

# Texas Register

Volume 18, Number 11, February 9, 1993

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Texas Register



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How to Use the Texas Register

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

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

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

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

Proposed Sections - sections proposed for adoption.

Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

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

Open Meetings - notices of open meetings.

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

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

How to Cite: Material published in the Texas Register is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 18 (1993) is cited as follows: 18 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 "18 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 18 TexReg 3."

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

Texas Administrative Code

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

The TAC volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals).

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

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

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

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

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

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

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
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The Table of TAC Titles Affected is cumulative for each volume of the Texas Register (calendar year).

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

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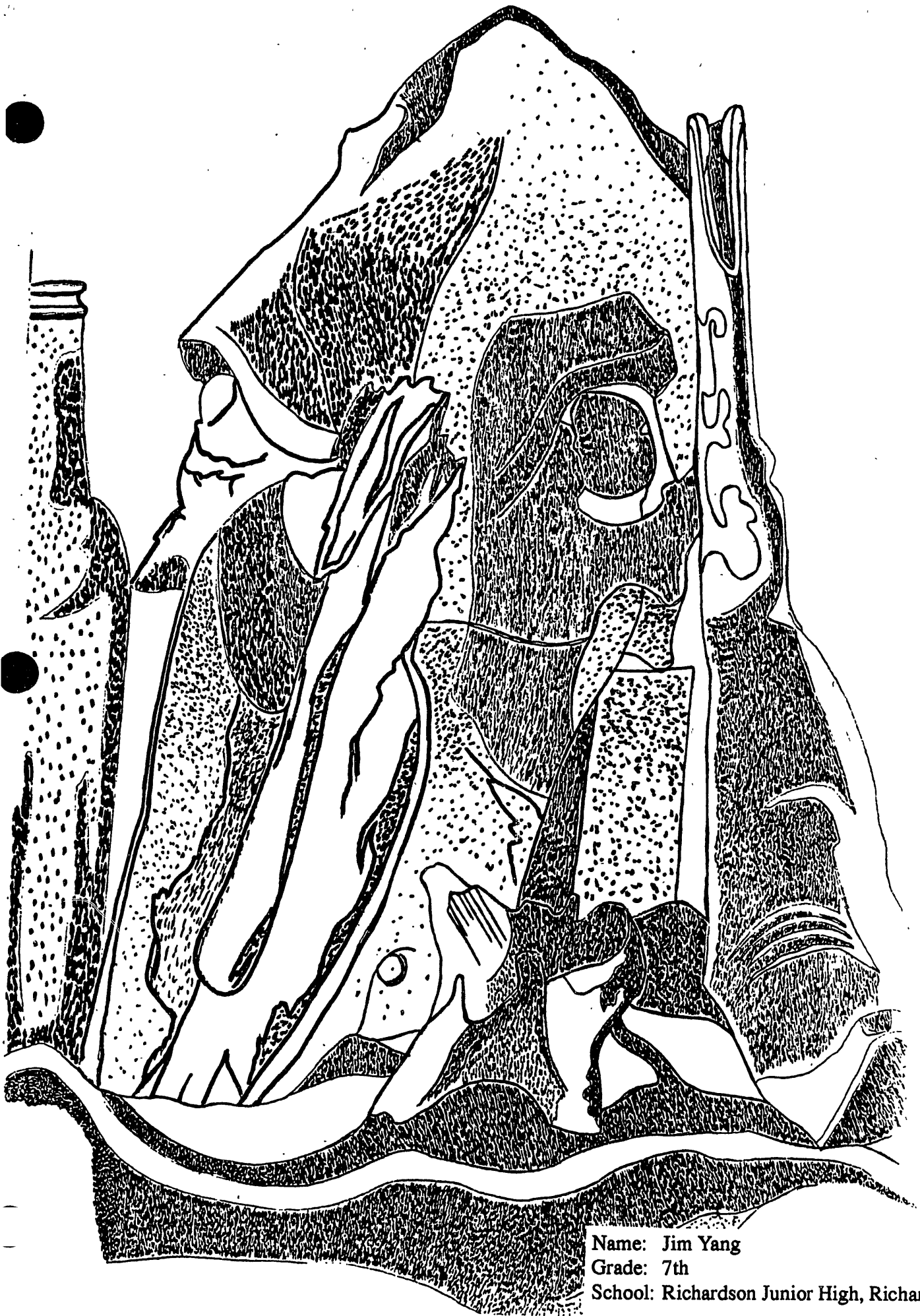
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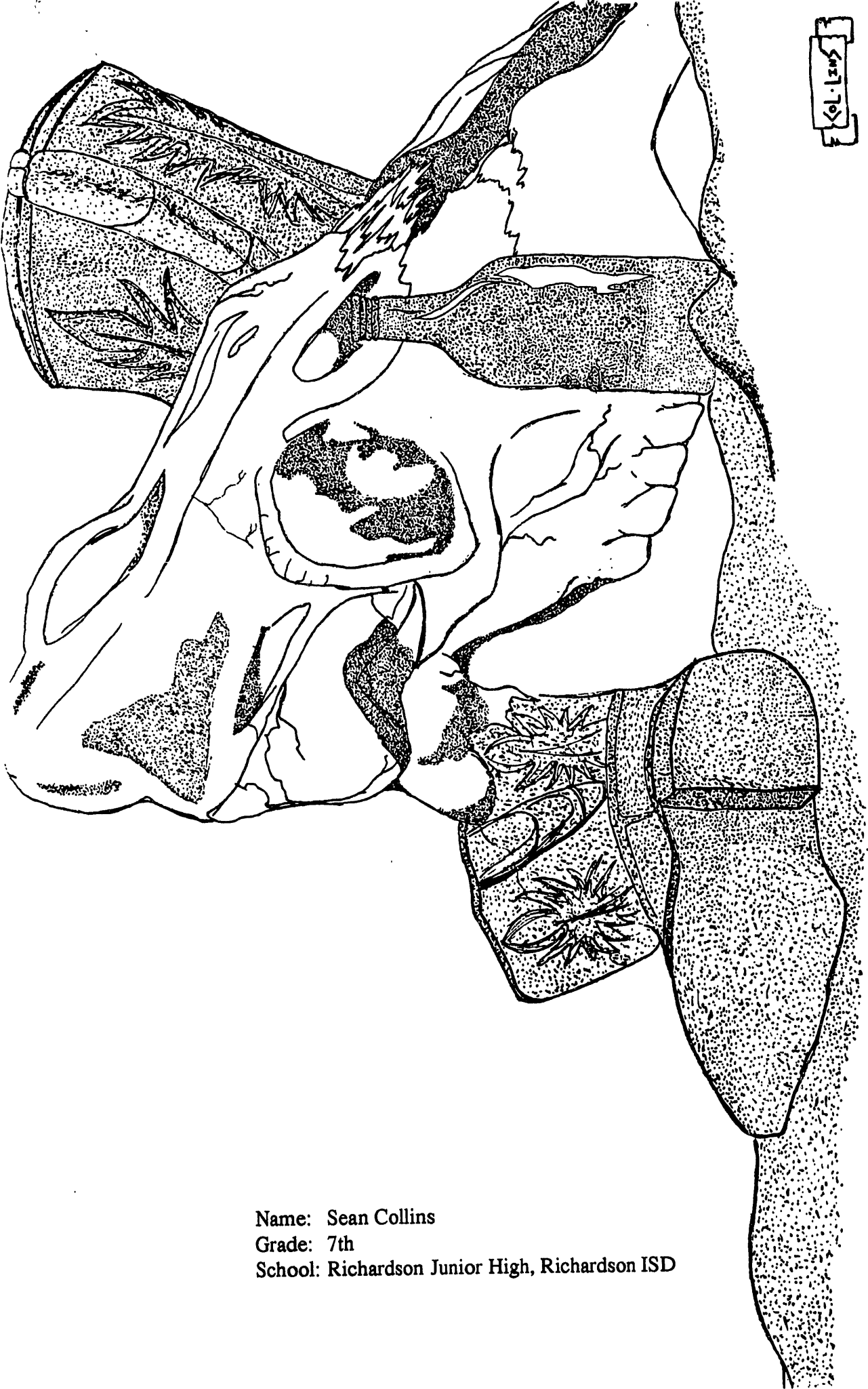
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School: Richardson Junior High, Richard

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Harris

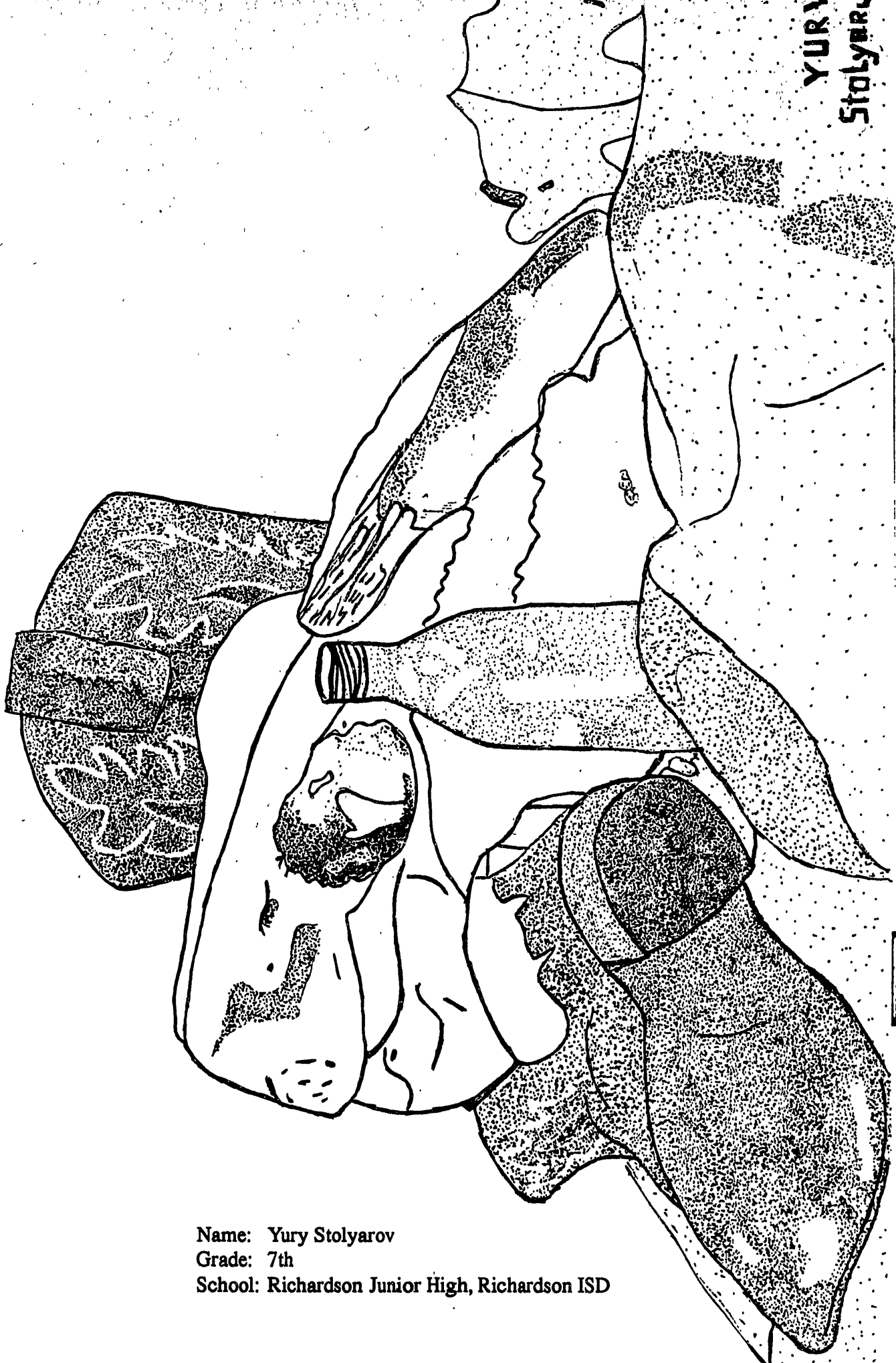


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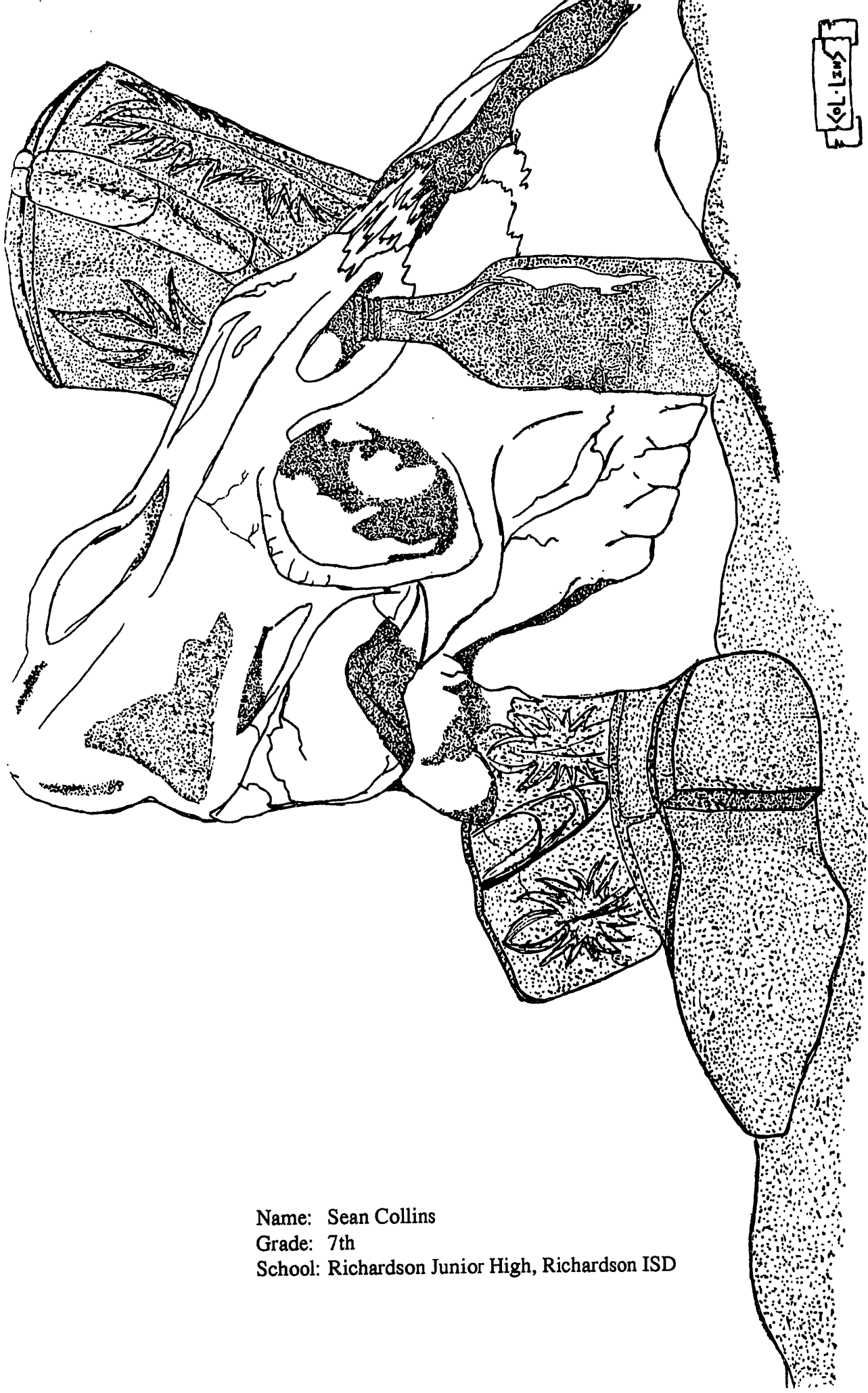
YURY  
Stolyarov



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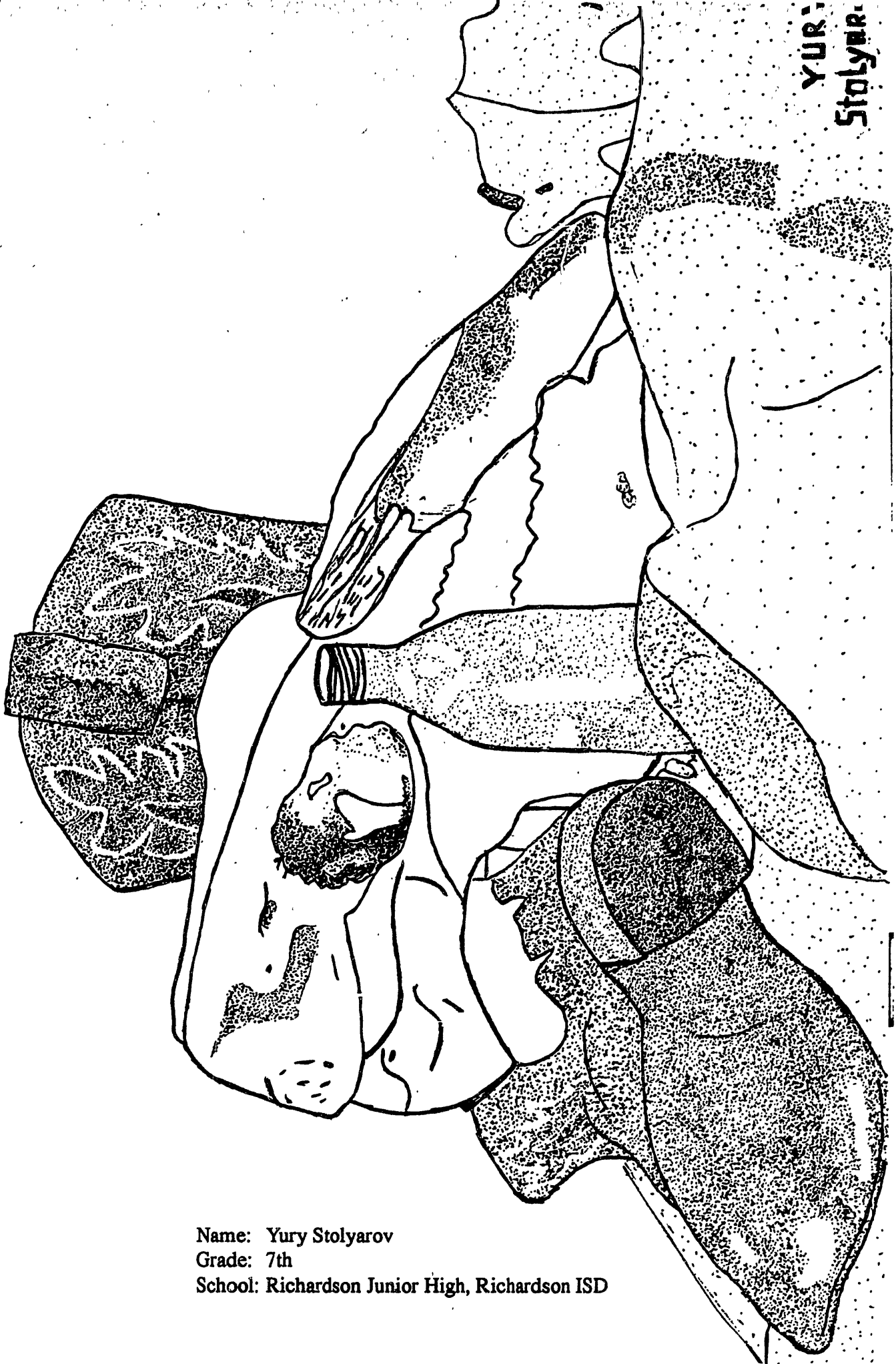
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# Texas Ethics Commission

The Texas Ethics Commission is authorized by Texas Civil Statutes, Article 6252-9d.1, §1.29, to issue advisory opinions in regard to the following statutes: Texas Civil Statutes, Article 6252-9b; the Government Code, Chapter 302; the Government Code, Chapter 305; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

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

## Opinion Requests

**AOR-150.** The Texas Ethics Commission has been asked about state employees' use of state phones for personal phone calls, both local and long-distance. The commission has also been asked about the use of fax-machines and cellular phones.

**AOR-151.** The Texas Ethics Commission has been asked to consider whether members of the following governmental bodies are required to file financial disclosure statements under Texas Civil Statutes, Article 6252-9b: the Air Conditioning and Refrigeration Contractors Advisory Board, the Texas Industrialized Building Code Coun-

cil, the Auctioneer Education Advisory Board, the Board of Boiler Rules, the Elimination of Architectural Barriers Advisory Committee, the Property Tax Consultants Advisory Council.

**AOR-152.** The Texas Ethics Commission has been asked to consider whether a judge may take \$500 for speaking at a conference. A letter from the group sponsoring the conference states that the organization "does not pay faculty compensation to judges for services that the judge would not have been requested to provide but for the judge's official position or duties. To the contrary, we pay judges and lawyers to participate as faculty because of their experience and

knowledge, not simply because of their current status as a judge."

**AOR-153.** A state agency has asked the Texas Ethics Commission whether persons regulated by the agency may donate plants and refreshments for an agency ceremony.

Issued in Austin, Texas, on January 29, 1993.

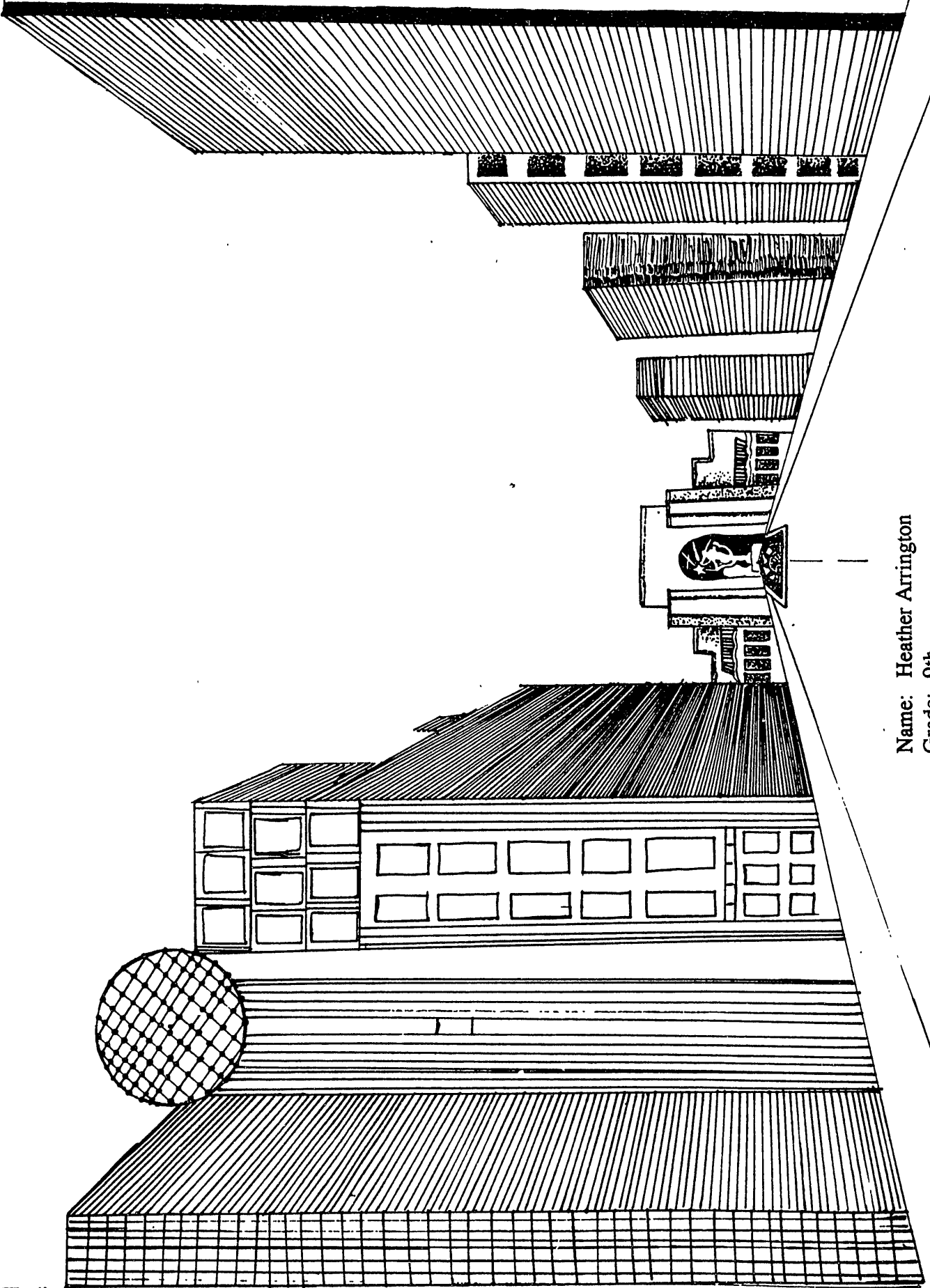
TRD-9318471

Sarah Woelk  
Director, Advisory Opinions  
Texas Ethics Commission

Filed: February 2, 1993

For further information, please call: (512) 463-5800

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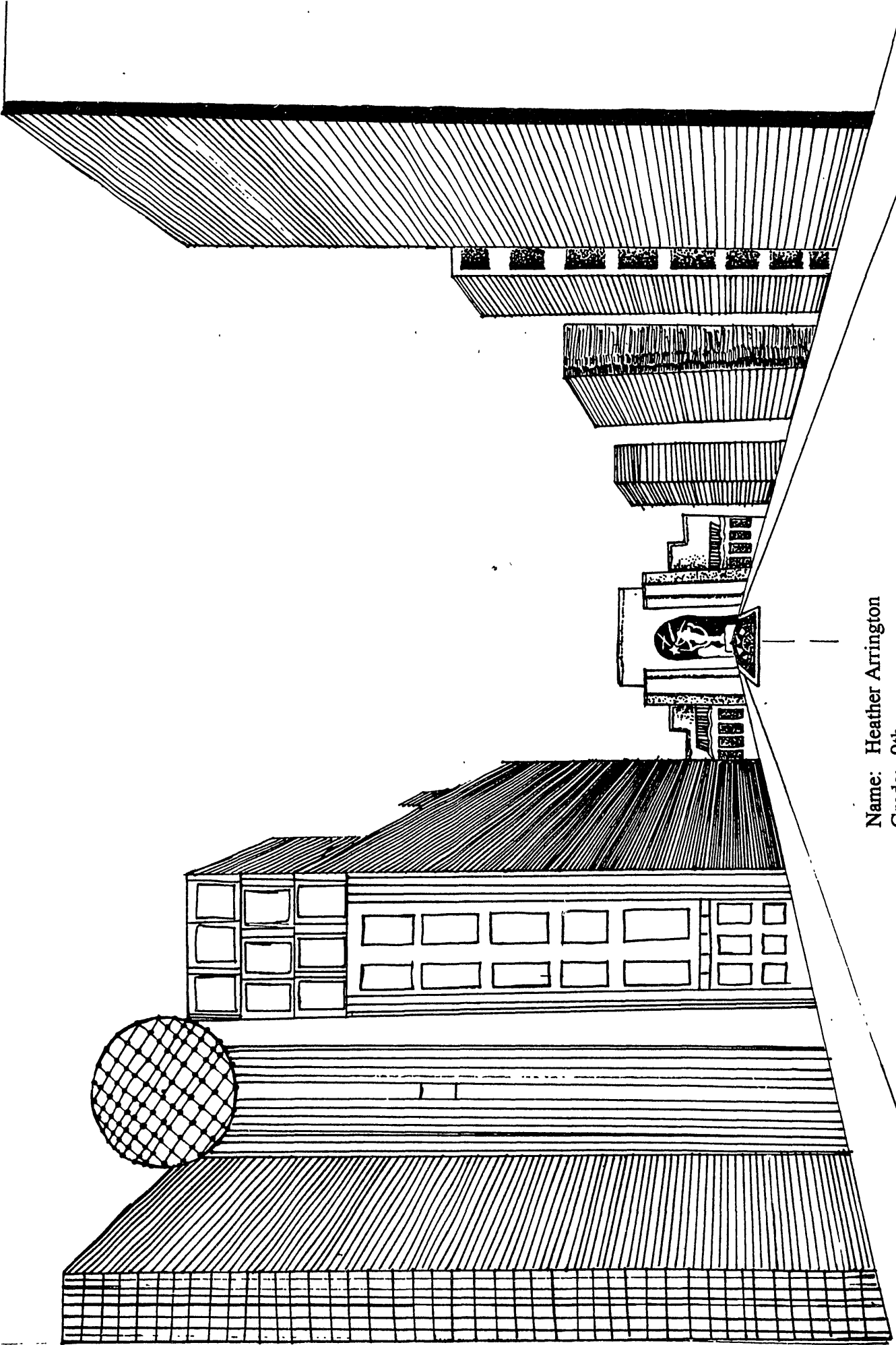
TRD-9318471

Sarah Woelk  
Director, Advisory Opinions  
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Filed: February 2, 1993

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# Emergency Sections

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, for no more than 120 days. The emergency action is renewable once for no more than 60 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 22. EXAMINING BOARDS

### Part VIII. Texas Appraiser Licensing and Certification Board

#### Chapter 153. Provisions of the Texas Appraiser Licensing and Certification Act

##### • 22 TAC §153.9

The Texas Appraiser Licensing and Certification Board adopts on an emergency basis an amendment to §153.9, concerning applications. The amendment revises the application form for a state certification or license, and for approval as an appraiser trainee. In addition to editorial changes, the proposed amendment would incorporate into the application form a statement concerning the possible non-renewal of a license, certification, or approval issued from that application for those who are in default on TGSLC loans, pursuant to proposed 22 TAC §153.17(h) and the Texas Education Code, §57.491.

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 United States Code, §§3331 et seq) mandates that the States certify, license, and regulate real estate appraisers and adopt standards consistent with federal law and guidelines. State certified and licensed appraisers must be used in conjunction with federally related transactions after December 31, 1992.

The amendment is adopted on an emergency basis under the Texas Appraiser Licensing and Certification Act, Article 6573a.2, Texas Civil Statutes, which provides the Texas Appraiser Licensing and Certification Board with authority to adopt rules and regulations necessary for the performance of its duties.

##### §153.9. Applications.

(a) (No change.)

(b) The Texas Appraiser Licensing and Certification Board adopts by reference the following forms approved by the board in 1991 and 1993, and published by and available from the board, P.O. Box 12188, Austin, Texas 78711-2188:

(i) TALCB Form 1.1 [1.0], Application for Appraiser Certification or[,] Licensing and Examination;

(2)-(3) (No change.)

(4) TALCB Form 4.2 [4.0], Application for Approval as an Appraiser Trainee.

(5)-(8) (No change.)

(c)-(f) (No change.)

Issued in Austin, Texas, on February 1, 1993.

TRD-9318387

Renil C. Liner  
Commissioner  
Texas Appraiser Licensing  
and Certification Board

Effective date: February 1, 1993

Expiration date: May 2, 1993

For further information, please call: (512)  
465-3950

##### • 22 TAC §153.17

The Texas Appraiser Licensing and Certification Board adopts on an emergency basis an amendment to §153.17, concerning Renewal of Certification, License, or Trainee Approval; Continuing Education. Section 153.17(g), concerning Renewal of Licenses or Certification for Servicemen on Active Duty Outside the State, is necessary for the board to comply with House Bill 1393, 72nd Legislature, 1991. The amended subsection permits a licensee or certificate holder on active military duty to renew an expired license or certification by documenting active duty outside the state, applying for renewal within 90 days after the active duty ends, paying the renewal fee in effect when the license or certification expired, and satisfying any education or experience requirements that would have been imposed for a timely renewal. Section 153.17(h), concerning Denial of Licensing and Certification of Persons who are in Default on TGSLC Loans, provides that license and certification renewals are subject to the Texas Education Code, §57.491, and that the board must give notice and opportunity for a hearing prior to declining to renew a license or certification for defaulting on a TGSLC loan or a repayment agreement. The subsection also requires the board to advise licensees or certificate holders of the effect of a default on subsequent license or certification renewals.

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 United States Code, §§3331 et seq) mandates that the States certify, license, and regulate real estate appraisers and adopt standards consistent with federal law and guidelines. State certified and licensed appraisers must be used in conjunction with federally related transactions after December 31, 1992.

The amendment is adopted on an emergency basis under the Texas Appraiser Licensing and Certification Act, Article 6573a.2, Texas Civil Statutes, which provides the Texas Appraiser Licensing and Certification Board with authority to adopt rules and regulations necessary for the performance of its duties.

§153.17. Renewal of Certification, License, or Trainee Approval; Appraiser Continuing Education.

(a)-(f) (No change.)

(g) Renewal of Licenses or Certification for Servicemen on Active Duty Outside the State.

(1) A person previously licensed or certified by the Board under this Act who is on active duty in the United States armed forces and serves in this capacity outside the State of Texas may renew an expired license or certification without being subject to any increase in fee imposed in his or her absence, or any additional education or experience requirements if the person:

(A) provides a copy of official orders or other official documentation acceptable to the Board showing that the person was on active duty outside the state during the person's last renewal period;

(B) applies for the renewal within 90 days after the person's active duty ends; and

(C) pays the renewal application fee in effect when the previous license or certification expired.

(2) Appraiser continuing education requirements that would have been imposed for a timely renewal shall be deferred under this section to the next renewal of a license or certification.

(h) Denial of Licensing and Certification of Persons who are in Default on Texas Guaranteed Student Loan Corporation (TGSLC) Loans. Renewals of licenses and certifications issued by the Board are subject to the policies established by the Texas Education Code, §57.491. Before the Board declines to renew a license or certification due to de-

fault on a loan guaranteed by TGSLC, a default on a repayment agreement with TGSLC, or a failure to enter a repayment agreement with TGSLC, the Board shall give notice and provide an opportunity for a hearing in accordance with the provisions of Texas Civil Statutes, Article 6252-13a, §18. The Board shall advise those licensed or certified in renewal notices and shall advise those who apply for licensure or certification in application forms that default on a loan guaranteed by TGSLC may prevent subsequent renewal of a license or certification or prevent the approval of an initial application for license or certification.

Issued in Austin, Texas, on February 1, 1993.

TRD-9318384

Renil C. Limer  
Commissioner  
Texas Appraiser Licensing  
and Certification Board

Effective date: February 1, 1993

Expiration date: May 2, 1993

For further information, please call: (512) 465-3950

◆ ◆ ◆  
• 22 TAC §153.19.

The Texas Appraiser Licensing and Certification Board adopts on an emergency basis an amendment to 22 TAC §153.19, concerning Licensing and Certification of Persons with Criminal Backgrounds. The section prohibits those who are incarcerated from obtaining or renewing a license or certification; provides for the suspension or revocation of an existing license or certification because of a conviction of a felony or misdemeanor; provides the rationale for honesty, trustworthiness, and reliability to protect the public; provides factors which the Board may consider in determining the fitness of a person to become licensed or certified; and requires the applicant to be responsible for securing and providing the Board with necessary information for the Board's determination.

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 United States Code, §§3331 et seq) mandates that the States certify, license, and regulate real estate appraisers and adopt standards consistent with federal law and guidelines. State certified and licensed appraisers must be used in conjunction with federally related transactions after December 31, 1992.

The amendment is adopted on an emergency basis under the Texas Appraiser Licensing and Certification Act, Article 6573a.2, Texas Civil Statutes, which provides the Texas Appraiser Texas Appraiser Licensing and Certification Board with authority to adopt rules and regulations necessary for the performance of its duties.

§153.19. *Licensing and Certification of Persons with Criminal Backgrounds [Criminal Offense Guidelines].*

(a) No currently incarcerated individual will be eligible to obtain or renew an appraiser license or certification.

(b) As provided in Texas Civil Statutes, Article 6252-13c, the Board may suspend or revoke an existing valid license or certification, disqualify an individual from receiving a license or certification, or deny to a person the opportunity to be examined for a license or certification because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the licensed or certified occupation. The Board shall revoke the license or certification of an individual upon his felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision.

(c) The Texas Appraiser Licensing and Certification Board considers it very important that persons who are licensed or certified, persons who are candidates to be licensed or certified, and persons who are training to be licensed or certified, be honest, trustworthy and reliable. The public necessarily reposes a great deal of trust and reliance upon licensed and certified appraisers because of the complex nature of appraisal valuation, and such relationship should not be undermined. When entering onto another's business or residential property or when representing the interests of another, an appraiser must have the ability to conduct himself or herself with honesty, trustworthiness, reliability, and integrity. Thus, the [The Texas Appraiser Licensing and Certification] Board deems the following felonies and misdemeanors directly related to the occupation of licensed or certified appraisers or appraiser trainees:

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

(4) offenses involving the sale or other disposition of real or personal property belonging to another without [with] authorization of law;

(5)-(6) (No change.)

(d) In determining whether a criminal offense is directly related to an occupation, the Board shall consider the following factors:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license or certification to engage in the occupation;

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

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed or certified occupation.

(e) In addition to the factors that may be considered under subsection (b) of this section the Board, in determining the present fitness of a person who has been convicted of a crime, shall consider the following evidence:

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

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

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

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

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

(6) other evidence of the person's present fitness including letters of recommendation from: prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the convicted person.

(f) It shall be the responsibility of the applicant to the extent possible to secure and provide the Board the recommendations of the prosecution, law enforcement, and correctional authorities; the applicant shall also furnish proof in such form as may be required by the Board that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

Issued in Austin, Texas, on February 1, 1993.

TRD-9318385

Renil C. Limer  
Commissioner  
Texas Appraiser Licensing  
and Certification Board

Effective date: February 1, 1993

Expiration date: May 2, 1993

For further information, please call: (512) 465-3950



• 22 TAC §153.20

The Texas Appraiser Licensing and Certification Board adopts on an emergency basis new §153.20, concerning Guidelines for Revocation and Suspension; Investigation. The section defines specific actions by licensees which may be cause for suspension or revocation of a license or certification; provides for Board discretion in determining appropriate penalties but restricts some infractions to specific penalties; provides that provisions of this rule do not relieve a licensee from civil liability or criminal prosecution; provides for complaints and investigations; prohibits undercover or covert investigations and anonymous complaints; holds Board members and employees harmless with respect to disclosures made to the Board in connection with any complaints; and provides for notice and referral of contested cases to the State Office of Administrative Hearings.

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 United States Code, §§3331 et seq) mandates that the States certify, license, and regulate real estate appraisers and adopt standards consistent with federal law and guidelines. State certified and licensed appraisers must be used in conjunction with federally related transactions after December 31, 1992.

The new section is adopted on an emergency basis under the Texas Appraiser Licensing and Certification Act, Article 6573a.2, Texas Civil Statutes, which provides the Texas Appraiser Licensing and Certification Board with authority to adopt rules and regulations necessary for the performance of its duties.

*§153.20. Guidelines for Revocation and Suspension; Investigation.*

(a) The Texas Appraiser Licensing and Certification Board (the Board) may suspend or revoke a license or certification issued under provisions of the Texas Appraiser Licensing and Certification Act (the Act) at any time when it has been determined that the person holding the license or certification:

(1) has been convicted of a felony;

(2) has disregarded or violated a provision of the Act or of the Rules of the Texas Appraiser Licensing and Certification Board;

(3) has acted or held himself or any other person out as a licensed or certified real estate appraiser under the Act when not so licensed or certified;

(4) has accepted payment of appraisal services and has failed to deliver the agreed service in the agreed upon manner;

(5) has refused to refund payment received for appraisal services when he or she has failed to deliver the appraisal service in the agreed upon manner;

(6) has accepted payment for services contingent upon a minimum, maximum, or pre-agreed value estimate;

(7) has offered to perform appraisal services or has agreed to perform such services when employment to perform such services is contingent upon a minimum, maximum, or pre-agreed value estimate;

(8) has made a willful or grossly negligent misrepresentation or any willful or grossly negligent omission of material fact;

(9) has had a license or certification as an appraiser revoked, suspended, or otherwise acted against by any other jurisdiction for an act which is an offense under Texas law;

(10) is confined in any county jail, post adjudication; is confined in any state or federal prison or mental institution; or through mental disease or deterioration, can no longer safely be entrusted to deal with the public or in a confidential capacity;

(11) has procured license or certification pursuant to the Act by making false or fraudulent representation;

(12) has failed to actively, personally, and diligently supervise an appraiser trainee under his or her sponsorship or any person not licensed or certified under the Act who assists the licensee or certificate holder in performing real estate appraisals;

(13) has had a final civil judgment entered against him or her on grounds of fraud or willful or grossly negligent misrepresentation in the making of an appraisal of real estate.

(b) The Board has discretion in determining the appropriate penalty for any violation under subsection (a) of this section with the following restrictions.

(1) Penalty for an offense under subsection (a)(1) of this section shall be immediate revocation of a license or certification pursuant to Texas Civil Statutes, Article 6252-13c(4)(e).

(2) Penalty for an offense under subsection (a)(3) of this section shall be suspension or withholding of license or certification for a period not to exceed two years.

(3) Penalty for a first violation under subsection (a)(4) of this section shall be suspension of license or certification for a period not to exceed 60 days.

(4) Penalty for a second violation under subsection (a)(4) of this section shall be suspension of license or certification for a period not to exceed one year.

(5) Penalty for a third violation under subsection (a)(4) of this section shall be suspension of license or certification for a period not to exceed three years.

(6) Penalty for an offense of either subsection (a)(6) or (7) of this section shall be suspension of license or certification not to exceed a period of three years.

(c) The provisions of this section do not relieve a person from civil liability or from criminal prosecution under the Act or under the laws of this State.

(d) The Board may direct the commissioner, on signed complaint in writing or upon the Board's own motion, to investigate the actions and appropriate records of a state licensed real estate appraiser, a state certified real estate appraiser, or an appraiser trainee.

(e) The commissioner may ask for inspection of an appraiser's books and records relative to a specific complaint or investigation. The appraiser must produce the specified documents within 60 days of the request.

(f) The Board may not investigate under this section a complaint submitted more than two years after the date of discovery of the incident involving the state licensed real estate appraiser, state certified real estate appraiser, or appraiser trainee that is the subject of the complaint.

(g) Notwithstanding any other provision of the Act, there shall be no undercover or covert investigations conducted by authority of the Act. No investigations of licensees or certificate holders or any other actions against licensees or certificate holders shall be initiated on the basis of anonymous complaints whether in writing or otherwise, but shall be initiated only upon the Board's own motion or a signed written complaint. Upon the adoption of such a motion by the Board or upon receipt of such complaint, the licensee or certificate holder shall be notified promptly and in writing unless the Board itself, after due consideration determines otherwise.

(h) All Board members, officers, directors, and employees of this agency shall be held harmless with respect to any disclosures made to the Board in connection with any complaints filed with the Board.

(i) If the board determines to take further action, notice of a hearing shall be given in accordance with §151.17 of this title (relating to Notice of Hearing); and any further proceedings shall be considered to be a contested case and to be governed by the Administrative Procedures and Texas Register Act, Article 6252-13a. The hearing shall be conducted by the State Office of Administrative Hearings pursuant to Texas Civil Statutes, Article 6252-13f, and Chapter 155 of this title (relating to Standards of Practice).

Issued in Austin, Texas, on February 1, 1993.

TRD-9318386

Renli C. Limer  
Commissioner  
Texas Appraiser Licensing  
and Certification Board

Effective date: February 1, 1993

Expiration date: May 2, 1993

For further information, please call: (512)  
465-3950



# Proposed Sections

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 any action may be 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 sections, 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 7. BANKING AND SECURITIES

### Part VII. State Securities Board

#### Chapter 109. Transactions Exempt from Registration

##### • 7 TAC §109.3

The State Securities Board proposes an amendment to §109.3, concerning sales to financial institutions and certain institutional investors under the Securities Act, §5.H, to expand the definition of "qualified institutional buyer" for purposes of the exemption. The referenced Securities and Exchange Commission release includes collective and master trusts used for the investment of employee benefit plan funds as well as separate accounts of an insurance company.

Richard Latham, securities commissioner, 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. Latham also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be continued uniformly with the Securities and Exchange Commission in regard to what is included within the exemption. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendment is proposed under Texas Civil Statutes, Article 581, §28-1, which provide the Board with the authority to adopt rules and regulations governing registration statements and applications; classify securities, persons, and matters within its jurisdiction; and prescribe different requirements for different classes.

§109.3. Sales to Financial Institutions and Certain Institutional Investors under the Securities Act, §5.H.

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

(c) Sales to certain institutional investors. The State Securities Board,

pursuant to the Securities Act, §5.T, exempts from the securities registration requirements of the Securities Act, §7, the offer and sale of any securities to any of the following purchases:

(1) (No change.)

(2) any "qualified institutional buyer" (as that term is defined in Rule 144A(2)(1) promulgated by the SEC under the 1933 Act, as made effective in SEC Release Number 33-6862[]), and amended in Release Number 33-6963).

(3) (No change.)

(d) (No change.)

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

Issued in Austin, Texas, on February 1, 1993.

TRD-9318453

Richard D. Latham  
Securities Commissioner  
State Securities Board

Earliest possible date of adoption: March 12, 1993

For further information, please call: (512) 474-2233

#### Chapter 123. Open-End Investment Companies

##### • 7 TAC §123.3

The State Securities Board proposes an amendment to §123.3, concerning conditional exemption for money market funds to take into account current rules of the Securities and Exchange Commission (SEC) and the National Association of Securities Dealers (NASD) as they relate to the Securities Commissioner's designation of open-end investment companies as "money market funds" for purposes of reduced registration fees.

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

Mr. Northcutt also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a money market fund designation approach that takes

into account current SEC and NASD rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendment is proposed under Texas Civil Statutes, Article 581, §28-1, which provide the Board with the authority to adopt rules and regulations governing registration statements and applications; classify securities, persons, and matters within its jurisdiction; and prescribe different requirements for different classes.

§123.3. Conditional Exemption for Money Market Funds.

(a) (No change.)

(b) Definition. In this section, a "no load money market fund" or "fund" is an open-end investment company which must meet all of the following conditions.

(1) The fund must engage [engages] in a continuous offering of its securities.[, which]

(2) The fund must not pay or charge [charges no] sales commissions or redemption fees except for a nominal exchange fee which may not be used for sales expenses or in lieu of an initial sales charge or redemption fee.

(3) The fund must not pay or charge asset-based charges in lieu of an initial sales charge or redemption fee.

(4) The fund must not pay or charge aggregate asset-based charges for sales promotion activities and/or the servicing of shareholder accounts in excess of .25% of average net assets per annum.

(5) The fund's [and whose] only objectives must be [are] preservation of capital, liquidity, and generation of current income derived from a portfolio consisting exclusively of United States dollar denominated evidences of indebtedness of minimal risk that generally may be described as money market investments such as, but not limited to, the following: certificates of deposit, United States government securities, municipal obligations, commercial paper or similar obligations.[.]

**(6) Additional Portfolio Requirements.**

**(A) The fund's average Portfolio maturity may not exceed 90 days.**

**(B) The fund's instruments must have a remaining maturity of less than 397 calendar days, except that government securities may have a remaining maturity of 762 days. [80% of whose principal amount must mature (may be redeemed or paid on demand) within one year from the date of issuance or settlement whichever is later; all of whose principal amount must mature (may be redeemed or paid on demand) within three years from the date of settlement.]**

**(C) A fixed rate debt instrument [For these purposes, an indebtedness] will be [is] deemed to "mature" on the date noted on the face of the instrument as the date on which the principal amount must be paid.**

**(D) [Or the case of] Variable or floating rate debt instruments [with longer stated dates for principal payments, such instruments] will be [are] deemed to "mature" on the next stated interest rate adjustment date.**

**(E) In connection with any investment subject to a put feature (which would give the fund the right to sell a specified underlying security or securities within a specified period of time and at a specific exercise price) the put feature may be sold, transferred, or assigned only with the underlying security or securities.**

**(F) Repurchase agreements must be fully collateralized by United States government securities and be held in the name of the fund or the fund's custodian.**

**(G) Except for mergers, consolidations, or acquisitions of assets, the fund's investments in other investment companies must be limited to 10% of average annual net assets. The investment companies must have identical objectives and similar investments to those of the fund. No management or advisory fees may be charged by the fund's manager or adviser for such investments.**

**(c) Request for Determination.**

**(1) At the time an applicant applies for registration of securities issued by an open-end investment company under**

the Act, §7, or at any time thereafter [when such a registration application is pending or registration is effective], the applicant may request that the Commissioner determine the issuer to be a money market fund as defined in this Rule. The request shall be made in writing on a Form proposed for adoption in §133.26 of this title (relating to Request for Determination as a Money Market Fund) [in such form and content as prescribed by the Commissioner]. The Commissioner shall review such [a] request and any other information deemed relevant by the Commissioner [him] and shall determine whether or not the issuer is a money market fund for purposes of this section.

**(2) If the request is made subsequent to the issuance of the fund's original permit, an amendment fee of \$10 will be required. Also, additional sales information will be required since only the securities registered and sold after the date the Commissioner determines that the issuer is a money market fund will be subject to the reduced registration fees under subsection (d) of this section.**

**(d)-(f) (No change.)**

**(g) Year-End Reports. All funds must file a Year-End Report of Sales on a Form proposed for adoption in §133.27 of this title (relating to Year-End Report of Sales by a Money Market Fund) in January of each year which reflects the amount of securities sold in the previous year, the balance of fees paid for registration of any unsold balance in the previous year and the recalculated balance of authorized securities at the beginning of the current year. In calculating fees applied to sales during the previous year, fees are first applied at the higher rates in the subsection (d)(5) of this section scale, and then at more reduced rates as sales volume increases, and not vice versa. Funds should consult the examples contained in the form for Year-End Report of Sales in determining how to compute fees.**

**(h)-(j) (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 February 1, 1993.

TRD-9318454 Richard D. Latham  
Securities Commissioner  
State Securities Board

Earliest possible date of adoption: March 12, 1993

For further information, please call: (512) 474-2233



## Chapter 124. Guidelines for Registration of Periodic Payment Plans

### • 7 TAC §§124.1-124.6

The State Securities Board proposes new §§124.1-124.6, concerning guidelines for registration of periodic payment plans. The sections relate to installment plans for investing in mutual funds. The sections reflect the guidelines adopted by the North American Securities Administrators Association, Inc. (NASAA).

Michael Northcutt, director, Securities Registration Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Northcutt also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be uniformity with other states in the requirements for registration of periodic payment plans for investing in mutual funds. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The new sections are proposed under Texas Civil Statutes, Article 581, §28-1, which provide the Board with the authority to adopt rules and regulations governing registration statements and applications; classify securities, persons, and matters within its jurisdiction; and prescribe different requirements for different classes.

#### §124.1. Introduction.

##### (a) Application.

(1) These guidelines apply to the registration and qualification of periodic payment plans (sometimes referred to as "contractual plans").

(2) Applications not conforming to the standards contained in these guidelines shall be looked upon with disfavor. However, where good cause is shown, certain guidelines may be modified or waived by the Securities Commissioner.

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

(1) Administrator—Referred to as "Securities Commissioner" throughout these guidelines.

(2) Current account—Any account in a periodic payment plan:

(A) which has not been liquidated; and

(i) which is no more than six payments in arrears; or

(ii) in which a payment has been made in the past six months; or

(B) in which the total amount deducted from all payments for sales charges or commissions is 9.0% or less of the total amount of payments made.

(3) Periodic payment plan—A plan which issues any certificate, investment contract, or other security providing for a series of periodic payments by the holder, and representing an undivided interest in certain specific securities or in a unit or fund of securities purchased wholly or partly with the proceeds of such payment.

(4) Persistency rate—The percentage of the total number of accounts in a periodic payment plan which are current accounts. For purposes hereof, the computation of the persistency rate shall not include any account which has been canceled in accordance with the cancellation right contained in the Investment Company Act of 1940, §27(f), as amended.

#### §124.2. Suitability Standards.

(a) No periodic payment plan may be sold unless a principal of the selling dealer has determined that the plan is suitable for the purchasing investor. Such determination shall include, but not be limited to, consideration of the following factors:

(1) the investor's age, marital status, and number of dependents;

(2) the investor's major investment goals and the time frame for achieving those goals;

(3) the investor's current and anticipated future financial status including income, and reasonably anticipated short- and long-term liabilities or other obligations;

(4) the reasonable likelihood of the investor's continued income;

(5) the investor's ability to address potentially burdensome financial situations (e.g., the death of a family member) through the use of insurance, savings, or other assets; and

(6) the investor's understanding of the risks inherent in investing in securities and the proper use of savings instruments or accounts for shorter term needs.

(b) The selling dealer shall retain for at least five years the documents disclosing the basis upon which the determination was reached as to each purchasing investor.

#### §124.3. Limitation on Commissions.

(a) In addition to the refund rights available to an investor in a periodic payment plan pursuant to the Investment Company Act of 1940, §27(d) and §27(f), as amended, in the event that an investor in a periodic payment plan shall withdraw from the plan within 28 months of the investor's

initial payment, the investor shall receive the sum of:

(1) the value of his or her account; and

(2) the amount by which all sales charges, commissions, or other selling or redemption fees deducted from the investor's account exceed 15% of the gross payments made by the investor.

(b) For purposes of subsection (a) of this section, each investor shall be provided a notice setting forth his or her cancellation rights. This notice, in the form provided in §124.4 of this title (relating to Disclosure), shall be sent not less than 30 days and not more than 60 days prior to the expiration of the investor's cancellation rights. Neither the sponsor nor its agent(s) shall advise the investor against exercising his or her right to cancel the plan without first determining that such advice is suitable for the particular investor. Such determination shall include, but not be limited to, consideration of the factors set forth in §124.2 of this title (relating to Suitability Standards), as well as of other factors indicating the likelihood that the investor will complete the plan.

§124.4. Disclosure. Each investor in a periodic payment plan shall be provided with disclosure in the form which follows. This disclosure shall be executed by the investor and by the selling dealer. The investor shall be provided with an executed copy. The dealer shall retain an executed copy for a period of at least five years.

**IMPORTANT MESSAGE REGARDING YOUR (NAME OF PLAN)**

Dear Investor:

You have the right within 28 months of the commencement of your plan to cancel your plan and receive a refund of all sales charges paid which are in excess of 15% of the total payments made. In determining whether or not to exercise your cancellation right, you should consider, among other things, the projected cost of your investment and your ability to make the scheduled payments over the life of your plan as they become due.

If you wish to exercise your cancellation rights, you must send notice to that effect to:

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by (date of expiration of cancellation rights).

Very truly yours,

(MESSAGE TO BE PUT ON ONE PAGE)  
**IMPORTANT MESSAGE TO PURCHASER OF A PERIODIC PAYMENT PLAN**

Regarding your application for ( \_\_\_\_\_ name of plan \_\_\_\_\_ ) at (monthly investment amount/total number of years of program). Date (of application) \_\_\_\_\_.

You are applying for an investment account which features a brokerage commission structure which concentrates the sales charge in the first 12 installments. In establishing such an account, you should most carefully consider your financial ability and personal intention to complete all of the scheduled (120 (10 years) or 180 (15 years)) payments. If you do not complete the full schedule of (120 or 180) payments, you will incur very high effective sales charges. These sales charges could cost you up to 50% of the amount you invested. You should be aware that there are many mutual funds which are available with brokerage commission structures that do not concentrate the sales charge in the early installments.

There are two points at which you may withdraw from the plan and receive a full or partial refund of the sales charges: (1) within 45 days after receiving notice of your cancellation rights, you may cancel the plan and receive a full refund of all sales charges paid; or (2) within 28 months of the commencement of the plan, you may cancel the plan and receive a refund of all sales charges paid which are in excess of 15% of the total payments made.

In evaluating your ability to invest regularly for a number of years, you should consider your income pattern, contingencies which may arise, and your willingness to invest in securities which fluctuate in value. If you have reason to doubt your ability and likelihood to complete this plan, you are urged to seek an alternative investment method.

**Purchaser's Statement**

I have received the above statement.

\_\_\_\_\_  
(Signature of Applicant)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Account Number)

\_\_\_\_\_  
(Date of Signature)

## Broker's Statement

I have discussed the above statement with the applicant and believe that he or she understands it.

\_\_\_\_\_  
(Signature of Sales Representative)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Date of Signature)

### §124.5. Persistency Rate and Reports.

(a) For all fiscal years beginning on or after January 1, 1993, the issuer of securities under a periodic payment plan shall file with the Securities Commissioner within 60 days of the end of the plan's fiscal year a report disclosing the plans persistency rate for all accounts opened in the jurisdiction no less than one year nor more than five years before the last day of the fiscal year.

(b) An issuer who fails to maintain a persistency rate of 70% or higher within the jurisdiction shall furnish a report setting forth an explanation for such failure. Failure to furnish such a report or failure to provide an explanation satisfactory to the Securities Commissioner shall be grounds for the Securities Commissioner to deny, suspend, or revoke registration of the periodic payment plan. In making this determination, the Securities Commissioner may consider all relevant factors, including but not limited to, national persistency rates, market conditions, the number of investors in that jurisdiction, the period of time the plan has been selling in that jurisdiction, legislative and regulatory development, and any other unusual or unique circumstances.

(c) The Securities Commissioner may deny the registration of a periodic payment plan based upon low persistency rates in one or more other jurisdictions. This provision shall not apply to the renewal of the registration of any plan currently registered in the jurisdiction.

§124.6. *Investment Objective.* The stated investment objective of a periodic payment plan shall be a fundamental policy of the plan as defined in the Investment Company Act of 1940, §8(b), and shall be consistent with the goal of providing a long-term investment opportunity suitable for persons of relatively modest means. If a fund's investment objective is not currently a fundamental policy, it shall be made one at the next meeting of shareholders.

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 February 1, 1993.

TRD-9318455

Richard D. Latham  
Securities Commissioner  
State Securities Board

Earliest possible date of adoption: March 12, 1993

For further information, please call: (512) 474-2233

### Chapter 133. Forms

#### • 7 TAC §133.26

The State Securities Board proposes new §133.26, concerning the request for determination as a money market fund, which would be a new Board form.

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

Mr. Northcutt also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the creation of a new form to make it easier to request money market status determination from the Securities Commissioner. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The new section is proposed under Texas Civil Statutes, Article 581, §28-1, which provide the Board with the authority to adopt rules and regulations governing registration statements and applications; classify securities, persons, and matters within its jurisdiction; and prescribe different requirements for different classes.

§133.26. *Request for Determination as a Money Market Fund.* The State Securities Board adopts by reference the request for determination as a money market fund. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711.

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 February 1, 1993.

TRD-9318456

Richard D. Latham  
Securities Commissioner  
State Securities Board

Earliest possible date of adoption: March 12, 1993

For further information, please call: (512) 474-2233

#### • 7 TAC §133.27

The State Securities Board proposes new §133.27, concerning the year-end report of sales by a money market fund, which would replace §133.28 of this title relating to year-end report of sales of money market funds which is being proposed for repeal.

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

Mr. Northcutt also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be the creation of a new form for year-end reports of sales by money market funds that is simpler for filers to complete than is the current form being proposed for repeal. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.



# CORRECTION

This Document  
Has Been Rephotographed  
To Assure Legibility.

(MESSAGE TO BE PUT ON ONE PAGE)  
**IMPORTANT MESSAGE TO PURCHASER OF A PERIODIC PAYMENT PLAN**

Regarding your application for (           name of plan           ) at (monthly investment amount/total number of years of program). Date (of application) \_\_\_\_\_.

You are applying for an investment account which features a brokerage commission structure which concentrates the sales charge in the first 12 installments. In establishing such an account, you should most carefully consider your financial ability and personal intention to complete all of the scheduled (120 (10 years) or 180 (15 years)) payments. If you do not complete the full schedule of (120 or 180) payments, you will incur very high effective sales charges. These sales charges could cost you up to 50% of the amount you invested. You should be aware that there are many mutual funds which are available with brokerage commission structures that do not concentrate the sales charge in the early installments.

There are two points at which you may withdraw from the plan and receive a full or partial refund of the sales charges: (1) within 45 days after receiving notice of your cancellation rights, you may cancel the plan and receive a full refund of all sales charges paid; or (2) within 28 months of the commencement of the plan, you may cancel the plan and receive a refund of all sales charges paid which are in excess of 15% of the total payments made.

In evaluating your ability to invest regularly for a number of years, you should consider your income pattern, contingencies which may arise, and your willingness to invest in securities which fluctuate in value. If you have reason to doubt your ability and likelihood to complete this plan, you are urged to seek an alternative investment method.

**Purchaser's Statement**

I have received the above statement.

\_\_\_\_\_  
(Signature of Applicant)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Account Number)

\_\_\_\_\_  
(Date of Signature)

## Broker's Statement

I have discussed the above statement with the applicant and believe that he or she understands it.

\_\_\_\_\_  
(Signature of Sales Representative)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Date of Signature)

### §124.5. Persistency Rate and Reports.

(a) For all fiscal years beginning on or after January 1, 1993, the issuer of securities under a periodic payment plan shall file with the Securities Commissioner within 60 days of the end of the plan's fiscal year a report disclosing the plans persistency rate for all accounts opened in the jurisdiction no less than one year nor more than five years before the last day of the fiscal year.

(b) An issuer who fails to maintain a persistency rate of 70% or higher within the jurisdiction shall furnish a report setting forth an explanation for such failure. Failure to furnish such a report or failure to provide an explanation satisfactory to the Securities Commissioner shall be grounds for the Securities Commissioner to deny, suspend, or revoke registration of the periodic payment plan. In making this determination, the Securities Commissioner may consider all relevant factors, including but not limited to, national persistency rates, market conditions, the number of investors in that jurisdiction, the period of time the plan has been selling in that jurisdiction, legislative and regulatory development, and any other unusual or unique circumstances.

(c) The Securities Commissioner may deny the registration of a periodic payment plan based upon low persistency rates in one or more other jurisdictions. This provision shall not apply to the renewal of the registration of any plan currently registered in the jurisdiction.

§124.6. *Investment Objective.* The stated investment objective of a periodic payment plan shall be a fundamental policy of the plan as defined in the Investment Company Act of 1940, §8(b), and shall be consistent with the goal of providing a long-term investment opportunity suitable for persons of relatively modest means. If a fund's investment objective is not currently a fundamental policy, it shall be made one at the next meeting of shareholders.

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 February 1, 1993.

TRD-9318455

Richard D. Latham  
Securities Commissioner  
State Securities Board

Earliest possible date of adoption: March 12, 1993

For further information, please call: (512) 474-2233

### ◆ ◆ ◆ Chapter 133. Forms

#### • 7 TAC §133.26

The State Securities Board proposes new §133.26, concerning the request for determination as a money market fund, which would be a new Board form.

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

Mr. Northcutt also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the creation of a new form to make it easier to request money market status determination from the Securities Commissioner. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The new section is proposed under Texas Civil Statutes, Article 581, §28-1, which provide the Board with the authority to adopt rules and regulations governing registration statements and applications; classify securities, persons, and matters within its jurisdiction; and prescribe different requirements for different classes.

§133.26. *Request for Determination as a Money Market Fund.* The State Securities Board adopts by reference the request for determination as a money market fund. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711.

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 February 1, 1993.

TRD-9318456

Richard D. Latham  
Securities Commissioner  
State Securities Board

Earliest possible date of adoption: March 12, 1993

For further information, please call: (512) 474-2233

#### ◆ ◆ ◆ • 7 TAC §133.27

The State Securities Board proposes new §133.27, concerning the year-end report of sales by a money market fund, which would replace §133.28 of this title relating to year-end report of sales of money market funds which is being proposed for repeal.

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

Mr. Northcutt also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be the creation of a new form for year-end reports of sales by money market funds that is simpler for filers to complete than is the current form being proposed for repeal. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The new section is proposed under Texas Civil Statutes, Article 581, §28-1, which provide the Board with the authority to adopt rules and regulations governing registration statements and applications; classify securities, persons, and matters within its jurisdiction; and prescribe different requirements for different classes.

**§133.27. Year-End Report of Sales by a Money Market Fund.** The State Securities Board adopts by reference the year-end report of sales by a money market fund. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711.

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 February 1, 1993.

TRD-9318457 Richard D. Latham  
Securities Commissioner  
State Securities Board

Earliest possible date of adoption: March 12, 1993

For further information, please call: (512) 474-2233

## Chapter 133. Forms

### • 7 TAC §133.28

*(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 State Securities Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The State Securities Board proposes the repeal of §133.28, concerning the year-end report of sales of money market funds, a State Securities Board form that would be replaced by the form set forth in proposed §133.27.

Michael Northcutt, director, Securities Registration Division, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Northcutt also has determined that for each year of the first five years the repeal as proposed is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary form. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The repeal is proposed under Texas Civil Statutes, Article 581, §28-1, which provide the Board with the authority to adopt rules and regulations governing registration statements and applications; classify securities,

persons, and matters within its jurisdiction; and prescribe different requirements for different classes.

### **§133.28. Year-End Report of Sales of Money Market Funds.**

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 February 1, 1993.

TRD-9318458 Richard D. Latham  
Securities Commissioner  
State Securities Board

Earliest possible date of adoption: March 12, 1993

For further information, please call: (512) 474-2233

## Chapter 139. Exemptions by Rule or Order

### • 7 TAC §139.4

The State Securities Board proposes new §139.4, concerning Mexican securities. The section would be an exemption from securities registration for certain Mexican securities. The exemption would be created pursuant to the Securities Act, §5.T.

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

Mr. Northcutt also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be an exemption from securities registration for securities either issued or guaranteed by the federal government of Mexico. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The new section is proposed under Texas Civil Statutes, Article 581, §28-1, which provide the Board with the authority to adopt rules and regulations governing registration statements and applications; classify securities, persons, and matters within its jurisdiction; and prescribe different requirements for different classes.

**§139.4. Mexican Securities.** Any security either issued or guaranteed by the federal government of Mexico shall be exempt from the securities registration requirements of the Act when offered for sale, sold, or dealt in by a registered dealer.

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 February 1, 1993.

TRD-9318459 Richard D. Latham  
Securities Commissioner  
State Securities Board

Earliest possible date of adoption: March 12, 1993

For further information, please call: (512) 474-2233

## TITLE 16. ECONOMIC REGULATION

### Part IV. Texas Department of Licensing and Regulation

#### Chapter 60. Texas Commission of Licensing and Regulation

##### Subchapter C. Fees

### • 16 TAC §60.67

The Texas Department of Licensing and Regulation proposes an amendment to §60.67, concerning the auctioneer exam fee. The department proposes to raise the fee from \$25 to \$50 to recover the costs of development and administration of the exam.

James D. Brush II, Director, Policies and Standards, has determined that for the first five-year period the section is in effect there will be fiscal implications for state government as a result of enforcing or administering the section. The effect on state government for the first five-year period the section is in effect will be an estimated increase in revenue of \$8,000, for fiscal years 1993-1997. There will be no effect on local government.

Mr. Brush II also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that a more valid and secure exam will result in more qualified license holders to serve the public. The effect on small businesses will be a one-time increase of \$25. The cost is the same for small and large businesses, as only one license is required for the business.

The anticipated economic cost to persons who are required to comply with the section as proposed will be: \$25 for each person for fiscal years 1993-1997.

Comments on the proposal may be submitted to James D. Brush II, Director of Policies and Standards, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 9100, which provide the Texas Department of Licensing and Regulation with the authority to set fees to cover the cost of administering programs regulated by the department.

**§60.67. Auctioneer Fees.**

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

(d) Examination fees. A \$50 [\$25] fee will be charged for each examination. This fee is not refundable.

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 January 28, 1993.

TRD-9318388 Jack W. Carlson  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Earliest possible date of adoption: March 12, 1993

For further information, please call: (512) 463-3127

◆ ◆ ◆  
**Chapter 67. Auctioneers**

◆ ◆ ◆  
• 16 TAC §67.83

The Texas Department of Licensing and Regulation proposes an amendment to §67.83, concerning the auctioneer exam fee. The department proposes to raise the fee from \$25 to \$50 to recover the costs of development and administration of the exam.

James D. Brush II, Director, Policies and Standards Division, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. The effect on state government for the first five-year period the section is in effect will be an estimated increase in revenue of \$8,000 for fiscal years 1993-1997. There will be no effect on local government.

Mr. Brush II also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that a more valid and secure exam will result in more qualified license holders to serve the public. The effect on small businesses will be a one-time increase of \$25. The cost is the same for small and large businesses, as only one license is required for the business.

The anticipated economic cost to persons who are required to comply with the section as proposed will be \$25 for each person for fiscal years 1993-1997.

Comments on the proposal may be submitted to James D. Brush II, Director of Policies and Standards, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 8700, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules to assure compliance with the Act.

**§67.83. Fees-Examination.**

(a) A \$50 [\$25] fee will be charged for each examination.

(b) (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 January 27, 1992.

TRD-9318389 Jack W. Carlson  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Earliest possible date of adoption: March 12, 1993

For further information, please call: (512) 463-3127

◆ ◆ ◆  
**TITLE 22. EXAMINING  
BOARDS**

**Part XXII. Texas State  
Board of Public  
Accountancy**

**Chapter 501. Professional  
Conduct**

**Other Responsibilities and  
Practices**

◆ ◆ ◆  
• 22 TAC §501.46

The Texas State Board of Public Accountancy proposes an amendment to §501.46, concerning form of practice. The amendment to the rule tracks the language of the Public Accountancy Act regarding the definition of "corporation".

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

Mr. Treacy also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the rule is clear and unambiguous regarding the forms of entities which may practice public accountancy. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to form of practice.

**§501.46. Form of Practice.** A certificate or registration holder may practice public accountancy only in a proprietorship, a partnership, a limited liability company, a registered limited liability partnership, [or] a professional corporation organized under the Texas Professional Corporation Act, as amended Texas Civil Statutes, Article 1528e, or other corporation authorized by applicable statutes, or an equivalent law of another state, territory, or foreign country, [organized in accordance with the Texas Professional Corporation Act] or as an employee of one of these entities.

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 February 2, 1993.

TRD-9318442 William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Earliest possible date of adoption: March 12, 1993

For further information, please call: (512) 450-7066

◆ ◆ ◆  
**TITLE 28. INSURANCE**

**Part I. Texas Department  
of Insurance**

**Chapter 1. General  
Administration**

**Subchapter A. Rules of Prac-  
tice and Procedure**

◆ ◆ ◆  
• 28 TAC §§1.82-1.86

The State Board of Insurance of the Texas Department of Insurance proposes new §§1.82-1.86, concerning forms and scope of discovery in contested cases. Discovery rules for contested cases are required for the orderly and efficient disposition of matters before the Commissioner and the State Board of Insurance of the Texas Department of Insurance. Proposed §§1.82-1.86 define the forms and scope of discovery in contested cases, which expand available discovery under Texas Civil Statutes, Article 6252-13a, and existing rules of practice and procedure. Proposed §1.82 defines permissible forms of discovery by parties in contested cases and the scope of discovery. Scope of discovery is essentially the same as collectively provided by the Texas Rules of Civil Procedure, 28 TAC §1.33, and Texas Civil Statutes, Article 6252-13a, §14 and §14a. Proposed §1.83 outlines service and filing of discovery requests and responses. Proposed §1.84 outlines deadlines for responses to discovery requests, unless modified by agreement of the party seeking discovery. Proposed §1.85 outlines requirements concerning requests for admission. Also, proposed §1.86 provides for discovery orders, sanctions, and appellate re-

view. Proposed §§1.82-1.86 are designed to supplement existing discovery rules to ascertain or seek the truth, to avoid surprise, to promote settlements, to preserve evidence, and to increase the efficient administration of contested cases. Proposed §§1.82-1.86 do not apply to Article 5.101 benchmark rate proceedings brought before the Board, even upon assignment of the proceeding to a Hearings Officer.

Kimberly L. Kiplin, Director of Legal Services, Texas Department of Insurance, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Kiplin also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be increased administrative efficiency. All parties involved in contested cases should benefit from streamlined issues, reduced litigation, and the promotion of settlement, which will benefit the public by providing uniformity of case administration, reduction of docket congestion, and the reduction of costs normally associated with protracted litigation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal must be submitted in writing within 30 days after the publication of the proposed rule in the *Texas Register* to Linda K. Von Quintus-Dorn, Chief Clerk, P.O. Box 149104, MC-113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Stephen Jon Moss, Staff Attorney, Legal Services, P.O. Box 149104, MC-110-1A, Austin, Texas 78714-9104. Any request for a public hearing on the proposal should be submitted separately to the Chief Clerk's Office.

The new sections are proposed under the Texas Insurance Code, Article 1.04(b), and Texas Civil Statutes, Article 6252-13a, §4 and §5. Article 1.04(b) provides the Board with authority to determine rules in accordance with the laws of this state. Texas Civil Statutes, Article 6252-13a, §4 and §5 authorize and require each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and prescribe the procedures for adoption of rules by a state administrative agency.

#### *§1.82. Forms and Scope of Discovery in Contested Cases.*

(a) Permissible forms of discovery by parties are:

- (1) oral depositions of a party or a nonparty;
- (2) written interrogatories to a party;
- (3) requests of a party for admission of facts or the genuineness or identity of documents or things;

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

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

(b) The scope of discovery shall be the same as provided by the Texas Rules of Civil Procedure and shall be subject to the constraints provided therein for privileges, objections, protective orders and duty to supplement, as well as §1.33 of this title (relating to Depositions; Entry on Property; use of Reports and Statements) and the proceedings provided in Texas Civil Statutes, Article 6252-13a, §14 and §14a. All discovery may commence upon the filing of an action or proceeding. No discovery may be initiated by a party seeking discovery after the initial hearing date, unless allowed by the Hearings Officer upon a showing of good cause.

(c) This sections and §§1.83-1.86 of this title (relating to Service and Filing of Discovery Requests and Responses; Deadlines for Responses to Discovery; Requests for Admission; and Discovery Orders) shall not apply to Article 5.101 benchmark rate proceedings brought before the Board, even upon assignment of such proceeding to a Hearings Officer or a contested case docket.

*§1.83. Service and Filing of Discovery Requests and Responses.* Requests for discovery and responses thereto shall be served in the manner provided by §1.28(d) of this title (relating to Service in Contested Cases) and should not be filed with the Hearings Division or Office of Administrative Hearings. Requests for issuance of a Commission to take deposition shall be filed with the Hearings Officer with a proposed Commission to take deposition only if the parties disagree on the scheduling or scope of the deposition. Depositions shall be returned in the manner provided in Texas Civil Statutes, Article 6252-13a, §14. Except for good cause shown, all requests for discovery shall be timely made prior to the hearing.

*§1.84. Deadlines for Responses to Discovery Requests.* Responses to discovery requests shall be made within a reasonable time period of not less than 14 days after receipt of service as directed by the party seeking discovery. The Hearings Officer may shorten or lengthen such time periods as the interest of justice requires. Nothing within this section shall prevent the party seeking discovery to extend response deadlines by agreement, but no such agreement shall be enforceable unless in writing and filed in the contested case that forms the basis for the discovery requests as provided in §1.31 of this title (relating to Agreements to be in Writing).

*§1.85. Requests for Admission.* Except as otherwise provided, requests for admission shall be governed by the applicable provisions of the Texas Rules of Civil Procedure. Each matter for which an admission is requested shall be separately stated. The matter shall be deemed to be admitted without necessity for an order unless, within the prescribed time for responding, the party to whom the request is directed serves upon the requesting party a written answer or objection addressed to the matter. The Requests for Admission document must clearly set forth this provision for deemed admissions, in bold print or by underlining, in a conspicuous location calculated to inform the opposing party of the consequences of a failure to respond within the prescribed time, as provided in §1.84 of this title (relating to Deadlines for Responses to Discovery Requests). The Hearings Officer or the Commissioner or Board may permit withdrawal or amendment of responses and deemed admissions upon a showing of good cause, if necessary in the interest of justice.

#### *§1.86. Discovery Orders.*

(a) Commission to take Deposition. The Hearings Officer is authorized to issue a Commission to take deposition, which shall authorize the issuance of any subpoenas necessary to require that the witness appear and produce, at the time the deposition is taken, books, records, papers, or other objects that may be necessary and proper for the purposes of the proceeding.

(b) Other Discovery Orders. The Hearings Officer may issue protective orders and orders compelling discovery responses. Requests for orders compelling discovery shall contain a statement that, after due diligence, the desired information cannot be obtained through informal means, good faith efforts at negotiation have failed to produce the requested discovery and that good cause exists for requiring discovery. The Hearings Officer may conduct in camera inspections of materials when requested by a party or when necessary to determine facts required to issue appropriate discovery orders, including protective orders. The request for a discovery order may be denied if the request is untimely or unduly burdensome in light of the complexity of the proceeding, if the requesting party has failed to exercise due diligence, if the discovery would result in undue cost to the parties or unnecessary delay in the proceeding, or for other good cause in the interest of justice.

(c) Sanctions. After notice and opportunity for hearing, an order imposing sanctions, as are just, may be issued by the Commissioner or the Hearings Officer for failure to comply with a discovery order, or subpoena issued pursuant to a Commission

for deposition or production of books, records, papers, or other objects. The order imposing sanctions may:

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

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

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

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

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

(6) strike pleadings or parts thereof or abate further proceedings until the order is obeyed; or, if entered by the Commissioner;

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

(d) Appellate Review. Any discovery order or subpoena and any order imposing sanctions issued by the Hearings Officer is subject to review by an appeal to the Commissioner or the Board, according to the stage of the action or proceeding. The appeal shall be filed with the Commissioner or Board within five days of the action that is the subject of the appeal. The appeal may be carried with the underlying case provided the Commissioner does not act upon the appeal within 15 days after the appeal was filed.

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 February 2, 1993.

TRD-9318446

Linda von Quintus-Dom  
Chief Clerk  
Texas Department of  
Insurance

Earliest possible date of adoption: March 12, 1993

For further information, please call: (512) 463-6328

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part IX. Texas Water Commission

#### Chapter 305. Consolidated Permits

##### Subchapter D. Amendments, Renewals, Transfers, Correction, Revocation and Suspension of Permits

###### • 31 TAC §305.69, §305.70

The Texas Water Commission (TWC) proposes an amendments to §305.69 and new §305.70, concerning solid waste permit modifications at the request of the permittee. The TWC is proposing the replacement of emergency §305.69 and §305.70, which were published on an emergency basis in the September 4, 1992, issue of the *Texas Register* (17 TexReg 6045). The amendment to §305.69 and new §305.70 are proposed in order to allow certain changes to municipal solid waste permits to be handled administratively, without going through the formal hearing process.

The proposed amendment to §305.69 simply clarifies the fact that the provisions of that section apply to industrial and hazardous waste permit modifications only, and that municipal solid waste permit modifications are covered by new §305.70. Proposed new §305.70 allows for the administrative approval of specifically delineated municipal solid waste permit modifications. The permit modifications delineated are minor in nature, and maintain or improve environmental protection standards. In addition, many facilities would like to begin complying with recently promulgated federal regulations that call for stricter operation and management standards for all municipal solid waste facilities. Under current TWC regulations, changes implemented in compliance with these stricter federal regulations require a permit amendment. Proposed new §305.70 allows many of these changes to be implemented more expeditiously.

Stephen Minick, Division of Budget and Planning, has determined that for the first five years these sections are in effect there will be fiscal implications as a result of enforcement or will be a savings in costs related to processing certain permit amendments or modifications. Costs to applicants for modification of municipal solid waste permits will be reduced in those circumstances under these rules where formal hearing processes may be avoided. These applicants would include local governments and small businesses. The costs to be avoided are prospective and will vary on a case-by-case basis with each application affected. Actual cost savings cannot be

estimated at this time. There are no increases in cost to affected party anticipated.

Mr. Minick also has determined that for the first five years these sections will be in effect the public benefit anticipated as a result of enforcement of and compliance will be the sections will be improvements in the process of modification of permits for municipal solid waste facilities and more timely incorporation of stricter operation and management standards for such facilities. There are no known costs to individuals required to comply with these sections as proposed.

Comments on the proposal may be submitted to Renea Ryland, Staff Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087. Comments will be accepted for a period of 30 days following the date of this publication.

The new and amended sections are proposed under the Texas Health and Safety Code, Chapter 361, which gives the commission all powers necessary and convenient under that chapter to carry out its responsibilities concerning the regulation and management of municipal solid waste.

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

(a) This section applies only to modifications to industrial and hazardous solid waste permits. Modifications to municipal solid waste permits are covered in §305.70 of this title (relating to Municipal Solid Waste Class I Modifications).

(b)[(a)] Class 1 modifications of solid waste permits.

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

(c)[(b)] Class 2 modifications of solid waste permits.

(1)-(15) (No change.)

(d)[(c)] Class 3 modifications of solid waste permits.

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

(e)[(d)] Other modifications.

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

(f)[(e)] Temporary authorizations.

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

(g) [(f)] Public notice and Appeals of Permit Modification Decisions.

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

(h)[(g)] Newly regulated wastes and units.

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

(i)[(h)] Appendix I. The following appendix will be used for the purposes of Subchapter D which relate to solid waste permit modification at the request of the permittee.

A. General Permit Provisions

- 1. Administrative and informational changes..... 1
- 2. Correction of typographical errors..... 1
- 3. Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls)..... 1
- 4. Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee:
  - a. To provide for more frequent monitoring, reporting, sampling, or maintenance..... 1
  - b. Other changes..... 2
- 5. Schedule of compliance
  - a. Changes in interim compliance dates, with prior approval of the executive director..... 1<sup>1</sup>
  - b. Extension of final compliance date..... 3
- 6. Changes in expiration date or permit to allow earlier permit expiration, with prior approval of the executive director..... 1<sup>1</sup>
- 7. Changes in ownership or operational control of a facility, provided the procedures of §305.65(g) are followed..... 1<sup>1</sup>

B. General Standards

- 1. Changes to waste sampling or analysis methods:



number of coordinators or other persons  
or agencies identified in the plan..... 1

**Note:** When a permit modification (such as introduction of a new unit) requires a change in facility plans or other general facility standards, that change shall be reviewed under the same procedures as the permit modification. (No change)

**C. Ground-water Protection**

1. Changes to wells:
  - a. Changes in the number, location, depth, or design of upgradient or downgradient wells of permitted groundwater monitoring system..... 2
  - b. Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well..... 1
2. Changes in groundwater sampling or analysis procedures or monitoring schedule, with prior approval of the executive director..... 1<sup>1</sup>
3. Changes in statistical procedure for determining whether a statistically significant change in groundwater quality between upgradient and downgradient wells has occurred, with prior approval of the executive director..... 1<sup>1</sup>

- 4. Changes in point of compliance..... 2
- 5. Changes in indicator parameters, hazardous constituents, or concentration limits (including ACLs):
  - a. As specified in the groundwater protection standard..... 3
  - b. As specified in the detection monitoring program..... 2
- 6. Changes to a detection monitoring program as required by §335.164(10) of this title (relating to Detection Monitoring Program), unless otherwise specified in this appendix..... 2
- 7. Compliance monitoring program:
  - a. Addition of compliance monitoring program pursuant to §335.164(7)(D) of this title (relating to Detection Monitoring Program), and §335.165 of this title (relating to Compliance Monitoring Program)..... 3
  - b. Changes to a compliance monitoring program as required by §335.165(11) of this title (relating to Compliance Monitoring Program), unless otherwise specified in this appendix.... 2
- 8. Corrective action program:
  - a. Addition of a corrective action program pursuant to §335.165(9)(B) of this title (relating to Compliance Monitoring Program)

and §335.166 of this title (relating to  
Corrective Action Program)..... 3

- b. Changes to a corrective action program  
as required by §335.166(8), unless  
otherwise specified in this appendix..... 2

D. Closure

1. Changes to the closure plan:

- a. Changes in estimate of maximum extent of  
operations or maximum inventory of waste  
on-site at any time during the active life  
of the facility, with prior approval of the  
executive director..... 1<sup>1</sup>
- b. Changes in the closure schedule for any unit,  
changes in the final closure schedule for  
the facility, or extension of the closure  
period, with prior approval of the executive  
director..... 1<sup>1</sup>
- c. Changes in the expected year of final  
closure, where other permit conditions  
are not changed, with prior approval  
of the executive director..... 1<sup>1</sup>
- d. Changes in procedures for decontamination  
of facility equipment or structures, with  
prior approval of the executive director..... 1<sup>1</sup>
- e. Changes in approved closure plan resulting

	from unexpected events occurring during partial or final closure, unless otherwise specified in this appendix.....	2
f.	Extension of the closure period to allow a landfill, surface impoundment or land treatment unit to receive non-hazardous wastes after final receipt of hazardous wastes under 40 CFR 264.113(d) and (e).....	2
2.	Creation of a new landfill unit as part of closure.....	3
3.	Addition of the following new units to be used temporarily for closure activities:	
a.	Surface impoundments.....	3
b.	Incinerators.....	3
c.	Waste piles that do not comply with 40 CFR 264.250(c).....	3
d.	Waste piles that comply with 40 CFR 264.250(c).....	2
e.	Tanks or containers (other than specified below).....	2
f.	Tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the executive director.....	1 <sup>1</sup>

E. Post-Closure

1. Changes in name, address, or phone number of contact in post-closure plan..... 1
2. Extension of post-closure care period..... 2
3. Reduction in the post-closure care period..... 3
4. Changes to the expected year of final closure, where other permit conditions are not changed..... 1
5. Changes in post-closure plan necessitated by events occurring during the active life of the facility, including partial and final closure..... 2

F. Containers

1. Modification or addition of container units:
  - a. Resulting in greater than 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below..... 3
  - b. Resulting in up to 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below..... 2
  - c. Or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or

# CORRECTION

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from unexpected events occurring during partial or final closure, unless otherwise specified in this appendix..... 2

f. Extension of the closure period to allow a landfill, surface impoundment or land treatment unit to receive non-hazardous wastes after final receipt of hazardous wastes under 40 CFR 264.113(d) and (e)..... 2

2. Creation of a new landfill unit as part of closure..... 3

3. Addition of the following new units to be used temporarily for closure activities:

a. Surface impoundments..... 3

b. Incinerators..... 3

c. Waste piles that do not comply with 40 CFR 264.250(c)..... 3

d. Waste piles that comply with 40 CFR 264.250(c)..... 2

e. Tanks or containers (other than specified below)..... 2

f. Tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the executive director.....1<sup>1</sup>

E. Post-Closure

1. Changes in name, address, or phone number of contact in post-closure plan..... 1
2. Extension of post-closure care period..... 2
3. Reduction in the post-closure care period..... 3
4. Changes to the expected year of final closure, where other permit conditions are not changed..... 1
5. Changes in post-closure plan necessitated by events occurring during the active life of the facility, including partial and final closure..... 2

F. Containers

1. Modification or addition of container units:
  - a. Resulting in greater than 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below..... 3
  - b. Resulting in up to 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below..... 2
  - c. Or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or



in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes or narrative descriptions of wastes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1<sup>1</sup>

- 2. a. Modification of a container unit without increasing the capacity of the unit..... 2
- b. Addition of a roof to a container unit without alteration of the containment system..... 1
- 3. Storage of different wastes in containers, except as provided in F(4) below:
  - a. That require additional or different management practices from those authorized in the permit..... 3
  - b. That do not require additional or different management practices from those authorized in the permit..... 2

Note: See §305.69(g) of this title (relating to Newly Listed Solid Waste Permit Modification at the Request of the Permittee or Identified Wastes) for modification

procedures to be used for the management of newly listed or identified wastes.

4. Storage or treatment of different wastes in containers:

a. That require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards, or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8 (a)(2)(ii), with prior approval of the executive director. This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1<sup>1</sup>

b. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the

same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1

5. Other changes in container management practices (e.g., aisle space, types of containers, segregation)..... 2

G. Tanks

1. a. Modification or addition of tank units resulting in greater than 25% increase in the facility's tank capacity, except as provided in G(1)(c), G(1)(d), and G(1)(e) below of this appendix..... 3

b. Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided in G(1)(d) and G(1)(e) below of this appendix..... 2

c. Addition of a new tank (no capacity limitation) that will operate for more than 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation..... 2

d. After prior approval of the executive director, addition of a new tank (no

capacity limitation) that will operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation..... 1<sup>1</sup>

e. Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1<sup>1</sup>

2. Modification of a tank unit or secondary containment system without increasing the capacity of the unit..... 2

3. Replacement of a tank with a tank that meets

the same design standards and has a capacity within +/-10% of the replaced tank provided:..... 1

- a. The capacity difference is no more than 1500 gallons;
- b. The facility's permitted tank capacity is not increased; and
- c. The replacement tank meets the same conditions in the permit.

4. Modification of a tank management practice..... 2

5. Management of different wastes in tanks:

- a. That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(c) below..... 3
- b. That do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(d) below..... 2
- c. That require addition of units or change in treatment processes or management standards,

provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(1)(ii), with prior approval of the executive director. The modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1<sup>1</sup>

- d. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1

Note: See §305.69(g) of this title (relating to Newly Listed Solid Waste Permit Modification at the Request of the Permittee or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

H. Surface Impoundments

1. Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity... 3
2. Replacement of a surface impoundment unit..... 3
3. Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system..... 2
4. Modification of a surface impoundment management practice..... 2
5. Treatment, storage, or disposal of different wastes in surface impoundments:
  - a. That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit..... 3
  - b. That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit..... 2
  - c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are

treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), and provided that the unit meets the minimum technological requirements stated in 40 CFR 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1

d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in 40 CFR 268.5(h)(2), and provided further that the surface impoundment has previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification



procedures to be used for the management of newly listed or identified wastes.

I. Enclosed Waste Piles. For all waste piles except those complying with 40 CFR 264.250(c), modifications are treated the same as for a landfill. The following modifications are applicable only to waste piles complying with 40 CFR 264.250(c).

1. Modification or addition of waste pile units:
  - a. Resulting in greater than 25% increase in the facility's waste pile storage or treatment capacity..... 3
  - b. Resulting in up to 25% increase in the facility's waste pile storage or treatment capacity..... 2
2. Modification of waste pile unit without increasing the capacity of the unit..... 2
3. Replacement of a waste pile unit with another waste pile unit of the same design and capacity and meeting all waste pile conditions in the permit..... 1
4. Modification of a waste pile management practice.... 2
5. Storage or treatment of different wastes in waste piles:
  - a. That require additional or different management practices or different design

- of the unit..... 3
- b. That do not require additional or different management practices or different design of the unit..... 2

**Note:** See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

**J. Landfills and Unenclosed Waste Piles**

- 1. Modification or addition of landfill units that result in increasing the facility's disposal capacity..... 3
- 2. Replacement of a landfill..... 3
- 3. Addition or modification of a liner, leachate collection system, leachate detection system, run-off control, or final cover system..... 3
- 4. Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, run-off control, or final cover system..... 2
- 5. Modification of a landfill management practice..... 2
- 6. Landfill different wastes:
  - a. That require additional or different management practices, different design of the liner, leachate collection system,

- or leachate detection system..... 3
- b. That do not require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system..... 2
- c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), and provided that the landfill unit meets the minimum technological requirements stated in 40 CFR 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1
- d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in 40 CFR 268.5(h)(2), and provided further that the landfill has previously

received wastes of the same type  
(for example, incinerator ash).

This modification is not applicable to  
dioxin-containing wastes (F020,  
021, 022, 023, 026, 027, and 028)..... 1

Note: See §305.69(g) of this title (relating to Newly Listed  
or Identified Wastes) for modification procedures to be  
used for the management of newly listed or identified  
wastes.

K. Land Treatment

1. Lateral expansion of or other modification of  
a land treatment unit to increase areal extent..... 3
2. Modification of run-on control system..... 2
3. Modify run-off control system..... 3
4. Other modifications of land treatment unit  
component specifications or standards required  
in the permit..... 2
5. Management of different wastes in land  
treatment units:
  - a. That require a change in permit operating  
conditions or unit design specifications..... 3
  - b. That do not require a change in permit  
operating conditions or unit design  
specifications..... 2

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

- 6. Modification of a land treatment management practice to:
  - a. Increase rate or change method of waste application..... 3
  - b. Decrease rate of waste application..... 1
- 7. Modification of a land treatment unit management practice to change measures of pH or moisture content, or to enhance microbial or chemical reactions..... 2
- 8. Modification of a land treatment unit management practice to grow food chain crops, or add to or replace existing permitted crops with different food chain crops, or to modify operating plans for distribution of animal feeds resulting from such crops..... 3
- 9. Modification of operating practice due to detection of releases from the land treatment unit pursuant to 40 CFR 264.278(g)(2)..... 3
- 10. Changes in the unsaturated zone monitoring system, resulting in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices

	or components thereof with devices or components that have specifications different from permit requirements.....	3
11.	Changes in the unsaturated zone monitoring system that do not result in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or components having specifications not different from permit requirements.....	2
12.	Changes in background values for hazardous constituents in soil and soil-pore liquid.....	2
13.	Changes in sampling, analysis, or statistical procedure.....	2
14.	Changes in land treatment demonstration program prior to or during the demonstration.....	2
15.	Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and the executive director's prior approval has been received.....	1 <sup>1</sup>
16.	Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the	

conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration and have received the prior approval of the executive director..... 1<sup>1</sup>

17. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the waste can be treated completely, where the conditions for the second demonstration are not substantially the same as the conditions for the first demonstration..... 3

18. Changes in vegetative cover requirements for closure..... 2

L. Incinerators, Boilers and Industrial Furnaces

1. Changes to increase by more than 25% any of the following limits authorized in the permit:  
A thermal feed rate limit; a feedstream feed rate limit; a chlorine feed rate limit, a metal feed rate limit, or an ash feed rate limit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be

- made through other means..... 3
2. Changes to increase by up to 25% any of the following limits authorized in the permit:
 

A thermal feed rate limit; a feedstream feedrate limit; chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means..... 2
  3. Modification of an incinerator, boiler, or industrial furnace unit by changing the internal size of geometry of the primary or secondary combustion units, by adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove HCl/Cl<sub>2</sub> metals or particulate from the combustion gases, or by changing other features of the incinerator, boiler, or industrial furnace that could affect its capability to meet the regulatory performance standards. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means..... 3
  4. Modification of an incinerator, boiler, or



industrial furnace unit in a manner that would not likely affect the capability of the unit to meet the regulatory performance standards but which would change the operating conditions or monitoring requirements specified in the permit. The executive director may require a new trial burn to demonstrate compliance with the regulatory performance standards..... 2

5. Operating requirements:

a. Modification of the limits specified in the permit for minimum or maximum combustion gas temperature, minimum combustion gas residence time, oxygen concentration in the secondary combustion chamber, flue gas carbon monoxide and hydrocarbon concentration, maximum temperature at the inlet to the particulate matter emission control system, or operating parameters for the air pollution control system. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means..... 3

b. Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the



Note: See §305.69(g) of this title (relating to Newly Regulated Wastes and Units) for modification procedures to be used for the management of newly regulated wastes and units.

- 7. Shakedown and trial burn:
  - a. Modification of the trial burn plan or any of the permit conditions applicable during the shakedown period for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn..... 2
  
  - b. Authorization of up to an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction, with the prior approval of the executive director .....1<sup>1</sup>
  
  - c. Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the executive director... 1<sup>1</sup>
  
  - d. Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the

prior approval of the executive director..... 1<sup>1</sup>

8. Substitution of an alternate type of nonhazardous waste fuel that is not specified in the permit..... 1

*§305.70. Municipal Solid Waste Class I Modifications.*

(a) A permittee may put into effect a Class I modification to a Municipal Solid Waste (MSW) permit provided that the permittee has received prior written authorization for such Class I modification from the executive director. In order to receive prior written authorization, the permittee must submit a modification request to the executive director specifying the changes to be made to permit conditions or to supporting documents referenced by the permit, and explaining in detail why such changes are necessary. The permittee must submit two copies of the modification request in accordance with §305.44 of this title (relating to Signatories to Applications). Failure to submit the modification request with complete information shall constitute grounds for returning the request to the permittee without further action.

(b) The permittee must send notice of the modification request by first-class mail to all persons listed in §305.103(b) of this title (relating to Notice by Mail) if the Class I permit modification identified in subsection (g) of this section is marked by a superscript 1. This notification must be made no later than 30 calendar days after the executive director acts upon the request. If the permittee fails to give notice as required, approval of the modification request is automatically revoked.

(c) No later than 60 calendar days after receipt of the modification request, the executive director must:

(1) approve the modification request, with or without changes, and modify the permit accordingly;

(2) deny the request;

(3) request additional information concerning the request from the permittee; or

(4) determine that the modification request does not qualify as a Class I permit modification, and that the requested change requires a permit amendment pursuant to §305.62 of this title (relating to Amendment).

(d) If a request for a Class I permit modification is denied by the executive di-

rector, the permittee must comply with the original permit conditions. Any change in a term, condition or provision of a MSW permit that is not authorized by the executive director as a Class I permit modification requires a permit amendment pursuant to §305.62 of this title.

(e) If after 60 days of receipt of a modification request that is specifically identified in subsection (g) of this section, the executive director fails to approve or deny the request or to notify the permittee that the requested modification requires a permit amendment pursuant to §305.62 of this title, the modification request shall be automatically approved. The executive director may extend this 60 day time period if necessary to review additional information submitted pursuant to subsection (c)(3) of this section. The length of the extension shall be equivalent to the amount of time necessary to review the additional information.

(f) With the written consent of the permittee, the executive director may extend indefinitely or for a specified period the time periods set out in subsections (c) and (e) of this section.

(g) The following is a list of possible Class I modifications to a MSW permit:

(1) a change in the sequence of landfill development;

(2) a change in the size and/or shape of a trench to obtain a 3:1 side slope, as long as there is no increase in capacity;

(3) replacement of existing monitor wells that have been damaged or rendered inoperable, with no change, to location, design, or depth of the wells;

(4) changes in the location of marker systems (i.e., grid markers);

(5) improvements to a fire protection plan;

(6) changes to interior road location in order to prevent traffic through the disposal area;

(7) changes in interior road design and construction materials;

(8) increases in sampling frequency (e.g., for ground water, methane, etc.);

(9) changes in excavation details, except for increases in depth that would change the SLQCP or increase the site life;

(10) corrections to the metes and bounds description of the permit boundaries that do not increase the size of the facility;

(11) upgrade of landfill liner design, installation, or quality control testing to reflect the requirements of revised regulations which provide for greater environmental protection;

(12) installation of a leachate collection system;

(13) installation of a methane gas monitoring system;

(14) installation of a methane gas collection system;

(15) changes in closure or post-closure care requirements to reflect the requirements of revised regulations which provide for increased environmental protection;

(16) the use of alternate daily cover on a trial basis not to exceed 6 months with one 6 month extension allowable;

(17) changes regarding the use of alternate windblown waste control methods;

(18) substitution of an equivalent financial assurance mechanism;

(19) temporary changes in operating hours to address natural disaster situations or to accommodate special community events;

(20) changes in the drainage control plan that improve internal stormwater runoff/runoff handling without impacting offsite drainage;

(21) changes in the entry gate location or site layout that relocate gatehouse, office or maintenance building locations, or add scales to the facility, so long as the changes do not alter access traffic patterns delineated in the site development plan and/or the permit;

(22) changes to a site layout plan that add or delete a properly registered

MSW facility—a used or scrap tire collection area, a recycling collection area, a sludge/grease/grit trap processing or stabilization facility, a petroleum contaminated soil stabilization area, a registered transfer station, a citizens collection area, a pesticide container collection area, a composting operation, or other activity properly registered with the Commission;

(23) an increase in landfill height not to exceed 10 feet above the approved final elevations as long as one of the following conditions are met:

(A) the facility either ceases the receipt of solid waste within 365 days of executive director approval of the height increase and initiates closure of the facility or unit, or has closed the facility; or

(B) the facility has submitted a request for a major permit amendment pursuant to §305.62(c)(1) of this title (relating to Amendments) to increase the height of the landfill; or

(C) the height increase is requested solely for the purpose of improving drainage from the filled area, and:

(i) the waste disposal area is not expanded into the limits of the buffer zone or within easements that exist; and

(ii) final contour elevations, including final cover, are no greater than 10 feet above the maximum final contour elevation of the contiguous landfilled area or phase of landfill development.

(h) Authorization to increase the height of a landfill, in accordance with subsection (g)(23) of this section, may only be granted one time as a Class I modification. Subsequent requests for an increase in height require a permit amendment.

(i) In case of a request for a Class I modification for a change in a term, condition or provision of a MSW permit not explicitly listed in subsection (g) of this section, the executive director shall make the determination as to whether the modification request may be processed as a Class I modification or whether the change requires a permit amendment pursuant to §305.62 of this title (relating to Amendment). In making this determination, the executive director shall consider the similarity of the requested change to those Class I modifications listed in subsection (g) of this section, as well as the following criteria:

(1) Class I modifications apply to minor changes to the facility or its operation that are routine in nature; and

(2) Class I modifications do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment.

(j) A temporary authorization may be granted by the executive director for a term of not more than 180 days for activities or events that will prevent disruption of solid waste management activities. The permittee must request a temporary authorization and must include in the request a specific description of the activities to be conducted and an explanation of why the temporary authorization is necessary, reasonable, and unavoidable. A temporary authorization may be reissued for an additional term of 180 days if the circumstances warrant additional time or if the permittee has applied for an amendment or modification to the permit.

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 February 1, 1993.

TRD-9318405 Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Earliest possible date of adoption: March 12, 1993

For further information, please call: (512) 463-8069

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part I. Texas Department of Public Safety

#### Chapter 31. Standards for an Approved Motorcycle Operator Training Course

##### • 37 TAC §§31.1-31.8

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

The Texas Department of Public Safety proposes the repeal of §§31.1-31.8, concerning standards for an approved motorcycle operator training course. The department is proposing repeal of these sections due to substantive amendments and additional sections. This action is being filed simultaneously with a proposal for new sections concerning standards for an approved motorcycle operator training course. These sections contain provisions for student and teacher qualification and certification, course records and requirements, and suspension.

Melvin C. Peebles, Assistant Chief of Fiscal Affairs, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Henry Palma, Sr., Manager, Motorcycle Safety Bureau, has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be that the department is repealing existing standards for an approved motorcycle operator training course to change language in order to comply with existing statutory requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2000.

The repeals are proposed under Texas Civil Statutes, Article 6701c-4, which provide the Texas Department of Public Safety with the authority to adopt rules that it determines are necessary to administer this article effectively.

§31.1. Program Sponsor.

§31.2. Motorcycle Instructor.

§31.3. Student Admission Requirements.

§31.4. Verification of Course Completion by a Minor.

§31.5. Approved Motorcycle Training Courses.

§31.6. Motorcycle Requirements.

§31.7. Notice of Hearing Requirements.

§31.8. Suspension.

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 January 27, 1993.

TRD-9318493 James R. Wilson  
Director  
Texas Department of  
Public Safety

Earliest possible date of adoption: March 12, 1993

For further information, please call: (512) 465-2000

##### • 37 TAC §§31.1-31.11

The Texas Department of Public Safety proposes new §§31.1-31.11, concerning standards for an approved motorcycle training course. The department is proposing new standards for an approved motorcycle operator training course due to substantive amendments and adding new sections. This action is filed simultaneously with a proposal for

repeal of existing sections concerning standards for an approved motorcycle operator training course. The new sections promulgate standards for program sponsors, instructors, definitions, student admission requirements and verification of course completion by minors, approved motorcycle training courses, motorcycle training requirements, notice and hearing requirements, suspension, quality assurance visits, and notification of legal actions.

Melvin C. Peeples, Assistant Chief of Fiscal Affairs, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Henry Palma, Sr., Manager, Motorcycle Safety Bureau, has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be an upgrading of standards to ensure the public of quality motorcycle operator training and expansion of the number of training facilities. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the sections as proposed will be \$55 student tuition per course for fiscal years 1993-1997.

Comments on the proposal may be submitted to John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2000.

The new sections are proposed under Texas Civil Statutes, Article 6701c-4, which provide the Texas Department of Public Safety with the authority to adopt rules that it determines are necessary to administer this article effectively.

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

**Advanced motorcycle operator training course**—A course of instruction designed to provide experienced motorcyclists with additional skills and knowledge found to be lacking in accident-involved motorcyclists.

**Basic motorcycle operator training course**—A course of instruction designed to teach new or inexperienced motorcyclists basic riding skills and defensive street riding strategies.

**Department**—Texas Department of Public Safety. The department is the state agency designated by the governor to establish and administer the motorcycle operator training and safety program.

**Instructor**—An individual certified and approved to teach the motorcycle operator training courses in Texas. This individual, unless directly employed by the Department as a motorcycle safety instructor, is not an agent, servant, or employee of the department or State of Texas.

**Mobile site sponsor**—A public or private entity bound by a letter of agreement to advertise for and enroll students, pay for

insurance, and provide a facility for the riding portion of the course. The department provides the remaining equipment, material, and instructional staff for the course. In its rule as a mobile site sponsor, this entity is not an agent, servant, or employee of the department or the State of Texas.

**Motorcycle operator training program**—The motorcycle operator training and safety program provides information and courses in knowledge, skills, and safety relating to the operation of motorcycles to all motorcyclists in this state. It also provides information to the general public on sharing the roadway with motorcycles.

**Motorcycle Safety Bureau**—An administrative bureau within the department assigned with the responsibility for establishing and administering the motorcycle operator training and safety program.

**Motorcycle Safety Foundation (MSF)**—A national, nonprofit organization whose purpose is to improve the safety of motorcyclists on the nation's streets and highways. The MSF provides programs in rider education, licensing improvement, public information, and research.

**Permanent site sponsor**—A public or private entity contracted by the department to provide motorcycle operator training on a regular basis. In its role as a permanent site sponsor, this entity is not an agent, servant, or employee of the department or the State of Texas.

### §31.2. Program Sponsor.

(a) No individual, association, partnership, corporation, or educational or governmental agency may sponsor or offer training in motorcycle operation to the public for tuition, consideration, or fee without authorization from the department. To qualify for authorization, a sponsor must be approved by the department through a current contract for a permanent site sponsor or letter of agreement for a mobile site sponsor. Approval will be denied unless a sponsor applicant meets the following requirements. The applicant must demonstrate the capacity to register students, collect and account for tuition and state reimbursements as appropriate, arrange public notice of courses, provide required insurance coverage and make all necessary insurance premium payments, submit and maintain all required records, and contract with, schedule, and compensate authorized instructors as appropriate. All applicants:

(1) must have access to a riding area for on-cycle training that is:

(A) a paved surface, including asphalt, concrete, or other all weather surface of suitable traction; and

(B) large enough to safely accommodate any motorcycle training range approved by the department, as flat as pos-

sible, secure from vehicular and pedestrian traffic, and free of surface hazards and obstacles;

(2) for permanent site contract must also have access to:

(A) a secure storage area to physically and environmentally protect training motorcycles and other course equipment;

(B) a classroom, not located in a private residence, that is large enough to seat all students and instructors comfortably and that contains at least one adequate desk or equivalent seating and writing surface for each student, and at least one instructor's desk, table, or podium;

(C) audiovisual presentation equipment for the classroom, including a chalkboard or equivalent; and

(D) a first aid kit and at least one five-pound Class ABC fire extinguisher, or equivalent, for the riding area.

(b) Approval as a sponsor may be suspended if the sponsor, an instructor under contract with the sponsor, or a member of the sponsoring organization with supervisory or executive duties involving the training program:

(1) fails to continue to meet the requirements of subsection (a) of this section;

(2) has been convicted or placed on probation for:

(A) any felony;

(B) any offense involving moral turpitude within the previous 10 years from the date of approval or renewal except as provided hereinafter; or

(C) any offense involving tampering with a government record, or any of the following offenses involving the operation of a motor vehicle within the previous five years:

(i) criminally negligent homicide;

(ii) driving while intoxicated; or

(iii) driving under the influence of drugs;

(3) cannot provide sufficient information and documentation to enable the department to evaluate or reevaluate the applicant's request for approval;

(4) knowingly presents or allows to be presented to the department any false or misleading information relating to a request for approval;

(5) permits or engages in any fraud or fraudulent practice concerning an application or, in any action between the applicant or licensee and the public, induces or countenances any fraud or fraudulent practice on the part of an applicant for a driver's license or permit;

(6) knowingly or recklessly disregards or fails to comply with any departmental rule, written policy, or written procedure regarding the motorcycle operator training program; or

(7) knowingly allows an instructor to give, or a student to receive, classroom or riding instruction if either exhibits any evidence of or effects from an alcoholic beverage, controlled substance, or drug as defined in Texas Civil Statutes, Article 67011-1.

(c) The department may construe any probation or conviction which is for a criminal offense arising from a penal provision from another state, federal, military, or foreign jurisdiction to be its closest equivalent under the penal provisions of this state.

(d) Approval may be cancelled if:

(1) it was based on false or incorrect information or mistake, such as clerical or other nonsubstantive errors by either party; or

(2) if the discrepancy causing the suspension under these administrative rules has not been corrected within the time limit prescribed by a suspension.

(e) Each sponsor must designate a chief school official to be responsible for signing contracts with the department, instructors, or students and for signing any forms required of the sponsor. The chief school official must also be designated by the sponsor to be the custodian of all records, which shall be kept for a period of at least three years from the date of the final performance report under the contract.

(f) If the sponsor is an organization, that organization shall designate one of its members as the chief school official. If the sponsor is an individual, that person shall also be the chief school official.

(g) The control of the sponsor is considered to have changed:

(1) in the case of sole proprietorship, when more than 50% of the controlling interest has been sold or transferred;

(2) in the case of a partnership or a corporation, when more than 50% of the controlling interest has been sold or transferred; or

(3) when the board of directors, officers, share holders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the sponsor.

(h) When control of the sponsor has changed, as outlined in subsection (g) of this section, the contract will be cancelled and renegotiated through the appropriate rules and regulations.

### §31.2. *Motorcycle Instructor.*

(a) No individual may instruct or offer instruction in motorcycle operation to the public for tuition, consideration, or fee without authorization from the department. To qualify for authorization, an instructor must be approved by the department. Approval will be denied unless an instructor applicant meets the following requirements. The applicant must agree to teach the training courses in accordance with the department's rules, policies, procedures, and approved curricula and must:

(1) hold a current National Certification from the Motorcycle Safety Foundation (MSF);

(2) be a high school graduate or possess a valid GED;

(3) possess a current, valid Texas motorcycle license;

(4) be a licensed driver for at least five years;

(5) meet the current driving record evaluation standards established by the Texas Education Agency for school bus drivers pursuant to Texas Civil Statutes, Article 6687b, §5(a);

(6) be free from addiction to alcoholic beverages or drugs; and

(7) be physically competent to conduct classroom and on-cycle instruction, including technically correct riding demonstrations.

(b) An applicant for approval to instruct an advanced motorcycle operator training course must meet all the requirements to instruct as identified in subsection (a) of this section, plus attend a department-approved curriculum update, and be able to perform technically correct riding demonstrations on his or her personal motorcycle.

(c) Approval as an instructor may be suspended if the instructor fails to continue to meet the requirements of subsections (a) and (b) of this section or if the instructor, as an individual, fails to meet or continue to meet the requirements of §31.2(b) of this title (relating to Program Sponsor).

(d) Approval may be cancelled if:

(1) it was based on false or incorrect information or mistake; or

(2) the discrepancy causing the suspension under §31.2 of this title (relating to Program Sponsor), §31.3 of this title (relating to Motorcycle Instructor), §31.4 of this title (relating to Student Admission Requirements), §31.5 of this title (relating to Verification of Course Completion by a Minor), §31.6 of this title (relating to Approved Motorcycle Training Courses), and §31.7 of this title (relating to Motorcycle Requirements) has not been corrected within the time limit prescribed by a suspension.

(e) A motorcycle instructor approved by the department may teach both the classroom and on-cycle phases of the courses for which the approval was granted.

(f) Motorcycle instructors approved by the department may not:

(1) give instructions or allow a student to receive instruction in motorcycle safety if either the instructor or student is using or exhibits any evidence of effect from an alcoholic beverage, controlled substance, or drug as defined in Texas Civil Statutes, Article 67011-1; or

(2) complete, issue, or validate a certificate of course completion to a person who has not successfully completed the course. A period of absence for any portion of scheduled course instruction will require that student repeat that portion of instruction prior to issuance of the certificate of completion.

### §31.4. *Student Admission Requirements.*

(a) Basic motorcycle operator training courses are open to any person who is:

(1) physically and mentally capable of being licensed in Texas as a motorcycle operator; and

(2) at least 15 years old on the day the course begins.

(b) A person who is 15 years old but less than 18 years old may not be admitted to a basic motorcycle operator training course before successful completion of the 32-hour classroom phase of the driver education course as required by the Texas Education Agency.

(c) The advanced motorcycle operator training course is restricted to individuals with a current motorcycle (Class M) driver's license. Each student must provide his or her own motorcycle that meets the requirements of §31.7 of this title (relating to Motorcycle Requirements).

### §31.5. *Verification of Course Completion by a Minor.*

(a) The sponsor will issue a Texas Driver Education Certificate (Form DL-

41A) to a student who is 15 years old but less than 18 years old and who has successfully completed the approved basic motorcycle operator training course. The DL-41A is issued to verify that the student has met the educational and training requirements for a motorcycle operator's license. A Department of Public Safety serialized completion card will be issued by the course sponsor to every student completing the approved advanced motorcycle operator training course.

(b) The department will accept an original signature or the written, stamped, or typed name or signature of the chief school official on Form DL-41A. The signature of the instructor on the form must be an original signature. If the chief school official is also the instructor, that person must sign both spaces on the form.

### *§31.6. Approved Motorcycle Training Courses.*

(a) Except as modified by subsection (c) of this section, the department adopts the educational, safety, and instructor standards, by reference, of the most current versions of the following Motorcycle Safety Foundation (MSF) courses:

(1) the approved basic motorcycle operator training course is the Motorcycle RiderCourse: Riding and Street Skills (MRC:RSS), Modules 1 through 15, Exercise 22, and Module 18;

(2) the approved advanced motorcycle operator training courses are the Experienced RiderCourse (ERC) and the Optional Experienced RiderCourse. The choice of curricula is determined by the size of the riding area. The skill and knowledge tests for either curricula are not required but may be used at the sponsor's discretion; and

(3) the approved instructor preparation course is MSF instructor preparation course curriculum.

(b) Approved course curricula are available for inspection at the department's Austin headquarters.

(c) In addition to these curricula requirements, the minimum standards for motorcycle operator training courses include the following.

(1) The student to instructor ratio for the basic and advanced course classroom instruction may not exceed 24 students per instructor.

(2) The student to instructor ratio for on-cycle instruction may not exceed six students per instructor until the instructor has taught more than six courses. Once this has occurred and the instructor has requested and received written permission from the department, they may teach up to eight students. In no case will there be more

than 12 students on the range at any given time.

(3) The department may change these ratios on a case-by-case basis when such change is justified after considering the available facilities, the safety of the students and instructor(s), and the efficient conduct of the course.

(4) A separate motorcycle must be available for each individual student during an entire module of on-cycle instruction.

(d) All participants and instructors must wear protective gear when riding during the course. The minimum protective gear is as follows:

(1) a motorcycle helmet that meets Department of Transportation standards;

(2) eye protection;

(3) over-the-ankle, sturdy footwear (not cloth, canvas, etc.);

(4) long-sleeved shirt or jacket;

(5) long, nonflare denim pants or equivalent; and

(6) full-fingered gloves, preferably leather

### *§31.7. Motorcycle Requirements.*

(a) A motorcycle must be rejected for use by the lead course instructor if it fails to meet the requirements of this section or if, in the discretion of the instructor, the motorcycle is unsafe for the rider, an instructor, another student, or any other person permitted in the riding area. A motorcycle may be deemed unsafe because of modification, damage, lack of maintenance, nonstandard configuration, or any other substantial safety reason.

(b) Any student-owned motorcycle must:

(1) meet all the requirements for operation on public highways;

(2) have proof of adequate insurance coverage available for inspection by the lead course instructor; and

(3) meet requirements of this section.

(c) A student may use a borrowed motorcycle if the student can show written permission from the owner to use the motorcycle in the course and if it meets all other requirements of this section.

(d) A moped, no-ped, motor scooter, motor-assisted bicycle, or a motorcycle with an engine displacement of over 350cc:

(1) may not be used in the basic course; and

(2) may be used in the advanced course only if it meets all other requirements of this section.

(e) No sponsor may provide a motorcycle to a student for use in the advanced course. If a sponsor provides a motorcycle to a student for use in the basic course, the motorcycle:

(1) must meet the safety requirements of subsection (a) of this section;

(2) must not be prohibited by subsection (d) of this section; and

(3) may, but is not required to, be registered, inspected, or insured for operation on public highways.

*§31.8. Notice and Hearing Requirements.* If the department intends to deny, suspend, or cancel approval of a program sponsor or instructor, notice and opportunity for hearing must be given as provided by Texas Civil Statutes, Article 6252-13a, Article 6252-13c, and Article 6252-13d, §§2-5.

*§31.9. Suspension.* The term of suspension under §31.2 of this title (relating to Program Sponsor) and §31.3 of this title (relating to Motorcycle Instructor) may not exceed one year. The term of suspension may be reduced by the manager of the Motorcycle Safety Bureau on the recommendation of the program director for Motorcycle Operator Training if corrective actions have been taken and the reason for suspension no longer exists. If the reason for suspension still exists at the end of the suspension period, the suspension automatically elevates to disapproval. To again become approved, a disapproved sponsor or instructor must reapply and meet all current requirements for approval.

### *§31.10. Quality Assurance Visits.*

(a) Quality Assurance Visits (QAVs) will be scheduled and conducted at each of the contracted permanent motorcycle operator training program sites. During the QAV, the focus will be on the adherence to requirements outlined in §31.2 of this title (relating to Program Sponsor), §31.3 of this title (relating to Motorcycle Instructor), §31.4 of this title (relating to Student Admission Requirements), §31.5 of this title (relating to Verification of Course Completion by a Minor), §31.6 of this title (relating to Approved Motorcycle Training Courses), and §31.7 of this title (relating to Motorcycle Requirements).

(b) The QAVs will be conducted by department personnel or by persons contracted by the department to perform them.

(c) While conducting the QAV, the evaluator will utilize the same pass/fail cri-



teria as is utilized to evaluate the student teaching portion of the approved motorcycle safety instructor training course. Instructor(s) not meeting the approved criteria will be suspended as outlined in §31.3 of this title (relating to Motorcycle Instructor). Remedial actions necessary to remove the suspension will be determined by the manager of the Motorcycle Safety Bureau on the recommendation of the program director for Motorcycle Operator Training and may include, but are not limited to:

(1) attending a department-sponsored instructor curriculum refresher course;

(2) attending all or portions of a department-sponsored instructor training course; or

(3) teaching an entire course under the supervision of a Motorcycle Safety Bureau staff member, an approved chief instructor, or other individual expressly designated by the department to perform such duties.

**§31.11. Notification of Legal Acting.** All sponsors shall notify the Motorcycle Safety Bureau with the details of any legal action which has been filed against the sponsor, its officers, or its contracted instructors within 30 days of such action.

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 January 27, 1993.

TRD-9318494 James F. Wilson  
Director  
Texas Department of  
Public Safety

Earliest possible date of adoption: March 12, 1993

For further information, please call: (512) 465-2000

## TITLE 43. TRANSPORTATION

### Part I. Texas Department of Transportation

#### Chapter 1. Administration

#### Conditional Grant Program

#### • 43 TAC §1.409

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

The Texas Department of Transportation proposes the repeal of §1.409 concerning repayment of the department's conditional grant

program. Repeal of this section is necessary because of the contemporaneous proposed adoption of new §1.409, which incorporates the provisions of the repealed section as rewritten and expanded to further clarify the scholarship repayment schedule for a student who is declared in default.

The Education Code, Chapter 56, Subchapter H, requires the department to establish and administer a conditional grant program to provide financial assistance to minority students who exhibited in the student's secondary school performance an aptitude for engineering and who intend to become civil engineers and work for the department for two years following graduation.

Charles H. Bailey, director, division of civil rights, has determined that there will be no fiscal implications as a result of enforcing or administering the repeal.

Mr. Bailey has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeal.

Mr. Bailey also has determined that for each of the first five years the repeal as proposed is in effect, the public benefit anticipated as a result of enforcing the repeal will be a more fair, equitable, and uniform repayment schedule for students.

There will be no effect on small businesses, and no anticipated economic cost to person who are required to comply with the proposed repeal.

Pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed repeal and new section. The public hearing will be held at 9 a.m. on Wednesday, February 24, 1993, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin.

Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer oral or written comments, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc., for proper reference. Any suggestions or requests for alternative language or other revisions in the proposed text should be submitted in written form.

Written comments on the proposed rule may be submitted to Charles H. Bailey, director, division of civil rights, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. All comments should be

submitted no later than 5 p.m. on March 12, 1993.

The repeal is proposed under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation, and Chapter 56, Subchapter H of the Education Code which requires the department to adopt rules implementing a conditional grant program.

#### §1.409. Repayment.

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 February 3, 1993.

TRD-9318516 Diane L. Northam  
Legal Administrative  
Assistant  
Texas Department of  
Transportation

Earliest possible date of adoption: March 12, 1993

For further information, please call: (512) 463-8630

The Texas Department of Transportation proposes new §1.409 concerning repayment of the department's conditional grant program. The new section replaces existing §1.409 which is simultaneously being repealed.

The Education Code, Chapter 56, Subchapter H, requires the department to establish and administer a conditional grant program to provide financial assistance to minority student who exhibited in the student's secondary school performance an aptitude for engineering and who intend to become civil engineers and work for the department for two years following graduation.

Section 1.409 establishes a new plan for repayment of the scholarship by a student who is declared in default by providing for a schedule of 120 monthly installment payments, a six month grant period, and a temporary reduction or deferral of payments and/or extension of the payment period in the case of catastrophic illness or family emergency.

Charles H. Bailey, director, division of civil rights, has determined that there will be no fiscal implications as a result of enforcing or administering the section.

Mr. Bailey has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the section.

Mr. Bailey also has determined that for each of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be a more fair, equitable, and uniform repayment schedule for students.

There will be no effect on small businesses, and no anticipated economic cost to person who are required to comply with the proposed new section.

Pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed repeal and new section. The public hearing will be held at 9 a.m. on Wednesday, February 24, 1993, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin.

Those desiring to make comments or presentations may register starting at 8 a.m. Any interested person may appear and offer oral or written comments, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc., for proper reference. Any suggestions or requests for

alternative language or other revisions in the proposed text should be submitted in written form.

Written comments on the proposed rule may be submitted to Charles H. Bailey, director, division of civil rights, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. All comments should be submitted no later than 5 p.m. on March 12, 1993.

The section is proposed under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation, and Chapter 56, Subchapter H of the Education Code which requires the department to adopt rules implementing a conditional grant program.

*§1.409. Repayment.*

(a) Installments. If a student is required to repay funds pursuant to §1.408 of this title (relating to Default), the department will establish a repayment schedule of 120 equal monthly installments; provided, however, that the minimum installment shall be \$20, and further provided that, at the option of the student, repayments may be made in fewer than 120 installments.

(b) Grace period. A student will not be required to begin payments until six months subsequent to the determination of default.

(c) Exception. The department may temporarily reduce or defer the required payments and/or extend the prescribed repayment period, upon approval of the executive director, if a student demonstrates his or her inability to pay due to catastrophic illness or family emergency. Any reduction, deferral, or extension will not relieve a student of his or her responsibility to repay all funds.

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 February 3, 1993.

TRD-9318517

Diane L. Northam  
Legal Administrative  
Assistant  
Texas Department of  
Transportation

Earliest possible date of adoption: March 12, 1993

For further information, please call: (512) 463-8630



# Adopted Sections

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 7. BANKING AND SECURITIES

### Part VII. State Securities Board

#### Chapter 115. Dealers and Salesmen

##### • 7 TAC §115.1

The State Securities Board adopts an amendment to §115.1, concerning dealers and salesmen, to add a time limit within which a new officer or partner must file an application, with changes to the proposed text as published in the November 20, 1992, issue of the *Texas Register* (17 TexReg 8128). The change makes the section gender neutral.

The section allows for the timely receipt by the Board of applications to register a new officer or partner.

The section places a 30-day filing requirement on applications to register a new officer or partner.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581, §28-1, which provide that the Board may make or adopt rules or regulations governing registration statements, applications, notices, and reports, and in the adoption of rules and regulations, may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes.

##### §115.1. General

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

(d) Officer or Partner Registration.

Dealer or investment adviser applicants other than individuals must make an application to register an officer or partner in connection with the registration, and any such officer or partner must complete the necessary registration requirements. An applicant may designate as its officer or partner a principal registered on the Central Registration Depository System maintained by the National Association of Securities Dealers. If the officer or partner resigns or is otherwise removed from his or her position, the firm shall make an application to register another officer or partner within 30 days.

(e)-(h) (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 February 1, 1993

TRD-9318449 Richard D. Latham  
Securities Commissioner  
State Securities Board

Effective date: February 23, 1993

Proposal publication date: November 20, 1992

For further information, please call. (512) 474-2233

##### • 7 TAC §115.4

The State Securities Board adopts an amendment to §115.4, concerning dealers and salesmen, to add a time limit within which changes to the evidence of registration must be submitted and clarify that surviving entities of certain transactions must be registered, without changes to the proposed text as published in the November 20, 1992, issue of the *Texas Register* (17 TexReg 8128).

The section allows for the timely receipt by the Board of changes to the evidence of registration and applications to register surviving entities of certain transactions.

The section places a 30-day filing requirement on submission of changes that are to be reflected on the evidence of registration and sets forth the requirement that applications be filed to register new entities created as a result of certain transactions.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581, §28-1, which provide that the Board may make or adopt rules or regulations governing registration statements, applications, notices, and reports, and in the adoption of rules and regulations, may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes

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 February 1, 1993

TRD-9318450 Richard D. Latham  
Securities Commissioner  
State Securities Board

Effective date: February 23, 1993

Proposal publication date: November 20, 1992

For further information, please call (512) 474-2233

#### Chapter 131. Guidelines for Confidentiality of Information

##### • 7 TAC §131.1, §131.2

The State Securities Board adopts amendments to §131.1 and §131.2, concerning the general provisions and disclosure for limited purposes provisions of the guidelines for confidentiality of information. Section 131.1 is adopted with changes to the proposed text as published in the November 20, 1992, issue of the *Texas Register* (17 TexReg 8128). The change makes the section gender neutral. Section 131.2 is adopted without changes and will not be republished. The sections have to do with permissible sharing of confidential information by the Securities Commissioner. Simultaneously, the Board is adopting the repeal of §131.3 and §131.4. The overall effect of the amendments and repeals is to expand the scope of permissible sharing of confidential information.

The section provides for greater flexibility in sharing confidential information with other regulators including those of foreign jurisdictions.

The section sets forth the parameters of permissible sharing of confidential information

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 581, §28-1, which provide that the Board may make or adopt rules or regulations governing registration statements, applications, notices, and reports, and in the adoption of rules and regulations, may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes

§131.1. General Provisions Pursuant to the authority given to the Board under the Securities Act, §28, as amended by Acts 1977, 65th Legislature, Chapter 327, effective August 29, 1977, the State Securities Board, recognizing the need for cooperative law enforcement among agencies responsible for prevention, detection, and prosecution of white collar crime, for the regulation and policing of persons who offer and sell securities, and for the regulation of offerings of securities, authorizes the Securities Commissioner in his or her discretion to supply information obtained during the

course of investigations conducted pursuant to the Securities Act, §28, to any governmental authority or any quasi-governmental authority charged with overseeing securities activities.

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 February 1, 1993

TRD-9318451 Richard D. Latham  
Securities Commissioner  
State Securities Board

Effective date: February 23, 1993

Proposal publication date: November 20, 1992

For further information, please call: (512) 474-2233

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• 7 TAC §131.3, §131.4

The State Securities Board adopts the repeal of §131.3 and §131.4, concerning other governmental agencies and quasi-governmental agencies with which the Securities Commissioner may share confidential information, without changes to the proposed text as published in the November 20, 1992 issue of the *Texas Register* (17 TexReg 8129). Simultaneously, the Board is adopting amendments to §131.1 and §131.2. The overall effect of the repeals and amendments is to expand the scope of permissible sharing of confidential information.

The sections are no longer needed.

Two unnecessary sections are being eliminated.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 581, §28-1, which provide that the Board may make or adopt rules or regulations governing registration statements, applications, notices, and reports, and in the adoption of rules and regulations, may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes.

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

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## TITLE 16. ECONOMIC REGULATION

### Part II. Public Utility Commission of Texas

#### Chapter 23. Substantive Rules

##### Rates

###### • 16 TAC §23.23

The Public Utility Commission of Texas adopts an amendment to §23.23 with changes to the proposed text as published in the October 16, 1992, issue of the *Texas Register* (17 TexReg 7145). The amendment makes several changes to the manner by which the commission regulates the fuel costs of generating utilities. In addition, the amendment corrects one error in the recently adopted amendments that allow the certification of long-term fuel contracts.

The amendment allows each utility's fuel factor to be revised every six months according to a specified schedule, in the case of emergencies, or in a general rate case. Refunds or surcharges for over and under-collections are required according to certain limitations. The current method for allocating refunds and surcharges is maintained; however, the interest rate applied to over or under-collections of fuel costs is changed to the rate set by the commission for over or undercharges pursuant to §23.45 of this chapter.

The amendment requires a reconciliation of fuel costs at least as often as once approximately every three years and provides a definition of the costs that are eligible for inclusion in the fuel factor. The amendment provides for a transition period between the existing rule and the proposal.

Finally, a correction is made to the recently adopted long-term fuel contract certification rule. The correction changes a reference to a long-term gas contract to a long-term fuel contract.

Comments were received from Brazos Electric Power Cooperative (Brazos), Consumers Union (CU), the operating subsidiaries of Central and South West Corporation (CSW), El Paso Electric Company (EPEC), Gulf States Utilities Company (GSU), Houston Lighting and Power Company (HL&P), the Lower Colorado River Authority (LCRA), Northeast Texas Electric Cooperative, Inc. and Tex-La Electric Cooperative of Texas, Inc. (NTEC), Office of Public Utility Counsel (OPC), San Miguel Electric Cooperative (SMEC), Southwestern Public Service (SPS), Texas Industrial Energy Consumers (TIEC), and Texas Utilities Electric Company, (TU Electric). Enron filed comments responsive to OPC's comments.

Several commenters noted that, except for the definition of eligible fuel, the proposal resulted from many hours of discussion and represented a consensus among the parties participating in the workshops and forums on this matter.

EPEC, LCRA, TU Electric, SPS, HL&P, NTEC supported the amendments but recommended some minor changes, which are ad-

ressed below. CSW supported the adoption of the proposal as published. CU opposed adoption of the proposal, particularly the definition of eligible fuel. Several commenters only commented on particular provisions without stating whether they supported or opposed the proposal as a whole.

OPC recommended that the commission reject the proposed revision to the contract certification portion of the rule and instead repeal the entire contract certification portion of the rule. Enron responded with the argument that repeal of the contract certification rule would be beyond the commission's authority in this rulemaking because natural gas companies would have no notice that such could occur. The commission supports the contract certification rule and does not believe it should be repealed. The proposed change, which corrects an error in the rule, is being adopted.

SMEC noted that the rule does not state what the consequences are for failing to file a request to make a surcharge as required by the proposal. SMEC suggested that the proposal be amended to state that, in the absence of good cause, the failure to file a required petition for surcharge means that the utility has waived its right to make the surcharge and must write off the under-collected balance. Furthermore, SMEC suggested that the proposal should be further changed so that a utility that has chosen not to petition for a surcharge and has waived its right to collect the under-collection should be exempted from the requirement that fuel be reconciled at least every three years. SMEC submitted that in such circumstances reconciliation is unnecessary and only increases the regulatory expenses that have to be borne by the ratepayer.

The commission does not believe it would be appropriate to make the changes suggested by SMEC. First, it should be noted that this part of the proposal is the result of lengthy discussions between the parties who attended the workshops. Also, there are a number of requirements in the proposal, but the proposal does not explicitly state the consequences of failure to comply with any of the requirements. There is no reason to single out this requirement. The commission may wish to consider the waiver part of SMEC's proposal at a later time, but the commission disagrees that waiver of surcharges will eliminate the need to require reconciliations on a regular basis. Reconciliation proceedings consider many more issues than simply under-collections and those issues should be considered on a regular basis.

The definition part of the proposal drew the most comments. TIEC was the most vocal in opposition to the definition, but OPC and CU objected to three elements of the definition for reasons similar to those underlying TIEC's opposition.

TIEC commented that the proposed definition of eligible fuel expenses lacks an underlying consistent policy that could give guidance as to why some fuel related costs were included and others excluded from the definition of fuel costs. As an example, TIEC noted that storage costs of fuel before the fuel is delivered to the generation site are eligible fuel costs, but storage costs at the generation site are

not eligible. TIEC suggested that the commission should state the underlying policy reason, and toward that end, TIEC offered a discussion of why fuel costs should be treated differently. TIEC commented that the fundamental method of recovery of costs is through base rates, and that special treatment is afforded fuel only because it may be subject to wide variation on a cost per unit basis. TIEC maintains that consequently only costs that are volatile should be allowed to be recovered outside of base rates, and to do otherwise, distorts the rate making process. Along these lines, TIEC offered language changes to the purpose section of the proposal that would limit eligible fuel expense to commodity costs and those costs associated with acquiring fuel but not easily separated from the price of fuel.

TIEC commented that the division in the proposal of those costs incurred off-site and those incurred at the generating site is inappropriate. TIEC stated that the distinction results in non-fuel costs being recovered through the fuel factor. TIEC points to natural gas storage as an example. Also, TIEC maintains that the division is illogical and subject to manipulation by the utility. To demonstrate their point, TIEC noted that a utility typically stores coal at the generating site, but seldom stores natural gas at the site. The proposal would treat these storage costs different, but not because of an underlying policy. TIEC also contended that utilities may manipulate their storage practices in order to make on-site storage appear to be off-site storage.

In contrast to OPC's, CU's, and TIEC's comments, GSU, HL&P, CSW, TU Electric, and LCRA, opposed any definition based on a distinction between "fixed" versus "variable" costs.

GSU commented that a more restrictive definition of eligible fuel than that proposed would be a significant change from current commission practice, would limit the ability of utilities to pursue aggressive, cost-saving fuel strategies, reduce the utility's flexibility at a time when significant changes are occurring in the natural gas market.

HL&P commented that further delineation of fuel costs within the FERC accounts as desired by TIEC would be burdensome. HL&P noted that the published proposal was in line with current practice. HL&P stated that TIEC would prefer that costs recovered through the fuel factor be limited because its clients' bills are predominantly kwh related.

CSW opposed the "fixed" versus "variable" distinction made by OPC and TIEC and pointed out that, in the past, attempts to apply this dichotomy have led to a fair amount of litigation. CSW commented that there is no easy way to divide "fixed" from "variable" cost, that it is fact specific to a particular situation, and as a consequence such a distinction would lead to constant controversy. CSW stated that it is to the ratepayer's advantage to include as much costs as possible in eligible fuel because such costs are subject to the same standards of review as other costs, are subject to refund if found unreasonable, and will be reflective of actual costs which will not always be going up. CSW stated that if more fuel related costs were

moved into base-rates, the investment community would likely demand a higher return to compensate for the greater perceived risk.

LCRA urged the commission to reject any definition that depends on a division between volatile and non-volatile fuel costs. LCRA noted that the commission has previously rejected such a definition and that such a definition will unnecessarily constrain utilities' fuel procurement practices and may act as a disincentive for the utility to choose the most economical option. LCRA commented that such a definition may deter a utility from purchasing an asset that could lower fuel costs because the utility would be faced with the burden of regulatory lag in regard to the asset. LCRA commented that the utilities' fuel procurement decisions should be solely driven by the economics of the choices. LCRA noted that the process of reconciling costs makes for more accurate recovery of reasonable costs than does the traditional test-year adjusted for known and measurable changes.

TU Electric commented that the proposed definition of eligible fuel codifies the current practice of the commission with the exception of the exclusion of reservation fees for purchased power and that the proposal properly rejects a definition based on a division based on fixed versus variable costs.

TU Electric and CSW each presented a rather detailed history of the treatment of fuel costs since the commission's conception, with the point of the history being, as stated by TU Electric, that "non-commodity and non-variable fuel costs have not only been included in the fuel factor since the very inception of this commission, but this commission has also properly and repeatedly rejected the notion that non-commodity or non-variable costs should be excluded from the fuel factor". Starting with the commission's original rules authorizing an automatic adjustment clause, TU Electric and CSW traced the fuel rule changes at the commission and noted in each instance that the language allowed all fuel costs (except for certain specified expenses) to be recovered separately from base rates. TU Electric and CSW also noted the rule proposals by the City of Dallas, the Texas Municipal League, and the commission staff that would have required the base-rating of fixed fuel costs were rejected by the commission. TU Electric and CSW also noted two recent cases in which the commission unequivocally rejected a dichotomy based on fixed versus variable costs.

TU Electric disagreed with the comment by TIEC that the rule proposal would significantly expand the definition of eligible fuel. TU Electric also disagreed with TIEC's statement that the commission's inclusion of natural gas storage facilities in reconcilable fuel costs in Docket 8425, *Application of Houston Lighting and Power Company* was limited to the facts of that case. In support of its position, TU Electric noted that such facilities were also included in fuel costs in TU Electric's last case.

TU Electric responded to TIEC's claim that there is no consistent policy basis underlying the proposal's separation of eligible versus ineligible fuel costs by stating that the policy basis is simple: all fuel and fuel related costs

incurred up to the time the fuel is delivered to the generating station should be included in the definition of eligible fuel.

TU Electric stated that the proposed definition is in the customers' best interest for a number of reasons. TU Electric suggested that if significant amounts of fuel costs are moved to base-rates, investors may perceive the utility to be more risky, particularly because of the potential of regulatory lag, and thus demand a higher return. Further, the customer may end up paying more or less than the actual fuel costs because base-rates are not reconcilable. TU Electric noted that more rate-cases may be necessary if a significant amount of fuel costs are base-rated and that this would result in the customers bearing greater rate-case expense. TU Electric suggested that a definition based on a distinction between fixed and variable costs may spawn more litigation at the commission. TU Electric suggested that contracting practices could change in order to make all costs appear variable, and thus recoverable through the fuel factor, and that this change in contracting practices may result in higher fuel prices. Finally, TU Electric stated that residential and small commercial customers could end up paying a larger share of a utility's fuel costs if non-variable fuel costs are placed in base-rates. This was contended to be possible because the base-rated fuel costs might be allocated based on demand rather than energy.

The commission rejects the use of a distinction between volatile versus non-volatile costs as a basis for determining which costs should be included in eligible fuel costs. The commission finds some merit in the comments from both sides of the debate over whether the definition of eligible fuel should be based on a distinction between "fixed" or non-volatile versus "variable" or volatile. One could come to the conclusion, as did TIEC, that because the treatment afforded fuel costs is special that the commission should strive to limit such special treatment to only those costs that caused the need for the special treatment, that is the volatile, unpredictable costs. But in this case, the commission is persuaded that such a limitation would have unintended, detrimental side-effects. It appears that such a limitation on costs that can be included in eligible fuel could distort the decision making process in regard to fuel decisions and this could be detrimental to the ratepayers. The commission is confident that only those costs that are reasonable will be paid by the ratepayer whether the costs are included in base-rates or in the fuel factor. Fuel costs are afforded special treatment, but the special treatment may be as advantageous to the ratepayer as it is to the utility. In fact, as suggested by CSW and TU Electric, the commission may have more control over the reasonableness of the utility's expense if the cost is subject to reconciliation.

As for TIEC's comment that it is illogical to exclude generating site storage of fuel and include off-site storage and that the utilities may abuse the process by manipulating their fuel storage practices, the commission disagrees. There is a logical reason why on-site storage should be excluded while off-site should be included. The off-site/on-site dis-

inction is an easy way to recognize a more important underlying distinction. The commission is not really concerned whether storage is on or off site; rather the commission wants to avoid regulations that distort buying decisions. There are two characteristics of natural gas storage that makes it possible for a regulation that requires base-rate treatment to distort decision making: Natural gas storage facilities are a scarce resource; Natural gas storage is a service that has traditionally been offered by third parties. Thus, a utility could be faced with the decision of buying storage service from a third party or obtaining one of the few storage facilities available. The commission does not want to distort that decision. It is unlikely that a utility would be in the same dilemma with regard to coal, lignite, or fuel oil. By coincidence, natural gas is almost always stored off-site while other fuels are almost always stored on-site. Thus, the distinction is logical. In regard to TIEC's contention that the utilities may manipulate their fuel storage practices, the commission believes that such actions would be readily apparent and could be addressed should they occur. The commission also notes that even if they did, the ratepayer would still only pay the reasonable cost of the storage.

As for TIEC's statement that the definition does not have an underlying policy, the commission submits that the underlying policy has been set out in the previous paragraphs. The bottom line is that all fuel and fuel-related costs except for those expressly excluded should be included in the definition of eligible fuel; except for this amendment's inclusion of wheeling revenues in eligible fuel, the commission agrees with the comments that this amendment does not modify the existing practice. It is unnecessary for the rule to explicitly contain such statements.

Other comments on the definition of eligible fuel focused on particular elements of the definition.

TIEC commented that the definition of eligible fuel includes non-fuel costs because FERC accounts 503, 536, and 565 include non-fuel costs. TIEC noted that Account 503, Steam from Other Sources, may include non-fuel costs such as the utility return, non-fuel O&M, depreciation costs, and taxes when the steam is produced by another department of the utility or pursuant to a joint operating agreement. TIEC suggested that at a minimum, it is only fair to include revenue from steam sales.

The commission does not believe that Account 503 expenses should include steam provided by another department or by a joint operating agreement to the extent those expenses for steam include utility return, non-fuel O&M, depreciation costs, and taxes. The language of the rule has been modified to exclude these components from Account 503 expenses. The commission also agrees that revenue from steam sales should be included in eligible fuel and the proposal has been changed to recognize this.

In regard to Account 536, Water for Power, TIEC commented that the account includes such things as license and permit fees, and periodic payments for riparian rights or headwater benefits. TIEC maintains that these expenses are stable and should be placed in base rates.

As discussed above, the commission is not concerned about the volatility of the expense. Therefore, no change has been made to this part of the rule.

In regard to Account 565, Transmission of Electricity by Others, TIEC commented that firm wheeling costs are not subject to wide and sudden fluctuations and consequently, these costs should be base-rated. TIEC argued that at a minimum fairness required that revenues from wheeling, which are likely recorded in Account 456, be used as an offset.

As mentioned previously, the commission is not concerned about the volatility of the expense. The commission does agree that revenue from wheeling should be included, and this change has been made.

OPC commented that the proposal's definition of eligible fuel is nearly verbatim to that offered by OPC except for three material differences. OPC objected to each of the three differences. OPC commented that off-site fuel storage should be a base-rate item and that it was inappropriate to include it in eligible fuel because it is not subject to rapid and wide variation in cost. OPC likened a natural gas storage facility to that of a warehouse. OPC commented that, contrary to their proposal, the commission proposal allows unloading and fuel handling costs at storage facilities to be included in eligible fuel expenses. OPC commented that such expenses should not be included for the same reason that the storage facility should not be included. OPC objected to the inclusion of wheeling costs, stating that such costs are demand related and should be included in base rates. OPC suggested rule language that addressed their concerns.

CU commented that there were three significant differences between the commission's proposal and that offered by consumer groups, those differences being that the commission's proposal allowed the inclusion of fuel storage facilities, fuel handling at fuel storage facilities, and wheeling costs. CU recommended that all three of the costs be excluded from eligible fuel. CU commented that the reason that fuel costs are treated separately is that they can be subject to rapid changes over short periods of time, and thus, only costs that are subject to such swings should be included in eligible fuel. CU stated that fuel storage facilities and the fuel handling expenses at the facilities are not subject to such swings. CU commented that wheeling costs are demand related and are not volatile.

In contrast to the position of OPC and CU, two commenters made specific comments supporting the inclusion of off-site storage expenses. CSW commented in support of the allowance of off-site storage as an eligible fuel cost and stated that with the changes in the natural gas industry, particularly the unbundling of services, a utility has even a greater incentive to invest in off-site storage. HL&P commented that §23.23(b)(2)(B)(ii) should be modified by adding the words "including off-site fuel storage costs" in order to eliminate any doubt that such costs are eligible fuel expenses.

The commission rejects the recommendations of OPC and CU that off-site storage

related costs and wheeling expenses should be excluded. The basis for OPC's and CU's argument that these items should be excluded is a distinction between volatile and non-volatile costs. As discussed above, the commission does not believe a definition based on this distinction is appropriate. Consequently, OPC's and CU's recommendations in regard to these costs are not adopted. The commission also rejects as unnecessary HL&P's suggestion to add an explicit reference to off-site fuel storage. The intent to include such costs in eligible fuel has clearly been stated in this summary.

LCRA noted the contrast between the position of OPUC, which is that the proposal allows only variable costs to be included in the fuel factor, and that of the General Counsel, which is that the proposal makes no distinction between fixed and variable costs. LCRA suggested that §23.23(b)(2)(B) be amended to delete the reference to the "delivered cost of fuel" because the phrase creates the potential for disagreement over what should be included in fuel costs.

The commission disagrees. The commission interprets OPC's discussion of volatility to solely be the basis for the exclusion of the three items that OPC recommends be excluded and not to be a statement of overall philosophy concerning the intention behind the definition. Furthermore, the commission believes the discussion in the previous paragraphs reduces the potential for disagreement.

Brazos noted that the definition of eligible fuel expenses includes costs which are not fuel, to wit, hydro power, purchased power, etc.. The accounts listed in the definition are all fuel or fuel related accounts properly treated as fuel. As for purchased power, the commission recognizes it is not fuel, but under §43(g) of the Public Utility Regulatory Act, Texas Civil Statutes (Supplement 1992) the commission is given discretion on how it allows the recovery of purchased power expense. Because of its inverse relationship to the fuel costs of the utility, the commission believes it is appropriate to include the expense as "eligible fuel".

TU Electric commented that reservation fees for purchased power should not be excluded. TU Electric maintained that this exclusion was the only deviation from current practice and that there was no logical reason to exclude them. It was suggested that they are similar to fees paid in regard to natural gas or coal contracts that are allowed to be included in the fuel factor. The commission desires to maintain current practice, so this change has been made.

EPEC commented that the commission should, in defining eligible fuel expense, include all subsequent amendments to the FERC chart of Accounts and not limit the definition to the accounts as of September 30, 1992.

The commission disagrees. The commission believes that the better approach is for this commission to first consider the amendments to the FERC Chart of Accounts before the changes are adopted by this commission rather than give blanket approval to any amendments.



EPEC commented that revenue related fuel taxes should be included as an eligible fuel cost because it is inherently a fuel related cost. EPEC further noted that such change should coincide with a change in base rates. Although the commission recognizes that revenue related taxes vary with fuel costs, the commission believes that they are distinct from fuel costs. Such taxes have not previously been considered a fuel cost by this commission. The commission declines at this time to include revenue related taxes related to fuel as an eligible fuel expense.

EPEC commented that economy energy sales should be considered as a fuel cost subject to reconciliation, but should not be considered in the setting of the fuel factor because they are so hard to predict. TIEC commented that the proposal does not address the treatment of off-system sales expenses and revenues. TIEC suggested that the proposal be amended to recognize such sales and use all margins and adders as an offset. TIEC also suggested that the expenses, margins and adders related to non-firm retail electric sales should be removed from the eligible fuel expenses that are to be recovered from the firm customers.

The commission agrees that off-system sales should be included as an eligible fuel expense. The commission disagrees with EPEC that they should not be included in setting the fuel factor. A reasonable estimation should be included in the setting of the factor. Of course, a reasonable estimation may be "zero" given the particular circumstances at hand. The proposal has been amended to recognize off-system sales. Because the commission has in the past split margins or adders between the customer and the utility, the change to the proposal has been drafted to recognize past rulings.

EPEC urged the commission to consider whether the exclusion of equity return to an affiliate was counter to the direction federal regulators were taking in separating the generation function and promoting independent generators.

Because a utility may request base-rate treatment of equity return to an affiliate, the commission does not believe that the proposal is counter to the direction of federal regulators.

EPEC commented that there is no apparent rationale for the exclusion of brokerage fees from fuel costs. EPEC was the only party that made this comment. The commission notes that brokerage fees are distinct from the underlying fuel costs and have not previously been included in fuel. Thus, they should be considered a base-rate expense.

EPEC commented that the exclusion of purchase power demand and capacity costs may act as an incentive for utilities to build to meet their capacity needs as opposed to purchasing power. The commission disagrees. Regulatory lag exists in both avenues for meeting capacity needs.

SPS commented that purchased power demand charges should not be excluded from eligible fuel expenses, because the exclusion creates a disincentive to engage in advantageous purchased power contracts. SPS sug-

gested that §23. 23(b)(2)(B)(iv) be amended to allow the recovery of demand or capacity costs and reservation fees upon a good cause showing on the basis of short-term economy considerations. The commission declines at this time to adopt this recommendation. If a utility needs more capacity, it has to either purchase it or build it. Given that both avenues require base rate treatment, there should not be a disincentive to purchasing the capacity. Therefore, it is unnecessary to make the change proposed by SPS.

LCRA noted that under Account 501 of the FERC Chart of Accounts, utilities are required to book revenues associated with the disposal of fuel residuals, but may not book expenses associated with the disposal of residuals. LCRA suggested that the proposal should be amended to either exclude the revenues or allow the costs to be recorded. The commission agrees; the proposal has been amended to exclude revenues from the disposal of residuals.

Several commenters offered comments on the "special circumstance" exception to the definition of eligible fuel. Some opposed the exception while others supported it.

OPC recommended deletion of the "special circumstances" exception in §23. 23(b)(2)(B)(v). OPC commented that the new definition of eligible fuel will not reduce litigation as long as there is a "special circumstances" exception. OPC suggested that if the commission wanted to reduce litigation, it should not allow exceptions to the definition. However, OPC commented that if the commission desires to have an exception, the proposed language is the language that should be adopted.

NTEC expressed concern about the "special circumstances" exception to the proposal and posed questions regarding the meaning of the terms "costs" and "benefits" referenced in the rule, to be used to determine whether special circumstances exist. NTEC commented that the "amorphous language" of this part of the rule could be abused and turn into a "catch-all".

CU agreed with the comments of OPC and NTEC regarding the special circumstances clause of the proposal.

TIEC commented that the special circumstances exception is too lenient at best and is probably not needed. TIEC commented that the utility is tasked to pursue cost savings irrespective of whether the utility receives immediate recovery. TIEC commented that the exception could swallow the rule or lead to increased litigation. TIEC suggested that if the special circumstances exception remains it should be tightened by requiring the utility to demonstrate the cost is fuel related, is not being recovered through base rates, is beyond the utility's control, and that the utility's financial integrity will be threatened if it is not allowed to recover the otherwise ineligible expense. Further, TIEC suggested that the special circumstance exception apply only until the utility files its next rate case.

CSW "firmly" supported the "special circumstances" exception to the rule. CSW commented that the inclusion of the clause was

good regulatory policy because it gives the commission flexibility to respond to changing circumstance and eliminate regulatory disincentives to economically sound decisions. CSW noted the drastic changes that have occurred in the natural gas market as an example of changing circumstances that call for flexibility in the commission's rules. CSW commented that the "special circumstances" provision would give utilities a reasonable opportunity to recover investments that are made in ventures that would benefit the ratepayers. CSW also noted that ratepayers will receive the benefits of the investment in such ventures immediately.

CSW opposed the additional standards proposed by TIEC for the "special circumstances" exemption. CSW maintained that TIEC's proposed standards would render the exemption meaningless because a utility would be unlikely to ever meet the standard. CSW commented that TIEC's proposals were motivated by a desire to shift costs from TIEC's clients to other ratepayer classes.

LCRA recommended rejection of TIEC's proposal to limit the special circumstances exception of the rule. In particular, LCRA noted that if a utility had to show it would not earn its authorized rate of return without the exception, utilities would be forced to present a case comparable to a base rate filing. Instead, LCRA urged the commission to expand the special circumstances exception of the rule to allow the recovery of any reasonable and prudent expense made for the purpose of substantially lowering fuel costs.

The commission is persuaded that the published language should be adopted. It presents an appropriate balance between the need for flexibility to meet unexpected circumstances with the need for certainty in order to reduce disputes and litigation. TIEC's proposed additions largely remove the availability of the clause, which the commission believes should remain.

EPEC supported the idea of allowing utilities the opportunity to change the fuel factor as often as once every six months, but objected to restricting the opportunity to a one day window. EPEC suggested that the window should be two weeks long, extending from one week before to one week after the first day of the scheduled month. The commission agrees that the window should be larger, but not as large as suggested by EPEC. The language has been changed to allow filing within the first five business days of the designated month.

OPC commented that the commission should be aware that it will be several years before the new definition of eligible fuel is applied in a reconciliation proceeding.

OPC commented that the commission should explain that it is not changing the standard for the allowance of expenses in a reconciliation proceeding. CU agreed with OPC's comments on this matter. The commission agrees. As noted by OPC the new language is intended to codify the existing practice rather than be a lessening of the existing standard. The new language, which tracks statutory language in requiring an expense to be "reasonable and necessary", is not in-

tended to be a substantive change from the current practice.

Brazos commented that the proposal will result in significant cost increases but that many of the more onerous provisions of previous proposals have been ameliorated.

Brazos requested clarification of what would need to be shown to make refunds on a basis other than lump sum payments. Brazos expressed concern over widely varying power costs, which presumably could be caused by lump sum refunds. The commission does not believe additional clarification is needed. The language being adopted is the same as exists in the current rule so the commission has had several years of experience with it.

GSU commented that the applicability of the definition portion of the proposal should be limited to cases filed after the effective date of the proposal. To that end, GSU recommended language changes to §23.23(b)(6). The commission agrees with this recommendation.

NTEC commented that the proposal does not recognize the "unique circumstances" faced by generation and transmission cooperatives (G&Ts) and that G&Ts that are non-operating minority-owners should be exempt for the requirement that a fuel reconciliation be performed at least as often as once every three years. The commission disagrees. Although, G&T's are in somewhat different circumstances, those circumstances should make it easier to reconcile costs. The commission believes that reconciliations should be performed on a regular basis, and NTEC has not presented a sufficient reason to deviate from that goal.

HL&P commented that §23.23(b)(2)(A)(ii)(III) should be amended to allow a utility to change its fuel factor in a fuel reconciliation case. The commission disagrees. With the opportunity to change the factor once every six months, it is unnecessary to make this change. In addition, the commission notes that this part of the proposal was the result of extensive discussions.

HL&P commented that the filing requirements for a reconciliation proceeding should be clarified by changing the requirement, found in §23.23(b)(3)(A), that utilities file "all fuel related schedules from the commission's rate filing package" to "all fuel reconciliation related schedules from the commission's rate filing package". The commission disagrees and believes all the fuel schedules should be submitted.

TU Electric commented that there was an extraneous "to" in §23.23(b)(2)(c) (ii)(III). It has been removed.

TU Electric commented that the words "and surcharges" should be added after the word "refund" in §23.23(b)(3)(C) because the subparagraph is applicable to both refunds and surcharges. The commission agrees, and the change has been made.

SPS commented that the proposal should provide for a waiver provision which would allow a waiver of any provision of the rule upon a showing of good cause. The commission disagrees. Section 23.2 already provides

for a good cause exception to the commission rules.

EPEC commented that a utility should be allowed to include any over or under-collections that were less than the materiality limit in the calculation of a fuel factor. The commission disagrees. The commission prefers to maintain the current mechanism for refunds and surcharges rather than spreading them out over a much longer period of time.

EPEC requested clarification of whether the interest rate for under or over collections would supersede previous commission orders that set interest rates such as the order that set the rate for EPEC performance standards. The commission believes that this will have to be determined on a case by case basis given the specific circumstances of each case and the language in each order.

HL&P commented that the proposal continues the current practice of not allowing investor owned, generating utilities to use a purchased cost recovery factor (PCRf) for inter-utility purchases and that this provides an advantage to cogenerators. This comment relates to a part of the commission's rule that is not subject to this rulemaking proceeding.

LCRA commented that §23.23(b)(2)(B) should be amended to allow river authorities to recover debt service coverage attributable to depreciation expense through the fuel factor. LCRA noted that river authorities do not separately identify depreciation expense for purposes of setting rates but instead recover the expense through debt service coverage. The commission agrees that LCRA should be able to recover through its fuel factor the same type expenses that an investor-owned utility can; however, the commission believes that LCRA can record operation expense into the specified FERC accounts for purposes of setting rates. LCRA includes a depreciation expense, with an offsetting adjustment being made to debt service coverage, for purposes of setting base-rates. There is no reason that the same could not be done for purposes of setting the fuel factors.

Finally, §23.23(b)(6) has been changed in recognition that these amendments are being made in 1993.

The amendments are adopted under Texas Civil Statutes, Article 1446d, §16(a), which provides the Public Utility Commission of Texas with the authority to make and enforce the rules reasonable required in the exercise of its powers and jurisdiction.

#### §23.23. Rate Design.

(a) Guidelines for certifying long-term fuel contracts. The commission will certify long-term fuel contracts in accordance with the guidelines in this subsection for determining the reasonableness of the terms and conditions of such contracts. This subsection does not require long-term fuel contracts to be submitted for certification, and no adverse inference will result from a utility's decision not to seek certification.

(1)-(5) (No change.)

(6) Certification. After considering the factors set forth in paragraph (3) of this subsection, the commission shall certify a long-term fuel contract if it determines that the terms and conditions of the contract are reasonable as a whole; otherwise, the commission shall deny certification.

(7) (No change.)

(b) Recovery of fuel and purchased-power costs.

(1) Purpose. The Commission will set an electric utility's rates at a level that will permit the utility a reasonable opportunity to earn a reasonable return on its invested capital and to recover its reasonable and necessary expenses, including the cost of fuel and purchased power. The Commission recognizes in this connection that it is in the interests of both utilities and their ratepayers to adjust customer charges in a timely manner to account for changes in certain fuel and purchased-power costs. Pursuant to the Public Utility Regulatory Act, (the Act) §43(g)(2), this subsection establishes a procedure for setting and revising fuel factors and purchased-power cost recovery factors and a procedure for regularly reviewing the reasonableness of the fuel expenses recovered through fuel factors.

(2) Fuel factors.

(A) Use and calculation of fuel factors. A utility's fuel costs will be recovered from the utility's customers by the use of a fuel factor that will be charged for each kwh consumed by the customer.

(i) Fuel factors are determined by dividing the utility's projected net eligible fuel expenses, as defined in subparagraph B of this paragraph, by the corresponding projected kilowatt-hour sales for the period in which the fuel factors are expected to be in effect. Fuel factors must account for system losses and for the difference in line losses corresponding to the type of voltage at which the electric service is provided. A utility may have different fuel factors for different times of the year to account for seasonal variations. A different method of calculation may be allowed upon a showing of good cause by the utility.

(ii) A utility may initiate a change to its fuel factor as follows.

(I) A utility may petition to adjust its fuel factor as often as once every six months according to the schedule set out in subparagraph (E) of this paragraph.

(II) A utility may petition to change its fuel factor at times other than provided in the schedule if an emer-



gency exists as described in subparagraph (G) of this paragraph.

(III) A utility's fuel factor may be changed in any general rate proceeding.

(iii) Fuel factors are in the nature of temporary rates, and the utility's collection of revenues by fuel factors is subject to the following adjustments.

(I) The reasonableness of the fuel costs that a utility has incurred will be periodically reviewed in a reconciliation proceeding, as described in paragraph (3) of this subsection, and any unreasonable costs incurred will be refunded to the utility's customers.

(II) To the extent that there are variations between the fuel costs incurred and the revenues collected, it may be necessary or convenient to refund overcollections or surcharge overcollections. Refunds or surcharges may be made without changing a utility's fuel factor, but requests by the utility to make refunds or surcharges may only be made at the times allowed by this paragraph. A utility may petition to make refunds or surcharges at the specified times that these rules allow a utility to change its fuel factor irrespective of whether the utility actually petitions to change its fuel factor at that time. A utility shall petition for a surcharge at the next date allowed for setting a fuel factor by the schedule set out in subparagraph (E) of this paragraph when it has materially undercollected its fuel costs and projects that it will continue to be in a state of material undercollection. A utility shall petition to make a refund at any time that it has materially overcollected its fuel costs and projects that it will continue to be in a state of material overcollection. Materially or material as used in this paragraph shall mean that the cumulative amount of over- or under-recovery, including interest, is 4.0% of the annual estimated fuel cost figure most recently adopted by the commission, as shown by the utility's fuel filings with the commission.

(B) Eligible fuel expenses. Eligible fuel expenses include expenses properly recorded in the Federal Energy Regulatory Commission Uniform System of Accounts, Numbers 501, 503, 518, 536, 547, 555, and 565, as modified in this subparagraph, as of September 30, 1992, and the items specified in clause (vi) of this subparagraph. Any later amendments to the System of Accounts are not incorporated into this subparagraph. Subject to the Commission finding special circumstances under clause (v), eligible fuel expenses are limited to.

(i) For any account, the utility may not recover, as part of eligible fuel expense, costs incurred after fuel is delivered to the generating plant site, for example, but not limited to, operation and maintenance expenses at generating plants, costs of maintaining and storing inventories of fuel at the generating plant site, unloading and fuel handling costs at the generating plant, and expenses associated with the disposal of fuel combustion residuals. Further, the utility may not recover maintenance expenses and taxes on rail cars owned or leased by the utility, regardless of whether the expenses and taxes are incurred or charged before or after the fuel is delivered to the generating plant site. The utility may not recover an equity return or profit for an affiliate of the utility, regardless of whether the affiliate incurs or charges the equity return or profit before or after the fuel is delivered to the generating plant site. In addition, all affiliate payments must satisfy the Act, §41(c)(1).

(ii) For Account Numbers 501 and 547, the only eligible fuel expenses are the delivered cost of fuel to the generating plant site excluding fuel brokerage fees. For account 501 revenues associated with the disposal of fuel combustion residuals will also be excluded.

(iii) For Account Numbers 518 and 536, the only eligible fuel expenses are the expenses properly recorded in the Account excluding brokerage fees. For Account Number 503, the only eligible fuel expenses are the expenses properly recorded in the Account excluding brokerage fees, return, non-fuel operation and maintenance expenses, depreciation costs and taxes.

(iv) For Account 555, the utility may not recover demand or capacity costs.

(v) Upon demonstration that such treatment is justified by special circumstances, a utility may recover as eligible fuel expenses fuel or fuel related expenses otherwise excluded in clauses (i)-(iv) of this subparagraph. In determining whether special circumstances exists, the Commission shall consider, in addition to other factors developed in the record of the reconciliation proceeding, whether the fuel expense or transaction giving rise to the ineligible fuel expense resulted in, or is reasonably expected to result in, increased reliability of supply or lower fuel expenses than would otherwise be the case, and that such benefits received or expected to be received by ratepayers exceed the costs that ratepayers otherwise would have paid or otherwise would reasonably expect to pay.

(vi) In addition to the expenses designated above, unless otherwise specified by the commission, eligible fuel expenses shall include:

(I) revenues from steam sales included in Accounts 504 and 456 to the extent expenses incurred to produce that steam are included in Account 503; and

(II) revenues from wheeling transactions; and

(III) revenues from off system sales in their entirety.

(C) Petitions to revise fuel factors. On the first business day of the months specified in subparagraph (E) of this paragraph, each utility using one or more fuel factors may file a petition requesting revised fuel factors. A copy of the filing shall also be delivered to the General Counsel and the Office of Public Utility Counsel. Each petition must be accompanied by supporting testimony that includes the following information:

(i) for each month of the period in which the fuel-factor has been in effect up to the most recent month for which information is available:

(I) eligible fuel expenses incurred, listed by the types of fuel used;

(II) purchased power and energy delivered to the utility, listed by source and showing the demand component and energy and/or fuel-expense component associated with the purchases;

(III) kilowatt-hour sales to system utility customer classes;

(IV) generation by plant, and if available, by unit;

(V) off-system kilowatt-hour sales, and associated fuel costs and revenues;

(VI) the revenues collected pursuant to fuel factors by customer class;

(VII) any other items that to the knowledge of the utility have affected fuel factor revenues and eligible fuel expenses; and

(VIII) the difference, by customer class, between the revenues collected pursuant to fuel factors and the eligible fuel expenses incurred;

(ii) for each month of the period for which the revised fuel factors are expected to be in effect:

(I) estimated eligible fuel expenses, listed by the types of fuel expected to be used;

(II) estimated purchased-power and energy deliveries, listed by source and showing the demand component and energy and/or fuel-expense component associated with the estimated purchases;

(III) estimated kilowatt-hour sales by customer class;

(IV) generation by plant, and if available, by unit;

(V) estimated off-system kilowatt-hour sales, and associated fuel costs and revenues; and

(VI) system energy input and sales, accompanied by the calculations underlying any differentiation of fuel factors to account for differences in line losses corresponding to the type of voltage at which the electric service is provided.

(D) Fuel factor revision proceeding. Burden of proof and scope of proceeding are as follows.

(i) In a proceeding to revise fuel factors, a utility has the burden of proving that:

(I) the expenses proposed to be recovered through the fuel factors are reasonable estimates of the utility's eligible fuel expenses during the period that the fuel factors are expected to be in effect;

(II) the utility's estimated monthly kilowatt-hour system sales and off-system sales are reasonable estimates for the period that the fuel factors are expected to be in effect; and

(III) the proposed fuel factors are reasonably differentiated to account for line losses corresponding to the type of voltage at which the electric service is provided.

(ii) The scope of a fuel factor revision proceeding is limited to the issue of whether the petitioning utility has appropriately calculated its estimated eligible fuel expenses and load.

(E) Schedule for filing petitions to revise fuel factors. A petition to revise fuel factors may be filed with any general rate proceeding. Otherwise, except as provided by subparagraph (G) of this paragraph which addresses emergencies, petitions by a utility to revise fuel factors may only be filed during the first five business days of the month in accordance with the following schedule:

(i) January and July: El Paso Electric Company and Central Power and Light Company;

(ii) February and August: Texas Utilities Electric Company and Brazos Electric Power Cooperative, Inc.;

(iii) March and September: West Texas Utilities Company and Gulf States Utilities Company;

(iv) April and October: Houston Lighting & Power Company and Southwestern Electric Power Company;

(v) May and November: Southwestern Public Service Company and Lower Colorado River Authority; and

(vi) June and December: Texas-New Mexico Power Company, South Texas Electric Cooperative, Inc., San Miguel Electric Cooperative, Inc., and any other electric utility not named in this subparagraph that uses one or more fuel factors.

(F) Procedural schedule. Upon the filing of a petition to revise fuel factors in a separate proceeding, the presiding officer shall set a procedural schedule that will enable the Commission to issue a final order in the proceeding as follows:

(i) within 60 days after the petition was filed, if no hearing is requested within 30 days of the petition; and

(ii) within 90 days after the petition was filed, if a hearing is requested within 30 days of the petition. If a hearing is requested, the hearing will be held no earlier than the first business day after the 45th day after the application was filed.

(G) Emergency revisions to the fuel factor. If fuel curtailments, equipment failure, strikes, embargoes, sanctions, or other reasonably unforeseeable circumstances have resulted in a material under-recovery of eligible fuel costs, the utility may file a petition with the commission requesting an emergency interim fuel factor. Such emergency requests shall state the nature of the emergency, the magnitude of change in fuel costs resulting from the emergency circumstances, and other information required to support the emergency interim fuel factor. The commission shall

issue an interim order within 30 days after such petition is filed to establish an interim emergency fuel factor. If within 120 days after implementation, the emergency interim factor is found by the commission to have been excessive, the utility shall refund all excessive collections with interest calculated on the cumulative monthly ending under- or overrecovery balance in the manner and at the rate established by the commission for overbilling and underbilling in §23.45(g) of this title (relating to Billing). If, after full investigation, the commission determines that no emergency condition existed, a penalty of up to 10% of such overcollections may also be imposed on investor-owned utilities.

(3) Reconciliation of fuel expenses. Utilities shall file petitions for reconciliation on a periodic basis so that any petition for reconciliation shall contain a maximum of three years and a minimum of one year of reconcilable data and will be filed no later than six months after the end of the period to be reconciled. However, notwithstanding the previous sentence, a reconciliation shall be requested in any general rate proceeding under the Act, §43 and may be performed in any general rate proceeding under the Act, §42. Upon motion and showing of good cause, a fuel reconciliation proceeding may be severed from or consolidated with other proceedings.

(A) Petitions to reconcile fuel expenses. In addition to all fuel related schedules from the Commission's rate filing package required for general rate proceedings, a fuel reconciliation petition filed by a utility must be accompanied by supporting testimony that includes the following information:

(i) for the period being reconciled, historical data corresponding to the monthly data required to be included in petitions to revise fuel factors;

(ii) summaries of all contracts under which the utility or a fuel-supplying affiliate of the utility purchased fuel, power, and/or energy during the reconciliation period, the costs of which are includible in the utility's eligible fuel expenses. Each contract summary must include the following information:

(I) the name of the supplier, the contract number or other designation, and the type of fuel or purchased power involved;

(II) the date on which the contract was originally signed and the dates on which any amendments were signed;

(III) the date on which the fuel or purchased-power was first supplied pursuant to the contract;

(IV) the term of the contract;

(V) the pricing mechanism under the contract;

(VI) the provisions of any take-or-pay obligations under the contract;

(VII) the maximum amount of deliveries available under the contract;

(VIII) the terms of any economic-out provisions in the contract;

(IX) the delivery points under the contract;

(X) the provisions for transportation of the fuel or transmission of the purchased-power under the contract; and

(XI) the quality or measurement of the fuel or purchased-power under the contract;

(iii) the quantities purchased and the unit prices and total prices paid under any contract during the reconciliation period;

(iv) if the utility's eligible fuel expenses for the period included an item or class of items supplied by an affiliate of the utility, the prices charged by the supplying affiliate to the utility were reasonable and necessary and no higher than the prices charged by the supplying affiliate to its other affiliates or divisions or to unaffiliated persons or corporations for the same item or class of items;

(v) a summary description of all generating-unit outages and partial outages during the reconciliation period; the utility must make available information stating in detail the reason or cause for any outage, the beginning and ending time and date of the outage or partial outage, and the amount of capacity reduction during any partial outage;

(vi) a summary of significant, atypical events that occurred during the reconciliation period that constrained the economic dispatch of the utility's generating units, including but not limited to transmission line constraints, fuel use or deliverability constraints, unit operational constraints, and system reliability constraints;

(vii) a general description of typical constraints that limit the economic dispatch of the utility's generating units, including but not limited to transmission line constraints, fuel use or deliverability constraints, unit operational constraints, and system reliability constraints; and

(viii) the reasonableness and necessity of the utility's eligible fuel expenses and its mix of fuel used during the reconciliation period.

(B) Fuel reconciliation proceedings. Burden of proof and scope of proceeding are as follows.

(i) In a proceeding to reconcile fuel factor revenues and expenses, a utility has the burden of showing that:

(I) its eligible fuel expenses during the reconciliation period were reasonable and necessary expenses incurred to provide reliable electric service;

(II) if its eligible fuel expenses for the reconciliation period included an item or class of items supplied by an affiliate of the utility, the prices charged by the supplying affiliate to the utility were reasonable and necessary and no higher than the prices charged by the supplying affiliate to its other affiliates or divisions or to unaffiliated persons or corporations for the same item or class of items; and

(III) it has properly accounted for the amount of fuel-related revenues collected pursuant to the fuel factor during the reconciliation period.

(ii) The scope of a fuel reconciliation proceeding includes any issue related to determining the reasonableness of the utility's fuel expenses during the reconciliation period and whether the utility has over- or underrecovered its reasonable fuel expenses. The scope does not include those issues precluded by subsection (a)(7) of this section.

(C) Refunds. All refunds and surcharges shall be made using the following methods.

(i) Interest will be calculated on the cumulative monthly ending under- or over-recovery balance in the manner and at the rate established by the Commission for overbilling and underbilling in §23.45(g) of this title.

(ii) Rate class as used in this subparagraph shall mean all customers taking service under the same tariffed rate schedule, or a group of seasonal agricultural customers as identified by the utility.

(iii) Interclass allocations of refunds and surcharges, including associated interest, shall be developed on a month-by-month basis and shall be based on the historical kilowatt-hour usage of each rate class for each month during the period in which the cumulative under- or over-recovery occurred, adjusted for line losses using the same commission approved loss factors that were used in the utility's applicable, fixed or interim fuel factor.

(iv) Intraclass allocations of refunds and surcharges shall depend on the voltage level at which the customer receives service from the utility. Retail customers who receive service at transmission voltage levels, all wholesale customers, and any groups of seasonal agricultural customers as identified by the utility shall be given refunds or assessed surcharges based on their individual actual historical usage recorded during each month of the period in which the cumulative under- or over-recovery occurred, adjusted for line losses if necessary. All other customers shall be given refunds or assessed surcharges based on the historical kilowatt-hour usage of their rate class.

(v) Unless otherwise ordered by the Commission, all refunds and surcharges shall be made through a one-time bill credit or charge. However, refunds may be made by check to municipally-owned utility systems if so requested. Retail customers who receive service at transmission voltage levels, all wholesale customers, and any groups of seasonal agricultural customers as identified by the utility shall be given a lump sum credit or assessed a lump sum surcharge. All other customers shall be given a credit or assessed a surcharge based on a factor which will be applied to their kilowatt-hour usage over a one-month period. This factor will be determined by dividing the amount of refund or surcharge allocated to each rate class by forecasted kilowatt-hour usage for the class during the month in which the refund or surcharge will be made.

(D) Procedural schedule. Upon the filing of a petition to reconcile fuel expenses in a separate proceeding, the presiding officer shall set a procedural schedule that will enable the Commission to issue a final order in the proceeding within one year after a materially complete petition was filed.

(4) Notice of fuel proceedings. In addition to the notice required by APTRA to be given by the Commission, the utility is required to give notice of fuel proceeding at the time the petition is filed.

(A) Method of notice. Notice of fuel proceedings will be given by the utility as follows.

(i) Notice in all proceedings involving refunds, surcharges, or a proposal to change the fuel factor, shall be by one time publication in a newspaper having general circulation in each county of the service area of the utility or by individual notice to each customer;

(ii) Notice in all reconciliation proceedings shall be by publication once each week for two consecutive weeks in a newspaper having general circulation in each county of the service area of the utility and by individual notice to each customer.

(iii) Notice of proceedings solely involving the certification of long term fuel contracts is covered by subsection (a) of this section.

(B) Contents of notice. Notice whether by publication or by individual notice to each customer shall state the date the petition was filed and include a general description of the customers, customer classes, and territories affected by the petition; and the relief requested. Notices to revise fuel factors must also state the proposed fuel factors by type of voltage and the period for which the proposed fuel factors are expected to be in effect. Notices to revise fuel factors, to refund, or to surcharge must contain the statement that, "these changes will be subject to final review by the Commission in the utility's next reconciliation", unless, in the case of refunds or surcharges, the change is a result of a reconciliation proceeding. Notices to reconcile fuel expenses must also state the period for which final reconciliation is sought. In addition, all notices must state: "Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Commission's Public Information Office at (512) 458-0256 or (512) 458-0221 (telecommunications device for the deaf)".

(C) Proof of notice may be demonstrated by appropriate affidavit. In fuel proceedings initiated by a person other than a utility, the notice required in this paragraph must be provided in accordance with a schedule ordered by the presiding officer.

(5) Reports; confidentiality of information. Matters related to submitting reports and confidential information will be handled as follows.

(A) The Commission will monitor each utility's actual and projected fuel-related costs and revenues on a monthly basis. Each utility shall maintain and provide to the Commission, in a format specified by the Commission, monthly re-

ports containing all information required to monitor monthly fuel-related costs and revenues, including generation mix, fuel consumption, fuel costs, purchased power quantities and costs, and system and off-system sales revenues.

(B) Contracts for the purchase of fuel, fuel storage, fuel transportation, fuel processing, or power are discoverable in fuel proceedings, subject to appropriate confidentiality agreements or protective orders.

(C) The utility shall prepare a confidentiality disclosure agreement to be included as part of the fuel reconciliation petition. The format for the agreement shall be the same as that contained in the commission approved rate filing package. In addition to the agreement itself, Attachment 1 of the agreement shall present a complete listing of the information required to be filed which the utility alleges are confidential. Upon request and execution of the confidentiality agreement, the utility shall provide any information which it alleges is confidential. If the utility fails to file a confidentiality agreement, the deadline for a commission final order in the case is tolled until a protective order is entered or a confidentiality agreement is filed. Use of the confidentiality disclosure agreement does not constitute a finding that any information is proprietary and/or confidential under law, or alter the burden of proof on that issue. The form of agreement contained in the commission approved rate filing package does not bind the examiner or the commission to accept the language of the agreement in the consideration of any subsequent protective order that may be entered.

(D) A party that cannot view a confidential document without receiving advantage as a competitor or bidder may hire outside counsel and consultants to view the document subject to a protective order.

(6) Effective date of the January, 1993 amendments; transition period. The January, 1993 amendments to this subsection are effective May 1, 1993. However, with respect to individual utilities, all fuel-related revenues collected through a fuel factor in effect before the effective date of a fuel factor established under the 1992 amendments shall be reconciled under Commission rules and orders in effect before the effective date of the 1992 amendments. Notwithstanding paragraph (3) of this subsection, no utility shall be required to file a separate fuel reconciliation petition earlier than one year after the effective date of this subsection, and utilities for which fuel expenses have been reconciled for one of the 18 months preceding the effective

date of this subsection shall not be required to file a separate fuel reconciliation petition earlier than two years after the effective date of this subsection. The definition of eligible fuel expense in this section shall apply except to the extent the definition is inconsistent with a commission order signed (before or after promulgation of this rule) in connection with a case filed before the effective date of this section, in which case such order shall apply to fuel expenses incurred until a final order is signed in the utility's first base rate case after the effective date of this section.

(7) The provisions of this paragraph apply to all investor-owned electric distribution utilities, river authorities and cooperative-owned electric utilities.

(A) An electric utility which purchases electricity at wholesale pursuant to rate schedules approved, promulgated, or accepted by a federal or state authority, or from qualifying facilities may be allowed to include within its tariff a purchased power cost recovery factor (PCRFF) clause which authorizes the utility to charge or credit its customer for the cost of power and energy purchased to the extent that such costs varies from the purchased power cost utilized to fix the base rates of the utility. Purchased electricity cost includes all amounts chargeable for electricity under the wholesale tariffs pursuant to which the electricity is purchased and amounts paid to qualifying facilities for the purchase of capacity and/or energy. The terms and conditions of such PCRFF clause, which may include the method in which any refund or surcharge from the utility's wholesale supplier will be passed on to its customers, shall be approved by an order of the commission.

(B) Any difference between the actual costs to be covered through the PCRFF and the actual PCRFF revenues recovered shall be credited or charged to the utility's ratepayers in the second succeeding billing month unless otherwise approved by the commission.

(C) If the utility purchases power from an unregulated entity, such as a political subdivision of the State of Texas, the utility shall submit the purchased power contract to the commission for approval of the terms, conditions and price. If the commission issues an order approving the purchase, a PCRFF may be applied to such purchases.

(D) If PCRFF revenue collections exceed PCRFF costs by 10% in any given month and the total PCRFF revenues have exceeded total PCRFF costs by 5.0% or more for the most recent 12-month period:

(i) investor-owned electric distribution utilities shall be subject to a 10% penalty on excess collection;

(ii) cooperative-owned electric utilities shall report to the commission the justification for excess collection.

(E) The utility shall maintain and provide to the commission, monthly reports containing all information required to monitor the costs recovered through the PCRf clause. This information includes, but is not limited to, the total estimated PCRf cost for the month, the actual PCRf cost on a cumulative basis, total revenues resulting from the PCRf and the calculation of the PCRf.

(8) The provisions of this paragraph apply to all investor-owned generating electric utilities and river authorities.

(A) An electric utility which purchases electricity from qualifying facilities may be allowed to include within its tariff a PCRf clause which authorizes the utility to charge or credit its customers for the costs of capacity purchased from cogenerators and small power producers. These costs shall be included in the PCRf only to the extent that such costs vary from the costs utilized to fix the base rates of the utility and to the extent that they comply with §23.66(h) of this title (relating to Arrangements between Qualifying Facilities and Electric Utilities). The terms and conditions of such PCRf shall be approved by an order of the commission.

(B) Purchased power costs that are recovered through the PCRf shall be excluded in calculating the utility's fixed fuel factor as defined in paragraph (2)(C) of this subsection.

(C) Costs recovered through a PCRf shall be allocated to the various rate classes in the same manner as the embedded costs of the utility's generation facilities allocated in the utility's last rate case, unless otherwise ordered by the commission. Once allocated, these costs shall be collected from ratepayers through a demand or energy charge.

(D) Any difference between the actual costs to be recovered through the PCRf and the PCRf revenues recovered shall be credited or charged to the customers in the second succeeding billing month.

(E) If PCRf revenue collections exceed PCRf costs by 10% in any given month and the total PCRf revenues have exceeded total PCRf costs by 5.0% or more for the most recent 12-month period,

the electric utility shall be subject to a 10% penalty on excess collections.

(F) The utility shall maintain and provide to the commission, monthly reports containing all information required to monitor costs recovered through the PCRf. This information includes, but is not limited to, total estimated PCRf cost for the month, the actual PCRf cost, total revenue resulting from the PCRf and the calculation of the PCRf clause.

(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 February 1, 1993.

TRD-9318403

John R. Rentrow  
Secretary of the  
Commission  
Public Utility Commission  
of Texas

Effective date: May 1, 1993

Proposal publication date: October 16, 1992

For further information, please call: (512) 458-0100

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 169. Veterinary Public Health

##### Rabies Control and Eradication

- 25 TAC §§169.22-169.24, 169.26-169.31, 169.33

The Texas Department of Health (department) adopts amendments to §§169.22-169.24, 169.26-169.31, and 169.33, concerning rabies control and eradication, without changes to the proposed text as published in the October 6, 1992, issue of the *Texas Register* (17 TexReg 6873). The sections cover definitions, pre-exposure rabies immunization, facilities for the quarantining of animals, quarantine method and testing, public and private entities that operate a quarantine facility, vaccination requirement, and disposition of domestic animals exposed to rabies.

These amendments add coyotes to the list of high risk animals, clarify that a 10-day observation period is applicable only to biting dogs and cats, require preexposure immunization of personnel at high risk from rabies, prescribe training standards for managers of animal quarantine facilities, prohibit rabies vaccination of animals during quarantine, require written standard operating procedures for quarantine facilities, clarify rabies vaccination certificate requirements, and delineate proper procedures for the management of domestic animals exposed to rabies. In addition,

the department made several editorial changes for purposes of clarification.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Health and Safety Code, §826.011, which provides the Texas Board of Health with the authority to adopt rules concerning rabies control; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

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 February 1, 1993.

TRD-9318426

Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Effective date: February 22, 1993

Proposal publication date: October 6, 1992

For further information, please call: (512) 458-7255

## Chapter 241. Shellfish Sanitation

### Texas Crab Meat

- 25 TAC §§241.2, 241.4, 241.8-241.10, 241.13, 241.15, 241.16, 241.19, 241.21, 241.23, 241.25, 241.26, 241.29

The Texas Department of Health (department) adopts amendments to §§241.2, 241.4, 241.8-241.10, 241.13, 241.15, 241.16, 241.19, 241.21, 241.23, 241.25, 241.26, and 241.29. Sections 241.8, 241.9, 241.10, 241.16, and 241.29 are adopted with changes to the proposed text as published in the October 2, 1992, issue of the *Texas Register* (17 TexReg 6734). Sections 241.2, 241.4, 241.13, 241.15, 241.19, 241.21, 241.23, 241.25, and 241.26 are adopted without changes and will not be republished.

The amendments update and clarify the existing rules. The primary areas of clarification concern private water supplies and allowed other seafood processing. The Division of Water Hygiene, which assisted in regulating private water supplies, has been transferred to the Texas Water Commission causing the department to adopt rules to regulate crab meat processors who use private water supplies to their operations. These sections, as amended, contain the same language as previously used by the Division of Water Hygiene. Other seafood processing will be allowed, subject to the same sanitation requirements as processing crab meat, with additional sanitation of the processing areas between different seafoods.

The amended sections provide for continued uniform regulation of the crab meat industry

consistent with public health and with current industry practices. The amended sections establish updated standards for the cooking of crabs and the picking, packing, pasteurizing, and distribution of crab meat.

A summary of comments and the agency's response, including reasons for agreement or disagreement are as follows.

COMMENT: Concerning §241.8(b), during department review, it was noted that an indicating thermometer should not be installed more than six feet off the floor, so it could be easily read.

RESPONSE: The department has changed the language accordingly.

COMMENT: Concerning §241.9(d), one commenter wanted a clarification of the term "flooding" to include "under normal conditions" or similar qualifier.

RESPONSE: The department agrees with the commenter and has changed this section to add the words "under normal conditions".

COMMENT: Concerning §241.9(i), during department review, it was determined that obtaining a sanitary control easement for existing wells would not be practical and therefore should only be required for wells completed after the effective date of these sections.

RESPONSE: The department added language to reflect that determination.

COMMENT: Concerning §241.9(o), one commenter questioned the need for intruder proof fences around private water wells since fencing would be expensive, a nuisance to deal with, and vandalism is not claimed as a problem.

RESPONSE: The department agrees with the comment and has changed this section to delete the requirement.

COMMENT: Concerning §241.9(r), one commenter wanted to know why the department cannot pick up water samples like they used to? Dealers have to pay approximately nine dollars per sample now.

RESPONSE: The department believes the industry should consider private water sample collection and analysis simply a cost of doing business.

COMMENT: Concerning §241.10(a), during department review, it was determined that under the present plumbing code, liquid discharge from sinks or lavatories directly on to the floor is not allowed as this would provide potential contamination of the product by splash from the discharge and foot traffic splash.

RESPONSE: Accordingly, the department has changed the language to comply with the code.

COMMENT: Concerning §241.10(d), during department review, it was noted that for clarity three-compartment sinks needed to be specifically required to have hot water provided to them, although this has been the accepted practice for years.

RESPONSE: Accordingly, the department has added clarifying language.

COMMENT: Concerning §241.29(c), one commenter wanted the training course requirement to contain a "grandfather" clause for people already in the industry, or that an equivalency for similar courses be allowed.

RESPONSE: The department rejects "grandfathering" and after consultation with the Division of Food and Drugs has changed this section accordingly.

In addition, minor changes were made throughout the rules for grammar or clarification.

All commenters were individuals who attended public hearings held to receive comments on the amendments. They were generally in favor of the changes but expressed concern as previously mentioned.

The amendments are adopted under the Texas Health and Safety Code, §436.045, which authorizes the Texas Board of Health to adopt rules concerning the regulation of Texas crab meat; and the §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

#### §241.8. Heating, Cooling, and Ventilation.

(a) (No change)

(b) Processors shall have their picking and packing areas cooled with mechanical refrigeration adequate to maintain the internal air temperature at 72 degrees Fahrenheit or less. Each processing room or area shall be equipped with an indicating thermometer installed to accurately measure, within three degrees, the temperature in the warmest location not to be more than six feet off the floor.

#### §241.9. Water Supply.

(a) Potable water shall be from a safe source, and protected from contamination, and the water supply system shall be constructed, maintained, and operated according to applicable state laws and this undesignated head. All water distribution systems shall be designed and constructed so as to provide a minimum residual pressure of 20 pounds per square inch under peak demand conditions. Under normal operating conditions, minimum pressures should not be less than 35 pounds per square inch in the distribution system.

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

(d) Water wells shall be so located that there will be no danger of pollution from flooding under normal conditions or from insanitary surroundings, such as, privies, sewage, sewage treatment plants, livestock and animal pens, solid waste disposal sites, or abandoned and improperly sealed wells.

(e) Well sites shall not be within 50 feet of a tile or concrete sanitary sewer, septic tank, or storm sewer, or within 150 feet of a septic tank perforated drainfield, absorption bed, evapotranspiration bed or underground fuel storage tank.

(f) No well site shall be located within 500 feet of a sewage treatment plant or within 300 feet of a sewage wet well, sewage pumping station or a drainage ditch which contains industrial waste discharges or the wastes from sewage treatment systems.

(g) No water wells shall be located within 500 feet of animal feed lots, solid waste disposal sites or lands irrigated by sewerage plant effluent.

(h) Livestock shall not be allowed within 50 feet of water supply wells.

(i) Abandoned water wells in the area of a proposed source shall be plugged and sealed properly to prevent possible contamination of freshwater strata.

(j) A sanitary control easement covering that portion of the lands within 150 feet of the well location shall be secured from all such property owners and recorded in the deed records at the county courthouse for all completed wells dug after the effective date of these sections.

(k) A concrete sealing block extending at least three feet from the well casing in all directions, with a minimum thickness of six inches and sloped to drain away at not less than 0.25 inches per foot shall be provided around the well head.

(l) Wellheads and pump bases shall be sealed by the use of gaskets or sealing compounds and, as applicable, properly vented to prevent the possibility of contamination of the well water.

(m) Upon completion of a new well, or after an existing well has been reworked, the well shall be disinfected and unused for at least six hours. After the water containing chlorine is completely flushed from the well, prior to placing the well in service, samples of water shall be collected and submitted for bacteriological analysis until three successive samples collected on separate days shall be free of coliform organisms.

(n) A suitable raw water sampling cock shall be provided on the discharge pipe of each well pump.

(o) Mechanical disinfection facilities capable of maintaining a free chlorine residual of 0.2-0.5 parts per million shall be provided with the point of injection prior to the hydropneumatic pressure tank or shall be ahead of the water storage reservoir(s), if a storage reservoir is provided. A test kit must be provided and available for testing the chlorine residual of the potable water.



(p) The use of disinfectants other than hypochlorination with mechanical injection shall be considered on a case-by-case basis. Hypochlorination solution containers and pumps shall be housed and locked to protect them from adverse weather conditions and vandalism.

(q) All hydropneumatic tanks shall be located wholly above grade and shall be of steel construction with welded seams.

(1) Metal thickness for hydropneumatic tanks shall be sufficient to provide at least a minimum of 1/8 inch corrosion allowance and to withstand the highest expected working pressures with a four to one factor of safety.

(2) All hydropneumatic tanks shall be provided with a pressure release device and an easily readable pressure gauge.

(3) The tank size shall be large enough to maintain 35 pounds per square inch working pressure to the farthest end of the distribution system and large enough to provide adequate disinfection contact time as reflected by negative confluent and/or coliform monthly sample results. The tank size shall not be less than 82 gallons.

(r) At least one sample of water taken from the distribution system shall be submitted to an approved laboratory each month for bacteriological analysis. Any coliform positive or confluent (TNTC) sample shall necessitate resampling the water within 24 hours of receiving the result. The Texas Department of Health's Division of Shellfish Sanitation Control (DSSC) shall be notified upon receipt of a coliform positive sample result. If the resample result is coliform positive, the DSSC shall be notified upon receipt of the result and the DSSC shall determine the appropriate steps for disinfection and/or resampling.

#### §241.10. Plumbing, Sewage, and Related Facilities.

(a) Plumbing shall be installed in compliance with applicable state laws, and shall be of adequate size and design to:

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

(4) provide adequate floor drainage in all areas; and

(5) properly dispose of all sink and lavatory liquid by direct discharge into drainage outlets. Drainage outlets shall be constructed and maintained to prevent the possible entrance of insects and rodents. Floor drainage shall not be allowed to drain from the plant on top of the ground.

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

(d) Hand washing lavatories and three-compartment sinks shall be provided with hot water of at least 100 degrees Fahr-

heit from either a controlled temperature source with a maximum temperature of 115 degrees Fahrenheit, or from a hot and cold mixing or combination faucet. Steam water mixing valves or steam water combination faucets shall not be acceptable.

(e)-(h) (No change.)

#### §241.16. Packing of Crab Meat.

(a) The packing area shall be equipped with a counter of rigid construction, surfaced with corrosion resistant metal or other impervious material with no open seams.

(b)-(g) (No change.)

(h) Repacking of crab meat shall not be allowed.

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

(k) Pickers and other unauthorized persons shall not enter the packing area for any purpose. An exception may be made in a small operation where an employee may adequately work in both the packing and picking areas. In such cases, the employee shall put on a clean apron and shall wash his/her hands thoroughly, immediately upon entering the packing area.

(l)-(n) (No change.)

#### §241.29. Education and Training.

(a) (No change.)

(b) Employees shall receive instruction and training in proper food handling and personal hygiene and sanitary practices from supervisory personnel or from other sources acceptable to the Texas Department of Health's (TDH) Division of Shellfish Sanitation Control (DSSC).

(c) Crab meat plant owners and/or managers and supervisors shall be required to attend a Food Protection Management Program, obtain a certificate of completion, and provide a copy to the DSSC prior to obtaining a shellfish certificate of compliance. New supervisors shall be required to attend the course and obtain a certificate of completion before working as a supervisor in a plant and shall submit a copy of their certificate to the DSSC within two weeks of employment. Training shall be accomplished by means of a training program consisting of 15 classroom hours and said program shall be accredited by the TDH. Persons seeking certification may obtain said training from commercial or educational activities accredited by the TDH. Certification shall be accomplished after all course requirements have been met and the applicants have demonstrated by means of an examination that they possess the required essential knowledge as determined by the health authority. Certificates shall be valid only for a period of three years. Prior

to expiration a person may attend a refresher course approved by the TDH and obtain a certificate of completion or obtain a passing score on a national examination for certification of food service managers that meets requirements of the U.S. Food and Drug Administration and the TDH. Copies of proof of either must be submitted to the DSSC prior to expiration.

(d) Unsanitary practices of employees shall be brought to the attention of the employees by their supervisor and the employees shall be instructed on the proper sanitary practice that is to be used.

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 February 1, 1993.

TRD-9318422

Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Effective date: February 22, 1993

Proposal publication date: October 2, 1992

For further information, please call: (512) 458-7510.

### Chapter 277. Occupational Safety

#### Federal Laws and Regulations Covering Occupational Safety

##### • 25 TAC §277.1, §277.2

The Texas Department of Health (department) adopts the repeal of existing §277.1 and §277.2, concerning federal laws and regulations covering occupational safety, without changes to the proposed text as published in the October 9, 1992, issue of the *Texas Register* (17 TexReg 6997).

The programs covered by the laws and regulations have been transferred to the Texas Workers' Compensation Commission and are no longer being implemented by the department. Accordingly, the department is repealing the sections.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Health and Safety Code, §341.016, which provides the Board of Health with authority to adopt rules concerning occupational health; and §12.001, which provides the Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

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

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TRD-9318421

Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Effective date: February 22, 1993  
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For further information, please call: (512) 834-6600

## Chapter 289. Occupational Health and Radiation Control

### Control of Radiation

The Texas Department of Health (department) adopts to repeal existing §§289.4, 289.21-289.31, 289.41-289.46, 289.61-289.68, and 289.91-289.99, concerning occupational health, without changes to the proposed text as published in the October 9, 1992, issue of the *Texas Register* (17 TexReg 6997).

Section 289.4 concerns threshold limit values of airborne contaminants; §§289.21-289.31 concern environmental standards in industrial establishments; §§289.41-289.46 concern industrial homework standards; §§289.61-289.68 concern standards for face and eye protection in public schools; and §§289.91-289.99 concern sanitation at temporary places of employment. All of the repealed sections have been transferred to Chapter 295 of this title as part of an overall restructuring and updating of the sections. The new sections in Chapter 295 replace the repealed sections being adopted in this issue of the *Texas Register*.

No comments were received regarding adoption of the repeals.

#### • 25 TAC §289.4

The repeal is being adopted under the Health and Safety Code, §341.016, which provides the Board of Health with authority to adopt rules concerning occupational health; and §12.001, which provides the Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

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

Issued in Austin, Texas, on February 1, 1993.

TRD-9318420 Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of Health

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Proposal publication date: October 9, 1992  
For further information, please call: (512) 834-6600

## Environmental Standards in Industrial Establishments

### • 25 TAC §§289.21-289.31

The repeals are adopted under the Health and Safety Code, §341.016, which provides

the Board of Health with authority to adopt rules concerning occupational health; and §12.001, which provides the Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

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

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TRD-9318419 Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of Health

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For further information, please call: (512) 834-6600

## Industrial Homework Standards

### • 25 TAC §§289.41-289.46

The repeals are being adopted under the Health and Safety Code, §341.016, which provides the Board of Health with authority to adopt rules concerning occupational health; and §12.001, which provides the Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

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

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TRD-9318418 Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of Health

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For further information, please call: (512) 834-6600

## Standards for Face and Eye Protection in Public Schools

### • 25 TAC §§289.61-289.68

The repeals are being adopted under the Health and Safety Code, §341.016, which provides the Board of Health with authority to adopt rules concerning occupational health; and §12.001, which provides the Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

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

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TRD-9318417 Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of Health

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For further information, please call: (512) 834-6600

## Sanitation at Temporary Places of Employment

### • 25 TAC §§289.91-289.99

The repeals are being adopted under the Health and Safety Code, §341.016, which provides the Board of Health with authority to adopt rules concerning occupational health; and §12.001, which provides the Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

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

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TRD-9318416 Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of Health

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For further information, please call: (512) 834-6600

## Chapter 295. Environmental Health

### Occupational Health Rules and Guidelines

The Texas Department of Health (department) adopts new §§295.101-295.109, 295.121-295.126, 295.141-295.148, and 295.161-295.169, concerning occupational health. Sections 295.101-295.105 and 195.107-295.109 are adopted with changes to the proposed text as published in the October 9, 1992, issue of the *Texas Register* (17 TexReg 6997). The remaining sections are adopted without changes and will not be republished.

New §§295.101-295.109 concern occupational health rules and new guidelines; new §§295.121-295.126 concern industrial homework standards; new §§295.141-295.148 concern standards for face and eye protection in public schools; and new §§295.161-295.169 concern sanitation at temporary places of employment. The new sections replace existing sections in Chapter 289 of this title which are being repealed in this issue of the *Texas Register*. Guidelines mean standards, limits, codes, practices, or procedures recommended by the Department for use by



public entities; NOT enforceable by the Department as administrative rules.

The new sections, with a few exceptions, replace existing sections in Chapter 289 which are being repealed in this issue of the *Texas Register*. The sections have been moved because the department wants to place them in a more appropriate chapter in the Texas Administrative Code, which is Chapter 295. The specific changes are as follows.

New §295.101 concerning threshold limit values of airborne contaminants is replacing existing §289.4 in Chapter 289, and new §295.106 concerning environmental standards in industrial establishments is replacing existing §§289.21-289.31 in Chapter 289; the new guidelines reference federal regulations containing the most current federal requirements in these areas. Guidelines mean standards, limits, codes, practices, or procedures recommended by the Department for use by public entities; NOT enforceable by the Department as administrative rules.

New §§295.102-295.105, and §§295.107-295.109, concerning exposure to toxic and hazardous substances, occupational noise exposure, respiratory protection, ventilation, access to employee exposure and medical records, medical services, and first aid do not replace any existing sections in Chapter 289; instead, these sections are new guidelines which reference federal regulations containing the most current federal requirements in these areas. Guidelines mean standards, limits, codes, practices, or procedures recommended by the Department for use by public entities; NOT enforceable by the Department as administrative rules.

New §§295.121-295.126, concerning industrial homework standards replace existing §§289.41-289.46 of Chapter 289, and new §§295.141-295.148 concerning standards for face and eye protection in public schools replace existing §§289.61-289.68 in Chapter 289. This is strictly a reorganization change, with the exception of new §295.146, in that existing sections have been moved to a new chapter; there is no change to the text of the other sections themselves.

New §§295.161-295.169, concerning sanitation at temporary places of employment replace existing §§289.91-289.99 in Chapter 289. This is a reorganization change and also a change in the text of the rules for updating and clarification purposes.

Comments on the proposed new sections and the department's responses are as follows.

COMMENT: Concerning §295.101(b), Threshold Limit Values of Airborne Contaminants, a commenter questioned the intent of the purpose statement which seems to imply that the values listed are only "recommended" values.

RESPONSE: The department agrees and has changed the statement to clarify the intent that levels adopted are exposure limits, not "recommended" values.

COMMENT: Concerning §295.101(e)(2), a commenter questioned why Appendices A

and E are exempt from the explanation of threshold limit values.

RESPONSE: The concept of a threshold limit value attempts to afford workers a degree of protection from hazardous atmospheric concentrations by limiting the amount of exposure to an "at or below" concentration of the hazardous substance. Appendix A of §295.101 addresses substances that NO contact, by any route, should be permitted. The substances listed are considered to have a very high potential for carcinogenic activity. The description of what a threshold limit value is does not apply to this appendix. Appendix E addresses simple asphyxiants. The substances listed are not "toxic" to humans. The danger associated with these gases and vapors is that under certain circumstances, they may displace enough air within a given environment to cause the amount of available oxygen to drop below what is required to sustain life. Therefore, the critical concentration is oxygen, not the other gas or vapor.

COMMENT: A commenter questioned why no enforcement provisions are shown in any of the proposed rules.

RESPONSE: No specified enforcement provisions are necessary when proposing additional rules that eventually become a part of the body of existing rules; enforcement is under provisions of the Act, §§341.091-341.092, pertaining to penalties. More specifically, no provision was made in the Act, or in any of the proposed rules for administrative penalties. Therefore, no administrative penalties will be made.

COMMENT: A commenter suggested that certain provisions of the proposed rules and proposed guidelines will have no meaningful impact on occupational risks in public workplaces and should not be adopted for any purpose, as guidelines or otherwise. Provisions most strongly objected to include: recordkeeping, baseline determination, medical surveillance, and monitoring.

RESPONSE: One of the most difficult aspects of determining the status of an occupational environment is finding a starting point, or baseline. Whether the contaminant in question is noise, metal fumes, volatile organic compounds, or asbestos, questions of worker exposure hinge on whether the exposure occurs "on the job" or somewhere else. A conscientious and efficient occupational health program for employees establishes just what the workplace environment really is, tracks changes, and alerts the employer to the development of possibly hazardous situations. The department feels that the preceding elements of a comprehensive occupational health program, even modestly applied, would greatly benefit both the worker and the employer. Therefore, the department does feel that the existing occupational health rules of the State of Texas, and the proposed guidelines, which are current rules found in the Code of Federal Regulations, combine to provide both public employers and employees very useful information which is considered to be the best available and which is accepted as a "national standard." Therefore, the sections are adopted as proposed.

COMMENT: A commenter suggested that certain terms, such as "employee" and

"workplace" should be defined for those federal regulations adopted as guidelines.

RESPONSE: The department agrees and has added definitions to the section pertaining to adoption of federal regulations as guidelines. (see §§295.102-295.105 and §§295.107-295.109).

The commenters are as follows: University of Texas System; Texas Municipal League; and the City of Houston.

The commenters were generally in favor of the proposed rules, however they offered comments and suggestions, and made recommendations as mentioned in the summary of comments.

#### • 25 TAC §§295.101-295.109

The new sections are adopted under the Health and Safety Code, §341.016, which provides the Board of Health with authority to adopt rules concerning occupational health; and §12.001, which provides the Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

#### §295.101. Threshold Limit Values of Airborne Contaminants.

(a) Scope. This section applies to public places of employment in Texas.

(b) Purpose. The purpose of this section is to establish maximum average atmospheric concentration of contaminants to which workers may be exposed during an eight-hour working day in their places of employment.

(c) Pertinent references. Copies of related laws, regulations, opinions of the Attorney General of Texas, and Advisory Standards currently applicable will be provided to any citizen of Texas upon request.

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

(1) Industrial establishment—An institution, a place, building, or location where one or more persons are employed.

(2) Places of employment—Any place where persons work for city, county, or state agencies, or other political subdivision of the state, public schools, public colleges and universities, and publicly owned utilities.

(3) American Conference of Governmental Industrial Hygienist (ACGIH)—The organization responsible for collecting the best available threshold limit value information from industrial experience, experimental human and animal studies, and when possible from a combination of the three.

(e) Applicability of figures.

(1) Threshold limit values (TLV) refer to airborne concentrations of substances and represent conditions under which it is believed that nearly all workers may be repeatedly exposed day after day without adverse effect. Because of wide variation in individual susceptibility, however, a small percentage of workers may experience discomfort from some substances and concentrations at or below the threshold limit; and an even smaller percentage may be affected more seriously by aggravation of a preexisting condition or by development of an occupational illness.

(2) TLVs refer to time-weighted concentrations for a seven or eight-hour workday and a 40-hour workweek. They should be used as guides in the control of health hazards and should not be used as fine lines between safe and dangerous concentrations. (Exceptions are the substances listed in Appendices A and E and those substances designated with a "C" or Ceiling value, as explained in Appendix C in subsection (p) of this section.)

(3) Time weighted averages permit excursions above the limit provided they are compensated by equivalent excursions below the limit during the workday. In some instances it may be permissible to calculate the average concentration for a workweek rather than for a workday. The degree of permissible excursion is related to the magnitude of the TLV of a particular substance as given in Appendix C in subsection (p) of this section. The relationship between threshold limit and permissible excursion is a rule of thumb and in certain cases may not apply. The amount by which threshold limits may be exceeded for short periods without injury to health depends upon a number of factors such as the nature of the contaminant, whether very high concentrations-even for short periods-produce acute poisoning, whether the effects are cumulative, the frequency with which high concentrations occur, and the duration of such periods. All factors must be taken into consideration in arriving at decisions as to whether a hazardous condition exists.

(f) Source.

(1) Threshold limits are based on the best available information from industrial experience, from experimental human and animal studies, and, when possible, from a combination of the three. The basis on which the values are established may differ from substance to substance; protection against impairment of health may be a guiding factor for some, whereas reasonable freedom and irritation, narcosis, nuisance, or other forms of stress may form the basis of others.

(2) The Chemical Substances TLV Committee holds to the opinion that

limits based on physical irritation should be considered no less binding than those based on physical impairment. There is increasing evidence that physical irritation may initiate, promote, or accelerate physical impairment through interaction with other chemical or biological agents.

(3) In spite of the fact that serious injury is not believed likely as a result of exposure to the threshold limit concentrations, the best practice is to maintain concentrations of all atmospheric contaminants as low as is practical.

(4) These limits are intended for use in the practice of industrial hygiene and should be interpreted and applied only by a person trained in this discipline. They are not intended for use, or for modification for use:

(A) as a relative index of hazard or toxicity;

(B) in the evaluation or control of community air pollution nuisances;

(C) in estimating the toxic potential of continuous uninterrupted exposure;

(D) as proof or disproof of an existing disease or physical condition; or

(E) for adoption by countries whose working conditions differ from those in the United States of America and where substances and processes differ.

(g) Documentation of threshold limit values (TLV). Documentation of Threshold Limit Values is a separate companion piece to the TLVs as issued by the ACGIH. The publication gives the pertinent scientific information and data with reference to literature sources, that were used to base each limit. Each documentation also contains a statement defining the type of response against which the limit is safeguarding the worker. For a better understanding of the TLVs it is essential that the Documentation of Threshold Limit Values be consulted when the TLVs are being used.

(h) Ceiling versus time-weighted average limits.

(1) Although the time-weighted average concentration provides the most satisfactory, practical way of monitoring airborne agents for compliance with the limits, there are certain substances for which it is inappropriate. In the latter group are substances which are predominantly fast acting and whose threshold limit is more appropriately based on this particular response. Substances with this type of re-

sponse are best controlled by a ceiling "C" limit that could not be exceeded. It is implicit in these definitions that the manner of sampling to determine compliance with the limits for each group must differ; a single brief sample, that is applicable to a "C" limit, is not appropriate to the time-weighted limit; here, a sufficient number of samples are needed to permit a time-weighted average concentration throughout a complete cycle of operations or throughout the work shift.

(2) Whereas the ceiling limit places a definite boundary which concentrations should not be permitted to exceed, the time weighed average limit requires an explicit limit to the excursions that are permissible above the listed values. The magnitude of these excursions may be pegged to the magnitude of the threshold limit by an appropriate factor shown in Appendix C in subsection (p) of this section. It should be noted that the same factors are used by the Chemical Substances TLV Committee in making a judgment whether to include or exclude a substance for a "C" listing.

(i) "Skin" notation. Listed substances followed by the word "Skin" refer to the potential contribution to the overall exposure by the cutaneous route including mucous membranes and eye, either by airborne, or more particularly, by direct contact with the substance. Vehicles can alter skin absorption. This attention-calling designation is intended to suggest appropriate measures for the prevention of cutaneous absorption so that the threshold limit is not invalidated.

(j) Mixtures. Special consideration should be given also to the application of the TLVs in assessing the health hazards which may be associated with exposure to mixtures of two or more substances. A brief discussion of basic considerations involved in developing threshold limit values for mixtures, and methods for their development, amplified by specific examples are given in Appendix B in subsection (p) of this section.

(k) Nuisance dusts.

(1) In contrast to fibrogenic dusts which cause scar tissue to be formed in lungs when inhaled in excessive amounts, so-called "nuisance" dusts have a long history of little adverse effect on lungs and do not produce significant organic disease or toxic effects when exposures are kept under reasonable control. The nuisance dusts have also been called (biologically) "inert" dusts, but the latter term is not appropriate to the extent that there is no dust which does not evoke some cellular response in the lung when inhaled in sufficient amount. However, the lung-tissue reaction caused by inhalation of nuisance dusts has the following characteristics:

(A) the architecture of the air spaces remains intact;

(B) collagen (scar tissue) is not formed to a significant extent;

(C) the tissue reaction is potentially reversible.

(2) Excessive concentrations of nuisance dusts in the workroom air may seriously reduce visibility (iron oxide), may cause unpleasant deposits in the eyes, ears, and nasal passages (Portland Cement dust), or cause injury to the skin or mucous membranes by chemical or mechanical action *per se* or by the rigorous skin cleansing procedures necessary for their removal.

(3) A threshold limit of 10 mg/m<sup>3</sup> (million particles per cubic foot), or 30 mppcf (million particles per cubic foot), of total dusts 1% SiO<sub>2</sub>, whichever is less, is recommended for substances in these categories and for which no specific threshold limits have been assigned. This limit, for a normal workday, does not apply to brief exposures at higher concentrations. Neither does it apply to those substances which may cause physiologic impairment at lower concentrations but for which a threshold limit

has not yet been adopted. Some "inert" particulates are given in Appendix D in subsection (p) of this section.

(l) Simple asphyxiants—"inert" gases or vapors. A number of gases and vapors, when present in high concentrations in air, act primarily as simple asphyxiants without other significant physiological effects. A TLV may not be recommended for each simple asphyxiant because the limiting factor is the available oxygen. The minimal oxygen content should be 18% by volume under normal atmospheric pressure (equivalent to a partial pressure, pO<sub>2</sub> of 135 mm Hg). Atmospheres deficient in O<sub>2</sub> do not provide adequate warning and most simple asphyxiants are odorless. Several simple asphyxiants present an explosion hazard. Account should be taken of this factor in limiting the concentration of the asphyxiant. Specific examples are listed in Appendix E in subsection (p) of this section.

(m) Physical factors. It is recognized that such physical factors as heat, ultraviolet and ionizing radiation, humidity, abnormal pressure (altitude), and the like may place added stress on the body so that the effects from exposure at threshold limit may be altered. Most of these stresses act adversely to increase the toxic response of a substance. Although most threshold limits have built-in safety factors to guard against adverse effects to moderate deviations from normal environments, the safety factors of

most substances are not of such a magnitude as to take care of gross deviations. For example, continuous work at temperature above 90 degrees Fahrenheit or overtime extending the work week more than 25%, might be considered gross deviations. In such instances judgment must be exercised in the proper adjustments of the TLVs.

(n) "Notice of intent." At the beginning of each year, proposed actions of the Chemical Substances TLV Committee for the forthcoming year are issued in the form of a "Notice of Intent." This notice provides not only an opportunity for comment, but solicits suggestions of substances to be added to the list. The suggestions should be accompanied by substantiating evidence.

(o) As legislative code. The conference recognizes that the TLVs may be adopted in legislative codes and regulations. If so used, the intent of the concepts contained in the Preface should be maintained and provisions should be made to keep the list current. These values are reviewed annually by the Chemical Substances TLV Committee for revision or additions, as further information becomes available.

(p) Adopted values and appendices are as follows.

(1) Adopted values.

XIII. ADOPTED VALUES (Gases, Vapors, Toxic Dusts, Fumes and Mists)

(In Alphabetical Order)

Substance	ppm <sup>a)</sup>	mg/M <sup>3b)</sup>
Abate .....	--	15
Acetaldehyde .....	200	360
Acetic acid .....	10	25
Acetic anhydride .....	5	20
Acetone .....	1,000	2,400
Acetonitrile .....	40	70
Acetylene .....	E	--
Acetylene dichloride, see 1, 2-Dichloroethylene .....	--	--
Acetylene tetrabromide .....	1	14
Acrolein .....	0.1	0.25
Acrylamide-Skin .....	--	0.3
Acrylonitrile-Skin .....	20	45
Aldrin-Skin .....	--	0.25
Allyl alcohol-Skin .....	2	5
Allyl chloride .....	1	3
**C Allyl glycidyl ether (AGE) .....	10	45
Allyl propyl disulfide .....	2	12
Allundum (Al <sub>2</sub> O <sub>3</sub> ) .....	--	D
2-Aminoethanol, see Ethanolamine .....	--	--
2-Aminopyridine .....	0.5	2
** Ammonia .....	50	35
Ammonium sulfamate (Ammate) .....	--	15
n-Amyl acetate .....	100	525
sec-Amyl acetate .....	125	650
Aniline-Skin .....	5	19
Anisidine (o, p-isomers)-Skin .....	--	0.5
Antimony & Compounds (as Sb) .....	--	0.5
ANTU (alpha naphthyl thiourea) .....	--	0.3
Argon .....	E	--
Arsenic & Compounds (as As) .....	--	0.5
Arsine .....	0.05	0.2
Azinphos-methyl-Skin .....	--	0.2
Barium (soluble compounds) .....	--	0.5
C Benzene (benzol)-Skin .....	25	80
Benzidine-Skin .....	--	A <sup>1</sup>
p-Benzoquinone, see Quinone .....	--	--
Benzoyl peroxide .....	--	5
Benzyl chloride .....	1	5
Beryllium .....	--	0.002
Biphenyl, see Diphenyl .....	--	--
Bisphenol A, see Diglycidyl ether .....	--	--
Boron oxide .....	--	15
Boron tribromide .....	1	10
C Boron trifluoride .....	1	3

<u>Substance</u>	<u>ppm</u> <sup>a)</sup>	<u>mg/M</u> <sup>3b)</sup>
Bromine .....	0.1	0.7
* Bromine pentafluoride .....	0.1	0.7
Bromoform-Skin .....	0.5	5
Butadiene (1, 3-butadiene) .....	1,000	2,200
Butanethiol, see Butyl mercaptan .....	--	--
2-Butanone .....	200	590
2-Butoxy ethanol (Butyl Cellosolve)-Skin .....	50	240
Butyl acetate (n-butyl acetate) .....	150	710
sec-Butyl acetate .....	200	950
tert-Butyl acetate .....	200	950
Butyl alcohol .....	100	300
sec-Butyl alcohol .....	150	450
tert-Butyl alcohol .....	100	300
C Butylamine-Skin .....	5	15
C tert-Butyl chromate (as CrO <sub>3</sub> )-Skin .....	--	0.1
n-Butyl glycidyl ether (BGE) .....	50	270
* Butyl mercaptan .....	0.5	1.5
p-tert-Butyltoluene .....	10	60
Cadmium (Metal dust and soluble salts) .....	--	0.2
*C Cadmium oxide fume (as Cd) .....	--	0.1
Calcium carbonate .....	--	D
Calcium arsenate .....	--	1
Calcium oxide .....	--	5
** Camphor (Synthetic) .....	2	--
Carbaryl (Sevin <sup>R</sup> ) .....	--	5
Carbon black .....	--	3.5
Carbon dioxide .....	5,000	9,000
Carbon disulfide-Skin .....	20	60
Carbon monoxide .....	50	55
Carbon tetrachloride-Skin .....	10	65
Cellulose (paper fiber) .....	--	D
Chlordane-Skin .....	--	0.5
Chlorinated camphene-Skin .....	--	0.5
Chlorinated diphenyl oxide .....	--	0.5
* Chlorine .....	1	3
Chlorine dioxide .....	0.1	0.3
C Chlorine trifluoride .....	0.1	0.4
C Chloroacetaldehyde .....	1	3
o-Chloroacetophenone (phenacylchloride) .....	0.05	0.3
Chlorobenzene (monochlorobenzene) .....	75	350
o-Chlorobenzylidene malonitrile (OCBM) .....	0.05	0.4
Chlorobromomethane .....	200	1,050
2-Chloro-1, 3-butadiene, see Chloroprene .....	--	--
Chlorodiphenyl (42% Chlorine)-Skin .....	--	1
Chlorodiphenyl (54% Chlorine)-Skin .....	--	0.5
1-Chloro, 2, 3-epoxypropane, see Epichlorhydrin .....	--	--
2-Chloroethanol, see Ethylene chlorohydrin .....	--	--
Chloroethylene, see Vinyl chloride .....	--	--

<u>Substance</u>	<u>ppm<sup>a)</sup></u>	<u>mg/M<sup>3b)</sup></u>
C Chloroform (trichloromethane) .....	50	240
1-Chloro-1-nitropropane .....	20	100
Chloropicrin .....	0.1	0.7
Chloroprene (2-chloro-1, 3-butadiene)-Skin .....	25	90
Chromic acid and chromates (as CrO <sub>3</sub> ) .....	--	0.1
Chromium, sol. chromic, chromous salts as Cr ...	--	0.5
Metal & insol. salts .....	--	1
Coal tar pitch volatiles (benzene soluble frac- tion) anthracene, BaP, phenanthrene, acridine, chrysene, pyrene) .....	--	0.2
Cobalt, metal fume & dust .....	--	0.1
Copper fume .....	--	0.1
Dusts and Mists .....	--	1
Corundum (Al <sub>2</sub> O <sub>3</sub> ) .....	--	D
Cotton dust (raw) .....	--	1
Crag <sup>R</sup> herbicide .....	--	15
Cresol (all isomers) - Skin .....	5	22
Crotonaldehyde .....	2	6
Cumene-Skin .....	50	245
Cyanide (as CN)-Skin .....	--	5
* Cyanogen .....	10	--
Cyclohexane .....	300	1,050
Cyclohexanol .....	50	200
Cyclohexanone .....	50	200
Cyclohexene .....	300	1,015
Cyclopentadiene .....	75	200
2, 4-D .....	--	10
DDT-Skin .....	--	1
DDVP, see Dichlorvos .....	--	--
Decaborane-Skin .....	0.05	0.3
Demeton <sup>R</sup> -Skin .....	--	0.1
Diacetone alcohol (4-hydroxy-4-methyl-2- pentanone) .....	50	240
1, 2-Diaminoethane, see Ethylenediamine .....	--	--
Diazomethane .....	0.2	0.4
Diborane .....	0.1	0.1
C 1, 2-Dibromoethane (ethylene dibromide)-Skin ...	25	190
Dibutyl phosphate .....	1	5
Dibutylphthalate .....	--	5
*C Dichloroacetylene .....	0.1	0.4
C o-Dichlorobenzene .....	50	300
p-Dichlorobenzene .....	75	450
Dichlorodifluoromethane .....	1,000	4,950
1, 3-Dichloro-5, 5-dimethyl hydantoin .....	--	0.2
1, 1-Dichloroethane .....	100	400
1, 2-Dichloroethane .....	50	200
1, 2-Dichloroethylene .....	200	790
C Dichloroethyl ether-Skin .....	15	90
Dichloromethane, see Methylenechloride .....	--	--
Dichloromonofluoromethane .....	1,000	4,200

<u>Substance</u>	<u>ppm<sup>a)</sup></u>	<u>mg/M<sup>3b)</sup></u>
C 1, 1-Dichloro-1-nitroethane .....	10	60
1, 2-Dichloropropane, see Propylenedichloride ..	--	--
Dichlorotetrafluoroethane .....	1,000	7,000
Dichlorvos (DDVP)-Skin .....	--	1
Dieldrin-Skin .....	--	0.25
Diethylamine .....	25	75
Diethylamino ethanol-Skin .....	10	50
**C Diethylene triamine-Skin .....	10	42
Diethylether, see Ethyl ether .....	--	--
Difluorodibromomethane .....	100	860
C Diglycidyl ether (DGE) .....	0.5	2.8
Dihydroxybenzene, see Hydroquinone .....	--	--
Diisobutyl ketone .....	50	290
Diisopropylamine-Skin .....	5	20
Dimethoxymethane, see Methylal .....	--	--
Dimethyl acetamide-Skin .....	10	35
Dimethylamine .....	10	18
Dimethylaminobenzene, see Xylidene .....	--	--
Dimethylaniline (N-dimethylaniline)-Skin .....	5	25
Dimethylbenzene, see Xylene .....	--	--
Dimethyl 1, 2-dibromo-2, 2-dichloroethyl phos- phate, (Dibrom) .....	--	3
Dimethylformamide-Skin .....	10	30
2, 6-Dimethylheptanone, see Diisobutyl ketone ..	--	--
1, 1-Dimethylhydrazine-Skin .....	0.5	1
Dimethylphthalate .....	--	5
Dimethylsulfate-Skin .....	1	5
Dinitrobenzene (all isomers)-Skin .....	--	1
Dinitro-o-cresol-Skin .....	--	0.2
Dinitrotoluene-Skin .....	--	1.5
Dioxane (Diethylene dioxide)-Skin .....	100	360
Diphenyl .....	0.2	1
Diphenyl amine .....	--	10
Diphenylmethane diisocyanate (see Methylene bisphenyl isocyanate (MDI) .....	--	--
Dipropylene glycol methyl ether-Skin .....	100	600
Di-sec, octyl phthalate (Di-2-ethylhexyl- phthalate) .....	--	5
Emery .....	--	D
* Endosulfan (Thiodan <sup>R</sup> )-Skin .....	--	0.1
Endrin-Skin .....	--	0.1
Epichlorhydrin-Skin .....	5	19
EPN-Skin .....	--	0.5
1, 2-Epoxypropane, see Propyleneoxide .....	--	--
2, 3-Epoxy-1-propanol, see Glycidol .....	--	--
Ethane .....	E	--
Ethanethiol, see Ethylmercaptan .....	--	--
Ethanolamine .....	3	6
2-Ethoxyethanol-Skin .....	200	740
2-Ethoxyethylacetate (Cellosolve acetate)-Skin .	100	540

<u>Substance</u>	<u>ppm<sup>a)</sup></u>	<u>mg/M<sup>3b)</sup></u>
Ethyl acetate .....	400	1,400
Ethyl acrylate-Skin .....	25	100
Ethyl alcohol (ethanol) .....	1,000	1,900
Ethylamine .....	10	18
Ethyl sec-amyl ketone (5-methyl-3-heptanone) ...	25	130
Ethyl benzene .....	100	435
Ethyl bromide .....	200	890
Ethyl butyl ketone (3-Heptanone) .....	50	230
Ethyl chloride .....	1,000	2,600
Ethyl ether .....	400	1,200
Ethyl formate .....	100	300
Ethyl mercaptan .....	0.5	1
Ethyl silicate .....	100	850
Ethylene .....	E	--
Ethylene chlorohydrin-Skin .....	5	16
Ethylenediamine .....	10	25
Ethylene dibromide, see 1, 2-Dibromoethane .....	--	--
Ethylene dichloride, see 1, 2-Dichloroethane ...	--	--
C Ethylene glycol dinitrate and/or Nitroglycerin-Skin .....	0.2 <sup>d)</sup>	--
Ethylene glycol monomethyl ether acetate, see Methyl cellosolve acetate .....	--	--
Ethylene imine-Skin .....	0.5	1
Ethylene oxide .....	50	90
Ethylidene chloride, see 1, 1-Dichloroethane ...	--	--
N-Ethylmorpholine-Skin .....	20	94
Ferbam .....	--	15
Ferrovandium dust .....	--	1
Fibrous glass .....	--	D
Fluoride (as F) .....	--	2.5
Fluorine .....	0.1	0.2
Fluorotrichloromethane .....	1,000	5,600
**C Formaldehyde .....	5	6
Formic acid .....	5	9
Furfural-Skin .....	5	20
Furfuryl alcohol .....	50	200
Gasoline .....	--	A <sup>3</sup>
Glycerin mist .....	--	D
Glycidol (2, 3-Epoxy-1-propanol) .....	50	150
Glycol monoethyl ether, see 2-Ethoxyethanol .....	--	--
Graphite, (Synthetic) .....	--	D
Guthion, <sup>R</sup> see Azinphosmethyl .....	--	--
Gypsum .....	--	D
Hafnium .....	--	0.5
Helium .....	E	--
Heptachlor-Skin .....	--	0.5
Heptane (n-heptane) .....	500	2,000
Hexachloroethane-Skin .....	1	10
Hexachloronaphthalene-Skin .....	--	0.2
Hexane (n-hexane) .....	500	1,800
2-Hexanone .....	100	410



<u>Substance</u>	<u>ppm</u> <sup>a)</sup>	<u>mg/M</u> <sup>3b)</sup>
Hexone (Methyl isobutyl ketone) .....	100	410
sec-Hexyl acetate .....	50	300
Hydrazine-Skin .....	1	1.3
Hydrogen .....	E	--
Hydrogen bromide .....	3	10
C Hydrogen chloride .....	5	7
Hydrogen cyanide-Skin .....	10	11
Hydrogen fluoride .....	3	2
Hydrogen peroxide .....	1	1.4
Hydrogen selenide .....	0.05	0.2
Hydrogen sulfide .....	10	15
Hydroquinone .....	--	2
* Indene .....	10	45
Indium and compounds, as In .....	--	0.1
C Iodine .....	0.1	1
Iron oxide fume .....	--	10
Iron salts, soluble, as Fe .....	--	1
Isoamyl acetate .....	100	525
Isoamyl alcohol .....	100	360
Isobutyl acetate .....	150	700
Isobutyl alcohol .....	100	300
Isophorone .....	25	140
Isopropyl acetate .....	250	950
Isopropyl alcohol .....	400	980
Isopropylamine .....	5	12
Isopropylether .....	500	2,100
Isopropyl glycidyl ether (IGE) .....	50	240
Kaolin .....	--	D
Ketene .....	0.5	0.9
Lead .....	--	0.2
Lead arsenate .....	--	0.15
Limestone .....	--	D
Lindane-Skin .....	--	0.5
Lithium hydride .....	--	0.025
L.P.G. (Liquified petroleum gas) .....	1,000	1,800
Magnesite .....	--	D
Magnesium oxide fume .....	--	15
Malathion-Skin .....	--	15
Maleic anhydride .....	0.25	1
C Manganese and compounds, as M <sub>n</sub> .....	--	5
Marble .....	--	D
** Mercury-Skin .....	--	0.1
** Mercury (organic compounds)-Skin .....	--	0.01
Mesityl oxide .....	25	100
Methane .....	E	--
Methanethiol, see Methyl mercaptan .....	--	--
Methoxychlor .....	--	15
2-Methoxyethanol, see Methyl cellosolve .....	--	--
Methyl acetate .....	200	610

<u>Substance</u>	<u>ppm<sup>a)</sup></u>	<u>mg/M<sup>3b)</sup></u>
Methyl acetylene (propyne) .....	1,000	1,650
Methyl acetylene-propadiene mixture (MAPP) .....	1,000	1,800
Methyl acrylate-Skin .....	10	35
Methylal (dimethoxymethane) .....	1,000	3,100
Methyl alcohol (methanol) .....	200	260
Methylamine .....	10	12
Methyl amyl alcohol, see Methyl isobutyl carbinol .....	--	--
* Methyl isoamyl ketone .....	100	475
Methyl (n-amyl) ketone (2-Heptanone) .....	100	465
C Methyl bromide-Skin .....	20	80
Methyl butyl ketone, see 2-Hexanone .....	--	--
Methyl cellosolve-Skin .....	25	80
Methyl cellosolve acetate-Skin .....	25	120
**C Methyl chloride .....	100	210
Methyl chloroform .....	350	1,900
Methylcyclohexane .....	500	2,000
Methylcyclohexanol .....	100	470
o-Methylcyclohexanone-Skin .....	100	460
Methyl ethyl ketone (MEK), see 2-Butanone .....	--	--
Methyl formate .....	100	250
Methyl iodide-Skin .....	5	28
Methyl isobutyl carbinol-Skin .....	25	100
Methyl isobutyl ketone, see Hexone .....	--	--
Methyl isocyanate-Skin .....	0.02	0.05
* Methyl mercaptan .....	0.5	1
Methyl methacrylate .....	100	410
Methyl propyl ketone, see 2-Pentanone .....	--	--
C Methyl silicate .....	5	30
C oc Methyl styrene .....	100	480
C Methylene bisphenyl isocyanate (MDI) .....	0.02	0.2
Methylene chloride (dichloromethane) .....	500	1,740
Molybdenum (soluble compounds) .....	--	5
(insoluble compounds) .....	--	15
Monomethyl aniline-Skin .....	2	9
C Monomethyl hydrazine-Skin .....	0.2	0.35
Morpholine-Skin .....	20	70
Naphtha (coal tar) .....	100	400
Naphthalene .....	10	50
$\beta$ -Naphthylamine .....	--	A <sup>1</sup>
Neon .....	E	--
Nickel carbonyl .....	0.001	0.007
Nickel, metal and soluble cmpds, as Ni .....	--	1
Nicotine-Skin .....	--	0.5
Nitric acid .....	2	5
Nitric oxide .....	25	30
p-Nitroaniline-Skin .....	1	6
Nitrobenzene-Skin .....	1	5
p-Nitrochlorobenzene-Skin .....	--	1

<u>Substance</u>	a) <u>ppm</u>	<u>mg/M</u> <sup>3b)</sup>
Nitroethane .....	100	310
Nitrogen .....	E	--
Nitrogen dioxide .....	5	9
Nitrogen trifluoride .....	10	29
Nitroglycerin-Skin .....	0.2	2
Nitromethane .....	100	250
1-Nitropropane .....	25	90
2-Nitropropane .....	25	90
N-Nitrosodimethylamine (dimethyl- nitrosoamine)-Skin .....	--	A <sup>1</sup>
Nitrotoluene-Skin .....	5	30
Nitrotrichloromethane, see Chloropicrin .....	--	--
Nitrous oxide .....	E	--
Octachloronaphthalene-Skin .....	--	0.1
* Octane .....	400	1,900
* Oil mist, particulate .....	--	5 <sup>h</sup>
* Oil mist, vapor .....	i) A <sup>3</sup>	--
Osmium tetroxide .....	--	0.002
Oxalic acid .....	--	1
Oxygen difluoride .....	0.05	0.1
Ozone .....	0.1	0.2
Paraquat-Skin .....	--	0.5
Parathion-Skin .....	--	0.1
Pentaborane .....	0.005	0.01
Pentachloronaphthalene-Skin .....	--	0.5
Pentachlorophenol-Skin .....	--	0.5
Pentaerythritol .....	--	D
* Pentane .....	500	1,500
2-Pentanone .....	200	700
Perchloroethylene .....	100	670
Perchloromethyl mercaptan .....	0.1	0.8
Perchloryl fluoride .....	3	13.5
* Petroleum Distillates (naphtha) .....	i) A <sup>3</sup>	--
Phenol-Skin .....	5	19
p-Phenylene diamine-Skin .....	--	0.1
Phenyl ether (vapor) .....	1	7
Phenyl ether-Biphenyl mixture (vapor) .....	1	7
Phenylethylene, see Styrene .....	--	--
Phenyl glycidyl ether (PGE) .....	10	60
Phenylhydrazine-Skin .....	5	22
Phosdrin (Mevinphos <sup>R</sup> )-Skin .....	--	0.1
Phosgene (carbonyl chloride) .....	0.1	0.4
Phosphine .....	0.3	0.4
Phosphoric acid .....	--	1
Phosphorus (yellow) .....	--	0.1
Phosphorus pentachloride .....	--	1
Phosphorus pentasulfide .....	--	1
Phosphorus trichloride .....	0.5	3

<u>Substance</u>	<u>ppm<sup>a)</sup></u>	<u>mg/M<sup>3b)</sup></u>
Phthalic anhydride .....	2	12
Picric acid-Skin .....	--	0.1
Pival <sup>R</sup> (2-Pivalyl-1, 3-indandione) .....	--	0.1
Plaster of Paris .....	--	D
Platinum (Soluble Salts) as Pt .....	--	0.002
Polytetrafluoroethylene decomposition products .	--	A <sup>2</sup>
Propane .....	E	--
Propiolactone .....	--	A <sup>1</sup>
Propargyl alcohol-Skin .....	1	--
n-Propyl acetate .....	200	840
Propyl alcohol .....	200	500
n-Propyl nitrate .....	25	110
Propylene dichloride .....	75	350
Propylene imine-Skin .....	2	5
Propylene oxide .....	100	240
Propyne, see Methylacetylene .....	--	--
Pyrethrum .....	--	5
Pyridine .....	5	15
Quinone .....	0.1	0.4
RDX-Skin .....	--	1.5
Rhodium, Metal fume and dusts, as Rh .....	--	0.1
Soluble salts .....	--	0.001
Ronnel .....	--	10
Rotenone (commercial) .....	--	5
Rouge .....	--	D
Selenium compounds (as Se) .....	--	0.2
Selenium hexafluoride .....	0.05	0.4
Silicon carbide .....	--	D
Silver, metal and soluble compounds .....	--	0.01
Sodium fluoracetate (1080)-Skin .....	--	0.05
Sodium hydroxide .....	--	2
Stibine .....	0.1	0.5
Starch .....	--	D
* Stoddard solvent .....	200	1,150
Strychnine .....	--	0.15
**C Styrene monomer (phenylethylene) .....	100	420
Sucrose .....	--	D
Sulfur dioxide .....	5	13
Sulfur hexafluoride .....	1,000	6,000
Sulfuric acid .....	--	1
Sulfur monochloride .....	1	6
Sulfur pentafluoride .....	0.025	0.25
Sulfuryl fluoride .....	5	20
Systox, see Demeton <sup>R</sup> .....	--	--
2, 4, 5 T .....	--	10
Tantalum .....	--	5
TEDP-Skin .....	--	0.2
Teflon <sup>R</sup> decomposition products .....	--	A <sup>2</sup>
Tellurium .....	--	0.1

<u>Substance</u>	<u>ppm<sup>a)</sup></u>	<u>mg/M<sup>3b)</sup></u>
Tellurium hexafluoride .....	0.02	0.2
TEPP-Skin .....	--	0.05
C Terphenyls .....	1	9
1, 1, 1, 2-Tetrachloro-2, 2-difluoroethane .....	500	4,170
1, 1, 2, 2-Tetrachloro-1, 2-difluoroethane .....	500	4,170
1, 1, 2, 2-Tetrachloroethane-Skin .....	5	35
Tetrachloroethylene, see Perchloroethylene .....	--	--
Tetrachloromethane, see Carbon tetrachloride .....	--	--
Tetrachloronaphthalene-Skin .....	--	2
Tetraethyl lead (as Pb)-Skin .....	--	0.100j)
Tetrahydrofuran .....	200	590
Tetramethyl lead (as Pb)-Skin .....	--	0.150j)
Tetramethyl succinonitrile-Skin .....	0.5	3
Tetranitromethane .....	1	8
Tetryl (2, 4, 6-trinitrophenylmethylnitramine)- Skin .....	--	1.5
Thallium (soluble compounds)-Skin as Tl .....	--	0.1
Thiram .....	--	5
Tin (inorganic cmpds, except SnH <sub>4</sub> and SnO <sub>2</sub> ) .....	--	2
Tin (organic cmpds) .....	--	0.1
Tin oxide .....	--	D
Titanium dioxide .....	--	D
Toluene (tolul) .....	200	750
C Toluene-2, 4-diisocyanate .....	0.02	0.14
o-Toluidine-Skin .....	5	22
Toxaphene, see Chlorinated camphene .....	--	--
Tributyl phosphate .....	--	5
1, 1, 1-Trichloroethane, see Methyl chloroform .....	--	--
1, 1, 2-Trichloroethane-Skin .....	10	45
Trichloroethylene .....	100	535
Trichloromethane, see Chloroform .....	--	--
Trichloronaphthalene-Skin .....	--	5
1, 2, 3-Trichloropropane .....	50	300
1, 1, 2-Trichloro 1, 2, 2-trifluoroethane .....	1,000	7,600
Triethylamine .....	25	100
Trifluoromonobromomethane .....	1,000	6,100
* Trimethyl benzene .....	25	120
2, 4, 6-Trinitrophenol, see Picric acid .....	--	--
2, 4, 6-Trinitrophenylmethylnitramine, see Tetryl .....	--	--
Trinitrotoluene-Skin .....	--	1.5
Triorthocresyl phosphate .....	--	0.1
Triphenyl phosphate .....	--	3
Tungsten & compounds, as W		
Soluble .....	--	1
Insoluble .....	--	5
Turpentine .....	100	560
Uranium (natural) sol. & insol. compounds as U .....	--	0.2

<u>Substance</u>	<u>ppm<sup>a)</sup></u>	<u>mg/M<sup>3b)</sup></u>
C Vanadium (V <sub>2</sub> O <sub>5</sub> dust) .....	--	0.5
(V <sub>2</sub> O <sub>5</sub> fume) .....	--	0.1
Vinyl benzene, see Styrene .....	--	--
**C Vinyl chloride .....	500	1,300
Vinylcyanide, see Acrylonitrile .....	--	--
Vinyl toluene .....	100	480
Warfarin .....	--	0.1
Xylene (xylol) .....	100	435
Xylidine-Skin .....	5	25
Yttrium .....	--	1
Zinc chloride fume .....	--	1
Zinc oxide fume .....	--	5
Zirconium compounds (as Zr) .....	--	5

**Radioactivity:** For permissible concentrations of radioisotopes in air, see U. S. Department of Commerce, National Bureau of Standards, Handbook 69, "Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure," June 5, 1959. Also, see U. S. Department of Commerce National Bureau of Standards, Handbook 59, "Permissible Dose from External Sources of Ionizing Radiation," September 24, 1954, and addendum of April 15, 1958.

- 
- a) Parts of vapor or gas per million parts of contaminated air by volume at 25°C and 760 mm. Hg pressure.
  - b) Approximate milligrams of particulate per cubic meter of air.
  - d) An atmospheric concentration of not more than 0.02 ppm, or personal protection may be necessary to avoid headache.
  - h) As sampled by method that does not collect vapor.
  - i) According to analytically determined composition.
  - j) For control of general room air, biologic monitoring is essential for personnel control.
- \*\* See Notice of Intended Changes  
 \* 1970 Addition  
 Capital letters refer to Appendices.

Appendix A. MINERAL DUSTS

Substance	m.p.p.c.f. <sup>e)</sup>
<b>SILICA</b>	
Crystalline	
** Quartz, Threshold Limit calculated from the formula .....	$\frac{250^f)}{\%SiO_2 + 5}$
** Cristobalite, Threshold Limit calculated Amorphous, including natural diatomaceous earth .....	20
<b>SILICATES (less than 1% crystalline silica)</b>	
** Asbestos, all types .....	5
Mica .....	20
Portland Cement .....	50
Soapstone .....	20
Talc (non-asbestiform) .....	20
Talc (fibrous), use asbestos limit .....	--
Tremolite, see asbestos .....	--
Graphite (natural) .....	15
** "Inert" or Nuisance Particulates	50 (or 15 mg/M <sup>3</sup> whichever is the smaller) of total dust <1% SiO <sub>2</sub>
See Appendix D	

Conversion factors

mppcf X 35.3 = million particles per cubic meter  
              = particles per c.c.

- 
- e) Millions of particles per cubic foot of air, based on impinger samples counted by light-field technics.
- f) The percentage of crystalline silica in the formula is the amount determined from airborne samples, except in those instances in which other methods have been shown to be applicable.
- \*\* See Notice of Intended Changes for Mineral Dusts

Appendix B. NOTICE OF INTENDED CHANGES  
(FOR 1970)

These substances, with their corresponding values, comprise those for which either a limit has been proposed for the first time, or for which a change in the "Adopted" listing has been proposed. In both cases, the proposed limits should be considered trial limits that will remain in the listing for a period of at least two years. During this time, the previously Adopted Limit will remain in effect. If, after two years no evidence comes to light that questions the appropriateness of the values herein, the values will be placed in the "Adopted" list. Documentation is available for each of these substances.

<u>Substance</u>	<u>ppm</u>	<u>mg/M<sup>3</sup></u>
2-Acetylaminofluorene-Skin .....	--	A <sup>1</sup>
+ Allyl glycidyl ether .....	5	22
4-Aminodiphenyl-Skin .....	--	A <sup>1</sup>
+ Ammonia .....	25	18
+ Ammonium chloride fume .....	--	10
Asphalt (petroleum) fumes .....	--	5
+ Butyl lactate .....	1	5
+ Camphor (synthetic) .....	2	12
+ Diazinon-Skin .....	--	0.1
+ 2-N Dibutylamino ethanol-Skin .....	2	14
Dichlorobenzidine-Skin .....	--	A <sup>1</sup>
+ Diethylene triamine-Skin .....	1	4
4-Dimethylaminoazobenzene .....	--	A <sup>1</sup>
Fibrous glass .....	g)--	D
+C Formaldehyde .....	2	3
+ Iron pentacarbonyl .....	0.01	0.08
+ Mercury (Alkyl compounds)-Skin .....	--	0.01
Mercury (All forms except alkyl) .....	--	0.05
+ Methyl chloride .....	100	210
Methyl 2-cyanoacrylate .....	2	8
+ Methylcyclopentadienyl manganese tricarbonyl (as Mn) .....	0.1	0.2
Methyl demeton-Skin .....	--	0.5
Methyl parathion-Skin .....	--	0.2
Phenothiazine-Skin .....	--	5
+ Rosin Core Solder, pyrolysis products .....	--	0.1 (as alde- hyde)
Styrene .....	100	420

+ 1970 Revision or Addition

Capital letters refer to Appendices

g) <5-7 μ Diameter. No TLV for coarse fibrous glass has yet been set.



Appendix B cont'd  
 NOTICE OF INTENDED CHANGES (Cont'd)  
 (FOR 1970)

<u>Substance</u>	<u>ppm</u>	<u>mg/M<sup>3</sup></u>
+C Subtilisins (Proteolytic enzymes) .....	--	0.0003 (as 100% pure crystal- line en- zyme)
+ Vanadium (V <sub>2</sub> O <sub>5</sub> Fume) as V .....	--	0.05
Vinyl acetate .....	10	30
+ Vinyl chloride .....	200	770
+ Wood dust (non allergenic) .....	--	5

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+ 1970 Revision or Addition

Capital letters refer to Appendices

Appendix B cont'd  
 NOTICE OF INTENDED CHANGES (Cont'd)  
 MINERAL DUSTS

<u>Substance</u>	<u>TLV</u>
+ Asbestos (All types)	5 fibers/ml > 5μ in length <sup>k)</sup>
+ Coal dust (bituminous) Cristobalite	2 mg/m <sup>3</sup> (respirable dust) <sup>m)</sup> Use one-half the value calculated from the count or mass formulae for quartz.
+ 'Inert' or Nuisance Particulates	10 mg/M <sup>3</sup> or 30 mppcf (whichever is the smaller) of the total dust < 1% SiO <sub>2</sub> <sup>n)</sup>
+ Quartz	TLV in mppcf: $\frac{300}{\%SiO_2 + 10}$ TLV for respirable dust in mg/m <sup>3</sup> : $\frac{10 \text{ mg/M}^{3p})}{\% \text{ Respirable quartz} + 2}$ TLV for "total dust", respirable and nonrespirable: $\frac{30 \text{ mg/M}^3}{\% \text{ quartz} + 3}$
Silica, fused Tridymite	Use quartz formulae Use one-half the value calculated from formulae for quartz.

+ 1970 Revision or Addition

- k) As determined by the membrane filter method at 430 X magnification phase contrast illumination. Concentrations > 5 fibers/ml, but not to exceed 10, may be permitted for 15-minute periods each hour up to five times daily.
- m) "Respirable" dust as defined by the British Medical Research Council Criteria (1) and as sampled by a device producing equivalent results (2).
  - (1) Hatch, T. E. and Gross, P., Pulmonary Deposition and Retention of Inhaled Aerosols, p. 149. Academic Press, New York, New York, 1964.
  - (2) Interim Guide for Respirable Mass Sampling, AIHA Aerosol Technology Committee, AIHA J. 31, 2, 1970, p. 133.
- n) This automatically reduces all particulate substances in Adopted list with TLV of 15 mg/M<sup>3</sup> to 10 mg/M<sup>3</sup>.
- p) Both concentration and per cent quartz for the application of this limit are to be determined from the fraction passing a size-selector with the following characteristics:

<u>Aerodynamic Diameter (μ)</u> (unit density sphere)	<u>% passing selector</u>
= 2	90
2.5	75
3.5	50
5.0	25
10	0

(2) Appendix A

APPENDIX A

A<sup>1</sup> Because of the high incidence of cancer, either in man or in animals, no exposure or contact by any route, respiratory, oral or skin should be permitted for the compounds:

2-Acetylaminofluorene	beta-Naphthylamine
4-Aminodiphenyl	4-Nitrodiphenyl
Benzidine & its salts	N-Nitrosodimethylamine
Dichlorobenzidine	beta-Propiolactone
4-Dimethylaminoazobenzene	

Because of the extremely high incidence of bladder tumors in workers handling beta-naphthylamine and the potential carcinogenic activity of the other compounds, the State of Pennsylvania prohibits the manufacture, use and other activities that involve human exposure without express approval by the Department of Health.

A<sup>2</sup> Polytetrafluoroethylene\* decomposition products. - Thermal decomposition of the fluorocarbon chain in air leads to the formation of oxidized products containing carbon, fluorine and oxygen. Because these products decompose in part by hydrolysis in alkaline solution, they can be quantitatively determined in air as fluoride to provide an index of exposure. No TLV is recommended pending determination of the toxicity of the products, but air concentrations should be minimal.

A<sup>3</sup> Gasoline and/or Petroleum Distillates. - The composition of these materials varies greatly and thus a single TLV for all types of these materials is no longer applicable. In general, the aromatic hydrocarbon content will determine what TLV applies. Consequently the content of benzene, other aromatics and additives should be determined to arrive at the appropriate TLV (Elkins, et. al. A.I.H.A.J. 24, 99, 1963).

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\* Trade Names: Algoflon, Fluon, Halon, Teflon, Tetran

(3) Appendix B.

## APPENDIX B

### B.1 THRESHOLD LIMIT VALUES FOR MIXTURES

When two or more hazardous substances are present, their combined effect, rather than that of either individually, should be given primary consideration. In the absence of information to the contrary, the effects of the different hazards should be considered as additive. That is, if the sum of the following fractions,

$$\frac{C_1}{T_1} + \frac{C_2}{T_2} + \dots + \frac{C_n}{T_n}$$

exceeds unity, then the threshold limit of the mixture should be considered as being exceeded.  $C_1$  indicates the observed atmospheric concentration, and  $T_1$  the corresponding threshold limit, (See Example 1A.a.).

Exceptions to the above rule may be made when there is good reason to believe that the chief effects of the different harmful substances are not in fact additive, but independent as when purely local effects on different organs of the body are produced by the various components of the mixture. In such cases the threshold limit ordinarily is exceeded only when at least one member of the series ( $C_1$  + or +  $C_2$  etc.)

$$\frac{C_1}{T_1} \quad \frac{C_2}{T_2}$$

itself has a value exceeding unity, (See Example 1A.b.).

Antagonistic action or potentiation may occur with some combinations of atmospheric contaminants. Such cases at present must be determined individually. Potentiating or antagonistic agents are not necessarily harmful by themselves. Potentiating effects of exposure to such agents by routes other than that of inhalation is also possible, e.g. imbibed alcohol and inhaled narcotic (trichloroethylene). Potentiation is characteristically exhibited at high concentrations, less probably at low.

When a given operation or process characteristically emits a number of harmful dusts, fumes, vapors or gases, it will frequently be only feasible to attempt to evaluate the hazard by measurement of a single substance. In such cases, the threshold limit used for this substance should be reduced by a suitable factor, the magnitude of which will depend on the number, toxicity and relative quantity of the other contaminants ordinarily present.

Examples of processes which are typically associated with two or more harmful atmospheric contaminants are welding, automobile repair, blasting, painting, lacquering, certain foundry operations, diesel exhausts, etc., (Example 2.)

THRESHOLD LIMIT VALUES FOR MIXTURES  
EXAMPLES

1A. General case, where air is analyzed for each component

- a. Additive effects. (note: It is essential that the atmosphere be analyzed both qualitatively and quantitatively for each component present, in order to evaluate compliance or noncompliance with this calculated TLV.)

$$\frac{C_1}{T_1} + \frac{C_2}{T_2} + \frac{C_3}{T_3} + \dots = 1$$

Example No. 1: Air contains 5 ppm of carbon tetrachloride (TLV = 10 ppm)  
20 ppm of ethylene dichloride (TLV = 50 ppm) and 10 ppm  
of ethylene dibromide (TLV = 25 ppm)

Atmospheric concentration of mixture =

$$5 + 20 + 10 = 35 \text{ ppm of mixture}$$

$$\frac{5}{10} + \frac{20}{50} + \frac{10}{25} = \frac{25 + 20 + 20}{50} = 1.3$$

Threshold Limit is exceeded. Furthermore, the TLV of this mixture may be calculated by reducing the total fraction to 1.0; i.e.

$$\text{TLV of mixture} = \frac{35}{1.3} = 27 \text{ ppm}$$

Example No. 2: Air contains 200 ppm of hexane (TLV = 500 ppm) 100 ppm  
of methylene chloride (TLV = 500 ppm) and 20 ppm of  
perchloroethylene (TLV = 100 ppm)

Atmospheric concentration of mixture =

$$200 + 100 + 20 = 320 \text{ ppm of mixture}$$

$$\frac{200}{500} + \frac{100}{500} + \frac{20}{100} = \frac{200 + 100 + 100}{500} = \frac{400}{500} = 0.8$$

Threshold Limit is not exceeded. The TLV of this mixture

$$= \frac{320}{0.8} = 400 \text{ ppm}$$

1B. Special case when the source of contaminant is a liquid mixture and the atmospheric composition is assumed to be similar to that of the original material; e.g. on a time weighted average exposure basis, all of the liquid (solvent) mixture eventually evaporates.

a. Additive effects (approximate solution)

1. The percent composition (by weight) of the liquid mixture is known, the TLVs of the constituents must be listed in mg/M<sup>3</sup>.

(NOTE: In order to evaluate compliance with this TLV, field sampling instruments should be calibrated, in the laboratory, for response to this specific quantitative and qualitative air-vapor mixture, and also to fractional concentrations of this mixture; e.g., 1/2 the TLV; 1/10 the TLV; 2 X the TLV; 10 X the TLV; etc.)

$$\text{TLV of mixture} = \frac{1}{\frac{f_a}{\text{TLV}_a} + \frac{f_b}{\text{TLV}_b} + \frac{f_c}{\text{TLV}_c} + \dots + \frac{f_n}{\text{TLV}_n}}$$

Example No. 1: Liquid solvent contains (by weight) 50% heptane (TLV = 2,000 mg/M<sup>3</sup>) 30% methylene chloride (TLV = 1740 mg/M<sup>3</sup>) 20% perchlorethylene (TLV = 670 mg/M<sup>3</sup>)

$$\begin{aligned} \text{TLV of mixture} &= \frac{1}{\frac{0.5}{2000} + \frac{0.3}{1740} + \frac{0.2}{670}} = \frac{1}{.00025 + .00017 + .0003} \\ &= \frac{1}{.00072} = 1390 \text{ mg/M}^3 \end{aligned}$$

Of this mixture: 50% or 695 mg/M<sup>3</sup> is heptane, 30% or 417 mg/M<sup>3</sup> is methylene chloride and 20% or 278 mg/M<sup>3</sup> is perchlorethylene

These values can be converted to ppm as follows:

heptane:                    2000 mg/M<sup>3</sup> = 500 ppm  
                                   1 mg/M<sup>3</sup> = 0.25 ppm  
                                   695 mg/M<sup>3</sup> = 174 ppm

methylene chloride: 1740 mg/M<sup>3</sup> = 500 ppm  
                                   1 mg/M<sup>3</sup> = 0.287 ppm  
                                   417 mg/M<sup>3</sup> = 119 ppm



$$\begin{aligned} \text{perchloroethylene: } 670 \text{ mg/M}^3 &= 100 \text{ ppm} \\ 1 \text{ mg/M}^3 &= 0.15 \text{ ppm} \\ 278 \text{ mg/M}^3 &= 42 \text{ ppm} \end{aligned}$$

The TLV of this mixture = 174 + 119 + 42 = 335 ppm.

1B.b. General Exact Solution for Mixtures of N Components With Additive Effects and Different Vapor Pressures.

$$(1) \quad \frac{C_1}{T_1} + \frac{C_2}{T_2} + \dots + \frac{C_n}{T_n} = 1;$$

$$(2) \quad C_1 + C_2 + \dots + C_n = T;$$

$$(2.1) \quad \frac{C_1}{T} + \frac{C_2}{T} + \dots + \frac{C_n}{T} = 1.$$

By the Law of Partial Pressures,

$$(3) \quad C_1 = sp_1,$$

and by Raoult's Law,

$$(4) \quad p_1 = F_1P_1^\circ.$$

Combine (3) and (4) to obtain

$$(5) \quad C_1 = aF_1P_1^\circ.$$

Combining (1), (2,1) and (5), we obtain

$$(6) \quad \frac{F_1P_1^\circ}{T} + \frac{F_2P_2^\circ}{T} + \dots + \frac{F_nP_n^\circ}{T} =$$

$$\frac{F_1P_1^\circ}{T_1} + \frac{F_2P_2^\circ}{T_2} + \dots + \frac{F_nP_n^\circ}{T_n}$$

and solving for T,

$$(6.1) \quad T = \frac{F_1P_1^\circ + F_2P_2^\circ + \dots + F_nP_n^\circ}{\frac{F_1P_1^\circ}{T_1} + \frac{F_2P_2^\circ}{T_2} + \dots + \frac{F_nP_n^\circ}{T_n}}$$

$$\text{or } \frac{1}{T} = \sum \frac{F_i P_i^\circ}{T_i}$$

$$(6.2) \quad T = \frac{1}{\sum \frac{F_i P_i^\circ}{T_i}}$$

$$i = 1 \quad \frac{F_1 P_1^\circ}{T_1}$$

- T = Threshold Limit Value in ppm.  
 C = Vapor concentration in ppm.  
 p = Vapor pressure of component in solution.  
 p<sup>o</sup> = Vapor pressure of pure component.  
 F = Mol fraction of component in solution.  
 a = A constant of proportionality.

Subscripts 1, 2, . . . n relate the above quantities to components 1, 2, . . . n, respectively.

Subscript i refers to an arbitrary component from 1 to n.

Absence of subscript relates the quantity to the mixture.

1B.c. Solution to be applied when there is a reservoir of the solvent mixture whose composition does not change appreciably by evaporation.

Exact Arithmetic Solution of Specific Mixture

	Mol. wt.	Density	TLV	p <sup>o</sup> at 25°C	Mol fraction in half-and-half solution by volume
Trichloroethylene (1)	131.4	1.46 g/ml	100	73 mm Hg	0.527
Methylchloroform (2)	133.42	1.33 g/ml	350	125 mm Hg	0.473

$$F_1 p_1^o = (0.527) (73) = 38.2$$

$$F_2 p_2^o = (0.473) (125) = 59.2$$

$$TLV = \frac{38.2 + 59.2}{\frac{38.2}{100} + \frac{59.2}{350}} = \frac{(97.4) (350)}{133.8 + 59.2} = \frac{(97.4) (350)}{193.0} = 177$$

TLV = 177 ppm (Note difference in TLV when account is taken of vapor pressure and mol fraction in comparison with above sample where such account is not taken.)

2. A mixture of one part of (1) parathion (TLV, 0.1) and two parts of (2) EPN (TLV, 0.5).

$$\frac{C_1}{0.1} + \frac{C_2}{0.5} = \frac{C_m}{T_m} \quad C_2 = 2C_1$$

$$C_m = 3C_1$$

$$\frac{C_1}{0.1} + \frac{2C_1}{0.5} = \frac{3C_1}{T_m}$$

$$\frac{7C_1}{0.5} = \frac{3C_1}{T_m}$$

$$T_m = \frac{1.5}{7} = 0.21 \text{ mg/M}^3$$

1C. TLV for Mixtures of Mineral Dusts.

For mixtures of biologically active mineral dusts the general formula for mixtures may be used.

For a mixture containing 80% talc and 20% quartz, the TLV for 100% of the mixture is given by:

$$TLV = \frac{1}{\frac{0.8}{20} + \frac{0.2}{2.5}} = 8.4 \text{ mppcf}$$

Essentially the same result will be obtained if the limit of the more (most) toxic component is used provided the effects are additive. In the above example the limit for 20% quartz is 10 mppcf.

For another mixture of 25% quartz, 25% amorphous silica and 50% talc:

$$TLV = \frac{1}{\frac{0.25}{2.5} + \frac{0.25}{20} + \frac{0.5}{20}} = 7.3 \text{ mppcf}$$

The limit for 25% quartz approximates 8 mppcf.

(4) Appendix C.

APPENDIX C

PERMISSIBLE EXCURSIONS FOR TIME-WEIGHTED  
AVERAGE (TWA) LIMITS

The Excursion TLV Factor in the Table automatically defines the magnitude of the permissible excursion above the limit, for those substances not given a "C" designation; i.e., the TWA limits. Examples in the Table show that nitrobenzene, the TLV for which is 1 ppm, should never be allowed to exceed 3 ppm. Similarly, carbon tetrachloride, TLV 10 ppm, should never be allowed to exceed 20 ppm. By contrast, those substances with a "C" designation are not subject to the excursion factor and must be kept below the TLV.

These limiting excursions are to be considered to provide a 'rule-of-thumb' guidance for listed substances generally, and may not provide the most appropriate excursion for a particular substance. Efforts are being made to develop such specific excursions, when indicated to be significantly different from that recommended by the present excursion factors.

<u>Substance</u>	<u>TLV</u>	<u>Excursion Factor</u>	<u>Max. Conc. Permitted for short time</u>
Nitrobenzene	1 ppm	3	3 ppm
Carbon tetrachloride	10 ppm	2	20 ppm
Carbon monoxide	50 ppm	1.5	75 ppm
Acetone	1000 ppm	1.25	1250 ppm
Boron trifluoride	C 1 ppm	--	1 ppm
Butylamine	C 5 ppm	--	5 ppm
Styrene monomer	C 100 ppm	--	100 ppm

For all substances:

TLV = 0 - 1 (ppm or mg/m<sup>3</sup>), Excursion Factor = 3  
 TLV = 1 - 10 (ppm or mg/m<sup>3</sup>), Excursion Factor = 2  
 TLV = 10 - 100 (ppm or mg/m<sup>3</sup>), Excursion Factor = 1.5  
 TLV = 100 - 1000 (ppm or mg/m<sup>3</sup>), Excursion Factor = 1.25

BASIS FOR ASSIGNING LIMITING "C" VALUES

By definition in the Preface, a listed value bearing a "C" designation refers to a 'ceiling' value that should not be exceeded; all values should fluctuate below the listed value. This, in effect, makes the "C" designation a maximal allowable concentration (MAC). In general, the bases for assigning or not assigning a "C" value rest on whether excursions of concentration above a proposed limit for periods up to 15 minutes may result in a) intolerable irritation, b) chronic, or irreversible tissue change, or c) narcosis of sufficient degree to increase accident proneness, impair self-rescue or materially reduce work efficiency.

(5) Appendix D.

APPENDIX D

Some "Inert" or Nuisance Particulates q)

Alundum (Al <sub>2</sub> O <sub>3</sub> )	Kaolin
Calcium carbonate	Limestone
Cellulose (paper fiber)	Magnesite
Portland Cement	Marble
Corundum (Al <sub>2</sub> O <sub>3</sub> )	Pentaerythritol
Emery	Plaster of Paris
Glycerine Mist	Rouge
Graphite (synthetic)	Silicon Carbide
Gypsum	Starch
Vegetable oil mists	Sucrose
(except castor, cashew nut, or similar irritant oils)	Tin Oxide
	Titanium Dioxide

---

q) When toxic impurities are not present, e.g. quartz < 1%.

(6) Appendix E.



APPENDIX E

Some Simple Asphyxiants - "Inert" Gases and Vapors

Acetylene	Hydrogen
Argon	Methane
Ethane	Neon
Ethylene	Nitrogen
Helium	Nitrous Oxide
	Propane

---

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William D. Wagner, Recording Sec'y

*§295.102. Exposure to Toxic and Hazardous Substances.*

(a) The Texas Department of Health (department) adopts by reference as guideline only the federal regulations in Title 29, Code of Federal Regulations, Subpart G, §1910.1000; §1910.1001; §1910.1017; §1910.1018; §1910.1025; §1910.1043; §1910.1047; §1910.1048; and §1910.1450 which contains the most current and pertinent standards regarding occupational exposure to toxic and hazardous substances.

(1) This guideline is applicable to public places of employment in Texas, and is not enforceable by the Texas Department of Health as an administrative rule.

(2) Wherever reference is made to secretary of labor, OSHA director, or similar words or phrases, substitute with Texas Department of Health.

(3) Wherever reference is made, "employee" shall mean an individual who works for a public employer in return for financial compensation.

(4) Wherever reference is made, "workplace" shall mean any place where employees work for public employers.

(b) A copy of the federal regulations is on file in the Texas Department of Health, Occupational Health Division, 8407 Wall Street, Austin, Texas 78756 and is available for public review during regular business hours.

*§295.103. Occupational Noise Exposure.*

(a) The Texas Department of Health (department) adopts by reference as guideline only the federal regulations in Title 29, Code of Federal Regulations, Subpart G, §1910.95, which contains the most current and pertinent standards regarding occupational noise exposure.

(1) This guideline is applicable to public places of employment in Texas, and is not enforceable by the Texas Department of Health as an administrative rule.

(2) Wherever reference is made to secretary of labor, OSHA director, or similar words or phrases, substitute with Texas Department of Health.

(3) Wherever reference is made, "employee" shall mean an individual who works for a public employer in return for financial compensation.

(4) Wherever reference is made, "workplace" shall mean any place where employees work for public employers.

(b) A copy of the federal regulations is on file in the Texas Department of

Health, Occupational Health Division, 8407 Wall Street, Austin, Texas 78756 and is available for public review during regular business hours.

*§295.104. Respiratory Protection.*

(a) The Texas Department of Health (department) adopts by reference as guideline only the federal regulations in Title 29, Code of Federal Regulations, Subpart I, §1910.134, which contains the most current and pertinent standards regarding respiratory protection.

(1) This guideline is applicable to public places of employment in Texas, and is not enforceable by the Texas Department of Health as an administrative rule.

(2) Wherever reference is made to secretary of labor, OSHA director, or similar words or phrases, substitute with Texas Department of Health.

(3) Wherever reference is made, "employee" shall mean an individual who works for a public employer in return for financial compensation.

(4) Wherever reference is made, "workplace" shall mean any place where employees work for public employers.

(b) A copy of the federal regulations is on file in the Texas Department of Health, Occupational Health Division, 8407 Wall Street, Austin, Texas 78756 and is available for public review during regular business hours.

*§295.105. Ventilation.*

(a) The Texas Department of Health (department) adopts by reference as guideline only the federal regulations in Title 29, Code of Federal Regulations, Subpart G, §1910.94, which contains the most current and pertinent standards regarding ventilation.

(1) This guideline is applicable to public places of employment in Texas, and is not enforceable by the Texas Department of Health as an administrative rule.

(2) Wherever reference is made to secretary of labor, OSHA director, or similar words or phrases, substitute with Texas Department of Health.

(3) Wherever reference is made, "employee" shall mean an individual who works for a public employer in return for financial compensation.

(4) Wherever reference is made, "workplace" shall mean any place where employees work for public employers.

(b) A copy of the federal regulations is on file in the Texas Department of

Health, Occupational Health Division, 8407 Wall Street, Austin, Texas 78756 and is available for public review during regular business hours.

*§295.107. Sanitation in the Workplace.*

(a) The Texas Department of Health (department) adopts by reference as guideline only the federal regulations in Title 29, Code of Federal Regulations, Subpart I, §1910.141, which contains the most current and pertinent standards regarding sanitation in the workplace.

(1) This guideline is applicable to public places of employment in Texas, and is not enforceable by the Texas Department of Health as an administrative rule.

(2) Wherever reference is made to secretary of labor, OSHA director, or similar words or phrases, substitute with Texas Department of Health.

(3) Wherever reference is made, "employee" shall mean an individual who works for a public employer in return for financial compensation.

(4) Wherever reference is made, "workplace" shall mean any place where employees work for public employers.

(b) A copy of the federal regulations is on file in the Texas Department of Health, Occupational Health Division, 8407 Wall Street, Austin, Texas 78756 and is available for public review during regular business hours.

*§295.108. Access to Employee Exposure and Medical Records.*

(a) The Texas Department of Health (department) adopts by reference as guideline only the federal regulations in Title 29, Code of Federal Regulations, Subpart C, §1910.20, which contains the most current and pertinent standards regarding access to employee exposure and medical records.

(1) This guideline is applicable to public places of employment in Texas, and is not enforceable by the Texas Department of Health as an administrative rule.

(2) Wherever reference is made to secretary of labor, OSHA director, or similar words or phrases, substitute with Texas Department of Health.

(3) Wherever reference is made, "employee" shall mean an individual who works for a public employer in return for financial compensation.

(4) Wherever reference is made, "workplace" shall mean any place where employees work for public employers.

(b) A copy of the federal regulations is on file in the Texas Department of Health, Occupational Health Division, 8407 Wall Street, Austin, Texas 78756 and is available for public review during regular business hours.

§295.109. Medical Services and First Aid.

(a) The Texas Department of Health (department) adopts by reference as guideline only the federal regulations in Title 29, Code of Federal Regulations, Subpart K, §1910.151, which contains the most current and pertinent standards regarding medical service and first aid.

(1) This guideline is applicable to public places of employment in Texas, and is not enforceable by the Texas Department of Health as an administrative rule.

(2) Wherever reference is made to secretary of labor, OSHA director, or similar words or phrases, substitute with Texas Department of Health.

(3) Wherever reference is made, "employee" shall mean an individual who works for a public employer in return for financial compensation.

(4) Wherever reference is made, "workplace" shall mean any place where employees work for public employers.

(b) A copy of the federal regulations is on file in the Texas Department of Health, Occupational Health Division, 8407 Wall Street, Austin, Texas 78756 and is available for public review during regular business hours.

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 February 1, 1993.

TRD-9318415 Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Effective date: February 22, 1993

Proposal publication date: October 9, 1992

For further information, please call: (512) 834-6600

Industrial Homework Standards

• 25 TAC §§295.121-295.126

The new sections are adopted under the Health and Safety Code, §341.016, which provides the Board of Health with authority to adopt rules concerning occupational health; and §12.001, which provides the Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

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

Issued in Austin, Texas, on February 1, 1993.

TRD-9318414 Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Effective date: February 22, 1993

Proposal publication date: October 9, 1992

For further information, please call: (512) 834-6600

Standards for Face and Eye Protection in Public Schools

• 25 TAC §§295.141-295.148

The new sections are adopted under the Health and Safety Code, §341.016, which provides the Board of Health with authority to adopt rules concerning occupational health; and §12.001, which provides the Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

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

Issued in Austin, Texas, on February 1, 1993.

TRD-9318413 Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Effective date: February 22, 1993

Proposal publication date: October 9, 1992

For further information, please call: (512) 834-6600

Sanitation at Temporary Places of Employment

• 25 TAC §§295.161-295.169

The new sections are adopted under the Health and Safety Code, §341.016, which provides the Board of Health with authority to adopt rules concerning occupational health; and §12.001, which provides the Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

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

Issued in Austin, Texas, on February 1, 1993.

TRD-9318412 Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Effective date: February 22, 1993

Proposal publication date: October 9, 1992

For further information, please call: (512) 834-6600

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 59. Parks

Park Entrance and Park User

• 31 TAC §59.2, §59.3

The Texas Parks and Wildlife Commission in a regularly scheduled public hearing held January 21, 1993, adopts amendments to Title 31 TAC §59.2 and §59.3, concerning park entrance and use fees. Section 59.3 is adopted with changes to the proposed text as published in the December 18, 1992, issue of the *Texas Register* (17 TexReg 8876). Section 59.2 is adopted without changes and will not be republished. Section 59.3(19)(A)(iv) changes from a maximum of \$85 to \$100 and §59.3(23)(B)(viii) changes from a maximum of \$600 to \$1,000. These changes are to provide flexibility in setting fees and generating revenue.

Fee increases are necessary to provide additional funding to maintain the current level of park services for the benefit of the public.

The rules are necessary to provide additional funding to maintain the current level of park services for the benefit of the public.

The rules will provide flexibility in setting fees.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Parks and Wildlife Code, §13.015 and §21.111, which provides the Texas Parks and Wildlife Commission with the authority to set certain park fees.

§59.3. Facility Use Fees. The amount of user fees will be determined by the Parks and Wildlife Commission and will be based primarily on comparisons of current fees for facilities and services of comparable character under similar conditions, with due consideration for length of season, provisions for peak loads, average percentage of occupancy, accessibility, availability, cost of labor, materials and supplies, type of patronage, and other such factors deemed significant, except the costs of park acquisition, development, and major repairs. The executive director will cause to be collected a user fee at the time a park facility is assigned or occupied, and as new parks and facilities are added to the system, the approved fee schedule will be implemented when feasible. Where variable use fees are authorized by the Commission they may be set on an individual park basis or an indi-

vidual facility basis by the department based on visitation and site desirability. Fees may also be set on a basis other than daily, e.g., weekly, monthly, etc. The Executive Director may discount or waive use fees in order to enhance utilization of existing facilities. The following Park use fees are effective March 1, 1993:

- (1) Campsite-Primitive-\$4.00-\$12;
- (2) Campsite-Regular-\$5.00-\$16;
- (3) Campsite-with Electricity-\$9.00-\$18;
- (4) Campsite-with Electricity and Sewer Connection-\$10-\$20;
- (5) Screened Shelter-\$15-\$30;
- (6) Recreation Hall:
  - (A) day use only-\$50-\$100;
  - (B) overnight use-\$80-\$150; (If equipped with kitchen add)-\$25-\$45;
- (7) Group Lodge:
  - (A) Bastrop-Lost Pines, one-eight persons-\$70-\$150;
  - (B) Lake Brownwood-Beach, one-26 persons-\$110-\$180;
  - (C) Lake Brownwood-Fisherman's, one-10 persons-\$80-\$125;
  - (D) Daingerfield-Bass, one-20 persons-\$105-\$160;
  - (E) Special-one-eight persons-\$70-\$125; Each additional person-\$5.00-\$15;
- (8) Dining Hall-\$65-\$100;
- (9) Tabernacle:
  - (A) 1-25 persons-\$17-\$40;
  - (B) 26 or more-\$29-\$60;
- (10) Pavilion-\$25-\$200 according to type of facility and size of group;
- (11) Auditorium-\$200-\$300;
- (12) Gymnasium-\$200-\$300; (with kitchen privileges add)-\$25-\$45;
- (13) Group Picnic Area:
  - (A) one-25 persons-\$17-\$40;
  - (B) 26 or more-\$29-\$60;

- (14) Picnic Shelter with Kitchen:
  - (A) one-25 persons-\$17-\$40;
  - (B) 26 or more-\$29-\$60;
  - (C) (with kitchen privileges add)-\$25-\$45;
- (15) Group Camp with Bunk-Houses and Dining Hall (Lake Brownwood State Park only)-\$65-\$100; plus \$12-\$30 for each bunk house used (Bunk houses not rented without dining hall);
- (16) Group Camp with Screened Shelters and Dining Hall-\$65-\$100 plus \$15-\$30 for each screened shelter used;
- (17) Group Camp with Campsites-Fee determined according to number and type of campsites used;
- (18) Group Camp with Barracks or Screened Shelters with Bunk Beds; Dining Hall and Restroom with showers available (Screened shelters with bunk beds rented to individuals on the 90 day reservation system after annual drawings, except at Garner)-\$150-\$250 Screened Shelter only-\$17-\$30;
- (19) Lodge, Court, or Inn:
  - (A) Indian Lodge:
    - (i) Single-\$40-\$70;
    - (ii) Double-\$45-\$75;
    - (iii) Double with double beds-\$50-\$80;
    - (iv) Suite with double beds-\$55-\$100;
    - (v) Each additional adult-\$5.00-\$10;
    - (vi) Each additional child (six-12)-\$2.00-\$4.00;
    - (vii) Children under six-Free;
  - (B) Balmorhea-San Solomon Springs Court:
    - (i) Single-\$35-\$50;
    - (ii) Each additional adult-\$5.00-\$10;
    - (iii) Each additional child (six-12)-\$2.00-\$4.00;
    - (iv) Children under six-Free;
    - (v) With kitchen unit add-\$5.00-\$10;

- (C) Landmark Inn:
  - (i) Single-\$35-\$50;
  - (ii) Double (two persons)-\$40-\$55;
  - (iii) Children (six-12)-\$2.00-\$4.00;
  - (iv) Children under six-Free;
  - (v) (Additional adult when space is available for cot)-\$5.00-\$10;
- (20) Cabins-\$35-\$100;
- (21) Swimming Pools:
  - (A) Adults-\$2.00-\$4.00;
  - (B) Child (six-12)-\$1.00-\$2.00;
  - (C) Group rate (before or after closing hours)-\$35-\$50;
- (22) Golf Course (Staff Operated) Lockhart only-nine holes:
  - (A) Green Fees-Daily-\$7.00-\$10;
    - (i) Weekends and Holidays-\$8.00-\$11;
    - (ii) Annual Family-\$150-\$200;
    - (iii) Annual Individual-\$100-\$150;
    - (iv) 18 years of age and under excluding (weekends and holidays) -\$3.00-\$6.00;
  - (B) Trail fee for privately owned golf carts:
    - (i) Daily-\$3.00-\$6.00;
    - (ii) Annual-\$50-\$100;
- (23) Texas State Railroad:
  - (A) Fares:
    - (i) Adult (one-way)-\$8.00-\$13;
    - (ii) Adult (R-T)-\$13-\$18;
    - (iii) Child (three-12) (one-way)-\$4.00-\$9.00;
    - (iv) Child (three-12) (R-T)-\$7.00-\$12;
  - (B) Train lease for filming purposes:
    - (i) Steam Locomotive and Tender (per day)-\$1,500-\$2,000;

(ii) Diesel Locomotives (per day)-\$700-\$1,000;

(iii) Steam Engine Firing Fuel and Lubricants (per running hour)-\$100-\$200;

(iv) Diesel Locomotives Fuel and Lubricants (per running hour)-\$50-\$100;

(v) Railroad Car per unit (any type) (per day)-\$120-\$200;

(vi) Rail Mounted Truck with Driver (per day)-\$280-\$400;

(vii) Motor Car with Driver (per day)-\$240-\$400;

(viii) Short Term Steam Train Use (after regular schedule run) three hour minimum (per hour)-\$400-\$1,000;

(ix) Plus Salaries for Train Crew. Surety bond of \$500,000 may be required; Train Charter Rates: 50 Mile Round Trip-Regular Passenger Fares-Minimum-\$2,500-\$3,500;

(x) 15-Mile Round Trips-Regular Passenger Fares-\$1,650-2,500;

(24) Fees for filming purposes by private, profit oriented businesses (per day). Surety bond may be required-\$250-\$5,000;

(25) Excess Vehicle Parking (With overnight facility use only) Per Vehicle-\$2.00-\$4.00 (Areas for parking designated by the Park Manager);

(26) Activity Use Fee Per person-\$2.00-\$6.00;

(27) Overnight Activity Use Fee Per person-\$2.00-\$6.00;

(28) Purts Creek Lake Use Fee-\$5.00-\$10;

(29) Big Bend Ranch State Natural Area Bus Tour Fee-\$30-\$60;

(30) Matagorda Island Boat Transportation Fee:

(A) Adults (R-T)-\$10-\$15;

(B) Child (six-12) (R-T)-\$5.00-\$10;

(C) On Island Tour Fee-\$3.00-\$12;

(31) Beach Shuttle Fee:

(A) Adults-\$2.00-\$4.00;

(B) Child (six-12)-\$1.00-\$2.00;

(32) Historic Site Tour Fees:

(A) Adult (19 and Over)-\$2.00-\$6.00;

(B) Student-\$1.00-\$3.00;

(33) Fishing Pier Fees-Per Fishing Device-\$1.00-\$3.00;

(34) Recreational Vehicle-Annual Fee-\$5.00-\$25;

(35) Excess occupancy fee (with overnight facility use fee) per person-\$1.00-\$3.00;

(36) Fees for special events, new activities, or new facilities are authorized by the Commission. These fee amounts shall be established by the Executive Director or designee.

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 February 1, 1993.

TRD-9318411 Paul M. Shinkawa  
Director, Legal Services  
Texas Parks and Wildlife  
Department

Effective date: February 22, 1993

Proposal publication date: December 18, 1992

For further information, please call: 1-(800) 792-1112, ext. 4433 or (512) 389-4433

## State Park Rules

### • 31 TAC §59.133

The Texas Parks and Wildlife Commission in a regularly scheduled public hearing held January 21, 1993, adopts an amendment to §59.133, concerning Closing Hours and Overnight Use policies, without changes to the proposed text as published in the December 18, 1992, issue of the *Texas Register* (17 TexReg 8879). This amendment is proposed to maintain consistency with other proposed changes.

The rules are necessary to ensure consistency between park fees and services provided.

The rules authorize a new overnight activity use fee for park users who do not require the use of an overnight facility.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Parks and Wildlife Code, §13.101, which provides the Texas Parks and Wildlife Commission with the authority to promulgate regulations governing parks and other recreational areas.

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 February 1, 1993.

TRD-9318410 Paul M. Shinkawa  
Director, Legal Services  
Texas Parks and Wildlife  
Department

Effective date: February 22, 1993

Proposal publication date: December 18, 1992

For further information, please call: 1-(800) 792-1112, ext. 4433 or (512) 389-4433

## Chapter 69. Resource Protection

### Memorandum of Understanding • 31 TAC §69.71

The Texas Parks and Wildlife Commission in a regularly scheduled public hearing held January 21, 1993, adopts new 31 TAC §69.71, concerning a Memorandum of Understanding with the Texas Department of Transportation (TxDOT) without changes to the proposed text as published in the December 18, 1992, issue of the *Texas Register* (17 TexReg 8880).

The Memorandum of Understanding was originally published as Exhibit A in the June 5, 1992, issue of the *Texas Register* (17 TexReg 4082). It provides for Texas Parks and Wildlife Department (TPWD) review of projects proposed by TxDOT which have the potential to affect natural resources within the jurisdiction of TPWD and concerns the development of a system by which information developed by TxDOT and TPWD may be exchanged to their mutual benefit. On June 25, 1992, TxDOT and TPWD conducted a joint public hearing to seek comments regarding the proposed memorandum of understanding between TxDOT and TPWD. A summary and discussion of these comments were published in the November 19, 1992, issue of the *Texas Register* (17 TexReg 7911). The MOU was revised by mutual agreement by TxDOT and TPWD. This revised MOU was adopted by TxDOT on October 28, 1992, appears as Exhibit A-22 in the November 10, 1992, issue of the *Texas Register* (17 TexReg 7914).

The rules have been developed according to Texas Civil Statutes, Article 6673g, §3, enacted by Senate Bill 352 during the 72nd Texas Legislature in 1991, which required establishment of a formal mechanism for environmental review coordination between TxDOT and other state environmental resource agencies.

The rules will provide a formal process by which TPWD may review TxDOT projects which have the potential to affect natural resources within the jurisdiction of the TPWD in order to assist TxDOT in making environmentally sound decisions, and to develop with TxDOT a system by which information developed by the TxDOT and the TPWD may be exchanged to their mutual benefit.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 6673g, §3, enacted by Senate Bill 352 during the 72nd Texas Legislature in 1991, which gives the Texas Parks and Wildlife Department the authority to adopt.

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 February 2, 1993.

TRD-9318430

Paul M. Shinkawa  
Director, Legal Services  
Texas Parks and Wildlife  
Department

Effective date: February 23, 1993

Proposal publication date: December 18, 1992

For further information, please call: 1-(800) 792-1112, ext. 4433 or (512) 389-4433

### Part III. Texas Air Control Board

#### Chapter 114. Control of Air Pollution From Motor Vehicles

##### • 31 TAC §§114.1, 114.5, 114.11

The Texas Air Control Board (TACB) adopts amendments to §§114.1, 114.5, and 114.11, concerning control of air pollution from motor vehicles, with changes to the proposed text as published in the August 4, 1992, issue of the *Texas Register* (17 TexReg 5469). Section 114.1, concerning Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions From Motor Vehicles, will restrict aftermarket alternative fuel conversion equipment and configurations with regard to emissions and safety concerns, and will enhance antitampering provisions. Also, subsection (c) of §114.5, concerning Exclusions and Exceptions, is deleted to improve consistency with §114.1. Finally, §114.11, concerning Alternative Fuel Requirements for Transit Authorities, specifies ethanol and ethanol/gasoline blends of 85% or greater as an acceptable alternative fuel.

The amendments clarify the intent of existing provisions concerning acceptable alternative fuel technology and respond to a petition for rulemaking from the Texas Corn Producers Board (TCPB) which would allow specified transit authorities to use ethanol as an approved alternative fuel.

A public hearing was held in Austin on September 10, 1992, to receive testimony regarding this proposal. A total of 12 written statements and four oral presentations were entered into the hearing record during the comment period which closed September 25, 1992. Thirteen commenters submitted testimony: Modern Butane, Inc. (MBI); Global Environmental Industries (GEI); the Texas Railroad Commission (RRC); the United States Environmental Protection Agency (EPA); the Lone Star Chapter of the Sierra

Club (Sierra); the Natural Gas Vehicle Technology Center (NGVTC); the TCPB; the Clean Fuels Development Coalition (CFDC); the El Paso City-County Health District (EPCCHD); the Motor Vehicle Manufacturers Association (MVMA); Tropicana Energy Corporation (TEC); and two individuals.

The comments have been grouped according to issue and are discussed in the following order: certification of aftermarket alternative fuel conversion systems; prohibition against improper engine configurations; and consideration of ethanol as an approved alternative fuel.

Changes to §114.1 will require written California Air Resources Board (CARB) certification or formal EPA recognition of aftermarket motor vehicle alternative fuel conversion systems. Aftermarket vehicle conversion systems covered include the hardware used to convert a gasoline or diesel vehicle to an approved alternative fuel. A CARB Executive Order will be considered to be proof of emissions certification. A letter from EPA acknowledging compliance with Memorandum 1A, exemption orders, or other EPA aftermarket certification will also be acceptable. In addition, gaseous fuel aftermarket conversion systems must comply with the safety regulations of the RRC and the Department of Public Safety (DPS).

The original text in §114.5(c), Exclusions and Exceptions, allowed dedicated alternative fuel vehicles to be exempted from §114.1. By removing this subsection, both dedicated and dual-fuel vehicles will be equally regulated and the requirements for aftermarket emissions approval will be more easily understood.

Commenters are organized into the following three categories. NGVTC, EPA, and EPCCHD supported the amendment as proposed. MBI, RRC, Sierra, and one individual supported the amendment with recommendations to change the language in the proposal. GEI opposed the proposal.

Sierra recommended further control of aftermarket installers to ensure that in-use emissions are not increased, citing as much of a concern for the quality of the installation as for certification of auxiliary hardware. Another commenter requested that the TACB pursue the development and operation of an independent aftermarket certification program in Texas. The commenter suggested that a TACB certification program should not be delayed.

Finally, MBI and RRC noted that the TACB should not require written safety approvals for each of the thousands of conversion hardware components already certified by other established safety authorities, such as the Underwriters Laboratories and the American Gas Association.

GEI commented that the new TACB rule would adversely affect the aftermarket conversion kit industry and make vehicle conversions to gaseous fuels less feasible. Although GEI supported some form of regulation, the commenter stated that written documentation is burdensome and unnecessary and that independent EPA-approved laboratories should

provide technical review without requiring special approvals by the TACB.

Mechanic training, alternative fuel vehicle emission inspections, and conversion installer certification programs may need to be proposed in the future. However, such action is beyond the scope of this rulemaking, which is intended only as a clarification of existing state and federal laws. By allowing CARB or EPA emissions certification documents, the TACB has provided adequate opportunities for conversion kit manufacturers to verify the acceptability of specific technologies. In recognition of the well-intended efforts to comply with existing alternative fuel requirements, the staff will exercise enforcement discretion regarding conversions performed prior to the effective date of this rulemaking.

After publishing the notice of public hearing, the staff became aware that the specific wording in the proposal which referenced safety considerations needed to be revised. Safety certifications for all the conversion kit components, as stated in the proposal, can not realistically be verified in writing. Many systems are preapproved by authorities such as Underwriter's Laboratory, Factory Mutual, and the American Gas Association. Accordingly, the language in §114.1 has been changed to correspond more closely to RRC safety approval criteria.

The purpose of certifying conversion equipment is to provide documentation that the converted vehicle does not emit more than the original vehicle, in accordance with state and federal laws. In addition, this provides protection for consumers of such conversion equipment.

Technically, any change in the original equipment manufacturer (OEM) emissions system is considered to be tampering. In the past, tampering was mostly an issue of finding defeat devices, such as "test" tubes in place of catalytic converters. The installation of compressed natural gas (CNG), liquified natural gas, and liquified petroleum gas fuel delivery systems are also considered to be tampering. In order to comply with the Federal Clean Air Act and DPS rules, conversion kit manufacturers/installers must secure some form of exemption from potential federal tampering charges. The best verification that the vehicle complies with antitampering laws is to use the EPA or CARB certification approvals. Even if the TACB implemented an aftermarket conversion system certification program, the TACB would have to adopt either the EPA or CARB procedures for approving vehicle emission compliance.

The amendment to subsection (f) of §114.1, restricts the sale of complete or partial engines which do not conform to OEM configurations. The staff initiated this amendment in response to evidence that imported and rebuilt engines were being marketed in Texas without having the EPA-approved emissions systems. EPA supported the language as proposed. No commenters disagreed with this amendment.

The amendment to §114.11 adds ethanol to the list of approved alternative motor vehicle fuels. Alternative fuel conversions of specified fleet vehicles are required by Senate Bills 740

and 769, adopted during the Regular Session, 71st Texas Legislature. Section 114.11 now defines an alternative fuel as one of the following: natural gas, liquified petroleum gas, electricity, methanol or methanol/gasoline blends of 85% (M85) or greater, or ethanol or ethanol/gasoline blends of 85% (E85) or greater. Any other candidate alternative fuel must be shown to be comparable to CNG in terms of emissions of volatile organic compounds (VOC), oxides of nitrogen, carbon monoxide, or particulate matter.

TCPB, EPA, CFDC, EPCCHD, MVMA, TEC, and one individual supported the inclusion of ethanol in the list. Sierra and another individual dissented, primarily on the grounds that ethanol has higher volatility, which leads to increased evaporative losses. In addition, Sierra maintained that ethanol has a higher VOC exhaust content, thus leading to higher ozone reactivity. Another concern was the unburned exhaust of ethanol. Ethanol is a VOC emission also regulated in the bakery industry because of its role in ozone formation.

Neat ethanol is 100% ethanol (E100). Near-neat ethanol is in gasoline/ethanol proportions of 85% or greater (E85). Although ethanol in 10% mixtures with gasoline (E10 or "gasohol") raises the volatility of gasoline, near-neat and neat ethanol have reduced Reid vapor pressure (RVP). The RVP of neat ethanol is about 2.5 pounds per square inch (psi) at 100 degrees Fahrenheit. This is about one-half of the vapor pressure for methanol (4.6 psi) and considerably less than that for gasoline (7.8-11 psi). The lower volatility of ethanol would tend to substantially reduce evaporative emissions relative to the use of gasoline.

Ethanol-fueled vehicles tend to emit higher ethanol and acetaldehyde exhaust emissions than gasoline-fueled vehicles. Ethanol, however, does not contain significant quantities of benzene and other dangerous aromatic compounds (e.g., 1,3-butadiene). The EPA and CARB have documented that the ozone reactivity which measures the propensity of ethanol to form ozone is comparable to that of methanol. Although ethanol as a motor fuel has not been scrutinized as extensively as methanol, ethanol has the potential to demonstrate similar air quality benefits. For example, in 1992, General Motors Corporation (GMC) produced 50 flexible-fueled vehicles (FFVs), which used recalibrated methanol engines. The Federal Test Procedure results were well within the emission standards for 1992 light-duty vehicles. The GMC ethanol project demonstrates that ethanol FFVs have the potential to be comparable to CNG vehicles with respect to emissions.

Based on review of submitted and available data on emissions for ethanol vehicles, the staff concludes that neat ethanol-fueled vehicles and near-neat ethanol FFVs cause emissions that are at least as clean as some approved mechanically-controlled, dual-fuel CNG vehicle conversions, and thus, ethanol should be added as an approved alternative fuel. The testimony provides a reasonable basis to accept that reactive emissions from ethanol-fueled vehicles are comparable to those from dual-fueled CNG vehicles with

aftermarket retrofit kits. Thus, ethanol and ethanol/gasoline blends of 85% or greater have been added to the list of acceptable alternative fuels.

In compliance with the Americans With Disabilities Act, this document may be requested in alternate formats by contacting Air Quality Planning Program staff at (512) 908-1457, (512) 908-1500 FAX of 1-800-RELAY-TX (TDD), or by writing or visiting at 12124 Park 35 Circle, Austin, Texas 78753.

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

*§114.1. Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions From Motor Vehicles.*

(a) (No change.)

(b) No person may remove or make inoperable any system or device used to control emissions from a motor vehicle or motor vehicle engine or any part thereof, except where the purpose of removal of the system or device, or part thereof, is to install another system or device, or part thereof, which is equally effective in reducing emissions from the vehicle. Acceptable removal and/or installation practices include:

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

(3) installation of conversion equipment to allow the use of an approved alternative fuel, as defined in §114.11 of this title (relating to Alternative Fuel Requirements for Transit Authorities), if:

(A) acceptable emissions reductions are verified by one of the following methods:

(i) the conversion equipment and configuration is certified by the California Air Resources Board; or

(ii) the conversion equipment and configuration is recognized in writing by the United States Environmental Protection Agency as complying with established federal policy memoranda; and

(B) the conversion kit components are recognized by the Texas Railroad Commission as complying with applicable safety requirements;

(4) replacement or installation of any other system or device if:

(A) the system or device can be demonstrated to be at least as effective in reducing emissions as the original equipment; and

(B) conformance with subparagraph (A) of this paragraph is documented, upon request.

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

(f) No person may sell, offer for sale, or use any system or device which circumvents or alters any system, device, engine, or any part thereof, installed by a vehicle manufacturer to comply with the Federal Motor Vehicle Control Program during actual in-use operation of a motor vehicle on Texas roadways. A notice of the prohibitions and requirements of this subsection shall be displayed at all motor vehicle parts, supply, repair, alternative fuel conversion, or other vehicle service facilities in Texas which sell, offer for sale, install, or offer to install any vehicle emission control, exhaust system or device, aftermarket alternative fuel conversion, or engine. The notice shall be displayed in a prominent and conspicuous location near each consumer entrance way and service counter. The notice shall read: "State Law prohibits any person from selling, offering for sale, or using any system or device for the purpose of circumventing the emission control device on a vehicle or vehicle engine. State law also prohibits any person from removing or disconnecting any part of the emission control system of a motor vehicle, except to install replacement parts which are equally effective in reducing emissions. Violators are subject to penalties under the Texas Clean Air Act of up to \$25,000 per violation". This notice shall be no smaller than 8 x 10 inches (20.32 cm by 25.4 cm) and shall be clearly visible to all customers.

*§114.5. Exclusions and Exceptions.*

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

(c) Any person owning or operating a motor vehicle or motor vehicle engine may apply to the Executive Director for a waiver from the provisions of §114.1(a)(b) of this title (relating to Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions From Motor Vehicles). Such a waiver may be granted if the following conditions are met:

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

(d) The following vehicle transactions involving "wholesale dealers" and "retail dealers" as defined in the Texas Dealer Law, Article 6686, Texas Civil Statutes, Title 43, Texas Administrative Code, are exempt from the requirements of §114.1(c) of this title (relating to Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions From Motor Vehicles):

(1)-(5) (No change.)

(e) Federal, state, and local agencies or their agents which sell abandoned, confiscated, or seized vehicles and any commercial vehicle auction facilities are exempt from the provisions of §114.1(c) of this title (relating to Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles) if the following conditions are met:

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

(f) The owner of a motor vehicle which has been totally disabled by accident, age, or malfunction and which will no longer be operated is exempt from the provisions of §114.1(c) of this title (relating to Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles) if the inspection certificate is removed and destroyed before the vehicle is offered for sale, or displayed for public examination.

#### §114.11. Alternative Fuel Requirements for Transit Authorities.

(a) Metropolitan rapid transit authorities created under Texas Civil Statutes, Article 1118x, regional transportation authorities created under Texas Civil Statutes, Article 1118y, and city transportation departments created under Article 1118z. Revised Statutes, shall ensure that fleet vehicles, including purchased vehicle services, are capable of being operated on alternative fuels, which are defined as follows:

- (1) natural gas;
- (2) liquified petroleum gas;
- (3) electricity;
- (4) methanol or methanol/gasoline blends of 85% (M85) or greater; or
- (5) ethanol or ethanol/gasoline blends of 85% (E85) or greater.

(b)-(h) (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 February 2, 1993.

TRD-9318480 Lane Hartssock  
Deputy Director, Air Quality  
Planning  
Texas Air Control Board

Effective date: February 23, 1993

Proposal publication date: August 4, 1992

For further information, please call: (512) 908-1451

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part III. Texas Youth Commission

#### Chapter 91. Discipline and Control.

##### Control

###### • 37 TAC §91.61

The Texas Youth Commission (TYC) adopts an amendment to §91.61, concerning the use of chemical agents, without changes to the proposed text as published in the November 27, 1992, issue of the *Texas Register* (17 TexReg 8268).

The amendment will bring about more restrictive use of chemical agents on youth.

The amendment is additional criteria for the use of chemical agents. It requires that less severe methods to gain control be exhausted, and are ineffective, untimely, or impractical, prior to chemical use.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

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

Issued in Austin, Texas, on January 29, 1993.

TRD-9318433 Ron Jackson  
Executive Director  
Texas Youth Commission

Effective date: February 23, 1993

Proposal publication date: November 27, 1992

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

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 15. Medicaid Eligibility

##### Subchapter A. General Information

The Texas Department of Human Services (DHS) adopts amendments to §15.100, §15.442, §15.455, §15.460, §15.503, and §15.610, without changes to the proposed text as published in the December 25, 1992,

issue of the *Texas Register* (17 TexReg 9094).

The justification for the amendments is to clarify Medicaid eligibility rules about the effective dates of inheritances and disclaimers of inheritances; spousal impoverishment; client-purchased annuities as income and resources; prior Medicaid coverage for clients transferring from limited Medicaid program to full Medicaid benefits; and a new income exemption for payments to an ICF-MR client by the MR facility intended to enhance the client's social skills and functional abilities.

The amendments will function by ensuring that Medicaid policies regarding the subjects in the previous paragraph are applied statewide.

No comments were received regarding adoption of the amendments.

###### • 40 TAC §15.100

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.

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 February 2, 1993.

TRD-9318481 Nancy Murphy  
Agency Liaison, Policy and  
Document Support  
Texas Department of  
Human Services

Effective date: March 15, 1993

Proposal publication date: December 25, 1992

For further information, please call: (512) 450-3765

### Subchapter D. Resources

###### • 40 TAC §15.442

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.

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 February 2, 1993.

TRD-9318482 Nancy Murphy  
Agency Liaison, Policy and  
Document Support  
Texas Department of  
Human Services



Effective date: March 15, 1993

Proposal publication date: December 25, 1992

For further information, please call: (512) 450-3765

### Subchapter E. Income

#### • 40 TAC §15.455, §15.460

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 provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

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 February 2, 1993.

TRD-9318483 Nancy Murphy  
Agency Liaison, Policy and  
Document Support  
Texas Department of  
Human Services

Effective date: March 15, 1993

Proposal publication date: December 25, 1992

For further information, please call: (512) 450-3765

### Subchapter F. Budget and Payment Plans

#### • 40 TAC §15.503

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.

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 February 2, 1993.

TRD-9318484 Nancy Murphy  
Agency Liaison, Policy and  
Document Support  
Texas Department of  
Human Services

Effective date: March 15, 1993

Proposal publication date: December 25, 1992

For further information, please call: (512) 450-3765

### Subchapter G. Application for Medicaid

#### • 40 TAC §15.610

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.

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 February 2, 1993.

TRD-9318485 Nancy Murphy  
Agency Liaison, Policy and  
Document Support  
Texas Department of  
Human Services

Effective date: March 15, 1993

Proposal publication date: December 25, 1992

For further information, please call: (512) 450-3765

### Chapter 19: Long Term Care Nursing Facility Requirements for Licensure and Medicaid Certification

#### Subchapter D. Admission, Transfer, and Discharge Rights

#### • 40 TAC §19.302

The Texas Department of Human Services (DHS) adopts an amendment to §19.302, concerning transfer and discharge, in its Long-Term Care Nursing Facility Requirements for Licensure and Medicaid Certification rule chapter, without changes to the proposed text as published in the October 23, 1992, issue of the *Texas Register* (17 TexReg 7525).

The justification for the amendment is to allow nursing facility residents, who have received a discharge notice and appealed it, to stay in the nursing facility until the appeal has been heard.

The amendment will function by protecting the right of nursing facility residents to remain in the facility while their appeal concerning discharge is being resolved.

During the comment period, DHS received comments from the Texas Health Care Association. A summary of the comments and DHS's response follows:

COMMENT: The commenter questioned why the rule contains no limitations on the continuance or scheduling of appeal hearings, as had been proposed at one point in the development of the rule.

RESPONSE: Section 79.1315 of this title (relating to Time Limits on Appeals), in DHS's fair hearings rule chapter already provides for limitations on the continuance and scheduling of hearings; therefore, DHS is adopting the rule as proposed.

COMMENT: The commenter questioned the legality of the rule considering the federal regulations which only require that a facility notify a resident 30 days in advance of a discharge.

RESPONSE: DHS believes that the rule as proposed complies with the federal regulations because the regulations also state that discharge can occur only in certain circumstances. A facility's contention that a particular circumstance exists does not prove that the circumstance exists. If the resident challenges the validity of the reason for discharge, the fact that a particular circumstance exists is not established until the fair hearing officer issues a ruling.

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.

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 February 2, 1993.

TRD-9318486 Nancy Murphy  
Agency Liaison, Policy and  
Document Support  
Texas Department of  
Human Services

Effective date: March 15, 1993

Proposal publication date: October 23, 1992

For further information, please call: (512) 450-3765

### Chapter 50. Day Activity and Health Services

#### Provider Eligibility

#### • 40 TAC §50.2908

The Texas Department of Human Services (DHS) adopts an amendment to §50.2908, concerning contracts in its Day Activity and Health Services (DAHS) chapter, without changes to the proposed text as published in the December 18, 1992, issue of the *Texas Register* (17 TexReg 8948).

The justification for the amendment is to revise how the effective date of a provider contract is determined. The effective date of the contract will be the date DHS receives the license or license notice from the Texas Department of Health or the facility.

The amendment will function by assuring that a client is placed in a facility only after the facility is issued a license.

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.

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 February 2, 1993.

TRD-9318487 Nancy Murphy  
Agency Liaison, Policy and  
Document Support  
Texas Department of  
Human Services

Effective date: March 1, 1993

Proposal publication date: December 18, 1992

For further information, please call: (512) 450-3765

## TITLE 43. TRANSPORTATION

### Part I. Texas Department of Transportation

#### Chapter 1. Administration

#### Public Meetings and Hearings

##### • 43 TAC §1.1, §1.2

The Texas Department of Transportation adopts the repeal of §1.1 and §1.2 concerning public meetings and hearings, without changes to the proposed text as published in the November 10, 1992, issue of the *Texas Register* (17 TexReg 7857).

Repeal of the sections is necessary because of the contemporaneous adoption of new §§1.13-1.5 concerning public meetings and hearings, which incorporate the provisions of the repealed sections as rewritten and expanded to further clarify and update policies of the Texas Transportation Commission and the department, and to comply with Texas Civil Statutes, Article 6665a. Article 6665a, as added by Senate Bill 352, 72nd Legislature, requires the commission to develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

A public hearing was held on December 3, 1992, and no oral or written comments were received.

The repeals are adopted under Texas Civil Statutes, Article 6666 and 6665a, which provide the Texas Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the Texas Department of Transportation, to implement policies that provide the public with a

reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of 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 February 2, 1993.

TRD-9318438 Diane L. Northam  
Legal Administrative  
Assistant  
Texas Department of  
Transportation

Effective date: February 23, 1993

Proposal publication date: November 10, 1992

For further information, please call: (512) 463-8630

#### Organization and Responsibilities

##### • 43 TAC §1.1, §1.2

The Texas Department of Transportation adopts new §1.1 and §1.2 concerning organization and responsibilities, without changes to the proposed text as published in the November 10, 1992, issue of the *Texas Register* (17 TexReg 7858).

Texas Civil Statutes, Article 6665, as amended by Senate Bill 352, 72nd Legislature, requires the commission to develop and implement policies that clearly define the respective responsibilities of the commission and the staff of the department. The commission has determined that it is also desirable to clearly define the organizational structure of the commission and the department.

Section 1.1, Texas Transportation Commission, lists the respective responsibilities of the commission, each member, and the commissioner of transportation. Section 1.2, Texas Department of Transportation, prescribes: the qualifications and responsibilities of the executive director of the department; the responsibilities of the staff of the department; the structure and organization of the department into operating divisions and geographic districts; and the policy, purpose, and responsibilities of the department's Motor Vehicle Board.

A public hearing was held on December 2, 1992, and no oral or written comments were received.

The new sections are adopted under Texas Civil Statutes, Articles 6666, which provide the Texas Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the Texas Department of Transportation, and Texas Civil Statutes, Article 6665, which require the commission to develop and implement policies that clearly define the respective responsibilities of the commission and the staff of the department.

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 February 2, 1993.

TRD-9318439 Diane L. Northam  
Legal Administrative  
Assistant  
Texas Department of  
Transportation

Effective date: February 23, 1993

Proposal publication date: November 10, 1992

For further information, please call: (512) 463-8630

#### Public Meetings and Hearings

##### • 43 TAC §§1.3-1.5

The Texas Department of Transportation adopts new §§1.3-1.5, concerning public meetings and hearings, without changes to the proposed text as published in the November 10, 1992, issue of the *Texas Register* (17 TexReg 7861).

The new sections replace existing §1.1 and §1.2, concerning public meetings and hearings, which are simultaneously being repealed.

Texas Civil Statutes, Article 6665a, as added by Senate Bill 352, 72nd Legislature, 1991, requires the commission to develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

The commission has determined that it is necessary to propose the permanent adoption of new §§1.3-1.5, which incorporate the provisions of the repealed sections as rewritten and expanded to further clarify and update commission policies, and to comply with new Article 6665a.

Section 1.3, Commission Meetings, provides that the commission will: hold at least one regular business meeting each month; hold special or emergency meetings called by the commissioner of transportation; be chaired by the commissioner of transportation; and act only by majority vote. Section 1.4, Public Access to Commission Meetings, provides: for persons to speak on posted agenda items; for persons to request the department to add an item to the commission agenda; for delegations to appear before the commission on transportation projects; for persons to speak on any matter under the commission's jurisdiction during an open-comment period; that persons with special communication or accommodation needs may contact the department, which will make every reasonable effort to accommodate; for notice of commission meetings in accordance with the Open Meetings Act; guidelines for meeting attendees to assure proper decorum, opportunity to be heard, and orderly proceedings; and for the commissioner of transportation to waive requirements of this section in the public interest if necessary for the performance of the responsibilities of the commission or the department. Section 1.5, Public Hearings: lists the purposes for which public hearings are held; authorizes the executive director or an employee to conduct certain hearings; pro-

vides guidelines for hearing attendees to assure proper decorum, opportunity to be heard, and orderly proceedings; provides that persons with special communication or accommodation needs may contact the department, which will make every reasonable effort to accommodate; and provides that the department, in an area with a substantial spanish speaking population, will provide notice of hearings in both English and Spanish, and spanish translation upon request.

A public hearing was held on December 3, 1992, and no oral or written comments were received.

The new sections are adopted under Texas Civil Statutes, Articles 6666 and 6665a, which provide the Texas Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the Texas Department of Transportation, and to implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of 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 February 2, 1993.

TRD-9318440  
Diane L. Northam  
Legal Administrative  
Assistant  
Texas Department of  
Transportation

Effective date: February 23, 1993

Proposal publication date: November 10, 1992

For further information, please call: (512) 463-8630

## Complaint Resolution

### • 43 TAC §§1.6-1.10

The Texas Department of Transportation adopts new §§1.6-1.10 concerning complaint resolution. Section 1.9 is adopted with changes to the proposed text as published in the November 10, 1992, issue of the *Texas Register* (17 TexReg 7863). Sections 1.6-1.8 and 1.10 are adopted without changes and will not be republished.

Texas Civil Statutes, Article 6665a, as added by Senate Bill 353, 72nd Legislature, 1991, requires the commission by rule to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department.

Section 1.6, Purpose, describes the purpose of the sections. Section 1.7, Definitions, provides definitions of terms used in the sections. Section 1.8, Filing a Complaint, provides that written complaints may be filed at any department business office and oral complaints may be filed in person, by phone, or by calling a toll-free number. Section 1.9, Notice to Consumers and Service Recipients, provides methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department, such methods to include: publication in selected public information literature, the official state travel map, district road construction reports, and general circulation newspapers; display on department motor vehicles, for complaints about the operation of the vehicles; and posting at each business office; job sites of department contractors, and the place of business of motor vehicle dealers, motor vehicle salvage dealers, and motor vehicle manufacturers, distributors, converters, and dealers regulated by the department. Section 1.10, Complaint Resolution, provides that the department will promptly review and make every reasonable effort to resolve complaints; respond in writing to written complaints; respond in writing or orally to oral complaints; maintain a file for each written complaint; and provide quarterly status letters for unresolved complaints.

A public hearing was held on December 2, 1992, and no oral or written comments were received. However, a staff review has determined that a limited change from the proposed published text of §1.9 is appropriate, specifically, deleting the provision that information on filing complaints will be included in motor vehicle registration renewal notices. The volume of annual renewal notices reaches tens of millions, and the logistics of providing channels of communication on that scale have presented the department with unanticipated difficulties. Instead the department will initiate a test or pilot program for targeted areas to assure proper resolution prior to any statewide application.

The new sections are adopted under Texas Civil Statutes, Article 6666 and Article 6665a, which provide the Texas Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the Texas Department of Transportation, and specifically to adopt rules establishing methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department.

*§1.9. Notice to Consumers and Service Recipients.* The department will provide no-

tice of one or more names, mailing addresses and/or telephone numbers as may be appropriate to geographical locations and subject matter for purposes of directing complaints to the department. Relevant information will at a minimum be:

(1) published in selected public information literature, the official state travel map, district road construction reports, and annual notices in general circulation newspapers;

(2) displayed on each department-owned motor vehicle, for complaints covering the operation of that vehicle;

(3) posted at each business office of the department, including construction field offices; and

(4) required to be displayed, in a form prescribed by the department:

(A) at each job site of a department contractor; and

(B) at the place of business of a:

(i) motor vehicle dealer regulated by the department under Texas Civil Statutes, Article 6686;

(ii) motor vehicle salvage dealer regulated by the department under Texas Civil Statutes, Article 6687-2; and

(iii) motor vehicle manufacturer, distributor, converter, or dealer licensed by the Motor Vehicle Board of the department under Texas Civil Statutes, Article 4413(36).

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 February 2, 1993.

TRD-9318441  
Diane L. Northam  
Legal Administrative  
Assistant  
Texas Department of  
Transportation

Effective date: February 23, 1993

Proposal publication date: November 10, 1992

For further information, please call: (512) 463-8630

## 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 State Board of Insurance pursuant to Chapter 5,

*Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register 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 State Board of Insurance, 333 Guadalupe, Austin. )

The State Board of Insurance of the Texas Department of Insurance, at a public hearing held at 9 a. m. on January 28, 1993, under Docket Number 1969, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street, Austin, Texas adopted the Texas Workers' Compensation Financial Call Plan (the Plan) as proposed by Staff of the Texas Department of Insurance. The Plan implements the Insurance Code, Article

5.58(a) which requires that the Board develop reasonable statistical plans to be used by each workers' compensation insurer in the recording and reporting of its loss experience and other data in order that the total loss and expense experience of all workers' compensation insurers may be made available annually. Staff's petition (Reference Number W-1192-68-1), was published in the December 22, 1992, issue of the *Texas Register* (17 TexReg 9024).

The State Board of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.58 and 5.96.

The Plan as adopted by the State Board of Insurance is filed with the Chief Clerk under Reference Number W-1192-68-1 and is incorporated by reference by Board Order Number 60155.

Consistent with Texas Insurance Code, Article 5.96(h), prior to the effective date of this

action, the Board will notify all insurers writing workers' compensation insurance.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure and Texas Register 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 February 2, 1993.

TRD-9318445

Linda K. von Quintus-Dorn  
Chief Clerk  
Texas Department of  
Insurance

For further information, please call: (512) 463-6328

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# Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to 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 named 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. Emergency meeting notices filed by all governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board at the Office of the Secretary of State in lobby of 221 East 11th Street, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

## Texas Department on Aging

Thursday, February 11, 1993, 9:30 a.m. The Texas Board on Aging of the Texas Department on Aging will meet at the Texas Department on Aging, 1949 South IH-35, Third Floor Conference Room, Austin. According to the agenda summary, the board will call the meeting to order; consider and possibly act on: approval of January 11, 1993 minutes; hear public testimony; executive director's report; presentation on senior citizen housing; Citizens Advisory Council (CAC) nominations; report on public hearing; final adoption of standards; standards for publication; reports on indirect costs; pre-admission screening program; client information system; monthly operating expenditures; prior internal audits; internal audit report on area agency on aging administration; pending legislation; process for discretionary grants/projects; quarterly state plan; quarterly discretionary grants/projects; needs assessment design for state and regional levels; planning process and format for regional plans; implementation plan for statement of board positions on role of area agencies on aging; make general announcements; and adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: February 2, 1993, 2 p.m.

TRD-9318467

## Texas Department of Agriculture

Friday, February 5, 1993, 3 p.m. The State Seed and Plant Board of the Texas Department of Agriculture held an emergency meeting at the Stephen F. Austin Building, Room 118, Ground Floor, 1700

North Congress Avenue, Austin. According to the complete agenda, the board discussed and acted on request for recertification of Lemont Rice Seed for the 1993 planting season. The emergency status was necessary as the board had determined that additional input from licensed producers was necessary for the board to establish emergency conditions required for recertification of Lemont rice seed. Immediate board action was necessary on the recertification of Lemont rice seed, a leading variety, to allow the variety to be planted in 1993. The 1993 planting season is imminent, and action had to be taken before the season begins.

Contact: Charles Leamons, P.O. Box 629, Giddings, Texas 78942, (409) 542-3691.

Filed: February 3, 1993, 4:36 p.m.

TRD-9318544

Thursday, February 18, 1993, 7 p.m. The Texas Department of Agriculture will meet at the Bailey County Courthouse, 300 South First Street, Courtroom, Second Floor, Muleshoe. According to the complete agenda, the department will hold a public hearing to receive public comment regarding proposed special exemptions under Texas Herbicide Law for Bailey County.

Contact: Lynn Howard, P.O. Box 12847, Austin, Texas 78711, (512) 475-1677.

Filed: February 2, 1993, 2:26 p.m.

TRD-9318476

## Texas Animal Health Commission

Friday, February 12, 1993, 9:30 a.m. The Finance Committee of the Texas Animal Health Commission will meet at 210 Barton

Springs Road, First Floor Conference Room, Austin. According to the complete agenda, the committee will discuss user fees.

Contact: Jo Anne Conner, 210 Barton Springs Road, Austin, Texas 78704, (512) 479-6697.

Filed: February 2, 1993, 10:22 a.m.

TRD-9318448

## State Bar of Texas

Thursday-Friday, February 11-12, 1993, 10 a.m. and 8:30 a.m. respectively. The Commission for Lawyer Discipline of the State Bar of Texas will meet at the Texas Law Center, Room 206, 1414 Colorado Street, Austin. According to the agenda summary, the commission will call the meeting to order; introduce visitors; discuss approval of prior minutes; review and discuss status reports of pending cases; report by Steve Moyik concerning ethics "hotline"; discuss commission's compliance with State Bar Act, Texas Rules of Disciplinary Procedure and orders of the Supreme Court; decide issue of selection of chief disciplinary counsel; discuss special counsel recruitment; budget and duties of the commission; presentation by Steve Martin, President of TYLA; discuss collection of attorney's fees in disciplinary cases; report by Bill Edwards on proposed amendments to Rules 1.06(e) and (f) and 2.09; discuss pending litigation pursuant to Article 6252-17(2)(e); assignment of special counsel; personnel matters; authorization of settlement offers; consider assignment of special counsel; discuss budget and operations of grievance committees; report by Tom Cunningham; discuss future meetings; discuss other matters; hear public comment; and adjourn.

Contact: Anne Dorris, P.O. Box 12487, Austin, Texas 78711, (512) 463-1381.

Filed: February 3, 1993, 4:09 p.m.

TRD-9318542

### Texas State Board of Dental Examiners

Friday, February 12, 1993, 8 a.m. The Texas State Board of Dental Examiners will meet at the Guest Quarters Hotel, 303 West 15th Street, Houston I and II Rooms, Austin. According to the agenda summary, the board will call the meeting to order; take roll call; discuss approval of minutes; consider and make final determination of proposal for decision in TSBDE #92-043-1004S; SOAH #504-92-202, TSBDE versus Tufflash; approval of settlement orders; modification of board orders-J. Frank Goodwin, DDS; Brad Schoonover, DDS; appearances before the Board-Dr. Jim Hill/Danny Diebel/Dr. Richard Garza (mobile dental clinic; Dr. Martin Alder-reciprocity/credentialing discussion; Dr. Daniel P. West-reinstatement of license; Dr. John Leland-reinstatement of Schedule II's; Dr. Jeffrey Glaser-request by TSBDE to appear; discuss approval of sedation-anesthesia permits; nitrous oxide monitoring courses; reports: president's report-discuss regional exam representative; discuss September board meeting; Lone Star Dental Conference; hear committee reports-administration; enforcement; examination and licensing; Sunset; Specialty Advisory Committee; meet in executive session to discuss personnel matters, pursuant to Article 6252-17, §2(g), Vernon's Texas Civil Statutes; and discuss pending litigation pursuant to Article 6252-17, §2(e).

Contact: C. Thomas Camp, 333 Guadalupe Street, Tower Three, Suite 3800, Austin, Texas 78701, (512) 463-6400.

Filed: February 2, 1993, 4:13 p.m.

TRD-9318500

Friday-Saturday, February 12-13, 1993, 8 a.m. (Revised agenda). The Texas State Board of Dental Examiners will meet at the Guest Quarters Hotel, 303 West 15th Street, Houston I and II Rooms, Austin. According to the revised agenda summary, the board will hold appearances before the board: Colonel Charles Wakefield-licensure by credentials.

Contact: C. Thomas Camp, 333 Guadalupe Street, Tower Three, Suite 3800, Austin, Texas 78701, (512) 463-6400.

Filed: February 3, 1993, 3:33 p.m.

TRD-9318540

Saturday, February 13, 1993, 8 a.m. The Texas State Board of Dental Examiners will meet at the Guest Quarters Hotel, 303 West

15th Street, Houston I and II Rooms, Austin. According to the agenda summary, the board will discuss the use of gloves in intraoral/invasive procedures; hold a public hearing and discuss proposed adoption of Rules 101.1(b)(3)(B), 109.173, and 115.10; make announcements; and adjourn.

Contact: C. Thomas Camp, 333 Guadalupe Street, Tower Three, Suite 3800, Austin, Texas 78701, (512) 463-6400.

Filed: February 2, 1993, 4:16 p.m.

TRD-9318501

### Texas Planning Council for Developmental Disabilities

Thursday, February 18, 1993, 11 a.m. The Executive Committee of the Texas Planning Council for Developmental Disabilities will meet at the Holiday Inn Northwest, Research Room, 8901 Business Park, Austin. According to the complete agenda, the committee will call the meeting to order; discuss approval of minutes of December 14, 1992; update concerning designated state agency for the council; consider stipends grant applications; budget status report; consider facilitated communication seminar; and discuss other items. 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 Denese Holman at (512) 483-4087.

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4081.

Filed: February 3, 1993, 2:15 p.m.

TRD-9318526

Thursday, February 18, 1993, 5:30 p.m. The Nominating Committee of the Texas Planning Council for Developmental Disabilities will meet at the Holiday Inn Northwest, 8901 Business Park, Austin. According to the complete agenda, the committee will call the meeting to order; discuss recommendation for council vice-chair; executive committee; consumer member-at-large; and 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 Denese Holman at (512) 483-4087.

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4081.

Filed: February 3, 1993, 2:15 p.m.

TRD-9318527

Thursday-Friday, February 18-19, 1993, 1:30 p.m. and 9 a.m. respectively. The Texas Planning Council for Developmental Disabilities will meet at the Holiday Inn Northwest, 8901 Business Park Drive, Ballroom, Austin. According to the agenda summary, on Thursday, the council will call the meeting to order; introduce council members, staff, and guests; discuss approval of minutes of November 5-6, 1992; hear public comments; TPCDD Strategic Plan Update and discussion; executive committee report; chairman's report; executive director's report; and adjourn. On Friday, the council will introduce council members, staff, and guests; hear public comments; continuation of unfinished business from February 18, 1993; advocacy and public information committee report; nominating committee report; grants monitoring committee report; make announcements; and 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 Denese Holman at (512) 483-4087.

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4081.

Filed: February 3, 1993, 2:15 p.m.

TRD-9318528

### Texas Diabetes Council

Tuesday, February 9, 1993, 7 a.m. The Texas Diabetes Council held an emergency meeting at the Guest Quarters Suites Hotel, 303 West 15th Street, Austin. According to the complete agenda, the council possibly discussed adoption of the minutes of the October 16, 1992 meeting; possibly discussed and acted on the status of community health center grants; staff expansion; election of chair; proposed new offices (vice-chair, budget committee chair); election of proposed officers: *State Plan to Control Diabetes* and fact sheet; and schedule for "Diabetes Day at the Capitol." The emergency status was necessary due to unforeseeable circumstances.

Contact: Richard Kropp, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7534. For ADA assistance, call Richard Butler at (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: February 2, 1993, 2:17 p.m.

TRD-9318470

## Texas Education Agency

**Wednesday, February 10, 1993, 4 p.m.** The State Board of Education Committee on Personnel of the Texas Education Agency will meet at the William B. Travis Building, Room 1-104, 1701 North Congress Avenue, Austin. According to the complete agenda, the committee will hold a briefing session on the State Board of Education Rules related to Chapter 137, Teacher Education. This item will present a brief overview of the professional educator policy development process the board is currently involved in in conjunction with the sunset of rules related to professional educator preparation and certification. All members of the board have been invited to attend.

**Contact:** Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

**Filed:** February 2, 1993, 2:01 p.m.

TRD-9318468

**Thursday, February 11, 1993, 9 a.m.** The Joint Meeting of the State Board of Education and The Texas Juvenile Probation Commission of the Texas Education Agency will meet at the Theatre, Fulmore Middle School, 201 East Mary Street, Austin. According to the agenda summary, the commission will make introductions and opening remarks; discuss juvenile crime and school violence; Bexar County alternative education pilot program; agreement between a Harris County juvenile court and District Judge Eric Andell, 315th District Court; presentation by Vicki Baldwin, principal, Fulmore Middle School and member of Texas Juvenile Probation Commission; discuss issues and needs warranting shared responsibility; and collaborative efforts to be pursued.

**Contact:** Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

**Filed:** February 3, 1993, 8:57 a.m.

TRD-9318504

**Thursday, February 11, 1993, 1 p.m.** The State Board of Education (SBOE) Committee on Students of the Texas Education Agency will meet at the William B. Travis Building, Room 1-100, 1701 North Congress Avenue, Austin. According to the agenda summary, the committee will hear public testimony; presentation by Communities in Schools; discuss 19 TAC Chapter 75, Subchapter D, Curriculum; 19 TAC §75.166, Credit by Examination; 19 TAC Chapter 75, Subchapter K, Extracurricular Activities; 19 TAC Chapter 157, Hearings and Appeals; discuss core standards and measures of performance for career/applied technology education for 1993-1994; SBOE rules pertaining to state graduation credit

options; vocational education in prisons; report on school safety and violence prevention in the schools; agreement for Job Training Partnership Act state education grants; 19 TAC Chapter 169, Relationship with the University Interscholastic League (UIL); and amendments to the UIL 1993-1994 constitution and contest rules.

**Contact:** Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

**Filed:** February 3, 1993, 8:58 a.m.

TRD-9318505

**Thursday, February 11, 1993, 1 p.m.** The State Board of Education (SBOE) Committee on Personnel of the Texas Education Agency will meet at the William B. Travis Building, Room 1-111, 1701 North Congress Avenue, Austin. According to the agenda summary, the committee will hear public testimony; discuss 19 TAC Chapter 145, Professional Environment; 19 TAC Chapter 149, Education Personnel Development; 19 TAC Chapter 137, Teacher Education and related professional education rules; additional programs for University of Texas at Brownsville alternative certification program; State Board of Education operating rule regarding standards of conduct and conflicts of interest; 19 TAC Chapter 143, Assignment of Personnel; 19 TAC Chapter 141, Teacher Certification; discuss proposed legislation concerning speech-language pathologists; and status report on the accreditation of school districts.

**Contact:** Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

**Filed:** February 3, 1993, 8:58 a.m.

TRD-9318506

**Thursday, February 11, 1993, 1 p.m.** The State Board of Education (SBOE) Committee on School Finance of the Texas Education Agency will meet at the William B. Travis Building, Room 1-104, 1701 North Congress Avenue, Austin. According to the agenda summary, the committee will hear public testimony; give school finance update; report on the findings and activities of the Texas Commission on Braille Textbook Production; summary of textbook purchases for school years 1990-1991 and 1991-1992; discuss 19 TAC Chapter 157, Hearings and Appeals; discuss proposed core standards and measures of performance for career/applied technology education for 1993-1994; vocation education in prisons; discuss recommendations for appointment to the Proprietary School Advisory Commission; and review of proposed agreement for Job Training Partnership Act state education grants.

**Contact:** Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

**Filed:** February 3, 1993, 8:58 a.m.

TRD-9318507

**Friday, February 12, 1993, 7:45 a.m.** The State Board of Education (SBOE) Ad Hoc Committee on Textbooks of the Texas Education Agency will meet at the William B. Travis Building, Room 1-100, 1701 North Congress Avenue, Austin. According to the complete agenda, the committee will give a report and recommendation regarding United States government textbooks exceeding the threshold of substantial errors.

**Contact:** Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

**Filed:** February 3, 1993, 8:58 a.m.

TRD-9318508

**Friday, February 12, 1993, 8:30 a.m.** The State Board of Education (SBOE) Committee on the Permanent School Fund (PSF) of the Texas Education Agency will meet at the William B. Travis Building, Room 1-109, 1701 North Congress Avenue, Austin. According to the agenda summary, the committee will hear public testimony; discuss recommended PSF investment program for February and funds available for the program; review of PSF securities transactions and the investment portfolio; and report of the PSF manager.

**Contact:** Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

**Filed:** February 3, 1993, 8:59 a.m.

TRD-9318509

**Friday, February 12, 1993, 8:30 a.m.** The State Board of Education (SBOE) Committee on Long-Range Planning of the Texas Education Agency will meet at the William B. Travis Building, Room 1-104, 1701 North Congress Avenue, Austin. According to the agenda summary, the committee will hear public testimony; expert speaker-Teacher Outcomes in Culturally Diverse Classrooms; interim evaluation of quality, equity, accountability; review Texas State Board of Education Long-Range Plan for Public Education, 1991-1995; recommendation of the Software Advisory Committee; future working agenda of the Committee on Long-Range Planning; options for the process to derive student outcomes; discuss federal government relations activities; discuss Windham Schools; and Texas State Health Plan.

**Contact:** Criss Cloudt, 1701 North Congress Avenue, Austin, Texas, 78701, (512) 463-9701.

**Filed:** February 3, 1993, 8:59 a.m.

TRD-9318510

**Friday, February 12, 1993, 1 p.m.** The State Board of Education (SBOE) of the



Texas Education Agency will meet at the William B. Travis Building, Room 1-104, 1701 North Congress Avenue, Austin. According to the agenda summary, the board will discuss approval of the minutes; hear public testimony; SBOE resolutions; approval of consent agenda; report/recommendation regarding United States Government textbooks exceeding the threshold of substantial errors; discuss professional environment; education personnel development; teacher education and related professional education rules; alternative certification program; curriculum; credit by examination; extracurricular activities; hearings and appeals; core standards and measures of performance for career and applied technology education for 1993-1994; relationship with the University Interscholastic League (UIL); amendments to the UIL 1993-1994 constitution/contest rules; interim evaluation of quality, equity, accountability; Texas SBOE Long-Range Plan for Public Education, 1991-1993; recommendation of the Software Advisory Committee; recommended Permanent School Fund investment program for February and funds available for the program; and information on agency administration.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: February 3, 1993, 8:59 a.m.

TRD-9318511

Thursday, February 25, 1993, 9 a.m. The Texas Environmental Education Advisory Committee of the Texas Education Agency will meet at the Houston Museum of Natural Science, One Hermann Circle Drive, Houston. According to the complete agenda, the committee will welcome and introduce guests; report of programs that have TEEAC endorsement; review rules for selection of new members; review draft of TEEAC business plan; hear sub-committee report; discuss new business; and adjourn.

Contact: Irene Pickhardt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9566.

Filed: February 4, 1993, 9:34 a.m.

TRD-9318563

### Employees Retirement System of Texas

Thursday, February 11, 1993, 9 a.m. The Board of Trustees of the Employees Retirement System of Texas will meet at the ERS Auditorium, ERS Building, 18th and Brazos Streets, Austin. According to the agenda summary, the board will discuss approval of minutes; appeals of contested cases; final adoption of new trustee Rules 83.1-83.11

relating to public school district insurance program; selection of firm to conduct 1991-1992 insurance audit of carrier operations in Texas Employees Uniform Group Insurance Program; proposed election calendar for Group Benefits Advisory Committee; Group Benefits Advisory Committee report; hear executive director's report; set next meeting date; and adjourn.

Contact: William S. Nail, 18th and Brazos Streets, Austin, Texas 78701, (512) 867-3336.

Filed: February 3, 1993, 8:32 a.m.

TRD-9318515

### Texas General Land Office

Friday, February 12, 1993, 9 a.m. The Oil Spill Division (Texas Oil Spill Commission) of the Texas General Land Office will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the complete agenda, the division will discuss approval of the minutes from January 25, 1993, meeting; presentation of resolution recommendations; finalization of '93 workplan; set next meeting; and adjourn.

Contact: Ruby Simpson, 1700 North Congress Avenue, Suite 630, Austin, Texas 78701, (512) 463-5019.

Filed: February 3, 1993, 3:41 p.m.

TRD-9318541

### Texas Department of Health

Friday, February 19, 1993, 9:30 a.m. The Chronically Ill and Disabled Children's Community Advisory Committee of the Texas Department of Health will meet at the Texas Department of Health, Room G-107, 1100 West 49th Street, Austin. According to the complete agenda, the committee will discuss and possibly act on purpose of committee; terms; election of officers; interagency coordination of Children with Special Health Care Needs (CSHCN); 1989 Omnibus Reconciliation Act (OBRA) mandates (family-centered, community-based, coordinated care and the development of community-based systems of care for CSHCN; and public and private collaboration); and subcommittee functions (Texas Pediatric Society/American Academy of Pediatrics initiatives; community-based services; and cultural competence.

Contact: John Evans, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7355. For ADA assistance, call Richard Butler, (512) 458-7488 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: February 2, 1993, 2:17 p.m.

TRD-9318469

### Judicial Districts Board

Friday, February 12, 1993, 9 a.m. The Judicial Districts Board will meet at the Texas Law Center, Room 204, 1414 Colorado Street, Austin. According to the complete agenda, the board will discuss recent federal court cases and legislative proposals regarding judicial redistricting. The board will meet in executive session to consult with legal counsel with respect to pending legislation.

Contact: C. Raymond Justice, 1414 Colorado Street, Suite 602, Austin, Texas 78701, (512) 463-1625.

Filed: February 4, 1993, 8:56 a.m.

TRD-9318548

### Lamar University System

Wednesday, February 3, 1993, 6:30 p.m. (Rescheduled from Thursday, February 4, 1993). The Board of Regents of the Lamar University System held an emergency meeting at the Mary and John Gray Library, Lamar-Beaumont, 4400 Martin Luther King, Beaumont. According to the complete agenda, the board met in executive session, pursuant to provisions of Vernon's Civil Statutes, Article 6252-17, §2(g), for the purpose of interviewing candidate for position of President of Lamar-Beaumont. The emergency status was necessary as a confirmation hearing for five members of the board of regents had been scheduled for Thursday, February 4, 1993, p.m.

Contact: James A. (Dolph) Norton, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: February 3, 1993, 8:24 a.m.

TRD-9318502

Monday, February 8, 1993, 2 p.m. (Rescheduled from Thursday, February 4, 1993). The Development and Public Relations Committee of the Lamar University System met at the John Gray Institute, Map Room, 855 Florida, Beaumont. According to the complete agenda, the committee considered concept of program for enhanced research and records capability; mission statement and name change; and met in executive session to consider potential foundation board members.

Contact: James A. (Dolph) Norton, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.



Filed: February 2, 1993, 11:32 a.m.

TRD-9318464

◆ ◆ ◆  
**Texas State Board of Licensure for Professional Medical Physicists**

**Wednesday, February 10, 1993, 1 p.m.**  
The Credentials Committee of the Texas State Board of Licensure for Professional Medical Physicists will meet at the Exchange Building, Room S-400, 8407 Wall Street, Austin. According to the complete agenda, the committee will discuss and possibly act on applications under Title 22, Texas Administrative Code, §601.6.

**Contact:** Jeanette A. Hilsabeck, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6655. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

**Filed:** February 2, 1993, 4:07 p.m.

TRD-9318497

**Thursday, February 11, 1993, 10:15 a.m.**  
The Texas State Board of Licensure for Professional Medical Physicists will meet at the Exchange Building, Room S-400, 8407 Wall Street, Austin. According to the complete agenda, the board will discuss approval of the minutes of November 19, 1992 meeting; hear reports of chairman and executive secretary; discuss and possibly act on: proposed amendments to rules pertaining to the Texas Medical Physics Practice Act and amendments to rules pertaining to the licensure of professional medical physicists (Title 22, Texas Administrative Code, Chapter 601); committee report on definition of what is and is not "engaging in the practice of medical physics"; discuss matters relating to *Texas Regulations for the Control of Radiation* as relating to the practice of medical physics; applications approved by executive secretary; applications approved by the credentials committee; proposals submitted on the medical physicists licensing examination; election of the chair and vice-chair; and other matters relating to the regulation of professional medical physicists not requiring board action.

**Contact:** Jeanette A. Hilsabeck, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6655. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

**Filed:** February 2, 1993, 4:07 p.m.

TRD-9318498

**Texas Department of Protective and Regulatory Services**

**Friday, February 5, 1993, 10 a.m.** The Texas Board of Protective and Regulatory Services of the Texas Department of Protective and Regulatory Services met at the Texas Department of Health, 1100 West 49th Street, Moreton Building, Room M-739, Austin. According to the emergency revised agenda summary, the board will discuss Fiscal Year 1993 operating budget adjustments. The emergency status was necessary as an agenda item on FY 1993 operating budget adjustments was inadvertently omitted but its inclusion is essential to ensure availability of funds transferred by the Texas Board of Human Services on January 22, 1993 for automation projects of the Texas Department of Protective and Regulatory Services.

**Contact:** Monica Miller, P.O. Box 149030, Mail Code W-639, Austin, Texas 78714-9030, (512) 450-4435.

**Filed:** February 2, 1993, 1:35 p.m.

TRD-9318465

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**Public Utility Commission of Texas**

**Wednesday, February 10, 1993, 9 a.m.**  
The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the commission will hold an open meeting to consider the following dockets: 10436, 9960, 11347, 11501, 11390, and 11266.

**Contact:** John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** February 2, 1993, 3:25 p.m.

TRD-9318489

**Wednesday, February 10, 1993, 9:05 a.m.**  
The Administrative Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the division will discuss and possibly act on staff report on SWB's earnings sharing status under Docket Number 8585; consider request for commission to seek waiver of effective date of FCC collocation order; presentation on the federal energy act; discuss CES/PUC interagency contract; consider proposed or pending legislation and possible action with respect thereto; budget and fiscal matters; briefing and possible intervention in Tex-La Electric Cooperative of Texas, Inc. versus TU, Docket Number TX 93-1, before the FERC; adjourn for executive session to consider litigation and personnel matters; reconvene for discussion

and decisions considered in executive session; set time and place for next meeting; and adjourn.

**Contact:** John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** February 2, 1993, 3:26 p.m.

TRD-9318490

**Wednesday, March 3, 1993, 10 a.m.** The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a third prehearing conference in Docket Number 11487-inquiry of the general counsel into the marketing and business practices of Southwestern Bell Telephone Company.

**Contact:** John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** February 3, 1993, 2:37 p.m.

TRD-9318533

**Wednesday, March 17, 1993, 10 a.m.** The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 11660-application of Houston County Electric Cooperative, Inc. for authority to implement a new high load factor rate.

**Contact:** John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** February 2, 1993, 3:25 p.m.

TRD-9318488

**Tuesday, April 20, 1993, 10 a.m.** The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a interim hearing in Docket Number 11487-inquiry of the general counsel into the marketing and business practices of Southwestern Bell Telephone Company.

**Contact:** John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** February 3, 1993, 2:37 p.m.

TRD-9318534

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**Texas Surplus Property Agency**

**Thursday, February 4, 1993, 10:30 a.m.** The Governing Board of the Texas Surplus Property Agency held an emergency meet-

ing at the General Services Commission, Room 402 (Board Room), 1711 San Jacinto, Austin. According to the emergency revised agenda summary, the board discussed the state auditor's report. The emergency status was necessary due to state auditor's request.

Contact: Marvin J. Titzman, P.O. Box 8120, San Antonio, Texas 78208, (210) 661-2381.

Filed: February 3, 1993, 2:28 p.m.

TRD-9318529

### University Interscholastic League

**Wednesday, February 10, 1993, 9 a.m.** The State Executive Committee of the University Interscholastic League will meet at the Red Lion Hotel, IH-35 North at Highway 290, Austin. According to the agenda summary, the committee will review and discuss transfer case-James Kizer of Brownsville Pace High School for soliciting grade change; appeal of violation of Athletic Code by Eldorado High School and Hearne High School; transfer case-Dallas Lincoln High School, abuse of officials and unsportsmanlike conduct; appeal by Eddie Fortenberry, Lockney High School for ejection from game; allegation of verbal abuse of officials by Hampton Hurt of El Paso Austin High School; alleged abuse of officials by Port Arthur Lincoln High School fan; and alleged abuse of officials by Oliver Hadnot of Jasper High School.

Contact: C. Ray Daniel, 2622 Wichita Street, Austin, Texas 78705, (512) 471-5883.

Filed: February 3, 1993, 10:54 a.m.

TRD-9318518

### University of Texas System

**Thursday, February 11, 1993, 3 p.m.** The Board for Lease of University Lands of the University of Texas System will meet at 201 West Seventh Street, Ashbel Smith Building, Austin. According to the agenda summary, the board will discuss approval of the minutes; consider oil and gas lease terms for permanent university fund lands located in Culberson, El Paso, Hudspeth and Terrell Counties, for the June 23, 1993 board for Lease of University Lands oil and gas lease sale.

Contact: Linward Shivers, 201 West Seventh Street, Austin, Texas 78701, (512) 499-4462.

Filed: February 2, 1993, 4:09 p.m.

TRD-9318499

### Texas Water Commission

**Thursday, February 11, 1993, 9 a.m.** The Texas Irrigators Advisory Council of the Texas Water Commission will meet at the Royce Hotel, Mercury Room, 3401 IH-35 South, Austin. According to the agenda summary, the council will call the meeting to order; recess into executive session; elect chairman; vice-chairman; certification of January 25, 1993 LI exam results; certification of January 25, 1993 IN results; discuss deferred items from January 26, 1993 meeting; discuss approval of minutes; and report on various items of interest.

Contact: Joyce Watson, P.O. Box 12337, Austin, Texas 78711, (512) 463-7992.

Filed: February 2, 1993, 3:39 p.m.

TRD-9318492

**Saturday, February 13, 1993, 8:30 a.m.** The Texas Water Commission will meet at 4207 River Place Boulevard, Overlook Room, Austin. According to the agenda summary, the commission and executive staff of the Texas Water Commission and the Texas Air Control Board will meet for training on the principles of total quality management.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: February 3, 1993, 1:38 p.m.

TRD-9318522

**Wednesday, February 17, 1993, 9 a.m.** The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider approving the following matters: enforcement actions; bankruptcy; examiner's proposal for decision; meet in executive session; in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to, rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: February 3, 1993, 1:38 p.m.

TRD-9318523

**Wednesday, February 17, 1993, 9 a.m.** The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider approving the following matters: water quality permits; renewals; amendments; district matters; rate matters; water right permits; weather modification license; examiner memorandums; in

addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to, rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: February 3, 1993, 1:39 p.m.

TRD-9318524

**Thursday, March 18, 1993, 9 a.m.** The Office of Hearings Examiners of the Texas Water Commission will meet at the Lubbock County Courthouse, Room 103, 904 Broadway Street, Lubbock. According to the agenda summary, the commission will consider an application for authorization to discharge wastewater by Lubbock County Water Control and Improvement District Number One from the facility located approximately five miles east of the City of Lubbock on FM Road 835 in Lubbock County.

Contact: Jim Bateman, P.O. Box 13087, Austin, Texas 78701, (512) 463-7875.

Filed: February 2, 1993, 2:21 p.m.

TRD-9318475

**Thursday, March 25, 1993, 9 a.m.** The Office of Hearings Examiners of the Texas Water Commission will meet at the William B. Travis Building, Room 1-199, 1701 North Congress Avenue, Austin. According to the agenda summary, on a staff initiated minor amendment Permit Number 11363-01, issued to Technology/Hydraulics, Inc., in order to update the format, to change the term of the permit and to upgrade the effluent storage requirements. The permit authorizes disposal of treated domestic wastewater effluent by irrigation. The wastewater treatment facility and irrigation site are within the Spicewood Balcones Subdivision, at 11207 Spicewood Parkway in Travis County.

Contact: Linda Sorrells, P.O. Box 13087, Austin, Texas 78701, (512) 463-7875.

Filed: February 2, 1993, 2:21 p.m.

TRD-9318474

**Thursday, March 25, 1993, 9 a.m.** The Office of Hearings Examiners of the Texas Water Commission will meet at the William B. Travis Building, Room 1-100, 1701 North Congress Avenue, Austin. According to the agenda summary, the commission will consider an application by Northwest Travis County Municipal Utility District Number Two for renewal of permit Number 12929-01 authorizing the disposal of treated domestic wastewater effluent by irrigation. The plant site and irrigation area are approximately 1,500 feet west of the intersec-

tion of Plumewood Drive and Spicewood Club Drive in the Spicewood Balcones Sub-division in Travis County.

Contact: Linda Sorrells, P.O. Box 13087, Austin, Texas 78701, (512) 463-7875.

Filed: February 2, 1993, 2:21 p.m.

TRD-9318472

Tuesday, April 20, 1993, 9 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 618, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider an application by Villas on Travis Condominium Owners Association for renewal of Permit Number 11532-01 authorizing a discharge of treated domestic wastewater effluent through a pipe into Lake Travis in Segment Number 1404 of the Colorado River Basin.

Contact: Robert Rogan, P.O. Box 13087, Austin, Texas 78701, (512) 463-7875.

Filed: February 2, 1993, 2:21 p.m.

TRD-9318473

## Regional Meetings

### Meetings Filed February 2, 1993

The Brazos Valley Development Council Executive Committee will meet at the Council Office, 3006 East 29th Street, Suite #2, Bryan, February 10, 1993, at 1:30 p.m. Information may be obtained from Tom Wilkinson, Jr., P. O. Drawer 4128, Bryan, Texas 77805-4128, (409) 776-2277. TRD-9318460.

The Brazos Valley Development Council Regional 9-1-1 Advisory Committee will meet at 3006 East 29th Street, Suite #2, Bryan, February 11, 1993, at 1:30 p.m. Information may be obtained from Jill Hyde, P.O. Box 4128, Bryan, Texas 77805-4128, (409) 776-2277. TRD-9318477

The Central Appraisal District of Taylor County Board of Directors will meet at 1534 South Treadaway, Abilene, February 17, 1993, at 3:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381. TRD-9318461.

The Education Service Center, Region XIII Board of Directors met at the ESC, Region XIII, ESC Conference Room #201, 5701 Springdale Road, Austin, February 8, 1993, at 12:45 p.m. Information may be obtained from Dr. Roy C. Benavides, 5701 Springdale Road, Austin, Texas 78723, (512) 929-1300. TRD-9318466.

The Grand Parkway Association will

meet at 5757 Woodway, Suite 140 East Wing, Houston, February 10, 1993, 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-9318479.

The Guadalupe-Blanco River Authority Board of Directors held an emergency meeting at the Authority's Offices, 933 East Court Street, Seguin, February 3, 1993, at 3 p.m. The emergency status was necessary as information was not received in time for regular posting. Information may be obtained from John H. Specht, P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9318463.

The High Plains Underground Water Conservation District Number One Board of Directors will meet at 2930 Avenue Q, Conference Room, Lubbock, February 9, 1993, at 10 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-9318462.

The 50th Judicial District Juvenile Board will meet at the District Courtroom, Knox County Courthouse, Benjamin, February 10, 1993, at noon. Information may be obtained from David Hajek, P.O. Box 508, Seymour, Texas 76380, (817) 888-2852. TRD-9318447.

### Meetings Filed February 3, 1993

The Bi-County Water Supply Corporation will meet at the Camp County Senior Citizens Building, 525 Elm Street, Pittsburg, February 9, 1993, at 7 p.m. Information may be obtained from Freeman Phillips, P.O. Box 848, Pittsburg, Texas 75686, (903) 856-5840. TRD-9318521.

The Bi-County Water Supply Corporation will meet at the Camp County Senior Citizens Building, 525 Elm Street, Pittsburg, February 9, 1993, at 8 p.m. Information may be obtained from Freeman Phillips, P.O. Box 848, Pittsburg, Texas 75686, (903) 856-5840. TRD-9318520.

The Callahan County Appraisal District Board of Directors will meet at 130-A West Fourth Street, Callahan County Appraisal District Office, Baird, February 15, 1993, at 7 p.m. Information may be obtained from Jane Ringhoffer, P.O. Box 806, Baird, Texas 79504, (915) 854-1165. TRD-9318537.

The Canyon Regional Water Authority Board met at the Guadalupe County Fire Training Facility, Lakeside Pass, New Braunfels, February 8, 1993, at 7:30 p.m. Information may be obtained from David J. Davenport, Route 2, Box 654W, New Braunfels, Texas 78130-9579, (512)

420-2323. TRD-9318539.

The Education Service Center, Region Two Board of Directors will meet at 209 North Water (Board Room), Corpus Christi, February 9, 1993, at 6:30 p.m. Information may be obtained from Ernest Zamora, 209 North Water, Corpus Christi, Texas 78401, (512) 883-9288. TRD-9318525.

The Erath County Appraisal District Board of Directors will meet at 1390 Harbin Drive, Board Room, Stephenville, February 11, 1993, at 7 a.m. Information may be obtained from Jerry Lee, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434. TRD-9318530.

The Lavaca County Central Appraisal District Board of Directors will meet at the Lavaca County Central Appraisal District, 113 North Main Street, Hallettsville, February 15, 1993, at 4 p.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9318536.

The San Patricio County Appraisal District Board of Directors will meet at 1146 East Market Street, Sinton, February 11, 1993, at 10 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402. TRD-9318535.

The South Franklin Water Supply Corporation Board of Directors will meet at the Office of South Franklin Water Supply Corporation, Highway 115 South, Mount Vernon, February 9, 1993, at 7 p.m. Information may be obtained from Richard Zachary, P.O. Box 591, Mount Vernon, Texas 75457, (903) 860-3400. TRD-9318519.

The Technology Partnership Organization (Or Quality Work Force Planning) Board of Directors will meet at the UT Tyler Muntz Library, Room 401, Tyler, February 10, 1993, at 2:45 p.m. Information may be obtained from Shelly McNeel, 3900 University Boulevard, Tyler, Texas 75799, (903) 566-7315. TRD-9318545.

The Upshur County Appraisal District Board of Directors will meet at the Upshur County Appraisal District Office, Warren and Trinity Streets, Gilmer, February 15, 1993, at 1 p.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644-0200, (903) 843-3041. TRD-9318543.

The Sulphur River Basin Authority Board of Directors will meet at the Mt. Pleasant Chamber of Commerce Building, 1604 North Jefferson Street, Mt. Pleasant, February 9, 1993, at 11:30 a.m. Information may be obtained from William O. Morris, P.O. Box 240, Texarkana, Texas 75504, (903) 793-5511. TRD-9318512.

**Meetings Filed February 4,  
1993**

**The Blanco County Appraisal District** Board of Directors will meet at the Blanco County Courthouse Annex, Avenue G and Seventh Street, Johnson City, February 9, 1993, at 5 p.m. Information may be obtained from Hollis Boatright, P.O. Box 338, Johnson City, Texas 78636, (512) 868-4013. TRD-9318559.

**The Dallas Central Appraisal District** Board of Directors will meet at 2949 North Stemmons Freeway, Dallas, February 10, 1993, at 7:30 a.m. Information may be obtained from Rick L. Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9318546.

**The East Texas Council of Governments** JTPA Board of Directors met at the Community Inn, Kilgore, February 4, 1993, at 11:30 a.m. The emergency status was necessary as item needed to be added to agenda before RFP's were sent out and the Private Industry Council meets on February 18,

1993. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 983-1440. TRD-9318547.

**The Manville Water Supply Corporation** Members will meet at the Coupland Independent School District, Spur 277, Coupland, February 9, 1993, at 7:30 p.m. Information may be obtained from LaVerne Rohlack, P.O. Box 248, Coupland, Texas 78615, (512) 272-4044. TRD-9318549.

**The Panhandle Quality Work Force Planning Committee** will meet at the Southwestern Bell Telephone Board Room, 815 South Tyler, Amarillo, February 10, 1993, at 3 p.m. Information may be obtained from David T. McReynolds, Suite 1020, Plaza II, Amarillo, Texas 79101, (806) 371-7577. TRD-9318560.

**The South Plains Association of Governments** Executive Committee will meet at 1323 58th Street, Lubbock, February 9, 1993, at 9 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Freedom Station, Lubbock, Texas

79452-3730, (806) 762-8721. TRD-9318550.

**The South Plains Association of Governments** Board of Directors will meet at 1323 58th Street, Lubbock, February 9, 1993, at 10 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Freedom Station, Lubbock, Texas 79452-3730, (806) 762-8721. TRD-9318551.

**The Sulphur-Cypress Soil and Water Conservation District Number 419** will meet at 1809 West Ferguson, Suite B, Mt. Pleasant, February 13, 1993, at 8:30 a.m. Information may be obtained from Beverly Amerson, 1809 West Ferguson, Suite B, Mt. Pleasant, Texas 75455, (903) 572-5411. TRD-9318561.

**The Tech Prep of the Rio Grande Valley, Inc.** Board of Directors will meet at the TSTC Short Course Center, Board Room, Harlingen, February 10, 1993, at 3 p.m. Information may be obtained from Pat Bubb, TSTC Short Course Center, Harlingen, Texas 78550-3697, (210) 425-0729. TRD-9318564.



# In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

## Texas Antiquities Committee Notice of Hearing and Call for Participants

Notice is hereby given that a hearing will be held before the State Office of Administrative Hearings beginning at 9 a.m. on Tuesday and Wednesday, March 9 and 10, 1993. The subject of the hearing will be consideration of a compliant on an antiquities permit issued to the City of Austin for study, archeological monitoring, and destruction of small fraction of archeological site 41TV1364, associated with the tunnel construction of a sewer line known as the "South Austin Outfall, Phase II" project (hereinafter "proposed project"), which passes through Zilker and Town Lake parks in Austin, Texas. The hearing will be held at 300 West 15th Street, in Suite 408, William P. Clements Building, Austin, Texas 78701.

The Save Our Springs Legal Defense Fund and Save Barton Creek Association, on behalf of their respective organizations and their members, have requested this hearing. They are contesting whether the investigations proposed under the subject permit will be adequate to protect those cultural deposits.

The Save Our Springs Legal Defense Fund and Save Barton Creek Association contest that the permit is inadequate under the law because it does not specifically permit destruction, harm, alteration, etc. to the archeological landmark and artifacts in Zilker and Town Lake parks; insufficient study has been done to achieve required mitigation to assure that preservation is maximized; the methods contemplated for mitigation fail to meet the statutory and rule requirements for mitigation, preservation, and harm minimization; alternatives and alternative routes to the proposed project exist which would eliminate all harm to the project; it fails to comply with acceptable and required techniques of investigation and recovery required under Chapter 41 of the Committee's rules.

The City of Austin and the staff of the Department of Antiquities Protection believe that the issuance of Permit 1196 fully complies with rules and procedure under the Antiquities Code. Five years of planning and archeological data collections support the permit. Three previous uncontested permit level investigations have already occurred and the City has undertaken several realignments and design changes to protect and preserve the archeological deposits in the park. The current proposed permit level investigations are associated with the tunnel excavations of the proposed sewer line which will adversely impact less than .2% of the overall site.

**Nature of Hearing.** Challenge to the issuance of Permit 1196, as provided for under Chapter 41 and 43 of the Antiquities Committee's Rules.

**What Must Be Proven.** That the permit is not in compliance with Committee's rules; that adequate preservation and study site 41TV1364 is not being accomplished.

**Parties to the Hearing.** At the hearing on the merits, only those persons admitted as parties will be permitted to make motions, present evidence and argument, and cross-examine witnesses. Presently the only prospective parties are the City of Austin, Department of Antiquities Protection, The Save Our Springs Legal Defense Fund and Save Barton Creek Association.

**Deadline for Requesting to be a Party.** Any person or organization that wants to be made a party must send a specific written request for party status to the State Office of Administrative Hearings at 300 West 15th Street, William P. Clements Building, Austin, Texas 78701, by 5 p.m. on February 19, 1993. The examiner cannot grant party status to any person or organization whose request comes in after that deadline, unless there is good cause for the request's coming in late.

**Prehearing Conference.** The State Office of Administrative Hearings has scheduled a prehearing conference be held on February 22, 1993, at 9 a.m. at 300 West 15th Street, William P. Clements Building, Suite 408, Austin, Texas 78701.

**Information About the Hearing and TAC Rules.** For further information regarding this hearing and the TAC rules contact Mark H. Denton, Staff Archeologist, Department of Antiquities Protection, P.O. Box 12276, Austin, Texas 78711 (512) 463-5711.

**Legal Authority.** This hearing is called and will be conducted under the authority of the Texas Civil Statutes, Article 6252-13f, and Chapter 155 State Office of Administrative Hearings and Chapter 43 of the Texas Antiquities Committee's Rules.

Issued in Austin, Texas, on February 2, 1993.

TRD-9318503 Kathleen McLaughlin-Neyland  
Administrative Technician  
Texas Antiquities Committee

Filed: February 3, 1993

## Texas Bond Review Board

### Bi-Weekly Report on the 1993 Allocation of the State Ceiling on Certain Private Activity Bonds

The information that follows is a report of the allocation activity for the period of January 15, 1993-January 29, 1993.

Total amount of state ceiling remaining unreserved for the \$247,184,000 subceiling for qualified mortgage bonds under the Act as of January 29, 1993: \$247,184,000.

Total amount of state ceiling remaining unreserved for the \$154,490,000 subceiling for state-voted issues under the Act as of January 29, 1993: \$44, 490,000.

Total amount of state ceiling remaining unreserved for the \$66,210,000 subceiling for qualified small issues under the Act as of January 29, 1993: \$66,210,000.

Total amount of state ceiling remaining unreserved for the \$44,140,000 subceiling for residential rental project issues under the Act as of January 29, 1993: \$12,980,000.

Total amount of state ceiling remaining unreserved for the \$370,776,000 subceiling for all other bonds requiring an allocation under the Act as of January 29, 1993: \$270,776,000.

Total amount of the \$882,800,000 state ceiling remaining unreserved as of January 29, 1993: \$641,640,000.

Following is a comprehensive listing of applications which have received a reservation date pursuant to the Act from January 15, 1993-January 29, 1993:

Texas Veterans Land Board, Eligible Borrowers, Land Bonds State-Voted, \$35, 000,000; Texas Higher Education Coordinating Board, Eligible Borrowers, Qualified Student Loan Bonds-State-Voted, \$75,000,000; Harris County HFC, Magi, Inc., Residential Rental 5900 Uvalde Apartments, \$10,160,000; Gulf Coast Waste Disposal Authority of Texas, Houston Chemical Services, Incorporated, All Other Bonds Solid Waste Disposal, \$50,000,000; Harris County HFC, Magi, Inc., Residential Rental Cedar Pond Apartments, \$13,000,000; San Antonio HFC, UCC 1981-A, Residential Rental River Oaks Apartments, \$8,000,000; Panhandle-Plains Higher Education Authority, Eligible Borrowers, Qualified Student Loan Bonds, \$50,000,000.

Issued in Austin, Texas, on February 1, 1993.

TRD-9318428 Jim Thomassen  
Executive Director  
Texas Bond Review Board

Filed: February 1, 1993



Types of Rate Ceilings

Effective Period  
(Dates are Inclusive)

Consumer (1)/Agricultural/  
Commercial (2) thru \$250,000

Commercial(2)  
over \$250,000

Indicated (Weekly) Rate - Art. 1.04(a)(1)

02/08/93-02/14/93

18.00%

18.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose.

[graphic]

Issued in Austin, Texas, on February 1, 1993.

TRD-9318513 Al Endsley  
Consumer Credit Commissioner

Filed: February 3, 1993



## Comptroller of Public Accounts Consultant Contract Award

In accordance with the provisions of Texas Civil Statutes, Article 6252-11c, the Comptroller of Public Accounts furnishes this notice of consultant contract award.

The consultant proposal request was published in the December 11, 1992, issue of the *Texas Register* (17 TexReg 8767).

The consultant will conduct a limited audit of utility billings of selected state agencies for the four-year period ended August 31, 1992. The program is intended to assist the State in identifying overpayments of utility billings by the relevant agencies during the audit period and obtaining refunds or credits for any such overpayments.

The contract is awarded to Childress Interests, Inc., 1331 Lamar Boulevard, Suite 1459, Houston, Texas, 77002. The consultant's receipt of compensation pursuant to the contract is entirely contingent upon the amount of refund or credit obtained by the consultant on behalf of the State. The contract was executed February 2, 1993, and extends through August 31, 1993.

Issued in Austin, Texas, on February 3, 1993

TRD-9318514 Arthur F. Lorton  
Senior Legal Counsel, General Law  
Section  
Comptroller of Public Accounts

Filed: February 3, 1993



## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, as amended (Texas Civil Statutes, Articles 5069-1.04).

## Texas Department of Health Correction of Error

The Texas Department of Health proposed an amendment to 25 TAC §145.111, concerning standards for nursing homes jointly developed by the department and the Texas Department of Human Services that apply to licensure and to Medicaid certification (standards). The rule was published in the January 12, 1993, *Texas Register* (18 TexReg 195).



Subsequently, various errors, omissions, oversights, funding category shifts, etc. have been discovered which brought about the need to make a midyear revision to the previously approved STIP.

TIP revisions applicable to the designated MPO's as well as to those areas outside designated MPO boundaries have been presented for public comment by means of public meetings conducted by relevant authorities throughout the State. The proposed revisions have been developed and refined through this process.

By letters dated September 9, 1992, addressed to federal transportation officials, the Honorable Ann W. Richards, Governor of Texas, delegated to the Texas Transportation Commission (commission) those powers and responsibilities granted to her by the Intermodal Surface Transportation Efficiency Act of 1991, save and except the Recreational Trails Program.

By Minute Order Number 101874 dated January 26, 1993, the commission found that the requisites of Section 134 were fully satisfied as they pertain to development of the midyear revisions to the prescribed TIP's by the MPO's and that the STIP revisions prepared and recommended by TxDOT fully satisfies the requisites of Section 135. Pursuant to the authority delegated by the Governor, the Commission also approved the respective TIP's of each designated MPO as reflected in the referenced revised STIP, proposed the revised STIP for adoption and final approval subject to public comment, and ordered the Executive Director to conduct or have conducted a public hearing to secure public comment.

A file copy of the draft midyear revisions to the FY 1993-1995 statewide transportation improvement program is available for review at TxDOT central Austin office of the Division of Transportation Planning located at Building 1, Room 318, 40th and Jackson Streets, Austin, and in each TxDOT district office. Persons wishing to review complete STIP may secure address and telephone number of the nearest district office from the division at (512) 465-7466. Also, a file copy is available at each metropolitan planning organization office. Local TxDOT district offices may be contacted for information on the appropriate metropolitan planning organization office locations.

Copies of the proposed midyear revisions to the STIP and documentation consisting of approximately 220 pages are available for purchase by contacting Eddie Shafie, P.O. Box 5051, Austin, Texas 78763-5051, phone (512) 465-7466, FAX (512) 467-3952. Copies of the "Introduction and Summary" are available on request without charge at any of the listed TxDOT offices.

Registration for the hearing will begin at 8 a.m., and speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony.

Further information on the midyear revisions to the STIP may be obtained from Alvin R. Luedecke, Jr., P.E., Division of Transportation Planning, P.O. Box 5051, Austin,

Texas 78763-5051, (512) 465-7346. Interested parties who are unable to attend the hearing may submit written comments to Alvin R. Luedecke, at that address. In order to be considered, all comments must be received by TxDOT at the above address no later than Thursday, March 4, 1993.

Issued in Austin, Texas, on February 1, 1993.

TRD-9318434

Diane L. Northam  
Legal Administrative Assistant  
Texas Department of Transportation

Filed: February 2, 1993

◆ ◆ ◆  
**Texas Water Commission**  
**Notice of Application for Authorization**  
**to Proceed in Federal Bankruptcy**

The Texas Water Commission has received an application by Denton County Reclamation and Road District for Authorization to Proceed in Federal Bankruptcy, under Chapter 9 of the Federal Bankruptcy Code, 11 United States Code, §901-941, as amended. The District is proposing to seek Bankruptcy Court approval of a plan of adjustment of the District's debts. The Commission shall investigate the financial condition of the District, including assets, liabilities and sources of revenues. If the Commission determines that the District cannot, through the full exercise of its rights and powers under the laws of this state, reasonably expect to meet its debt and other obligations as they mature, the Commission may authorize the District to proceed in bankruptcy.

No public hearing will be held on this application unless an affected person has requested a public hearing. Any person wishing to protest the application of the District is requested to file the protest in written form within 25 days of the issuance of the notice. The protest should contain the name, mailing address, and phone number of the person making the request; and a brief statement of the person's interest in the application and the reasons for the protest. If the Commission determines that the protest shows reason that the District is able to meet its debt and other obligations, or that an evidentiary public hearing would serve the public interest, the Commission may direct the Office of Hearing Examiners to conduct an evidentiary public hearing, after issuance of proper and timely notice of the hearing. Protests should be submitted to the Chief Clerk's Office, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, Attention: Mamie M. Black. Copies of such protest must be furnished to the District, the Executive Director and the Public Interest Counsel of the Commission.

Information concerning these applications may be obtained by writing the Texas Water Commission at the above-mentioned address or by calling (512) 463-8537.

Issued in Austin, Texas, on January 29, 1993.

TRD-9318432

Gloria A. Vasquez  
Chief Clerk  
Texas Water Commission

Filed: February 2, 1993

◆ ◆ ◆  
**Public Notice**

The Texas Water Commission announces that Parts A and B of the permit application form for industrial and hazard-



ous waste facilities have been revised. The revised forms (TWC Forms 0283-revised December 15, 1992 and Form 0376-revised December 4, 1992) are available to the public. These forms can be obtained from the Industrial and Hazardous Waste Permits Section in Austin by calling (512) 908-6595. These forms can also be obtained by any Texas Water Commission District office.

Issued in Austin, Texas, on February 1, 1993.

TRD-9318404

Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Filed: February 1, 1993



# 1993 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1993 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 July 30, November 5, November 30, and December 28. 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.
1 Friday, January 1	Monday, December 28	Tuesday, December 29
2 Tuesday, January 5	Wednesday, December 30	Thursday, December 31
3 Friday, January 8	Monday, January 4	Tuesday, January 5
4 Tuesday, January 12	Wednesday, January 6	Thursday, January 7
5 Friday, January 15	Monday, January 11	Tuesday, January 12
6 Tuesday, January 19	Wednesday, January 13	Thursday, January 14
Friday, January 22	1992 ANNUAL INDEX	
7 Tuesday, January 26	Wednesday, January 20	Thursday, January 21
8 Friday, January 29	Monday, January 25	Tuesday, January 26
9 Tuesday, February 2	Wednesday, January 27	Thursday, January 28
10 Friday, February 5	Monday, February 1	Tuesday, February 2
11 Tuesday, February 9	Wednesday, February 3	Thursday, February 4
12 Friday, February 12	Monday, February 8	Tuesday, February 9
13 Tuesday, February 16	Wednesday, February 10	Thursday, February 11
14 *Friday, February 19	Friday, February 12	Tuesday, February 16
15 Tuesday, February 23	Wednesday, February 17	Thursday, February 18
16 Friday, February 26	Monday, February 22	Tuesday, February 23
17 Tuesday, March 2	Wednesday, February 24	Thursday, February 25
18 Friday, March 5	Monday, March 1	Tuesday, March 2
19 Tuesday, March 9	Wednesday, March 3	Thursday, March 4
20 Friday, March 12	Monday, March 8	Tuesday, March 9
21 Tuesday, March 16	Wednesday, March 10	Thursday, March 11
22 Friday, March 19	Monday, March 15	Tuesday, March 16
23 Tuesday, March 23	Wednesday, March 17	Thursday, March 18
24 Friday, March 26	Monday, March 22	Tuesday, March 23
25 Tuesday, March 30	Wednesday, March 24	Thursday, March 25
26 Friday, April 2	Monday, March 29	Tuesday, March 30
27 Tuesday, April 6	Wednesday, March 31	Thursday, April 1
28 Friday, April 9	Monday, April 5	Tuesday, April 6
29 Tuesday, April 13	Wednesday, April 7	Thursday, April 8
Friday, April 16	FIRST QUARTERLY INDEX	
30 Tuesday, April 20	Wednesday, April 14	Thursday, April 15

31 Friday, April 23	Monday, April 19	Tuesday, April 20
32 Tuesday, April 27	Wednesday, April 21	Thursday, April 22
33 Friday, April 30	Monday, April 26	Tuesday, April 27
34 Tuesday, May 4	Wednesday, April 28	Thursday, April 29
35 Friday, May 7	Monday, May 3	Tuesday, May 4
36 Tuesday, May 11	Wednesday, May 5	Thursday, May 6
37 Friday, May 14	Monday, May 10	Tuesday, May 11
38 Tuesday, May 18	Wednesday, May 12	Thursday, May 13
39 Friday, May 21	Monday, May 17	Tuesday, May 18
40 Tuesday, May 25	Wednesday, May 19	Thursday, May 20
41 Friday, May 28	Monday, May 24	Tuesday, May 25
42 Tuesday, June 1	Wednesday, May 26	Thursday, May 27
43 *Friday, June 4	Friday, May 28	Tuesday, June 1
44 Tuesday, June 8	Wednesday, June 2	Thursday, June 3
45 Friday, June 11	Monday, June 7	Tuesday, June 8
46 Tuesday, June 15	Wednesday, June 9	Thursday, June 10
47 Friday, June 18	Monday, June 14	Tuesday, June 15
48 Tuesday, June 22	Wednesday, June 16	Thursday, June 17
49 Friday, June 25	Monday, June 21	Tuesday, June 22
50 Tuesday, June 29	Wednesday, June 23	Thursday, June 24
51 Friday, July 2	Monday, June 28	Tuesday, June 29
52 Tuesday, July 6	Wednesday, June 30	Thursday, July 1
53 Friday, July 9	Monday, July 5	Tuesday, July 6
Tuesday, July 13	SECOND QUARTERLY INDEX	
54 Friday, July 16	Monday, July 12	Tuesday, July 13
55 Tuesday, July 20	Wednesday, July 14	Thursday, July 15
56 Friday, July 23	Monday, July 19	Tuesday, July 20
57 Tuesday, July 27	Wednesday, July 21	Thursday, July 22
Friday, July 30	NO ISSUE PUBLISHED	
58 Tuesday, August 3	Wednesday, July 28	Thursday, July 29
59 Friday, August 6	Monday, August 2	Tuesday, August 3
60 Tuesday, August 10	Wednesday, August 4	Thursday, August 5
61 Friday, August 13	Monday, August 9	Tuesday, August 10
62 Tuesday, August 17	Wednesday, August 11	Thursday, August 12
63 Friday, August 20	Monday, August 16	Tuesday, August 17
64 Tuesday, August 24	Wednesday, August 18	Thursday, August 19
65 Friday, August 27	Monday, August 23	Tuesday, August 24
66 Tuesday, August 31	Wednesday, August 25	Thursday, August 26
67 Friday, September 3	Monday, August 30	Tuesday, August 31
68 Tuesday, September 7	Wednesday, September 1	Thursday, September 2
69 *Friday, September 10	Friday, September 3	Tuesday, September 7

70 Tuesday, September 14	Wednesday, September 8	Thursday, September 9
71 Friday, September 17	Monday, September 13	Tuesday, September 14
72 Tuesday, September 21	Wednesday, September 15	Thursday, September 16
73 Friday, September 24	Monday, September 20	Tuesday, September 21
74 Tuesday, September 28	Wednesday, September 22	Thursday, September 23
75 Friday, October 1	Monday, September 27	Tuesday, September 28
76 Tuesday, October 5	Wednesday, September 29	Thursday, September 30
77 Friday, October 8	Monday, October 4	Tuesday, October 5
Tuesday, October 12	THIRD QUARTERLY INDEX	
78 Friday, October 15	Monday, October 11	Tuesday, October 12
79 Tuesday, October 19	Wednesday, October 13	Thursday, October 14
80 Friday, October 22	Monday, October 18	Tuesday, October 19
81 Tuesday, October 26	Wednesday, October 20	Thursday, October 21
82 Friday, October 29	Monday, October 25	Tuesday, October 26
83 Tuesday, November 2	Wednesday, October 27	Thursday, October 28
Friday, November 5	NO ISSUE PUBLISHED	
84 Tuesday, November 9	Wednesday, November 3	Thursday, November 4
85 Friday, November 12	Monday, November 8	Tuesday, November 9
86 Tuesday, November 16	Wednesday, November 10	Thursday, November 11
87 Friday, November 19	Monday, November 15	Tuesday, November 16
88 Tuesday, November 23	Wednesday, November 17	Thursday, November 18
89 Friday, November 26	Monday, November 22	Tuesday, November 23
Tuesday, November 30	NO ISSUE PUBLISHED	
90 Friday, December 3	Monday, November 29	Tuesday, November 30
91 Tuesday, December 7	Wednesday, December 1	Thursday, December 2
92 Friday, December 10	Monday, December 6	Tuesday, December 7
93 Tuesday, December 14	Wednesday, December 8	Thursday, December 9
94 Friday, December 17	Monday, December 13	Tuesday, December 14
95 Tuesday, December 21	Wednesday, December 15	Thursday, December 16
96 Friday, December 24	Monday, December 20	Tuesday, December 21
Tuesday, December 28	NO ISSUE PUBLISHED	

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