 p m 45 days after the date of this publication

To facilitate comments on the proposed rules, two public hearings will be held at the following locations Houston–Thursday September 1, 1994, at 7 00 p.m , in Conference Room A, Second Floor of the Houston-Galveston Area Council Office Building, 3555 Timmons Lane, Houston, Texas; Austin–Tuesday, September 13, 1994, at 1:30 p.m., Stephen F Austin State Office Building, Room 118, 1700 North Congress Avenue, Austin, Texas

The new sections are proposed under the Texas Water Code, §5 103, which provides the TNRCC with the authority to adopt any regulation necessary to carry out its powers and duties under the Texas Water Code and other laws of this state, and Texas Water Code, §26 264, which provides the TNRCC with the authority to issue rules necessary and convenient to carry out the purposes of Texas Water Code, Chapter 26 Subchapter G.

These sections are also proposed under Texas Water Code §26 039, which authorizes the Commission to issue reasonable rules

establishing safety and preventive measures concerning activities that are inherently or potentially capable of causing or resulting in the accidental discharge or spillage of waste or other substances and which pose serious or significant threats of pollution, and under the Texas Health and Safety Code, Solid Waste Disposal Act, §361.024, which authorizes the TNRCC to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste.

§327.1. Applicability.

(a) This chapter applies to all discharges or spills, as defined in Texas Water Code, §§26.039 and 26.262-26. 268, and 30 TAC §335.1 of this title (relating to Definitions), as well as to the discovery of historical contamination as defined in this chapter, within the territorial limits of the State of Texas, including the coastal waters of this state

(b) Discharges or spills that are continuous and stable in nature, and are reported to the United States Environmental Protection Agency (EPA) pursuant to 40 CFR §302.8, are not subject to the requirements of this chapter, except for the notification requirement at §327.3(i) of this title (relating to Notification Requirement).

(c) This chapter does not apply to:

(1) the lawful placement of waste in a solid waste management unit registered and operated under 30 TAC Chapter 335, Subchapter A of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste),

(2) the lawful placement of waste in an industrial solid or municipal hazardous waste management unit permitted and operated under 30 TAC Chapter 335, Subchapter A; or

(3) units and activities regulated under the authority of the Texas Water Code, Chapter 26, Subchapter I

(d) This chapter does not apply to any authorized discharge from a federally- or state-permitted facility or grandfathered facility that is operated in compliance with the provisions of the permit or regulation authorizing discharges or emissions from the facility.

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

Coastal waters–Surface waters subject to the tide and located in or bordering counties of Texas having a shoreline and that portion of the Gulf of Mexico subject to the jurisdiction of the State of Texas.

Commission-The Texas Natural Resource Conservation Commission.

Commission on-scene coordinator-The official designated by the executive director to coordinate and direct commission responses, or to oversee private responses to discharges or spills on-site.

Discharge or spill-An act or omission by which oil, hazardous substances, or other substances in harmful quantities, are spilled, leaked, pumped, poured, emitted, entered, or dumped onto or into waters in the State of Texas or by which those substances are deposited where, unless controlled or removed, they may drain, seep, run, or otherwise enter water in the State of Texas. The term "discharge" or "spill" shall not include any discharge which is authorized by a permit issued pursuant to federal law or any other law of the State of Texas, any discharge to which Texas Natural Resources Code, Chapter 40, Subchapter C, D, E, F, or G applies or, with the exception of spills in coastal waters, regulated solely by the Railroad Commission of Texas.

Emergency coordinator-The employee designated by the owner or operator of a facility or vessel to coordinate response actions in the event of a discharge or spill.

Emergency response team-A unit of the Emergency Response and Assessment Section of the Pollution Cleanup Division in the Office of Waste Management and Pollution Cleanup of the Commission.

Facility-Any structure or building, including contiguous land, equipment, pipe or pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, aircraft, or any site or area where a discharge or spill has occurred or may occur.

Harmful quantity-That quantity of hazardous substance the discharge or spill of which is determined to be harmful to the environment or public health or welfare or may reasonably be anticipated to present an imminent and substantial danger to the public health or welfare by the administrator of the EPA pursuant to federal law and by the executive director.

Hazardous substance-Any substance designated as such by the administrator of the EPA pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S C. §9601 et seq., regulated pursuant to the Clean Water Act, §311, 33 U S.C. §1321 et seq., or designated by the commission.

Hazardous waste-Any solid waste identified or listed as a hazardous waste by the administrator of the EPA pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U S C §6901 et seq., as amended.

Historical contamination-The presence on land, or in the groundwater, of contamination in the form of oil, hazardous substances, or other substances resulting from discharges or spills the time or origin of which is not known. Historical contamination shall not include any discharge or spill·

(A) authorized by a permit issued pursuant to federal law or any other law of the State of Texas;

(B) any discharge or spill to which Texas Natural Resources Code, Chapter 40, Subchapter C, D, E, F, or G, applies;

(C) any discharge or spill that is regulated solely by the Railroad Commission of Texas; or

(D) residual contamination from a discharge or spill that was previously reported to the TNRCC or a predecessor agency

LEPC-Local Emergency Planning Committee

Oil-Oil of any kind or in any form, including but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil (Clean Water Act, 33 U S.C §1321(a))

Other substances-Substances which may be useful or valuable and therefore are not ordinarily considered to be waste, but which will cause pollution if discharged into water in the state.

Person-An individual, firm, financial institution, corporation, association, partnership, or governmental entity

Person responsible or responsible person-A person who is.

(A) the owner, operator, or demise charterer of a vessel from which a discharge or spill emanates, or

(B) the owner or operator of a facility or unit from which a discharge or spill emanates; or

(C) any other person who causes, suffers, allows, or permits a discharge or spill.

Pollution-The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose

Regional manager-The manager of a commission field office.

Regional office-A commission field office

Regional response team-A team consisting of designated representatives from participating federal, state and local agencies or authorities pursuant to 40 Code of Federal Regulations (CFR) §300 et seq. The current members of this Regional Response Team are listed on Figure 5: 30 TAC §327.2 Appendix V.

Registered facility-Any facility that is registered with or permitted by the commission pursuant to 30 TAC §335.2 and §335.6 of this title relating to (Definitions, and Update of Emergency Planing Form).

Transportation-The act of conveyance or movement of materials from one place to another by truck, ship, pipeline, or other means.

Vessel-Every description of watercraft, used or capable of being used as a means of transportation on the water.

Water or water in the state-Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface waters, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

§327.3. Notification Requirements.

(a) Reportable discharge or spill. A reportable discharge or spill is:

(1) any discharge or spill of any quantity of oil, hazardous substances, or other substances discharged or spilled into or which may enter water in the State if not immediately contained, controlled, or removed;

(2) any discharge or spill which presents an imminent and substantial endangerment to public health or public safety;

(3) discharges or spills of the Comprehensive Environmental Responsibility, Compensation, and Liability Act (CERCLA) reportable quantity (RQ) or more for the material discharged or spilled and which are contained within operating registered facilities;

(4) any discharge or spill during transportation;

(5) any discharge or spill to soil only of 25 gallons or more of a petroleum product as defined in Texas Water Code, §26.342;

(6) any discharge or spill to soil only of five barrels or 210 gallons or more of crude oil; or

(7) any discharge or spill to soil only of 25 gallons or more of oil as otherwise defined in these rules.

(b) Initial notification required. Upon the determination that a reportable discharge or spill has occurred, the responsible person must provide a telephone report to the Commission within one hour of that determination. In all occurrences, the initial telephone notification must be made within 24 hours of the discovery of or the occurrence of the discharge or spill. This notification may be accomplished during normal business hours by calling the regional office for the TNRCC region in which the discharge or spill occurred. For incidents occurring after normal business hours, this notification may be accomplished by calling the Texas Emergency Response Center at the telephone numbers listed in the most recent State of Texas Oil and Hazardous Substances Spill Contingency Plan.

(1) In all occurrences, the initial telephone notification must provide, at a minimum and to the extent known, the information covered in subsection (c)(1)-(7) of this section.

(2) Operating facilities registered with the Commission as a solid waste generator and maintaining a current Notice of Registration are not subject to the notification requirements of this section when all of the following conditions are met:

(A) the discharge or spill is on-site and is contained or removed;

(B) the discharge or spill has not entered and will not enter water in the State;

(C) the discharge or spill does not present an imminent and substantial endangerment to public health or public safety;

(D) the amount of the substance discharged or spilled is less than the CERCLA reportable quantity for that substance and the discharge or spill is only to soil; and

(E) if the substance discharged or spilled is oil spilled only to soil, and

(i) the amount discharged or spilled is less than 25 gallons of petroleum product as defined in Texas Water Code, §26.342; or

(ii) the amount discharged or spilled is less than five barrels or 210 gallons of crude oil; or

(iii) the amount discharged or spilled is less than 25 gallons of oil as otherwise defined in these rules.

(3) A discharge or spill notification flow chart is provided in Figure 2: 30 TAC §327.3(e)(3), Appendix II.

(4) An immediate update notification must be made to the commission whenever significant changes in quantity, quality, or location of the discharge or spill have been observed.

(5) A 24-hour update notification covering the information in subsection (c)(8)-(15) of this section is required for all occurrences. At the discretion of the commission On-Scene Coordinator or the Emergency Response Team staff on duty, this notification may not be required if during the initial report, the responsible person provides all information required by subsection (c) of this section, confirms that all response actions are complete, and there is no longer a threat to public health, public safety, or the environment.

(6) The act of notifying the commission that a reportable discharge or spill has occurred shall not be construed as an admission that pollution has occurred Furthermore, if a responsible person determines, after notification, that a reportable discharge or spill did not occur, the responsible person may send a letter to the executive director documenting that determination. Unless the executive director disagrees with that determination, the executive director will then make note of this in commission records.

(c) Telephone report. The telephone report required by subsection (a) of this section must provide, at a minimum, and to the extent that it is known, the following information:

(1) the date and time of the incident;

(2) a specific description or identification of the waste, hazardous substances or other substances discharged or spilled;

(3) an estimate of the quantity discharged or spilled;

(4) the duration of the incident;

(5) a description of the waters or other media involved, affected or threatened;

(6) the source of the discharge or spill;

(7) the name, address and telephone number of the responsible person;

(8) a description of the extent of actual or potential water pollution;

(9) the name and telephone number of the person who is in charge of operations or the person in charge at the location of the discharge or spill;

(10) a description of any actions that have been taken, are being taken and will be taken to contain and cleanup the site of the discharge or spill;

(11) the extent of any injuries resulting from or caused by the incident;

(12) any known or anticipated health risks;

(13) a description of any possible hazards to the environment;

(14) the identity of any governmental representatives, including local authorities, or third parties responding to the incident; and

(15) any other information which may be significant to the response action.

(d) Notification of local governmental authorities. If the discharge or spill presents endangerment to the public health or welfare (such as, but not limited to the occurrence of an explosion, a fire, or a traffic hazard), the responsible person must immediately notify the local fire department, law enforcement authority, health authority, or Local Emergency Planning Committee (LEPC) as appropriate. If the local government does not agree or is unable to notify potentially affected parties, including residents, to take appropriate precautions such as evacuation, then the responsible person shall make these notifications immediately.

(e) Notification to property owner and residents. The responsible person must notify the owner or occupant of the property upon which the discharge or spill occurred as well as the occupants of any property that may be affected, by telephone, within one working day and, in writing, within three working days of the incident. Notification must be made immediately in situations where the discharge or spill may threaten the health or safety of property owners, occupants, residents, or others either by the local government or by the responsible person.

(f) Proof of owner notification. A copy of all written reports required by the Commission under §327.4 of this title (relating to Actions Required) must be mailed, by certified mail, return receipt requested, at the same time that the report is submitted to the commission, and to the owner and occupant(s) of the property upon which the discharge or spill occurred. The person who caused, suffered, allowed or permitted the discharge or spill shall provide the executive director with written proof of owner notification within ten working days after the notification.

(g) Additional notification required. Compliance with the notification requirements set forth in this section, does not relieve, satisfy or fulfill any other notification requirements imposed by permit or other local, state or federal law.

(h) Alternate notification plans. Responsible persons in charge of activities and facilities may submit and implement an alternate notification plan. This alternate notification plan must comply with the Texas Water Code, §26.039. Responsible persons must obtain the executive director's written approval before implementing any alternate notification plan. Adequate implementation of the approved plan must meet the notification requirements of this section.

(i) State notification. Discharges or spills that are continuous and stable in nature and are reported to the EPA pursuant to 40 CFR §302.8 shall be reported concurrently in the same manner to the State.

§327.4. Actions Required.

(a) The responsible person must immediately commence reasonable response actions and cooperate fully with the executive director and/or the local incident command system. Response actions may include, but are not limited to, the following actions:

(1) arrival of the responsible person or response personnel who have been hired by the responsible person at the site of the discharge or spill;

(2) initiation of efforts to stop the discharge or spill;

(3) minimization of the impact to the public health and the environment;

(4) containment of the discharge or spill;

(5) neutralization of the effects of the incident;

(6) removal of the material and substances discharged or spilled; and

(7) management of the wastes.

(b) The responsible person must take steps to ensure that properly trained personnel respond to the discharge or spill and that these personnel are provided with the proper protective equipment.

(c) Upon request of the local government responders or the executive director, the responsible person must provide a verbal or written description, or both, of the planned response actions and all actions taken before the arrival of the local governmental responders or the executive director. When the commission on-scene coordinator requests this information, it is subject to executive director approval, modification and possible additional response action requirements. The information will serve as a basis for the executive director's determination of the need for:

(1) further remedial actions by the responsible person;

(2) the initiation of state funded actions for which the responsible person may be held liable to the maximum extent allowed by law; and

(3) subsequent reports on the response actions.

(d) The responsible person must submit written notification, such as a letter, describing the details of the event and supporting the adequacy of the response action, to the appropriate regional manager and the Emergency Response Team Leader, within ten working days of the discovery of the incident. The regional manager has the discretion to extend the deadline for written notification up to a maximum of 30 days. The report must state one of the following items:

(1) A statement that the discharge or spill cleanup has been completed and a description of how the cleanup was conducted. The statement should include the information required for the Telephone Report, §327.3(c) of this title (relating to Notification Requirements). The executive director may request additional information. (See Figure 3: 30 TAC §327.4(d)(1)-(3) and §327.8(a) Appendix III for guidance.)

(2) A summary of the circumstances which necessitate a request for an extension of the time allowed for the response action as well as a projected work schedule outlining the time required to conduct the remaining tasks to complete the cleanup. The executive director may grant an extension up to 180 days. Unless otherwise notified by the appropriate regional manager or the Emergency Response Team, the responsible party shall proceed according to the terms of the projected work schedule. (See Figure 3: 30 TAC §327.4(d)(1)-(3) and §327.8(a) Appendix III for guidance.)

(3) A statement that the discharge or spill cleanup has not been completed nor is a complete cleanup expected to be possible within the maximum allowable 180-day extension, a summary of why a complete cleanup is not feasible, and a projected work schedule outlining the remaining tasks to complete the cleanup. This notification will also serve as notification of remediation under the Risk Reduction Rules in §335.8 of this title (relating to closure) and will trigger compliance with all applicable risk reduction rules. (See Figure 3: 30 TAC §327.4(d)(1)-(3) and §327.8(a) Appendix III for guidance.)

(e) Operating facilities registered with the TNRCC as a solid waste generator must maintain records of all discharges or spills and historical contamination that they have determined are not subject to the noti-

fication requirements of §327.3 of this title (relating to Notification Requirements) or §327.8 of this title (relating to Historical Contamination). These records are to be maintained at the facility or vessel for three years after the discharge or spill or discovery of historical contamination. These records are to be made available to the executive director upon request.

§327.5. Emergency Planning Form Requirements.

(a) Owners and operators of facilities or vessels storing, processing or transporting any materials or substances which are capable of causing or resulting in pollution must have an emergency planning form for each facility and each vessel if:

(1) the vessel is storing, processing or transporting 500 gallons in bulk or more of oil, hazardous substances, or other substances; or

(2) the facility is storing, operating, processing, or transporting containers, tanks, pipelines, or vessels with a bulk capacity of 500 gallons or more of oil, or 500 gallons or more of hazardous substances or other substances.

(b) Completion of an Emergency Planning Form which includes the information in Figure 1: 30 TAC §327.5(b), Appendix I is required.

(c) The most recent emergency planning form must be available at all times to personnel. Posting the planning form on employee bulletin boards near telephones and emergency response equipment, along with evacuation plans, is sufficient to comply with the availability requirement.

(d) For existing facilities and vessels, an emergency planning form must be available to emergency personnel at the site within 90 days of the effective date of this chapter.

(e) For new facilities or vessels, an emergency planning form must be available before storage, processing or transportation of substances which are capable of resulting in or causing pollution.

(f) If a facility or vessel is engaged in transporting substances in the amounts set forth in subsections (a)(1) or (2) of this section, but the facility or vessel is not transporting goods in commerce, then this section does not apply.

§327.6. Update of Emergency Planning Form. The emergency planning form must be reviewed and updated whenever any of the required information changes. For additional guidance (See Contingency Plan Guidance in Figure 4: 30 TAC 327.6 Appendix IV).

§327.7. Emergency Coordinator. There must be at least one designated emergency coordinator for each facility or vessel subject to the requirements of §327.5 of this title (relating to Emergency Planning Form Requirements) available to respond immediately, to coordinate emergency response measures and commit any resources necessary to comply with the requirements of this chapter in connection with a discharge or spill. The emergency coordinator is responsible for the following:

(1) maintaining familiarity with all aspects of the emergency planning form;

(2) committing the resources necessary for compliance with the requirements of this chapter;

(3) initiating and ensuring that the countermeasures necessary to minimize impacts are completed;

(4) ensuring that the response action is conducted appropriately; and

(5) taking all other necessary actions to respond to a discharge or spill both on-site and offsite.

§327.8. Historical Contamination.

(a) The person or entity discovering historical contamination must submit written notification to the appropriate regional manager and the Emergency Response and Assessment Manager within ten working days of discovery. Discovery of historical contamination can occur either through observation or through receipt of analytical sampling data. The notification must include the address and exact location of the historical contamination, the date and method of discovery, the nature of the historical contamination, an estimate of the extent of contamination, possible sources if any can be determined, the current property owner and/or operator of the location of the contamination and any other appropriate information. (See Figure 3: 30 TAC §327.4(d)(1)-(3) and §327.8(a) Appendix III for guidance.)

(b) If the available information regarding the discovery of historical contamination indicates the presence of an imminent and substantial endangerment to the public health, public safety, or the environment, the person or entity discovering the contamination must immediately notify the Commission, the local fire department, law enforcement authority, health authority, or LEPC as appropriate. The responsible person must cooperate fully with the Commission on-scene coordinator and/or the local incident command system in initiating appropriate actions under the Texas Water Code, §26.266 and §327.4 of this title (relating to Action Required).

(c) If the available information regarding the historical contamination indicates that it does not present an imminent and substantial endangerment to the public health, public safety, or the environment, then after submitting the notification required by subsection (a) of this section, responsible person shall conduct any further response in a form and manner consistent with the requirements of Chapter 335, Subchapter S of this title (relating to Risk Reduction Standards).

(d) These notification requirements do not apply when

(1) the historical contamination is found at an operating facility registered with the commission as a solid waste generator;

(2) the facility maintains a current Notice of Registration; and

(3) one of the following conditions is met:

(A) the historical contamination is reported in accordance with existing permits issued by the commission,

(B) the historical contamination is reported and incorporated into a current Site Assessment or RCRA Facility Investigation being conducted at the registered facility with the knowledge of the executive director; or

(C) the concentration of the constituent detected by appropriate sampling and analytical methods is less than the medium-specific concentrations identified in Appendix I or Appendix II Chapter 335, Subchapter S of this title (relating to Risk Reduction Standards).

(e) The responsible person has the burden of proof to show that the discharge or spill is the result of historical contamination

§327.9. Access. The members of the commission and employees and agents of the commission are entitled to enter any public or private property at any reasonable time to inspect or investigate conditions or actions relating to discharges or spills, historical contamination, or compliance with this chapter. An inspection or investigation under this authority may include the on-site use of cameras, video cameras, tape recorders and any other audio-visual equipment to depict and record site conditions and activities Responsible persons may request, consistent with the provisions of the Texas Government Code, §552, that any of the aforementioned recordings, photographs, videotapes, and other such documentation be kept confidential by the

Commission. Members, employees, or agents acting under this authority who enter private property shall observe the establishment's rules concerning safety, internal security and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials. If any member, employee, or agent is refused the right to enter in or on public or private property or conduct an inspection or investigation under this authority, the executive director may invoke any authorized remedies.

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 August 3, 1994

TRD-9446026 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Earliest possible date of adoption. September 9, 1994

For further information, please call: (512) 239-6087

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TITLE 34. PUBLIC FINANCE

Part III. Teacher Retirement System of Texas

Chapter 23. Administrative Procedures

- **34 TAC §23.5**

The Teacher Retirement System of Texas (TRS) proposes an amendment to §23.5, concerning nomination for appointment to the Board of Trustees. This section sets out the time frame, nominations procedures, and the election procedures for TRS Board of Trustees. The amendment changes the elections from a Fall election (September-October) time frame to a Spring election (March-April). In addition the length of terms set out in previous law, but dropped during a non-substantive recodification, are established in the rule for clarity. Recodification was done with no intent at substantive changes in the law. Additionally, a title change for the head of the agency was made in law. Finally, it is made clear that member numbers (social security numbers) must be placed on a returned ballot for validation purposes.

Wayne Fickel, controller, has determined that for the first five-year period that the proposed section will be in effect there will be no net costs to state and local government as a result of enforcing or administering the rule as amended

Mr. Fickel also has determined that for the first five years the amendment is in effect the public benefit of enforcing the section as amended will be more efficient transitions between in-coming and out-going board members as well as more clarity in defining terms of office and election procedures. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed

Comments on the proposal may be submitted to Wayne Blevins, Executive Director, Teacher Retirement System, 1000 Red River, Austin, Texas 78701-2698, within 30 days of publication in the *Texas Register*

The amendment is proposed under the Government Code, Chapter 825, §825 102, which authorized the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system and the transaction of business of the board and §825 002 as well as previous versions of this law before recodification setting terms of Board members The change in title for the head of the agency was authorized in Chapter 812 of the Acts of the 73rd Legislature, 1993

The Government Code, Chapter 825 is affected by this proposed amendment

§23.5 Nomination for Appointment to the Board of Trustees

(a) During any calendar year in which the term of office of a public school district member, institution of higher education member, or retired teacher member expires, the Teacher Retirement System of Texas will conduct an election between **March 15 and April 30** [September 1 and October 15] to select the nominees to be considered by the governor for appointment to the position

(b) Public school district members of the system who are currently employed by a public school district may have their names listed on the official ballot as candidates for nomination to a public school district position by filing an official petition bearing the signature, printed or typed name, and social security number of 500 members of the retirement system whose most recent credited service is or was performed for a public school district. Institution of higher education members of the system who are currently employed by an institution of higher education may have their names listed on the official ballot as candidates for nomination to the institution of higher education position by filing an official petition bearing the signature, printed or typed name, and social security number of 500 members whose most recent credited service is or was performed for an institution of higher education. Retired teachers may have their names listed on the official ballot as candidates for nomination to the retired teacher position by filing an official petition bearing the signature, printed or typed name, and social security number of at least 100 retirees of the system Official petition forms shall be available from the Teacher Retirement System of Texas, 1000 Red River, Austin, Texas 78701-2698. Official petitions must be filed by **January 15** [July 1] of the calendar year in which the election is to be held. A qualified public school district member, institution of higher education member, or retiree may sign more than one candidate's petition as long as they are eligible to vote in the election of the candidate or candidates for whom they are signing.

(c) Upon verification of petitions by the system, the names of qualified candidates shall be printed on the ballot. The ballot shall also provide space for write-in candidates. Ballots shall be mailed on or before **March 15** [September 1] of the year in which the election is held to the last known home address of each active member or retiree. Ballots **with member or retiree numbers (social security numbers) to be used for validation purposes** must be returned to the Teacher Retirement System of Texas by **April 30** [October 15] of the year in which the election is held in order to be counted. The executive **director** [secretary] shall cause the ballots to be counted. Names of the candidates for each position receiving the three highest number of votes shall be certified by the executive **director** [secretary] to the governor.

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

(f) Terms of Board Members run for six years and shall expire on August 31. Terms expire on the following dates and every six years thereafter:

(1) Public school district appointment, Place One, August 31, 1995.

(2) Gubernatorial appointment, Place One, August 31, 1995.

(3) State Board of Education appointment, Place One, August 31, 1995.

(4) Public school district appointment, Place Two, August 31, 1997.

(5) Gubernatorial appointment, Place Two, August 31, 1997.

(6) State Board of Education appointment, Place Two, August 31, 1997.

(7) Higher Education appointment, August 31, 1999.

(8) Retiree appointment, August 31, 1999.

(9) Gubernatorial appointment, Place Three, August 31, 1999.

(g) A vacancy in the office of a trustee shall be filled for the unexpired term in the same manner that the office was previously filled.

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 July 25, 1994.

TRD-9445965 Wayne Blevins
Executive Director
Teacher Retirement System of Texas

Proposed date of adoption: September 10, 1994

For further information, please call: (512) 370-0506

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part XI. Texas Juvenile Probation Commission

Chapter 345. Community Corrections Assistance Program

• **37 TAC §345.2**

(Editor's Note: The Texas Juvenile Probation Commission proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Juvenile Probation Commission (TJPC) proposes an amendment to §345.2, concerning the setting of commitment performance targets for each juvenile board.

Keith Rudeseal, planner, has determined that there will not be fiscal implications to state or local government as a result of enforcing or administering the section.

The public benefits anticipated as a result of enforcing the section as proposed will be: sucessful juvenile probation completions, successful intensive supervision juvenile probation completion, successful completions of direct diversion placements, and diversion from the Texas Youth Commission.

There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the rule as proposed.

Comments on the proposal may be submitted to Keith Rudeseal at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711.

The amendment is proposed under Human Resources Code §§141.001, 141.041, and 141.042 which provides Texas Juvenile Probation Commission with the authority to improve the effectiveness of juvenile probation services and provide alternatives to commitment of juveniles by providing financial aid to juvenile boards to establish and improve probation services and to adop rules for these purposes.

The rule affects Human Resources Code, §§141.001, 141.041, and 141.042.

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 August 2, 1994.

TRD-9445963 Bernard Licarione
Executive Director
Texas Juvenile Probation Commission

Earliest possible date of adoption: September 9, 1994

For further information, please call: (512) 443-2001

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part X. Texas Employment Commission

Chapter 302. Employment Service

• **40 TAC §302.1**

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

The Texas Employment Commission proposes the repeal of §302.1, concerning documents required for registration for work, currently requiring the documents necessary to complete an I-9.

Martin Aguirre, deputy administrator for Employment Service/Unemployment Insurance, has determined that for the first five-year period the repeal is in effect there will be an estimated yearly reduction in cost of $61,000 for state government. These costs include special paper, envelopes, and postage There are no fiscal implications for local government as a result of the repeal of the rule.

Mr. Aguirre also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of repealing the rule as proposed will be enhancement of employer and applicant basic labor exchange (i.e. worker recruitment and placement) and other services (e.g. Trade Adjustment Assistance) through reinvestment of equivalent staff time (32+ staff positions per year) required for Forms I-9 program.

There will be no effect on small businesses and there is no anticipated economic cost to persons as a result of the proposed repeal.

Comments on the proposal may be submitted to Carolyn Calhoon, Office of the Deputy Administrator for Legal Affairs, T.E C Building, 101 East 15th, Room 660, Austin, Texas 78778, (512) 463-2291

The repeal is proposed under Texas Labor Code, Title 4, Subtitle A (formerly Texas Civil Statutes, Article 5221b), which provides the Texas Employment Commission with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of this Act.

Labor Code, §202.081 is affected by this proposed repeal.

§302.1. Valid registration

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 August 3, 1994

TRD-9446030 J Ferris Duhon
Legal Counsel
Texas Employment Commission

Earliest possible date of adoption: September 9, 1994

For further information, please call: (512) 463-2291

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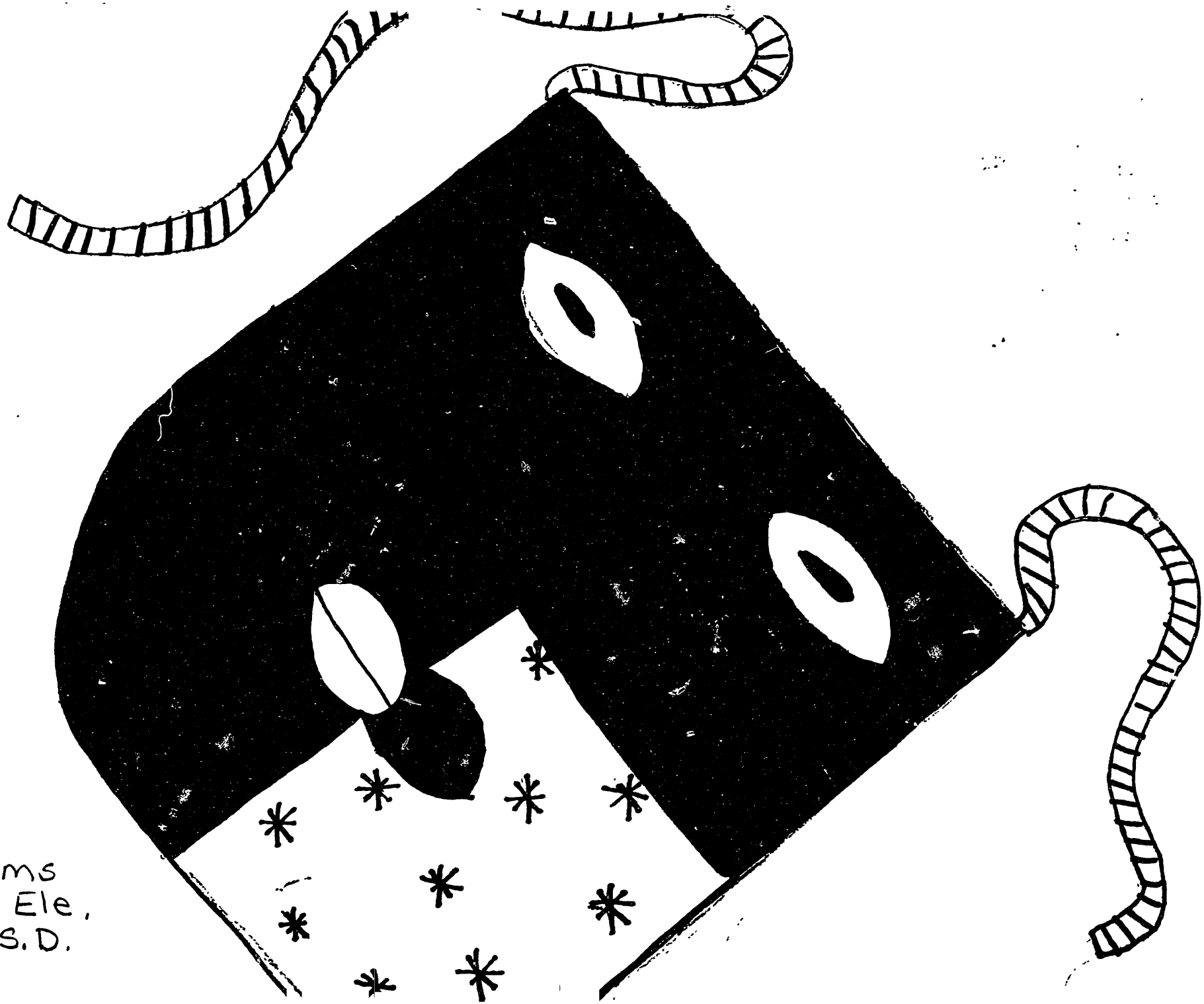

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WITHDRAWN RULES

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

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 229. Food and Drug

Licensure of Wholesale Device Distributors

• 25 TAC §§229.291-229.303

The Texas Department of Health has withdrawn from consideration for permanent adoption a proposed new §§229.291-229.303 which appeared in the July 8, 1994, issue of the *Texas Register* (19 TexReg 5330). The effective date of this withdrawal is August 3, 1994.

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

TRD-9446035 John T. Richards
Assistant General Counsel
Texas Department of Health

Effective date: August 3, 1994

For further information, please call: (512) 458-7236

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ADOPTED RULES

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

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

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 15. Alternative Fuels Research and Education Division

Propane Water Heater Rebate Program

- **16 TAC §§15.101, 15.105, 15.110, 15.115, 15.120, 15.125, 15. 130, 15.135, 15.140, 15.145, 15.150, 15.155, 15.160, 15.165**

The Railroad Commission of Texas adopts new §§15.101, 15.105, 15.110, 15.115, 15.120, 15.125, 15.130, 15.135, 15.140, 15.145, 15.150, 15.155, 15.160, and 15.165, concerning the establishment and administration of a consumer rebate program for water heaters fueled by propane (liquefied petroleum gas; LPG), without changes to the proposed text as published in the June 21, 1994, issue of the *Texas Register* (19 TexReg 4802).

The new sections establish a program that achieves energy conservation and efficiency and improves the quality of air in this state as authorized by the Texas Natural Resources Code, §113.2435(a) and §113.2435(b). Participation in the program is voluntary, and rebate payments are entirely at the discretion of the Railroad Commission of Texas No person has a legal entitlement or other right to a rebate under this program.

New §15.101 states the purpose of the program, and §15.105 defines terms used in the rule. New §15.110 establishes the rebate program for a period of two years unless the commission changes the termination date, and new §15.115 limits funding to 25% of the funds available in the Alternative Fuels Research and Education Fund. Eligibility requirements, application procedures and conditions for receipt of rebates are described in §§15. 120-15.130. New §15.135 places sole responsibility for selection of equipment and an installer on the consumer. Sections 15.140-15.145 authorize the commission to set the amount of the rebate and the energy efficiency factor of an eligible water heater and prescribe verification, safety, disallowance and refund procedures and requirements. New §15.150 establishes requirements for assignment of rebates. Conditions under which a propane dealer may be suspended or declared ineligible to participate in the rebate program are set out in §15.155. Procedures for the receipt and handling of complaints and penalties for violation of rebate program rules are set out in §§15.160-15.165.

The commission views the consumer rebate program as an innovative tool for encouraging the use of environmentally beneficial alternative fuels which can contribute to the improvement of air quality in this state. For that reason, the commission wanted to implement this program as quickly as possible, while ensuring adequate opportunity to receive ideas, information, and suggestions about the consumer rebate program from a wide array of interested persons. To that end, on May 16, 1994, the commission authorized the issuance of a working draft of the proposed rules establishing a pilot consumer water heater rebate program and the convening of a public hearing on the working draft to receive input from interested persons before publishing a proposed rule. By having staff meet with interested persons and receive oral and written comments early in the process, the commission sought to cover gaps and resolve inconsistencies in the working draft of the rules, address areas of concern to interested persons, and achieve consensus before publishing proposed rules.

Notice of the public hearing was given by letter mailed on May 19, 1994, to more than 70 individuals and groups (including electric utilities and their representatives, propane industry representatives, and consumer and environmental groups) and by publication in the May 24, 1994, issue of the *Texas Register*. Commission staff from the Alternative Fuels Research and Education Division (AFRED) conducted the public hearing on June 3, 1994, at which time three entities offered oral and written comment: Brazos Electric Cooperative, Association of Texas Electric Cooperatives, and Texas Propane Gas Association. Written comments were received from Modern Diversified Propane Services of Austin and Dickens Electric Cooperative. A representative of the General Land Office attended the hearing but submitted no oral or written comments.

The Association of Texas Electric Cooperatives and Dickens Electric Cooperative said the program was bad public policy because it favored propane over electricity and interfered in the competitive fuels marketplace. The commission responds that the legislature established the public policy of achieving energy conservation and efficiency and improving the quality of air in this state in passing House Bill 2822, 73rd Legislature, 1993, which authorizes the commission to implement consumer rebate programs for the purchasers of appliances and equipment fueled by propane or other environmentally beneficial alternative fuels.

The Association and Brazos Electric Cooperative also said the working draft preamble did not lay out a full methodology and sources in support of the efficiency, emissions, and cost benefits claimed; Brazos submitted two pages of questions about how commission staff arrived at its estimates. In response to these observations and questions, the AFRED staff rewrote the preamble to provide a much more detailed analysis of the claimed benefits; made specific reference to the publications used as the sources of water use, heater efficiency, and energy costs; and extended a written offer to meet with interested persons to review in further detail the methodology, source materials, and assumptions underlying the cost, efficiency, and emissions estimates made in the preamble to the proposed rules. No one telephoned, wrote, or visited the AFRED offices in response to this offer. No requests for a second public hearing were received.

Modern Propane suggested rebates be limited to one per family or commercial entity. Limits or caps (not necessarily one per residence) were discussed and rejected by the AFRED advisory committee on the grounds that limits would make the program less attractive to certain consumers, such as apartment house residents and owners and new-construction contractors. The commission agrees that setting limits on rebates at this time would unduly restrict the opportunity to encourage use of propane water heaters.

Written comments of Texas Propane Gas Association (TPGA), dated May 11, 1994, concerned a preliminary working draft. The working draft circulated for comment at the June 3, 1994, hearing already addressed TPGA's May 11 comments.

Following publication of the proposed sections on June 21, 1994, the commission received no comments from groups or associations. The commission received only one comment from a business, which recom-

mended restricting the availability of rebates to two per applicant so as to spread the benefits of the program to a greater number of consumers. The commission agrees that the rebate program's benefits must be distributed broadly to the public and not limited to a few applicants In the absence of experience from operation of the program, however, the commission believes limiting rebates to two per applicant could impair the program's effectiveness in reaching some classes of consumers, *e g*, occupants and owners of apartment buildings or other multi-unit residences The commission will monitor applications for multiple rebates throughout the program and take appropriate action to ensure adequate distribution of the program's benefits Such actions could include actions under §15 120(e), which allows the commission to limit the total amount of rebates that may be paid to any applicant.

The new sections are adopted under the Texas Natural Resources Code, §113 2435(a) and §113 2435(b), which authorizes the commission to adopt rules relating to the establishment of consumer rebate programs for purchasers of appliances and equipment fueled by LPG or other environmentally beneficial alternative fuels for the purpose of achieving energy conservation and efficiency and improving the quality of air in this state The Texas Natural Resources Code, §113 243(c)(6), authorizes the commission to use money in the Alternative Fuels Research and Education Fund to pay the direct and indirect cost of such programs The Texas Natural Resources Code, §§113 248, 113 249, and 113 250, prescribe civil and criminal penalties and establish an enforcement mechanism for violations of the Texas Natural Resources Code or commission rules

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

Issued in Austin, Texas, on August 1, 1994

TRD-9445949 Mary Ross McDonald
Assistant Director, Legal Division, Gas Utilities/LP Gas Section
Railroad Commission of Texas

Effective date August 22, 1994

Proposal publication date June 21, 1994

For further information, please call (512) 463-7008

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TITLE 22. EXAMINING BOARDS

Part X. Texas Funeral Service Commission

Chapter 203. Licensing and Enforcement-Specific Substantive Rules

- **22 TAC §§203.1, 203.7-203.9, 203.11, 203.17, 203.18**

The Texas Funeral Service Commission adopts amendments to §§203 1, 203 7-203.9, 203.11, 203.17, and 203.18, concerning disclosures required to be made by providers of funeral services and merchandise, with changes to the proposed text as published in the May 13, 1994, issue of the *Texas Register* (19 TexReg 3624).

The amendments coordinate and conform existing substantive rules with amended regulations of the Federal Trade Commission's Funeral Practices Trade Regulation Rule, at 16 Code of Federal Regulations (CFR), Part 453, concerning price disclosures and fraudulent and deceptive practices applicable to the sale of funeral services and merchandise.

No comments were received regarding the proposed amendments Changes were made to improve clarity and intent.

The amendments are adopted under Texas Civil Statutes, Article 4582b, §5, which provide the Texas Funeral Service Commission with authority to adopt rules to administer Article 4582b.

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

Alternative Container-An unfinished wood box or other non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of fiberboard, pressed-wood, composition materials (with or without an outside covering) or like materials.

Cash advance item-Any item of service or merchandise described to a purchaser as a "cash advance, accommodation, cash disbursement" or similar terms. A cash advance item is also any item which is not an offering of the funeral provider but is obtained from a third party and paid for by the funeral provider on the purchaser's behalf Cash advance items may include, but are not limited to, cemetery or crematory services, pallbearers, public transportation, clergy honoraria, flowers, musicians or singers, nurses, obituary notices, gratuities and death certificates

Funeral ceremony-A service commemorating the deceased with the body present.

Funeral goods-Any "funeral merchandise," as defined by Texas Civil Statutes, Article 4582b, §1(N), which is sold or offered for sale directly to the public for use in connection with funeral services

Funeral provider-Any person, partnership or corporation, including a funeral director or a funeral establishment and any employee or agent, that sells or offers to sell funeral goods and funeral services to the public

Funeral services-For purposes of §§203 7, 203 9, 203 11, and 203.18 of this title (relating to Comprehension of Disclosures, Price Disclosure, Clarification of Fraudulent or Deceptive Conduct in Providing Funeral Services or Merchandise; and Presentation of Required Price Lists, Consumer Brochures, and Written Memorandum or Purchase Agreements), any funeral service as defined in Texas Civil Statutes, Article 4582b, §1(O), sold or offered for sale to the public which may be used to:

(A) care for and prepare deceased human bodies for burial, cremation, or other final disposition; and

(B) arrange, supervise, or conduct the funeral ceremony or final disposition of deceased human bodies.

Memorial service-A ceremony commemorating the deceased without the body present.

Outer burial container-Any "outer enclosure," as defined in Texas Civil Statutes, Article 4582b, §1(P), which is designed for placement in the grave above or around the casket and includes containers commonly known as burial vaults, grave boxes, and grave liners.

Services of funeral director and staff-The services of the funeral director and staff which are not included in the prices of other categories that must be separately stated on the general price list or written memorandum furnished by a funeral provider in arranging and supervising a funeral, including but not limited to conducting the arrangement conference, planning the funeral, obtaining necessary permits, placing obituary notices, any other services offered by the funeral establishment, and any unallocated overhead.

§203.7. Comprehension of Disclosures.

(a) Unfair or deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider to fail to furnish accurate price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies, including at least the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, immediate burials, or direct cremations, to persons inquiring about the purchase of funerals. Any funeral provider who complies with the preventive requirements of these rules is not engaged in the unfair or deceptive acts or practices defined here.

(b) To prevent unfair or deceptive acts or practices, funeral providers must make all disclosures required by these rules in a clear and conspicuous manner. No statement or information may be included in a casket, outer burial container, or general price list which alters or contradicts the information required by these rules to be included in those lists.

§203.8. Telephone Price Disclosures. To prevent unfair or deceptive acts or practices, funeral providers must tell persons who ask by telephone about the funeral establishment's offerings or prices any accurate information from the General Price List, as defined in Texas Civil Statutes, Article 4582b, §1(S), and any other readily available information that reasonably answers the question.

§203.9. Price Disclosure.

(a) To prevent unfair or deceptive acts or practices, funeral providers must give a printed or typewritten General Price List, as defined in Texas Civil Statutes, Article 4582b, §1(S), for retention to persons who inquire in person about the offering, availability or price of funeral goods or services offered by the funeral provider.

(b) The General Price List must be given upon beginning any in-person discussion of the prices of or the overall type of funeral service or disposition, or of specific funeral goods or services offered by the funeral provider, whichever occurs first, and before showing any casket or outer burial container.

(c) The requirement of subsection (b) of this section applies whether the discussion takes place in the funeral establishment or elsewhere; provided, however, that when the deceased is removed for transportation to the funeral establishment, an in-person request at that time for authorization to embalm does not, by itself, trigger the requirement to give the General Price List if the funeral provider, in seeking prior embalming approval, discloses that embalming is not required by law. Any other discussion during that time about prices or the selection of funeral services triggers the requirement to give consumers a General Price List.

(d) The General Price List, as defined in Texas Civil Statutes, Article 4582b, §1(S), must contain a caption describing the list as a "General Price List," the name, address, and telephone number of the funeral establishment's place of business, the effective date for the price list, and the printed notices required by Texas Civil Statutes, Article 4582b, §1(S), and §203.11(g)(2)(A)(i) of this title (relating to Clarification of Fraudulent or Deceptive conduct in Providing Funeral Services or Merchandise).

(e) The General Price List must also contain the retail prices (expressed in either as a flat fee, or as the price per hour, mile or other unit of computation), and the information specified below for at least each of the following items, if offered for sale:

(1) forwarding of remains to another funeral establishment, together with a list of the services provided for any quoted price;

(2) receiving remains from another funeral establishment, together with a list of the services provided for any quoted price;

(3) the price range for the direct cremations offered by the funeral establishment, together with:

(A) a separate price for a direct cremation where the purchaser provides the container;

(B) separate prices for each direct cremation offered where the purchaser obtains a casket or alternative container from the funeral provider; and

(C) a description of the services and container (where applicable), included in each price;

(4) the price range for the immediate burials offered by the funeral establishment, together with:

(A) separate price for the immediate burial where the purchaser provides the casket;

(B) separate prices for each immediate burial offered where the purchaser obtains a casket or alternative container from the funeral provider; and

(C) description of the services and container (where applicable) included in that price;

(5) transfer of remains to funeral establishment;

(6) embalming;

(7) other preparation of the body;

(8) casket prices. The General Price List must contain the retail prices of all caskets and alternative containers offered which do not require special ordering and enough information to identify each. In lieu of the requirement to include individual casket and alternative container prices on the same list as other retail prices, the price range for the caskets and alternative containers offered by the funeral provider may be listed on the General Price List under the following conditions.

(A) The General Price List must contain the range of prices for caskets and alternative containers offered by the funeral provider, together with the following statement: *A complete price list will be provided at the funeral establishment.*

(B) A separate casket price list must be given at the time the General Price list is required to be given pursuant to subsection (b) of this section.

(C) The separate list must contain the following:

(i) a caption describing the list as a Casket Price List;

(ii) the name, address and telephone number of the funeral establishment's place of business;

(iii) the retail prices of all caskets and alternative containers offered which do not require special ordering and enough information to identify each;

(iv) the effective date for the stated prices; and

(v) the notice required by Texas Civil Statutes, Article 4582b, §1(S);

(9) outer burial container prices. The General Price List must contain the retail prices of all outer burial containers offered which do not require special ordering and enough information to identify each container. In lieu of the requirement to include individual outer burial container prices on the same list as other retail prices, the price range for the outer burial containers offered by the funeral provider may be listed on the General Price List under the following conditions.

(A) The General Price List must contain the range of prices for outer burial containers offered by the funeral provider, together with the following statement: *A complete price list will be provided at the funeral establishment.*

(B) The separate outer burial container price list must be given at the time the General Price list is required to be given pursuant to subsection (b) of this section.

(C) The separate list must contain the following:

(i) a caption describing the list as an Outer Burial Container Price List;

(ii) the name, address and telephone number of the funeral establishment's place of business;

(iii) the retail prices of all outer burial containers offered which do not require special ordering and enough information to identify each;

(iv) the effective date for the stated prices; and

(v) the notice required by Texas Civil Statutes, Article 4582b, §1(S);

(10) use of funeral establishment facilities and staff for viewing the deceased;

(11) use of funeral establishment facilities and staff for funeral ceremony;

(12) use of funeral establishment facilities and staff for memorial service;

(13) use of funeral establishment equipment and staff for graveside service;

(14) use of funeral establishment's hearse;

(15) use of funeral establishment's limousines;

(16) either subparagraph (A) or (B) of this paragraph (which shall be the only fee for services, facilities, or unallocated overhead permitted to be non-declinable, unless otherwise required by law):

(A) the price for the services of funeral director and staff, together with a list of the principal basic services provided for any quoted price; however, if the charge cannot be declined by the purchaser:

(i) the following statement must be included: *This fee for our basic services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains)*; and

(ii) the quoted price shall include all charges for the recovery of unallocated funeral establishment overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services"; or

(B) alternatively, the fee for the services of funeral director and staff may be included in the price of caskets and, if so, shall include all charges for recovery of unallocated funeral establishment overhead.

(i) Where the alternative of including the fee for the services of funeral director and staff in the price of caskets is chosen, the following statement must be shown on the General Price List, together with the prices of individual caskets (or the range of casket prices where a separate casket price list is used), and on any separate Casket Price List together with the individual casket prices: *Please note that a fee for the use of our basic services is included in the price of our caskets. Our services include (specify here the principal basic services included in the quoted price).*

(ii) Funeral providers may include in the required disclosure the phrase "and overhead" after the word "services".

(17) other itemized services provided by the funeral establishment staff, which must be declinable; and

(18) specifically itemized cash advance items. These prices must be given to the extent then known or reasonably ascertainable. If the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.

(f) To further prevent unfair or deceptive acts or practices, funeral providers must give an itemized written memorandum or funeral purchase agreement (as defined in Texas Civil Statutes, Article 4582b, §1(T)) for retention to each person who arranges a funeral, or other disposition of human remains, at the conclusion of the discussion of arrangements. The statement must contain at least the following information:

(1) the itemized cost of the funeral goods and funeral services selected by the customer from the general price list;

(2) each cash advance item or amount paid or owed by the funeral provider to another person on behalf of the customer, and each fee which the funeral provider charges the customer for the cost of advancing funds or becoming indebted to another person on behalf of the customer, together with the statement required by §203.11(f)(2) of this title (relating to Clarification of Fraudulent or Deceptive Conduct in Providing Funeral Services or Merchandise);

(3) the total cost of the goods and services selected;

(4) the following printed notices:

(A) *Charges are made only for items that are used. If the type of funeral selected requires extra items, we will explain the reasons for the extra items in writing on this memorandum.* (As required by Texas Civil Statutes, Article 4582b, §1(T); and

(B) *Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below*; and

(5) the name, mailing address, and telephone number of the Texas Funeral Service Commission, and a statement indicating that complaints may be directed to the Commission; and

(6) the name, address, and telephone number of the funeral establishment.

(g) Funeral providers may give persons any other price information in any other format, so long as the requirements of the commission's rules are also complied with.

§203.11. Clarification of Fraudulent or Deceptive Conduct in Providing Funeral Services or Merchandise.

(a) Embalming provisions.

(1) Deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(A) represent that state or local law requires that a deceased person be embalmed;

(B) fail to disclose that embalming is not required by law except in certain special cases.

(2) Preventive requirements. To prevent these deceptive acts or practices, funeral providers must:

(A) not represent that a deceased person is required to be embalmed for.

(i) direct cremation;

(ii) immediate burial; or

(iii) a closed casket funeral without viewing or visitation when refrigeration is available; and

(B) place the following disclosure on the general price list, in immediate conjunction with the price shown for embalming: *Embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial.*

(b) Casket for cremation provisions.

(1) Deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral establishment, a crematory, or other funeral provider to

(A) represent that state or local law requires a casket for direct cremation;

(B) represent that a casket is required for direct cremation; or

(C) require that a casket be purchased for direct cremation.

(2) Preventive requirements. To prevent these deceptive acts or practices, funeral providers who arrange direct cremations must:

(A) if direct cremations are arranged, place the following disclosure in immediate conjunction with the price range shown for direct cremation: *If you want to arrange a direct cremation, you can use an alternative container. Alternative containers encase the body and can be made of materials like fiberboard or composition materials (with or without an outside covering). The containers we provide are (specify here the containers provided)*;

(B) make an alternative container available for direct cremations.

(c) Outer burial container provisions.

(1) Deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(A) represent that state or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case;

(B) fail to disclose to persons arranging funerals that state law does not require the purchase of an outer burial container.

(2) Preventative requirements. To prevent these deceptive acts or practices, funeral providers must place the following disclosure in immediate conjunction with the outer burial container prices or price range listed on the general price list, and if the prices of outer burial containers are listed on a separate outer burial container price list, in immediate conjunction with those prices: *In most areas of the country, no state or local law makes you buy a container to surround the casket in the grave. However, many cemeteries require that you have such a container so that the graves will not sink in. Either a grave liner or a burial vault will satisfy these requirements.*

(d) General provisions on legal and cemetery requirements.

(1) Deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for funeral providers to represent that federal, state, or local laws, or particular cemeteries or crematories, require the purchase of any funeral goods or funeral services when such is not the case.

(2) Preventive requirements. To prevent these deceptive acts or practices, as well as the deceptive acts or practices identified in subsections (a)(1), (b) (1), and (c)(1) of this section, funeral providers must identify and briefly describe in writing on the statement of funeral goods and services selected any legal, cemetery, or crematory requirement which the funeral provider represents to persons as compelling the purchase of funeral goods or funeral services for the funeral which that person is arranging.

(e) Provision on preservation and protective value claims. In selling or offering to sell funeral goods and funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(1) represent that funeral goods or funeral services will delay the natural decomposition of human remains for a long-term or indefinite time;

(2) represent that funeral goods have protective features or will protect the body from graveside substances, when such is not the case.

(f) Cash advance provisions.

(1) Deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(A) represent that the price charged for a cash advance item is the same as the cost to the funeral director for the item when such is not the case;

(B) fail to disclose to persons arranging funerals that the price being charged for a cash advance item is not the same as the cost to the funeral provider for the item when such is the case.

(2) Preventive requirements. To prevent these deceptive acts or practices, funeral providers must place the following sentence in the itemized statement of funeral goods and services selected, in immediate conjunction with the list of itemized cash advance items required by §203.9(f)(2) of this title (relating to Price Disclosure), if the funeral provider makes a charge upon, or receives and retains a rebate, commission or trade or volume discount upon a cash advance item: *We charge you for our services in obtaining: (specify here the cash advance items for which charges are made for obtaining the items).*

(g) Other required purchases of funeral goods or funeral services.

(1) Unfair or deceptive acts or practices. In selling or offering to sell funeral goods or funeral services, it is an unfair or deceptive act or practice for a funeral provider to:

(A) condition the furnishing of any funeral goods or funeral services to a person arranging a funeral upon the purchase of any other funeral good or service, except as required by law or as otherwise permitted by these rules; or

(B) charge any fee as a condition to furnishing any funeral goods or funeral services to a person arranging a funeral, other than the fees for:

(i) services of funeral director and staff permitted by §203.9(e) (16);

(ii) other funeral services and funeral goods selected by the purchaser from the general price list; and

(iii) other funeral goods or services required to be purchased, as explained on the funeral purchase agreement, in accordance with subsection (d)(2) of this section.

(2) Preventive requirements.

(A) To prevent this unfair deceptive act or practice, funeral providers must:

(i) place the following disclosure in the general price list, immediately above the prices required by these rules to be listed: *The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected.* Provided, however, that if the charge for "services of funeral director and staff" cannot be declined by the purchaser, the statement shall include the following sentence between the second and third sentences of the preceding required sentence: *However, any funeral arrangements you select will include a charge for our services.* The preceding statement may include the phrase "and overhead" after the word "services" if the fee includes a charge for recovery of unallocated funeral establishment overhead; and

(ii) on the statement of funeral services selected, place the disclosures required by §203.9(f)(4) of this title.

(B) A funeral provider does not violate this section by failing to comply with a request for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide.

(h) Embalming without approval.

(1) Unfair or deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any funeral provider to charge a fee for embalming a deceased human body unless:

(A) approval has been obtained, under conditions set out in paragraph (2) of this subsection, from a family member or other authorized person; and

(B) in seeking approval, the funeral provider discloses that a fee will be charged if a funeral which requires embalming (such as a funeral with viewing) is selected and that no fee will be charged if a service which does not require embalming (such a direct cremation or immediate burial) is selected, unless embalming was previously authorized and performed.

(2) Conditions under which a fee for embalming may be charged are:

(A) where the approval for embalming (expressly so described) has been obtained, without solicitation, prior to the embalming;

(B) in cases where embalming is performed without prior approval, only when the funeral provider was previously selected by a person authorized to make funeral arrangements and that funeral provider:

(i) exercised due diligence to attempt to contact a family member or other authorized person and such effort is documented as required by §203.19 of this title (relating to Required Documentation for Embalming);

(ii) had no reason to believe the family did not want embalming performed; and

(iii) subsequent approval is obtained for the already performed embalming;

(C) in seeking approval, a funeral provider must disclose that a fee will be charged if the family selects a funeral which requires embalming, such as a funeral with viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.

(3) Preventive requirements. To prevent these unfair or deceptive acts or practices, funeral providers must include on the itemized statement of funeral goods and services selected, the following statement: *If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below.*

§203.17. Clarification of Other Itemized Services Provided by Funeral Home Staff. The term, other itemized services provided by the funeral establishment staff, in Texas Civil Statutes, Article 4582b, §1(S), is interpreted to include only those services, if any, of the funeral director and staff which are not included in the definition of "services of funeral director and staff," as defined in §203.1 of this title (relating to Definitions), and which therefore must be declinable.

§203.18. Presentation of Required Price Lists, Consumer Brochures, and Written Memorandum or Purchase Agreement. In order to provide the maximum protection to the consuming public, the presentation of required price lists and purchase agreements will be as follows.

(1) The general price list will be presented for retention to any consumer who inquires in person about any funeral services, cremation or merchandise and prior to the consumer viewing or selecting any merchandise or service.

(2) Consumer Information Brochures, containing information specified by the Commission, will be presented in the same manner and timing as price lists.

(3) The written memorandum or funeral purchase agreement must be presented for retention to the person who arranges a funeral, cremation or other disposition of a dead human body upon the conclusion of the discussion of arrangements.

(4) When a separate casket price list or a separate outer burial container price list is provided to pursuant to and in accordance with §203.9(e)(8) or §203.9(e)(9) of this title (relating to Price Disclosure), there is no requirement that the provision of such separate price lists be provided for retention by the customer.

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 July 12, 1994.

TRD-9445960 Wayne L. Goodrum
General Counsel
Texas Funeral Service Commission

Effective date: August 23, 1994

Proposal publication date: May 13, 1994

For further information, please call: (512) 834-9992

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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 the repeal of §117.570 and adopts new §117.570 in Chapter 117, concerning Control of Air Pollution From Nitrogen Compounds. New §117.570 is adopted with changes to the proposed text as published in the March 1, 1994 *Texas Register* (19 TexReg 1443). The repeal is adopted without changes and will not be republished.

Revisions to Chapter 117 are adopted 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 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.

New §117.570, concerning Trading, establishes a NO_x RACT trading program which provides a cost-effective alternative method of complying with the NO_x emission specifications of this chapter. Under the trading program, an owner or operator may reduce the amount of NO_x emission reductions otherwise required under this chapter by obtaining an emission reduction credit which may be generated by the same or another company in the same ozone nonattainment area. New §117.570 states the conditions under which trading may take place, defines procedures for generating and using reduction credits, and specifies the system for administration of the trading program.

Public hearings on this proposal were held in Beaumont, Texas on March 30, 1994, and in Houston, Texas on March 31, 1994. No oral comments were received at the public hearings, and written comments were received from six commenters.

General Comments. The Texas Chemical Council (TCC), Baker & Botts, Houston Lighting and Power (HL&P), and OxyChem expressed support for the proposed trading rule

The staff acknowledges the support expressed by the commenters.

An individual expressed opposition to the emissions trading concept in the Houston ozone nonattainment area, which is classified as severe, and emphasized the need to control emissions to the maximum extent possible.

The concepts of emission trading and emission control are not mutually exclusive. The staff believes that progress in achieving air quality goals can be made while introducing innovative and cost-effective methods to comply with regulatory requirements. Foremost in the staff's concerns has been the necessity of requiring real emissions reductions as a prerequisite to emission trading. The suggestion to apply "maximum" controls is not consistent with the philosophy of RACT, defined as a level of control that is technically practicable and economically feasible. The trading rule does not address the stringency of controls per se, but rather provides an alternative, flexible method of complying with existing rules which reflect RACT.

HL&P requested confirmation that a source has the option to purchase sufficient reduction credits (RCs) to allow that source to operate at its current NO_x emission rate (i.e., without the full application of NO_x RACT controls required under Chapter 117), at maximum rated capacity, throughout the entire year. HL&P requested clarification that the proposed rule does not limit the quantity of RCs allowed to be purchased.

The trading rule is designed to allow sources to comply with the NO_x reduction requirements of Chapter 117 (NO_x RACT rule) by using an emission reduction credit created and used in accordance with the rule. As long as the trading rule's requirements are met, RCs may be used in any manner consistent with the original rule section requiring NO_x reductions for a given unit. For units complying with the provisions of §117. 105 or §117.205, concerning Emission Specifications, or §117.107 or §117. 207, concerning Alternative System-Wide or Plant-Wide Emission Specifications, respectively, operation at maximum rated capacity (MRC) is allowed. The amount of required reduction credit is now calculated on an annual basis at MRC. For units complying with the provisions of §117.223 (Source Cap), however, the historical operating rate of participating units determines the maximum emission cap, and all units may not necessarily be allowed to operate at MRC. In any case, additional RCs may not be applied to raise allowable emissions above the level established for the source cap.

The EPA Region 6 office stated its intent to evaluate the proposed trading rule for consistency with the Economic Incentive Program (EIP) rules and any EPA policies on NO_x RACT. The final EIP rules (40 Code of Federal Regulations (CFR) Part 51, Subpart U), which appeared in the April 7, 1994 *Federal Register*, set out nine key criteria which the state must address in its EIP State Implementation Plan (SIP) submission. The EPA added that the state would meet the EIP criteria by addressing EPA's comments in §117.570 in addition to providing a narrative in its SIP submission.

The EPA promulgated the final EIP rules one month after the TNRCC's rule proposal in the *Texas Register*, and after approximately 18 months of ongoing meetings of the NO_x Trading Working Group (with EPA's participation). The TNRCC understands that the EIP rules, as applied to discretionary EIPs such as the NO_x trading rule under consideration, are intended to provide guidance to states opting to include such programs in the SIP. The EPA's specific comments relating to the EIP rules are addressed in several places in this evaluation of testimony. In cases where §117.570 has not been revised to conform with EIP guidance, the state's rationale and proposed remedy, if appropriate, are discussed.

Specific Comments. OxyChem commented that the proposed rule's requirement under §117.570(b)(1), allowing trades only within the same ozone nonattainment area, restricts the use of emission credits. The commenter suggested language which would provide an exception to this requirement if the credits were used on an intra-company basis (i.e., used by different facilities owned and operated by the same company).

The requirement for confining emission trades to a single ozone nonattainment area is valid, regardless of the ownership of companies wishing to exchange credits in a trade. The potential differences in ozone precursor loadings, mix of source types, and overall control strategies between two different ozone nonattainment areas make trading between contiguous areas problematic, not to mention areas separated by even greater distances. For this reason the rule requirement has been retained.

An individual objected to allowing the use of shutdown credits for emission reductions occurring after November 15, 1990, proposed in §117.570(b)(3), stating that since these reductions have already taken place, they should not result in further credits to industry.

In order to implement an emission trading program, a baseline date along with meaningful pre-trade criteria must be established. EPA guidance has identified November 15, 1990, the date the FCAA Amendments were enacted by Congress, as an appropriate baseline date. It should be noted that shutdown credits can be generated and used only by sources participating in a source cap in accordance with §117.223.

The EPA commented that in referencing §101.29(f), relating to Emissions Banking, in the methods for calculating RCs for nonRACT sources, proposed §117.570(c)(1)(A) does not specify replicable methods for quantifying emissions as required by §51.493(d) of the federal EIP rules. The EPA further commented that any RC calculated in a manner other than that specified in §117.570(c)(2) must be approved by EPA before it can be used in trading. An individual stressed the necessity of basing emission reduction credits on actual test results, rather than estimations, in proposed §117.570(c)(1)(B) in order to avoid faulty documentation and use of credits.

The procedures specified in §117.570(c)(1)(B) require the use of emissions test data in establishing a unit's actual emissions baseline. The rule also allows alternative documentation in the event that the source creating the RC has shut down or irreversibly changed. Such documentation would represent historical activity levels, defined in EPA's draft document "RACT for NO_x Trading Guidance" (June 10, 1993) as the product of the capacity utilization and the hours of operation that have historically occurred for each emission unit. The activity level reflects the actual production rate or a surrogate thereof, such as heat input or fuel usage, obtained from historical data. The staff believes that the use of best available data and good engineering practice, as required by the rule, will provide credible, workable procedures for proper documentation of emission reduction credits. The staff will work with EPA to further define the scope of replicable procedures necessary to adequately quantify emissions.

The EPA cited 40 CFR §51.493(d) of the EIP rule, concerning replicable methods for quantifying emissions and 40 CFR §51.493(e), concerning monitoring, recordkeeping, and reporting (MRR), and stated that these provisions need to be addressed in §117.570 in order for the rule to be approvable by EPA.

See the response to EPA's preceding comment concerning replicable emission quantification procedures. With regard to MRR requirements, 40 CFR §51.493(e) (2)(i) lists such criteria as continuous monitoring, *in situ* or portable measurement devices, operation and maintenance procedures, and manual or automated recordkeeping, which must be contained in the EIP (or the SIP as a whole). The adopted NO_x RACT rule specifies one or more of the above listed MRR requirements for each unit affected by the rule, in addition to acceptable test methods. Since the NO_x RACT rule has been submitted as a SIP revision, the cited MRR requirements in the EIP appear to have been addressed properly.

The EPA commented that the term "actual emissions baseline" in proposed §117.570(c)(1)(B) should be defined.

The actual emissions baseline has been defined in §117 570(c)(1)(B) as "the actual annual emissions, in tons per year, from a source determined by use of data representative of actual operations in 1990 or later, assuming full compliance with all applicable state and federal rules and regulations."

The EPA suggested using different notations, such as "i" and "j," to distinguish between RC generators and RC users throughout the rule.

The staff agrees with this comment, and has changed notations in the rule for clarity. In order to maintain consistency with notations already cross-referenced in §117.223 (Source Cap), "i" denotes RC users, and "j" denotes RC generators.

The EPA noted a discrepancy in the definitions of "i" and "N" in the equation given in proposed §117.570(c)(2), concerning generation of RCs, as compared to the definitions of these terms in the equation given in §117. 223(b)(1), concerning Source Cap. The EPA commented that §117.570(c)(2) as proposed would allow sources to selectively include particular units, rather than the entire source category to which the units belong, contrary to EPA policy guidance. The EPA recommended that either the rule clarify that shutdown units cannot generate RCs, or that "i" and "N" be defined in proposed §117.570(c)(2) consistent with §117.223(b)(1).

The staff's intent in §117.570(c)(2) was to define the mechanism for generating RCs consistent with EPA's emission trading guidance, which specifies that shutdown credits can be used or generated only under an emissions cap program New §117.570(c)(3) adds language which clarifies this point. Therefore, the only revisions to the definitions of "i" and "N" in §117 570(c)(2) have been the addition of "generating RCs" at the end of each definition. As discussed in the previous response to EPA's comment, the notation "i" has been changed to "j" to clarify that a RC generator is denoted.

OxyChem commented on the definition of R_A in the equation in proposed §117.570(c)(2) for calculating generated RCs, which defines the pre-trade allowable emission rate as the lowest of any federally enforceable emission limitation, the applicable RACT limit, or the actual emission rate as of June 9, 1993 The commenter stated that including the actual emission rate in the definition penalizes sources that significantly reduced emissions since November 15, 1990. OxyChem suggested revising the definition of R_A so that assignment of the actual emission rate would apply only to those sources without state or federal emission limitations in determining the pre-trade allowable emission limitation.

The basis of a valid emission trading program rests on the proper documentation and assignment of credits for emissions reductions actually achieved below a set baseline Sources which have historically emitted at a level less than applicable state or federal emission limitations do not gain a corresponding credit which may then be used in an emission trade to comply with rule requirements To allow such an approach would undermine the trading program's fundamental requirement that only real emissions reductions below the emissions baseline may be credited

The EPA commented that the use of shutdown credits is allowed only under an emissions cap program, and not under a traditional RACT or emission averaging program Therefore, EPA commented, sources can use shutdown credits as RCs in accordance with proposed §117 570(d)(1), but not under proposed §117 570(d) (2)

The staff agrees, and has added new §117 570(c)(3) and §117 570(d)(3) specifying that RCs from shutdown units may be generated or used, respectively, only by units participating in a source cap

The EPA commented that in the equations given in proposed §117 570(d)(1), the definitions of "i" and "N" should be consistent with the definitions of these terms given in §117 223(b)(1).

The definitions of "i" in both equations in §117 570(d)(1) have been changed to "each emission unit in the source cap," thereby addressing EPA's comment.

The EPA commented that the reason for denoting the reduction credit as "RC" instead of "RC" in the equations in proposed §117 570(d)(1) is not clear, since the RC is generated by a unit outside of the facility

In §117.570(d)(1), the term "RC" is used to denote that portion of a RC applied to unit *i* in the source cap. The revision of nomenclature to denote RC generators by "j" and RC users by "i" may help to make this distinction clearer.

The EPA commented that in the equation given in proposed §117.570(d)(2), H_i should be defined as the maximum daily heat input of the unit using the RC, instead of the actual daily heat input of the unit generating the RC. The EPA further commented that the source could assign a heat input to a given unit which was less than its maximum heat input, if the source is willing to make that assigned heat input its new enforceable limit.

The EPA's comment is relevant to the trading rule's underlying concept that RCs are created by reducing actual emissions, and are used by applying RCs toward allowable emission rates. For units complying with §§117.105, 117.107, 117 205, or 117 207, the allowable emission rate is based on MRC and is not limited by historical activity levels. Using the definition of H_i as originally proposed in §117.570(d)(2) would result in trading actual emissions from the source generating RCs for actual emissions from the source using RCs If the source using RCs determined its emission trading credit based on actual historical operations which were less than MRC, then operated at MRC and a higher activity level as allowed, the trade would not achieve emissions reductions equivalent to those obtained by applying traditional RACT. Therefore, the definition of H_i in §117 570(d)(2) has been changed by replacing H_i with H_{Mi}, defined as "the maximum daily heat input, in MMBtu/day, as defined in §117 223(b)(2) of this title."

The EPA commented that under §117 213(b)(1)(E), concerning Continuous Demonstration of Compliance, any unit complying with the emission specifications of §117 205 or §117 207 using a pound per million British thermal units (lb/MMBtu) limit on a 30-day rolling average must install and operate a continuous emissions monitoring system (CEMS). The EPA stated that if a unit complies with §117.205 or §117.207 under the trading provisions of proposed §117 570(d)(2), using a 30-day rolling average, then that unit must also comply with the CEMS provisions of §117.213(b)(1)(E). The EPA commented that the equation given in §117.570(d)(2) should clarify that the new 30-day rolling average emission limit, in lb/MMBtu, is for a given unit *i*.

As EPA has noted, the NO_x RACT rule specifies operation of CEMS whenever a 30-day rolling averaging period is used. However, it is not the intent of the trading rule to automatically impose CEMS requirements or to allow longer compliance averaging periods for units participating in trading, if such requirements or averaging periods would not have applied to those units in the absence of trading Clarifying language has therefore been added to §117.570(d)(2), stating that the appropriate compliance averaging period specified in §§117.105, 117.107, 117.205, or 117 207 shall be assigned to the unit using a RC in accordance with the provisions of §117 570(d)(2). In addition, the left-hand side of the equation in §117.570(d)(2) has been changed to "New emission limit for unit *i* (lb/MMBtu)."

The EPA requested clarification on how a program to lease RCs, referenced in proposed §117.570(e), would work. The EPA commented that the rule subsection should clarify that RCs do not carry property rights. The EPA also recommended starting the last sentence in proposed §117.570(e) with the word "approved," thus clarifying that RCs must be approved before they can be used.

Leasing may be a desirable approach for sources needing credits on a temporary basis in order to satisfy the rule requirements. Although §117. 570(e) does not specify the exact manner in which RCs would be leased under the emission trading program, it is envisioned that negotiations between trading parties for leasing RCs would be conducted similarly as for purchasing RCs. One difference would be the need to specify an expiration date for the credits, at which time the RC user would have to either control emissions or obtain other credits to remain in compliance with the rule. Language has been added to §117.570(e), requiring information on leased RCs to be included in the final control plan or revised final control plan. With regard to property rights, the intent of the rule is that RCs are not considered property for which a loss, such as might occur through revision of RCs or adoption of a more stringent rule, must be compensated by the state. Recommended language has been added to §117.570(e), emphasizing that RCs must be approved before being used.

An individual objected to the leasing or selling of emission credits allowed under proposed §117.570(e), stating that the public health would thus be jeopardized.

The staff believes that the process of creating economic incentives for achieving required emissions reductions through the leasing or selling of credits does not jeopardize the ultimate goal of protecting the public health. The commenter does not substantiate the claim that a company's leasing or selling credits externally, as opposed to banking and applying the credits internally, would uniquely endanger the public's health.

The EPA commented that in proposed §117.570(f), which requires a source using RCs to submit a revised final control plan if a more stringent NO_x emission limit is established for the unit generating the RC, the rule should specify a time period for submitting the revised plan. The EPA also requested clarification on whether the source generating the RC is required to revise the registration application under proposed §117.570(g)(1) .

Language has been added in §117.570(f) requiring the owner or operator using the RC to submit a revised final control plan as soon as practicable, but no later than 90 days prior to the effective date of the new, more stringent rule or permit limitations. Language has also been added in §117. 570(f) requiring the owner or operator generating the RC to submit a revised registration application in accordance with §117.570(g)(1) as soon as practicable, but no later than 90 prior to the effective date of the new, more stringent rule or permit limitations. In addition, the terms in

parentheses in the equation in §117.570(f) have been reversed in order to correct an inadvertent error which appeared in the proposed version. The words "or revise" have been added after "create" in the first sentence of §117.570(g) (1) to maintain rule consistency.

The EPA stated that in proposed §117.570(g)(1), concerning the Executive Director's evaluation and adjustment of the value of the RC, that any adjustment not based on the emission quantification protocol of §117.570(c) (2) would need to be approved by EPA.

This issue has been discussed in a previous response to EPA's comment concerning approvable emission quantification procedures The procedures specified in §117.570(c)(1)(B) for quantifying emissions from non-RACT sources require the use of actual emissions test data, or if the source has shut down or irreversibly changed, use of best available data and good engineering practice. Typically, this documentation would be as rigorous as that required under §117.570(c)(2), since it would require submittal of data reflecting actual heat input, fuel usage, or some other surrogate of historical activity levels. Therefore, the TNRCC believes that any adjustment of RCs by the Executive Director should have the latitude allowed under both §117.570(c)(1) and (2) without the necessity of EPA approval

The TCC and Baker & Botts commented that the provision in proposed §117 570(g)(1), concerning the Executive Director's discretion to adjust the value of a RC after an engineering evaluation, is misplaced, and recommended deleting the fourth sentence in proposed §117.570(g)(1) The TCC, Baker & Botts, and HL&P recommended revising proposed §117.570(g)(4) by adding the word "modify" as follows. ".. approve, modify, or deny the registration" The TCC, Baker & Botts, and HL&P also recommended revising proposed §117.570(g) (6) by adding "modification" to the opening language in order to provide a mechanism for appeal of the Executive Director's adjustment of a RC

The suggested revisions of §117.570(g)(4) and §117.570(g)(6) have been made for clarity. However, the staff has retained the language in §117.570(g) (1) referring to the Executive Director's authority to perform an engineering evaluation and adjust the value of the RC as appropriate.

The EPA stated that the provision in proposed §117.570(g)(2), concerning receipt of registration applications at least 90 days before the RC is utilized, should clarify that RCs must be approved by the TNRCC before they can be used

The recommended changes have been added to §117.570(g)(2), along with a clarifying reference to "planned" utilization of the RC.

The EPA requested clarification of proposed §117.570(g)(3) and (4), concerning the disposition of the application completeness determination (required within 30 days of receipt) and application approval (required within 90 days of receipt), and asked if the application would automatically be deemed complete, or approved, if the respective deadlines passed without TNRCC action.

Nothing in §117.570(g)(3) and (4) is intended to imply the TNRCC's automatic determination of completeness or approval of an application after the respective deadlines have passed.

Under proposed §117.570(g)(5), EPA requested clarification concerning procedures to follow if the approval of a registration is subsequently revoked.

The referenced rule paragraph gives the criteria for revocation of a registration approval, and provides that a revised control plan may be required to be submitted. Language has been added requiring a revised control plan to be submitted as soon as practicable, but no later than 90 days of notification of the Executive Director's revocation of registration approval. Since adequate authority is already provided for enforcement of Chapter 117, the staff does not consider a detailed outline of enforcement options within the trading rule to be necessary .

The EPA requested clarification under proposed §117.570(g)(7) and (8), concerning documentation of RC use in the initial and final control plans, respectively, whether a source needed to obtain TNRCC approval of either plan before using the RC. The EPA further commented that proposed §117 570(g)(7) should specify the time period for a source to submit a revised initial control plan after including RCs, rather than specify that the plan be submitted "as soon as practicable "

Language has been added to §117.570(g)(7) and (8) stating that the Executive Director must approve the revised initial control plan or final control plan, respectively, before the RC may be used. This requirement should address EPA's concern about specifying the time frame for submitting a revised initial control plan, since the RC cannot be used until Executive Director approval is received.

The EPA commented that if the state takes credit for projected NO_x reductions from Chapter 117 in its post-1996 Reasonable Further Progress (RFP) SIP, it must evaluate the appropriate application of the two uncertainty factors required by 40 CFR §51.493(f)(2) of the EIP rules.

The referenced portions of the EIP rules concern the use of factors for compliance uncertainty, defined in the rules as "the extent to which sources will actually comply with program requirements," and program uncertainty, defined as "the extent to which voluntary market responses to incentives actually occur and/or the use of various quantification methods with differing confidence levels." The TNRCC has not received guidance from EPA regarding presumptive norms and other criteria to be used in formulating and applying these uncertainty factors. The TNRCC will work with EPA to determine appropriate methods to address this issue.

The EPA cited the following requirements of the EIP rule which must be contained in the state's SIP narrative. §51.493(f)(3), concerning periodic audits, §51 493(h), concerning administrative procedures, and §51.493(i), concerning enforcement provisions.

The TNRCC will address the referenced portions of the EIP rule, as appropriate, in the SIP narrative.

Subchapter D. Administrative Provisions

• 30 TAC §117.570

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 authority.

Issued in Austin, Texas, on July 27, 1994

TRD-9445985 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

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

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The new section 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.

§117.570. Trading.

(a) An owner or operator may reduce the amount of emission reductions otherwise required by §117.105 or §117.205 of this title (relating to Emission Specifications), §117.107 of this title (relating to Alternative System-Wide Emission Specifications), §117 207 of this title (relating to Alternative PlantWide Emission Specifications), or §117.223 of this title (relating to Source Cap) by obtaining an emission reduction credit which is established in accordance with this section.

(b) The following requirements must be met in order for a particular unit to be eligible to use this section.

(1) The unit or source creating the reduction credit (RC) must be located in the same federally designated ozone nonattainment area as the unit subject to the requirements of this section.

(2) RCs must be generated from a stationary source or sources.

(3) The emission reduction which is the basis for establishment of the RC must have occurred after November 15,

1990.

(c) Reduction credits shall be generated as follows.

(1) For sources not subject to the emission specifications of §117. 105 or §117.205 of this title, creditable RCs shall be established in accordance with the following requirements.

(A) RCs shall be calculated in accordance with the establishment of stationary source emission reduction credits (ERCs) under §101.29(f) of this title (relating to Emissions Banking); and

(B) The source shall use emissions test data to establish the actual emissions baseline in accordance with the testing requirements of §117.209(b) of this title (relating to Initial Control Plan Procedures), or §117.111 or , §117.211 of this title (relating to Initial Demonstration of Compliance), as applicable. The actual emissions baseline is defined as the actual annual emissions, in tons per year, from a source determined by use of data representative of actual operations in 1990 or later, assuming full compliance with all applicable state and federal rules and regulations. If the source creating the RC has been shut down or irreversibly changed, the source shall use the best available data and good engineering practice to establish the actual emissions baseline.

(2) For sources subject to the emission specifications of §117.105 or §117 205 of this title, creditable RCs shall be calculated using the following equation: Figure 1 30 TAC §117.570(c)(2)

(3) RCs from shutdown units may be generated only by units participating in a source cap in accordance with §117.223 of this title.

(d) Reduction credits shall be used as follows.

(1) An owner or operator complying with §117.223 of this title may reduce the amount of emission reductions otherwise required by complying with both of the following equations instead of the equations in §117.223(b)(1) and (2) of this title. Figure 2: 30 TAC §117.570(d)(1)

(2) An owner or operator complying with §§117.105, 117.107, 117.205, or 117 207 of this title may reduce the amount of emission reduction otherwise required by those sections for a unit or units at a major source by complying with individual unit emission limits calculated from the following equation: Figure 4: 30 TAC §117.570(d)(2)

(3) RCs from shutdown units may be used only by units participating in a source cap in accordance with §117.223 of this title.

(e) RCs may be freely transferred in whole or in part and may be sold or conveyed in any manner in accordance with the laws of the State of Texas. The RC may be sold outright or leased for some time period agreed to by the parties subject to subsection (g) of this section, but not less than six months. Any owner or operator shall document the use of a leased RC in the final control plan in accordance with §117.115 or §117.215 of this title (relating to Final Control Plan Procedures), or in the revised final control plan in accordance with §117.117 or §117.217 of this title (relating to Revision of Final Control Plan), identifying the lessee and lessor, the amount of RCs leased, and the conditions of the lease. Approved RCs must be acquired by a source prior to their utilization under subsection (d) of this section.

(f) Any lower NO_x emission specification established by rule or permit for the unit or units generating the RC shall require the user of the RC to obtain an approved new reduction credit or otherwise reduce emissions prior to the effective date of such rule or permit change. For units using a RC in accordance with this section which are subject to new, more stringent rule or permit limitations, the owner or operator using the RC shall submit a revised final control plan to the Executive Director of the TNRCC in accordance with §117.117 or §117.217 of this title (relating to Revision of Final Control Plan) to revise the basis for compliance with the emission specifications of this chapter. The owner or operator using the RC shall submit the revised final control plan as soon as practicable, but no later than 90 days prior to the effective date of the new, more stringent rule or permit limitations. In addition, the owner or operator of a unit generating the RC shall submit a revised registration application to the Executive Director, in accordance with subsection (g)(1) of this section, within 90 days prior to the effective date of any new, more stringent rule or permit limitations affecting that unit. If a more stringent NO_x emission specification is established by rule or permit for the unit or units generating the RC, the value of the RC shall be recalculated as follows: Figure 5: 30 TAC §117.570(f)

(g) The RC program established by this section shall be administered as follows.

(1) The owner or operator of a source seeking to create or revise a RC shall submit a registration application to the Executive Director using the RC registration form approved by the Executive Director. The Executive Director shall annotate the RC registration application with the date of receipt. The RC registration shall include information sufficient to calculate the RC value under subsection (c) of this section. The Executive Director shall perform an engineering evaluation of the claimed credit and may adjust the value of the RC on the basis of this evaluation. The application must clearly state the enforceable limits for each unit generating a credit. For emission units subject to the emission specifications of this chapter, which generate RCs, and for which the owner or operator elects to comply with the individual emission specifications of §§117.105, 117.107, 117.205, or 117.207 of this chapter, the enforceable emission limit R_{Bj} shall be calculated using the maximum rated capacity. For emission units subject to the emission specifications of this chapter, which generate RCs, and for which the owner or operator elects to achieve compliance using §117.223 of this title, the enforceable emission limit R_{Bj} shall be substituted for R_j in the source cap allowable mass emission rate equations of §117.223(b)(1) and (2) of this title and those allowable rates shall be the enforceable limits for those sources.

(2) Registration applications must be received at least 90 days prior to the planned utilization of the RC. RCs may be utilized only after the Executive Director grants approval of the registration application.

(3) The Executive Director shall have 30 days from date of receipt to determine if the registration application is complete.

(4) The Executive Director shall have 90 days from date of receipt to approve, modify, or deny the registration or 60 days after determination of completeness, whichever is later.

(5) The Executive Director may revoke approval of a registration under this section at any time upon a determination that the requirements of this section are not being met, and may require submittal of a revised control plan for the generator or user of a RC upon such a finding. The owner or operator shall submit a revised control plan to the Executive Director as soon as practicable, but no later than 90 days after the date of the Executive Director's notification that approval of a registration has been revoked.

(6) Denial or modification of a registration by the Executive Director may be appealed according to the provisions of §101.29(l)(2) of this title.

(7) The owner or operator desiring to utilize the RC in accordance with subsection (d) of this section shall document this in the initial control plan submitted in accordance with §117.109 or §117.209 of this title (relating to Initial Control Plan Procedures). The change of a control plan to include a RC after April 1, 1994, shall require a revision to the initial control plan and resubmission of the plan

for approval as soon as practicable. RCs may be utilized only after the Executive Director grants approval of the revised initial control plan.

(8) The owner or operator desiring to utilize the RC in accordance with subsection (d) of this section shall document this in the final control plan submitted in accordance with §117.115 or §117.215 of this title (relating to Final Control Plan Procedures). The new emission limit for each unit as calculated in subsection (d) of this section shall be clearly listed and will be considered federally enforceable. RCs may be utilized only after the Executive Director grants approval of the final control plan.

(9) After submission of the final control plan in accordance with §117.115 or §117.215 of this title, an owner or operator who wishes to transfer an RC to revise the basis for compliance with the emission specifications of this chapter shall submit a revised final control plan to the Executive Director in accordance with §117.117 or §117.217 of this title. The owner or operator shall not vary from the representations made in the final control plan without prior approval from the Executive Director.

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 authority

Issued in Austin, Texas, on July 27, 1994.

TRD-9445986 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

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

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Chapter 291. Water Rates

Subchapter I. Wholesale Water or Sewer Service

• 30 TAC §§291.128-291.138

The Texas Natural Resource Conservation Commission (commission) adopts the repeal of §§291.131-291.136 and new §§291.128-291.138. New §§291. 128-291.138 are adopted with changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3899) The repeals are adopted without changes and will not be republished. This repeal is necessary to address an administrative processing error from a previous rulemaking and does not affect the current rules in §§291.121-291.127, Subchapter H, Utility Submetering. The new §§291.128-291.138 concern appeals of wholesale water and sewer rates.

A public hearing was held on June 10, 1994, and several persons appeared and presented testimony. These individuals also submitted written comment during the comment period.

The commission received several comments questioning the propriety of this entire rules proposal. Commenters contend the proposal is contrary to constitutional and statutory authority and/or premature. For several years, participants in Texas Water Code Chapter 11, 12, and 13 wholesale rate cases have urged the need for rules governing these proceedings. The courts continue to recognize the commission's jurisdiction in these matters and have reconciled that jurisdiction with the argument that commission review interferes with a constitutional right of contract. The commission believes a review process with an inherent deference to contracts will encourage careful planning by sellers and purchasers, foster regionalization and generate an efficiency factor absent from the current process.

One commenter proposed stylistic and grammatical changes to §§291.130-291. 135, 291.137, 291.138. The commission has adopted several of the suggested changes.

One commenter suggested §291.128 be amended to limit its applicability "to instances where service is provided pursuant to a contract." The commission agrees that these rules should apply only to those petitions filed that involve a written contract, including filings submitted pursuant to Chapters 11 and 12 of the Texas Water Code (Water Code).

Several commenters addressed §291.129 claiming the definitions of "Cash Basis" and "Utility Basis" were too restrictive. The commission agrees with the comments on these two definitions and has modified the text accordingly. One commenter suggested that use of the term "demanded" in the definition of "Protested Rate" is inappropriate because it presumes rates stipulated in a contract are "demanded" by the seller. The commission notes that the rule assumes the seller's "protested rate" correctly interprets any existing agreement between the seller and purchaser. There will be instances where the purchaser files a petition or appeal and the commission finds the protested rate does not adversely affect the public interest. The commission decision is not tantamount to a judicial interpretation of any underlying agreement. The parties would still have the courts to seek this redress. In addition, rates set forth in a contract do not generally give rise to appeals before the commission. It is those rates demanded *pursuant* to a contract that are usually appealed.

A few commenters suggested changes to §291.130 which would impose additional requirements on petitioners, such as requiring them to serve a copy of its petition on the seller complained of and that the petition contain specific factual allegations. One commenter suggests that a petitioner's complaint be subject to sanctions under the Texas Rules of Civil Procedure. The commission agrees that petitioner should serve its complaint on the party against whom the petitioner seeks relief and that the petition should contain specific allegations which will support a finding of at least one criteria identified in §291.133. The section has been revised to reflect these suggestions. The commission has general discovery rules which can be used in these rate proceedings so there is no need to reference the civil court rules.

Several commenters identified an incorrect reference in §291.131 which the commission has corrected.

One commenter proposed modifications to §291.131 which clarify the executive director's role when reviewing petitions filed under the Water Code, §11.041. Another commenter suggests §291.131 clarify that petitions filed pursuant to the Water Code, §11.041, are also subject to the public interest test in §291.133. This commenter also asks the commission to recognize an authority in the executive director to dismiss the Water Code, §11.041, petitions. The functions performed by the executive director under the Water Code, §11.041, are ministerial, so the commission has revised the section to clearly reflect his role.

The commission received one comment supporting language in §291.132 which allows parties to agree to "opt out" of the bifurcated hearing process. The remaining comment identifies various problems with the rule. One commenter contends the use of a "probable grounds" standard also used in §291.131 is confusing. The commission has revised this section to more accurately identify the purpose of the first phase hearing which is to determine if the protested rate is adverse to the "public interest." Thus, all references to "probable grounds" in §291.132 and subsequent sections have been replaced with "public interest."

Another commenter proposed changes to §291.132 clarifying that a petition will be heard by a hearings examiner before it is presented to the commission. This change is consistent with changes to §291.131 and has been made.

The commission received one comment suggesting the time frames in §291. 132 be condensed in order to reduce the possibility of "pancaking" rate cases. The commission believes that even the original 120 day time frame in §291. 132 will be difficult to satisfy. Therefore, it is more appropriate to have the time frame begin on the day the petition is forwarded to the office of hearings examiners rather than on the day of filing. This approach will ensure adequate administrative review, particularly of petitions which fall short of meeting minimum filing requirements.

One commenter asks §291.132 be modified to define "relevance," for purposes of first phase discovery, in terms of the specific "probable grounds" allegations raised in the petition. The commission disagrees with this comment and believes such a limitation is understood particularly with the limited time available in the initial phase of the process.

Two commenters argued that §291.132 and other sections making up the bifurcated hearing approach are too restrictive, may result in dismissal of otherwise legitimate rate appeals, and may force parties to litigate twice the same contested issues. The commission disagrees with this argument. The bifurcated approach will serve to identify frivolous appeals and more efficiently process legitimate

ones. While the process will require petitioners to conduct some pre-filing research and preparation to support their allegations, the process will also serve to encourage contracting parties to more carefully negotiate their agreements. A petitioner need not allege every item outlined in §291.133, only those it can substantiate. A petitioner with a supportable claim should be able to demonstrate violation of a public interest criteria within the time frames and process prescribed in §291.132. Changes to §§291.132-291.134 clarifying that the parties will litigate public interest issues in the first evidentiary hearing and cost of service issues in the subsequent hearing are intended to forestall the waste and delay associated with litigating an issue more than once. Finally, adopted §291.132 clarifies that findings of fact and conclusions will be included in an order prepared by the examiner rather than in the proposal for decision.

Most of the comment received was directed at all or parts of §291.133. About half of these commenters argued that the determination of the public interest requires an analysis of the seller's cost of service. On the other hand, the other half of the commenters argued that the seller's cost of service cannot be part of the analysis of the public interest, and that the proposed rules should be revised to clarify that cost of service will not be considered during the evidentiary hearing on public interest.

The commission concludes the public interest does not demand that a wholesale rate shall equal the seller's cost of providing service to the purchaser. The commission believes this is an appropriate conclusion which is consistent with the statutory requirements of the Water Code, Chapters 11, 12, and 13. This is appropriate even though the Code requires the commission to ensure that rates are "just and reasonable," "not unreasonably preferential, prejudicial, or discriminatory," and that they shall be "sufficient, equitable, and consistent in application to each class of customers." While these terms are traditionally used to invoke a regulatory authority's duty to set rates that are based upon cost of service, the circumstances which justify cost of service ratemaking are not present here. As is explained in the Water Code, the Legislature imposed a comprehensive regulatory system upon retail water and sewer utilities which are by definition monopolies in the areas they serve, and that the regulatory system is intended to serve as a substitute for competition. This system calls for rates based on the seller's cost of providing service. The circumstances of wholesale water and sewer service are not the same. The disputes concerning wholesale rates which have come before the commission concern parties who are in a position quite different than the typical retail customer. The purchaser is itself a utility that is sophisticated in utility transactions, and the purchaser, generally, has had several options from which it may obtain water or sewer service, including self service.

The commission's conclusion is consistent with the entirety of the statutory requirements. First, the Water Code provisions concerning the commission's appellate jurisdiction over disputes between utilities states that rates must be "just and reasonable." See, Water Code, §13.043(f), (j). But nowhere does it specify that the rates must equal the seller's cost of providing service to the purchaser. Moreover, the 73rd Legislature amended the Water Code, §13.043(j), so that it now specifies that the commission shall consider the terms of any agreement between municipalities. The new requirement is not conditional. The commission must consider the agreement even when the agreement calls for rates that are not based upon cost of service. Second, Water Code, Chapter 12, specifies the commission may use any reasonable basis for fixing rates for the furnishing of raw or treated water. Water Code §12.013(c). The commission believes this provision alone is sufficient authority to support the commission's conclusion, at least with respect to those disputes raised pursuant to the Water Code, Chapters 11 and 12.

The commission's conclusion is also consistent with the opinions of the courts. The court in *High Plains Natural Gas Company v. Railroad Commission of Texas*, 467 S.W.2d 532 (Tex. Civ. App.--Austin 1971, writ ref'd n.r.e.) was confronted by a similar wholesale rate dispute, but concerning a contract for the sale of natural gas. The court specifically rejected the argument that the court should compare the disputed rate with a rate based on cost of service in order to determine the public interest. The court rejected the argument that this was a relevant inquiry. The commenters' citations to opinions such as *Texas Water Commission v. City of Fort Worth*, No. 3-92-00502-CV (Tex. App.--March 2, 1994, writ requested) did not cause the commission to change its conclusion. The court in *Fort Worth*, like the Water Code itself, calls for rates not "unreasonably preferential, prejudicial, or discriminatory." The opinion does not state one way or the other whether the public interest must, or even can, be analyzed on the basis of cost of service. The commission believes its conclusion is consistent with this opinion, for the same reasons its conclusion is consistent with the statutory requirements.

The commission next addresses the statements of those commenters on the public interest finding who argued the commission cannot, or at least should not, evaluate cost of service as part of the analysis. One commenter argued that the *High Plains* opinion shows the commission cannot consider cost of service because the court there imposed a public interest test which did not mention cost of service.

The commission concludes that under the adopted bifurcated hearing procedure the commission should not consider cost of service in the determination on public interest. The commission relies on three rationales to reach this conclusion. First, the adopted public interest criteria and related factors seek the facts which lie at the heart of disputes concerning wholesale rates. The commission reaches this conclusion after conducting numerous public meetings where both sellers and purchasers generally agreed that most agreements for the sale of wholesale services are reasonable and are the product of arms length negotiations. However, there are situations where a seller and purchaser have entered into a long term agreement that later is disputed. Over time the seller exercises near monopoly power over the purchaser because many agreements allow the seller the unilateral right to adjust the rate. Moreover, the purchaser substantially has no alternatives to obtain water or sewer service because it has entered into a long term agreement with the seller. The adopted criteria focus on the actual facts which will show whether the protested rate reflects this latter type of agreement so much that it invokes the public interest. Second, the commission concludes the determination of the seller's cost of service is not as reliable a mechanism to determine the public interest as some commenters believe. The discussions at the public meetings showed generally that there will be as many different determinations of cost of service as experts who are asked the question. Moreover, the expert opinions can arrive at equally reasonable conclusions which recommend rates that are two or three times the rates recommended by other experts. Third, the use of cost of service to determine the public interest does not give sufficient deference to contractual agreements between the seller and purchaser.

One commenter argued that the determination of the public interest should not be limited to the public interest criteria listed in §291.133(a)(1)-(4). However, the commission favors a conservative approach when evaluating whether to cancel a rate which was set pursuant to a private agreement between utilities. The public interest criteria as adopted are sufficiently broad. A party should not be allowed to urge that some other criteria have been violated. Two commenters argued that the violation of one of the public interest criteria alone should not lead to a finding the rate adversely affects the public interest, and one commenter argued *all* the public interest criteria should be proved up before such a finding is made. The commission disagrees because the violation of any one of the four public interest criteria shows there has been a substantial breach of the public interest.

One commenter argued that §291.133(a)(1) is not relevant to the commission's jurisdiction and should be deleted. The commission disagrees. There have been past instances where a purchaser filed a petition or appeal, and even the seller argued against the protested rate but for opposite reasons. This criteria will address this type of situation. Moreover, the commission has asked the courts to reconsider commission jurisdiction under the Water Code, Chapters 11 and 12.

Two commenters argued that the public interest criteria in §291.133(a)(2) should at least be expanded to include a definition of "excessive financial burden." Another commenter opposed the paragraph altogether. The commission agrees this public interest criteria was not sufficiently defined. The paragraph as adopted incorporates the standard used in §291.133(a)(1), but focuses the inquiry upon the purchaser. Basically, the criteria states the public interest will be violated if the protested rate would impair the purchaser's ability to provide service to its retail customers, based on the purchaser's financial integrity and operational capability. The commission believes this would be an unusual circum-

stance. Nonetheless, were it to occur it would adversely affect the public interest.

Two commenters argue that citing monopoly power in §291.133(a)(3), as a public interest criteria is improper because the fact that a utility is a monopoly does not alone determine a violation of the public interest. The commission agrees, but points out that the rule inquires into whether there exists an *abuse* of monopoly power

One commenter contends that the factors in §291.133(a)(3) are ill-defined, and will lead to substantial uncertainty whether a seller must fear the commission will cancel the contract it reached with a purchaser. However, the adopted rules are actually a substantial move towards giving due consideration to contracts The adoption of these rules marks the end of past policy where the commission essentially automatically cancelled the rate set by contract and set a rate based on cost of service. Nor are the factors ill-defined During the commission's public meetings the parties discussed the issues that are commonly the basis of disputes. The factors focus upon those issues Moreover, during the public meetings the commission met with near universal rejection of mathematic tests and safe harbors meant to define the public interest because these "exact" methods often require lengthy cost of service analyses which lead to ancillary disputes on whether the thresholds have been met

This same commenter suggests that §291 133(a)(3)(A) should refer to issues surrounding possible annexation into a municipality. The commission believes the subparagraph is already sufficiently broad to allow such an analysis

One commenter argued that §291 133(a)(3)(B), improperly focuses on the seller's cost of providing service to the purchaser. As discussed previously, the commission agrees and has revised the subparagraphs so that the focus is not on cost of service. The commenter argued for a provision specifying the pass-through of an increase in purchased water costs is a reasonable change in conditions. The commission rejects this because the commission cannot assume that every agreement allows for the pass-through of purchased water costs.

One commenter suggested the commission evaluate the water or sewer rates charged by other Texas utilities as described in §291.133(a)(3)(G) only if they are comparable. Another commenter argued the factor should be deleted The commission rejects these comments because the commission will use a rate comparison only for limited purposes The commission believes the rates charged by other utilities is a relevant inquiry to determine the public interest However the commission, like the commenters, understands that there are numerous reasons which may explain why one utility's rate may be higher than the rates imposed by another utility. Given that understanding, the commission will not be placing dispositive weight on the fact the protested rate is different than the rates charged by other utilities While the commission is interested in broad terms why there are differences in rates, the commission believes a requirement that rates must be comparable would unduly complicate the hearing, often concerning a utility that is not even before the commission.

One commenter argued §291.133(a)(3)(H) should be amended to provide that a comparison of retail rates should not be undertaken when the purchaser has earlier refused annexation by the seller. The commission rejects this recommended amendment. Another commenter opposed the requirement altogether. Again, as in §291.133(a)(3)(G), the commission believes it focuses on a relevant inquiry to determine the public interest. However, the commission understands that it cannot place dispositive weight on this factor.

One commenter argued that the public interest criteria in §291.133(a)(4) should concern unreasonable discrimination between customers, but should only focus on wholesale customers. The commission agrees that a comparison of the protested rate with rates the seller charges other wholesale customers is relevant to the public interest inquiry, and that the statutory language gives sufficient guidance concerning the scope of the inquiry. The public interest inquiry under paragraph §291.133(a)(3) should sufficiently cover whether any disparity in treatment between retail and wholesale customers adversely affects the public interest. Accordingly, the adopted rule includes a revised paragraph §291.133(a)(4) which uses the statutory language found in the Water Code, §13.047(j), that the rate shall not be unreasonably preferential, prejudicial, or discriminatory, and specifies that under the subsection the inquiry shall be limited to a comparison of seller's rates charged to wholesale customers. A commenter argued that §291.133(a)(4) imposed an unlawful standard to determine the public interest because the subsection inquired concerning the mere appearance of discrimination, as opposed to the existence of discrimination. This issue has been resolved by the adopted changes which inquire whether the protested rate is unreasonably preferential, prejudicial, or discriminatory.

Several commenters opposed §291.133(a)(5) because it appeared to require that all wholesale contracts entered into after the effective date of the rules must be based upon the seller's cost of service. A commenter argued that the subsection imposed a criteria irrelevant to the public interest finding. Several of the commenters argued the test would ignore that cities may base their agreements upon considerations that cannot be added easily to a cost of service analysis. Moreover, a municipality that desires to provide wholesale service to one entity would not want to incur the expense of a cost of service study. The commission believes proposed §291 133(a)(5) should be deleted because it is not consistent with the commission's conclusion stated previously that the public interest does not demand that a wholesale rate shall equal the seller's cost of providing service.

Several commenters addressed §291.134. One commenter stated that the procedure was unclear once the commission finds a protested rate adversely affects the public interest, while another commenter argued the subsection should not include the "just and reasonable" standard as a test used to evaluate the protested rate. These comments persuade the commission to clarify the rule. If the commission in the evidentiary hearing on public interest determines the protested rate adversely affects the public interest, there is no need to revisit and reanalyze the protested rate during the evidentiary hearing on cost of service. The sole purpose of the evidentiary hearing on cost of service will be to determine the seller's cost of providing service to the purchaser, and to set a rate on that basis. One commenter argued that the commission should not limit itself to setting the rate based on cost of service. The commission disagrees because the commission wishes to add as much certainty to this process as possible. The commission has found it difficult indeed to anticipate all the possible disputes which could arise and to give guidance, to the extent possible, concerning how the commission will determine the public interest The commission believes that if the public interest criteria cannot be explained in more definite form, then at least the commission should show in clear terms the remedy the commission will use whenever it finds the public interest has been adversely affected.

One commenter argued that when the commission finds the protested rate adversely affects the public interest, and remands the proceeding to an examiner for an evidentiary hearing on cost of service, such finding should be issued in a final order The commission disagrees because a remand is an interim order, marking roughly the end of the first half of the proceeding, not the end of the entire proceeding. Moreover, the commenter's proposal would unreasonably prolong appeals and unduly complicate them. If the remand order were final and subject to a judicial appeal then the seller would appeal in many instances. This would likely leave the remaining cost of service proceedings before the commission in administrative limbo while the seller seeks his day in court concerning the commission's public interest finding If the commission were to nonetheless proceed with the cost of service determination the proceedings would be unduly complicated by the fact the same proceeding was already at the courthouse. This would be an unreasonable burden on the parties' time and resources.

The commission also disagrees with commenter's argument that the opinion in *Texas Water Commission v City of Fort Worth* requires the immediate issuance of a final order where the commission finds the protested rate adversely affects the public interest. The opinion does not discuss, much less resolve, the argument that the commission must make a public interest finding in a separate proceeding subject to immediate judicial review. The commission could have issued rules which provide for one evidentiary hearing on all contested issues, but elected not to. The commission adopts the bifurcated hearing approach because it believes the procedure will clarify the contested issues and conserve both the commission's and the parties' resources The adoption of the commenter's argument would substantially thwart these benefits.

One commenter argued that §291.134(b) should provide that if the commission sets rates the commission will take into account any agreement between the seller and purchaser. The commission believes this would merely restate a provision found in §291.135(a). A commenter pointed out that the proposed rule had no provision concerning interim rates The commission believes it may impose interim rates where appropriate, but that there is no need to add an interim rates provision to the rule.

The commission received numerous comments addressing §291.135. One commenter suggested that §291.135(a), which provides that the commission "may" rely on reasonable methodologies set by contract should be made mandatory The commission agrees with this comment and revised the rule to provide that the commission "shall" rely on reasonable methodologies set by contract in calculating the cost of service.

Two commenters suggested that cost of service for non-profit utilities should be determined based on the cash basis methodology regardless of the methodology specified in the contract The commission disagrees. While the commission has traditionally applied cash basis methodology to such utilities, these rules are intended to afford increased deference to reasonable contractual provisions such as the specification of a reasonable accounting methodology With respect to §291.135(b), which provides that the commission may, under specific circumstances, decline to recognize a change in methodologies imposed by a service provider, (suggesting that a change in methodologies may be reasonable and authorized by the contract), the commission believes such a situation could be appropriately addressed pursuant to the rule since it remains permissive, *i.e.*, it does not prohibit the commission from recognizing a change in methodologies under appropriate circumstances.

The commission received a few comments relating to §291.136. Two commenters suggest that the law and sound policy require that the burden of proof should always be on the service provider. One commenter suggests that the burden of proof should always be on the "applicant," (the party seeking relief from the commission) whether the applicant is the seller or the buyer. A final commenter suggests that the law requires imposition of a heightened burden of proof "by clear and satisfactory evidence" on the party seeking to set aside the contract based on the public interest.

The commission believes the rule appropriately places the burden of proof on the petitioner to show that the rate demanded violates the public interest, and upon the service provider to establish the appropriate cost based rate. The commission believes this standard is fair and consistent with current case law.

The commission received several comments relating to §291.137. Five of the commenters assert that the section is illegal because the commission "enjoys" only appellate jurisdiction over these wholesale rates disputes. In light of these comments, this section has been revised to clarify that it does not prohibit a service provider from proposing a rate increase at any time and; if the proposed increase is not appealed, it will go into effect. This section will apply only when a utility has had a rate demanded set aside as violating the public interest, raises its rates within three years of the end of the test year from the prior proceeding, and the customer appeals. The effect of this section, under these limited circumstances, is to require the seller to justify the increase and place an automatic interim rate in effect at the level set in the prior proceeding. At the conclusion of the proceeding, the appropriate party will be required to pay to the other party the difference between the automatic interim rate and the final rate set. The commenters generally believed §291.137 is unfair in addition to being unlawful. In light of the limited applicability and consequences of the section, the commission believes that it is legal, fair, and efficient.

Two commenters contend the requirements set forth in §291.138 invite inappropriate rate comparisons, are overly burdensome, and require information that will fail to identify the unique characteristics of a water or sewer service relationship. The commission has revised the rule to allow more flexibility on data to be reported concerning all types of rates and other characteristics of water and sewer service relationship. The adopted rule allows for guidelines on the contents of these reports to be established. Since annual filings may create hardships, the section has also been modified to require submittals in odd-numbered years only. The reference to a specific agency division was duplicative and has been removed.

Comments were received from the following: City of Arlington, City of Carrollton, City of Dallas, Dallas Water Utilities, City of Denton, City of El Paso, City of Fort Worth, City of Lewisville, City of Wichita Falls, Lost Creek Municipal Utility District, Lower Colorado River Authority, Northwest Travis County Municipal Utility District No. 1; Tarrant County Water Control and Improvement District No. 1. Comments were also received from the following: Butler, Porter, Gay & Day; Law Offices of Ronald J. Freeman; Gebhard Sarma Group, Inc.; Hutchison Boyle Brooks & Fisher, and Scanlan & Buckle, P.C.

The new sections are adopted under the Texas Water Code, §5.103, which authorizes the commission to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state and Texas Water Code, §§11.041, 12.013, and 13.043 which govern appeals or petitions for review of wholesale water and wastewater rates.

§291.128. Petition or Appeal Concerning Wholesale Rate. This subchapter sets forth substantive guidelines and procedural requirements concerning:

(1) a petition to review rates charged pursuant to a written contract for the sale of water for resale filed pursuant to the Texas Water Code, Chapter 11 or 12; or

(2) an appeal pursuant to the Texas Water Code, §13.043(f), (appeal by retail public utility concerning a decision by a provider of water or sewer service).

§291.129. Definitions. For purposes of this subchapter, the following definitions apply:

(1) Petitioner-The entity that files the petition or appeal.

(2) Protested rate-The rate demanded by the seller.

(3) Cash Basis calculation of cost of service-A calculation of the revenue requirement to which a seller is entitled to cover all cash needs, including debt obligations as they come due. Basic revenue requirement components considered under the cash basis generally include operation and maintenance expense, debt service requirements, and capital expenditures which are not debt financed. Other cash revenue requirements should be considered where applicable. Basic revenue requirement components under the cash basis do not include depreciation.

(4) Utility Basis calculation of cost of service-A calculation of the revenue requirement to which a seller is entitled which includes a return on investment over and above operating costs. Basic revenue requirement components considered under the utility basis generally include operation and maintenance expense, depreciation, and return on investment.

§291.130. Petition or Appeal.

(a) The petitioner must file a written petition with the commission accompanied by the filing fee required by the Texas Water Code. The petitioner must serve a copy of the petition on the party against whom the petitioner seeks relief and other appropriate parties.

(b) The petition must clearly state the statutory authority which the petitioner invokes, specific factual allegations, and the relief which the petitioner seeks. The petitioner must attach any applicable contract to the petition.

(c) The petitioner must file an appeal pursuant to the Texas Water Code, §13.043(f), in accordance with the time frame provided therein.

§291.131. Executive Director's Determination of Probable Grounds. When a petition or appeal is filed, including a petition subject to the Texas Water Code, §11.041, the executive director shall determine within ten days of the filing of the petition or appeal whether the petition contains all of the information required by this subchapter. For purposes of this section only, the executive director's review of probable grounds shall be limited to a determination whether the petitioner has met the requirements of §291.130 of this title (relating to Petition or Appeal). If the executive director determines that the petition or appeal does not meet the requirements of §291.130, the executive director shall inform the petitioner of the deficiencies with the petition or ap-

peal and allow the petitioner the opportunity to correct these deficiencies. If the executive director determines that the petition or appeal does meet the requirements of §291.130, the executive director shall forward the petition or appeal to the office of *hearings exainers for an evidentiary hearing.*

§291.132. Evidentiary Hearing on Public Interest.

(a) If the executive director forwards a petition to the office of hearings examiners pursuant to §291.131 of this title (relating to Executive Director's Determination of Probable Grounds), the office of hearings examiners shall conduct an evidentiary hearing on public interest to determine whether the protested rate adversely affects the public interest.

(b) Prior to the evidentiary hearing on public interest discovery shall be limited to matters relevant to the evidentiary hearing on public interest.

(c) The examiner shall prepare a proposal for decision and order with proposed findings of fact and conclusions of law concerning whether the protested rate adversely affects the public interest, and shall submit this recommendation to the commission no later than 120 days after the executive director forwards the petition to the office of hearings examiners pursuant to §291.131 of this title (relating to Executive Director's Determination of Probable Grounds).

(d) The seller and buyer may agree to consolidate the evidentiary hearing on public interest and the evidentiary hearing on cost of service. If the seller and buyer so agree the examiner shall hold a consolidated evidentiary hearing.

§291.133. Determination of Public Interest.

(a) The commission shall determine the protested rate adversely affects the public interest if after the evidentiary hearing on public interest the commission concludes at least one of the following public interest criteria have been violated:

(1) the protested rate impairs the seller's ability to continue to provide service, based on the sellers's financial integrity and operational capability;

(2) the protested rate impairs the purchaser's ability to continue to provide service to its retail customers, based on the purchaser's financial integrity and operational capability;

(3) the protested rate evidences the seller's abuse of monopoly power in its provision of water or sewer service to the purchaser. In making this inquiry, the commission shall weigh all relevant factors. The factors may include:

(A) the disparate bargaining power of the parties, including the purchaser's alternative means, alternative costs, environmental impact, regulatory issues, and problems of obtaining alternative water or sewer service;

(B) the seller's failure to reasonably demonstrate the changed conditions that are the basis for a change in rates;

(C) the seller changed the computation of the revenue requirement or rate from one methodology to another;

(D) where the seller demands the protested rate pursuant to a contract, other valuable consideration received by a party incident to the contract;

(E) incentives necessary to encourage regional projects or water conservation measures;

(F) the seller's obligation to meet federal and state wastewater discharge and drinking water standards;

(G) the rates charged in Texas by other sellers of water or sewer service for resale;

(H) the seller's rates for water or sewer service charged to its retail customers, compared to the retail rates the purchaser charges its retail customers as a result of the wholesale rate the seller demands from the purchaser;

(4) the protested rate is unreasonably preferential, prejudicial, or discriminatory, compared to the wholesale rates the seller charges other wholesale customers.

(b) The commission shall not determine whether the protested rate adversely affects the public interest based on an analysis of the seller's cost of service.

§291.134. Commission Action to Protect Public Interest, Set Rates.

(a) If as a result of the evidentiary hearing on public interest the commission determines the protested rate does not adversely affect the public interest, the commission will deny the petition or appeal by final order. The commission must state in the final order that dismisses a petition or appeal the bases upon which the commission finds the protested rate does not adversely affect the public interest.

(b) If the commission determines the protested rate adversely affects the public interest, the commission will remand the matter to the office of hearings examiners for further evidentiary proceedings. The remand order is not a final order subject to judicial review.

(c) No later than 90 days after remand the seller shall file with the Office of Chief Clerk five copies of a cost of service study which supports the protested rate.

(d) After remand the parties shall not offer evidence or argument on whether the protested rate adversely affects the public interest. After further evidentiary proceedings the commission shall cancel the protested rate, and set a rate consistent with the ratemaking mandates of the Texas Water Code, Chapters 11, 12, and 13. The commission must state in a final order that grants a petition or appeal the bases upon which the commission finds the protested rate adversely affects the public interest.

§291.135. Determination of Cost of Service.

(a) The commission shall follow the mandates of the Texas Water Code, Chapters 11, 12, and 13 to calculate the annual cost of service. The commission shall rely on any reasonable methodologies set by contract which identify costs of providing service and/or allocate such costs in calculating the cost of service.

(b) When the protested rate was calculated using the cash basis or the utility basis, and the rate which the protested rate supersedes was not based on the same methodology, the commission may calculate cost of service using the superseded methodology unless the seller establishes a reasonable basis for the change in methodologies. Where the protested rate is based in part upon a change in methodologies the seller must show during the evidentiary hearing the calculation of revenue requirements using both the methodology upon which the protested rate is based, and the superseded methodology. When computing revenue requirements using a new methodology, the commission may allow adjustments for past payments.

§291.136. Burden of Proof. The petitioner shall have the burden of proof in the evidentiary proceedings to determine if the protested rate is adverse to the public interest. The seller of water or sewer service (whether the petitioner or not) shall have the burden of proof in evidentiary proceedings on determination of cost of service.

§291.137. Commission Order to Discourage Succession of Rate Disputes.

(a) If the commission finds the pro-

tested rate adversely affects the public interest and sets rates on a cost of service basis, then the commission shall add the following provisions to its order.

(1) If the purchaser files a new petition or appeal, and the executive director forwards the petition or appeal to the office of hearings examiners pursuant to §291.131, then the examiner shall set an interim rate immediately. The interim rate shall equal the rate set by the commission in this proceeding where the commission granted the petition or appeal and set a cost of service rate.

(2) The commission shall determine in the proceedings pursuant to the new petition or appeal that the protested rate adversely affects the public interest. The examiner shall not hold an evidentiary hearing on public interest but rather shall proceed with the evidentiary hearing to determine a rate consistent with the ratemaking mandates of the Texas Water Code, Chapters 11, 12, and 13.

(b) The effective period for the provisions issued pursuant to subsection (a) of this section shall expire upon the earlier of three years after the end of the test year period, or upon the seller and purchaser entering into a new written agreement for the sale of water or sewer service which supersedes the agreement which was the subject of the proceeding where the commission granted the petition or appeal and set a cost of service rate. The provisions shall be effective in proceedings pursuant to a new petition or appeal if the petition or appeal is filed before the date of expiration.

(c) For purposes of subsection (b) of this section, the "test year period" is the test year used by the commission in the proceeding where the commission granted the petition or appeal and set rates on a cost of service basis.

§291.138. Filing of Rate Data.

(a) For purposes of comparing the rates charged in Texas by providers of water or sewer service for resale, the commission requires each provider of water or sewer service for resale to report the retail and wholesale rates it charges to purchasers.

(b) By January 31st of each odd-numbered year each provider of water or sewer service for resale shall file a report with the commission. The report must provide the information prescribed in a form prepared 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 August 3, 1994.

TRD-9446017 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Effective date: August 23, 1994

Proposal publication date: May 20, 1994

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

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Subchapter I. Nonsubmetered Master Meter Utilities

• 30 TAC §§291.131-291.136

The repealed sections are adopted under the Texas Water Code, §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state.

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 August 3, 1994.

TRD-9446018 Mary Ross McDonald
Director, Legal Division
Texas Natural Resource Conservation Commission

Effective date: May 20, 1994

Proposal publication date. August 23, 1994

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

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter CC. Waste Tire Recycling Fee

• 34 TAC §3.721

The Comptroller of Public Accounts adopts an amendment to §3.721, concerning the tires that are subject to the waste tire recycling fee, without changes to the proposed text as published in the February 8 , 1994, issue of the *Texas Register* (19 TexReg 892).

The 73rd Legislature, 1993, amended the Health and Safety Code, §361.472, effective October 1, 1993, to impose the fee on basically all new tires with a rim diameter equal to or greater than 12 inches but less than 25 inches, including all sizes of new motorcycle tires, and to repeal the authority for dealers to retain a portion of the fees remitted

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Health and Safety Code, §361.472.

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 August 2, 1994.

TRD-9445992 Martin Cherry
Chief, General Law
Comptroller of Public Accounts

Effective date. August 23, 1994

Proposal publication date February 8, 1994

For further information, please call: (512) 463-4028

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Chapter 9. Property Tax Administration

Subchapter A. Practice and Procedure

• 34 TAC §9.17

The Comptroller of Public Accounts adopts an amendment to §9.17, concerning notice of public hearing on tax increase, without changes to the proposed text as published in the June 7, 1994, issue of the *Texas Register* (19 TexReg 4410).

The Tax Code, §26.06, requires the comptroller to prescribe by rule the form and content of the notice of a public hearing on a tax increase The rule adopts by reference amended model form 26.06. The form is amended to delete unnecessary information.

The amendment is necessary because Senate Bill 7, 73rd Legislature, 1993, abolished county education districts. The abolishment of county education districts returned to school districts the portion of the school district's tax rate formerly levied by the county education district. The current notice reflects the abolition of county education districts. Because county education districts levied taxes for the last time in 1992, reference to county education districts is no longer needed on the notice.

The amendment deletes the optional information for school districts concerning county education districts on model form 26.06 Amendment of the rule also changes the address of the Comptroller of Public Accounts, Property Tax Division, and deletes the date of the amendment of the form.

No comments were received regarding adoption of the amendment

The amendment is adopted under the Tax Code, §26 06, which requires the comptroller by rule to prescribe the form and wording for notice of a public hearing on a tax increase. The amendment implements the Tax Code, §26 06

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 August 2, 1994.

TRD-9445990 Martin Cherry
Chief, General Law
Comptroller of Public Accounts

Effective date: August 23, 1994

Proposal publication date: June 7, 1994

For further information, please call: (512) 463-4028

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• 34 TAC §9.19

The Comptroller of Public Accounts adopts the repeal of §9.19, concerning notice of effective and rollback tax rates, without changes to the proposed text as published in the June 7, 1994, issue of the *Texas Register* (19 TexReg 4410).

The Tax Code, §26.04, only requires that the comptroller prescribe the form. Adoption of the form by rule is not necessary.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Tax Code, §26.04, which requires the comptroller to prescribe the form for publishing notice of effective and rollback tax rates. The repeal implements the Tax Code, §26.04.

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 August 2, 1994

TRD-9445991 Martin Cherry
Chief, General Law
Comptroller of Public Accounts

Effective date: August 23, 1994

Proposal publication date: June 7, 1994

For further information, please call: (512) 463-4028

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 47. Primary Home Care

The Texas Department of Human Services (DHS) adopts amendments to §§47. 2902, 47.2904, 47 2909, 47.2912, 47.2913, 47.3901, and 47.3906 in its Primary Home Care chapter. The amendments to §§47.2902, 47.2909, 47.2913, and 47. 3901 are adopted with changes to the proposed text as published in the June 7, 1994, issue of the *Texas Register* (19 TexReg 4413). The amendments to §§47.2904, 47.2912, and 47.3906 are adopted without changes to the proposed text and will not be republished

The justification for the amendments is to streamline the prior approval process to require only initial prior approval of medical need, with the following exceptions: Annual renewal of prior approval of medical need by the DHS regional nurse is required for applicants who are eligible under the provisions of the Social Security Act, §1929(b); and DHS's regional nurse gives a time-limited prior approval for applicants with a medical need and related functional impairment based on an acute medical condition that is expected to improve. The requirement for an annual physician's order for primary home care is also being changed. A physician's order is only required for initial prior approval and for renewal of prior approval for time-limited services.

The amendments will function by streamlining the process so provider agencies will not be required to submit a prior approval packet to the DHS regional nurse to obtain reauthorization of primary home care. Also, service plan changes may be authorized faster since the approval will be handled directly by the caseworker.

During the comment period, DHS received written comments from the Texas Health Care Association. A summary of the comments and DHS's responses follows:

Comment concerning §47.2902: Require clients with time-limited approval (less than 12 months) to be reassessed at 120 days to be consistent with nursing facility requirements for reassessment at 120 days.

Response: Time-limited prior approval can be for varying lengths of time depending on the client's medical condition and related functional impairment. DHS is adopting this section without change.

Comment: Require physician's orders to be updated every six months

Response: Primary home care is a non-skilled attendant care program for persons with chronic health conditions which cause functional impairments in activities of daily living. Attendants provide assistance with activities of daily living. The physician is ordering the attendant care service, not the specific skilled nursing tasks/treatments. Also, federal Medicaid requirements do not require the physician to update orders for primary home care every six months. DHS is adopting the sections without change.

Comment concerning §47.2913(b)(1): Change the wording to "summary of client need for service when provided" because sections should be written for circumstances when a service is provided, not "if" services a provided.

Response: This paragraph refers to a form that is completed by the DHS caseworker and is only sent to the provider if any information has changed since the last assessment. The form summarizes the client's need for service. If the client continues to need services, and the reasons continue to be the same, a new form is not sent to the provider. DHS is adopting this paragraph without change.

The department has revised the section titles of §§47.2902, 47.2909 and 47.2913 for clarification. Also, the department has moved the location of the word "form" in §47.3901(b)(11) for clarification.

Service Requirements

• 40 TAC §§47.2902, 47.2904, 47.2909, 47.2912, 47.2913

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement §§22.001-22.024 and 32.001-32.041 of the Human Resources Code.

§47.2902. Requesting Prior Approval for Primary Home Care.

(a) Provider agencies must obtain, from the regional nurse, prior approval of medical need for applicants and renewal of prior approval for certain clients.

(1) Except as indicated in paragraph (2) of this subsection, only initial prior approval of medical need by the department regional nurse is required for applicants who have a chronic medical condition causing functional impairment in personal care that is expected to be long-standing. However, annual reauthorization of service by the caseworker is required.

(2) Annual renewal of prior approval by the department regional nurse is required for clients who are eligible under the provisions of the Social Security Act, §1929(b).

(3) The department regional nurse gives a time-limited prior approval for applicants with a medical need and related functional impairment based on an acute medical condition that is expected to improve in less than 12 months.

(b)-(g) (No change.)

§47.2909. Physician Supervision for Primary Home Care. An individual seeking initial prior approval for primary home care, or a client with time-limited (less than 12 months) prior approval who wants to renew prior approval, must have a physician's order for the service.

§47.2913. Prior Approval Renewal for Primary Home Care.

(a) For clients who have time-limited prior approval and who request renewal of prior-approval of medical need by the regional nurse, the RN supervisor must send the following forms to the regional nurse.

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

(b) For clients who are eligible for primary home care under the provisions of

the Social Security Act, §1929(b), the RN supervisor must send the following forms to the regional nurse to obtain renewal of prior approval:

(1) summary of client need for service, if provided;

(2) approval for CCAD services-referral response, if received from the caseworker; and

(3) client health assessment/proposed service plan.

(c) The RN supervisor must submit the prior approval material to the regional nurse in time for it to be postmarked or date-stamped by the department no later than one day after the termination date of the current prior approval period. If the required forms are not submitted within this time frame, a gap in client coverage occurs.

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 August 2, 1994.

TRD-9446007 Nancy Murphy
Section Manager of Media and Policy Services
Texas Department of Human Services

Effective date: October 1, 1994

Proposal publication date: June 7, 1994

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

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Claims Payment

• 40 TAC §47.3901, §47.3906

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

§47.3901. Claims Requirements.

(a) (No change.)

(b) The provider agency is not entitled to payment if:

(1)-(8) (No change.)

(9) services are ordered by a physician who has been excluded from the Medicare or Medicaid program or both;

(10) services are billed at a unit rate that does not match the client's priority level; or

(11) the physician's order form for primary home care services does not meet department requirements.

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

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

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

TRD-9446008 Nancy Murphy
Section Manager of Media and Policy Services
Texas Department of Human Services

Effective date: October 1, 1994

Proposal publication date: June 7, 1994

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

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Chapter 48. Community Care for Aged and Disabled

Eligibility

• 40 TAC §48.2918

The Texas Department of Human Services (DHS) adopts an amendment to §48. 2918, without changes to the proposed text as published in the June 7, 1994, issue of the *Texas Register* (19 TexReg 4413).

The justification for the amendment is to streamline the prior approval process to require only initial prior approval of medical need, with the following exceptions: Annual renewal of prior approval by the DHS regional nurse is required for applicants who are eligible under the provisions of the Social Security Act, §1929(b); and DHS's regional nurse gives a time-limited prior approval for applicants with a medical need and related functional impairment based on an acute medical condition that is expected to improve. The requirement for an annual physician's order for primary home care is also being changed. A physician's order is only required for initial prior approval and for renewal of prior approval for time-limited services.

The amendment will function by streamlining the process so provider agencies will not be required to submit a prior approval packet to the DHS regional nurse to obtain reauthorization of primary home care. Also, service plan changes may be authorized faster since the approval will be handled directly by the caseworker.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

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 August 2, 1994.

TRD-9446006 Nancy Murhpy
Section Manager of Media and Policy Services
Texas Department of Human Services

Effective date. October 1, 1994

Proposal publication date: June 7, 1994

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

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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 Department of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative 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 Department of Insurance, 333 Guadalupe, Austin.)

The Commissioner of Insurance at a public meeting held July 18, 1994, at 9: 00 a.m., in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, adopted a staff proposal, with changes to the rules and endorsement as proposed, of new Texas Personal Lines Manual rules and an amendatory Foundation Exclusion/Limited Coverage Endorsement to the Homeowner's Policy, Texas Dwelling Policy, Farm and Ranch Owner's Policy, and Texas Farm and Ranch Policy to exclude coverage for damage to foundations or slabs of the

insured dwelling, other than loss caused by fire, lightning, smoke, windstorm, hurricane, hail, explosion, aircraft, vehicles, vandalism, malicious mischief, riot, civil commotion, and falling objects. This endorsement restricts coverage, including the exclusion of damage to foundations or slabs caused by leakage from a plumbing system. An insurer may attach this endorsement only if the insured dwelling is more than ten years old. Notice of the proposed rules and endorsements (Reference Number P-0694-14-I) was published in the June 17, 1994 issue of the *Texas Register* (19 TexReg 4742). The date of the hearing was changed as published in the June 24, 1994 issue of the *Texas Register* (19 TexReg 4990).

As a result of comments received on the proposed rules and endorsements, the Commissioner adopted the proposed exclusionary/limited coverage endorsements with the following changes: the introductory words on premium reduction were deleted and replaced with language to track the provisions of the statute verbatim; a notice in bold type was added to clarify for policyholders that the endorsement restricts coverage, including the exclusion of damage to foundations or slabs caused by leakage from a plumbing system. Also, as a result of comments, the Commissioner adopted the proposed Manual rules with the following changes: language was added to require that the endorsement number and the endorsement title be shown on the declaration page along with the premium reduction; and the provision on the application of the premium percentage reduction was amended to provide that the percentage reduction be applied to the basic premium before, rather than after, any adjustments to the basic premium.

The Commissioner has determined that these rules and endorsements are necessary to comply with the Insurance Code, Article 5.35-2 (Acts 1993, 73rd Legislature, Chapter 685, §20.23, effective September 1, 1994). Article 5. 35-2 provides that the Commissioner shall adopt an endorsement form that excludes coverage for damage to foundations or slabs of the insured dwelling, other than loss caused by fire, lightning, smoke, windstorm, hurricane, hail, explosion, aircraft, vehicles, vandalism, malicious mischief, riot, civil commotion, and falling objects from a homeowner's, farm and ranch owner's, or fire insurance policy promulgated under Article 5.35 of the Insurance Code.

The newly adopted endorsements include Endorsement Number HO-150 to be attached to Homeowner's Policy Form HO-A with Endorsement Number HO-170 attached, Form HO-B, and Form HO-C; Endorsement Number TDP-022 to be attached to the Texas Dwelling Policy Forms 2 and 3; Endorsement Number FRO-450 to be attached to Farm and Ranch Owner's Policy Form FRO-A with Endorsement Number FRO-470 attached and Form FRO-B; and Endorsement Number TFR-075 to be attached to Texas Farm and Ranch Policy Forms 2 and 3.

The newly adopted Texas Personal Lines Manual rules include Homeowner's Section Rule IV.A.20, Dwelling Section Rule IV.O, Farm and Ranch Owner's Section Rule IV.A.21, and Farm and Ranch Section Rule IV.R. These rules address when the endorsements may be attached and application of the premium reduction resulting from the exclusionary endorsement. The rules provide that the endorsement may be attached only to a policy insuring a dwelling that is more than ten years old and is void if attached to a policy insuring a dwelling that is ten years old or less as of the inception date of the policy Under the rules, the determination of whether a dwelling is more than ten years old is to be made by using the period from the date of completion of the construction of the dwelling to the inception date of the latest policy insuring the dwelling. The rules also: provide that the reduction in premium is determined by reducing the basic premium by a certain specified percentage, which will be determined at this year's residential property insurance benchmark rate hearing; require that the endorsement number, endorsement title, and the premium reduction be shown separately on the declaration page; and require that the percentage reduction be applied to the basic premium before any adjustments to the basic premium.

The rules and endorsements become effective on the effective date of the 1994 residential property insurance benchmark rates

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.35-2, 5.35, 5.96, and 5.98

The adopted endorsements and rules are on file in the Office of the Chief Clerk under Reference Number P-0694-14-I and are incorporated by reference by Commissioner Order Number 94-0840.

This notification is made pursuant to the Insurance Code, Article 5 96, which exempts action taken under Article 5 96 from the requirements of the Administrative Procedures and Texas Register Act (Administrative Procedure Act, 73rd Legislature, Regular Session, Chapter 268, §1, 1993 Texas General Laws 737 (codified at Texas Government Code Title 10, Chapter 2001))

Consistent with the Insurance Code, Article 5.96(h), prior to the effective date of this action, the Texas Department of Insurance will notify all insurers affected by this action

This notification is made pursuant to the Insurance 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 August 3, 1994

TRD-9446050

D J Powers
General Counsel and Chief Clerk
Texas Department of Insurance

Effective date n/a

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

♦ ♦ ♦


Nicki Hess
Gr. 5.

TABLES AND GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Figure 1: 16 TAC 3.101(f)(3)(B)(ii)

If the average depth to the top of the formation (in feet)		The maximum allowable production rate (in thousand cubic feet per day) may not exceed-
exceeds-	but does not exceed-	
0	1,000	44
1,000	1,500	51
1,500	2,000	59
2,000	2,500	68
2,500	3,000	79
3,000	3,500	91
3,500	4,000	105
4,000	4,500	122
4,500	5,000	141
5,000	5,500	163
5,500	6,000	188
6,000	6,500	217
6,500	7,000	251
7,000	7,500	290
7,500	8,000	336
8,000	8,500	388
8,500	9,000	449
9,000	9,500	519
9,500	10,000	600
10,000	10,500	693
10,500	11,000	802
11,000	11,500	927
11,500	12,000	1,071
12,000	12,500	1,238
12,500	13,000	1,432
13,000	13,500	1,655
13,500	14,000	1,913
14,000	14,500	2,212
14,500		2,557

Figure 1: 30 TAC §101.30(c)(2)(A)

	Tons/Year
Ozone (VOC or NO_x)	
Marginal or moderate NAAs inside an ozone transport region	
VOC	50
NO_x	100
Other ozone NAAs outside an ozone transport region	100
Serious NAAs	50
Severe NAAs	25
Extreme NAAs	10
Carbon Monoxide	
All NAAs	100
SO_2 or NO_2	
All NAAs	100
PM_{10}	
Moderate NAAs	100
Serious NAAs	70
Pb	
All NAAs	25

Figure 2: 30 TAC §101.30(c)(2)(B)

	Tons/Year
Ozone (NO_x), SO_2, or NO_2	
All maintenance areas	100
Ozone (VOC)	
Maintenance areas inside an ozone transport region	50
Maintenance areas outside an ozone transport region	100
Carbon Monoxide	
All maintenance areas	100
PM_{10}	
All maintenance areas	100
Pb	
All maintenance areas	25

Figure 1: 30 TAC §117.570(c)(2)

$$\text{RCs (tons per year)} = \sum_{j=1}^{N} \left[H_j \times (R_{Aj} - R_{Bj}) \times \frac{365}{2000} \right]$$

Where:

j = each emission unit subject to this section generating RCs

N = the total number of emission units subject to this section generating RCs

H_j = actual daily heat input, in million British thermal units (MMBtu) per day, as calculated according to §117.223(b)(1) of this title

R_{Aj} = the lowest of any applicable federally enforceable emission limitation, the reasonably available control technology (RACT) limit of §117.105 or §117.205(b)-(d) of this title, or the actual emission rate as of June 9, 1993, in pound (lb)/MMBtu, that apply to emission unit j in the absence of trading. For units that have been shut down prior to June 9, 1993, the actual emission rate shall be considered to be the average annual emission rate occurring over the period used to define the unit's baseline heat input period in §117.223(g)(3) of this title.

R_{Bj} = The enforceable emission rate, in lb/MMBtu, for unit j established in the registration under subsection (g) of this section.

Figure 2: 30 TAC §117.570(d)(1)

$$\text{New 30-day rolling average emission limit (lb/day)} = \sum_{i=1}^{N} \left[(H_i \times R_i) + \left(RC_i \times \frac{2000}{365} \right) \right]$$

Where:

R_i, in lb/MMBtu, is defined as in §117.223(b)(1) of this title

i = each emission unit in the source cap

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

H_i = actual daily heat input, in MMBtu per day, as calculated according to §117.223(b)(1) of this title

RC_i = RC used for each unit, in tons per year, generated in accordance with subsection (c) of this section. If RC_i is from a unit not subject to the emission specifications of §117.105 or §117.205 of this title, this term becomes RC_i/F, where F is the offset ratio for the ozone nonattainment area where the unit is located (e.g. 1.2 for Beaumont/Port Arthur and 1.3 for Houston/Galveston).

and

Figure 3: 30 TAC §117.570(d)(1)

$$\text{New maximum daily emission limit (lb/day)} = \sum_{i=1}^{N} \left[(H_{Mi} \times R_i) + \left(RC_i \times \frac{2000}{365} \right) \right]$$

Where:

i and N are defined as in the first equation in this paragraph

R_i, in lb/MMBtu, is defined as in §117.223(b)(1) of this title

H_{Mi} = the maximum daily heat input, in MMBtu/day, as defined in §117.223(b)(2) of this title.

Figure 4: 30 TAC §117.570(d)(2)

$$\text{New emission limit for unit i (lb/MMBtu)} = R_{Ai} + \left(\frac{RC_i}{H_{Mi}} \times \frac{2000}{365} \right)$$

Where: i = each emission unit subject to this section

N = the total number of emission units subject to this section

R_{Ai} = the lowest of any applicable federally enforceable emission limitation, the RACT limit of §117.105 or §117.205(b)-(d) of this title, or the actual emission rate as of June 9, 1993, in lb/MMBtu, that apply to emission unit i in the absence of trading. For units that have been shut down prior to June 9, 1993, the actual emission rate shall be considered to be the average annual emission rate occurring over the period used to define the unit's baseline heat input period in §117.223(g)(3) of this title.

and H_{Mi} and RC_i are defined as in paragraph (1) of this subsection.

The appropriate compliance averaging period specified in §117.105, §117.107, §117.205, or §117.207 of this title shall be assigned to unit i using a RC in accordance with the provisions of this paragraph.

Figure 5: 30 TAC §117.570(f)

$$\text{Recalculated RC (tons per year)} = \sum_{j=1}^{N} \left[H_j \times (R_{Bj} - R_{Aj\text{-}new}) \times \frac{365}{2000} \right]$$

Where: j, N, H_j and R_{Bj} are defined as in subsection (c)(2) of this section

$R_{Aj\text{-}new}$ = the new NO_x emission specification for unit j, in lb/MMBtu

If the recalculated RC is of zero or negative value, the RC is determined to be of zero value.

Figure 1: 30 TAC §327.5(b) Appendix I

Emergency Planning Form for Facilities and Vessels

Facility or Vessel Name: _____

Registration or Permit No.: _____ and Issuing Agency and Program: (e.g. Texas Natural Resource Conservation Commission (TNRCC) & Solid Waste Registration or TNRCC & Petroleum Storage Tank or TNRCC & Industrial/Hazardous Waste or TNRCC & Wastewater or Texas Parks and Wildlife Department & Boat): _____

_____

Person In Charge of Operations: Name _____
Telephone No. _____

Emergency Response Coordinator: Name _____
Telephone No.(24-Hour): _____

Name, Address and Telephone Number of Responsible Official:

_____
_____
_____
_____
_____
_____

In the event of an emergency including fire, explosion, collision, or discharges or spills including releases to the atmosphere that may effect public health and the environment, the following notifications are suggested for emergency assistance and in some cases may be required by law:

Potential First Responders

Facility or Vessel Response Personnel Safety:

Personal Protection of Citizens in immediate vicinity:

Fire and Rescue:

Police or Law Enforcement:

Emergency Medical Services:

Nearest Hospital:

Local Emergency Planning Committee (LEPC):

Contractor Personnel:

Spill Cooperatives:

Regional Texas Natural Resource Conservation Commission Office:

Texas Natural Resource Conservation Commission/ Texas Emergency Response Center:	512-463-7727 or 1-800-832-8224

Other National or Statewide Responders

Chemtrec, Chemnet, Chlorep, Pesticide Safety Team:	800-424-9300
American Association of Railroads/Bureau of Explosives	202-835-9300
Agency for Toxic Substances and Disease Registry:	404-4524100
National Response Center:	800-424-8802

Other Contacts/Responders

Port Authority:
River Basin or Aquifer Authority:
Water Supplier:
Local Health District:
Nearest U.S. Coast Guard Office:

For Stationary Facilities Only

Distance and Identification of nearest Surface Water within 1 mile.

Distance and identification of Nearest Population within 1 mile.

Distance and Identification of Other Nearest Sensitive Receptors within 1 mile (for example - Edwards Aquifer Recharge Zone, Wetland/Marsh, Wildlife Refuge, Recreational Area, Nursing Homes, Schools and Hospitals).

Evacuation Sketch and Details (for facilities where this is already in existence, the existing document may be displayed alongside this form and information may be included to also recognize evacuation procedures for local residents as worked out with local fire departments, police departments, and Local Emergency Planning Committees).

The Workplace Chemical List required by the "Community Right-to-Know" provisions of SARA Title III.

Figure 2: 30 TAC §327.3(e)(3) Appendix II

Discharge or Spill Notification Flowchart

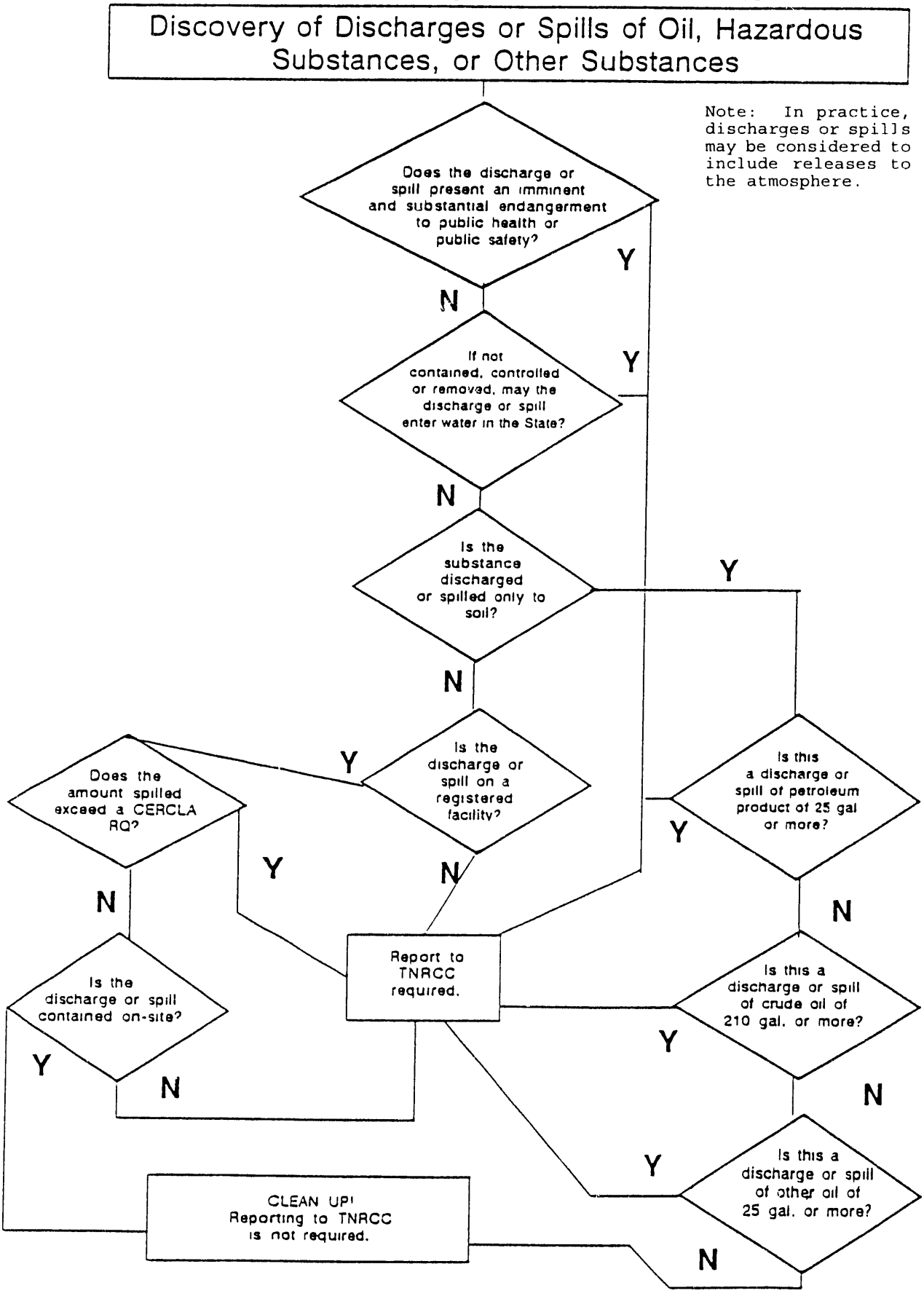

Figure 3: 30 TAC §327.4(d)(1)-(3) and §327.8(a) Appendix III

Guidelines for Reports When Requested

This appendix is offered as guidance in discharge or spill response report preparation and includes information that a responsible party may choose to retain for historical documentation of the discharge or spill event. It is not intended to expand or limit the requirements in the Chapter 327 Spill Prevention and Control.

If the executive director requires more information about a spill, he may request some or all of the following information. Responsible persons are not required to provide this information except upon a specific request.

A. Background information:

1. the time and date of occurrence and time and date of discovery, if different;
2. the type of material discharged or spilled. A Material Safety Data Sheet (MSDS) for each of the materials released should be included;
3. the amount of material discharged or spilled:
   a. to a surface water body (i.e., a stormwater ditch, bayou, creek, river, or bay), the responsible person must list all other surface water bodies which may be impacted;
   b. to the land, the responsible person should also include a description of the surface material

which has been impacted; (i.e., concrete, soil, limestone, etc.) The responsible person must describe the land area. (i.e., coastal, fixed inland site, wetlands, etc.);

c. to the air, the responsible person should describe the duration and intensity of the emission, any information about the nature of the emission including a visible emissions evaluation, and any actions taken to mitigate the effects of the discharge or spill; and

d. a scaled map, indicating the lateral extent of the material discharged or spilled as well as all bodies of water impacted; and

4. Location of the site affected by the discharge or spill.

a. the name of the facility, if different from the responsible person;

b. the facility's Texas solid waste generator number and EPA Registration Number, if applicable;

c. both the physical address for the location of the discharge or spill and the mailing address for the responsible person, if different;

d. the name and phone number for a contact person at the site;

e. if the location of the discharge or spill is not owned by the responsible person, then the responsible person must include the names, addresses and phone numbers of the property owners; and

5. The time and date that the Commission was notified including:

a. the name of the representative or the responsible person who reported the incident to the Commission;

b. the name of the Commission representative who received the report from the responsible person; and

c. if the Commission conducted a site visit, the name of the Commission inspector and the date of the site visit.

B. Chronology

A time and date chronology of the response actions taken by the responsible person. The chronology should describe the nature of the response actions (i.e. the name, address and phone number of the response contractor as well as the name of a contact person, if different than the responsible person; the date and time of the first containment actions and the name of the individuals or company conducting these activities; a detailed description of the containment equipment and

personnel used; and a description of the effectiveness of the initial response actions; etc.);

C. Other agencies notified, including the time and date of the notification and the contact person;

D. Weather conditions during the clean-up and a discussion of how the weather conditions may aid or hinder the clean-up activities;

E. Reported injuries;

F. Actions taken to remove, neutralize the substances discharged or spilled including:

1. The amount of substances recovered and contained;
2. The amount of substances lost to the environment;
3. If soil was impacted, the amount of substances removed. A scaled map indicating the lateral and vertical extent of the excavation activities is to be included;
4. The disposition of the excavated substances, the recovered substances and any additional wastes generated from the clean-up activities including any on-site and off-site storage, processing or treatment. If the material is stored at an off-site location, the responsible person must include the name, physical address, and phone number for the storage facility;
5. A description of all sampling activities including:
   a. list of the persons collecting the samples;

b. scaled map indicating the lateral and vertical location of the sampling locations;

c. tabulation of the analyses performed and the analytical methods used;

d. the name and address of the laboratory conducting the analytical work;

e. the name and address of the supplier of the sample containers; and,

f. copy of the analytical results as reported by the laboratory to the responsible person; and

6. A report of the EPA and Commission waste classification and waste code numbers including:

a. copies of any analytical results used to obtain the waste classifications as well as any correspondence received from the Commission unless the waste is already listed on the facility's Notice of Registration (NOR).

b. listing of any temporary generator or transporter numbers used, if applicable.

c. copies of the manifests used for the shipment of the wastes.

d. the name, address and phone number of the facility receiving the waste.

Figure 4: 30 TAC §327.6 Appendix IV

Contingency Plan Guidelines

Due to the complexity of the issues involved, the Commission will issue rules on Contingency Plans in a separate future rulemaking. Meanwhile, the Commission recommends that facilities that handle oil and hazardous substances, including industrial and hazardous wastes, prepare a contingency plan. The following guidelines may serve as an example to those facilities that prepare a contingency plan before the Contingency Plan rules are written.

(a) Owners and operators of facilities or vessels storing, processing or transporting any materials or substances which are capable of causing or resulting in pollution should have a contingency plan for each facility and each vessel if:

(1) the vessel is storing, processing or transporting 500 gallons or more of oil, hazardous substances, or other substances; or

(2) the facility is storing, operating, processing, or transporting containers, tanks, pipelines, or vessels with a bulk capacity of 1,000 gallons or more of oil, or 5,000 gallons or more of hazardous substances or other substances.

(b) The contingency plan should contain the following information:

(1) description of the actions that facility or vessel personnel should take in response to any discharge or spill;

(2) description of the arrangements agreed to by local police and fire departments, hospitals, local emergency response teams and contractors to coordinate services;

(3) description of the provisions used for coordination with the State of Texas in accordance with the most recent State of Texas Oil and Hazardous Substances Spill Contingency Plan;

(4) an up-to-date list of the names, addresses, and phone numbers (office and home) of each person designated to act as an emergency coordinator of the facility or vessel. If more than one person is listed and identified as the emergency coordinator for the facility or vessel, then the list is to include a designation of one person as the primary emergency coordinator with the alternate emergency coordinators identified and listed in succeeding order.

(5) an up-to-date list of all emergency equipment (such as, but not limited to, fire extinguishing systems, discharge or spill control equipment, communications systems, alarm systems, and decontamination equipment and materials.) This list of emergency equip-

ment should contain a description of the location of this equipment. The description of the location of the equipment may be accomplished by the inclusion of visual aids such as maps, diagrams, schematics or other appropriate means;

(6) plan for the evacuation of personnel where there is a possibility that evacuation could be necessary or where this information would be useful to external response teams;

(7) current and accurate list which identifies facility or vessel personnel trained to assist the emergency coordinator in response to an incident;

(8) if a facility or vessel is to be engaged in transportation, a component giving special consideration to identification of sensitive receptors along the transportation route which includes a plan for implementing countermeasures to minimize impacts. This component may be supplemented by contractor resources, but the information should be readily available for the use of the emergency coordinator for the facility or vessel; and

(9) if a facility is not engaged in transportation, a component giving special consideration to sensitive receptors.

(d) The most recent contingency plan should be available at all times to emergency personnel.

(e) For facilities not engaged in transportation, a copy of the most recent contingency plan should be made available upon request to anticipated first responders. Upon request, the contingency plan should be submitted to the appropriate regional manager and the Emergency Response Team.

(f) For vessels or facilities engaged in transportation, a copy of the contingency plan should be submitted, upon request, to the Emergency Response Team, the appropriate regional manager, members of the Regional Response Team, and contractors. Any vessel or facility entering a port should make the contingency plan available to the appropriate harbor authority.

(g) For existing facilities and vessels, a contingency plan should be available to emergency personnel at the site within 90 days of the effective date of this chapter. If there is an existing plan prepared under other state or federal requirements, the plan must be reviewed by the facility or vessel operator and amended if necessary to comply with this title.

(h) For new facilities or vessels, a contingency plan should be available before storage, processing or transportation of substances which are capable or resulting in or causing pollution.

(i) If a facility or vessel is engaged in transporting substances in the amounts set forth in paragraphs (a)(1) or (a)(2) of this section, but the facility or vessel is not transporting goods in commerce, then this section does not apply.

Amendment of Contingency Plan. The contingency plan should be reviewed and amended within 90 days whenever:

(a) the regional manager or Emergency Response Team Leader finds deficiencies in the plan after conducting an evaluation and requests corrective action including, but not limited to, discharge or spill prevention measures, countermeasures, control procedures, and contractor support to ensure an adequate response action;

(b) the plan fails in an emergency based on the judgment of the vessel or facility emergency coordinator, the regional manager, or the Emergency Response Team Leader; or

(c) the facility or vessel is to be changed in any way that increases the potential for a discharge or spill.

Emergency Coordinator. There must be at least one designated emergency coordinator for each facility or vessel available to respond immediately, to coordinate emergency response measures and commit any resources necessary to comply with the requirements of this Chapter in connection with a discharge or spill. The emergency coordinator is responsible for the following:

(a) maintaining familiarity with all aspects of the contingency plan;

(b) committing the resources necessary for compliance with the requirements of this chapter;

(c) initiating and ensuring that the countermeasures necessary to minimize impacts are completed;

(d) ensuring that the response action is conducted appropriately; and

(e) taking all other necessary actions to respond to a discharge or spill both on-site and offsite.

Figure 5: 30 TAC §327.2 Appendix V

REGION VI

REGIONAL RESPONSE TEAM ("RRT")

MEMBER AGENCIES

PLEASE DISCARD/DESTROY ALL

PRIOR MEMBERSHIP ROSTERS

July, 1994

REGION VI REGIONAL RESPONSE TEAM

RRT CO-CHAIRMEN

Charles A. Gazda, EPA Region VI

Captain James W. Calhoun, USCG Eighth District

PARTICIPATING FEDERAL RRT AGENCIES

DEPARTMENT OF AGRICULTURE (DOA) - U.S. FOREST SERVICE (USFS)

(PRIMARY)		Duty Hours
Malcolm Cockerham		(501) 321-5284
Fire Management Staff Officer		Non-Duty Hours
U.S. Forest Service		(501) 525-2830
P.O. Box 1270	FAX	(501) 321-5334
Hot Springs, AR 71902	Confirmation #	(501) 740-8011
*ESF #10 Representative		E-Mail R6DOA

(ALTERNATE) Duty Hours

Bobby James (404) 347-4243

U.S. Forest Service FAX (404) 257-2836

1720 Peachtree Road N.W.

Atlanta, GA 30367

DEPARTMENT OF COMMERCE (DOC) - NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA)

(PRIMARY) Duty Hours

Ron Gouguet (214) 655-2232

NOAA/(RC) FAX (214) 655-6460

EPA Superfund Mgmt. Div. (6H-MA)

1445 Ross Avenue 24-hr Seattle Duty# (206) 726-2148

Dallas, TX 75202 Non-Duty Hours

* ESF #10 Representative (214) 321-7165

(ALTERNATE) Duty Hours

Waynon Johnson (404) 347-1586

NOAA/HAZMAT FAX (404) 347-0076

U.S. EPA Waste Div. Non-Duty Hours

345 Courtland St. N.E. (404) 876-2004

Atlanta, GA 30308 NOAA E-MAIL CRC4

DEPARTMENT OF COMMERCE (DOC) - NOAA SCIENTIFIC SUPPORT COORDINATOR (SSC)

(PRIMARY)
CDR Michael D. Barnhill
Commander (mSSC)
Eighth Coast Guard District
Hale Boggs Federal Building (MEP)
500 Magazine Street
New Orleans, LA 70130-3396

Duty Hours
(504) 589-6901
Cell. Ph. (504) 583-0799
Pager (800) 759-7243
PIN # 27149
E-MAIL LASSC
Non-Duty Hours
(504) 589-6225
FAX (504) 589-4999

DEPARTMENT OF DEFENSE (DOD) - U.S. ARMY CORPS OF ENGINEERS, (USACE) - Southwestern Division (for spills which occur in Oklahoma. Texas (inland), and parts of Arkansas and New Mexico)

(PRIMARY)
Tom Kincheloe

Emergency Management Division
U.S. Army Corps of Engineers
Southwestern Division

Duty Hours
(214) 767-2425
or 767-2297
Non-Duty Hours
(817) 465-4085
FAX (214) 767-5305

Santa Fe Building, Room 410 Pager (800) Sky Page
1114 Commerce Street PIN # 873-6328
Dallas, TX 75242-0216
*ESF #10 Representative

(ALTERNATE) Duty Hours
Royce B. Swayne (214) 767-2424
National Emergency Manager Non-Duty Hours
U.S. Army Corps of Engineers (817) 274-2093
Southwestern Division FAX (817) 767-5305
Santa Fe Building, Room 410
1114 Commerce Street
Dallas, TX 75242-0216

DEPARTMENT OF DEFENSE (DOD) - U.S. ARMY CORPS OF ENGINEERS, (USACE) Southwestern Division (for spills in parts of Texas, Louisiana, and S.W. New Mexico)

(PRIMARY) Duty Hours
Gus Marinos (409) 766-3956
U.S. Army Corps of Engineers Non-Duty Hours
P.O. Box 1229 (409) 763-4673
Galveston, TX 77553 Pager (409) 943-0150
FAX (409) 766-3990
E-MAIL COEG6

(ALTERNATE) Duty Hours Frank Garcia (409) 766-3954

U.S. Army Corps of Engineers Non-Duty Hours

P.O. Box 1229 (409) 765-8084

Galveston, TX 77553

DEPARTMENT OF DEFENSE (DOD) - U.S. ARMY CORPS OF ENGINEERS. (USACE) - Lower Mississippi Valley Division (for spills in parts of Louisiana, Arkansas, and Texas)

(PRIMARY) Duty Hours

David Sills, FEMA Coordinator (601) 634-7303

Emergency Management Branch FAX (601) 634-7310

U.S. Army Corps of Engineers Non-Duty Hours

Lower Mississippi Valley Division (601) 636-0912

P.O. Box 80 E-MAIL COEV6

Vicksburg, MS 39180

(ALTERNATE) Duty Hours

Frank Stubbs, Chief (601) 634-7302

Emergency Management Branch Non-Duty Hours

U.S. Army Corps of Engineers (601) 638-3238

Lower Mississippi Valley Division FAX (601) 634-7810

P.O. Box 80

Vicksburg, MS 39180

DEPARTMENT OF DEFENSE (DOD) - U.S. ARMY (USA) - (for spills in Arkansas, Louisiana, New Mexico, Oklahoma, and Texas)

(PRIMARY)

COL. Jerry L. Unwin

Headquarters, Fifth U.S. Army

ATTN: AFKB-OP-P-CP

Contingency Plans Branch

Fort Sam Houston, TX 78234-7000

Duty Hours

(210) 221-9320

DSN 471-9320

Non-Duty Hours

(210) 646-6752

FAX (210) 221-9485

E-MAIL ARMY6

(ALTERNATE)

Charles T. Mangum

Headquarters, Fifth U.S. Army

ATTN: AFKB-OP-P-CP

Contingency Plans Branch

Fort Sam Houston, TX 78234-7000

Duty Hours

(210) 221-9309

221-0504/0018

DSN 471-9309

or 471-0504

Non-Duty Hours

(210) 221-2955

221-2099/2401

FAX (210) 221-9485

E-MAIL ARMY 6

*LTC David B. Ladner
ESF #10 Representative

Duty Hours
(817) 429-7560
Non-Duty Hours
(817) 861-2636

DEPARTMENT OF DEFENSE (DOD) - U.S. NAVY (USN) - (for spills in Louisiana)

(PRIMARY)
LCDR Dave M. Sweet
Public Works Officer
Naval Support Activity
West Bank
New Orleans, LA 70146-6000

Duty Hours
(504) 361-2500
FAX (504) 361-2198
E-MAIL NAVY 6

(ALTERNATE)
Lt. G.F. Patnoad
Public Works Officer
Naval Air Station
New Orleans, LA 70143-5000

Duty Hours
(504) 393-3273
(504) 393-3102
E-MAIL NAVY 6
Non-Duty Hours
(504) 392-4788

DEPARTMENT OF ENERGY (DOE)

(PRIMARY)
William C. Gibson, Jr.

Duty Hours
(504) 734-4201

Project Manager	FAX	(504) 734-4427
Strategic Petroleum Reserve	NOAA E-MAIL	R6DOE
900 Commerce Road East		
New Orleans, LA 70123		

(ALTERNATE)	Duty Hours	
Melissa W. Smith		(504) 734-4387
Environmental Safety & Health Div.	Non-Duty Hours	
Strategic Petroleum Reserve		(504) 392-8726
900 Commerce Road East	FAX	(504) 734-4427
New Orleans, LA 70123		

(ALTERNATE)	Duty Hours	
Daneen Farrow		(504) 734-4721
Environmental Safety & Health Div.	Non-Duty Hours	
Strategic Petroleum Reserve		(504) 466-4027
900 Commerce Road East	FAX	(504) 734-4427
New Orleans, LA 70123		

*ESF # 10 Representative (DOE HQ-EOC)	(202) 586-8100

DEPARTMENT OF HEALTH AND HUMAN SERVICES (DHHS)

(PRIMARY)	Duty Hours
Phil Edgington	(214) 767-3871

Emergency Coordinator
Dept. of Health & Human Services
1200 Main Tower Building
Dallas, TX 75202
*ESF # 10 Representative

Non-Duty Hours
(214) 349-9841
FAX (214) 767-0404
E-MAIL R6PHS

DEPARTMENT OF THE INTERIOR (DOI)

(PRIMARY)
Glenn Sekavec
Department of the Interior
P.O. Box 649
Albuquerque, NM 87103
* ESF #10 Representative

Duty Hours
(505) 766-3565
Non-Duty Hours
(505) 821-3434
FAX (505) 766-1059

(ALTERNATE)
Susan Lefevre
Department of The Interior
P.O. Box 649
Albuquerque, NM 87103

Duty Hours
(505) 766-3565
Non-Duty Hours
(505) 877-2178
FAX (505) 766-1059
E-MAIL R6DOI

DEPARTMENT OF JUSTICE (DOJ)

(PRIMARY)		Duty Hours
(Replacement not identified)		(202)
U.S. Department of Justice		Non-Duty Hours
Land and Natural Resources Div.		(301) 564-4584
9th & Pennsylvania Ave., Rm 2614	FAX	(202) 368-8395
Washington, DC 20530		E-MAIL R6DOJ

DEPARTMENT OF LABOR (DOL) - OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION (OSHA)

(PRIMARY)		Duty Hours
Jerry Bailey		(214) 767-4734
Assistant Regional Administrator		Non-Duty Hours
for Technical Support		(817) 467-6313
OSHA - Region VI		Telecopy
525 Griffin Street		(214) 767-4188
		767-4693
Dallas, TX 75202		E-MAIL R6DOL
*ESF #10 Representative		

(ALTERNATE)	Duty Hours
Dr. Glen Williamson	(214) 767-4737
Deputy Regional Administrator	Non-Duty Hours

OSHA - Region VI
525 Griffin Street
Dallas, TX 75202

(214) 299-6814
Telecopy
(214) 767-4188
767-4693

NUCLEAR REGULATORY COMMISSION (NRC)

(PRIMARY)
L. Joe Callan, Director
Div. of Radiation Safety and
Safequards
Nuclear Regulatory Commission
611 Ryan Plaza Dr., Suite 400
Arlington, TX 76011

Duty Hours
(817) 860-8106
Non-Duty Hours
Emergency Only
(301) 951-0550
E-MAIL R6NRC
(817) 728-8016
FAX (817) 860-8188

(ALTERNATE)
Eugene Bates
Nuclear Regulatory Commission
Region 6
611 Ryan Plaza Dr. - Suite 1000

Arlington, TX 76011
*ESF # 10 Representative

Duty Hours
(817) 860-8233
Non-Duty Hours
(817) 860-8100
FAX (817) 860-8210
860-8211
(817) 728-8233

DEPARTMENT OF STATE (DOS)

EPA Headquarters (202) 382-2180

DEPARTMENT OF TRANSPORTATION (DOT) - U.S. COAST GUARD (USCG) (for spills in Texas, Louisiana, and New Mexico)

(PRIMARY) Duty Hours
Capt. James W. Calhoun (504) 589-6271
(RRT Co-Chairman) Non-Duty Hours
Commander, 8th Coast Guard District (M) (504) 589-6225
Hale Boggs Federal Building FAX (504) 589-4999
501 Magazine Street E-MAIL CGD8
New Orleans, LA 70130-3396

(ALTERNATE) Duty Hours
LCDR S. P. Glenn (504) 589-6901
8th Coast Guard District Non-Duty Hours
Hale Boggs Federal Building (MEP) (504) 589-6225
501 Magazine Street FAX (504) 589-4999
New Orleans, LA 70130-3396
*ESF # 10 Representative

(ALTERNATE) Duty Hours
CW02 Michael White (504) 589-6901

8th Coast Guard District
Hale Boggs Federal Building (MEP)
501 Magazine Street
New Orleans, LA 70130-3396

Non-Duty Hours
(504) 589-6225
FAX (504) 589-4999

DEPARTMENT OF TRANSPORTATION (DOT) - U.S. COAST GUARD (USCG) (for spills in Arkansas and Oklahoma)

(PRIMARY)
Capt. Robert Lunchun
Chief, Marine Safety Division
2nd Coast Guard District
1222 Spruce Street, Rm 2.102G
St. Louis, MO 63103-2832
*ESF # 10 Representative

Duty Hours
(314) 539-2655
Non-Duty Hours
(314) 539-3706
NOAA E-MAIL CGD2
EPA 97022
FAX (314) 539-2672

(ALTERNATE)
CDR Ed Morris
Assistant Chief, Marine Safety Div.
Port Safety Branch
2nd Coast Guard District
1222 Spruce St., Rm. 2, 102G
St. Louis, MO 61303-2832

Duty Hours
(314) 539-2655
Non-Duty Hours
(314) 539-3706
NOAA E-MAIL CGD2
FAX (314) 539-2637

(ALTERNATE)		Duty Hours
LCDR Mike Schafersman		(314) 539-2655
RRT Coordinator		Non-Duty Hours
2nd Coast Guard District		(314) 539-3706
1222 Spruce St., Rm. 2.102G		NOAA E-MAIL CGD2
St. Louis, MO 61303-2832		FAX (314) 539-2672

DEPARTMENT OF TRANSPORTATION (DOT) - USCG NATIONAL STRIKE FORCE

CDR J.J. Kichner		Duty Hours
Commanding Officer	(Watchman)	(205) 639-6601
USCG National Strike Force	(Pager)	(205) 460-9801
CG Aviation Training Center		FAX (205) 639-6610
Mobile, AL 36608-9690		Non-Duty Hours
	(Home)	(205) 639-9340

DEPARTMENT OF TRANSPORTATION (DOT) - RESEARCH & SPECIAL PROJECTS ADMIN. (RSPA)

(PRIMARY)	Duty Hours
Dennis Martini	(817) 334-3225
Hazmat Program Manager	Non-Duty Hours
Federal Building 8A00	(817) 478-8418
819 Taylor Street	E-MAIL R6DOT
Ft. Worth, TX 76102	FAX (817) 334-4666

*ESF #10 Representative

(ALTERNATE)
Kevin Toth
Hazmat Program
Federal Building 8A00
819 Taylor Street
Ft. Worth, TX 76102

Duty Hours
(817) 334-3225
E-MAIL R6DOT
FAX (817) 334-4144
(Home) Non-Duty Hours
(817) 545-1508

ENVIRONMENTAL PROTECTION AGENCY (EPA)

(PRIMARY)
Charles A. Gazda, Chief
(RRT Co-Chair)
Emergency Response Branch
EPA Region 6
1445 Ross Avenue
Dallas, TX 75202

Duty Hours
(214) 655-2270
Non-Duty Hours
(214) 655-2222
FAX (214) 655-7447
NOAA E-MAIL R6EPA

* ESF #10 Representative

(ALTERNATE) Duty Hours

James Mullins, Chief (214) 655-2270

Emergency Response Branch Non-Duty Hours

EPA Region 6 (214) 655-2222

1445 Ross Avenue

Dallas, TX 75202

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

(PRIMARY) Duty Hours

John Benton (817) 898-5262

Senior Technological Hazards Non-Duty Hours

Specialist (817) 898-5280

FEMA Region VI Telecopy (817) 898-5263

800 North Loop 288 Emergency (817) 898-5280

Denton, TX 76201-3698 NOAA E-MAIL R6FEMA

*ESP # 10 Representative

(ALTERNATE) Duty Hours

R. Kent Baxter (817) 898-5330

Technological Hazards Branch Non-Duty Hours

FEMA Region VI Emergency (817) 898-5280

Federal Regional Center Telecopy (817) 898-5263

800 North Loop 288

Denton, TX 76201-3698

GENERAL SERVICES ADMINISTRATION (GSA)

(PRIMARY)		DUTY HOURS
Lawrence Sack		(817) 334-2350
Director, Administrative Service Div.		Non-Duty Hours
General Services Administration (7CA)		(817) 430-8982
817 Taylor Street	FAX	(817) 334-4609
Fort Worth, Texas 76102		

(ALTERNATE)	DUTY HOURS	
Robert C, Hominick		(817) 334-2349
Chief, Assessment Branch		Non-Duty Hours
General Services Administration (7CA0)		(817) 478-5271
817 Taylor Street	MOBILE #	(817) 366-1526
Fort Worth, Texas 76102		
*ESF #10 Representative		

(ALTERNATE)	DUTY HOURS	
Geraldine W. Parish		(817) 334-2349
Support Services Specialist		
General Services Administration (7CA0)		Non-Duty Hours

817 Taylor Street (817) 534-4373

Fort Worth, Texas 76102

(ALTERNATE) DUTY HOURS

W. Gene Pruitt (817) 334-2349

Support Services Specialist

General Services Administration (7CAO) Non-Duty Hours

817 Taylor Street (817) 447-9807

Fort Worth, Texas 76102

PARTICIPATING STATE RRT AGENCIES

STATE OF ARKANSAS

(PRIMARY) DUTY HOURS

Randall Mathis (501) 562-7444

Arkansas Dept. of Pollution C&E Non-Duty Hours

8001 National Drive (501) 562-6537

Little Rock, Arkansas 72209 (501) 329-5601

FAX (501) 562-4632

(ALTERNATE) DUTY HOURS

Joe Dillard (501) 329-5601

Director, Arkansas Office of		Non-Duty Hours
Emergency Services		(501) 329-5601
Post Office Box 758	FAX	(501) 327-8047
Conway, Arkansas 72032	XXX 1-STOP	(501) 374-1201

(ALTERNATE)	DUTY HOURS	
Richard McDuffie		(501) 562-7444
Arkansas Dept. of Pollution		Non-Duty Hours
Control & Ecology		(501) 374-1201
8001 National Drive		E-MAIL R6AR
Little Rock, Arkansas 72209	FAX	(501) 562-0297

*ESF #10 Representative

STATE OF LOUISIANA

(PRIMARY - OIL SPILL)

Roland Guidry

Louisiana Oil Spill Coordinator

Office of the Governor

Post Office Box 94095

Baton Rouge, Louisiana 70804-9004

DUTY HOURS

(504) 922-3230

MOBILE # (504) 933-6809

PAGER # 1-800-443-7243

ID # 044257

Non-Duty Hours

(504) 338-9287

(904) 798-7795

FAX (504) 922-3239

(PRIMARY)

Dale Givins

Assistant Secretary, Office of

Water Resources

Louisiana Deparatment of

Environmental Quality

Post Office Box 82215

Baton Rouge, Louisiana 70804

XXX- EMERGENCY NOTIFICATION

DUTY HOURS

(504) 765-0634

Non-Duty Hours

(504) 275-7500

Telecopier

(504) 765-0866

(ALTERNATE - OIL SPILL)

DUTY HOURS

Tim Hebert (504) 922-3230

Louisiana Oil Spill Coordinator

Office of the Governor MOBILE # (504) 933-1600

Post Office Box 94095 PAGER # 1-800-443-7243

Baton Rouge, Louisiana 70804-9004 ID # 016307

Non-Duty Hours

(504) 332-2214

(504) 933-1600

FAX (504) 922-3239

(ALTERNATE) DUTY HOURS

John Kern (504) 765-0867

Coordinator, Survellance Section Non-Duty Hours

Louisiana Deparatment of (504) 383-6453

Evironmental Quality Telecopier

Post Office Box 82215 (504) 765-0866

Baton Rouge, Louisiana 70804

(PRIMARY) DUTY HOURS

Col. William J. Croft (504) 342-5470

Assistant Director Non-Duty Hours

Louisiana Office of (504) 342-5470

Emergency Preparedness Telecopier

(Natural Disasters) (504) 342-5471

Post Office Box 44217 PAGER # 1-800-254-8198

Baton Rouge, Louisiana 70804

*ESF #10 Representative

(ALTERNATE) DUTY HOURS

Sgt. Gary LeBlancs (504) 925-6113

Louisiana State Police XXX-1-STOP (504) 925-6595

Transporation & Environmental FAX (504) 925-4048

Safety

Post Office Box 66614

Mail Slip 21

Baton Rouge, Louisiana 70896

*ESF #10 Representative

STATE OF NEW MEXICO

(PRIMARY) DUTY HOURS

R. Keith Lough, Chief (505) 827-9222

Emergency Management Bureau Non-Duty Hours

New Mexico Department of (505) 827-9126

Public Service FAX (505) 827-3456

Post Office Box 1628

Santa Fe, New Mexico 87504-1628

(ALTERNATE) DUTY HOURS

Max Johnson (505) 827-9223

Chief, Chemical Safety Office Non-Duty Hours

Department of Public Safety (505) 827-9126

Post Office Box 1628 E-MAIL R6NM

Santa Fe, New Mexico 87504-1628 FAX (505) 827-3456

*ESF #10 Representative XXX-1-STOP (505) 988-9660

FAX (505) 827-4361

STATE OF OKLAHOMA

(PRIMARY) DUTY HOURS

Steve Thompson (405) 271-4468

Oklahoma Department of XXX-1-STOP 1-800-522-0206

Environmental Quality XXX-1-STOP (405) 271-7363

Post Office Box 53504 Non-Duty Hours

Oklahoma City, Oklahoma 73152 (405) 271-4468

*ESF #10 Representative E-MAIL R60K

FAX (405) 271-8425

(ALTERNATE) DUTY HOURS

Lawrence A. Gales (405) 271-8062

Director of Support Service Non-Duty Hours

Oklahoma State Department of (405) 271-5221

Environmental Quality Room 905 FAX (405) 271-7339

1000 North 10th Streeet

Oklahoma City, Oklahoma 73117-1212

STATE OF TEXAS

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

(PRIMARY - CHEMICAL/INLAND OIL)		DUTY HOURS
David Barker, Team Leader		(512) 239-2510
Emergency Response		Non-Duty Hours
Texas Natural Response Conservation		(512) 463-7727
Commission	FAX	(512) 239-2527
Post Office Box 13087 - Capitol Station		E-MAIL R6TX
Austin, Texas 78711	PAGER #	1-800-759-7243
*ESF #10 Representative	PIN #	529-4733
	XXX-1-STOP	(512) 463-7727

(ALTERNATE - CHEMICAL/INLAND OIL)		DUTY HOURS
Stennie Meadours, Manager		(512) 239-2510
Emergency Response & Assessment		Non-Duty Hours
Texas Natural Response Conservation		(512) 463-7727
Commission	FAX	(512) 239-2527
Post Office Box 13087 - Capitol Station		
Austin, Texas 78711		

GENERAL LAND OFFICE (GLO)

(PRIMARY - COASTAL OIL)

Tim McKinna

Texas General Land Office

1700 North Congress, Room 740

Austin, Texas 78701

DUTY HOURS

(512) 463-5195

Non-Duty Hours

1-800-831-8224

FAX (512) 475-1560

(ALTERNATE)

Tricia Clark

Texas General Land Office

1700 North Congress, Room 740

Austin, Texas 78701

DUTY HOURS

(512) 475-1574

RTT COMMITTEE MEMBERSHIP

ROSTER

MANAGEMENT COMMITTEE

Tim Hebert, Chair	(State of Louisiana)
Eugene Bates	(NRC)
Lawrence Sack	(GSA)
Joe Dillard	(State of Arkansas)
R. Keith Lough	(State of New Mexico)
Larry Gales	(State of Oklahoma)
Glenn Sekavec	(DOI)
James Mullins	(U.S. EPA)
Melissa W. Smith	(DOE)
Tricia Clark	(State of Texas)
David Barker	(State of Texas)
CWO2 Mike White	(USCG District 8)

PREPAREDNESS COMMITTEE

David Barker, Co-Chair	(State of Texas)
Tim McKinna, Co-Chair	(State of Texas)
Tom Kinchloe	(DOD/USACE)
Dale Davidson	(DOD/USACE)

Gus Marinos	(DOD/USACE)
Frank Garcia	(DOD/USACE)
Charles T. Mangum	(DOD/5th Army)
Daneen Sarrow	(DOE)
Phil Edgington	(DHHS)
Robert C. Hominick	(GSA)
Roland Guidry	(State of Louisiana)
Col. William J. Croft	(State of Louisiana)
Max Johnson	(State of New Mexico)
James C. Staves	(U.S. EPA)
Larry Gales	(State of Oklahoma)
Glenn Sekavec	(DOI)
William B. Jackson	(DOC/NOAA)
Betty Broueseau	(State of Louisiana)
Mike White	(USCG District 8 MEP)

COMMUNICATION COMMITTEE

Robert Hominick, Chair	(GSA)
Mike White	(USCG District 8 MEP)
Greg Fife	(U.S. EPA)
Glenn Sekavec	(DOI)
David Barker	(TNRCC)
Daneen Farrow	(DOE)
Manuel F. Gonzalex	(TGLO)

Roland Guidry	(LOSC)
Tim Hebert	(LOSC)
Gus Marinow	(DOD)
Lawrence Sack	(GSA)

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, September 29, 1994, 10:00 a.m. (Rescheduled from August 9, 1994, 10:00 a.m.)

Texas Department of Agriculture, Expressway 83, two blocks west of Morningside Road

San Juan

According to the complete agenda, the Office of Hearings will hold an administrative hearing to review alleged violations of Texas Agriculture Code, §76.116(a)(1) and §76.114(a) and 4 Texas Administrative Code, §7.18 and §7.22 by Darryl Woods doing business as Sun Valley Dusting.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448

Filed: August 4, 1994, 9:55 a m

TRD-9446099

♦ ♦ ♦

Texas Commission on Alcohol and Drug Abuse

Tuesday, August 9, 1994, 1:30 p.m.

710 Brazos, Eighth Floor, Perry Brooks Building

Austin

Emergency Meeting

According to the complete agenda, the Grant and Contract Review Committee agenda consists of: call to order, fiscal year 1995 treatment services request for proposals award criteria, fiscal year 1995 group homes contract; fiscal year 1994 treatment contract adjustments, new business, next meeting; and adjourn

Reason for Emergency: To make immediate funding decisions affecting provision of substance abuse treatment services throughout the state.

Contact: Steve Casillas or Lynn Brunn-Shank, 720 Brazos, Suite 403, Austin, Texas 78701, (512) 867-8265

Filed: August 3, 1994, 9:00 a m

TRD-9446031

♦ ♦ ♦

State Bar of Texas

Thursday-Friday, August 11-12, 1994, 10:00 a.m. and 8:30 a.m., respectively.

Thursday-The Four Seasons Hotel, San Jacinto West Ballroom, 98 San Jacinto

Friday-The Shoreline Grill Banquet Room, 98 San Jacinto

Austin

According to the agenda summary, the Commission for Lawyer Discipline agenda consists of: call to order/introductions/review and discuss: minutes; peer review and diversion program; statistical reports; Commission's compliance with provisions of the State Bar Act, Orders of the Supreme Court and Texas Rules of Disciplinary procedure; budget and operations of the general counsel/chief disciplinary counsel's office, grievance committees, Special Counsel Program, budget and operations of the Commission, mediation of disciplinary matters, presentations by trial staff/closed executive session, discuss pending litigation and evidentiary cases, special counsel assignments, personnel matters/public session discuss and authorize action on matters taken up in closed executive session/discuss future meetings, other matters as appropriate/receive public comment/adjourn

Contact: Anne McKenna, P O Box 12487, Austin, Texas 78711, 1-800-204-2222

Filed: August 3, 1994, 3 56 p m

TRD-9446076

Friday, August 12, 1994, 1:30 p.m.

The Texas Law Center, 1414 Colorado, Room 104

Austin

According to the agenda summary, the Executive Committee agenda consists of call to order/roll call/reports of Chair of the Board, President, President Elect, President of the Texas Young Lawyer's Association, Acting Executive Director, Office of the General Counsel; Immediate Past President, Supreme Court Liaison/adjourn

Contact: Pat Hiller, P.O Box 12487, Austin, Texas 78711, 1-800-204-2222

Filed: August 3, 1994, 3:56 p.m.

TRD-9446077

♦ ♦ ♦

Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons

Tuesday, August 16, 1994, 8:30 a.m.

Texas Commission for the Blind, Staff Training Room, 4800 North Lamar Boulevard

Austin

According to the agenda summary, the Budget Subcommittee agenda consists of:

Call to order and introduction of subcommittee members and guests

Overview of fiscal year 1994 budget and program goals for Texas Industries for the Blind and Handicapped (TIBH)

Report on work centers' response to ideas about the State Use Program for fiscal year 1995

Overview of fiscal year 1995 budget and proposed program goals for TIBH

Executive session pursuant to V.T.C.A., Government Code, §551.074, and §551.075 to discuss personnel matters

Discussion and recommendations regarding fiscal year 1995 budget and proposed program goals for TIBH

Discussion and recommendations regarding fiscal year 1995 commission rates for TIBH

Discussion and recommendations regarding the annual letter of agreement between the Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons and TIBH

Adjournment

Contact: Hollis Pinyan, P.O. Box 12866, Austin, Texas 78711, (903) 561-8146

Filed: August 3, 1994, 9:56 a.m.

TRD-9446057

♦ ♦ ♦

Texas Department of Commerce

Wednesday, August 3, 1994, 2:00 p.m.

City Council Chambers, Municipal Building, 1625 13th Street

Lubbock

Emergency Revised Agenda

According to the agenda summary, the Policy Board agenda consists of: call to order; adoption of the minutes from the meeting of June 8, 1994; report from Executive Director; final adoption of Job Training Partnership Act Rules, 10 TAC §§187.101-187.298 and Open Records Charges Rules, 10 TAC §§192.1-192.7 and final repeal of the Rural Industrial Development Finance Plan Rules, 10 TAC §§161.1-161.102 and Texas Rental Rehabilitation Program Rules, 10 TAC §179.1; proposed repeal of the Revenue Bonds for the promotion and development of industrial enterprises, 10 TAC 175; proposed rulemaking to change Commerce's address for the following rules: Product Commercialization, Product Development Fund and Procedures of the Board; final adoption of amendments to Smart Jobs Fund Rules, 10 TAC §§186.104, 186.201, 186.204, 186.302, and 186.306-186.308; final adoption of Tourism Advisory Committee rules, comments by Senator Montford, Texas Chamber of Commerce Advisory Committee; presentation by Levelland Knitting Mills; public comments; and adjourn.

Reason for Emergency: The last three information items were shifted in order to accommodate a board member's schedule. Also, the location of the meeting was changed because the recording equipment in the other location was not working.

Contact: Pat Segura, 816 Congress Avenue, Suite 890, Austin, Texas 78701, (512) 320-9612

Filed: August 2, 1994, 2:23 p.m.

TRD-9446003

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Texas Planning Council for Developmental Disabilities

Thursday, August 11, 1994, 8:30 a.m.

Sheraton Hotel, 500 North IH-35, Red River Room

Austin

According to the complete agenda, the Advocacy and Public Information Committee agenda consists of:

8:30 a.m. Call to order

1. Introductions

2. Public comments

3. Approval of minutes of April 7-8, 1994

4. Public information report

A. Discussion of council public awareness strategies and activities

B. Update on public information activities

5. State policy legislation

A. Update on public policy issues

B. Discussion of upcoming legislative issues

6. Federal policy legislation

Noon. Adjourn

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Rosalinda Lopez at (512) 483-4094.

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4080.

Filed: August 2, 1994, 4:44 p.m.

TRD-9446015

Thursday-Friday, August 11-12, 1994, 1:30 p.m. and 8:30 a.m., respectively.

Sheraton Hotel, 500 North IH-35, Colorado Room

Austin

According to the complete agenda, the Council agenda consists of:

Thursday, August 11, 1994

1:30 p.m. Call to order

1. Introductions of council members, staff and visitors

2. Public comments

3. Approval of minutes of May 12-13, 1994

4. Executive Committee report

A. FY 94 budget status report

B. Approval of FY 95 budget

C. Consideration of TPCDD/TRC management agreement revisions

D. Membership in National Organization

E. Concurrent Committee meetings

F. 1995 council meeting schedule

G. Other discussion items

5. Chair's report

A. Grantee survey

B. Staff recommendations on action items

C. Other discussion items

6. Executive Director's report

7. Advocacy and Public Information Committee report

A. Discussion of council public information activities

B. Consideration of Federal and State Policy issues

5:00 p.m. Recess

Friday, August 12, 1994

8:30 a.m. Reconvene

1. Introductions

2. Public comments

3. Continuation of unfinished business from August 11, 1994

4. Planning and Evaluation Committee report

A. Approval of FY 95-97 TPCDD State Plan

B. Consideration of FY 95 proposed funding activities

C. Other discussion items

5. Grants Management Committee report

6. UT-Austin University Affiliated Program (UAP) update

7. Advocacy, Inc., update

8. Announcements

2:30 p.m.: Adjourn

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Rosalinda Lopez at (512) 483-4094.

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4080.

Filed: August 3, 1994, 3.30 p.m.

TRD-9446074

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Texas Diabetes Council

Thursday, August 11, 1994, 4:00 p.m.

Room T-607, Texas Department of Health, 1100 West 49th Street

Austin

According to the complete agenda, the Industry Advisory Committee will discuss and possibly act on Operation Defeat Diabetes in Corpus Christi, project evaluations, and other business not requiring committee action; and future plans

Contact: Amy Pearson, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7534 For ADA assistance, call Richard Butler at (512) 458-7695 or T. D D (512) 458-7708 at least two days prior to the meeting

Filed: July 28, 1994, 10.43 a.m.

TRD-9446768

Friday, August 12, 1994, 9:00 a.m.

Room G-107, Texas Department of Health, 1100 West 49th Street

Austin

According to the complete agenda, the Texas Diabetes Council will discuss approval of the minutes of the May 20, 1994 meeting, and discuss and possibly act on: priorities for State Plan to control diabetes; report on site review of Texas Diabetes Institute; recommendations for continuation funding (Texas Diabetes Institute; Community-based diabetes education and awareness projects; and diabetes complications invervention grant projects); request for supplemental funding for Texas Department of Health Regions 4 and 5 community-based diabetes project in Marion and Williams counties; and staff report.

Contact: Amy Pearson, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7534. For ADA assistance, call Richard Butler at (512) 458-7695 or T. D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: July 28, 1994, 10:43 a.m.

TRD-9446767

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Texas Commission on Human Rights

Tuesday, August 16, 1994, 1:00 p.m.

John H. Reagan State Office Building, Room 106, 105 West 15th Street

Austin

According to the agenda summary, the Texas Commission on Human Rights agenda consists of: Welcoming of guests; approval of 1996-1997 Legislative Appropriations Request; commissioner issues; and unfinished business

Contact: William M Hale, P.O Box 13493, Austin, Texas 78711, (512) 837-8534.

Filed: August 4, 1994, 9:48 a.m

TRD-9446096

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Texas Incentive and Productivity Commission

Friday, August 12, 1994, 10:00 a.m.

Clements Building, 15th and Lavaca, Fifth Floor, Committee Room #5

Austin

Revised Agenda

According to the agenda summary, the Texas Incentive and Productivity Commission agenda consists of:

Adding additional item to.

IV Consideration of 1994 agency applications for Productivity Bonus Program awards for approval

Office of Consumer Credit Commissioner

Contact: M. Elaine Powell, P.O. Box 12482, Austin, Texas 78711, (512) 475-2393.

Filed: August 2, 1994, 11:49 a.m.

TRD-9445994

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Texas Board of Professional Land Surveying

Friday, August 12, 1994, 9:00 a.m.

7701 North Lamar Boulevard, Suite 400

Austin

Revised Agenda

According to the complete agenda, the Board will approve the minutes of the previous meeting; welcome and install new board members; discuss and possibly assign committee appointments; introduce Frank Knapp; discuss and possibly act on active complaints and show cause actions; conduct interviews and possible action concerning Gerald Georges, Jr. and Houston Jalayer; hear presentation of committee reports; discuss and possibly act on Board Rule 661.121; discuss and possibly act on correspondence to and from the board; discuss old business and consider new business. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Sandy Smith at 451-9427 two work days prior to the meeting so that appropriate arrangements can be made.

Contact: Sandy Smith, 7701 North Lamar Boulevard, Suite 400, Austin, Texas 78752, (512) 452-9427.

Filed: August 2, 1994, 2:36 p.m.

TRD-9446005

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Texas Lottery Commission

Wednesday, August 10, 1994, 10:00 a.m.

6937 North IH-35, American Founders Building, First Floor Auditorium

Austin

According to the agenda summary, the Texas Lottery Commission agenda consists of: call to order; approval of minutes of June 27, 1994 meeting; consideration and possible proposal of rules relating to the administration of the Bingo Enabling Act for the following: Instant Bingo, 16 TAC §55.554; Seal Required on Disposable Bingo Cards, 16 TAC §55.552; criminal history reports, 16 TAC §55.542; report by the Executive Director on the financial status of the agency; consideration and possible proposal of rules relating to the administration of the State Lottery Act for the following: instant ticket vending machines and instant games where prizes are awarded to individual prize winners over a period of time; consideration and possible approval of amendment to the financial and drawings audit contracts between Coopers and Lybrand and the Texas Lottery Commis-

sion; consideration and possible action on a determination regarding the legal characterization of Lottery and Bingo Proceeds; executive session regarding the legal characterization of Lottery and Bingo proceeds and pending litigation; consideration and possible proposal of rules relating to the administration of the State Lottery Act and the Bingo Enabling Act, including rules relating to practice and procedures before the Texas Lottery Commission; may consider the status and possible entry of an order in any contested case if a Proposal for Decision has been received from the assigned Administrative Law Judge and the time period has lapsed for the filing of exceptions and replies, if any; may meet in Executive Session on any of the above listed items as authorized by the Texas Open Meetings Act; and adjournment

Contact: Michelle Guerrero, 6937 North IH-35, Austin, Texas 78752, (512) 371-4935

Filed: August 2, 1994, 3 40 p m

TRD-9446012

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Texas Natural Resource Conservation Commission

Thursday, August 11, 1994, 9:30 a.m.

TNRCC Office Complex, 12015 Park 35 Circle, North IH-35, Building E, Room 201-S

Austin

According to the agenda summary, the Water Well Drillers Advisory Council will discuss and take action on the following consider the approval of minutes of the May 26, 1994 meeting, consider whether to the following complaints for a formal hearing or take appropriate legal action City of Leander, Sonny Leggett, Scarley Bible, David Burleson, Claude Davis, Kenneth Faulkner, Paul Hampton, James Housden, Richard Keenan, John Kraatz, Kenneth Kramer, C W. Lusby, Danny Murchison, Doyle Murphee, Larry Nance, Reverence Ortwell, Jim Payne, Albert Posey, Troy Ratliff, Joe Sloan, Thomas Floyd Smith, Glenn Snook, Johnny Townsend, Joe Vernor, Henry Warren, and John Frye; consider certification of applicants for registration and driller trainer registration and consider staff reports.

Contact: Bonnie Rubey, P O. Box 13087, Austin, Texas 78711, (512) 239-0600.

Filed: August 2, 1994, 11:49 a.m.

TRD-9445988

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Public Utility Commission of Texas

Friday, August 5, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Emergency Meeting

According to the complete agenda, the Public Utility Commission of Texas will hold an emergency administrative meeting (executive session) at which the commissioners will discuss: El Paso Electric Company-Cause Number 92-10148FM (US Bankruptcy Court, Western District).

Reason for emergency: Motion filed by Central and Southwest Corporation and El Paso Electric Company in El Paso Electric Company's bankruptcy case and related bankruptcy court scheduling conference set for August 10, 1994 necessitate commission discussion and possible action.

Contact: John M Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: August 2, 1994, 11:49 a m

TRD-9445989

Tuesday, August 16, 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 13282· application of MFS Intelnet of Texas, Inc for a Certificate of Convenience and Necessity to operate as a local exchange company in the areas served by Southwestern Bell Telephone Company and GTE Southwest, Inc in Harris, Dallas, Collin, Tarrant, Bexar, Travis, and El Paso counties.

Contact: John M Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: August 4, 1994, 8 51 a m

TRD-9446091

Wednesday, March 15, 1995, 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 13126 inquiry of the General Counsel into the operation and management of the South Texas Nuclear Project.

Contact: John M Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 4, 1994, 8.51 a.m.

TRD-9446092

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Railroad Commission of Texas

Thursday, September 1, 1994, 2:00 p.m.

Hyatt Regency on the Riverwalk at Paseo del Alamo, 123 Losoya Street

San Antonio

According to the complete agenda, the Railroad Commission of Texas will hold a meeting on the state of the LP-Gas industry.

2:00-2:10 p.m.-Call to order. Introduction of Chairman James E. (Jim) Nugent, Commissioner Mary Scott Nabers and Commissioner Barry Williamson.

2:10-2:25 p.m.-Remarks by Chairman James E. (Jim) Nugent, Commissioner Mary Scott Nabers and Commissioner Barry Williamson.

2:25-4:30 p m.-Speakers'/presenters' comments to the commission.

4:30 p.m approximately-Closing remarks by Chairman James E. Nugent (Jim) Nugent, Commissioner Mary Scott Nabers and Commissioner Barry Williamson Adjournment.

Contact: Thomas D Petru, P O Box 12967, Austin, Texas 78711-2967, (512) 463-6949

Filed: August 1, 1994, 3·57 p m

TRD-9445950

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Texas National Research Laboratory Commission

Monday, August 1, 1994, 1:30 p.m. (Rescheduled from July 29, 1994.)

InfoMart Exhibition Hall, Room 7007, Oak Lawn and Stemmons Freeway

Dallas

Emergency Meeting

According to the agenda summary, the Texas National Research Laboratory Commission agenda consists of.

Convene joint meeting of commission and SSC Advisory Committee

Administrative actions

Welcome and introduction of special guests

Chairman's reports-Shelton Smith and Jess Hay

Special presentations

Action items. Consideration, and action as may be appropriate, regarding the settlement between Texas and DOE; and consideration, and action as may be appropriate, regarding the retention of outside legal counsel to continue settlement negotiations between Texas and DOE

Public comment

Adjourn

Reason for emergency: Urgent necessity to meet publicly and act upon matters relating to TX/DOE settlement.

Contact: Karen L. Chrestay, 2275 North Highway 77, Waxahachie, Texas 75165, (214) 708-3100.

Filed: July 29, 1994, 11:29 a.m

TRD-9445865

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Sunset Advisory Commission

Tuesday, August 16, 1994, 9:00 a.m.

Room E1 036, Capitol Extension Building

Austin

According to the complete agenda, the Sunset Advisory Commission will call to order, approval of minutes; presentation of staff reports and public testimony on Texas Workers' Compensation Insurance Fund, Texas Workers' Compensation Commission, and Texas Workers' Compensation Research Center, decisions on the Texas Historical Commission/Antiquities Committee, next meeting date, and adjourn

Contact: Susan Kinney, 1400 North Congress Avenue, Capitol Extension, Room E2 002, Austin, Texas 78701, (512) 463-1300

Filed: August 3, 1994, 10 57 a m

TRD-9446060

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Texas Sustainable Energy Development Council

Friday, August 12, 1994, 7:30 a.m.

1000 Red River, Teacher Retirement System Cafeteria

Austin

According to the complete agenda, the Texas Sustainable Energy Development Council agenda consists of

I Call to order

II Discuss administrative matters

III Discuss strategic planning

IV Adjourn

Contact: Charlotte Banks, 1700 North Congress Avenue, Room 850, Austin, Texas 78701, (512) 463-1745

Filed: August 2, 1994, 3.36 p m

TRD-9446009

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Teacher Retirement System of Texas

Wednesday, August 10, 1994, 10:00 a.m.

1000 Red River, Room 514 E

Austin

According to the complete agenda, the Ethics Policy Committee will discuss review of Teacher Retirement System of Texas ethics policy and discussion of Legislation affecting ethics policy.

Contact: Mary Godzik, 1000 Red River, Austin, Texas 78701-2698, (512) 370-0506

Filed: August 2, 1994, 2:30 p.m

TRD-9446004

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Texas Department of Transportation

Thursday, August 11, 1994, 9:00 a.m.

815 Brazos, Suite 302, Brazos Building

Austin

According to the agenda summary, the Motor Vehicle Board will call to order, roll call Approval of minutes of Motor Vehicle Board meeting on June 23, 1994 Argument on proposal for decision Agreed orders Orders of dismissal Consideration of revised proposed new Texas Motor Vehicle Board Rule of Practice and Procedure §103 13 Other a Review of litigation status report; b Review of consumer complaint recap report including decisions made by examiners, division director and board members; c Review of Article 6686 (P-number) contested cases, d Division budget status Adjournment

Contact: Brett Bray, 815 Brazos #300, Austin, Texas 78701, (512) 476-3587

Filed: August 3, 1994, 11 57 a m

TRD-9446064

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Texas Turnpike Authority

Thursday, August 11, 1994, 1:30 p.m.

3015 Raleigh Street

Dallas

According to the complete agenda, the Sound Committee agenda consists of

Roll call of committee members

Recognition of other directors present

1 Discussion of public response to meeting of July 19, 1994

2 Executive Session-pursuant to Article 6252-17 Vernon's Revised Civil Statutes. §2(f)-Briefing by Texas Turnpike Authority staff, consultants, and attorneys on issues and legal implications of retrofitting the Dallas North Tollway with sound mitigation devices

3. Consider request of University Park to join TTA in sound mitigation studies and policy development possible action

4. Discussion of DNT sound mitigation issues

5. Progress report on continuing sound studies

6. Receipt of public comments and questions

7. Consider recommendation on adoption of a DNT screen wall policy

8. Consider recommendation of approval of Supplemental Agreement Number 13 to Contract DNT 78A

Adjournment

Contact: Jimmie Newton, 3015 Raleigh Street, Dallas, Texas 75219, (214) 522-6200

Filed: August 3, 1994, 3 30 p m

TRD-9446072

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The University of Texas Health Center at Tyler

Friday, August 12, 1994, 11:30 a.m.

Highway 271 at Highway 155, Room 116

Tyler

According to the complete agenda, the Animal Research Committee agenda consists of

Approval of minutes

Chairman's report

Veterinarian's report

Old business Protocol #131 Training Laboratory

New business

Protocol #132 Blisters

Protocol #133 T-14 Skin Tumor

Protocol #134 Pathways of Fibrin Turnover

Addenda #31Z Adding personnel

Addenda #31AA Extending duration

Addenda #31BB Immunolocalization

Addenda #87E The effect of age on maternal mediation

Adjournment

Contact: Joe Godwin, P O Box 2003, Tyler, Texas 75710, (903) 877-7756

Filed: August 2, 1994, 2.17 p m

TRD-9445997

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Texas Board of Veterinary Medical Examiners

Monday, September 19, 1994, 9:00 a.m.

Room 106, Reagan Building, 105 West 15th Street

Austin

According to the agenda summary, the Texas Board of Veterinary Medical Examiners will hold a public hearing on Rule 22 TAC §573.10 concerning Supervision of Lay Personnel, and more specifically the rule deals with guidelines for animal health care tasks and supervision levels for support staff, i.e. veterinary technicians.

This hearing will be limited to comments on this rule.

Persons requiring reasonable accommodations are requested to contact Judy Smith, 1946 South IH-35, Suite 306, Austin, Texas 78704, (512) 447-1183 or TDD 1-800-735-2989 within 72 hours of the meeting to make appropriate arrangements.

Contact: Ron Allen, 1946 South IH-35, #306, Austin, Texas 78704, (512) 447-1183.

Filed: August 3, 1994, 1:49 p.m.

TRD-9446070

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Regional Meetings

Meetings Filed August 2, 1994

The Texas Automobile Insurance Plan Association Governing Committee will meet at the Omni Austin Hotel, 700 San Jacinto, Austin, August 11, 1994, at 9:30 a.m. Information may be obtained from Marilyn Kinsey, P.O. Box 18447, Austin, Texas 78760-8447.

The Canyon Regional Water Authority Board met at the Guadalupe Fire Training Facility, 850 Lakeside Pass Drive, New Braunfels, August 8, 1994, at 7:00 p.m. Information may be obtained from Cathy C. Talcott, Route 2, Box 654 W, New Braunfels, Texas 78130-9579. TRD-9445998.

The Hansford Appraisal District Board will meet at 709 West Seventh Street, Spearman, August 10, 1994, at 9:00 a.m. Information may be obtained from Cindy Avila, P.O. Box 519, Spearman, Texas 79081-0519, (806) 659-5575. TRD-9446014.

The High Plains Underground Water Conservation District Number One Board of Directors will meet in the Conference Room, 2930 Avenue Q, Lubbock, August 9, 1994, at 10:00 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-9446013.

The Houston-Galveston Area Council Transportation Department will meet in Room A, Second Floor, 3555 Timmons, Houston, August 11, 1994, at 3:30 p.m. Information may be obtained from Kathy Lang, P.O. Box 22777, Houston, Texas 77227, (713) 993-4501. TRD-9446002

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Meetings Filed August 3, 1994

The Austin Transportation Study Policy Advisory Committee met at 26th and Red River, Joe C. Thompson Conference Center, Room 2.102, Austin, August 8, 1994, at 6:00 p.m. Information may be obtained from Michael R. Aulick, P.O Box 1088, Austin, Texas 78767, (512) 499-2275. TRD-9446081.

The Bexar-Medina-Atascosa Counties Water Control and Improvement District Number One Board of Directors met at 226 Highway 132, Natalia, August 8, 1994, at 8:00 a.m. Information may be obtained from John W Ward III, P.O Box 170, Natalia, Texas 78059, (210) 663-2132 TRD-9446044.

The Blanco County Appraisal District Board of Directors will meet at Avenue G and Seventh Street, Johnson City August 9, 1994, at 5:00 p.m. Information may be obtained from Hollis Boatright, P.O Box 338, Johnson City, Texas 78636, (210) 868-4013 TRD-9446073

The Cass County Appraisal District Board of Directors met at 502 North Main Street, Linden, August 8, 1994, at 7:00 p.m. Information may be obtained from Janelle Clements, P.O Box 1150, Linden, Texas 75563, (903) 756-7545 TRD-9446075

The Colorado River Municipal Water District Board of Directors will meet at 400 East 24th Street, Big Spring, August 18, 1994, at 9:00 a.m. Information may be obtained from O. H Ivie, Box 869, Big Spring, Texas 79720, (915) 267-6341 TRD-9446078.

The Education Service Center, Region XX Board of Directors will meet at 1314 Hines Avenue, San Antonio, August 17, 1994, at 2.00 p.m. Information may be obtained from Judy M Castleberry, 1314 Hines Avenue, San Antonio, Texas 78208-1899, (210) 299-2471 TRD-9446063.

The Gregg County Appraisal District Board of Directors will meet at 2010 Gilmer Road, Longview, August 9, 1994, at 11:00 a.m. Information may be obtained from William T. Carroll, 2010 Gilmer Road, Longview, Texas 75604, (903) 759-0015. TRD-9446082.

The Lower Rio Grande Valley Development Council Hidalgo County Metropolitan Planning Organization will meet at the University of Texas Pan American, Business Administration Building, Auditorium, Room 110, 1201 University Drive, Edinburg, August 16, 1994, at 6:30 p.m. Information may be obtained from Edward L. Molitor, 4900 North 23rd, Street, McAllen, Texas, (210) 682-3481. TRD-9446032.

The Nueces River Authority Board of Directors will meet at the Plaza San Antonio Hotel, 555 South Alamo Street, San Antonio, August 9, 1994, at 10:00 a.m. Information may be obtained from Con Mims, P.O Box 349, Uvalde, Texas 78802-0349, (210) 278-6810. TRD-9446045.

The Region III Education Service Center Board of Directors (Joint Meeting with Regional Advisory Committee) will meet at the Holiday Inn, 2705 Houston Highway, Victoria, August 10, 1994, at 10:30 a.m. Information may be obtained from Julius D Cano, 1905 Leary Lane, Victoria, Texas 77901, (512) 573-0731. TRD-9446065.

The Region III Education Service Center Board of Directors will meet at 1905 Leary Lane, Victoria, August 10, 1994, at 1:30 p.m. Information may be obtained from Julius D Cano, 1905 Leary Lane, Victoria, Texas 77901, (512) 573-0731 TRD-9446066

The San Antonio-Bexar County Metropolitan Planning Organization Technical Advisory Committee will meet at the Metropolitan Planning Organization, Conference Room, 434 South Main, Suite 205, San Antonio, August 9, 1994, at 9.00 a.m. Information may be obtained from Charlotte A Roszelle, 434 South Main, Suite 205, San Antonio, Texas 78304, (210) 227-8651 TRD-9446090

The South Franklin Water Supply Corporation Board of Directors will meet at the Office of South Franklin Water Supply Corporation, Highway 115, South of Mount Vernon, August 9, 1994, at 7:00 p.m. Information may be obtained from Richard Zachary, P.O Box 591, Mount Vernon, Texas 75457, (903) 860-3400 TRD-9446033

The Wood County Appraisal District Board of Directors will meet in the Conference Room, 217 North Main, Quitman, August 11, 1994, at 1.30 p.m. Information may be obtained from W Carson Wages or Lou Brooke, P.O. Box 518, Quitman, Texas 75783-0518, (903) 763-4891 TRD-9446043

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Meetings Filed August 4, 1994

The Brown County Appraisal District Board of Directors met at 403 Fisk Avenue, Brownwood, August 8, 1994, at 7:00 p.m. Information may be obtained from Doran E Lemke, 403 Fisk Avenue, Brownwood, Texas 76801, (915) 643-5676 TRD-9446094

The Education Service Center, Region VII Board of Directors will meet at Elizabeth's New Orleans Restaurant, 2344 Old Longview Road, Henderson, August 11, 1994, at Noon. Information may be obtained from Eddie J. Little, 818 East Main, Kilgore, Texas 75662, (903) 984-2071. TRD-9446093.

The El Oso Water Supply Corporation Board of Directors will meet at FM 99, Karnes City, August 9, 1994, at 7:30 p.m. Information may be obtained from Judith Zimmermann, P.O. Box 309, Karnes City, Texas 78118, (210) 780-3539. TRD-9446100.

The Grand Parkway Association will meet at 5757 Woodway, Suite 140 East Wing, Houston, August 11, 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-9446097.

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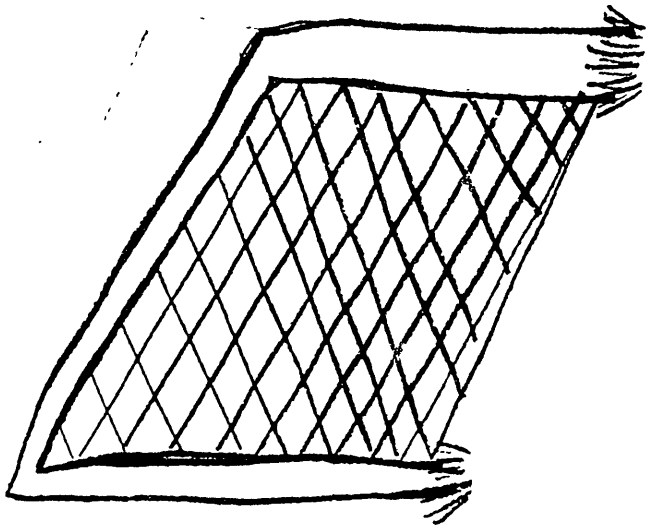

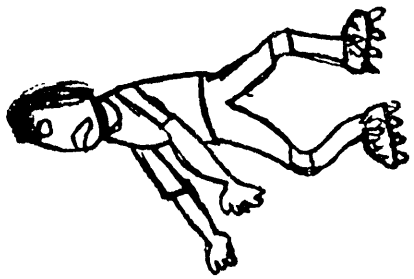

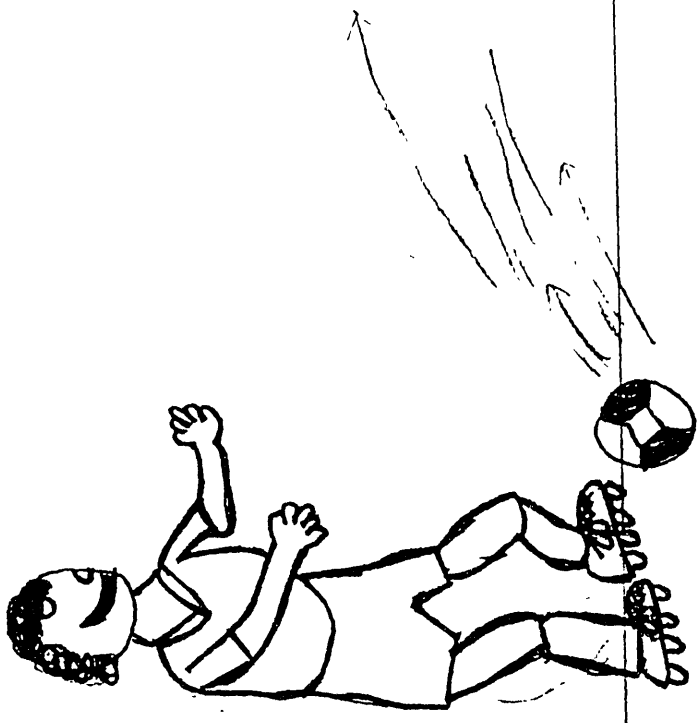

KAILA WYATT
5th GRADE
EHRHARDT ELEM.
KLEIN I.S.D.
HOUSTON

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.

Comptroller of Public Accounts

Local Sales Tax Changes

The 1.5% city sales tax will be ABOLISHED effective October 1, 1994, in the City of Fort Gates (Coryell County), City Code 2050045, New Rate .00000, Combined Rate 0.06750.

The 1.0% city sales tax will become effective October 1, 1994, in the City of Thorntonville (Ward County), City Code 2238068, New Rate 0.01000, Combined Rate 0.07250.

An additional 0.125% sales tax for improving and promoting economic and industrial development will become effective October 1, 1994, in the City of Navasota* (Grimes County), City Code 2093017, New Rate 0.01500, Combined Rate 0.08250.

An additonal 0.25% sales tax for improving and promoting economic and industrial development will become effective October 1, 1994, in the following cities 026-Local Sales Tax Changes

CITY NAME	CITY CODE	NEW RATE	COMBINED RATE
*Center (Shelby County)	2210024	0.01500	0.07750
*Fort Stockton (Pecos County)	2186015	0.01500	0.07750
*League City (Galveston County)	2084063	0.01750	0.08000
*Seguin (Guadalupe County)	2094016	0.01500	0.08250

An additional 0.5% sales tax for improving and promoting economic and industrial development will become effective October 1, 1994, in the following cities 026-Local Sales Tax Changes

CITY NAME	CITY CODE	NEW RATE	COMBINED RATE
*Bay City (Matagorda County)	2158028	0.02000	0.08250
Booker (Lipscomb County)	2148021	0.01500	0.07750
Booker (Ochiltree County)	2148021	0.01500	0.07750
Bridgeport (Wise County)	2249056	0.01500	0.08250
Celeste (Hunt County)	2116047	0.01500	0.08250
Cotulla (La Salle County)	2142018	0.01500	0.07750
Encinal (La Salle County)	2142027	0.01500	0.07750
*Forney (Kaufman County)	2129051	0.02000	0.08250
Frisco (Collin County)	2043036	0.02000	0.08250
Frisco (Denton County)	2043036	0.02000	0.08250
Haskell (Haskell County)	2104014	0.02000	0.08250

Hill Country Vil (Bexar County)	2015085	0.01500	0.07750
Junction (Kimble County)	2134018	0.01500	0.07750
Kaufman (Kaufman County)	2129024	0.02000	0.08250
*La Joya (Hidalgo County)	2108145	0.02000	0.08250
Linden (Cass County)	2034037	0.01500	0.07750
*Perryton (Ochiltree County)	2179014	0.02000	0.08250
*Refugio (Refugio County)	2196013	0.02000	0.08250
*Richmond (Fort Bend County)	2079042	0.02000	0.08250
*Sour Lake (Hardin County)	2100036	0.02000	0.08250
Strawn (Palo Pinto County)	2182028	0.01500	0.08250
Venus (Ellis County)	2126063	0.01500	0.07750
Venus (Johnson County)	2126063	0.01500	0.07750
Watauga (Tarrant County)	2220282	0.01500	0.07750

An additional 1.0% sales tax for improving and promoting economic and industrial development will become effective October 1, 1994, in the City of Newton (Newton County), City Code 2176017, New Rate 0.02000, Combined Rate 0. 08250.

An additional 0.25% sales tax for improving and promoting economic and industrial development will become effective October 1, 1994, and the additional 0.5% sales tax for property tax relief will be reduced to 0.25% effective October 1, 1994, in the City of Cuney (Cherokee County), City Code 2037061, New Rate 0.01500, Combined Rate 0.08250. There will be no change in the city rate nor in the combined rate

The additional 0.5% sales tax for improving and promoting economic and industrial development as permitted under Article 5190.6, §4A, will be replaced with an additional 0.5% sales tax for improving and promoting economic and industrial development as permitted under Article 5190.6, §4B, in the City of Teague (Freestone County), City Code 2081020, New Rate 0.02000, Combined Rate 0.08250. This change will become effective October 1, 1994. There will be no change in the city rate nor in the combined rate.

An additional 0.25% sales tax for property tax relief will become effective October 1, 1994, in the following cities. 026-Local Sales Tax Changes

CITY NAME	CITY CODE	NEW RATE	COMBINED RATE
*Center (Shelby County)	2210024	0.15000	0.07750
*Fort Stockton (Pecos County)	2186015	0.01500	0.07750
Graham (Young County)	2252014	0.01500	0.08250
*Seguin (Guadalupe County)	2094016	0.01500	0.08250

An additional 0.375% sales tax for property tax relief will become effective October 1, 1994, in the City of Navasota* (Grimes County), City Code 2093017, New Rate 0.01500, Combined Rate 0.08250.

An additional 0.5% sales tax for property tax relief will become effective October 1, 1994, in the following cities. 026-Local Sales Tax Changes

CITY NAME	CITY CODE	NEW RATE	COMBINED RATE
Arcola (Fort Bend County)	2079131	0.15000	0.07750
*Bay City (Matagorda County)	2158028	0.02000	0.08250
Castroville (Medina County)	2163030	0.01500	0.08250
Denton (Denton County)	2061024	0.01500	0.07750
*Forney (Kaufman County)	2129051	0.02000	0.08250
Freer (Duval County)	2066010	0.01500	0.07750
Horizon City (El Paso County)	2071068	0.01500	0.08250
Jacksboro (Jack County)	2119017	0.01500	0.08250
Jasper (Jasper County)	2121022	0.02000	0.08250
LaCoste (Medina County)	2163058	0.01500	0.08250
*La Joya (Hidalgo County)	2108145	0.02000	0.08250
*League City (Galveston County)	2084063	0.01750	0.08000
Mabank (Henderson County)	2129015	0.01500	0.07750
Mabank (Kaufman County)	2129015	0.01500	0.07750
Malakoff (Henderson County)	2107020	0.01500	0.07750
Palacios (Matagorda County)	2158019	0.02000	0.08250
*Perryton (Ochiltree County)	2179014	0.02000	0.08250
Ranger (Eastland County)	2067028	0.02000	0.08250
*Refugio (Refugio County)	2196013	0.02000	0.08250
*Richmond (Fort Bend County)	2079042	0.02000	0.08250
Rio Grande City (Starr County)	2214020	0.02000	0.08250
Saginaw (Tarrant County)	2220139	0.01500	0.07750
San Diego (Duval County)	2066029	0.01500	0.07750
San Diego (Jim Wells County)	2066029	0.01500	0.08250
Seagoville (Dallas County)	2057208	0.01500	0.07750
*Sour Lake (Hardin County)	2100036	0.02000	0.08250
Stafford (Fort Bend County)	2079033	0.01500	0.07750
Stafford (Harris County)	2079033	0.01500	0.07750
Taylor (Williamson County)	2246013	0.02000	0.08250
West (McLennan County)	2161014	0.01500	0.08250

A 0.5% special purpose district sales tax will become effective October 1, 1994, in the following special purpose districts. 026-Local Sales Tax Changes

SPD NAME	SPD CODE	NEW RATE	COMBINED RATE
Delta County Emergency Services District	5060506	0.00500	SEE NOTE 1
Rockdale Hospital District	5166509	0.00500	SEE NOTE 2

NOTE 1: The boundaries of the Delta County Emergency Services District are coterminous with the boundaries of Delta County.

The Cities of Cooper and Pecan Gap are currently collect-

ing a 1.0% city sales tax. The combined rate in the City of Cooper and the portion of the City of Pecan Gap that is in Delta County will be 0.08250. The combined rate in the portion of the City of Pecan Gap that is in Fannin County will remain at 0. 07750.

The combined rate for the seven cities in the county that have not adopted city sales tax and for the unincorporated areas of Delta County will be 0. 07250.

NOTE 2: The boundaries of the Rockdale Hospital District are coterminous with the boundaries of the City of Rockdale. The combined rate in the City of Rockdale will be 0.08250.

A 1.0% special purpose district sales tax for the Town Center Improvement District of Montgomery County will become effective October 1, 1994. The boundaries of the Town Center Improvement District ARE NOT the same boundaries as Montgomery County. 026-Local Sales Tax Changes

SPD NAME	SPD CODE	NEW RATE	COMBINED RATE
Town Center Improvement District	5170503	0.01000	SEE NOTE 3

NOTE 3: The Town Center Improvement District is located within the unincorporated area of Montgomery County known as The Woodlands. Zip codes 77380 and 77387 are partially within this special purpose district. You may call the local field office at 713/821-0162 for information regarding whether a specific address is located within the boundaries of this special purpose district.

*These cities have a rate increase for economic and industrial development and a rate increase for property tax relief. Both rate increases will become effective October 1, 1994. The new rate and the combined rate include both increases.

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

TRD-9445993 Martin Cherry
Chief, General Law
Comptroller of Public Accounts

Filed: August 2, 1994

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Interagency Council on Early Childhood Intervention

Request for Proposals for Internal Auditing Services

The Interagency Council on Early Childhood Intervention (ECI) is soliciting proposals from Certified Public Accountants or Certified Internal Auditors with at least three years of auditing experience to provide internal auditing services to ECI. Performance under a contract pursuant to this request for proposal will begin no later than October 1, 1994 and will continue through August 31, 1995. ECI desires services which represent the best combination of price and quality. All proposals to be considered must be received at ECI by 5:00 p.m. central standard time on August 31, 1994 or postmarked by August 30, 1994.

For a copy of the proposal instructions and scope of services, please contact Richard Parker at (512) 502-4930. Funding is available contingent upon continued state and federal legislative appropriations.

Proposals should be mailed to: Interagency Council on Early Childhood Intervention, 1100 West 49th Street, Austin, Texas 78756-3199.

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

TRD-9446041 Tammy Tiner, Ph.D.
Chairperson
Interagency Council on Early Childhood Intervention

Filed: August 3, 1994

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Texas Education Agency

Correction of Error

The Texas Education Agency submitted a Request for Proposal, which appeared in the July 26, 1994, issue of the *Texas Register* (19 TexReg .5774).

In the first sentence of the RFP, "§32.33" should read "32.22". In the second sentence of the section titled Description, the word "discover" should be "discovery". Finally, the concluding sentence of the section titled Requesting the RFP was omitted. The sentence should read, "Please refer to the RFP number in your request".

Additionally, in the same issue of the *Texas Register* (19 TexReg 5775), an error as submitted appears in RFP #701-94-033. The authorizing signature was listed as Criss Cloudt, Associate Commissioner for Policy Planning and Evaluation. The correct signature is "Lionel R. Meno, Commissioner of Education".

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Notice of Public Hearings

The State Board of Education (SBOE) Committee on Long-Range Planning will hold a series of public hearings to obtain input on the development of the Long-Range Plan for Public Education, 1995-1999. The hearings will be held at the following times and places listed. Hearings may adjourn before the stated ending time if all who pre-registered or registered on-site have been called to give testimony.

Hearings will be held at the following locations:

Thursday, August 18, 1994, from 3:00 p.m. until 5:00 p.m. and from 6:30 p.m. until 8:30 p m., at Region 2 Education Service Center, 209 North Water Street, Room 2D, Corpus Christi, Texas;

Tuesday, August 23, 1994, from 3:00 p.m. until 5:00 p.m. and from 6:30 p.m. until 8 30 p.m., at Region 13 Education Service Center, 5701 Springdale Road, Rooms 202 and 203, Austin, Texas;

Thursday, August 25, 1994, from 3:00 p.m. until 5:00 p.m. and from 6:30 p.m. until 8.30 p m., at Region 17 Education Service Center, 1111 West Loop 289, Room 229 North, Lubbock, Texas; and

Tuesday, August 30, 1994, from 3.00 p.m. until 5:00 p m. and from 6:30 p.m. until 8:30 p.m , at Region 5 Education Service Center, 2295 Delaware Street, Rooms A and B, Beaumont, Texas.

The State Board of Education periodically reviews the educational needs of the state, establishes goals for Texas public education, and adopts and promotes a long-range plan for meeting those goals The goals developed for this Long-Range Plan will carry Texas public education to the next century. The hearings are conducted to gather comment about the educational needs of the state, proposed goals for Texas public education, and how those goals can best be achieved.

In order to allow the committee to hear from as many groups as possible, professional associations and education advocacy organizations are encouraged to coordinate proposals within their memberships and make one presentation on behalf of the group.

Individuals desiring to present testimony to the Committee on Long-Range Planning are asked to register for the hearing by calling the Texas Education Agency Office of Policy Planning and Evaluation, at (512) 463-9701, by 5:00 p. m. on the last working day prior to the public hearing at which they wish to speak To accommodate as many speakers as possible, individuals are asked to limit their testimony to the committee to three minutes. Speakers will be asked to testify in the order in which their calls were received

Individuals may also register on-site the day of the hearing. These individuals will be allowed to give testimony on a first-come, first-served basis following those who have pre-registered.

Speakers needing translation services or other special accommodations should notify the Office of Policy Planning and Evaluation by 5.00 p m at least five working days prior to the public hearing at which they wish to speak

Speakers are encouraged to provide 15 written copies of their testimony for distribution to the committee Written information for the committee can be sent to the Office of Policy Planning and Evaluation at any time

Additional information concerning these hearings may be obtained from the Division of Policy Planning and Evaluation, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, or at (512) 463-9701.

Issued in Austin, Texas, on August 2, 1994

TRD-9445995 Lionel R Meno
Commissioner of Education
Texas Education Agency

Filed August 2, 1994

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Texas Department of Health

Designation of Sites Serving Medically Underserved Populations

The Texas Department of Health (department) is required under Texas Civil Statutes, Article 4495b, §3.06, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of its designations in the Texas Register and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as a site serving a medically underserved population Texas Tech University Health Sciences Center Department of Pediatrics clinic, located at 1400 Coulter, Amarillo (Potter County), Texas. Designation is based on proven eligibility as a site serving a disproportionate number of clients eligible for federal, state or locally funded health care programs.

Oral and written comments on this designation may be directed to Dora McDonald, Chief, Bureau of State Health Data and Policy Analysis, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261. Comments will be accepted for 30 days from the date of this notice

Issued in Austin, Texas, on August 3, 1994

TRD-9446036 Susan K Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Filed: August 2, 1994

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Notice of Emergency Cease and Desist Order

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Dentist at Cypresswood Court (registrant-R20831) of Spring to cease and desist using the Trophy dental x-ray unit (Serial Number E975) 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 August 3, 1994

TRD-9446040 Susan K Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Filed August 3, 1994

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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: Bart N. Nichols, D.D.S., San Antonio, R14009; Stonie R. Cotten, M.D., Dallas, R02079; Douglas R. Stark, D.V.M., Spring, R09724; Steve L. Burch, D.D.S., P.C., Allen, R12908; Gary W. Whitaker, D.C., San Antonio, R13034; Mark A. Frye, D.P.M., Huntsville, R13089; Rodney B. Brand, D.C., Fort Worth, R13156; Almeda Clinic, Houston, R14801, Charles G. Holmsten, M.D. & Assoc., P.A., Houston, R14965; Garland D. Glenn, II, D.C., Tyler, R14972.

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 August 3, 1994.

TRD-9446037 Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Filed: August 3, 1994

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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: Mike Rathman Logging Company, Wichita Falls, L01700; Baytown Radiology Associates, Baytown, L01904; Physicians & Surgeons Hospital, Midland, L03386.

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 August 3, 1994.

TRD-9446038 Susan K Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Filed: August 3, 1994

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation

Notice is hereby given that the Bureau of Radiation Control (bureau) issued a notice of violation and proposal to assess an administrative penalty to Blazer Inspection (licensee-L04619) of Texas City. A penalty of $10,000 is proposed to be assessed the company for violations of the Texas Regulations for Control of Radiation. The violations resulted in a radiation injury to a radiation worker, and the licensee delayed obtaining the appropriate guidance and assistance for the injured employee.

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 August 3, 1994.

TRD-9446039 Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Filed: August 3, 1994

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Texas Department of Human Services

Request For Proposal for Nutrition Education Contract Trainers

The Texas Department of Human Services (TDHS) is inviting proposals for nutrition education contract trainers.

Description of Services: Dietitians are needed to conduct nutrition education workshops and presentations, present exhibits, evaluate materials, attend training sessions, and assist in the development of materials for the Nutrition Education and Training program. Services will be required

on a variable basis depending on the number and type of workshops, presentations and exhibits planned for each dietitian's area.

Geographical Area: Dietitians are being actively sought for the Dallas/Fort Worth and Houston areas.

Closing Date: Proposals must be received by 5:00 p.m., September 8, 1994.

Term of Contract: The contract period is October 1, 1994-September 30, 1995.

Procedures of Selection: A screening form will be used to select applicants. Applicants that are considered for selection will be scheduled for an interview.

Contact Person: For more information, please call or write Brenda Miller (512) 467-5893 or Yvonne Buonamici (512) 467-5895, NET Program MC Y-906, P.O. Box 149030, Austin, Texas 78714-9030. RFP packets are now available.

Issued in Austin, Texas on August 3, 1994.

TRD-9446059 Nanacy Murphy
Section Manager for Media and Policy Services
Texas Department of Human Services

Filed: August 3, 1994

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Texas Department of Insurance

Exemption to Membership in the Texas Workers Compensation Insurance Facility Applications

The following companies have filed affidavits with the Texas Department of Insurance to continue their exemption to membership in the Texas Workers' Compensation Insurance Facility through August 31, 1995.

Affidavits have been received from: Petroleum Casualty Company, First Employees Insurance Company, Highlands Casualty Company, British American Insurance Company, Montfort Insurance Company, Sunbelt Insurance Company, Texas Hospital Insurance Exchange, Financial Casualty & Surety, Inc., and American Risk Funding Insurance Company.

Any objections to the continuation of exemption to membership in the Texas Workers' Compensation Insurance Facility for these nine companies must be filed within 15 days after this notice was filed with the Secretary of State, addressed to the attention of Nancy Moore, Deputy Commissioner Workers' Compensation, Texas Department of Insurance, Mail Code 202-1A, P.O. Box 149092, Austin, Texas 78714-9092.

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

TRD-9446052 D. J. Powers
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: August 3, 1994

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Notice

The Commissioner of Insurance will consider approval of the proposed amendments to the Bylaws of the Texas Workers' Compensation Insurance Facility 30 days after publication of this notice in the Texas Register pursuant to Article 5.76-2, §2.04. The proposed amendments to the bylaws have been approved by the governing Committee of the Facility.

The proposed amendments are required due to the changes to the Insurance Code enacted during the 73rd Legislature, 1993. For example, all references to the "State Board of Insurance" are proposed to be amended to read "Commissioner of Insurance" or "Texas Department of Insurance", as appropriate. Another proposed amendment allows the continuation of the term of a member of the Facility's governing Committee until a successor for that member's position has been appointed and takes office. Another proposed amendment redefines what constitutes a quorum at a meeting of the Facility's Governing Committee.

Copies of the full text of the proposals are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadulupe Street, Austin, Texas 78714-9104. For further information or to request copies, please contact Angie Arizpe at (512) 322-4147 (refer to Reference Number W-0794-16).

Comments on the proposal must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to the Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Nancy Moore, Deputy Commissioner Workers' Compensation, Texas Department of Insurance, P.O. Box 149092, MC 202-1A, Austin, Texas 78714-9092.

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

TRD-9446053 D. J. Powers
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: August 3, 1994

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Executive and Legislative Budget Office

Joint Budget Hearing Schedule–Appropriations Requests for the 1996-1997 Biennium (For the period of August 8-12, 1994)

The staff of the Governor's Office of Budget and Planning and the staff of the Legislative Budget Board will hear the budget requests for 1996-1997 from the following state agencies at the following dates, times and places.

Persons interested in attending should call to confirm the dates, times, and places in advance, as rescheduling sometimes occurs.

Interested parties should contact Don Green at the Legislative Budget Board, at (512) 463-1200, for further information.

Board of Private Investigators and Private Security Agencies: August 9, 1994; 2:30 p.m.; Room 103, John H. Reagan Bldg., 105 West 15th Street, Austin.

Board of Vocational Nurse Examiners: August 10, 1994; 3:30 p.m.; Room 101, John H. Reagan Bldg., 105 West 15th Street, Austin.

Board of Nurse Examiners:August 11, 1994; 9.00 a.m.; Room 104, John H. Reagan Bldg., 105 West 15th Street, Austin.

Fire Fighters Pension Commissioner August 11, 1994, 9 30 a m , Room 103, John H. Reagan Bldg., 105 West 15th Street, Austin

Issued in Austin, Texas, on August 1, 1994

TRD-9445957 Don Green
Special Assistant
Legislative Budget Board

Filed August 1, 1994

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Texas Natural Resource Conservation Commission

Advertisement for PST Contracts

The Storage Tank Contracts Section of the Petroleum Storage Tank (PST) Division of the Texas Natural Resource Conservation Commission (TNRCC) will be mailing out a revised Request For Qualification (RFQ) Package seeking Statements of Qualifications (SOQs) from firms with expertise in the expedited investigation and assessment of LPST sites. This RFQ supersedes the previous RFQ for Regional Expedited Site Assessment (ESA) Contracts The new SOQs should emphasize work done in Expedited Complete Plume Delineation (ECPD). SOQs will be due back to the TNRCC 21 days from the mailing date.

Contracts will be awarded on a regional bases for groups of sites under the authority granted to the TNRCC by the Texas Health and Safety Code and the Texas Water Code. The contracts will be awarded using the two-step bid process The first step is the RFQ Companies whose SOQ's pass the review process will receive Invitations For Bids (IFBs) for expedited investigation and assessment at specific sites

Also forthcoming, in the near future, the TNRCC will be seeking SOQs and bids from firms with expertise in emergency response to releases from PSTs and from firms with expertise in monitoring, reporting, and evaluation of LPST sites

Later in the year, the TNRCC will be seeking SOQs from firms with expertise in remedial action planning and engineering design of remediation systems for LPST sites. The resulting contract for these services will be procured using the selection and negotiation process as required by the Professional Services Procurement Act

These RFQ packages will be mailed automatically to any company listed under Class 925 or 926 on the General Services Commission bid list. If you would like to receive any of the above mentioned RFQ packages, and you are not on the GSC bid list, you may receive one by calling in or having your request to Tonia Patterson at (512) 239-2120 or FAX (512) 293-2177

Issued in Austin, Texas, on August 3, 1994

TRD-9446016 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed. August 2, 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 Annotated, §382 017 (Vernon's 1992); Texas Government Code Annotated, Subchapter B, Chapter 2001 (Vernon's 1993); 40 Code of Federal Regulations, §51.102 of the U.S. 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 proposed revision to the SIP

The Federal Clean Air Act Amendments of 1990 require a Post-96 Rate-of-Progress SIP revision submittal and accompanying rules to be submitted by November 15, 1994 This submittal must contain an Attainment Demonstration based on Urban Airshed Modeling. Additionally, the revision must demonstrate how the Houston/ Galveston (H/GA) and Beaumont/Port Arthur (B/PA) nonattainment areas intend to achieve a 3 0% per year reduction of volatile organic compounds and/or nitrogen oxides until the year 1999 for B/PA or 2007 for H/GA, and additional reductions as needed to demonstrate modeled attainment The plan must also carry an additional 3 0% of contingency measures to be implemented if the nonattainment area fails to meet a deadline

Public hearings on the proposal will be held on September 1, 1994, at 7.00 p m at the John Gray Institute, 855 Florida Avenue, Beaumont, and on September 2, 1994 at 12 00 p m at the Houston-Galveston Area Council, Conference Room A, 3555 Timmons Lane, Houston Individuals may present oral statements when called upon in order of registration Open discussion within the audience will not occur during the hearings; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearings

Written comments not presented at the hearings may be submitted to the TNRCC central office in Austin through September 7, 1994. Material received by the TNRCC Regulation Development Section by 4 00 p.m on that date 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 Air Program regional offices. Please mail written comments to Liz Johnson-Orr, Regulation Development Section, Air Quality Planning Division, P O. Box 13087, Austin, Texas 78711-3087. For further information contact Liz Johnson-Orr at (512) 239-1967

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 July 27, 1994

TRD-9445984 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed. August 2, 1994

♦ ♦ ♦

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code Annotated, §382 017 (Vernon's 1992), Texas Government Code Annotated, Subchapter B, Chapter 2001 (Vernon's 1993); 40 Code of Federal Regulations §51.102 of the U S Environmental Protection Agency (EPA) regulations concerning State Implementation Plans (SIP), the Texas Natural Resource

Conservation Commission (TNRCC) will conduct a public hearing to receive testimony concerning a proposed revision to the SIP.

The proposal is a response to the 1990 Federal Clean Air Act (FCAA) Amendments and the requirement for moderate ozone nonattainment areas to submit an attainment demonstration plan no later than November 15, 1993, unless the state opted to use the Urban Airshed Model (UAM) to demonstrate attainment. The TNRCC opted to use the UAM and, therefore, will submit the attainment demonstration SIP by November 15, 1994.

A public hearing on the proposal will be held on August 31, 1994, at 1:00 p. m. at the City of Irving Central Library Auditorium, 801 West Irving Boulevard, Irving. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing may be submitted to the TNRCC central office in Austin through September 2, 1994. Material received by the TNRCC Regulation Development Section by 4:00 p.m. on that date 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 Air Program regional offices. Please mail written comments to Alan Henderson, Regulation Development Section, Air Quality Planning Division, P.O. Box 13087, Austin, Texas 78711-3087. For further information contact Alan Henderson at (512) 239-1510.

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 July 27, 1994

TRD-9445983 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: August 2, 1994

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Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code Annotated, §382.017 (Vernon's 1992); Texas Government Code Annotated, Subchapter B, Chapter 2001 (Vernon's 1993); 40 Code of Federal Regulations §51.102 of the U.S. 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 proposed revision to Chapter 101 and to the SIP.

The proposed rule is a response to the 1990 Federal Clean Air Act (FCAA) Amendments and the subsequent EPA final rule on General Conformity (Federal Register, November 30, 1993). The EPA rules require states to submit SIP revisions to comply with this rule by November 30, 1994. All states are required to establish enforceable general conformity procedures involving all federal agencies which have funding and/or decision making authority for federal actions in nonattainment areas. General Conformity does not apply to Federal Highway Administration and Federal Transit Authority funded transportation related actions.

A public workshop to discuss the proposal will be held on August 23, 1994 from 9:30 a.m. to 3:30 p.m. in Building E of the TNRCC central office located at 12118 North IH-35, Austin. For further information please contact Alan Henderson at (512) 239-1510 or John Gillen at (512) 239-1415.

Public hearings on the proposal will be held at the following times and locations: August 31, 1994, at 10:00 a.m. at the City of El Paso Council Chambers, 2 Civic Center Plaza, Second Floor, El Paso; August 31, 1994, at 11: 00 a.m. at the City of Irving Central Library Auditorium, 801 West Irving Boulevard, Irving; September 1, 1994, at 6:00 p.m. at the John Gray Institute, 855 Florida Avenue, Beaumont; and September 2, 1994 at 10:00 a.m. at the Houston Galveston Area Council, Conference Room A, 3555 Timmons Lane, Houston. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearings; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after each hearing.

Written comments not presented at the hearings may be submitted to the TNRCC central office in Austin through September 16, 1994. Material received by the TNRCC Regulation Development Section by 4:00 p.m. on that date 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 Air Program regional offices. Please mail written comments to Alan Henderson, Regulation Development Section, Air Quality Planning Division, P.O. Box 13087, Austin, Texas 78711-3087. For further information contact Alan Henderson at (512) 239-1510.

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 July 27, 1994

TRD-9445982 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: August 2, 1994

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Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code Annotated, §382.017 (Vernon's 1992); Texas Government Code Annotated, Subchapter B, Chapter 2001 (Vernon's 1993); 40 Code of Federal Regulations §51.102 of the U.S. Environmental Protection Agency (EPA) regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission (TNRCC) will conduct a public hearing to receive testimony concerning a proposed revision to the SIP.

Section 818 of the Federal Clean Air Act (FCAA) Amendments of 1990 permits the TNRCC to perform computer modeling that demonstrates that El Paso could attain the National Ambient Air Quality Standard (NAAQS) for ozone, "but for emissions emanating from outside the U.S." The modeling is performed using the Urban Airshed

Model (UAM). The UAM demonstrates that El Paso can meet the ozone NAAQS by 1996, three years before the FCAA requirement. This SIP revision demonstrates modeled attainment under §818 and petitions EPA to have the attainment date in El Paso changed from 1999 to 1996.

A public hearing on the proposal will be held on August 31, 1994 at 12:00 p. m. at the City of El Paso Council Chambers, 2 Civic Center Plaza, 2nd Floor, El Paso. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing may be submitted to the TNRCC central office in Austin through September 2, 1994. Material received by the TNRCC Regulation Development Section by 4:00 p.m. on that date 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 Air Program regional offices. Please mail written comments to Beecher Cameron, Regulation Development Section, Air Quality Planning Division, P.O. Box 13087, Austin, Texas 78711-3087. For further information contact Mr. Beecher Cameron at (512) 239-1495.

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 July 27, 1994

TRD-9445981 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: August 2, 1994

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Public Hearing Notice

The Texas Natural Resource Conservation Commission (Commission) will conduct two public hearings during a 45-day comment period to receive public comment on proposed new Chapter 327 entitled "Spill Prevention and Control." The new chapter concerns the prevention, control, and management of discharges or spills.

The Commission is proposing the Spill Prevention and Control Rules to effectuate its powers, responsibilities, and authorities regarding discharges or spill under the Texas Water Code, Chapter 26, and the Texas Health and Safety Code, Solid Waste Disposal Act, Chapter 361 et seq.

The hearings are scheduled at the following locations: Houston, Thursday September 1, 1994, at 7:00 p.m., in Conference Room A, Second Floor of the Houston-Galveston Area Council Office Building, 3555 Timmons Lane, Houston, Texas; Austin, Tuesday, September 13, 1994 at 1:30 p.m., Stephen F. Austin State Office Building, Room 118, 1700 North Congress Avenue, Austin, Texas.

If you have any questions concerning the hearings, you may contact Bruce McAnally, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2141.

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

TRD-9446025 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: August 2, 1994

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North Central Texas Council of Governments

Notice of Consultant Contract Award

Consultant Contract Award In accordance with Texas Civil Statutes, Article 6252-11c, the North Central Texas Council of Governments publishes this notice of consultant contract award The consultant proposal request appeared in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3520). The consultant is to conduct an Enhancement Before and After Study in the Dallas-Fort Worth Metropolitan Area.

The consultant selected for this project is Wilbur Smith Associates, 908 Town and Country Boulevard, Suite 400, Houston, Texas 77024. The maximum amount of this contract is $50,000. The contract began August 1, 1994 and will terminate November 30, 1994.

A report will document the projects, procedures, and findings of the "Before" phase of the study to facilitate future data collection and comparison of conditions in the "After" phase of the study.

Issued in Arlington, Texas, on August 1, 1994

TRD-9446042 Mike Eastland
Executive Director
North Central Texas Council of Governments

Filed: August 3, 1994

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Public Utility Commission of Texas

Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for NationsBanc Services, Inc., Ft. Worth, Texas

Docket Title and Number Application of Southwestern Bell Telephone Company for Approval of a 48-Station Addition to the Existing Plexar-Custom Service for NationsBanc Services, Inc. pursuant to Public Utility Commission Substantive Rule 23.27. Docket Number 13260.

The Application. Southwestern Bell Telephone Company is requesting approval of a 48-station addition to the existing Plexar-Custom Service for NationsBanc Services, Inc. The geographic service market for this specific service is the Ft. Worth, 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 August 2, 1994

TRD-9445999 John M Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: August 2, 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 Spring Branch ISD Spring Branch, Texas

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of a New Plexar-Custom Service for Spring Branch ISD pursuant to Public Utility Commission Substantive Rule 23.27 Docket Number 13259.

The Application. Southwestern Bell Telephone Company is requesting approval of a new Plexar-Custom Service for Spring Branch ISD. The geographic service market for this specific service is the Spring Branch, 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 August 2, 1994

TRD-9446000 John M Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed August 2, 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 Edinburg CISD, Edinburg, Texas.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of a 179-Station Addition to the Existing Plexar-Custom Service for Edinburg CISD pursuant to Public Utility Commission Substantive Rule 23.27. Docket Number 13250.

The Application Southwestern Bell Telephone Company is requesting approval of a 179-station addition to the existing Plexar-Custom Service for Edinburg CISD The geographic service market for this specific service is the Edinburg, 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 August 2, 1994

TRD-9446001 John M Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: August 2, 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 Corpus Christi Independent School District, Corpus Christi, Texas

Docket Title and Number Application of Southwestern Bell Telephone Company for Approval of a 1436-Station Addition to the Existing Plexar Custom Service for Corpus Christi ISD pursuant to Public Utility Commission Substantive Rule 23.27 Docket Number 13281.

The Application Southwestern Bell Telephone Company is requesting approval of a 1436-station addition to the existing Plexar-Custom Service for Corpus Christi ISD The geographic service market for this specific service is the Corpus Christi, 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 August 3, 1994

TRD-9446049 John M Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed August 3, 1994

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Railroad Commission of Texas

Invitation for Bids

This is a revision of the "Invitation for Bids" published in the *Texas Register* on August 5, 1994.

The Railroad Commission of Texas, Surface Mining and Reclamation Division (hereinafter referred to as the commission), is soliciting bids for the closure of four mine openings at the Malakoff Underground Abandoned Mine Land (AML) site. The site is located in Henderson County, approximately one mile east of Malakoff, Texas off Highway 31.

As the designated state agency for implementation of the "Surface Mining Control and Reclamation Act of 1977" (30 U S C A. §1201 et seq) the commission will award a lump-sum, fixed-price contract to the lowest and best bidder for completion of this work. Sealed bids will be received until 2 00 p. m., September 6, 1994, at which time the bids will be publicly opened and read at the address given below A mandatory pre-bid conference will be held at the site at 2:00 p.m., August 18, 1994. Construction work items will include Mobilization; Clearing

and Grubbing; Earthwork; Topsoil Handling; Water Control Structures; Revegetation; Tunnel Excavation and Backfill; and Erosion Repair

Copies of the specifications, drawings and other contract documents are on file in Austin at the following address. The complete bid package may be obtained from the following mailing address. Malakoff Underground AML Project; Surface Mining and Reclamation Division; Railroad Commission of Texas; P O. Box 12967; Austin, Texas 78711-2967; Attn: Melvin B. Hodgkiss, P.E., Director. All questions concerning the work or bid document must be received by 5:00 p.m. , August 26, 1994.

Issued in Austin, Texas, on August 3, 1994

TRD-9446046 Mary Ross McDonald
Assistant Director, Legal Division-Gas Utilities/LP Gas
Railroad Commission of Texas

Filed August 3, 1994

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Center for Rural Health Initiatives

Correction of Error

The Center for Rural Health Initiatives proposed a new §§500 61-500 73, concerning the community scholarship program which provides scholarship funds to individuals pursuing certain health care professions The rules appeared in the July 29, 1994, *Texas Register* (19 TexReg 5822)

On the first line of the first paragraph of the preamble should read "The Center for Rural Health initiatives proposes "

Under §500 69 Breach of Contract, in (c)(4)(B) the and at the end of the paragraph should be removed

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Texas Workers' Compensation Commission

Clarification of Chronology Regarding Adoption of §110.110.

As the Texas Workers' Compensation Commission has received many requests for clarification regarding the adoption of new 28 TAC §110.110, the commission is publishing this notice in order to clear up any confusion as to the correct and official version of the adopted new rule The adoption of §110 110 was originally submitted to the *Texas Register* for publication in the July 19, 1994, issue The *Texas Register* rejected the submission for errors in formatting regarding the contract language in subsection (c)(7), and notified the commission that the adoption would need to be reformatted and resubmitted. The commission resubmitted the adoption for publication in the July 26, 1994, issue Meanwhile, the *Texas Register* accidentally published the document submitted originally in the July 19, 1994, issue. When the second submission of the adoption was published in the July 26, 1994, issue, the *Texas Register* inadvertently omitted an editor's note explaining why the adoption was being published twice. There was also no reference to the fact that the contract language in subsection (c) (7) and the text for the notice required in subsection (d)(7), designated as Figure 1 and Figure 2, respectively, were published as graphics in the Tables and Graphics section of the *Texas Register* The adoption published in the July 26, 1994, issue contained errors as submitted by the commission. These errors are described in the Correction of Error notice also published in the *In Addition Section* in this issue of the *Texas Register*. The official version of 28 TAC §110.110 is the one filed with the *Texas Register*. The version published in the July 26, 1994, issue of the *Texas Register*, on (19 TexReg 5719) including Figure 1 and Figure 2 (19 TexReg 5741) as corrected in this issue of the *Texas Register*, is a correct copy of the adopted rule. A correct copy may also be obtained from Elaine Crease, Office of the General Counsel, Texas Workers' Compensation Commission, 4000 South IH35, Mailstop 4-D, Austin, Texas, 78704 (512) 440-3700.

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

TRD-9446048 Susan Cory
General Counsel
Texas Workers' Compensation Commission

Filed. August 3, 1994

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Request for Information

The current Acute Care Inpatient Hospital Fee Guideline took effect on September 1, 1992. The Commission is aware that members of the public hold an array of views about the guideline and its implementation. As part of the its biannual review process, the existing guideline is being published and the Commission is encouraging the public to comment on it. Comments received in response to this request will be used to evaluate what changes, if any, should be made to the current guideline. While all comments will be welcomed, those containing relevant data and documentation which allow the Commission to adequately research and verify the concerns and issues which are raised will be most helpful and accorded the most weight. In addition, an explanation of how any data was derived will assist in verifying the accuracy and relevance of the data For example, a comment that a hospital is being paid a stated certain "x" percentage of costs will be of greater assistance in the review process if it is accompanied by data and documentation and an explanation of the items and amounts being counted toward costs and toward payment. It is important to note that the current guideline covers only inpatient treatment in acute care facilities. It does not cover outpatient treatment or treatment in rehabilitation or psychiatric hospitals. The Commission is not considering broadening the existing rule to cover these types of services Any efforts to address these types of services will be addressed in a separate rulemaking proceeding. In conjunction with soliciting general input on the Acute Care Inpatient Hospital Fee Guideline, the Commission is requesting comments *and supporting data* from interested parties on the following questions: Is a uniform statewide per diem a reasonable basis for compensation of hospitals for inpatient services to workers' compensation patients? What alternative form of reimbursement schedule would be preferable to the current one and why? Did the existing guideline have an impact on access to inpatient hospital services for injured workers, and what impact would it have had if hospitals acted in an economically rational fashion? Did workers' compensation patients in any urban area encounter difficulty in accessing inpatient treatment and, if so, would they have had difficulty had all hospitals acted in an economically rational fashion? Have any specific hospitals ceased providing care to workers' compensation patients? Would any specific hospital have

been economically better off by refusing to treat workers' compensation patients? Did payment under the existing guidelines cover allocated hospital costs per case for the 1992-1994 period? Please identify what cost components have been allocated to workers' compensation cases. Are inflation adjustments needed for the 1994-1996 period? Include in this answer all of the components used to calculate any adjustments. For what percentage of patients in specific hospitals is an amount less than billed charges accepted as payment in full? What have efficiency studies shown as areas in which hospitals could reduce costs? What has been done to implement any cost reduction recommendations? What is the range of discounts from billed charges accepted by specific hospitals as payment in full from third-party payors including payments made pursuant to negotiated contracts? What discounts from billed charges or flat fees have been negotiated by insurance carriers for PPOs? Is it necessary to set different per diem levels by geographic area, by size, or by hospital type to avoid inadequate or excessive compensation? Is it necessary to maintain the separate reimbursement for CAT scans, MRI scans, and implantables? Are there other services that should be included in the separate reimbursement system? Should adjustments to the per diem amounts be instituted to cover costs generated by more than one separate surgical procedure on the same day? At what point should a surgical outpatient be considered an inpatient and be subject to the guidelines? What technical amendments to the existing rule are necessary in order to make administration of the rule more efficient? What data should the Commission consider and how should it obtain that data?

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

TRD-9446047 Susan Cory
General Counsel
Texas Workers' Compensation Commission

Filed: August 3, 1994

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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 of publication. No issues will be published on March 11, July 22, November 11, and November 29. A asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
47 Friday, June 24	Monday, June 20	Tuesday, June 21
48 Tuesday, June 28	Wednesday, June 22	Thursday, June 23
49 Friday, July 1	Monday, June 27	Tuesday, June 28
50 Tuesday, July 5	Wednesday, June 29	Thursday, June 30
51 *Friday, July 8	Friday, July 1	Tuesday, July 5
Tuesday, July 12	SECOND QUARTERLY INDEX	
52 Friday, July 15	Monday, July 11	Tuesday, July 12
53 Tuesday, July 19	Wednesday, July 13	Thursday, July 14
Friday, July 22	NO ISSUE PUBLISHED	
54 Tuesday, July 26	Wednesday, July 20	Thursday, July 21
55 Friday, July 29	Monday, July 25	Tuesday, July 26
56 Tuesday, August 2	Wednesday, July 27	Thursday, July 28
57 Friday, August 5	Monday, August 1	Tuesday, August 2
58 Tuesday, August 9	Wednesday, August 3	Thursday, August 4
59 Friday, August 12	Monday, August 8	Tuesday, August 9
60 Tuesday, August 16	Wednesday, August 10	Thursday, August 11
61 Friday, August 19	Monday, August 15	Tuesday, August 16
62 Tuesday, August 23	Wednesday, August 17	Thursday, August 18
63 Friday, August 26	Monday, August 22	Tuesday, August 23
64 Tuesday, August 30	Wednesday, August 24	Thursday, August 25
65 Friday, September 2	Monday, August 29	Tuesday, August 30
66 Tuesday, September 6	Wednesday, August 31	Thursday, September 1
67 *Friday, September 9	Friday, September 2	Tuesday, September 6
68 Tuesday, September 13	Wednesday, September 7	Thursday, September 8
69 Friday, September 16	Monday, September 12	Tuesday, September 13
70 Tuesday, September 20	Wednesday, September 14	Thursday, September 15
71 Friday, September 23	Monday, September 19	Tuesday, September 20
72 Tuesday, September 27	Wednesday, September 21	Thursday, September 22
73 Friday, September 30	Monday, September 26	Tuesday, September 27
74 Tuesday, October 4	Wednesday, September 28	Thursday, September 29