

Texas Register

Volume 18, Number 41, May 28, 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Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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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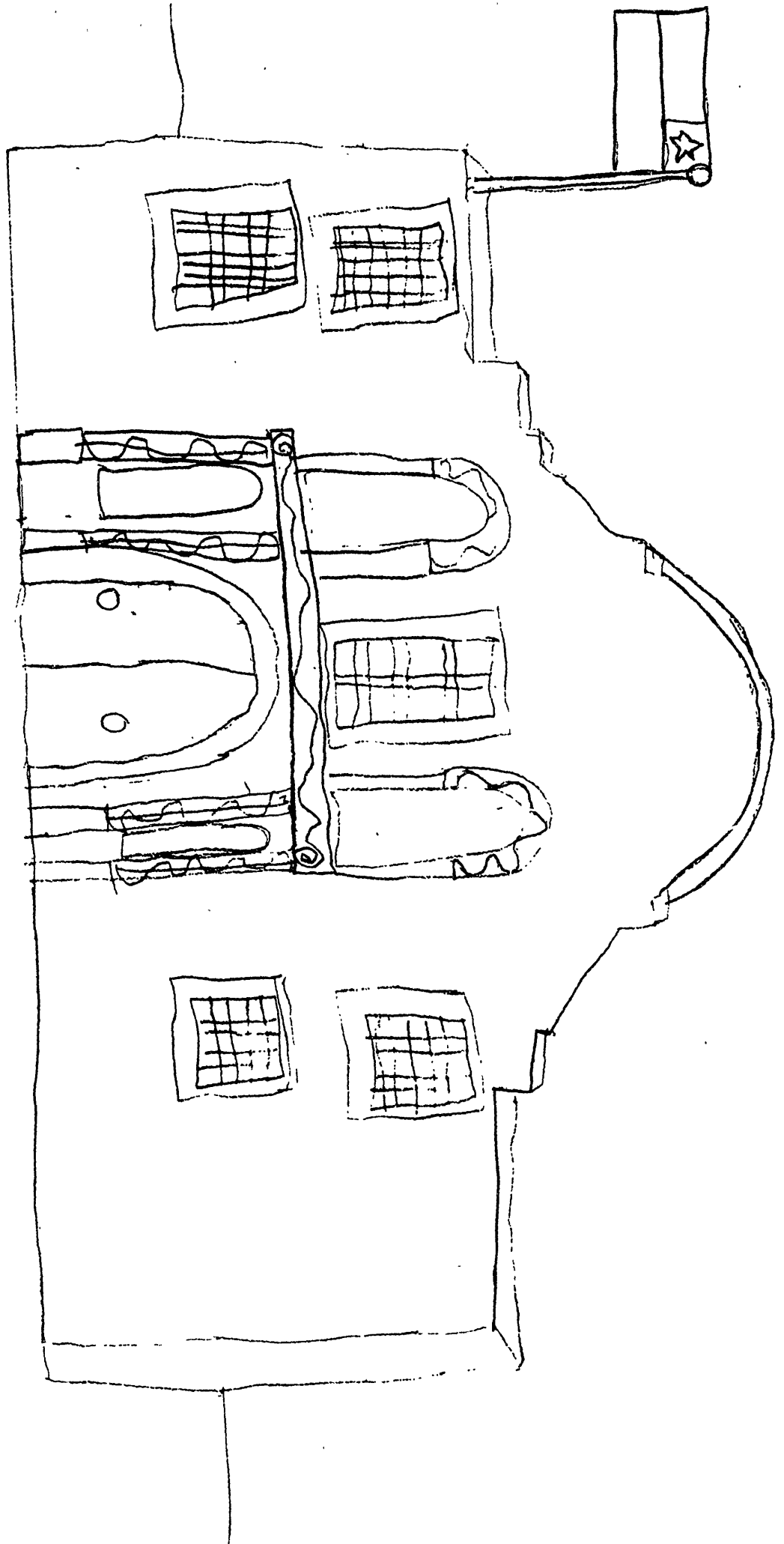
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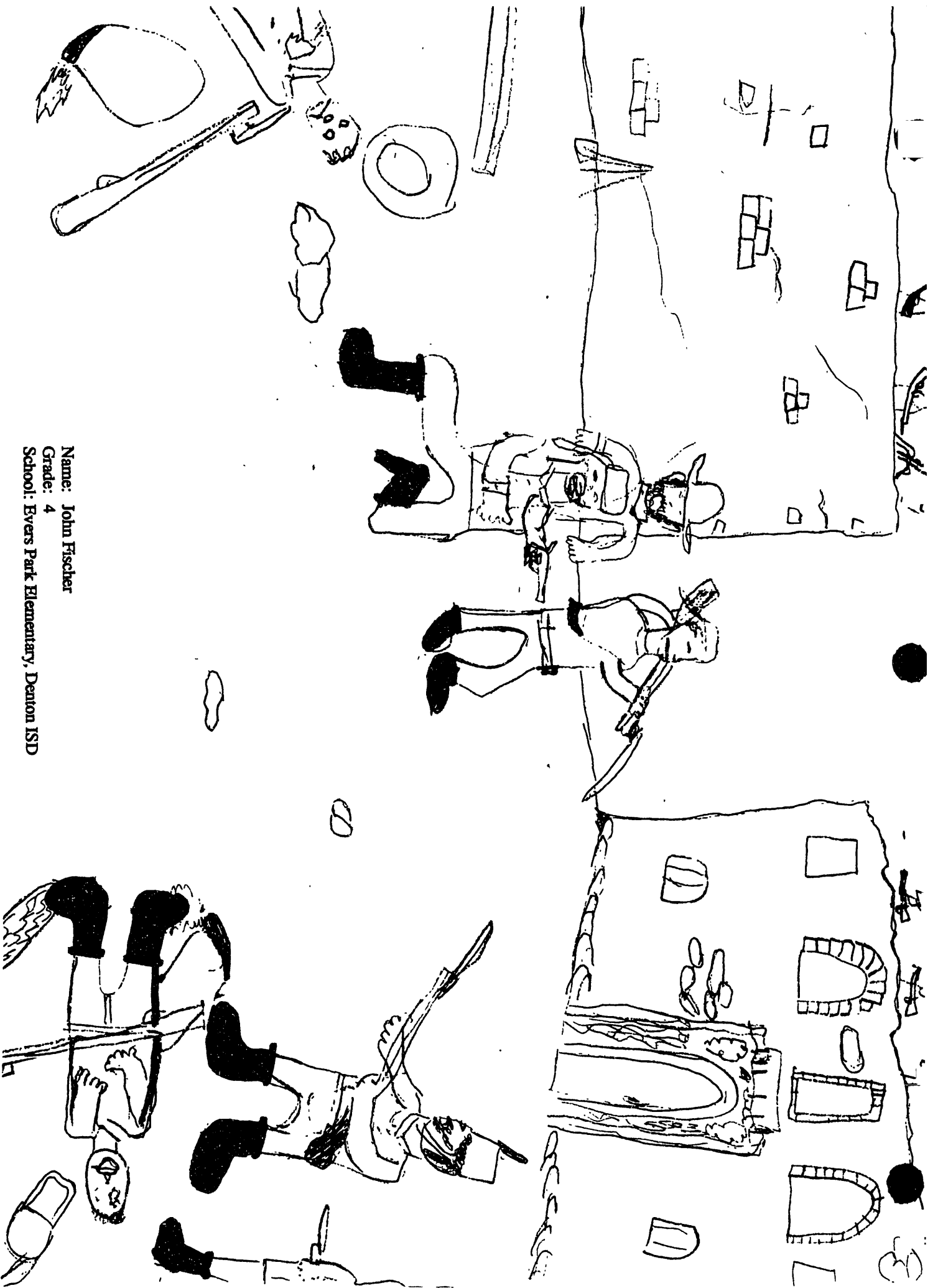
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Name: Davis Green
Grade: 4
School: Evers Park Elementary, Denton ISD



Name: John Fischer

Grade: 4

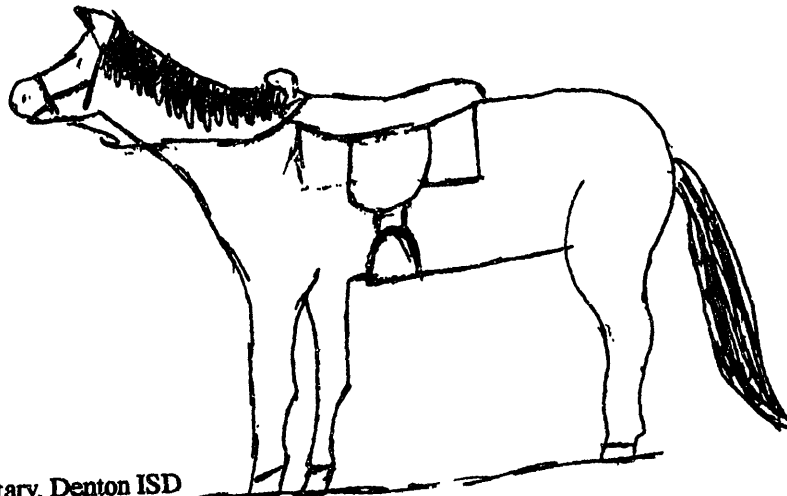
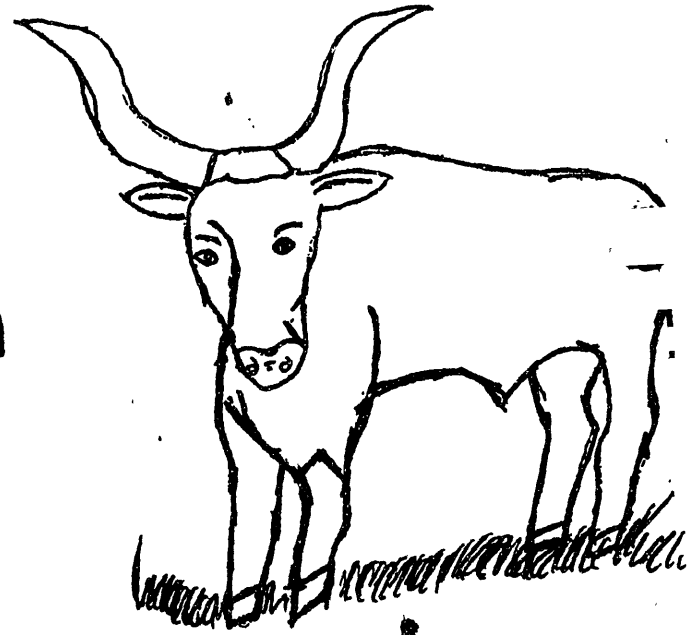
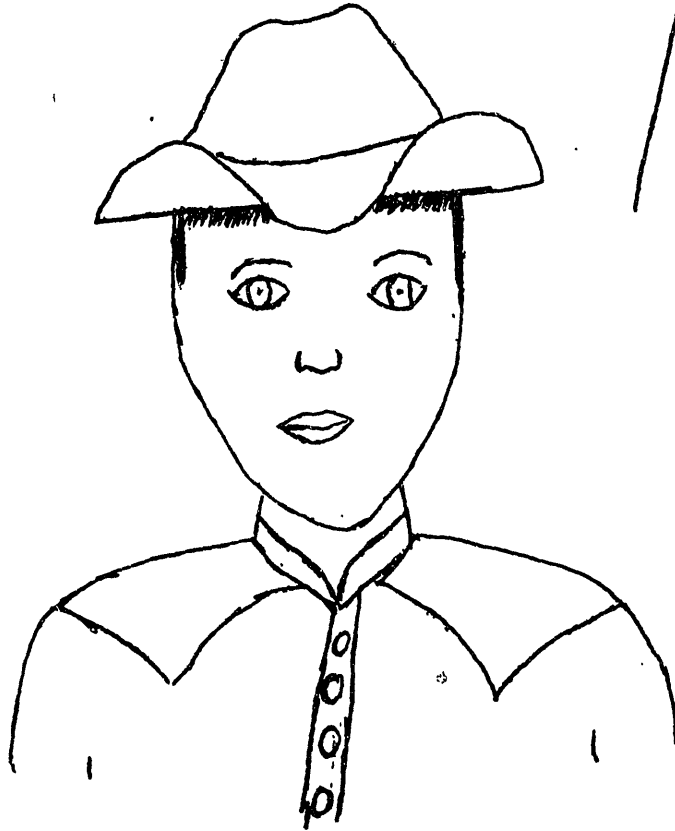
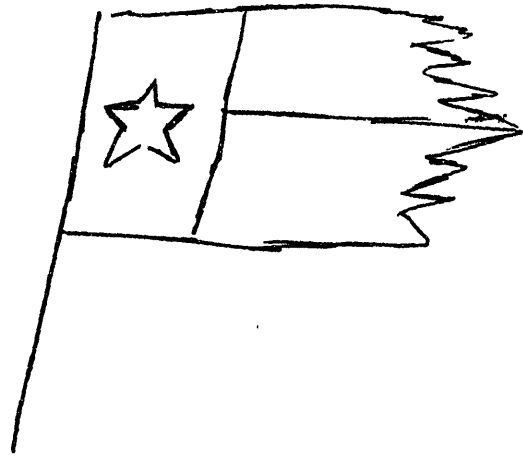
School: Evers Park Elementary, Denton ISD

EVANS
Longhorn



Name: Collin Skipper
Grade: 4
School: Evers Park Elementary, Denton ISD

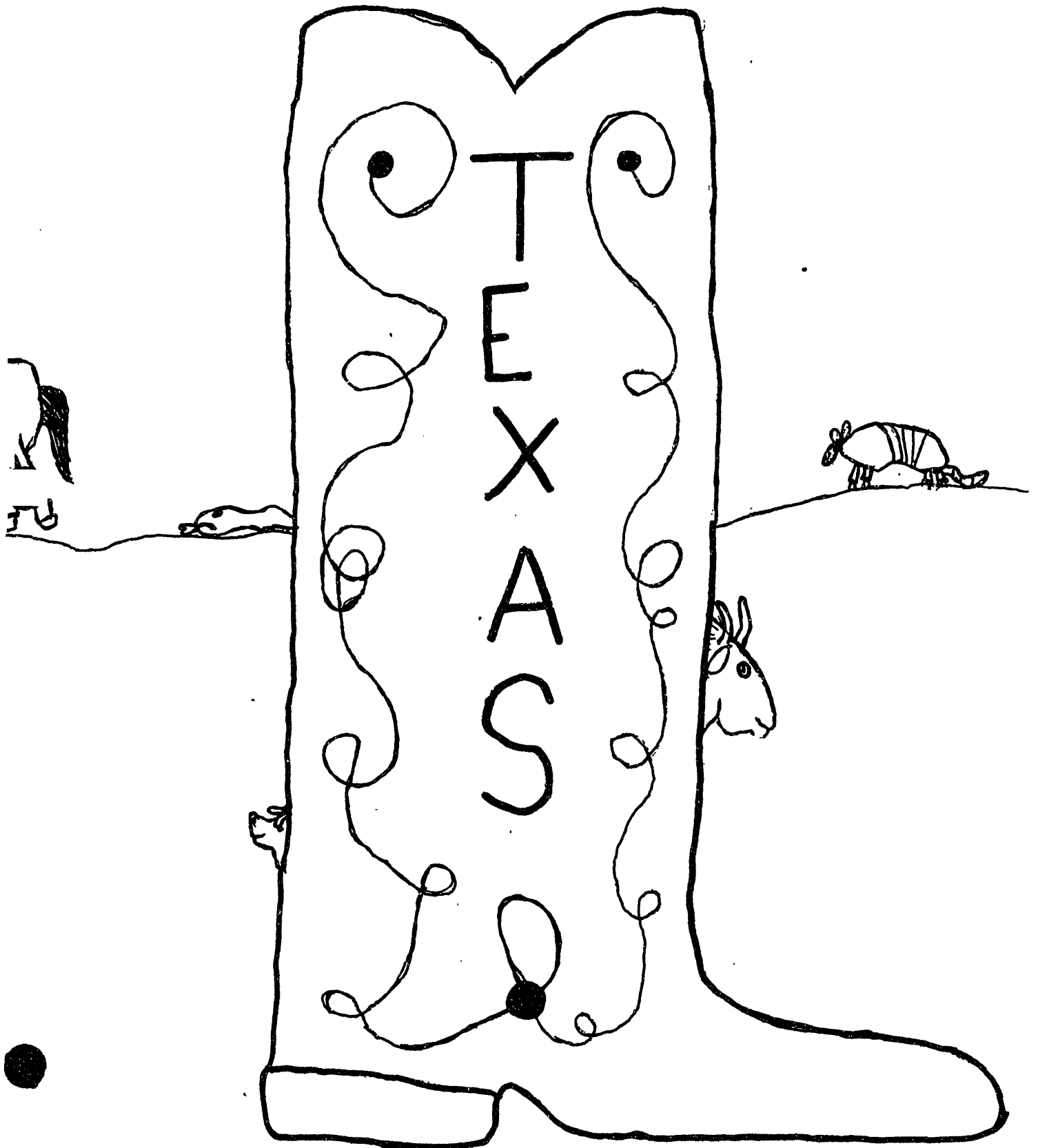
Texas



Name: Mary Kniatt
Grade: 4
School: Evers Park Elementary, Denton ISD

Star

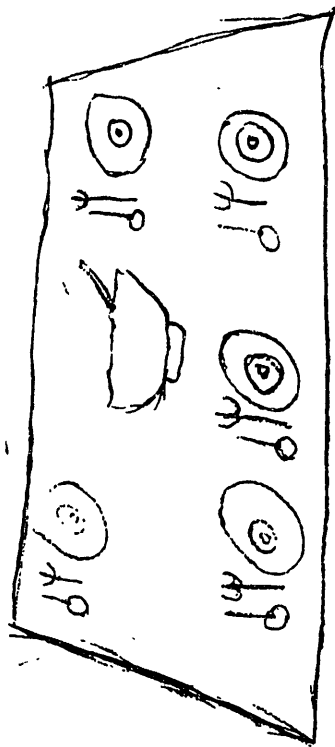
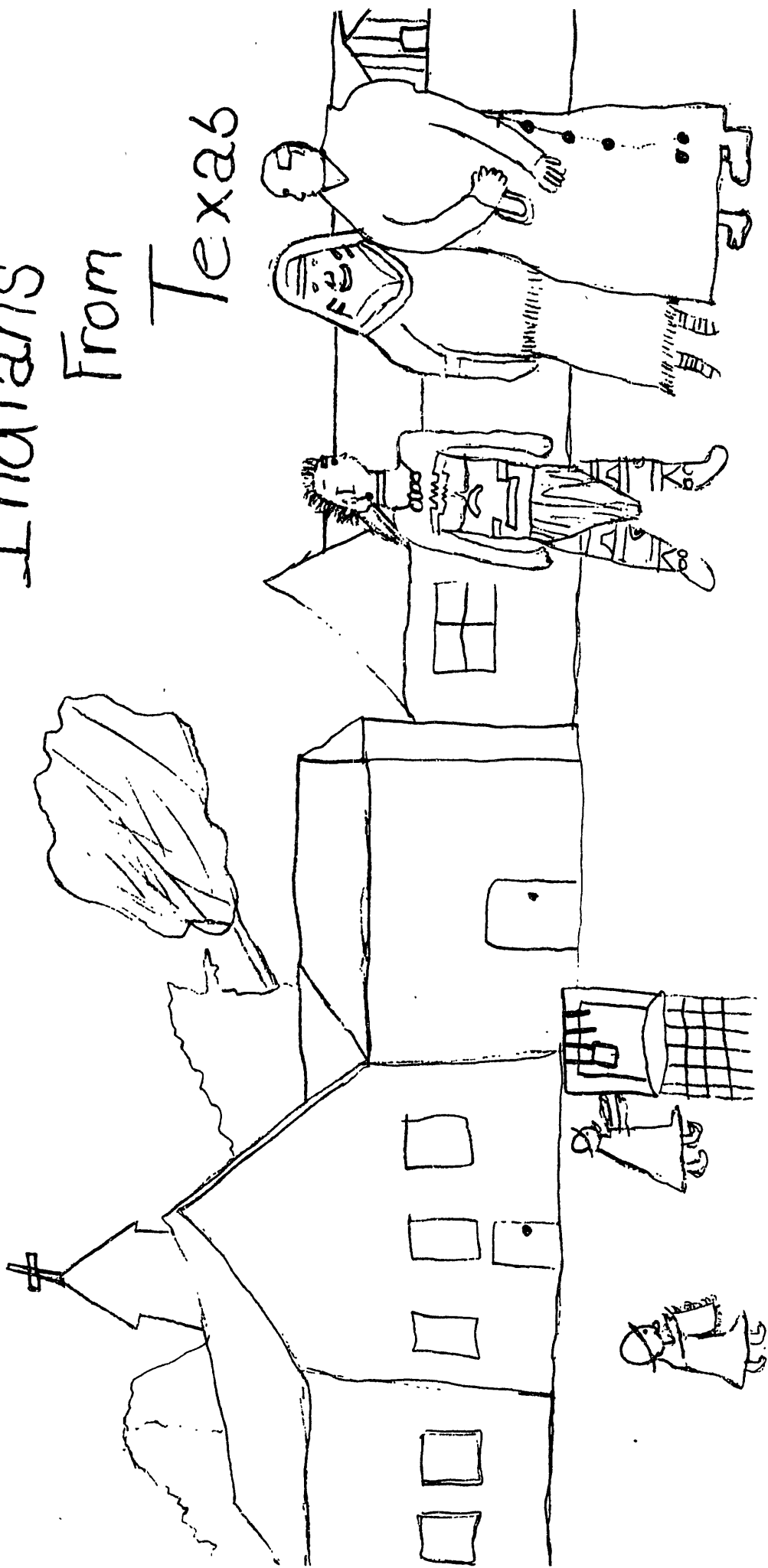
Name: Mandy Eastup
Grade: 4
School: Evers Park Elementary, Denton ISD



Indians

From

Texas



Name: Bridgett Martinez

Grade: 4

Attorney General

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

Letter Opinions

LO-93-24 (ID#-16797). Request from Sandra Waters, Chair, State Committee of Examiners for Speech-Language Pathology and Audiology, Austin, concerning whether a teacher performing an internship under the Education Code, §13.0321, to obtain an additional certification in speech and hearing therapy is violating Texas Civil Statutes, Article 4512j.

Summary of Opinion. Certification in speech and hearing therapy is not certification to teach at a grade level or in a subject area. Therefore, certified teachers cannot seek additional certification in speech and hearing therapy under the Education Code, §13.0321.

TRD-9323315

LO-93-25 (ID#-17927). Request from H. Bate Bond, Comal County Auditor, New Braunfels, concerning what districts the county auditor is required to audit under the Local Government Code, §115.0035.

Summary of Opinion. The "district" to which the Local Government Code, §115.0035, applies is the judicial district or districts in which the county in question is located.

TRD-9323316

LO-93-26 (RQ-447). Request from Fred S. Brinkley, Jr., R.Ph., Executive Director/Secretary, Texas State Board of Pharmacy, Austin, concerning whether certain revenues that the State Board of Pharmacy collects are subject to consolidation under Chapter 403 of the Government Code.

Summary of Opinion. For purposes of Chapter 403 of the Government Code, revenues the State Board of Pharmacy generates from sources other than fines are deposited into a fund outside the state treasury. Section 403.094 and §403.095 of the Government Code therefore do not apply to the State Board of Pharmacy's fund.

TRD-9323317

LO-93-27 (ID#-19167). Request from John Whitmire, Chairman, Criminal Justice Committee, Texas State Senate, Austin, concerning whether a policy officer em-

ployed by the City of Houston may simultaneously serve as a paid city commissioner in the City of Galena Park.

Summary of Opinion. A municipal police officer is not as a matter of law prohibited from serving as an elected commissioner of another city in the same county.

TRD-9323318

LO-93-28 (ID#-17647). Request from Eddie G. Shell, Burnet County Attorney, Burnet, concerning the authority to pronounce death and the requisites of a death certificate.

Summary of Opinion. The Health and Safety Code, §671.001(d), authorizes a registered nurse to pronounce a patient dead if the licensed health care facility that employs the nurse has enacted written policies permitting a registered nurse to do so. However, the Health and Safety Code, §193.004(a), authorizes only that physician last in attendance on the decedent to provide the required medical certification if the death occurred with medical attendance. Neither a registered nurse nor a justice of the peace is authorized to provide the required medical certification.

TRD-9323319

LO-93-29 (ID#-18204). Request from David J. Freeman, Executive Secretary, Texas Racing Commission, Austin, concerning whether an individual who was unassociated with a racetrack licensee at the time the racetrack was licensed or was operating may request reinstatement of the racetrack license under the Texas Racing Act, Texas Civil Statutes, Article 179e, §6.19.

Summary of Opinion. It is not unreasonable to read the Texas Racing Act, Texas Civil Statutes, Article 179e, §6.19, to require the Texas Racing Commission to investigate any individual who requests reinstatement of a racetrack license under §6.19 and who was unassociated with a racetrack licensee at the time the racetrack was licensed or was operating.

TRD-9323320

LO-93-30 (RQ-359). Request from Jim Mapel, Criminal District Attorney, Brazoria County Courthouse, Angleton, concerning

whether a home-rule city may adopt a nepotism rule that is more restrictive than state law.

Summary of Opinion. A home-rule city may adopt a nepotism policy that is more restrictive than §1(a) of the state nepotism law, Texas Civil Statutes, Article 5996a.

TRD-9323321

Opinions

DM-210 (RQ-207). Request from Fred Toler, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, Austin, concerning construction of the Government Code, §415.058, addressing the effect of a felony conviction on the licensure of a law enforcement officer.

Summary of Opinion. Under the Government Code, §415.058, a person is disqualified from serving as an officer or county jailer if the person is convicted of a felony. Such a person is once again qualified to hold a license to serve as an officer or county jailer if the person subsequently is pardoned expressly for proof of innocence, if the person subsequently is acquitted in a court of law, or if a court sets aside or dismisses the conviction.

If a person is convicted of a felony, that person is disqualified to serve as an officer or county jailer even though he or she is appealing the decision. If the person succeeds on the appeal, however, and the court subsequently acquits the person or sets aside the person's conviction, the person is once again qualified to serve as an officer or county jailer.

TRD-9323322

DM-211 (RQ-230). Request from David J. Freeman, Executive Secretary, Texas Racing Commission, Austin, concerning the authority of the Texas Racing Commission pursuant to §6.09 and §10.05 of the Texas Racing Act, Texas Civil Statutes, Article 179e, to receive and regulate the use of breakage generated by pari-mutuel wagering on greyhounds.

Summary of Opinion. The Texas Racing Act, Texas Civil Statutes, Article 179e, §6.09(d), requires all of the breakage allo-

cated by that section, that is, the 50% of the breakage generated by pari-mutuel wagering on greyhound races, to be paid first to the Texas Racing Commission. That section also dedicates one-half of the 50%, or 25%, to stakes races. The Texas Racing Commission is authorized by §6.09(d) to adopt rules regulating all breakage allocated by §6.09(d), including the 25% set aside for stakes races. However, in accordance with §10.04 and §10.05 of the act, the Texas Greyhound Association may propose rules for the use of breakage it receives under the act, but those rules are subject to approval by the Texas Racing Commission.

TRD-9323323

DM-212 (RQ-427). Request from Tracey Bright, County Attorney, Ector County Courthouse, Odessa, concerning whether a school district may contract with off-duty police officers and deputy sheriffs for security services, and related questions.

Summary of Opinion. Article XVI, §40, does not as a matter of law prohibit city police officers and sheriff's deputies from serving as part-time security officers for a school district. City police officers, sheriff's deputies, and school-district security officers do not hold "civil officers" as a matter of law as that term is used in Article XVI, §40. Previous attorney general's opinions concluding to the contrary are overruled. We cannot determine, however, whether Article XVI, §40, prohibits any particular police officer or sheriff's deputy from serving as a security officer for a school district. Determining whether a particular city police officer, sheriff's deputy, or school-district security officer hold a civil office raises questions of fact, which cannot be addressed in the opinion process.

TRD-9323324

DM-213 (RQ-231). Request from James W. Carr, Lavaca County Attorney, Hallettsville, concerning whether a commissioners court may limit the number of monthly supplemental workers' compensation payments to county employees already receiving such payments.

Summary of Opinion. The Commissioners Court of Lavaca County may not reduce the number or amount of supplemental compensation payments made to a county employee injured prior to January 1, 1991, pursuant to a policy that obligates the county to pay, for the period the employee receives workers' compensation benefits, the difference between workers' compensation benefits and the employee's regular wages or salary.

TRD-9323325

DM-214 (RQ-476). Request from David R. Smith, M.D., Commissioner of Health, Texas Department of Health, Austin, con-

cerning impact of "leave without pay" provisions of the General Appropriations Act on the Workers' Compensation Act, Texas Civil Statutes, Article 8307c.

Summary of Opinion. A state agency is not required to terminate an employee simply because that employee has been on unpaid leave in connection with a work-related injury for more than 12 months. The General Appropriations Act does not conflict with the Workers' Compensation Act. Rather, the appropriations act exempts employees on leave for work-related injuries from the 12-month limit. In addition, we believe the appropriations act permits agency heads to grant exceptions to the 12-month limit for employees on unpaid leave in connection with work-related injuries.

TRD-9323326

DM-215 (RQ-353). Request from O. H. "Ike" Harris, Chairman, Jurisprudence Committee, Texas State Senate, Austin, concerning interpretation of the Insurance Code, Article 21.24-1, §4(c), relating to assignment of health insurance benefits and waiver of deductibles or copayments.

Summary of Opinion. The Insurance Code, Article 21.24-1, §4(c), clarifies that a health care provider who accepts an assignment of benefits is not relieved of any obligations regarding billing for or collecting a copayment or deductible. What a health care provider must do to satisfy any contractual obligations in this regard is not addressed by §4 and is beyond the scope of this opinion. We caution, however, that a health care provider would be ill advised to represent to a client or prospective client that a deductible or copayment will be waived in order to induce that individual to use the health care provider's services.

TRD-9323327

Requests for Opinions

(RQ-525). Request from Honorable O. H. "Ike" Harris, Chair, Committee on State Affairs, Texas State Senate, P.O. Box 12068, Austin, concerning the number of vacation days for fire fighters and police officers in cities or more than 30,000.

(RQ-526). Request from Honorable Fred Hill, Chair, House Committee on Urban Affairs, Texas House of Representatives, P.O. Box 2910, Austin, concerning whether a home-rule city may adopt an ordinance that prohibits random drug testing by private employers within the city.

(RQ-527). Request from Nancy F. Braswell, Smith County Auditor, 100 North Broadway, Room 107, Courthouse, Tyler,

concerning whether a non-English-speaking party to a civil suit has a right to have an interpreter appointed and paid from county funds.

(RQ-528). Request from Honorable Luis V. Saenz, Cameron County District Attorney, Cameron County Courthouse, 974 East Harrison Street, Brownsville, concerning whether the 15% penalty authorized by the Tax Code, §33.07, is applicable to installment agreements entered into prior to July 1 of the year in which the taxes became delinquent, and related questions.

(RQ-529). Request from Rita Horwitz, Executive Director, State Pension Review Board, P.O. Box 13498, Austin, concerning whether a board of trustees of a public retirement system may meet in executive session to consider eligibility for disability retirement benefits.

(RQ-530). Request from Honorable Tracy Bright, Ector County Attorney, Ector County Courthouse, Room 201, Odessa, concerning whether a school district may, without violating the competitive bidding statutes, act as its own "general contractor" in letting bids for renovation and remodeling projects.

(RQ-531). Request from Honorable David Aiken, San Patricio County Attorney, San Patricio County Courthouse, Room 102, Sinton, concerning procedure for dissolution of a hospital district, and related questions.

(RQ-532). Request from Honorable Fred Hill, Chair, Committee on Urban Affairs, Texas House of Representatives, P.O. Box 2910, concerning reinstatement of a police officer by a city subject to Chapter 143, Local Government Code, which provides for municipal civil service, and related questions.

(RQ-533). Requested from Todd K. Brown, Executive Director, Texas Workers' Compensation Commission, 4000 South IH-35, Austin, concerning constitutionality of that portion of the Workers' Compensation Act, Article 8308, *et seq.*, which requires a political subdivision to pay death benefits to the Subsequent Injury Fund.

(RQ-534). Request from Honorable Mike Driscoll, Harris County Attorney, 1001 Preston, Suite 634, Houston, concerning whether a county may sell impounded animals to a research facility without complying with the "5-day holding period" required by the federal Pet Protection Act, and related questions.

TRD-9323314

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.

Texas Ethics Commission Opinions

AOR-177. The Texas Ethics Commission has been asked whether the Texas Commission on the Arts is a "regulatory agency" for purposes of the revolving door prohibitions set out in Texas Civil Statutes, Article 6252-9b, §7A.

AOR-178. The Texas Ethics Commission has been asked to consider whether a professional association may hire a legislator as a staff person, and, if so, whether certain job duties may be assigned to the legislator.

AOR-179. The Texas Ethics Commission has been asked to consider whether a legislator may contract to collect delinquent taxes on behalf of a political subdivision.

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: (1) Texas Civil Statutes, Article 6252-9b; (2) Chapter 302, Government Code; (1) Chapter 305, Government Code; (3) Title 15, Election Code; (5) Chapter 36, Penal Code; and (6) Chapter 39, Penal Code.

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

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

TRD-9323343 Sarah Woelk
Director, Advisory Opinions
Texas Ethics Commission

Filed: May 24, 1993

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



TEXANS IN THE OLD DAYS



Name: Lindsey MacIntyre
Grade: 4
School: Evers Park Elementary, Deaton ISD

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 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Customer Service and Protection

• 16 TAC §23.56

The Public Utility Commission of Texas proposes an amendment to §23.56, concerning the components of the dual-party relay service. The section provides for the establishment of a statewide telecommunications dual-party relay service (DPRS), allowing for telephone communication through the use of relay operators between people who are deaf, hard-of-hearing, deaf-blind, and speech-disabled and those who can hear and speak. One purpose of the amendment is to require the state certified DPRS carrier to offer the carrier of choice option, in conformity with federal regulations mandated by the Americans with Disabilities Act of 1990 (ADA), Title IV. The carrier of choice option allows the user to choose an interexchange carrier for long distance calls made through the DPRS. The proposed section also requires the DPRS to meet the mandatory minimum standards established by the FCC. Additionally, the proposed section requires the state certified DPRS carrier to provide interstate service. Funding for interstate service through the Texas Universal Service Fund will be discontinued as of July 26, 1993, so that this service may be funded with federal funds through the shared-funding mechanism as required by the FCC. Under this plan, state certified DPRS programs will be eligible for settlements under the shared-funding mechanism.

Suzi Ray, assistant general counsel, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Ray also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be the ability for users of the relay service to place all types of calls by simply dialing the Relay Texas access number, and the ability for relay service users to choose an interexchange carrier for long distance calls made through the relay service. There will be no effect on small businesses as a result of enforcing this rule. There is no

anticipated economic cost to persons who are required to comply with the rule as proposed.

Ms. Ray also has determined that for each of the first five years the rule is in effect there will be no impact on employment in the geographical areas affected by implementing the requirements of the rule.

Comments on the proposed amendment (13 copies) may be submitted to John M. Renfrow, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication. Comments should refer to Project Number 11991.

The amendment is proposed under Texas Civil Statutes, Article 1446c, §16(a) and 96A, which provide the Public Utility Commission of Texas with the authority to make and enforce rules establishing a statewide telecommunications relay access service for persons who are hearing- and speech-impaired. This amendment is intended to conform §23.56 with federal regulations mandated by the Americans with Disabilities Act of 1990, Title IV, Public Law Numbers 101-336, 104 Statutes at Large 327, 366-69. See 47 United States Code, §225 (1990). See also 47 Code of Federal Regulations, §§64. 601-605 (1991).

§23.56. *Statewide Dual-Party Relay Service.*

(a) (No change.)

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

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

(7) Carrier of Choice—An option that allows the user to choose an interexchange carrier for long distance calls made through the dual-party relay service.

(8) Mandatory Minimum Standards—The standards established by the Federal Communications Commission, outlining basic mandatory telecommunications relay services.

(c) (No change.)

(d) Dual-party relay service. The dual-party relay service shall provide the hearing-impaired and speech-impaired with access to the telecommunications network in Texas equal to that provided other customers.

[(1) Implementation date. The dual-party relay service shall begin on or before September 1, 1990.]

(1)[(2)] Components of the dual-party relay service. The dual-party relay service shall meet the mandatory minimum standards defined in subsection (b)(8) of this section and shall consist of the following:

(A)-(J) (No change.)

(K) capability of providing both inbound and outbound intrastate and interstate service; [interstate service, to begin on or before May 1, 1992, except as provided in paragraph (3) of this subsection; and]

(L) capability for carrier of choice; and

(M)[(L)] other service enhancements proposed by the relay service carrier and approved by the commission.

(2) Conditions for Interstate Service, and Carrier of Choice Feature.

(A) The cost of providing interstate service will be reimbursed through the Universal Service Fund until July 26, 1993. On and after July 26, 1993, the relay service carrier will not be reimbursed for the cost of providing the interstate portion of the service from the Universal Service Fund. Funding for interstate service will come from the interstate jurisdiction as mandated by the Federal Communications Commission.

(B) Carrier of Choice must be implemented on or before July 26, 1993.

(C) Separate funds and records shall be maintained for the intrastate and interstate portions of the service.

[(3) Scope of the dual-party relay service. The interstate service capability set forth in paragraph (2)(K) of this subsection.]

tion shall be required as a component of the dual-party relay service only while reimbursement through the Universal Service Fund is allowed for interstate service. The cost of providing interstate service will be reimbursed through the Universal Service Fund until the earlier of July 26, 1993, or the time when the hearing-impaired or speech-impaired in Texas are provided interstate service through a service other than the statewide dual-party relay service. However, if federal funding is made available to the Universal Service Fund for the purpose of funding the interstate service, the dual-party relay service may continue to provide interstate service after July 26, 1993. Separate funds and records therefore shall be maintained for the intrastate and interstate portions of the service.]

(3)[(4)] Rates and charges. The following rates and charges shall apply to the dual-party relay service.

(A) (No change.)

(B) Intrastate long distance calls. The relay service carrier shall discount its tariffed intrastate rates by 50% for users of the dual-party relay service. [The rates for intrastate interexchange service provided to users of the dual-party relay service shall be set by contract between the Commission and the relay service carrier. The calling or the called party shall bear one-half of the total charges established by this contract.]

[(C) Interstate long distance charges. The rates for interstate service provided to users of the dual-party relay service shall be set by contract between the Commission and the relay service carrier. The calling or called party shall bear one-half of the total charges established by this contract.]

(C)[(D)] Access charges. Local exchange carriers shall not impose access charges on calls that make use of this service and which originate and terminate within the same toll-free local calling scope.

(D)[(E)] Billing and collection services. Upon request by the relay service carrier, local exchange carriers shall provide billing and collection services in support of this service at just and reasonable rates.

(e)-(f) (No change.)

(g) Recovery of costs through the Universal Service Fund.

(1) The relay service carrier will be reimbursed from the Universal Service Fund for the costs of the service that are not

paid by the calling or the called party; except the relay service carrier will not be reimbursed for the 50% discount set forth in subsection (d)(3)(B) of this section. These costs may include a return on the investment required to provide the service and the cost of unbillable and uncollectible calls placed through the service, provided that the cost of unbillable and uncollectible calls shall be subject to a reasonable limitation as determined by the Commission, based on recommendations made by Commission staff after reviewing such costs that are submitted for reimbursement. The relay service carrier shall submit a monthly report to the Commission justifying its claims for reimbursement under the contract. Upon approval by the Commission, the Universal Service Fund Administrator as defined by §23.53(c)(1)(A) of this title (relating to Universal Service Fund) shall make a disbursement in the approved amount.

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

[(4) Expenses incurred for the implementation and provision of interstate relay service, as provided in subsection (d)(2)(K) of this section, may not be submitted prior to the May 1992 report due date established by the Administrator.]

(h) Universal Service Fund Assessment.

(1) Cost of Intrastate service. The cost of the intrastate portion of the service is the sum of:

[(A) The cost of the intrastate portion of the service is the sum of:]

(A)[(i)] any separately identifiable start-up expenses incurred in the implementation of the intrastate portion of the service;

(B)[(ii)] the amount paid to the relay carrier for the provision of intrastate calls based on the contracted rate per minute of service;

(C) the expenses associated with dual-party relay service incurred by the Commission;

[(iii)] an allocated portion of the expenses incurred by the Commission based on the ratio of intrastate calls to total calls, such ratio to be calculated annually at the same time that the Commission reviews the assessment percentages;]

(D)[(iv)] the expenses associated with dual-party relay service incurred by the Administrator on behalf of the Commission; [for the provision of the intrastate portion of the service]; and

(E)[(v)] any amount established as a reserve for such contingencies as late payments and uncollectibles.

[(B) The cost of the interstate portion of the service is the sum of:

[(i)] any separately identifiable start-up expenses incurred in the implementation of the interstate portion of the service;

[(ii)] the amount paid to the relay carrier for the provision of interstate calls based on the contracted rate per minute of service;

[(iii)] an allocated portion of the expenses incurred by the Commission based on the ratio of interstate calls to total calls, such ratio to be calculated annually at the same time that the Commission reviews the assessment percentages;

[(iv)] the expenses incurred by the Administrator on behalf of the Commission for the provision of the interstate portion of the service; and

[(v)] any amount established as a reserve for such contingencies as late payments and uncollectibles.]

(2) (No change.)

[(3) Funding for the interstate portion of the service. One hundred percent of the cost of the interstate portion of the service shall be assessed to other telecommunications utilities.]

(3)[(4)] Division of LEC Assessment among LECs.

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

(4)[(5)] Division of Other Telecommunications Utilities' Intrastate Assessment among Other Telecommunications Utilities.

(A)-(D) (No change.)

[(6) Division of Other Telecommunications Utilities' Interstate Assessment among Other Telecommunications Utilities.

[(A) The Administrator shall establish an interstate assessment rate to apply to other telecommunications utilities. This rate shall be calculated by dividing the cost assessed to other telecommunications utilities as set forth in paragraph (3) of this subsection for the current period by the total interstate local switching access minutes of use (MOU) as set forth in subparagraph (C) of this paragraph for the current period.

[(B) Interstate local switching access MOU are all minutes for which

telecommunications utilities are billed the local switching rate element (e.g. LS1, LS2) from the LEC's interstate access service tariff. These minutes shall include sent paid, sent collect, and originating 800 service. For services not billed the local switching rate element, interstate local switching access MOU will be the assumed MOU as defined in the LEC's interstate access service tariff multiplied by the number of interstate voice grade equivalents billed to that telecommunications utility.

[(C) The interstate assessment to each other telecommunications utility shall be the amount of that utility's interstate access MOU multiplied by the interstate assessment rate for the period.

[(D) LECs shall submit monthly reports to the Administrator showing interstate local switching access MOU for other telecommunications utilities.]

(i)-(m) (No change.)

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

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

TRD-9323308

John Renfrow
Secretary of the
Commission
Public Utility Commission
of Texas

Earliest possible date of adoption: June 28, 1993

For further information, please call: (512) 458-0100

Title 28. INSURANCE Part I. Texas Department of Insurance

Chapter 1. General Administration

Subchapter A. Rules of Prac- tice and Procedure

• 28 TAC §1.87, §1.88

The State Board of Insurance of the Texas Department of Insurance proposes new §1.87 and §1.88, concerning entry of appearance and filing of exceptions in contested cases. Appearance and filing 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 §1.87 and §1.88 define the time periods for entering an appearance and for filing briefs, exceptions, and replies to proposed decisions in contested cases. Texas Civil Statutes, Article 6252-13a§14(r), provides for the entitlement to assistance of counsel in contested cases, and proposed §1.87 is intended to inform all parties and the

Hearings Officer of any party or representative for a party that is expected to appear in the contested case. Texas Revised Civil Statutes, Article 6252-13a, §15, provides for the right of parties to a contested case to file briefs or exceptions to a proposal for decision in a contested case and replies to any such briefs or exceptions. Proposed §1.88 provides timeframes in which a party must file any briefs, exceptions, or replies, which may be modified by the Hearings Officer upon a showing of good cause.

Kimberly L. Kiplin, director of legal services, Texas Department of Insurance, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government resulting from implementation or utilization of the proposed rules.

Ms. Kiplin also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules are increased administrative efficiency. All parties involved in contested cases should benefit from streamlined litigation, clarification of parties, 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 affect on small businesses.

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. Request for a public hearing on this proposal should be submitted separately to the Chief Clerk Office.

The new rules 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.

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

§1.88. Briefs, Exceptions, and Replies Related to a Proposal for Decision. Briefs or exceptions to a proposal for decision issued in a contested case must be filed within ten working days from the date of the proposed order. Replies to the briefs or exceptions must be filed within seven working days from the date upon which the briefs or exceptions upon which the reply is based was filed. Filing dates provided in this section may be modified by the Hearings Officer upon a showing of good cause, or upon agreement by the parties. Copies of briefs, exceptions and replies filed pursuant to this section shall be served on all opposing parties upon the day of filing.

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 at Austin, Texas, on May 21, 1993.

TRD-9323309

Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of
Insurance

Earliest possible date of adoption: June 28, 1993

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

Part II. Texas Workers' Compensation Commission

Chapter 56. Structured Compromise Settlement Agreements

• 28 TAC §56.55

The executive director of the Texas Workers' Compensation Commission proposes an amendment to §56.55, concerning requirements for an annuity company. This amendment is intended to lower the requirements for the company that writes annuities for workers' compensation claims to allow more companies to compete and to provide lower cost alternatives for insurance companies than currently exist. This proposed amendment takes advantage of the fact that the companies offering annuities are guaranteed by an association. The beneficiary of the annuity will be protected by: the financial strength of the insurance company writing the annuity; the original insurance company that purchased the annuity since that company remains liable for benefits; and the strength of the guaranty association.

Janet Charness, Chief of Budget, has determined that for the first five years this amended section is enforced or administered there will be fiscal implications.

There will be no added costs to the state or local governments as a result of this amendment. There will be potential savings as a result of purchasing lower cost annuities, however, since this only applies to claims subject to the law in effect prior to January 1,

1991, those savings will not be likely to grow or apply to larger numbers of claims than are currently being paid through annuities.

Other than potential cost savings, this amendment should have no effect on large businesses.

The public benefit anticipated as a result of this amendment as proposed will be availability of a broader range of options for purchasing annuities and lower costs. While this would normally result in trading off limited availability and the costs of annuities from top rated companies against a higher risk of inability to pay, the added layer of protection offered by the guaranty association eliminates this risk.

There is no anticipated economic cost to persons who are required to comply with the section as amended.

Comments on the proposal may be submitted to Ken Forbes, Policy and Rules Administrator, Texas Workers' Compensation Commission, Southfield Building, 4000 South I-H 35, Austin, Texas 78704-7491.

Amendment of this section is proposed under Texas Civil Statutes, Article 8307-4(a), which provide the Workers' Compensation Commission, formerly the Industrial Accident Board, with the authority to adopt rules necessary to administer the workers' compensation laws and §17.12(b) of Senate Bill One, Second Called Session 1989, which delegates authority to the executive director to administer the workers' compensation laws in effect prior to the effective date of the Workers' Compensation Act.

§56.55. *Annuity Company.* An annuity company providing an annuity under the terms of a structured settlement must be authorized [licensed] to write annuities [do business] in Texas and must have a [Best's rating of A+, with a financial size category of: VII or above, according to the most recent information available]:

- (1) A.M. Best rating of B or better;
- (2) Dunn & Bradstreet rating of 3A1 or better;
- (3) Standard & Poor's rating of BBB or better;
- (4) Moody's rating of Baa or better;
- (5) Duff and Phelps rating of A or better; or
- (6) Minimum tangible net worth of \$5 million with a ratio of tangible net worth to long term debt of 1.5 to one or greater; and
- (7) be in good standing with the Texas Department of Insurance.

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

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

TRD-9323262

Susan Cory
General Counsel
Workers' Compensation
Commission

Proposed date of adoption: June 28, 1993

For further information, please call: (512) 440-3592

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 7. Administration of State Lottery Act

Subchapter D. Lottery Game Rules

• 34 TAC §7.304, §7.305

The Comptroller of Public Accounts proposes amendments to §7.304 and §7.305, concerning on-line game rules. The purpose of the new language is to provide specific game details and requirements for the addition of "Quick Pick" to the Texas Lottery's on-line game "Lotto Texas" such as method of number selection by a random number generator operated by the computer.

Tom Plaut, chief revenue estimator, has determined that for the first five-year period the rules are in effect there will be no significant revenue impact on the state or local government as a result of enforcing the rules.

Dr. Plaut also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be in allowing the comptroller to implement the lottery on-line game in a regulated and timely manner. These rules are adopted under the State Lottery Act, §2.02, and do not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the amendments may be submitted to Nora Linares, Director, Lottery Division, 111 East 17th Street, Austin, Texas 78701.

The amendments are proposed under the State Lottery Act, §2.02, which provides the comptroller with the authority to adopt all rules necessary to administer the State Lottery Act.

§7.304. *On-Line Game Rules (General).*

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

(1)-(11) (No change.)

(12) On-line game—A lottery game which utilizes a computer system to administer plays, the type of game, and amount of play for a specified drawing

date, and in which a player either selects a combination of numbers or allows number selection by a random number generator operated by the computer, referred to as Quick Pick [the type of game, the amount of play for a specified drawing date]. The lottery will conduct a drawing to determine the winning combination(s) in accordance with the rules of the specific game being played and the drawing procedures for the specific game.

(13)-(15) (No change.)

(16) On-line ticket—A computer-generated ticket issued to a player, by an on-line retailer, as a receipt for the combination of numbers a player has selected, and generated on an on-line terminal on official Texas Lottery paper stock by either selecting his or her own numbers or selecting Quick Pick, which is a random number generator operated by the computer [to a player as a receipt for the combination of numbers a player has selected]. That ticket shall be the only acceptable evidence of the combination of digits, numbers, or symbols selected. On-line tickets may be purchased only from on-line retailers.

(17)-(22) (No change.)

(23) Quick Pick—A play option that generates random numbers by the computer.

(24)[(23)] Roll-over—The amount not won (no matching combinations) or prize breakage from the previous drawing in a prize category. The amount not won will be carried forward for the next drawing for that specific prize category.

(25)[(24)] Shares—The total number of matching combinations within each prize category as determined for each drawing.

(26)[(25)] Sign-on slip—The receipt produced by the on-line terminal when the retailer signs on to the system.

(27)[(26)] Ticket bearer—The person who has signed the on-line ticket or who has possession of an unsigned ticket.

(28)[(27)] Valid ticket—Any ticket that meets all of the validation requirements of the Texas Lottery.

(29)[(28)] Validation—The process of determining whether an on-line ticket presented for payment is a winning ticket.

(30)[(29)] Validation number—The 16-digit number printed on the front of each on-line ticket which is used for validation.

(31)[(30)] Void ticket—Any ticket that is stolen, unissued, illegible, mutilated, altered, counterfeit in whole or part, misregistered, defective, incomplete, printed

or produced in error, multiply printed, or fails any of the Texas Lottery's confidential validation tests.

(32)(31) Winning combination—One or more digits, numbers, or symbols randomly selected by the lottery in a drawing which has been certified.

(b)-(h) (No change.)

§7.305. "Lotto Texas" On-Line Game Rule.

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

(d) Play for Lotto Texas.

(1) Type of play. A Lotto Texas player must select six numbers in each play or allow number selection by a random number generator operated by the computer, referred to as Quick Pick. A winning play is achieved only when three, four, five, or six of the numbers selected by the player match, in any order, the six winning numbers drawn by the lottery.

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

(e) (No change.)

(f) Ticket purchases.

(1) (No change.)

(2) Lotto tickets shall show the player's selection of numbers, or Quick Pick (QP) numbers, boards played, drawing date, and validation and reference numbers.

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

(g)-(h) (No change.)

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

Issued in Austin, Texas, on May 24, 1993.

TRD-9323337

Tres Lorton
Senior Legal Counsel
Comptroller of Public
Accounts

Earliest possible date of adoption: June 28, 1993

For further information, please call: (512) 463-4028

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 15. Medicaid Eligibility

Subchapter C. Basic Program Requirements

The Texas Department of Human Services (DHS) proposes amendments to §§15.310, 15.320, 15.600, 15.615, and 15.620; and new §§15.601, 15.603, 15.604, 15.607, 15.609, 15.611, 15.612, 15.617, 15.619,

15.621, and 15.623, concerning basic program requirements, and application and recertification for Medicaid. The purpose of the amendments, and new sections is to include additional policy and procedures regarding Medicaid eligibility. The application process has been expanded emphasizing that a client's eligibility for all appropriate programs must be tested before a denial is issued.

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the section will be that uniform application of procedures will occur statewide. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Judy Coker at (512) 450-3227 in DHS's Long-Term Care Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-017, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

• 40 TAC §15.310, §15.320

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

§15.310. Eligibility Requirements for Residents of Public Institutions.

(a) Except for patients in Title XIX medical facilities and certain individuals described in this section, individuals who are inmates and live in public institutions throughout the calendar month are not eligible for medical assistance.

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

(3) An individual who is placed in a Title XIX-contracted long-term care [nursing] facility (Medicare SNF, NF, or ICF-MR) after release from a jail, prison, reformatory, or other correctional or holding facility is not considered to be under the control of that institution if he does not have to return to it after release from the Title XIX-contracted long-term care [nursing] facility (Medicare SNF, NF, or ICF-MR). In these cases, an individual could be eligible for Medicaid if he meets all eligibility criteria.

(b) (No change.)

§15.320. Eligibility Requirements for Redetermination. A client's eligibility is redetermined

(1) when necessary because of previously obtained information indicating an anticipated change;

(2) within 10 workdays after receipt of a report indicating changes that may affect eligibility or applied income;

(3) within 30 workdays after receipt of a report indicating changes that affect neither eligibility nor applied income,

(4) at periodic intervals not to exceed 12 months; and

(5) at least every six months if income and/or incurred medical expenses are [is] averaged.;

[(6) at least every six months if the client has earned income; and

[(7) at least every six months if the clients countable resources are within \$100 of the resource limit.]

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

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

TRD-9323311

Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Human Services

Proposed date of adoption: August 1, 1993

For further information, please call: (512) 450-3765

Subchapter G. Application for Medicaid

• 40 TAC §§15.600, 15.615, 15.620

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

§15.600. Date of Application. The date of application for Title XIX (Medicaid) benefits is the date on which:

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

(3) local department office is notified that an SSI client living in a Title XIX-contracted long-term care [nursing] facility is denied SSI because his income exceeds the benefit rate [SSI-payment standard].

§15.615. Medical Care Identification [Card].

(a) Certification and recertification.

(1) When a client is certified or recertified for regular Medicaid benefits, the department promptly [immediately] issues a medical care identification [card] to provide proof of eligibility for these benefits. The first form [card] indicates Medicaid coverage from the most recent medical effective date through the end of the month of issuance (or the date of denial in the case of simultaneous open and close certifications for retroactive periods only).

(2) After certification, the department issues a new form [card] each month to serve as proof of current eligibility for as long as the client remains eligible for Medicaid. The department mails [times the mailing of] the forms [cards] so that clients receive the forms [cards] by the first day of the month for which they are effective.

(3) If a retroactive coverage for a client is certified, the department issues a separate medical identification form [card] reflecting eligibility for the retroactive coverage period. The department does not issue forms [cards] for clients with institutional coverage because Title XIX state institutions are responsible for all medical care for Medicaid-eligible residents. The department sends each state institution a monthly listing of all Medicaid clients currently shown on computer files as living in that facility.

(b) Medicaid verification letter. The department may issue a Medicaid verification letter to an eligible Medicaid client who lacks a form [card] if:

(1) the client is newly certified and has not received the initial form [card];

(2) the monthly form [card] has not been received after the first of the month;

(3) the current form [card] has been lost or destroyed; or

(4) the client is temporarily separated from the other eligible family members whose names appear on the form [card].

§15.620. Cases Placed on Hold.

(a) When a case is certified for Medicaid, situations may arise in which, by policy, the case cannot be denied but continued receipt of assistance is in question. In these situations, the department may place the case on hold. When the department does so, the client is not mailed a medical care identification form [card] and no benefits are paid for the hold period until the hold is released. All department-imposed holds place Medicaid benefits on hold effective

on the first of the next process month. Department field staff initiate a hold under either of the following circumstances:

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

(b) The department may initiate a hold when a medical care identification form [card] for an MAO or SSI case is returned as nondeliverable. In this situation, the hold is effective on the first of the next process month.

(c) The state office Third Party Liability and Review Unit puts SSI cases on hold for failure to provide health insurance or tort settlement information. Before placing the case on hold, the unit gives the client advance notice and advises the client about the right to appeal.

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

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

TRD-9323310

Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Human Services

Proposed date of adoption: August 1, 1993

For further information, please call: (512) 450-3765

◆ ◆ ◆
• 40 TAC §§15.601, 15.603, 15.604,
15.607, 15.609, 15.611, 15.612,
15.617, 15.619, 15.621, 15.623

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

§15.601. Eligibility Determination.

(a) The Texas Department of Human Services (DHS) eligibility specialist must verify all eligibility factors according to the verification and documentation requirements for each factor.

(b) The DHS eligibility specialist must document all factors of eligibility in the case record to substantiate the decisions made on all applications and redeterminations prior to certifying, recertifying, denying, or taking any other action on a client's eligibility and/or applied income.

§15.603. Client Notification.

(a) The Texas Department of Human Services (DHS) eligibility specialist must send the client a written notification of eligibility and the applied income amount or ineligibility for each program.

(b) For redeterminations, a client must be notified of any change in eligibility or applied income, if applicable.

(c) The notification form must be addressed to the client or, if addressed to a responsible party, reference that the information is about the client. All information on notification forms must be accurate.

(d) The DHS eligibility specialist must mail notification of the decision to the client within two working days from the date of the decision.

§15.604. Application Process.

(a) Federal law requires that a person who wishes to apply for a Title XIX (Medicaid)-funded program be allowed to file an application without delay, regardless of the person's ultimate eligibility for assistance.

(b) An application form must be mailed within two working days from the receipt of the request for an application.

(c) The Texas Department of Human Services uses the application form to test eligibility for all Medicaid programs for which the client meets the criteria. A separate application form is not required for each of the different Title XIX long-term care programs for the elderly and persons with disabilities.

§15.607. Written Application.

(a) The client or the responsible party acting for the client must submit a written application.

(b) The application is signed under penalty of perjury.

(c) The Texas Department of Human Services' (DHS's) form used for long-term care Title XIX-funded programs is the application for assistance.

(d) If a client or the responsible party contacts DHS to initiate an application and appears to be eligible for Supplemental Security Income (SSI), the DHS eligibility specialist refers the client to the Social Security Administration. If the client wishes to file an application with DHS, the DHS eligibility specialist gives the client the appropriate form letter and an application for assistance.

(e) The DHS eligibility specialist explains that eligibility is determined on the basis of a completed, signed, and dated application for assistance; information obtained from a face-to-face interview; and required verification documents.

(f) The DHS eligibility specialist explains that medical assistance cannot be approved for payment of Title XIX long-term care in a Medicare-Skilled Nursing

Facility (SNF), nursing facility (NF), Intermediate Care Facility for the Mentally Retarded (ICF-MR) facility, or state school until the following have occurred:

(1) preadmission screening and annual resident review is cleared prior to admission to a Medicare-SNF or a NF. This does not apply to ICF-MR and state schools;

(2) a medical necessity or level of care is assigned;

(3) the client enters a Title XIX contracted long-term care bed in a facility; and

(4) the client has remained in at least one or more Title XIX-contracted long-term care beds for at least 30 consecutive days. Hospital stays and therapeutic home visits do not break the 30-consecutive-day requirement.

(g) An eligibility determination cannot be final until the client or the responsible party provides all information and verification requested.

§15.609. Applicants and Their Allowed Representatives

(a) The Texas Department of Human Services must allow an individual or individuals of the client's choice to accompany, assist, and represent the client in the application process. A responsible party or bona fide agent is a person who is familiar with the client and knowledgeable of the client's financial affairs. If a client's responsible party is not his spouse, parent, legal guardian, immediate family member, or holder of his power of attorney, evidence of written authorization by that client for the independent party to file for benefits on the client's behalf must be provided.

(b) Nursing facility staff, hospital discharge planning staff, and hospital collection agency staff are not considered bona fide agents to file an application on behalf of a client unless they have the client's written authorization. If none of the persons described in this subsection are available to complete the application for assistance, the eligibility specialist uses the application as a recording document, while documenting on the Medical Assistance Only Worksheet contacts with all sources having knowledge of the client's finances.

§15.611. Allowed Signatures.

(a) In order of preference, the application for assistance should be signed by:

(1) the client, if 18 years old or over, mentally competent, and physically able;

(2) the client's parent(s) or court-appointed guardian, if the client is under age 18;

(3) the client's guardian of estate, if the client is age 18 or over and has a court-appointed guardian. In this situation, the guardian of person is not required to sign;

(4) the client's spouse, if the client is 18 years or over and physically unable to sign;

(5) the individual holding the client's power of attorney (POA), if the client is 18 years or over and physically unable to sign. This would substantiate that the client authorized the POA to act on the client's behalf;

(6) someone other than the persons listed in paragraphs 1-5 of this subsection may sign on the signature line for the responsible party if the client is 18 or over, physically unable, and does not have a legal guardian, spouse, or POA.

(b) A person who signs an application or redetermination form for a client must furnish evidence of the authority to complete and sign an application on behalf of a client. Such evidence may be a copy of guardianship papers, POA papers, or, in the absence of a guardianship or POA, a written statement describing the representative's relationship to the client and responsibility for the client's care. Such a statement is not required from the parent or spouse of a client.

(c) If the client makes an "X" on the signature line for applicant/recipient, two witnesses must sign on the signature lines for witnesses.

§15.612. Processing Deadlines.

(a) The Texas Department of Human Services (DHS) makes and documents a decision on an application as soon as all required verification is received.

(b) DHS makes a decision on applications from Category 1 clients within 45 days from the date the completed and signed application for assistance was returned to the local DHS office. DHS must make a decision on Category 3 and 4 applications within 90 days.

§15.617. Denials. Eligibility for all applicable programs must be determined before a client is denied for any reason during application or redetermination.

§15.619. Administrative Denials.

(a) When the Texas Department of Human Services eligibility specialist sends the client or responsible party a notice scheduling an appointment and the appointment is not kept, the eligibility specialist sends a follow-up second notice of appointment.

(b) If there is no response by the end of the 10-day deadline given on the follow-up notice, the application is denied. The application can be reopened under the original file date if the client or the responsible party provides a reasonable explanation for failing to respond to the appointment letter, such as hospitalization, language barrier, or the need for other assistance.

§15.621. Failure to Furnish Information.

(a) The client or his responsible party must furnish verification needed to make an eligibility application or redetermination decision.

(b) The eligibility specialist must not deny the application on failure to furnish information before completing the following:

(1) request necessary information from the client or the responsible party. The request may be by letter or a written list of needed items that are identified in a face-to-face interview. A copy of the letter or list must be in the case record. The request must be specific, such as three bank statements that cover the months of June, July, and August;

(2) give a reasonable due date by when the information is needed. Reasonableness of the due date is determined by the type of information/verification requested;

(3) follow up after the initial due date with a second written request for information that specifies the information needed, explains the consequence of not furnishing the information, and gives a reasonable due date;

(4) deny the application/redetermination if the procedures described in this subsection are followed and the information/verification is not provided by the close of business on the due date indicated on the second request.

(c) For applications, the initial and follow-up written requests must be initiated within the first 30 days that an application is pending.

(d) For resource/income information made available to the eligibility specialist after the face-to-face interview, the initial and follow-up written requests need not be initiated within the first 30 days that the application is pending.

(e) Delay in certification procedures may be followed if the client or responsible party is attempting to obtain the information but cannot meet the deadline.

(f) When a client or the responsible party attempted to obtain the needed information and the case was denied because the

information was not obtained by the deadline, including the extended pending period allowed under delay in certification, but the needed information is obtained within 90 days of the denial, the eligibility specialist reopens the application under the original file date.

(g) If a client is unable to act on his own behalf and has no responsible party, the eligibility specialist must make collateral contacts to substantiate the eligibility decision. A denial on failure to furnish information is not appropriate in this situation.

§15.623. Previously Completed Application for Assistance. A previously completed application for assistance may be used in the following situations:

(1) The application for assistance was used for the assessment in determining the protected resource amount, and the institutionalized spouse files an initial application for medical assistance only (MAO) within 12 months of the signature date on the application for assistance.

(2) An active companion case becomes a couple case; that is, one spouse

is already receiving benefits and the other spouse applies for benefits. The husband and wife do not need to be in the same program.

(3) If an application or redetermination is denied for any reason and the client reapplies, the previously completed application for assistance is valid for 90 days from the date of denial. A written, dated, and signed statement of request to reapply must be obtained from the client or the responsible party to establish the file date. Verification must be updated if circumstances have changed. If an application is denied in error, the original application file date must be protected no matter how old the application for assistance.

(4) The application for assistance is referred to the eligibility specialist from staff in the Community Care for the Aged and Disabled (CCAD) program for a determination of eligibility under the Social Security Act, §1929(b), regardless of the signature date on the form.

(5) A program transfer is being accomplished, no annual review is due, and computer edits require denial and recertification.

(6) An application should be accepted to protect the application file date for clients entering non-certified facilities pending certification of the facility as a Title XIX provider. If a client's application is denied because the facility has not been certified by the application due date, the previously completed application for assistance should be used whenever the facility is certified, and the original application file date is reported on the notice of application. Verification must be updated if circumstances have changed.

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

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

TRD-9323312

Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Human Services

Proposed date of adoption: August 1, 1993

For further information, please call: (512) 450-3765



Withdrawn Sections

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

TITLE 28. INSURANCE

Part II. Texas Workers' Compensation Commission

Chapter 56. Structured Compromise Settlement Agreements

• 28 TAC §56.55

The Texas Workers' Compensation Commission has withdrawn from consideration for permanent adoption a proposed amended §56.55 which appeared in the January 8, 1993, issue of the *Texas Register* (18 TexReg 154). The effective date of this withdrawal is May 21, 1993.

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

TRD-9323263

Susan Cory
General Counsel
Texas Workers'
Compensation
Commission

Effective date: May 21, 1993

For further information, please call: (512) 440-3592



TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

Chapter 117. Control of Air Pollution From Nitrogen Compounds

Subchapter B. Combustion at Existing Major Sources Commercial, Institutional, and Industrial Sources

• 31 TAC §117.206, §117.220

The Texas Air Control Board has withdrawn from consideration for permanent adoption a proposed new §117.206 and §117.220 which appeared in the November 20, 1992, issue of the *Texas Register* (17 TexReg 8143). The effective date of this withdrawal is May 19, 1993.

Issued in Austin, Texas, on May 19, 1993

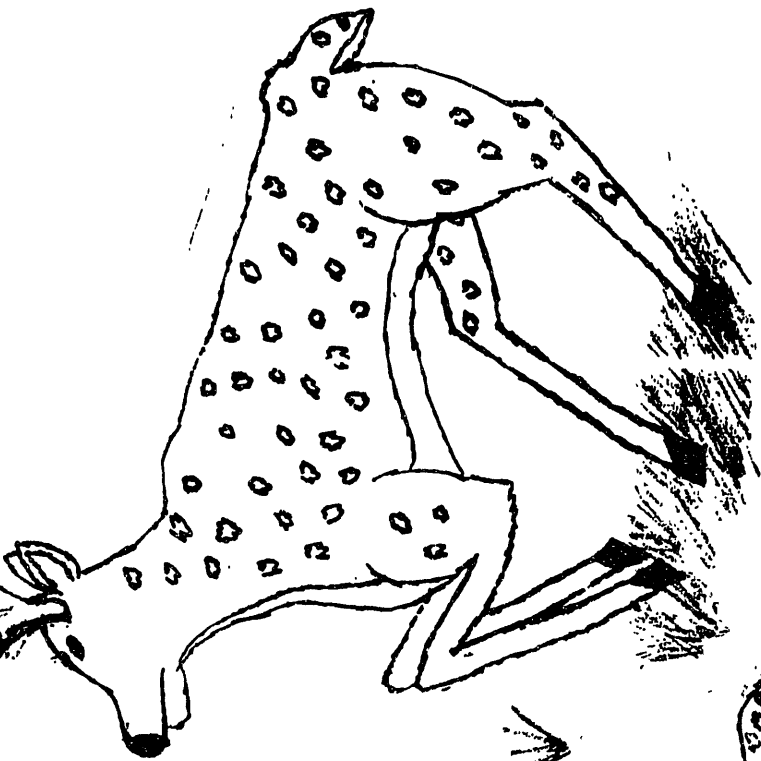
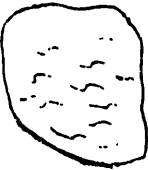
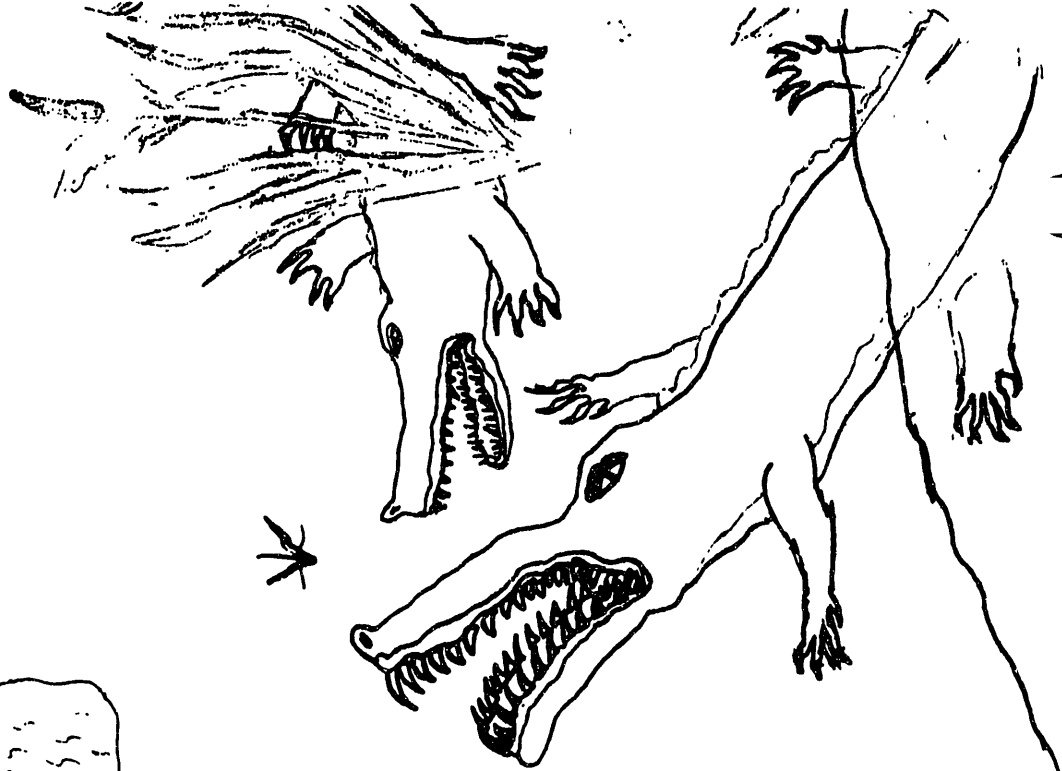
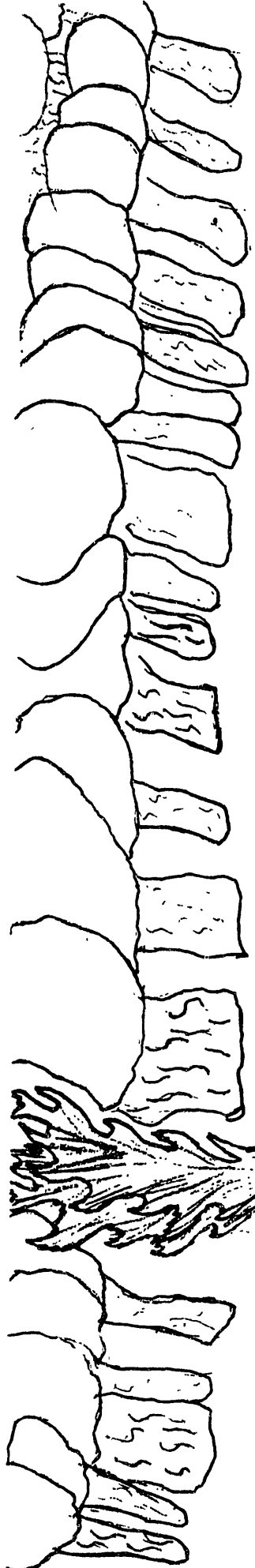
TRD-9323205

Lane Hartscock
Deputy Director
Texas Air Control Board

Effective date: May 19, 1993

For further information, please call: (512) 908-1451





Name: Josh Smith
Grade: 4
School: Evers Park Elementary, Denton ISD

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 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

• 16 TAC §23.61

The Public Utility Commission of Texas adopts amendments to §23.61, concerning telephone utilities, with changes to the proposed text as published in the November 20, 1992, issue of the *Texas Register* (17 TexReg 8130).

The commission adopts the amendments for the purpose of updating registration requirements applicable to nondominant telecommunications utilities and for the purpose of expanding the reporting requirements applicable to providers of competitive exchange services. The reporting requirements in §23.61(k) are revised from the November publication in response to specific comments received by the commission. These revisions are explained in the summary of comments. Additionally, the commission is persuaded by commenters that proposed §23.61(l), relating to data reports, raises issues that should be more thoroughly explored in workshops before the requirements are formalized in a rule. Therefore, for the reasons explained in the summary of comments, the commission does not adopt proposed §23.61(l).

The following submitted comments in response to the November 20, 1992, *Texas Register* publication: AT&T Communications of the Southwest, Inc. (AT&T); MCI Telecommunications Corporation (MCI); Metropolitan Fiber Systems of Dallas, Inc. and Metropolitan Fiber Systems of Houston, Inc. (MFS); Southwestern Bell Telephone Company (SWB); Teleport Communications Group (TCG); Texas Statewide Telephone Cooperative, Inc. (TSTCI); and Texas Telephone Association (TTA). GTE Southwest, Inc. and Contel of Texas, Inc. filed a letter concurring in TTA's comments and recommendations. Reply comments were filed by MFS and SWB.

No party took issue with proposed §23.61(a)(7), which adds the term "competitive exchange service" to the list of definitions. Subparagraphs (A) -(I) enumerate those services that are excluded from the definition of "local exchange service" in paragraph (17). The commission therefore adds this definition to subsection (a) and, for clarity, replaces paragraph (17)(B)(i) -(ix) with a reference to "competitive exchange service."

MCI commented that the language of proposed subsection (i) could be construed to exclude from the requirements of the subsection those carriers who have been providing service in Texas for more than 30 days. The commission agrees with MCI and modifies subsection (i) accordingly.

TSTCI commented that the commission should add language to proposed §23.61(i)(2) to require registering carriers to identify a "principal Texas address and telephone number" when the principal office is located out-of-state. This commission believes that this modification is inappropriate, since establishment of a business location in the state is not a requirement to do business in Texas and many nondominant carriers do not maintain a Texas business location. It is the commission's experience that many nondominant carriers handle customer service and government relations from their principal offices outside the state; communication with these carriers is more effective through their principal offices than through satellite locations in Texas. TSTCI also suggested that nondominant carriers should be required, as part of the registration process, to quantify the number of business locations maintained within the state. TSTCI stated that such information will provide the commission "with data as to the non-dominant carriers' diversity of operation within the state." It appears that TSTCI would have the commission impose reporting requirements as part of the registration process. Because the commission believes that registration requirements are distinct from reporting requirements, it makes no change in subsection (i) in response to this comment.

TSTCI commented that subsection (j)(3) needs to be clarified to accommodate nondominant carriers' provision of individual customer contracts, varying rates by geographic location, and banded rates. TSTCI did not provide an explanation in support of its requested modification. TSTCI's concerns appear to be based on a presumption that without this clarification providers of competitive exchange services will fail to provide specific pricing information. The commission finds no basis for this presumption and adopts subsection (j)(3) as proposed.

TSTCI recommended adding a requirement that a nondominant carrier provide notice to the commission 30 days in advance of discontinuing a service in a location. TSTCI stated that this information will be helpful in such matters as preventing customer complaints and evaluating changes in product trends. The commission notes that in the last year it has not received a single complaint regarding discontinuance of a service by a nondominant carrier. The commission also

notes that it subscribes to numerous industry publications, which it believes provide adequate, and perhaps better, information upon which to make the evaluations mentioned by TSTCI. The commission does not adopt the recommended change.

TCG requested that updates to the information required in subsections (i) and (j) be made quarterly. As proposed, subsection (i) requires annual updates; subsection (j) requires continuous updates. MFS, in reply comments, supported TCG's request. The commission, upon considering these comments, believes that the public interest requires that consumers and others be able to contact their telecommunications utilities at all times; consequently, it believes that the information provided pursuant to subsection (i) must be kept current at all times, as the rule currently requires. With respect to subsection (j), it has been the commission's experience that in some highly competitive markets, rates may change weekly or even daily. In such markets, quarterly updates are not adequate to provide useful market information to the public. The requested change to the timing of the reports under subsection (j) is not made.

MFS commented that the proposed requirements appear fair and reasonable and generally supported adoption. However, MFS commented that all telecommunications utilities should be required to provide, in their respective data reports, information concerning competitive exchange services comparable in detail and specificity to that required from nondominant telecommunications utilities. SWB commented that nondominant utilities should be required to report the same information as LECs, since these utilities "compete with LECs; they target the same market; [and] they offer similar (if not in fact identical) services." TSTCI commented that the dominant interexchange carrier, AT&T, should be required to include in its data report information regarding its provision of competitive exchange services. No party opposed these comments. The commission believes that the commenting parties have identified a deficiency in the rule as proposed. Although these parties' comments either were or appear to have been directed specifically to subsection (l), the comments are equally applicable to subsection (k). The information provided pursuant to subsection (k) is intended primarily to assist the commission and the public, including LECs, in assessing competitive activity in specific telecommunications markets. A valid assessment cannot be made in the absence of information concerning the activity of certain providers of competitive exchange services-in particular, the activity of local exchange carriers ("LECs") and AT&T, the dominant interexchange car-

rier. The commission therefore modifies subsection (k) by deleting the phrase "nondominant carrier" and substituting "telecommunications utility."

Several parties commented that subsection (k) should be clarified to specify when the required information is to be filed. MFS, SWB, and TTA recommended that reports filed pursuant to subsection (k) be filed on the same schedule as those filed pursuant to subsection (j). The commission believes that continuous updating of the information required in subsection (k) would be unduly burdensome. This subsection is modified to require semiannual reports.

TSTCI commented that §23.61(k)(1) should be modified to require a functional and technical description by component. According to TSTCI, such an approach would be consistent with that required of LECs. MFS responded generally that the addition of such requirements is unnecessary and would be unduly burdensome. The commission declines to adopt TSTCI's recommendation to require a functional and technical description of each component of a service. Subsection (k)(1) mirrors subsection (c)(4)(C) of Substantive Rule 23.27, relating to rate-setting flexibility for services subject to significant competitive challenges; subsection (c)(4)(C) contains certain information that a LEC must include in its application for approval of a customer-specific contract. While TSTCI did not identify the LEC reporting requirement to which it referred, it appears that TSTCI was alluding to §23.27(b)(3)(C), which addresses the contents of a LEC application for pricing flexibility. Pursuant to subsection (b)(3)(C), a LEC must "identify the service for which the LEC is requesting pricing flexibility, including each component thereof, and provide functional and technical descriptions of the service" which is the subject of the application. TSTCI's proposal significantly expands this requirement and, as MFS commented, imposes an increased burden on reporting utilities. First, it obligates the reporting utility to furnish functional and technical descriptions of each component. Second, reporting utilities would be required to identify and provide such descriptions on a regular basis, whereas under §23.27(b)(3)(C) a LEC need identify components of its competitive services only when it files an application for pricing flexibility. At this time, the commission does not believe that the burden associated with the provision of additional information is justified by the value of the information received. It therefore declines to modify subsection (k)(1) as suggested.

TSTCI commented that §23.61(k)(1)(B) should be modified so that the reporting utility indicates which components are provided by that utility and which components are provided by "other telecommunications utilities." According to TSTCI, to the extent components are provided by a LEC, it would be beneficial for the commission to know whether that use was optional or mandatory, thereby identifying for the commission a LEC's monopoly services. The commission believes that TSTCI's proposal has merit and imposes only a minimal burden on reporting utilities to identify those services that are furnished by a LEC and used by the reporting

utility in its provision of a competitive exchange service. Rather than modify subparagraph (B), however, the commission believes that it is more appropriate to incorporate this suggested revision in subparagraph (C), which pertains to network configurations. It therefore modifies subparagraph (C) to require the reporting utility to identify each LEC service that is required for the provision of a competitive exchange service.

TSTCI and TTA proposed modifying subsection (k)(2) to require nondominant carriers to identify, by competitive exchange service, each geographic area in which service is being provided. MFS, in reply comments, did not oppose this proposal, although it stated that it did not believe such additional information was necessary. The commission is persuaded that the proposed modification will generate, with minimal additional regulatory burden, information relevant to an assessment of competitive telecommunications markets. It therefore modifies subsection (k)(2) to reflect the TSTCI and TTA proposals.

TTA commented that subsection (k)(3) should be modified by deleting the term "buildings" and substituting instead "locations," as there could be debate as to what constitutes a "building." TTA also commented that the reporting utility should identify whether it serves any residential customers in the geographic area. MFS opposed this proposal. According to MFS, "locations" is no less ambiguous than "buildings." The commission intended, with this requirement, to obtain information concerning the size of a reporting utility's operations. However, the commission agrees with both TTA and MFS that subsection (k)(3) lacks a clearly-defined standard and therefore may fail to generate useful information. Upon further consideration, the commission believes that this information may be more appropriately provided in the context of data reports, as discussed *infra*. The commission therefore deletes subsection (k)(3).

TSTCI and TTA commented that proposed §23.61(k)(4) should be modified to address all transmission media, not just fiber and cable. MFS, in reply comments, supported this suggested modification. TTA also recommended that the paragraph be modified to require transmission information on a per-service basis; MFS opposed this recommendation. The commission agrees that it would be in the public interest to require reporting of data on all transmission facilities. However, such reporting, to provide useful information, would require a revision of the standard of measurement, since the terms "route mile" and "circuit mile" are not appropriate for all transmission media. These matters should be more thoroughly explored in workshops prior to adoption. The commission therefore deletes proposed §23.61(k)(4).

SWB and TSTCI recommended that subsection (k) be amended to include service quality measures. While MFS believed that this proposal had merit, it commented that such information must be reported in a consistent fashion, so that comparisons between carriers can be meaningful. Noting that neither SWB nor TSTCI offered specific proposals, MFS suggested that service quality issues be addressed in Project Number 11541, relating

to service quality standards. In November, 1992, the commission specifically solicited comment in Project Number 11541 on whether and what service quality standards should be applied to nondominant telecommunications utilities or alternate access providers. The commission agrees with MFS that the service quality issues raised by SWB and TSTCI should be addressed in Project Number 11541 and therefore makes no change in response to these comments.

SWB commented that subsection (k) be expanded to require reports by subsidiary and by geographic location within the LATA, as well as reports on the method of determining jurisdiction and the carrier's financial ability to provide services. SWB did not propose any recommended language, nor did it identify specific benefits to be achieved by these requirements. SWB did generally comment that this additional information would offer the commission a better opportunity to determine the status of competition in the telecommunications industry. MFS opposed these proposals as unnecessary and burdensome. According to MFS, the commission's authority to require reporting should be used only to obtain information that is reasonably related to the performance of its public-interest functions. Based on the record before it, the commission declines to modify subsection (k) to incorporate SWB's general recommendations. The commission notes that SWB is free, during the workshops and rulemaking discussed, *infra*, to propose that these additional reporting requirements be added to the commission's data reports.

Several parties commented regarding proprietary treatment of information filed under the rule. TCG requested proprietary and confidential treatment of all information filed under §23.61, while MFS proposed amending subsection (k) to permit proprietary treatment, stating that competitively sensitive information should not be made public. MCI and MFS agreed that a nondominant telecommunications utility providing information under subsection (k) should be allowed to request confidential treatment of such information, as provided for in published subsection (l)(1)(B) and (l)(2)(B). According to MFS, treating this information in a proprietary manner is consistent with the Open Records Act, specifically §3(a)(4) of that Act, which provides an exception for information which, if released, would give advantage to competitors or bidders. SWB and TTA opposed such a proposal. Both SWB and TTA agreed that proprietary treatment thwarts the purpose of the reporting requirements established in subsection (k), which SWB identified as obtaining information to establish that a market is competitive. Additionally, SWB opposed the proposal on the grounds that the information requested in subsection (k) is generic in nature. SWB commented that if such information were treated as proprietary, then a LEC should be entitled to obtain access to such information, pursuant to protective agreements, for use in a §23.27 application for pricing flexibility. TSTCI, recognizing the inconsistency between proposed provisions of the rule, including subsections (k) and (l), commented that all utilities should receive the same treatment of information asserted to be confidential.

The commission declines to modify subsection (k) to provide for proprietary treatment, as recommended by TCG, MCI, and MFS. The commission has modified the reporting requirements of subsection (k), as discussed supra. The commission does not believe that the information requested in subsection (k), as modified, is presumptively confidential under the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a (Vernons Supplement 1993) (hereinafter Open Records Act). The Open Records Act, §3(a), provides that "[a]ll information collected, assembled, or maintained by or for governmental bodies, except in those situations where the governmental body does not have either a right of access to or ownership of the information, pursuant to law or ordinance or in connection with the transaction of official business is public information and available to the public." To attain its statutory objectives, Articles III and V of the Public Utility Regulatory Act, Texas Civil Statutes, Article 1446c (Vernons Supplement 1993) (hereinafter PURA), grants the commission the right of access to information; consequently, the commission considers all information "collected, assembled, or maintained" by it to be presumptively public information. While the Open Records Act excludes from this designation many categories of information, the commission does not agree with MFS that §3(a)(4) of the Act applies, in light of Texas Attorney General ORD-592 (August 14, 1991) (Section 3(a)(4) exception is designed to protect the interests of only governmental bodies and not the interests of private parties.). Additionally, no party has demonstrated that the information it seeks to withhold from disclosure falls within any other exception to the Open Records Act. The commission concludes that treating this information as presumptively confidential is contrary to both the spirit and letter of the Open Records Act. The commission cannot prescribe access to information that is more restrictive than the Open Records Act. The commission notes, however, that this rule does not preclude any reporting telecommunications utility from making a showing to entitle that utility to protection of information that it considers confidential.

AT&T commented that adoption of subsection (l), relating to data reports, could be premature. Noting that the commission adopted two new measures of market share in its 1993 report on the Scope of Competition in Telecommunications Markets, AT&T commented that subsection (l) should be revised to require carriers to report information concerning their facilities and excess capacity. Alternatively, AT&T stated that the commission should hold workshops to establish new measures of market share. The commission agrees that it would be preferable to defer adoption of subsection (l) and, instead, conduct workshops directed to identifying information that both the industry and commission believe is necessary. At this time, the various data reports are used primarily to acquire information that is compiled and included in the commission's report on the scope of competition. The commission's obligation to prepare this report on a biennial basis is imposed by PURA, §18(k). In light of anticipated statutory changes, the commission believes that, rather than adopt proposed

subsection (l), it is prudent to more precisely define what purposes the data reports (or other reporting requirements) are intended to serve and then to conduct workshops directed to identifying and obtaining the type of information best-suited to achieving those purposes. The commission therefore declines to adopt subsection (l).

TCG and MFS agreed that duplicative and overlapping requirements should be eliminated. Although TCG failed to provide specific examples, it commented that the requirements of proposed subsection (l)(2) overlapped with requirements imposed by proposed subsections (i) and (k). It requested that the commission consolidate these requirements to the greatest extent possible. As noted earlier, the commission believes that registration requirements serve a different purpose than reporting requirements. Consequently, it does not consolidate the various requirements. The commission believes that participatory workshops, described supra, will minimize the reporting requirements that allegedly overlap.

AT&T commented that elimination of subsection (l)(6) would inadvertently eliminate confidential treatment of information provided under Substantive Rule 23.25, relating to long distance rates, as that rule contains a reference to §23.61(l)(6). The commission recognizes that deletion of subsection (l)(6) will require amendment of §23.25(e) This deletion, however, will not affect AT&T's right to make a showing pursuant to the Open Records Act to entitle it to protection of information it considers confidential. Moreover, as discussed supra, the commission believes that treating this information as presumptively confidential is contrary to both the spirit and letter of the Open Records Act. The commission makes no change in response to this comment.

Finally, a number of commenters raised concerns regarding the protective treatment afforded information in data reports that the reporting carrier designated as confidential or proprietary. AT&T raised a number of arguments in support of its contention that subsection (l) be revised so that its information would be treated as proprietary upon written request. SWB appeared to agree with AT&T, commenting that certain usage information should be treated as confidential, regardless of the regulatory status of the filing entity. MCI suggested that subsection (l)(1)(B) and (2)(B) be revised to codify the current commission practice of notifying parties of Open Records requests. Because the commission has elected not to adopt proposed subsection (l), it is unnecessary to respond to these comments at this time.

TSTCI and TTA recommended that the §23.61 be revised to add an enforcement provision. Essentially, both the TSTCI and TTA proposals would preclude a nondominant carrier from participating in any commission proceeding unless it (or all members, if an association sought to participate) was in "full compliance" with all reporting requirements. In reply comments, SWB supported an enforcement provision as proposed by these commenters; MFS opposed it on a number of grounds. The commission agrees with MFS that it has ample authority under

PURA, §§16(a), 18(c), 71, and 72 to enforce its reporting requirements. The commission also agrees with MFS that the addition of the proposed enforcement provisions would require a nondominant carrier (or association) to affirmatively prove its compliance (or members' compliance) with all commission reporting requirements as a condition of participation; establishing this precondition raises collateral issues that could generate extensive and burdensome litigation. Therefore, the commission declines to add an enforcement provision.

TTA recommended that the commission add a proposed subsection (m), providing that subsections (i), (j), (k), and (l) constitute the minimum reporting requirements applicable to nondominant carriers and that the commission may require such other and further reports as are necessary to fulfill its duties pursuant to PURA §18. MFS opposed this recommendation on the grounds that the provision is unnecessary, in light of PURA, §18(c)(3). That statutory provision authorizes the commission to require of nondominant telecommunications utilities "the filing of such reports as the commission may direct from time to time." The commission agrees with MFS that TTA's proposed subsection (m) is unnecessary. It therefore declines to adopt the TTA recommendation.

TTA opposed the deletion of current subsection (m), relating to the evaluation of competition. It therefore proposed the addition of a proposed subsection (n), which would require that the commission, on an annual basis, gather and use information to determine the existence, impact, and scope of competition in competitive telecommunications markets. In a significant change from the current subsection (m), under the TTA proposal the commission would be required to "make public its findings in a published report." TTA commented that as the industry becomes more competitive, annual evaluations are of increasing importance; TTA, however, did not identify what purpose such evaluations would serve. The commission does not believe that such a provision is necessary, as several provisions of PURA, §18 authorize the commission to determine the level of competition in the telecommunications industry. See, PURA, §18(c)(2), and (e). The commission believes that the publication of annual reports as proposed by TTA would likely engender significant contention without achieving specific objectives; moreover, such a report carries with it the potential for prejudicing the commission with respect to pending proceedings. Finally, the commission notes that pursuant to PURA, §18(k) it prepares biennially a report for the legislature on "the scope of competition in regulated communications markets and the impact of competition on customers in both competitive and noncompetitive markets, with a specific focus on rural markets." The commission construes TTA's proposal to differ from this legislative report. For these reasons, the commission declines to adopt TTA's proposed subsection (n).

All comments, including those not specifically referenced herein, were fully considered by the commission.

The amendment is adopted pursuant to Texas Civil Statutes, Article 1446c, §16,

which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and pursuant to §28(a), which grants the Public Utility Commission of Texas the power to require that public utilities report to it such information relating to themselves and affiliated interests as it may consider useful in the administration of the Public Utility Regulatory Act, and pursuant to §18, which grants the Public Utility Commission of Texas the jurisdiction to require nondominant telecommunications utilities to file such reports as the commission may direct.

§23.61. Telephone Utilities.

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

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

(7) Competitive exchange service—Any of the following services, when provided on an inter- or intrastate basis within an exchange area:

(A) services for which local exchange carriers have been granted authority to enter into customer-specific, contracts pursuant to the Act, §18(e)(3)(B), as those services are described in §23.27 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges);

(B) services for which a local exchange carrier has been granted authority to engage in pricing flexibility pursuant to §23.27 of this title;

(C) private line services or virtual private line services;

(D) resale or sharing of local exchange service, where that resale or sharing is allowed by commission approved tariffs;

(E) dark fiber services;

(F) non-voice data transmission services;

(G) dedicated or virtually dedicated access services;

(H) any service initially provided within an exchange after October 26, 1992, if first provided by an entity other than the local exchange carrier(s) certificated to provide service within that exchange; or

(I) any service that the commission determines by final order in a docketed proceeding is not local exchange service.

(8) Complex service—The provision of a circuit requiring special treatment, special equipment, or special engineering design. This includes private lines, WATS, PBX trunks, rotary lines, special assemblies, etc.

(9) Customer access line—A unit of measurement representing a telecommunications circuit designated for a particular customer. One customer access line shall be counted for each circuit which is capable of generating usage on the line side of the switched network or a private line circuit, regardless of the quantity or ownership of customer premises equipment connected to each circuit. In the case of multi-party lines, each party shall be counted as a separate customer access line.

(10) Customer trouble report—Any oral or written report from a customer or user of telecommunications service received by any telecommunications utility relating to a physical defect, difficulty, or dissatisfaction with the service provided by the telecommunications utility's facilities. A separate report shall be counted for each telephone or PBX switchboard position reported in trouble when several items are reported by one customer at the same time, unless the group of troubles so reported is clearly related to a common cause.

(11) Dominant carrier—

(A) A provider of any particular communication service which is provided in whole or in part over a telephone system who as to such service has sufficient market power in a telecommunications market as determined by the commission to enable such provider to control prices in a manner adverse to the public interest for such service in such market.

(B) Any provider of local exchange telephone service within a certificated exchange area as to such service.

(12) Exchange Area—The geographic territory delineated as an exchange area by official commission boundary maps. An exchange area usually embraces a city or town and its environs. There is usually a uniform set of charges for telecommunications service within the exchange area. An exchange area may be served by more than one central office. An exchange area may also be referred to as an exchange.

(13) Grade of service—The number of customers a line is designated to serve.

(14) Intercept service—A service arrangement provided by the local exchange carrier whereby calls placed to a disconnected or discontinued telephone number are intercepted and the calling party is informed by an operator or by a recording that the called telephone number has been disconnected, or discontinued, or changed to another number, or that calls are being received by another telephone, etc.

(15) Line—A circuit or channel extending from a central office to the customer's location to provide telecommunications service. One line may serve one customer, or all customers served by a multiparty line.

(16) Local calling area—The area within which telecommunications service is furnished to customers under a specific schedule of exchange rates. A local calling area may include more than one exchange area.

(17) Local exchange company—A telecommunications utility certificated to provide local exchange service within the state. A local exchange company is also referred to as a local exchange carrier.

(18) Local exchange service—

(A) Telecommunications service provided within an exchange for the purpose of establishing connections between customer premises within the exchange, including connections between a customer premises and a long distance service provider serving the exchange. Local exchange service may also be referred to as local exchange telephone service.

(B) Notwithstanding subparagraph (A) of this paragraph, a competitive exchange service is not local exchange service.

(C) The provisions of paragraphs (7) and (18)(B) of this subsection shall be liberally construed to encourage a competitive marketplace.

(19) Local message—A completed call between customer access lines located within the same local calling area.

(20) Local message charge—The charge that applies for a completed telephone call that is made when the calling customer access line and the customer access line to which the connection is established are both within the same local calling area, and a local message charge is applicable.

(21) Local service charge—The charge for furnishing facilities to enable a customer to send or receive telecommunications within the local calling area. This

local calling area may include more than one exchange area.

(22) Long distance telecommunications service—That part of the total communication service rendered by a telecommunications utility which is furnished between customers in different local calling areas in accordance with the rates and regulations specified in the utility's tariff.

(23) Message—A completed customer telephone call.

(24) Message rate service—A form of local exchange service under which all originated local messages are measured and charged for in accordance with the utility's tariff.

(25) Nondominant carriers—Interexchange telecommunications carriers (including resellers of interexchange telecommunications services), specialized communications common carriers, other resellers of communications, other communications carriers who convey, transmit, or receive communications in whole or in part over a telephone system, and providers of operator services (except that subscribers to customer-owned pay telephone service shall not be deemed to be telecommunications utilities) who are not dominant carriers.

(26) Out-of-service trouble report—An initial customer trouble report in which there is complete interruption of incoming or outgoing local exchange service. On multiple line services a failure of one central office line or a failure in common equipment affecting all lines is considered out of service. If an extension line failure does not result in the complete inability to receive or initiate calls, the report is not considered to be out of service.

(27) Primary service—The initial provision of voice grade access between the customer's premises and the switched telecommunications network. This includes the initial connection to a new customer or the move of an existing customer to a new premises, but does not include complex services.

(28) Private line—A transmission path that is dedicated to a customer and that is not connected to a switching facility of a telecommunications utility, except that a dedicated transmission path between switching facilities of interexchange carriers shall be considered a private line.

(29) Public telephone service—An individual line customer service equipped with a coin collecting or coinless public telephone instrument installed for use of the general public in locations where the general public has access to these telephones.

(30) Regrade—An application for a different grade of service.

(31) Repeated trouble report—A customer trouble report regarding a specific

line or circuit occurring within 30 days or one calendar month of a previously cleared trouble report on the same line or circuit.

(32) Station—A telephone instrument or other terminal device.

(33) Telecommunications utilities—Dominant carriers and nondominant carriers.

(34) Trunk—A circuit facility connecting two switching systems.

(35) Virtual private line—Circuits or bandwidths, between fixed locations, that are available on demand and that can be dynamically allocated.

(b)-(h) (No change.)

(i) Registration of nondominant telecommunications carriers. Each nondominant carrier not currently registered with the commission shall file with the commission the information set forth in paragraphs (1)-(7) of this subsection within 30 days of commencing service in Texas or within 30 days of the effective date of this subsection, whichever is later. This information shall be updated and kept current at all times. By June 30 of each year each nondominant carrier that has not filed during the previous 12 months changes to the information filed pursuant to this subsection shall file with the commission a letter informing the commission that no changes have occurred:

(1) legal name and assumed names, if any;

(2) address and telephone number of the principal office;

(3) date service commenced in Texas;

(4) name, address, and office location of each partner (if applicable) or each officer;

(5) names and addresses of five largest shareholders (if applicable);

(6) name, address, and telephone number of registered agent or designated person who can be contacted by the commission; and

(7) name, address, and telephone number of attorney, if any.

(j) Information regarding rates and services of nondominant carriers. Each nondominant carrier shall file the information set forth in paragraphs (1)-(3) of this subsection. This information shall be updated and kept current at all times. By June 30 of each year, each nondominant carrier that has not filed during the previous 12 months changes to the information filed pursuant to this subsection shall file with the commission a letter informing the commission that no changes have occurred:

(1) a description of the type(s) of communications service provided;

(2) for each service listed in response to paragraph (1) of this subsection, the locations in the state (by city) in which service is originated and/or terminated. If service is provided statewide, either origination or termination, the carrier shall so state; and

(3) a tariff, schedule or list showing all recurring and nonrecurring rates for each service provided.

(k) Information regarding competitive exchange services. Each telecommunications utility providing competitive exchange service shall file with the commission the information set forth in paragraphs (1)-(2) of this subsection within 30 days of commencing service in Texas or within 30 days of the effective date of this subsection, whichever is later. This filing shall be made in addition to the reports required by subsections (i) and (j) of this section. Beginning in 1994, the information shall be updated February 1 and August 1 of each year.

(1) A functional and technical description of each competitive exchange service provided, including:

(A) the functions that the service is intended to perform for the customer;

(B) the types of equipment used to provide the service (including, but not limited to, transmission facilities, switching facilities, customer equipment, software functions, and protocol);

(C) LEC services required to provide the service; and

(D) a schematic diagram showing how the service is provided.

(2) A description that identifies specifically the geographic area(s) in Texas in which the carrier provides competitive exchange service.

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

Issued in Austin, Texas, on May 19, 1993.

TRD-9323196

John M. Rentrow
Secretary of the
Commission
Public Utility Commission
of Texas

Effective date: June 9, 1993

Proposal publication date: November 20, 1992

For further information, please call: (512) 458-0100

TITLE 22. EXAMINING BOARDS

Part XII. Board of Vocational Nurse Examiners

Chapter 235. Licensing

Application for Licensure

- 22 TAC §§235.2, 235.9, 235.16, 235.18, 235.19

The Board of Vocational Nurse Examiners adopts amendments to §§235.2, 235.9, 235.16, 235.18, and 235.19, without changes to the proposed text as published in the April 20, 1993, issue of the *Texas Register* (18 TexReg 2515).

These rules are adopted for implementation of computer adaptive testing (CAT) and to streamline the process of licensure of persons with criminal convictions.

No comments were received relative to the adoption of these amendments.

The amendments are adopted under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

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

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

TRD-9323304 Marjorie A. Bronk, R.N.,
M.S.H.P.
Executive Director
Board of Vocational Nurse
Examiners

Effective date: June 11, 1993

Proposal publication date: April 20, 1993

For further information, please call: (512) 835-2071

Board Review of Application

- 22 TAC §235.26

The Board of Vocational Nurse Examiners adopts the repeals to §235.26, without changes to the proposed text as published in the April 20, 1993, issue of the *Texas Register* (18 TexReg 2515).

The rule is being repealed because it is obsolete.

No comments were received relative to the repeal of this rule.

The repeal is adopted under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

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

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

TRD-9323303 Marjorie A. Bronk, R.N.,
M.S.H.P.
Executive Director
Board of Vocational Nurse
Examiners

Effective date: June 11, 1993

Proposal publication date: April 20, 1993

For further information, please call: (512) 835-2071

Examination

- 22 TAC §235.31

The Board of Vocational Nurse Examiners adopts an amendment to §235.31, without changes to proposed text as published in the April 20, 1993, issue of the *Texas Register* (18 TexReg 2516).

The rule is adopted to allow for the implementation of computer adaptive testing (CAT).

No comments were received relative to adoption of the amendment of this rule.

The amendment is adopted under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

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

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

TRD-9323302 Marjorie A. Bronk, R.N.,
M.S.H.P.
Executive Director
Board of Vocational Nurse
Examiners

Effective date: June 11, 1993

Proposal publication date: April 20, 1993

For further information, please call: (512) 835-2071

- 22 TAC §235.32, §235.33

The Board of Vocational Nurse Examiners adopts the repeals to §235.32 and §235.33, without changes to the proposed text as published in the April 20, 1993, issue of the *Texas Register* (18 TexReg 2516).

The rules are being repealed because they are obsolete.

No comments were received relative to the repeal of these rules.

The repeals are adopted under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

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

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

TRD-9323301 Marjorie A. Bronk, R.N.,
M.S.H.P.
Executive Director
Board of Vocational Nurse
Examiners

Effective date: June 11, 1993

Proposal publication date: April 20, 1993

For further information, please call: (512) 835-2071

Issuance of Licenses

- 22 TAC §235.47

The Board of Vocational Nurse Examiners adopts an amendment to §235.47, without changes to the proposed text as published in the April 20, 1993, issue of the *Texas Register* (18 TexReg 2516).

The rule is being amended to allow for consistency between the licensing and continuing education rules.

No comments were received relative to the amendment of this rule.

The amendment is adopted under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

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

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

TRD-9323300 Marjorie A. Bronk, R.N.,
M.S.H.P.
Executive Director
Board of Vocational Nurse
Examiners

Effective date: June 11, 1993

Proposal publication date: April 20, 1993

For further information, please call: (512) 835-2071

- 22 TAC §235.48

The Board of Vocational Nurse Examiners adopts new §235.48, relative to Emeritus License, without changes to the proposed text as published in the April 20, 1993, issue of the *Texas Register* (18 TexReg 2517).

The rule is proposed as it is not included in the current licensing rules, although the term is referred to in the continuing education chapter of the rules.

No comments were received relative to the adoption of this rule.

The new rule is adopted under Texas Civil Statutes, Article 4528c, §5(g), which provide

the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

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

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

TRD-9323299 Marjorie A. Bronk, R.N.,
M.S.H.P.
Executive Director
Board of Vocational Nurse
Examiners

Effective date: June 11, 1993

Proposal publication date: April 20, 1993

For further information, please call: (512) 835-2071

Chapter 237. Continuing Education

Continuing Education

• 22 TAC §237.19

The Board of Vocational Nurse Examiners adopts an amendment to §237.19, without changes to the proposed text as published in the April 20, 1993, issue of the *Texas Register* (18 TexReg 2517).

The rule is adopted to make licensing and continuing education rules consistent.

No comments were received relative to the amendment of this rule.

The amendment is adopted under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

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

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

TRD-9323298 Marjorie A. Bronk, R.N.,
M.S.H.P.
Executive Director
Board of Vocational Nurse
Examiners

Effective date: June 11, 1993

Proposal publication date: April 20, 1993

For further information, please call: (512) 835-2071

Chapter 239. Contested Case Procedure

Hearings Process

• 22 TAC §239.33

The Board of vocational Nurse Examiners adopts new §239.33, relative to release of information, without changes to the proposed

text as published in the April 20, 1993, issue of the *Texas Register* (18 TexReg 2518).

This rule was adopted to delineate what investigations division information can be released.

No comments were received relative to the adoption of this rule.

The rule is adopted under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

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

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

TRD-9323297 Marjorie A. Bronk, R.N.,
M.S.H.P.
Executive Director
Board of Vocational Nurse
Examiners

Effective date: June 11, 1993

Proposal publication date: April 20, 1993

For further information, please call: (512) 835-2071

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

Chapter 117. Control of Air Pollution From Nitrogen Compounds

• 31 TAC §§117.1-117.4

The Texas Air Control Board (TACB) adopts the repeal of §§117.1-117.4, and adopts new §§117.10, 117.101, 117.103, 117.105, 117.107, 117.109, 117.111, 117.113, 117.115, 117.117, 117.119, and 117.121, 117.201, 117.203, 117.205, 117.207-117.209, 117.211, 117.213, 117.215, 117.217, 117.219, 117.221, 117.301, 117.305, 117.309, 117.311, 117.313, 117.319, 117.321, 117.401, 117.405, 117.409, 117.411, 117.413, 117.419, 117.421, 117.451, 117.455, 117.458, 117.510, 117.520, 117.530, 117.540, 117.550, 117.560, 117.570, and 117.601, concerning Control of Air Pollution From Nitrogen Compounds. Sections 117.010, 117.101, 117.103, 117.105, 117.107, 117.109, 117.111, 117.113, 117.115, 117.117, 117.119, 117.121, 117.201, 117.203, 117.205, 117.207-117.209, 117.211, 117.213, 117.215, 117.217, 117.219, 117.221, 117.305, 117.309, 117.313, 117.319, 117.321, 117.405, 117.409, 117.413, 117.419, 117.421, 117.451, 117.510, 117.520, 117.530, 117.540, 117.560, 117.570 and 117.601 are adopted with changes to the proposed text as published in the November 20, 1992, issue of the *Texas Register* (17

TexReg 8136). Sections 117.301, 117.311, 117.401, 117.411, 117.455, 117.458, and 117.550 are adopted without changes and will not be republished. Sections 117.206 and 117.220 are being withdrawn.

The adopted revisions to Chapter 117 were developed in response to requirements of the 1990 Federal Clean Air Act Amendments and the U.S. Environmental Protection Agency (EPA) to implement Reasonably Available Control Technology (RACT) controls for certain stationary sources of nitrogen oxides in the Houston/Galveston area and Beaumont/Port Arthur area ozone nonattainment counties (Brazoria, Chambers, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, and Waller counties).

Public hearings were held in Houston on December 14, 1992, and Beaumont on December 15, 1992 to consider the proposed revisions. Written comments were accepted through February 15, 1993. Forty-three commenters submitted written testimony. Thirteen commenters presented oral testimony during the public hearings. All testimony and written comments have been reviewed and seriously considered. The following discussion addresses the general comments and suggested corrections and then addresses the comments specific to each part of the regulation.

Endorsement/Support. Amoco Chemical Company (Amoco Chem), Amoco Oil Company (Amoco Oil), and Chevron U.S.A. Products Company (Chevron) encouraged the continued joint meetings of the Texas Air Control Board (TACB) and industry work groups. The meetings between TACB staff and the Texas Chemical Council (TCC) Nitrogen Oxides NO_x RACT Subcommittee, equipment vendors, trade associations, and other industry representatives since early 1992 have been very productive in the preparation of the first round of NO_x RACT rules. Much work still remains in the further drafting of regulations, and the spirit of cooperation developed to date will be instrumental in meeting air quality goals in the future.

Amoco Chem, Amoco Oil, and Chevron expressed support for flexible, innovative approaches to emission reductions. In the current round of NO_x RACT rulemaking, the staff has sought to develop rules which incorporate flexible and innovative approaches while accomplishing reductions which will benefit air quality. Future rulemaking efforts should continue to promote creative solutions which meet both these goals.

Destec Energy, Inc. (Destec) expressed support for the proposed rule and commended the TACB staff for its judicious use of a well-balanced advisory group. The staff acknowledges the commendation extended by the commenter.

Amoco Chem, Amoco Oil, Chevron, Dow U.S.A. (Dow), DuPont, Exxon Chemical Americas (Exxon Chem), Mobil Oil Corporation (Mobil), Monsanto, and Texaco Chemical Company (Texaco) endorsed the comments submitted by the TCC and/or the Texas Mid-Continent Oil & Gas Association (TMOGA). The staff has noted individual commenters' endorsements of TCC and TMOGA comments.

Technical/Benefits. OxyChem (Oxy) recommended that the TACB exercise caution in implementing NO_x RACT rules because of uncertainty in NO_x/volatile organic compounds (VOC)/ozone relationships. The 1990 Federal Clean Air Act (FCAA) Amendments, §185(B), required the EPA to conduct a study on the roles of NO_x and VOC in ozone formation. Two major components of this study, a report by the National Academy of Sciences titled *Rethinking the Ozone Problem in Urban and Regional Air Pollution* (December 1991) and a draft EPA report titled *The Role of Ozone Precursors in Tropospheric Ozone Formation and Control* (February 1993) concluded that NO_x controls are generally more effective than VOC controls in reducing ozone in areas where ambient VOC/NO_x ratios are relatively high. The study cautioned, however, that control strategies must be tailored to individual areas because of variations in ozone response to reductions in NO_x and/or VOC. VOC/NO_x ratios obtained from ambient air measurements in the Houston/Galveston and Beaumont/Port Arthur areas are well above the 15-20 range generally considered to indicate greater effectiveness of NO_x controls over VOC controls in the reduction of ozone. These data point out the importance of implementing NO_x controls in the Houston/Galveston and Beaumont/Port Arthur ozone nonattainment areas as soon as is practicable. In these areas, the Urban Airshed Model (UAM) will likely be instrumental in fine-tuning the ozone control strategy, not in deciding whether to implement NO_x controls at all. Due to relatively lower VOC/NO_x ratios in Dallas/Fort Worth and El Paso, the TACB decided to delay NO_x RACT rules for these ozone nonattainment areas until UAM results were available to assist in determining whether such a strategy would be effective in reducing ozone in these areas.

Oxy commented that implementing NO_x RACT rules before the need is demonstrated by UAM modeling will result in unnecessary expense to industry, even if rules are rescinded later. The Federally mandated schedule for attainment of the ozone standard sets ambitious, but achievable timelines for implementing controls in ozone nonattainment areas. Results of UAM modeling will play an important role in determining the extent and magnitude of needed NO_x reductions. However, the time required to set up, run, and perfect these sophisticated models does not allow the luxury of having all the answers before beginning to undertake emissions reductions. The most cost-effective and feasible control measures should be implemented whenever there is a reasonable expectation that improvements in ozone levels will result. As noted in the response to the previous comment, the TACB has already postponed consideration of NO_x RACT rules for Dallas/Fort Worth and El Paso in order to weigh UAM results heavily in developing NO_x RACT policy for these areas. Available information, notwithstanding future UAM results, indicates that NO_x reductions in the Houston/Galveston and Beaumont/Port Arthur ozone nonattainment areas will be highly effective in reducing ozone levels. Results of first-round UAM modeling will be available to confirm the direction of the NO_x control strategy before initial control plans are required to

be submitted by industry by April 1, 1994. Besides the primary benefit of emissions reductions, the proposed NO_x RACT regulation will also enhance the emissions inventory and input to the UAM model. The regulation's compliance schedule requires preliminary testing data for the majority of NO_x emission sources to be submitted with the initial control plan by April 1, 1994. This will allow the NO_x inventory enhancement to be included in the UAM reevaluation of 1995. The staff believes that proceeding with NO_x RACT rules in an expeditious manner is justified for these reasons.

The Galveston-Houston Association for Smog Prevention (GHASP) commented that maximum emission reductions are needed because Houston is classified as a severe ozone nonattainment area. The staff agrees that substantial NO_x reductions will likely be required in order to attain the ozone standard in the Houston/Galveston and the Beaumont/Port Arthur ozone nonattainment areas. However, there are practical technical and economic considerations in the implementation of a rule of this scope that point to phasing-in progressively more restrictive standards over time. The first round of NO_x RACT rules in the current proposed rulemaking represents a significant step toward attaining the ozone standard. The staff estimates that this first round of rules will result in NO_x reductions on the order of 20% from major stationary sources and 10% overall. As more information becomes available from emissions testing of industrial boilers and heaters, and the results of UAM modeling are evaluated, the staff will be able to determine further needed NO_x reductions and initiate the next round of rulemaking.

Oxy suggested that the staff conduct studies to evaluate the need for further NO_x controls. Air quality dispersion models are the primary tool currently available to states in predicting the effects of proposed emission controls on ambient ozone concentrations. In fact, EPA requires the use of photochemical grid models such as the UAM to demonstrate attainment of the ozone standard or to justify exemption from NO_x RACT requirements. The UAM is not perfect, however, and relies upon the quality of inputs such as emissions data in order to produce accurate, meaningful results. The emissions data to be collected and submitted by industry as a result of the current proposed NO_x RACT rules will be extremely valuable to the staff in enhancing the accuracy of the emissions inventory and the UAM. The EPA is currently conducting studies to improve the reliability of the UAM, and will make this information available to states. In the meantime, actual data from sources affected by the rule will be very useful to the staff in assessing the need for further NO_x controls.

Miscellaneous. EPA commented that the staff should issue a technical support document explaining the derivation of all RACT limits. The staff intends to prepare a brief technical discussion as part of the NO_x RACT State Implementation Plan (SIP) submittal which will provide the basis for the rule's RACT limits.

EPA commented that the staff should indicate whether all major NO_x sources are covered

by the rule, and if not, provide EPA with a schedule for future rule adoption. The staff's responses to hearing testimony identify major source categories and other areas which will require further rulemaking to comply with the NO_x RACT portions of the FCAA Amendments. The EPA has pointed out in its hearing testimony some of these areas requiring more work, and communications are ongoing to provide EPA with information concerning future rule adoption.

TMOGA suggested that the staff publish a position paper in the *Texas Register* as a preamble to the rule. This technical issues paper will be available to the public after the NO_x RACT SIP is submitted to EPA.

GHASP objected to a block one-hour average throughout the rule, and commented that the rolling one-hour average in the June 1992 draft proposal was more stringent. The block one-hour averaging period for gas turbines, internal combustion engines, and boilers and heaters without continuous emission monitoring systems (CEMS) installed has been retained. A 24-hour rolling average for adipic acid and nitric acid plants is required. For boilers and heaters with CEMS, a 30-day rolling average in pounds of NO_x per million British thermal unit (Btu) (lb NO_x/MMBtu) or a block one-hour average in pounds per hour (lb/hr) is required. The staff believes that extending compliance averaging periods will not compromise air quality goals, but will provide flexibility necessitated by the fluctuation of operating parameters and emissions over time. The June 1992 draft proposal of the rule did not contain any reference to a rolling one-hour average.

Organization of Rule/Errata. TCC suggested replacing the word "biennial" with "every two years" in §117.213(d), relating to Continuous Demonstration of Compliance, and in other places where the word occurs. The staff considers the standard dictionary definition of the word "biennial," defined as "occurring every two years," to apply throughout the rule wherever this word is used.

In §117.119(d)(5), EPA suggested adding the word "otherwise" after "unless" in the phrase "... unless requested by the Executive Director of the TACB." The word "otherwise" has been added to the referenced sentence in §117.119(d)(5), relating to Notification, Recordkeeping, and Reporting Requirements. This revision would also apply to wording in parallel sections of the rule at §§117.219(d)(5), 117.319(c)(5), and 117.419(c)(5).

EPA commented that in §117.203(b)(6)(C), relating to Exemptions, the requirement for sources with withdrawn exemptions to submit a revised compliance plan conflicts with the lack of a requirement for these sources to submit an initial or final compliance plan. The word "revised" will be deleted from §117.203(b)(6)(C), thereby clarifying the requirements for submitting a compliance plan. In §117.207(f), EPA suggested to refer to "low annual capacity factor boilers or process heaters" (additions underlined) to be consistent with the definition of this term in §117.010, relating to Definitions. The suggested wording has been incorporated into §117.207(f), relating to Alternative Plant-Wide Emission Specifications.

EPA commented that in §117.207(f), relating to Alternative Plant-Wide Emission Specifications, and §117.211(c)(4),(5), and (6), relating to Initial Demonstration of Compliance, the citation of §117.203(6), relating to Exemptions, as a definition of low capacity factor units is incorrect, since the exemption of gas turbines or engines in §117.203(6) is based on annual hours of operation rather than capacity. The staff believes that the term "low annual capacity factor" may be properly used to describe operations of emissions units on the basis of either annual fuel consumption or annual hours of operation. Therefore, the wording "low annual capacity factor gas turbine" and "low annual capacity factor gas engine" is added to §117.203(b) (6)(B), to clarify that the exemption is based on annual hours of operation. The reference to §117.203(6) in §117.203(b)(6)(B) in the applicable sections has also been changed.

EPA commented that the term "low annual capacity factor units" in §117.211(c)(4), relating to Initial Demonstration of Compliance, is not defined for gas turbines, and that §117.10, relating to Definitions, defines the term only for boilers and process heaters. The reference to low annual capacity factor units in §117.211(c)(4) is to gas turbine supplemental waste heat recovery units, not gas turbines. The term "low annual capacity factor gas turbine supplemental waste heat recovery unit" is added to the title of the definition of "low annual capacity factor boiler or process heater" in §117.10, as well as to §117.211(c)(4).

DuPont and EPA suggested in §117.321 and §117.421, relating to Alternative Case Specific Specifications for adipic acid and nitric acid plants, respectively, that the reference to plant-wide averaging be deleted since this option is not available for adipic acid and nitric acid plants. The reference to plant-wide averaging in both §117.321 and §117.421 has been deleted.

EPA commented that the applicability of the undesignated head "Nitric Acid Manufacturing" is confusing, since §117.401, relating to Applicability, applies only to nitric acid plants in the Houston/Galveston and Beaumont/Port Arthur ozone nonattainment areas, whereas the undesignated head "Nitric Acid Manufacturing-General" applies statewide. The title of the undesignated head "Nitric Acid Manufacturing" has been changed to "Nitric Acid Manufacturing-Ozone Nonattainment Areas." The wording in the undesignated head "Nitric Acid Manufacturing-General" has been clarified by deleting the word "only" in the last sentence of §117.451, relating to Applicability.

Section 117.10-Definitions. Some commenters requested the inclusion of definitions in §117.010 which were not part of the original proposal. The Administrative Procedure and Texas Register Act (APTRA) does not allow adoption of a rule which contains major substantive changes from the original proposal as published in the *Texas Register*, although a rule may be repropounded and reoffered for public comment. The Secretary of State's Office has interpreted this to mean that no new definitions can be added to the rule at this time. In order to clarify the staff's intended meaning, comments requesting new

definitions will be addressed in the staff's responses in this section. New definitions may be proposed in future rulemaking.

TCC recommended adding five definitions to be consistent with EPA Region 6 terminology: emission rate, facility cap, mass emission loading, maximum allowable emission rate, and maximum allowable mass emission loading. TMOGA suggested a definition for facility cap. GHASP recommended that a definition of emission rate be included which includes emissions from start-ups and shutdowns. The staff is not sure that the proposed TCC definitions would add clarity to the rule. For instance, emissions in lb/hr are usually referred to as "mass emission rate," rather than mass emission loading. Rates can be per unit of energy or per unit of time. The staff believes that emission limits are clearly expressed as proposed. The staff may recommend definitions relating to facility caps in future rulemaking.

GHASP's suggested definition of emission rate is based on the concern that emissions may not be minimized during periods of start-up and shutdown. The staff believes that clarifying the definitions of start-up and shutdown to improve the consistent application of General Rule §101.11(b) could lead to reduced emissions, whereas changing the definition of emission rate is a less effective way of addressing the concern. The TACB Compliance staff intends to develop more uniformity in defining periods of start-up and shutdown and evaluating emissions occurring during start-up and shutdown periods based on comparisons of data within specific facility types.

Texaco commented that the definition of "block one-hour average" is vague, since it doesn't specify the frequency or quantity of data to be collected each hour. The staff relied on current federal New Source Performance Standards (NSPS) as a guide in drafting the proposed rule requirements for emissions testing and monitoring. The General Provisions (Subpart A) of NSPS, §60.13(h), require four or more data points equally spaced over each one-hour period. However, if three valid data points can be generated during the hourly period in which the once-per-day zero and span checks are performed, hourly emission are to be calculated from this data. This relatively low frequency of data collection will facilitate sharing of CEMS, thereby reducing total CEMS costs. The staff does not expect that the Title V enhanced monitoring requirements will entail major revisions to NSPS CEMS requirements, but understands that any additional Title V CEMS requirements would be applicable to major NO_x sources. The staff has reviewed EPA's preliminary draft-enhanced monitoring rules and will review the rules again when they are formally proposed in the *Federal Register*. Although the staff believes that the new Chapter 117 provides sufficient details to adequately specify procurement of CEMS, the staff intends to provide, before the end of the summer, brief written guidance on testing, monitoring, and acceptable formats for initial compliance plans.

TCC and TMOGA suggested that a definition is needed for "chemical processing gas turbine" and suggested that it be defined as a

gas turbine employed as a power source within, or integral to, a chemical processing unit. The staff proposed a definition for "chemical processing gas turbine" as "a gas turbine that vents its exhaust gases into the operating stream of a chemical process." The basis for the staff's proposal and exemption for such turbines at §117.203(b)(6)(A) is that a downstream chemical process, typically consisting of catalyst beds which rely on hot exhaust gases from a turbine functioning as a hot air generator, could be adversely affected by the presence of steam or water injection for NO_x control in the exhaust gases. "Chemical processing gas turbines" as proposed in the definition are relatively rare. TCC's and TMOGA's recommendation would exempt turbines used for mechanical or electric power output, which are the typical uses of gas turbines. The definition will be maintained as proposed.

TCC and Houston Lighting & Power (HL&P) suggested that the definitions for cold start-up and shutdown be deleted. Amoco Chem, Amoco Oil, Exxon Chem, Exxon Company, U.S.A. (Exxon), Gulf States Utilities Company (GSU), and Enron Power Corporation-U.S. (Enron) suggested various revisions to the definitions for cold start-up and shutdown. Section §101.11(e) provides a mechanism for exemption of a process from emission limits during periods of start-up or shutdown. This subsection is written broadly in order to cover all types of sources. The staff believes it is appropriate to clarify the application of §101.11 in the more specific context of combustion sources in Chapter 117. The staff also believes that the proposed definitions of cold start-up and shutdown are simple, clear, and appropriate. The variety of comments as to what conditions constitute a startup or shutdown suggests that there is a need for clarification. However, the staff did not thoroughly discuss the proposed definitions internally or with industry and does not believe this issue must be resolved under the current rulemaking. Further, the staff is interested in consideration of specific numerical time limits for defining start-up and shutdown for each category of equipment regulated under the rule. Due to the need for future clarification, the proposed definitions of cold start-up and shutdown have been deleted.

TMOGA and Mobil suggested a definition for CEMS as an analytical device that directly measures and records specific emissions, such as NO_x, for one or more combustion devices at least four times each hour. Exxon Chem suggested a similar definition for CEMS. The first paragraph of §117.10 states that terms not specifically defined in the Texas Clean Air Act, the General Rules, or this chapter shall have the meanings commonly used in the field of air pollution control. Although the suggested new definition appears fairly consistent with the staff's intent, the staff does not believe that a definition for CEMS is required, since the meaning is commonly understood in the field of air pollution control. The staff recommends limiting the number of units sharing a single CEMS to three. Hourly CEMS data collection requirements were discussed in the previous response to the definition of block one-hour average. The NSPS CEMS performance

specification tests and quality assurance requirements referenced at §117.213(b), §117.313(b), and §117.413(b) further define CEMS.

HL&P suggested deleting the names of affected companies in the definition of "electric power generating system." The staff's use of names of affected companies was intended for clarity. The staff does not believe that confusion will result from deleting the specific utility names if "publicly regulated utility" is substituted for the two names. The intent is that cogeneration sources be regulated under the undesignated head, "Commercial, Institutional, and Industrial Sources." Since cogeneration sources are not regulated by the Public Utility Commission of Texas, no confusion should result. The names "HL&P" and "GSU" have been deleted from the definition.

Exxon suggested that the definition of heat input be modified to include a definition for the heat input of a carbon monoxide (CO) boiler in a fluid catalytic cracking unit (FCCU). The staff recognizes the need to define heat input of an FCCU CO boiler. The staff agrees with Exxon and the definition of heat input has been revised to include the South Coast Air Quality Management District (SCAQMD) rule-language, as suggested by Exxon for CO boilers.

Waukesha Engine Division (Waukesha) suggested using an engine's nameplate rating to define engine horsepower. The TACB has previously encountered controversy over claims that nameplates have been altered in an attempt to circumvent the requirements of the TACB. Nameplate ratings do not always reflect the load limitations that the driven equipment may impose on an engine. The staff recognizes the commenter's concern that gas engine manufacturers may not have used Diesel Equipment Manufacturer's Association standards in describing their engines' horsepower capabilities and that to require this standard could be costly. The definition of horsepower rating referenced in Standard Exemption 6 appears to be a workable definition. The second sentence of the definition of horsepower rating has been deleted, making the proposed definition equivalent to the existing definition in the TACB Standard Exemption List.

TRC Environmental Corporation (TRC) for Applied Energy Services (AES) Deepwater commented that the definitions of "utility boiler or steam generator" and "electric power generating system" do not include AES' petroleum coke-fired boiler. TRC suggested that the definition of industrial boiler or steam generator does not apply to AES, since petroleum coke is a waste fuel. AES' boiler is not owned or operated by a municipality or a Public Utility Commission of Texas-regulated utility, so it is neither a "utility boiler or steam generator," nor an "electric power generating system." The staff intends that the definition for industrial boiler or steam generator apply to petroleum coke-fired industrial boilers or steam generators. The definition states that an industrial boiler or steam generator is any combustion equipment, not including utility or auxiliary steam boilers, that burns solid, liquid, or gaseous fuel to produce steam. The

staff considers petroleum coke, which is a solid and is used as a fuel, to be a solid fuel, so the definition would apply to this type of unit for the purposes of this rule. The unit would, therefore, be regulated under the undesignated head "Commercial, Institutional, and Industrial Sources."

TCC noted that the definition of low annual capacity boiler and process heater has subparagraphs (A) and (B) reversed. The definitions are used to define rule exemptions for equipment which is used sparingly. The staff originally based the definition on the potential of a unit to be a major NO_x emitter. The staff believes that subparagraphs (A) and (B) are not reversed, since the staff developed the proposed definition using an emission factor of 0.14 lb NO_x/MMBtu for units rated less than 100.0 million Btu per hour (MMBtu/hr) heat input, which was half the factor used for large units rated more than 100.0 MMBtu/hr heat input.

Since the proposal was published, the staff has reconsidered cost effectiveness in setting the heat input exemption threshold for large units. For large units, the staff used an emission rate of 0.23 lb NO_x/MMBtu, which is EPA's typical emission factor for natural gas-fired boilers in the NSPS Subpart Db Preamble (49 Federal Register 25106). Using this emission factor, the staff calculated that an industrial boiler or process heater with a heat input of 100.0 MMBtu/hr and operating at a 25% annual capacity factor is a potential major source of NO_x. The annual heat input for such a unit is 2.2(10¹¹) Btu/year. The staff considered the cost-effectiveness of emission controls on a unit with these characteristics, based on the California Air Resources Board (CARB) and SCAQMD technical support document, *A Suggested Control Measure for the Control of Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators and Process Heaters* (April 1987). The document computes cost-effectiveness of NO_x controls as a function of the annual capacity factor of a unit. Capital costs for NO_x control equipment are independent of capacity factor. Annual emission reductions, and hence cost-effectiveness, are highly variable with the capacity factor. As examples, two "D" type package boilers with substantially differing ease of retrofit have NO_x cost effectiveness values of \$1,000/ton (simple retrofit case) and \$2,800/ton (difficult retrofit case) of NO_x reduced, based on a 25% annual capacity factor. The staff considers these costs to be reasonable. The CARB document also shows that there are economies of scale in the costs of retrofitting a boiler with a low NO_x burner as boiler size increases. The staff thinks the economy of scale in retrofitting low-NO_x burners (LNB) and the higher emission rates from larger units makes an exemption based on annual heat input cost-effective for increasing unit sizes above 100.0 MMBtu/hr heat input. Based on this analysis, the threshold has been increased for the exemption of low annual capacity factor boilers and heaters rated more than 100.0 MMBtu/hr heat input. The staff has changed the definition of low annual capacity factor boiler or process heater with maximum rated capacity greater than or equal to 100.0 MMBtu/hr heat input from an

annual heat input of 1.4(10¹¹) Btu/year, to 2.2(10¹¹) Btu/year. The Btu/year exemption threshold for the units with maximum rated capacity greater than or equal to 40.0 MMBtu/hr and less than 100.0 MMBtu/hr heat input has been retained.

HL&P suggested that the definition of maximum rated capacity be reworded so as to not constrain existing boilers and turbines. It suggested defining maximum rated capacity as the maximum heat input as documented by actual operation. It suggested the TACB Permits practice of using the lowest temperature, perhaps ten degree Fahrenheit, to establish maximum rated capacity for gas turbines.

The maximum rated capacity is used to establish emission limits, but does not place new constraints on production capacity of units. Independent and prior to the proposed Chapter 117, each unit has a production constraint based on actual grandfather production rate or permit condition. If the unit is grandfathered (with respect to TACB Chapter 116), defining maximum rated capacity as the maximum heat input as documented by actual operation (prior to September 1, 1971) is appropriate. If the unit is permitted, a permit condition or representation in the permit application, or the design maximum heat input would represent the production constraint. The maximum rated capacity definition is meant to coincide with the current production constraint for boilers and heaters. The maximum rated capacity definition is not meant to coincide with the current production constraint for gas turbines and internal combustion engines (ICE). However, the gas turbine emission limits are in parts per million (ppm) for base-load turbines or pound per million Btu for peaking turbines at §105(h); and for ICE, in grams NO_x per horsepower-hour (g NO_x/hp-hr). Limits of this nature do not constrain production and the maximum rated capacity definition is irrelevant, except in the case of calculating alternative limits under the system-wide average (or plant-wide average for industrial sources).

The maximum rated capacity definition is designed to avoid inflating the weight of gas turbines (or ICE) in the system-wide (or plant-wide) limit. The maximum rated capacity definition for gas turbines and ICE treats this equipment slightly differently from boilers on the basis of a physical difference in the way they operate. Gas turbine and ICE maximum output increases significantly as ambient temperature decreases. For turbines, extremely cold temperatures are the appropriate basis for establishing a permitted production-based maximum pound per hour emission rate; however, the level of control required is entirely established by a ppm limit. The system-wide average uses a heating weighted average to determine individual unit allowable emissions. By using the International Standards Organization (ISO) basis for determining the gas turbine heat input weighting factor (and manufacturer's horsepower rating for ICE), the system-wide emission limits are not artificially weighted with extreme cold operating conditions which occur very rarely. To ensure that the system-wide average limits result in RACT equivalent reductions to individual emission limits, a logical argument could be made for using an even higher am-

bient temperature, perhaps based on average ozone exceedance day temperature. This temperature is not readily available, whereas ISO temperature (59 degree Fahrenheit) is, and turbine output at ISO temperature reasonably approximates maximum output under ozone exceedance conditions

TMOGA, Exxon Chem, and Miles Incorporated (Miles) suggested a definition for parametric monitoring system. The requirement to install, calibrate, maintain, and operate a parameter monitoring system has been deleted from §117.213(a).

EPA suggested that a definition be added for the term "peaking service" or clarify the language of §117.103(b)(3)(C) and §117.203(b)(6)(C) if the intent there is that a unit "in peaking service" is the same as a "peaking gas turbine or engine." The wording of §117.103(b)(3)(C) and §117.203(b)(6)(C) has been revised to parallel the definition of "peaking gas turbine or engine."

TMOGA and Mobil suggested deleting the wording "the ratio of the" in both the definitions of plant-wide emission rate and plantwide emission limit. The staff based the definitions of plantwide emission limit and plant-wide emission rate and the use of these terms in §117.207 (similarly for system-wide in §117.105) on SCAQMD Rule 1109, which also relies on emissions averaging with individual unit emission limits. Companies will be allowed to assign individual heater and boiler NO_x emission limits in either lb/hr, one-hour average, or lb NO_x/MMBtu, 30-day rolling average, as discussed in §117.207. The staff believes this flexibility may address the concern of the commenter and does not believe that the suggested wording change would add clarity to the definition. The staff intends to provide a brief guidance document for companies to develop their initial compliance plans and may restate the emissions averaging concept using mathematical notation rather than the verbal approach based on Rule 1109.

Oxy interpreted the definition of process heater to exclude thermal reactors and suggested that TACB clarify this definition accordingly. Oxy also suggested that the exclusion of thermal cracking units would be appropriate because, according to the EPA's assessment, they are not a significant class of NO_x sources. The staff has defined process heaters in a way that includes thermal cracking units in the equipment class of process heaters. The definition states that a process heater is a piece of combustion equipment which is used to transfer the heat from the combustion of liquid or gaseous fuels to a process fluid. The definition does not make judgement as to whether or not the heat transferred to the process fluid is for heating the process fluid or for causing a reaction. For this reason, thermal cracking units would be defined as being a process heater and would be subject to the emission limits set forth in Chapter 117. The staff definition of process heater is consistent with the definition in EPA's Alternative Control Technique (ACT) document, NO_x Emissions from Process Heaters. The ACT defines process heaters to include heated-feed and reaction-feed heaters. The ACT also shows that reac-

tion feed-heaters account for 80% of the total fired heat input in the chemical manufacturing industry.

TCC, TMOGA, Exxon Chem, and Texaco sought a definition for totalizing fuel flow meter and suggested various definitions. The staff believes that the suggestion for a definition of totalizing fuel flow meter is valid, although it was not originally proposed by the staff in the proposed rule. The staff may recommend that the definition be added in future rulemaking. The definition would be as follows: A nonresettable device that reports cumulative fuel flow to a piece of equipment as the heat value or mass delivered over a defined period of time. The staff's interpretation of the definition is that the flow meter must either have a nonresettable mechanical output, or a transducer which will allow the fuel flow rate to be electronically transmitted through an integrated electronic measuring system to a computer for fuel usage recording. A strip or chart recorder whose output is not integrated and reported would not qualify as a mechanical output since the reading would not indicate cumulative flow.

Utility Costs-General HL&P noted that Subchapter B Combustion at Existing Major Sources-Utility Electric Generation does not treat the same sources consistently for different classes of owners. The staff has tried to address both the general and specific situations where HL&P suggested there was inequitable treatment between different classes of owners. Some differences between rule sections may be inevitable due to the differences in the type of facilities involved.

Greater Houston Partnership (GHP) noted that Subchapter B is costly, especially to utilities.

The staff agrees that the subchapter is costly, but believes that attainment of the national ozone standards in Houston and Beaumont/Port Arthur will require the allocation of resources to pollution control projects not previously considered. Cost estimates for rule compliance vary widely, but the staff believes that some of the industry estimates are inflated.

Section 117.101-Applicability. HL&P suggested that the names of the affected companies be deleted from §117.101. The names have been deleted.

Section 117.103-Exemptions. GHASP suggested deleting the exemptions allowed under §117.103(a) for the start-up and shutdown of a unit. Utility boilers are normally infrequently operated in shutdown or start-up modes. Start-ups and shutdowns are short-term, transient events for which emission control is difficult; emissions from these events are relatively small and will be controlled by existing provisions in the General Rules concerning major upsets and maintenance.

HL&P recommended deleting the reference to "cold start-up or shutdown" and the 12-hour start-up restriction. GSU recommended that the duration of "start-up" and "shutdown" procedures subject to exemptions be extended to 72 hours. HL&P suggested that §117.103(a) should also reference the

system-wide averaging provisions of §117.107. The staff proposed a specific 12-hour maximum time period for start-up procedures for all electric utility units. The time period was based on the SCAQMD utility NO_x rule, where the definition applies only to utility power boilers, not utility auxiliary boilers, gas turbines, or engines. The 12-hour time period may not be appropriate for other units such as gas turbines, which may start-up in minutes. The staff does not believe start-up periods must necessarily be fully defined under the current rulemaking, since the General Rules make allowances for exempting units during periods of major upsets and maintenance. Section 117.103(a) has been revised so that start-up and shutdown periods, as defined in the General Rules, will apply.

GSU stated that TACB should exempt sources which are determined not to contribute to ozone nonattainment in their respective areas. The staff disagrees with GSU. To consider the concept of exempting certain "non-contributing" sources would imply that ozone formation is generally caused by specific emission units. This premise is unsupported by decades of scientific research concerning photochemical oxidants and smog. In fact, photochemical smog is a regional problem to which all sources, particularly electric utility plants, contribute. During smog episodes, ozone tends to build slowly over time, so that more sources contribute to the problem, over a much wider area, than for other criteria pollutant emissions. The available evidence on ozone formation points out the inherent difficulties in placing arbitrary borders around a problem which does not recognize geographical boundaries.

GHASP opposed the §117.103(b)(3)(C) exemption for gas turbines used in peaking service.

Stationary industrial engines and turbines often run either close to continuous operation or less than 10% of annual capacity, about 850 hours per year. Requiring emission controls for equipment which is limited to run no more than 10% of annual capacity is not cost-effective. Considering the magnitude of NO_x emissions generated continuously by other sources on a year-round basis, the exemption of the relatively few peaking units for the reasons cited appears reasonable. The annual low capacity factor for both utility and industrial gas turbines and internal combustion engines has been raised to 850 hours per year. Rule sections relating to exemptions for both utility and industrial sources, and continuous demonstration of compliance have been revised to reflect this change.

EPA suggested that the exemption for peaking turbines in §117.103(b)(3)(C) be based on operation for less than 200 hours per calendar year.

The language is revised in §117.103(b)(3)(C) as suggested.

HL&P strongly urged the TACB to exempt auxiliary boilers with a heat input of less than 8.76(10¹¹) Btu per year. Industrial boilers with a heat input capacity of less than 100.0 MMBtu/hr heat input are not subject to a NO_x emission limit under Chapter 117. Industrial

boilers with heat input less than 100.0 MMBtu/hr could consume up to 8.76(10¹¹) Btu per year. HL&P is concerned that the proposed exemption may require emission controls for units which rarely operate, which is not cost effective. There are eight utility auxiliary boilers in the four ozone nonattainment areas, all operated by HL&P. The staff's analysis of 1990 emissions data revealed that only two of the eight affected auxiliary units would not be exempted under the current proposal, and that 1990 capacity factors were unusually high for those two units. The use of historical capacity factors in the analysis revealed that exemptions might potentially apply for all eight affected auxiliary units. Nonetheless, TACB has reconsidered cost effectiveness in setting the heat input, based exemption for industrial boilers and heaters. The annual heat input exemption for utility units has been increased to the level now recommended for industrial units.

EPA's direction to TACB is that Chapter 117 should address all major sources. Smaller industrial boilers, those with maximum rated capacities less than 100 MMBtu/hr heat input, are potentially major sources. Although the proposed rule exempts such sources from emission limits, the staff recommends proposing rules for these and other major sources in additional rulemaking in the near future. The staff does not believe that the need for supplementary rulemaking in the future for regulation of smaller major sources is justification for exempting major sources which are subject to the current rule. HL&P observed that §117.103(c) indicates that if emergency, standby, or peaking units exceed the applicable Btu-per-year or hour-per-year limitation, the exemption will be withdrawn. HL&P requested at least one exceedance before the exemption would be withdrawn. Alternatively, HL&P recommended that a three-year rolling average for the Btu-per-year limitation could be adopted to help sources avoid having exemptions withdrawn due to emergency situations. GSU recommended that a three-year rolling average for the Btu-per-year limitation be adopted to help sources avoid having exemptions withdrawn due to emergencies. Chapter 117 requires application of emission controls if the exemption levels are exceeded. The cost-effectiveness of any emission controls decreases as the amount of time the equipment operates decreases. The staff has increased the allowable hourly limitations from 200 to 850 hours per year in order to assure that the equipment in the specified services either meets the exemption from control requirements or is required to have controls applied where it may be cost-effective. The staff also has increased the allowable annual heat input for the low annual capacity factor (Btu-per-year) exemption. Otherwise, installation of NO_x controls could be required in cases where it may not be cost-effective. The staff feels that allowing an exceedance of a limit defeats the purpose of setting a limit, so HL&P's potential solution is not recommended. Allowing a three-year rolling average Btu-per-year limitation is another potential solution to the problem. However, enforcement of emission limitations on such a long-term basis may not be acceptable to the EPA. The staff has increased the hour-per-

year and Btu-per-year exemption limits, as discussed in the previous comment and has raised the hourly limits in the utility rule to be consistent with revisions in the industrial rule.

If the exemption is lost, HL&P recommended a 90-day (instead of 30-day) period, and GSU recommended a 180-day period, to develop and submit a compliance plan.

The staff agrees that the time period should be extended and has increased the proposed 30-day limit to a 90-day limit to develop and submit a compliance plan.

Section 117.105—Emission Specifications.

HL&P stated that in §117.105 the staff has failed to follow the RACT guidance available from the EPA. EPA recommended NO_x RACT limits for utility boilers in the November 25, 1992 NO_x Supplement to the General Preamble. Their suggested RACT limits are 0.20 lb NO_x/MMBtu for tangential-fired and 0.30 lb NO_x/MMBtu for wall-fired electric utility boilers, calculated on a 30-day rolling average basis. However, the guidance also states, "Although EPA has historically recommended source-category-wide presumptive RACT limits..., decisions on RACT may be made on a case-by-case basis, considering the technological and economic circumstances of the individual source (57 Federal Register 55624)." Staff has interpreted EPA's guidance to allow different RACT determinations to be made, as appropriate, based on affected sources' and states' individual circumstances. Thus, the proposed RACT limits do, in effect, follow EPA's guidance, since it allows more specific RACT determinations. EPA's guidance is designed for outliers or the very highest emitters and as a result, the Texas boilers would not achieve any additional reductions if EPA's RACT limits were applied. The system-wide mean emission rate for HL&P's gasfired boilers has been estimated at about 0.23 lb NO_x/MMBtu which suggests compliance with a limit of 0.25 lb NO_x/MMBtu on a 30-day rolling average, but the system-wide emission limit, applying EPA's RACT guidance to HL&P's boiler population, is 0.28 lb NO_x/MMBtu, averaged over 30 days. If the presumptive RACT limits were adopted, HL&P would already be in compliance with the emission limits according to the staff's calculations, and the needed emission reductions would not be achieved. The TACB proposed emission limits are also based on a shorter averaging period than EPA's, which is effectively a more stringent limit. HL&P data shows that the proposed 24-hour averaging period may be 29% more stringent (i.e., NO_x emissions variability from the arithmetic mean is plus 29%) than EPA's suggested 30-day averaging period, based on actual monitored emissions data from two of HL&P's gas-fired units. If EPA's numerical limits were applied on a 24-hour average basis instead of the 30-day average that EPA recommends, it is estimated that HL&P would still be in compliance with the EPA's presumptive RACT limits and would not require controls. The staff recognizes that the proposed §117.105 emission limits are more stringent than the EPA's recommended limits, but believes this is necessary to make progress toward attainment of the ozone National Ambient Air Quality Standard (NAAQS) by the federally imposed deadlines.

Ozone attainment will require a major effort by broad categories of industries, and a cooperative effort between government and industry. The single largest major NO_x stationary point-source category in Texas is the electric utility industry, which accounts for more than 25% of the major source NO_x emissions in the four ozone nonattainment areas. The utilities must bear some of the cost of reducing NO_x emissions if attainment is to be achieved by the statutory deadlines.

HL&P claimed to be required to spend an estimated \$790 million to satisfy the requirements of the proposed rules. They stated this will place their company in a less competitive position with respect to local power producers. HL&P noted that their cost-effectiveness estimates are \$8,600 per ton of NO_x reduced. The TACB staff believes the estimated \$790 million dollars to comply with proposed 0.20 lb NO_x/MMBtu emission limits is exaggerated. It includes costs to replace a net 640-megawatt (MW) loss in generating capacity as a result of RACT operational requirements, primarily associated with furnace pressure limitations reached through the extensive use of windbox flue gas recirculation (FGR) control technology. A thorough review of the requirements as applied to HL&P revealed no conclusive evidence that derating would be necessary on all of HL&P's units, as theorized. Admittedly, the postulated derates for furnace pressure limitations could occur for the technical reasons cited; in fact, units can be found elsewhere in the United States that have experienced derates for similar reasons. However, no conclusive evidence was found that derates of the magnitude they suggested, for virtually all of their units, was a probable scenario. The staff independently developed capital cost estimates to comply with the proposed rule of \$32 million under one control scenario. After reviewing additional information submitted by HL&P, the staff developed a \$73-million scenario based on the comprehensive application of low NO_x burners. These cost estimates, which were developed without foreknowledge of chosen compliance methods, are imprecise, but the staff believes they represent a more realistic cost range than HL&P's estimates. The staff believes HL&P's cost-effectiveness estimate of \$8,600 per ton is too high because it is largely based on excessive capital and derate costs. The staff's cost-effectiveness estimates are \$1,300 per ton for the first scenario, and \$3,300 per ton for the scenario using the application of LNB.

HL&P commented that the proposed emission limit, 0.20 lb NO_x/MMBtu for wall and tangential gas-fired utility boilers, calculated on a 24-hour rolling average, doesn't represent RACT, is too stringent, and fails to follow EPA's RACT guidance of 0.20 lb NO_x/MMBtu and 0.30 lb NO_x/MMBtu emission limits for tangential and wall gas-fired utility boilers respectively, calculated on a 30-day rolling average. HL&P recommended that emission rates equivalent to the application of LNB and overfire air be considered RACT. They stated that obtainable emission rates with the application of these techniques are expected to be close to EPA's recommended limits. GSU recommended emission limits of 0.20 lb NO_x/MMBtu and 0.30 lb NO_x/MMBtu for tan-

gential and wall-fired boilers, respectively, calculated on a 30-day rolling average.

As a result of negotiations with HL&P, the staff has adopted NO_x emission limits less stringent than those proposed. Limits of 0.26 lb NO_x/MMBtu for gas-fired utility boilers on a 24-hour rolling average basis and 0.20 lb NO_x/MMBtu based on a 30-day rolling average have been implemented, instead of 0.20 lb NO_x/MMBtu on a 24-hour average basis as originally proposed. The staff has deleted the pound-per-hour mass-emission limit standard. The staff's recommended emission limits are much closer to the recommended EPA limits. For HL&P, the limits may be approximately equivalent to the application of low-NO_x burners. The staff estimates that GSU, with only two operating stations in the Houston/Galveston and Beaumont/Port Arthur ozone nonattainment areas and lower emitting units than HL&P, currently meets the recommended limits. The staff agreed to compromise to facilitate rulemaking progress while retaining a reasonable level of reductions.

HL&P and GSU stated that the rule imposes the same emission limits on both wall and tangential gas-fired utility boilers without acknowledging the design differences between the two types and their impact on NO_x formation. This is inconsistent with EPA guidance and with existing TACB Chapter 117 NO_x rules. The staff recognizes that tangentially-fired gas boilers are often lower NO_x emitters than wall-fired units. The intent in setting the emission limits was to achieve moderate

emission reductions from HL&P's 19 gas-fired boilers considered as a single system. The expected reductions can be achieved by requiring a single limit, for both tangential and wall-fired units, that is derived from an analysis of the different firing configurations in the affected boiler population. The single emission limit simplifies the staff analysis needed to design the appropriate system emission reduction and does not appear to inconvenience HL&P substantially. Tangentially-fired boilers can, in a system-wide average, offset emissions from wall-fired boilers, which are otherwise more costly to control. Since the rule allows system-wide averaging, a single RACT limit for both firing configurations was considered as appropriate as separate limits.

HL&P claimed that the staff did not consider the physical characteristics and constraints of the affected boiler population and that this is inconsistent with EPA's policy for determining RACT. HL&P stated that Texas utility boilers are initially designed to burn natural gas and are therefore built with small, tight furnaces with inherently high heat release rates. In contrast, many of the boilers in the Northeastern States for Coordinated Air Use Management (NESCAUM) region, whose RACT limit of 0.20 lb NO_x/MMBtu for natural gas utility boilers serves as the basis for the TACB proposed limit, are units which are initially designed to burn coal and later converted to burn natural gas. They are characterized by larger, cooler furnaces with lower heat release rates, which allow for flame expansion

and cooling, thereby lowering NO_x emission levels. The staff accounted for the physical characteristics of the affected boiler population when proposing the emission limits in §117.105. The design characteristics of HL&P's gas-fired utility boilers were recognized; the staff believes that the recommended 0.20 lb NO_x/MMBtu (30-day average) and 0.26 lb NO_x/MMBtu (24-hour average) emission limits are reasonably achievable and economically feasible. The staff consulted NO_x control experts, utility boiler design engineers, boiler control technology vendors, power plant operations engineers and technicians, and power plant architects/engineers, and found no conclusive evidence that HL&P's boilers can be singled out as inherently troublesome to control. Furthermore, the staff's estimate of achievable emission reductions are based on HL&P's own reported uncontrolled baseline NO_x emission levels. HL&P claims to have uniquely small, tight furnaces with high heat release rates due to their historically extensive use of natural gas as a boiler fuel, resulting in inherently high baseline NO_x levels, which supposedly require more extensive control technology retrofits than most other utility units. Data was provided by HL&P on the volume of the furnace region directly in front of burner rows for each of their units, instead of using entire firebox volumes as defined in §117.10, which made the heat release rates seem extraordinarily large when compared with similar units. Firebox volumes provided by HL&P, and the staff's computation of heat release rates based on these volumes, are shown in TABLE-1 1.

TABLE-1

HL & P's Utility Boilers
Unit Specific Data

Unit	MW	MMBtu/hr	Fire Box volume* (ft ³)	Heat release MMBtu/hr/ft ³
CBY1	770	7,000	48,304	0.14
CBY2	770	7,000	48,304	0.14
CBY3	770	7,000	58,320	0.12
GBY5	420	4,030	62,234	0.06
SRB1	180	1,826	47,374	0.04
SRB2	180	2,442	51,600	0.05
SRB3	240	2,442	23,353	0.10
SRB4	240	1,748	51,600	0.03
DWP9	185	1,735	47,373	0.04
WAP1	183	1,735	47,769	0.04
WAP2	183	2,845	74,778	0.04
WAP3	290	5,490	23,368	0.23
WAP4	565	2,200	35,361	0.06
THW2	240	4,500	35,361	0.13
PHR1	490	4,500	35,361	0.13
PHR2	490	4,500	35,361	0.13
PHR3	575	5,500	66,096	0.08
PHR4	770	7,700	48,693	0.16
WEB3	390	3,550	45,527	0.08

As reported by HL & P upon TACB's request

The staff found data on a boiler, similar in construction to HL&P's Cedar Bayou 3 (CBY3 on the table), that was used as a basis for performance comparisons. This boiler, Ormond Beach 2 (a Southern California Edison (SCE) boiler currently in commercial operation in Ventura County, California), is a unit designed to burn natural gas and has a very high heat release rate, slightly higher than that of Cedar Bayou 3. Ormond Beach 2 has a heat rate input of 7,125 MMBtu/hr (compared to CBY3's heat rate input of 7,000 MMBtu/hr); its furnace volume of 208,450 ft³ is equivalent to the actual furnace volume (instead of the volume of the region in front of burners, as reported by HL&P for their boilers) of Cedar Bayou 3. Ormond Beach 2 was constructed at almost the same time by the same boiler manufacturer as Cedar Bayou 3. Ormond Beach 2 is currently operating with burners out of service, LNB, and 18% windbox FGR; and is complying with a 125 parts per million by volume (ppmv) which is approximately 0.15 lb NO_x/MMBtu on a 24-hour average emission limit, a notably more stringent emission limit than was proposed under §117.105. It has not been subject to any derate due to fan limitations or furnace overpressurization, although forced draft (FD) fan motors were once replaced with variable speed drives, or experienced other operational difficulties of the magnitude that HL&P suggested would occur with their units. At one time, Ormond Beach 2 temporarily operated at reduced boiler load (but did not derate the unit) due to inability to meet its 0.15 lb NO_x/MMBtu emission limit, but boiler capacity was later restored when they met their emission limits. The unit is currently undergoing a replacement of reheat tubes at a cost of approximately \$7.5 million due to tube wear. The wear, although a normal phenomenon, was exacerbated by the operation of NO_x control systems, particularly FGR. The staff acknowledges that some incremental increases in maintenance costs may be attributed to FGR, but HL&P's claim of tens of millions of dollars in costs due to operational difficulties associated with NO_x controls are not representative of current spending needed to comply with the rule. Ormond Beach 2 is currently being retrofit with flue gas treatment systems to comply with a new 0.10 lb NO_x/MW-hour emission limit (approximately 0.01 lb NO_x/MMBtu). Although requiring the installation of among the most extensive NO_x control equipment in the nation, its new limit is expected to be achieved without requiring stiffening or rebuilding of the boiler, as HL&P claims would occur with Cedar Bayou 3 if the originally proposed emission limits were adopted. In fact, plant engineers at SCE have estimated that Ormond Beach 2 could withstand an additional three inch w.c. system pressure without any capacity derate. Thus, if Ormond Beach 2 is capable of complying with such stringent emission limits, the staff believes Cedar Bayou 3—which has a lower heat release rate than Ormond Beach 2—is capable of complying with the notably less stringent recommended emission limits without significant derate. Since all of HL&P's utility boilers have lower heat release rates than Cedar Bayou 3 as noted in the above table, except for P. H.

Robinson 4 (PHR4) and Cedar Bayou 1 and 2 (which are only slightly higher), HL&P's boilers are also expected to be capable of complying with similar emission limits. The staff also believes more technical research is needed to complete an assessment of the operational impacts associated with NO_x RACT.

HL&P claimed that while the TACB has based the proposed utility boiler emission limits on what has been proposed in the NESCAUM region, the assessment of what percentage of NO_x reductions are achievable, the projected cost, and operational impacts have been based on California's achievements. HL&P indicated that most utility boilers in California were initially designed to burn oil and later converted to burn natural gas; larger furnace volumes and lower NO_x emissions are associated with units designed to fire fuel oil. The staff considered the State and Territorial Air Pollution Program Administrators (STAPPA) and Association of Local Air Pollution Control Officers (ALAPCO) recommended limits as well as the NESCAUM proposal and many pieces of technical, economic, and operational information, including technical reports used to justify the NESCAUM and STAPPA/ALAPCO recommended limits, in developing the proposed rule. The NESCAUM/EPA document titled *Evaluation and Costing of NO_x Controls for Existing Utility Boilers in the NESCAUM Region* (draft June 1992, final December 1992) was found to provide the most current comprehensive summary of utility low-NO_x retrofit experience nationwide.

The staff relied on the cost estimates from this study in the majority of its estimates. The staff also reviewed technical literature on the subject of NO_x combustion control, reviewed reports summarizing utility low NO_x operational experience, and consulted with NO_x control experts and boiler technology vendors in arriving at viable NO_x emission limits. Based on this review, the recommended 0.20 lb NO_x/MMBtu (30-day average) and 0.26 lb NO_x/MMBtu (24-hour average) emission limits were found to be highly suitable, considering technical and economic practicability, and are considered to represent RACT in Texas. California's newly adopted emission limits are considered too stringent and costly to adopt in Texas, would require the application of controls beyond the level of stringency that is normally considered RACT, and were not realistically considered. However, the past 20 years' experience of California-based utilities in controlling NO_x is so vast that the staff considers the depth and breadth of their technical and operational expertise to be a very practical guide for developing a NO_x control policy for Texas. The staff would be remiss not to consider the abundantly useful information that can be gained from the meaningful NO_x reduction achievements in California. Comparisons with California utility boilers have been invaluable in setting recommended RACT emission limits. HL&P never clearly established that the overall California utility boiler population, which is presently operating at low emission levels, started with lower baseline emissions than units in Texas. Although some units in California were built for oil-firing and were

later switched to natural gas, others were built for dual-fuel capability with either gas or oil as the primary fuel, and yet others were originally designed and built for natural gas firing. The staff readily acknowledged that utility companies in Texas historically have relied more heavily on natural gas for electric power generation than companies elsewhere in the country (including California), and that fact is reflected in the design fuel mix of the boiler population of California utility units compared to HL&P's. Yet many additional questions remain about the relative design and performance capabilities of units in these two regions. HL&P never clearly established the fact that relative firebox volumes of natural gas boilers and fuel oil units are actually different, and persuasive comparative data was lacking to support their claims of boiler design uniqueness. Although the staff conceptually agrees that fuel oil firing tends to suggest a need for larger furnace sizes, discussions with boiler design engineers revealed that design fuel is only one of many considerations in sizing a utility boiler furnace, and that a person cannot generalize about furnace size based on fuel type alone. Actual firebox volumes of HL&P's units were never contrasted with a comparative California boiler population, so the size differences that exist, if any, have not been clearly established. Furthermore, the differences in NO_x emission levels that are expected from these size differences are not known and were not adequately addressed. Furthermore, some units in California are known to have natural gas as their original design fuel, and others, such as Ormond Beach 2, are known to have high heat release rates. Yet, these units have been complying with notably more stringent emission limits, for about the last two decades, than were originally proposed in §117.105, and doing so without massive operational limitations that HL&P postulated would occur with their units. For example, SCAQMD has had a 125 ppmv (about 0.15 lb NO_x/MMBtu) limit for units larger than 215 MW on a 15-minute average since 1976, San Diego County Air Pollution Control District's limit has been 125 ppmv, averaged hourly, since 1971; Ventura County Air Pollution Control District's limit has been 125 ppmv (for units larger than 2,150 MMBtu/hr heat input), averaged over 24 hours, since 1972. Other California district-wide limits currently in effect include 125 ppmv at Morro Bay, 225 ppmv at Monterey, and 175 ppmv in the Bay Area. Currently, new emission limits of 0.25 lb NO_x/MW-hour (about 0.025 lb NO_x/MMBtu) on a 24-hour average, with a 1999 final compliance date and a number of interim limits, have been adopted at SCAQMD. Ventura County has adopted new limits, effective by 1994, of 0.20 lb NO_x/MW-hour (about 0.02 lb NO_x/MMBtu) for units smaller than 215 MW, and 0.10 lb NO_x/MW-hour (about 0.01 lb NO_x/MMBtu) for units larger than 215 MW, similar strict limits are being considered in the San Diego County and Bay Area districts. Gas-fired utility units in these districts have also been complying with their more stringent limits without taking the severely drastic control measures that were claimed would be required for HL&P units. Technology has also advanced beyond the level that was available for these California-based utilities 20 years

ago, when they first began to comply with their emission limits, which will make cost-effective NO_x control more feasible now than it was then. The staff admits that NO_x control on these units resulted in certain operational problems, many of which were overcome, but these problems were not of the magnitude that HL&P suggested. The staff found that the effectiveness of various controls, as a percent of NO_x reduction, is generally well established. When control techniques are installed, units with low initial baseline levels generally achieve fewer NO_x reductions than units with higher baseline emission levels. Percent reductions are comparable, if not higher, for units with higher baseline emissions. In establishing emission limits and their associated cost estimates, the staff used HL&P's published baseline emission levels, and applied an estimated reasonable percentage of NO_x reductions to develop supporting information for the proposed §117.105 limits.

HL&P contended that, in assessing costs, the staff did not consider that HL&P units will result in a capacity derate (loss of ability to generate electricity) in order to minimize the operational difficulties associated with NO_x control. This derate is a result of FD fan and furnace pressure limitations and can be eliminated by replacing FD fans and upgrading furnace pressure capabilities by rebuilding boilers. HL&P does not think that RACT

should include rebuilding boilers. The staff recognizes that operational impacts may result from installing boiler controls. However, operational requirements resulting from operating with lower excess oxygen (O₂) levels and installing FGR, and their impact on HL&P's units, are believed to have been exaggerated. A thorough staff review found no conclusive evidence that operational limitations would necessitate derate on virtually all of HL&P's units, as they have claimed.

For example, HL&P claimed that installation of FGR would require a derate on their units due to pressure capacity limitations of their existing FD fans. However, most utility boilers are designed with excess fan capacity and discharge pressure margins. Excess design margins on FD fans are expected to absorb most of the pressure increases associated with the use of FGR. In cases when FD fan upgrades are unavoidable, replacement of a fan at nominal cost might provide the additional pressure and flow needed to overcome FGR operational requirements. In a worst-case scenario for their largest unit, fans, motors, controls, and all its associated equipment could be replaced at a cost no greater

than \$1.8 million, thus avoiding the costly derate they suggested. HL&P also indicated that operating with excess O₂ levels and using 20% FGR, as they claim would be required on virtually all of their gas-fired units to achieve the proposed emission limits, will increase furnace pressures beyond the manufacturers' recommended furnace pressure setpoints and approach the yield strengths of furnace structural members. Although the staff conceptually agrees that furnace pressures would increase under this scenario, the staff believes that increases would be absorbed by excess furnace pressure design margins. HL&P developed a theoretical equation for pressure increase as a function of flowrate that applies to the use of FGR. This equation is based on idealized conditions which ignore frictional and dynamic losses, thus exaggerating their expected pressure increases. The staff also reviewed HL&P test data which show the effect of FGR on FD fan, windbox, and furnace pressures. The data indicates that pressure increases are far less than are predicted by HL&P's theoretical equations, which they used as a basis for estimating the amount of required derate, this is shown in the following table

Effect of FGR on the fan, furnace, and windbox pressure:

FGR Rate (%)	Increase in Fan operating pressure (%)		Increase in windbox pressure (%)		Increase in Furnace pressure (%)	
	Test data	HL & P's Equat.	Test Data	HL & P's Equat.	Test Data	HL & P's - Equat.
11.3	2%	23.8%	0.0%	23.8%	0.0%	23.8%
13.0	4%	27.7%	0.0%	27.7%	0.0%	27.7%
19.7	12.7%	39.0%	11.4%	39.0%	13.3%	39.0%
20.0	18%	44.0%	20%	44.0%	24%	44.0%

The staff did not find any conclusive evidence that massive derates will be needed and does not believe that rebuilding boilers would be

required. For example, SCE's Ormond Beach 2 has the same furnace volume and a slightly higher heat release rate than HL&P's Cedar Bayou 3, as discussed in the staff's response to HL&P's comment concerning physical limi-

tations. This unit is currently complying with a 125 ppmv (0.15 lb NO_x/MMBtu) limit on a 24-hour rolling average basis, with plans to comply with 0.10 lb NO_x/MW-hour beginning later in 1993. Ormond Beach 2 did not require

and is not expected to require boiler rebuilding in spite of the extremely stringent emission limits imposed. Boiler furnace structural reinforcement, which usually involves the replacement of buck stays and other structural supports, might be technically and economically achievable, and carry costs that are within the range associated with RACT. To imply that this involves "rebuilding boilers" as they have done, is an exaggeration.

HL&P claimed that the staff did not consider the effect of variability of emissions when estimating capital costs. The staff initially had no data to show the emission variability of HL&P's boilers. In later meetings, HL&P provided TACB with CEMS data on two of their largest units, Cedar Bayou 1 and 2. Statistical analysis was applied to the data, and variability of 29% from the mean was found on a 24-hour average basis. The variability of emissions on these two units was used to represent the variability of emissions on all of their units. This data was considered in arriving at new recommended emission limits.

HL&P observed that the proposed emission limits are based on a one-hour block average mass limit and a 24-hour rolling average lb NO/MMBtu limit. HL&P stated that the proposed averaging periods, coupled with lower numerical emission limits, are too stringent when compared with EPA's recommendations, which are based on a 30-day rolling average. GHP and GSU suggested a 30-day average; HL&P recommended that if the proposed emission limits are to be adjusted to account for their units' variability, the new proposed limit should be 0.26 lb NO/MMBtu for both walland tangential gas-fired boilers on a 24-hour rolling average, and 0.20 lb NO/MMBtu based on a 30-day rolling average, both calculated at the maximum heat input for all units either on a unit-specific basis or as an assigned value derived from the system-wide average; with no one-hour mass limitation. This closely approximates EPA's RACT recommendation when applied to HL&P's boiler population, with an associated capital cost totaling \$200 million. As a result of negotiations with HL&P, the staff has deleted the hourly emission limit, changed the 24-hour emission limit recommendation from 0.20 lb NO/MMBtu to 0.26 lb NO/MMBtu, and established a proposed 30-day emission limit of 0.20 lb NO/MMBtu. Averaging times were taken into account by the staff in setting the higher 24-hour limit. These limits evolved from negotiations between HL&P and TACB staff, and are proposed as a compromise in order to facilitate rulemaking progress. The staff's highest estimate of capital costs for compliance is about \$75 million, based on the extensive use of LNB as a control approach. This is in contrast with HL&P's estimate of \$200 million.

HL&P claimed that variability in NO_x emissions is documented to be 29% for HL&P units based on a 24-hour average, and that it will have to operate at significantly lower emission rates than the proposed 0.20 lb NO/MMBtu emission limit to be able to account for variability. HL&P may not necessarily need to operate at emission rates that are significantly lower than the rule limits in order to comply. If HL&P reduces a unit's emissions variability, it could operate it at correspond-

ingly higher emission rates, closer to the emission limit.

HL&P stated that its analysis shows that 60% of the NO_x reductions required by the proposed rule may be achieved for only 9.0% of the total cost, and 74% of the reductions may be achieved for 20% of the cost. It feels that a 74% reduction would represent RACT; for its system this approximates EPA's recommended emission limits. The staff conceptually agrees with this comment. This information was presented late in the negotiation process, leaving inadequate time to thoroughly evaluate it. It should be noted, however, that these numbers were deduced from HL&P's cost estimates of compliance with the proposed rule, which the staff believes are too high.

HL&P said that the proposed emission limit of 0.38 lb NO/MMBtu for coal-fired utility boilers, calculated on a 24-hour rolling average basis, is too stringent, does not constitute RACT, fails to distinguish between wall and tangential-fired boilers, and is inconsistent with EPA and NESCAUM guidance. NESCAUM's recommended limits are 0.38 lb NO/MMBtu for tangential-fired boilers and 0.43 lb NO/MMBtu for wall-fired boilers, 24-hour average and EPA's respective recommended limits are 0.45 lb NO/MMBtu and 0.50 lb NO/MMBtu, 30-day rolling average. HL&P's suggested emission limits are 0.38 lb NO/MMBtu for tangential-fired and 0.43 lb NO/MMBtu for wall-fired coal utility boilers, based on a 24-hour rolling average; with no one-hour mass emission limit. There are only four coal-fired electric utility boilers in the four ozone nonattainment areas in Texas, and these units are located at HL&P's W. A. Parish generating station. Due to their large size and economical fuel, the four units are among the eight highest NO_x emitting units in the ozone nonattainment areas. These units were built in the 1970's in accordance with the NO_x limits of NSPS, Subparts D or Da. The emission rates actually achieved by the units are substantially lower than their currently applicable 0.70 lb NO/MMBtu, three-hour average (Subpart D) or 0.50 lb NO/MMBtu, 30-day rolling average (Subpart Da) emission limits.

Throughout the rulemaking process, the level of NO_x emission controls currently applied to the coal-fired units has been considered by the staff to represent RACT. The staff's intent has been to establish RACT limits for these units equivalent to their actual emission rates, over an appropriate averaging period. The advantage of doing this is that substantial paper reductions in emissions may help with the attainment modeling demonstration, which must be made using potential emissions. Negotiations with HL&P resulted in recommended emission limits for coal-fired boilers of 0.38 lb NO/MMBtu for tangentially-fired utility boilers and 0.43 lb NO/MMBtu for wall-fired boilers calculated on a 24-hour rolling average. The recommended change reflects the change between the NESCAUM limits as originally proposed and as eventually adopted by NESCAUM. The staff agrees that the emission limits acceptable to HL&P represent RACT. The staff has segregated the four coal-fired units from the rest of the system average to ensure that the emission reductions sought for the gas-

fired units are not affected by the emission limits for the coal-fired units. Since the coal units are among HL&P's low-cost electricity producers, these units have the highest annual capacity factors of the affected units. By segregating the coal-fired and gas-fired units in the system averaging of §117.107, the system averaging is more likely to achieve reductions equivalent to reductions achievable under §117.105. HL&P stated that industrial boilers currently operating under NSPS, 40 Code of Federal Regulations (CFR) 60, are not subject to the proposed rule. Similar language should be included in the utility section of the rule.

HL&P stated that industrial boilers currently operating under NSPS, 40 CFR 60, are not subject to the proposed rule. Similar language should be included in the utility section of the rule. The staff agrees that consistency should exist between provisions for industrial and utility boilers. The staff has added similar language to that for industrial boilers subject to 40 CFR 60 in §117.105 for utility auxiliary boilers. However, industrial units subject to NSPS are not entirely exempt from the proposed rule, nor will utility auxiliary units. These units, though retaining their NSPS emission limits in lieu of other proposed emission specifications, are to be subject to all other provisions of the rule. In order to achieve the quantity of emission reductions necessary for ozone reduction, the staff does not recommend applying the NSPS emission limits to electric generating units.

HL&P recommended language to adopt these emission limits "either by unit-specific limitation or system-wide averaging technique." Section 117.107 addresses system-wide averaging, so specifying that the emission limits are "either by unit-specific limitation or system-wide averaging technique" in §117.105 is not necessary.

HL&P indicated that the word "only" should be deleted from §117.105(b) because coal units may co-fire very small quantities of natural gas or oil for flame stability purposes. The word "only" has been deleted from §117.105(b), since coal-fired units sometimes fire limited quantities of natural gas.

HL&P indicated that proposed emission specifications for oil-fired utility boilers are 0.10 lbs NO/MMBtu higher than the specifications for gas-fired utility boilers and recommended an emission limit of 0.36 lbs NO/MMBtu for oil-fired boilers, based on a 24-hour rolling average. The staff believes that the §117.105 emission limit for oil-fired utility boilers, 0.30 lbs NO/MMBtu on a rolling 24-hour average basis, is appropriate. Several of HL&P's boilers have been converted and issued TACB permits to enable continuous fuel oil firing. A review of its permit files has shown that representations were made that they were capable of operating at 0.30 lb/MMBtu, and capable of meeting NSPS emission limits of 0.30 lbs NO/MMBtu on a threehour rolling average basis, in accordance with 40 CFR 60, Subpart D. Discussions with HL&P have revealed that additional information may become available which demonstrates that permit limits higher than 0.30 lb NO/MMBtu were applied to these units, but permit information on these units has convinced the staff

that the recommended 0.30 lb NO_x/MMBtu limits are technically achievable and economically reasonable. Since similar units may already be achieving 0.30 lbs NO_x/MMBtu emission levels on a shorter averaging period, the staff believes that the proposed limit is representative of RACT and appropriate for the entire population of fuel oil capable boilers.

HL&P suggested that §117.105(d) be revised to remove heat input weighted average emission specifications for coal-fired units firing a mixture of fuels, change the 24-hour average emission limits, and allow for 30-day average emission limits to be based on gas or gas/waste oil firing only. The staff conceptually agrees with the first part of this comment. Coal-fired boilers may co-fire limited quantities of natural gas, as much as 3.0%, for flame stability purposes. These limited quantities of natural gas are not expected to significantly affect the emission rates of coal-fired boilers, so the heat input weighted average shall apply to units burning natural gas and fuel oil only. The language of §117.105(d) has been revised to reflect this flexibility and to contain the newly proposed 24-hour average emission limits for natural gas firing. The staff agrees that emission limits should be calculated based on 100% natural gas firing, but this section will not include provisions for heat input weighted average, 30-day emission limits.

HL&P recommended deleting §117.105(e). The rule should not contain a block one-hour average emission limit. The staff agrees with this comment and this section has been deleted.

HL&P suggested raising the emission limit in §117.105(f) for utility gas turbines firing natural gas from 25 to 42 ppmv, to be consistent with the limit for industrial gas turbines in §117.205(a)(4)(b), relating to Emission Specifications (industrial sources). For purposes of maintaining rule consistency between the electric utility and industrial sections, the staff has revised the emission limit as suggested. HL&P is the only affected electric utility with gas turbines, some of which could be subject to the emission limit of §117.105(f). None of these units are currently operating at output levels in MW-hours that would subject them to this limit. However, the eight Frame 7B gas turbines at HL&P's Wharton Station have recently received a construction permit for turbine upgrade to Frame 7E configuration. The modification will increase the turbines' efficiency and power output in addition to reducing NO_x emissions. The efficiency increase is expected to result in operation at output levels in MW-hours equal to or greater than the output level referenced in §117.105(f). This turbine upgrade is permitted at a BACT limit of 25 ppmv NO_x. Consistent with longstanding EPA policy, any unit which has a BACT-based emission limit which is more stringent than its RACT limit must use the BACT limit in computing the plant-wide allowable emission rate. To do otherwise would allow "double counting" of the emission reductions under both the new source review and RACT regulations.

HL&P recommended deletion of the 65 ppmv limit for utility gas turbines firing fuel oil in

§117.105(g), since no limit is imposed on comparable industrial gas turbines. The staff is unaware of any industrial gas turbines in the two nonattainment areas affected by this proposed rule which have fuel oil firing capability. The staff may consider a proposed 65 ppmv limit for industrial gas turbines for the sake of rule consistency, and recommends that this be considered in future rulemaking.

HL&P indicated that under the Wisconsin Electric Power Company (WEPCO) ruling, most CO emissions that result from the installation of NO_x controls will not be considered major modifications by EPA when sources are implementing the 1990 FCAA Amendments. HL&P requested that the CO emission limitation of 400 ppmv be deleted. GSU contended that a CO emission limit should not be included. The staff's intent in proposing a CO emission limit is to ensure that retrofit NO_x controls, which have the potential to cause a CO emissions increase, will not result in excessive CO emission levels. CO is a product of incomplete combustion, is a criteria pollutant, and is also known to play a limited role in ozone formation. As an organic compound, CO has a lower ozone formation potential than methane or ethane, but is nonetheless an emission input in the UAM due to the large quantity of actual emissions, primarily from mobile sources. VOC emissions are also products of incomplete combustion, and may concurrently increase with CO increases. Any VOC increases associated with higher CO emissions are of concern to the staff because of their potential to exacerbate ozone formation. HL&P stated in its comments that some site-specific increases in CO emissions should be expected with stringent NO_x RACT reductions. However, *Evaluation and Costing of NO_x Controls for Existing Utility Boilers* in the NESCUM Region concluded that, except for units with extremely low NO_x levels such as California's, "significant NO_x reductions are possible from gas-fired boilers without an increase in CO emissions" (pages 7-15). This study documented CO emissions that are associated with NO_x control levels that are, in the majority of cases analyzed, significantly more stringent than the TACB staff is currently using under §117.105. CO emissions for the gas-fired boilers studied showed a range of 12 to 90 ppm at NO_x emission levels in the range of 0.06 lb NO_x/MMBtu to 0.31 lb NO_x/MMBtu. In cases where combustion controls increased CO levels above their regulatory limits, plant operators were able to make subsequent reductions to CO emissions by increasing excess combustion air. These boilers are being controlled with combustion modifications to more stringent NO_x levels than the TACB staff is currently setting, and their CO limits are no higher than 200 ppmv. This is less than half the TACB staff's recommended CO level, yet stringently controlled boilers are capable of operating in compliance with this regulatory limit. The staff concludes that the proposed limit is much higher than a properly adjusted utility boiler will produce. The proposed 400 ppmv CO emission limit was developed as an industrial boiler limit. The staff extended the limit to utility boilers for the sake of treating these sources equably. In any case, the proposed limit creates an upper bound on CO, which could potentially exceed

400 ppmv. The staff has retained the CO limit.

GSU recommended that the CO emission limit not be corrected for O₂.

The staff overlooked inclusion of a reference to 3.0% O₂, which is a conventional diluent correction for a boiler concentration limit. After reviewing this issue with GSU, the staff agrees that the CO emission limit for their utility boilers should not be corrected for O₂. The rule language as proposed does not correct CO limits for O₂, so the staff recommends retaining the existing language.

HL&P indicated that the proposed rule is based upon the application of combustion controls and not the use of selective catalytic reduction (SCR) or selective non-catalytic reductions (SNCR), so the ammonia slip-emission limitation of 10 ppmv in §117.105(k) should be deleted. GSU agreed that an ammonia emission limit should not be included. In the event that some industries and/or utilities may elect to install SCR or SNCR technologies, an ammonia emission limit is necessary to prevent excess ammonia slip. The use of SCR and/or SNCR is a plausible scenario for a utility electing to overcontrol a large, high capacity factor boiler to offset emissions from other units. If SCR or SNCR technologies are not chosen, the ammonia emission limit will have no effect on other means of control. However, a higher, 20 ppmv emission limit based on a one-hour averaging time period has been added.

Section 117.107-Alternative System-Wide Emission Specification. HL&P indicated that under §117.107, industrial sources can use post-1990 shutdowns in their calculations of plant-wide emission specifications but utilities cannot; they would like similar language included for utilities. EPA will not allow the use of plant shutdowns in determining plant-wide emission limits. Shutdown credits have been deleted for industrial sources and cannot be extended to utility sources.

HL&P and EPA suggested that the reference to "plant-wide" in section 117.107(b) should be changed to "system-wide." The proposed rule at §117.107(b) contained an erroneous reference to "plant-wide" emission limits. The wording has been changed to refer to "system-wide" emission limits.

HL&P suggested that §117.107(c) clearly specify that systemwide averaging be allowed among gas turbines and auxiliary boilers, even though they cannot be included in the utility boiler system-wide average. The staff has concerns with RACT equivalency when individual unit emission rate limits are applied on a plant-wide or system-wide basis. Under any emissions averaging based on maximum rated capacity, there is the possibility that actual emissions may be higher than if each unit had complied with RACT emission limits on an individual basis. The problem with allowing system-wide averaging among units of a given class, such as utility-peaking gas turbines or auxiliary boilers, is that these units have highly variable annual capacity factors. Data supplied by HL&P indicate that one-third of their gas turbines operate under 100 hours per year, with only a few operating over 2,000 hours per year. Information supplied by HL&P

concerning its auxiliary boilers shows similar variations in annual capacity utilization. If HL&P installs controls on units which are used proportionately less than other units with higher capacity factors, on which it installs less controls, the resulting emissions reductions are not equivalent to RACT. EPA has expressed concern, and will require states to demonstrate, that any emissions reductions from an averaging rule achieve actual reductions equivalent to traditional RACT methods based on individual unit limits. The language excluding utility-peaking gas turbines and auxiliary boilers from system-wide averaging has been retained.

HL&P commented that the one-hour mass emission rate standard of §117.107(d) is not appropriate. The staff agrees and the onehour mass emission rate standard has been deleted.

GSU commented that the rule should clarify that for utilities, plant-wide averaging within a single ozone nonattainment area is available as an alternative to system-wide averaging. GSU would not be allowed to use system-wide averaging under the proposed rule because it operates generating units in both the Beaumont/Port Arthur and Houston/Galveston ozone nonattainment areas. The intent of the rule is to allow system-wide averaging only within a given ozone nonattainment area. Since GSU has only one operating plant in each ozone nonattainment area, the "system" for emissions averaging purposes is the one plant. Thus, GSU operates two independent "systems."

GHASP objected to allowing system-wide emission limitations. GHASP recommended retaining an earlier rule provision whereby a unit found in violation of an emission specification meant that all units within a system-wide average would also be in violation. System-wide averaging is a compliance method that allows for greater flexibility and cost-effectiveness while achieving emission reductions similar to those for a rule with individual, unit-specific emission limits. System-wide averaging provisions must meet certain RACT equivalency criteria, which call for reductions achieved under system-wide averaging to be equivalent to reductions obtainable by unit-specific emission limits, to be approved by EPA. Several system-wide averaging alternatives that have been suggested by industry are not currently recommended by the staff due to potential EPA disapproval because of RACT equivalency problems. The current system-wide averaging provisions have been retained, except to limit the averaging to like categories of equipment to improve the chances of obtaining RACT equivalency. An earlier draft proposal of this rule included a provision for all units in a system-wide average to be in violation of the emission specifications if one unit was found to be in violation. This was because the system-wide averaging methodology then under consideration specified only one enforceable emission limit for an entire system, such that all units in a system-wide average could be operated at any emission rate provided that their aggregate emissions did not exceed their applicable system-wide limit. This was a facility cap proposal, which the utilities rejected due to concerns about technical diffi-

culty in maintaining the data from all sources on a continuous basis. Due in part to this potential enforceability issue, the proposed §117.107 now allows only system-wide averaging, which requires enforceable unit-specific limits to be established and reported in an owner's final control plan. These new unitspecific limits allow for enforcement actions to be taken for individual units, instead of for an entire utility system, as under the earlier draft Rule language will not be added to make each unit in violation whenever one unit is in violation.

EPA recommended referring to the §117.105(g) emission specification in the definition of "NO_x (allowable)." Section 117.107(d)(2) has been revised accordingly.

EPA supported system-wide emission averaging, but must be assured that RACT equivalent reductions would be achieved. EPA stated that the use of maximum rated capacities rather than actual heat inputs in calculating system-wide emission limits does not meet their criteria, but would be acceptable if any one of the following were met: factors are consistent with the State attainment demonstration; sources using system-wide emission limits are required to show that system-wide emission rates based on actual heat inputs over a 30-day period do not exceed system-wide emission limits; and TACB justifies that emission limits combined with averaging provisions constitute RACT.

The averaging allowed under §117.207(a)-(h) is equivalent to RACT. Equivalency is demonstrated by the application of RACT emission limits to each affected source and using preference testing and emissions monitoring to verify compliance. Section §117.207(i) has been deleted at the request of EPA to ensure equivalency.

Since TACB was trying to write an NO_x RACT rule in the specified timeframe mandated by Congress in the 1990 FCAA Amendments, and EPA guidance was not available on the use of maximum rated capacities at this time, the staff believes that the emission limits combined with the averaging provisions constitute RACT for the affected sources.

Section 117.109-Initial Control Plan Procedures. HL&P and B&B suggested that §117.109 clarify that initial control plans are intended for planning purposes only and are not subject to enforcement. B&B also suggested deleting the requirement to make initial control plans subject to TACB approval, except when the information provides specific dates for compliance extensions beyond May 31, 1995. The staff agrees with the concept that if a person meets the requirements which are due by May 31, 1995, the question of how the person goes there is not an issue. The FCAA Amendments require that RACT measures be implemented as expeditiously as is practicable, but no later than May 31, 1995. The staff recognizes that the installation of control equipment by May 31, 1995 is difficult enough that the TACB should not propose, by rulemaking, specific dates prior to May 31, 1995, as a means of ensuring that control equipment is implemented as expeditiously as is practicable. However, the staff recommends that the rule continue to contain control plan design requirements, which are due

by April 1, 1994. The wording of §117.109 has been revised to reflect that the Executive Director shall approve the initial compliance plan if it contains all the information specified in §117.109. As discussed in §117.540(a), wording has been deleted in that section which prohibits deviation from the initial compliance plan, except as provided in that section. Section 117.109 has been clarified so that any revision (i.e., deviation) to the initial compliance plan is to be submitted with the final control plan.

The staff believes that these changes address the commenter's concern regarding prohibition of deviation from the initial compliance plan.

HL&P indicated that the requirement contained in §117.109(c)(1) to submit the anticipated annual heat input for each unit should be deleted. Annual heat inputs must be known in order to determine a unit's potential for exemption. Annual heat inputs are needed to evaluate control plans in order to assess the need for future RACT equivalency demonstrations.

The staff sees benefits of requiring both the maximum rated capacity and the anticipated annual heat input of the affected industrial boilers and heaters. The anticipated annual heat input data is generally available, can readily be included in the initial control plan, and it is a number which will be required in setting a facility cap, which is an option to be considered for future rulemaking. The requirement of listing the anticipated annual heat input of each unit has been revised to require the listing of the anticipated annual capacity factor of each unit in the proposed rule. The annual capacity factor provides the same information as the anticipated annual heat input, except that it is expressed as a percentage.

HL&P indicated that the reference to mass emission rate in §117.109(c)(4) should be deleted. The staff agrees with this comment and the reference to mass emission rates has been removed, since mass emission limits are no longer recommended. Instead, reference to emission rates in lb NO_x/MMBtu on a 24-hour and 30-day average basis has been included in §117.109(c)(4).

HL&P commented that the proposed rule specifies minimal control plan requirements for industrial sources, but that utilities must submit very extensive control plans. Section 117.109(c)(6) and (7) should be deleted. The staff agrees and §117.109(c)(6) and (7) have been deleted. Rule language concerning control plan requirements for utility sources will be revised to be consistent with the requirements for industrial sources.

B&B suggested that §117.109 provide for making requests for a later final compliance date in initial control plans. The staff agrees that persons seeking final compliance dates subsequent to May 31, 1995 should submit these requests with the initial control plans. However, in §117.540 the required elements of a request for an extension of the final compliance date has been maintained.

EPA suggested that initial control plans should include the system-wide emission limit or an assignment of anticipated NO_x emission rate for each affected unit. The intent of §117.109(f) is to require the basis for the

calculations, which should include the system-wide emission calculations and the preliminary assignment of the individual emission rates for the affected units. The staff believes that this explanation will document the intention of the rule language.

Section 117.111-Initial Demonstration of Compliance. HL&P observed that §117.111 does not specify performance testing requirements for industrial sources, but utilities are required to test at four points over "normal" operating loads. CEMS data from utility boilers, based on the first 30 operating days after the deadline, should be allowed in lieu of testing. For gas turbines with CFMS, one-hour monitoring data should similarly be allowed to demonstrate initial compliance.

The wording of this subsection has been revised to remove the reference to "normal operating load" and to make the testing requirements consistent with the requirements for industrial sources. The staff disagrees with HL&P's suggestion to make initial demonstration of compliance based on operating data collected after the final compliance deadline, but it will be based on CEMS data.

HL&P commented that the language of §117.111(b) should be modified to eliminate the requirements to demonstrate compliance with a mass limitation. The requirement to demonstrate compliance with a mass limitation has been deleted, since mass emission limits are no longer recommended under §117.105. Demonstrations of compliance with the 24-hour average and 30-day average lb NO_x/MMBtu emission limits will be based on CEMS data.

GSU indicated that continuous, in-stack CO emission monitors should not be required; instead, alternative means of demonstrating compliance with the CO limit, such as periodic stack testing or alternative monitoring methods, should be allowed. The staff believes that periodic stack testing or alternative monitoring methods are not as effective as continuous monitoring for demonstrating compliance with applicable CO limits and does not recommend changing this requirement.

GSU commented that if CO monitors are required, CO monitor specifications should reflect the requirements of 40 CFR 60 rather than 40 CFR 75. The staff agrees that 40 CFR 75 does not require CO monitoring and that the appropriate specifications for continuous CO monitoring are contained in 40 CFR 60. However, administrative requirements do not allow the addition of CO monitor specifications to the adopted rule language, since it was not contained in the original proposal, so it will be reconsidered in subsequent rulemaking.

GHASP recommends removing the phrase "as near thereto as practicable" from §117.111(a). The compliance averaging time has been extended to 24-hour and 30-day periods. Under these long-term averages, holding a utility boiler to maximum rated capacity for testing purposes is impractical. Therefore, the staff has deleted the entire reference to "maximum rated capacity" in §117.111(a).

GSU commented that the rule should indicate which 40 CFR 60, Appendix A, test methods are necessary for demonstration of initial compliance, and should allow for minor modifications to these test methods, if necessary. GSU recommended making §117.111 consistent with §117.211(f) and allowing for alternative test methods subject to Executive Director approval. Administrative requirements do not allow revision of the rule language to specify additional test methods without formally re-proposing the rule, since they were not included in the original proposal. However, since monitoring using CEMS was already required, the staff agrees with GSU and recommends that initial demonstration of the NO_x emission limits on a 24-hour and 30-day average be similar to the requirements of 40 CFR 60.46a(e), which addresses CEMS operation. Specification of test methods for initial demonstration of the CO limits cannot be added, but will be proposed in later rulemaking. The language in §117.111 has been revised to make it consistent with §117.211(f), and to allow for alternative methods subject to Executive Director approval.

Section 117.113-Continuous Demonstration of Compliance. GHASP recommended retaining in §117.113 the provision, that was in an earlier rule draft, whereby continuous emission data collection was required during periods of CEMS downtime. GHASP also recommended retaining a requirement to report CEMS data to TACB regional offices by a telecommunications link that was contained in the earlier draft. Requiring continuous data collection during periods of CEMS downtime would most likely require installation of redundant monitors. In order to avoid imposing redundant monitoring requirements and improve cost-effectiveness, monitoring requirements are made consistent with EPA's Title IV rules promulgated under 40 CFR 75. This will allow resources to be allocated for the purchase of equipment that will actually produce NO_x reductions, instead of for monitoring equipment. TACB currently lacks the staffing to be able to perform a viable review of the quantity of data that would be reported by a telecommunications link. Therefore, continuous data collection during periods of CEMS downtime and a telecommunications link are not needed.

HL&P suggested that the requirements to monitor CO and exhaust or fuel flow rate be deleted from §117.113(a) for consistency with the monitoring provisions of 40 CFR 75. Although not required by 40 CFR 75, CO should be tested and monitored in accordance with 40 CFR 60 to ensure initial and continuous compliance with CO emission limitations of §117.105(j). Exhaust or fuel flowrates must be monitored in order to compute the mass emission rate (in lb/hr or tons per year) for future demonstrations of NO_x RACT equivalency for emissions inventory data collection purposes.

HL&P commented that in §117.113(a), utility gas turbines with an annual electric output less than the product of 2,500 hours and the MW rating of the unit should be exempted from CEMS/parametric modeling requirements. HL&P also recommended in §117.113(a) to allow the option of reporting

steam-to-fuel or water-to-fuel ratios implied by §117.119(d), relating to Notification, Recordkeeping, and Reporting Requirements, but not referenced in that section. Enhanced monitoring methods will need to be developed for each emission unit which is a major source of NO_x emissions. Section §117.213(e) in the industrial section of the rule specifies that monitored steam-to-fuel or water-to-fuel ratios may be used to demonstrate compliance with the applicable emission limit. For electric utility turbines which are subject to §117.105(h) or (i), relating to Emission Specifications, and use steam or water injection for NO_x compliance, the staff has added the corresponding industrial gas turbine rule to §117.113 for utility gas turbines, for the sake of rule consistency, in later rulemaking.

HL&P indicated that the wording in §117.113(a) could be interpreted inconsistently with the provisions of 40 CFR 75, Appendix E. The use of EPA's phrase "peaking units" creates the potential for confusion with the term "peaking gas turbine or engine" defined in §117.10. The staff agrees and has revised §117.113(a) to prevent possible confusion.

HL&P suggested that §117.113(a) implies that CEMS are required on all utility stationary gas turbines, since those units are affected units under §117.101, and requested that this be corrected in the final rule. HL&P also requested that stationary gas turbines exempt from emission specifications be exempt from monitoring requirements. The staff intended, but did not include in the original rule proposal, provisions allowing peaking gas turbines to monitor steam-to-fuel or water-to-fuel ratios as an alternative to CEMS. The staff has extended the option for operating parameter monitoring systems, comparable to the industrial rule for gas turbines at §117.213(e), to utility gas turbines rated less than 30 MW or peaking gas turbines which use steam or water injection, in lieu of installing CEMS in accordance with 40 CFR 75.

The rule identifies that gas turbines exempt from emission specifications are also exempt from monitoring requirements. Section 117.103 states that certain stationary gas turbines are "exempted from the provisions of this undesignated head." Therefore, the rule does not require CEMS for all stationary gas turbines. Stationary gas turbines exempt from emission specifications are exempt from monitoring or parametric modeling requirements, and stationary gas turbines subject to emission specifications are intended to have applicable CEMS requirements.

HL&P indicated that gas turbines subject to the emission specifications of §117.105(h) and (i) should be exempt from all continuous emission monitoring/parametric modeling requirements. The staff disagrees, since without continuous monitoring or parametric modeling, emission rates for these units will be impossible to quantify. Establishing emission rates for major sources is one of the basic intentions of the proposed rule.

HL&P indicated that §117.119(d) should be clarified to allow reporting of water-to-fuel ratios to demonstrate compliance. The staff

agrees and has revised §117.119(d) to allow reporting of water-to-fuel ratios.

HL&P commented that §117.113(c) should provide that the use of 40 CFR 75, Appendix E, is an option, not a requirement, in the event that a utility may prefer to utilize CEMS in lieu of Appendix E. The staff agrees and has changed §117.113(c) rule language to allow continuous emissions monitoring of peaking turbines, in lieu of monitoring in accordance with 40 CFR 75, Appendix E.

HL&P noted that §117.113(d) requires auxiliary boilers to install CEMS in accordance with 40 CFR 75 or §117.213, or to use parametric modeling procedures. HL&P recommended an exemption for auxiliary boilers with heat input less than 8.76 by 10¹¹ Btu/year from monitoring/parametric modeling requirements. Auxiliary boilers with an annual heat input greater than 2.2 by 10¹¹ Btu/year generally have the potential to emit significant quantities of NO_x per year and are subject to emission limits and other provisions of the rule. They must be monitored to be subject to emissions verification and enforcement, so monitoring or parametric modeling provisions of the rule must apply. Exempting units with as much as 8.76 by 10¹¹ Btu/year would exempt most auxiliary utility boilers from monitoring requirements and the accompanying verification and enforceability, as well.

GSU recommended allowing alternative locations for in-stack monitoring subject to approval of the TACB Executive Director. The staff agrees to allow alternative locations to in-stack monitoring subject to the approval of the Executive Director, and §117.113 has been revised accordingly.

Section 117.115—Final Control Plan Procedures. HL&P indicated that the initial demonstration of compliance in §117.510(4) should be based on CEMS data for the first 30 operating days after the final date of compliance, and results submitted after allowing time for the CEMS data to be processed. Section 117.115(a) should require that the final control report be submitted within 180 days after, instead of before, the final date for compliance. This is consistent with 40 CFR 60.8. Section 117.115(a) currently requires submittal of 30-day operating results of the initial compliance demonstration before they occur. Section 117.115(b) should allow the submission of the results after the final date of compliance. The intent of setting a final compliance date is to have the required controls in place, operational, properly monitored, and tested by that time. However, the staff recognizes the potential difficulty in obtaining 30 days' operating data for the initial compliance demonstration by May 31, 1995.

NSPS Subpart A, §60.8 allows testing and submission of results up to 180 days after initial start-up of a new facility. The complexity of applying NO_x controls does not compare to the complexity of starting up a new utility electric generating unit, so the staff does not believe that it is appropriate to allow 180 days after the final compliance date to submit the final control report. To assist in meeting the requirements of the initial compliance demonstration, the staff has changed §117.510 to allow the submission of test results to demonstrate compliance any time up to 60 days after

the final compliance date. Submittal of the final control report 180 days after the final compliance date would, in effect, defer final compliance by almost six months. Since §117.540 already provides for phased implementation of RACT to account for potential technical and scheduling problems, allowing further deferral of the final compliance date is not desirable. The initial demonstration of compliance and subsequent report will be required 60 days after the final compliance date in §117.510.

HL&P suggested that the one-hour emission limitation should be deleted from §117.115(b)(1). The staff has already agreed with HL&P to remove the proposed one-hour emission limitation requirement from the rule, and instead require a 30-day emission limit and a 24-hour emission limitation with an appropriately higher lb NO_x/MMBtu limit. Section 117.115(b)(1) has been revised accordingly.

EPA requested clarification of the process for approval of maximum allowable NO_x emission rates, submitted in final control plans. Enforceable maximum allowable emission rates will be assigned to each unit complying with the system-wide averaging provisions of §117.107. The approval process will consist of verification that maximum allowable NO_x emission rates will achieve expected reductions, comply with system-wide emission limitations, and otherwise comply with the rule provisions.

HL&P commented that §117.117 should be clarified to allow owners or operators to submit revisions to their final control plan, and should state that a permit or permit amendment will be unaffected if NO_x emission rates are being merely reassigned while still meeting system-wide average emission limitations. The revision of a control plan should only constitute a permit revision for a permitted unit. The last sentence of this section is unnecessary. The language of §117.117 allows owners/operators to submit revisions to final control plans if revisions to plan contents are desired. The staff plans to propose additional rulemaking at §117.550 to make permitting requirements less burdensome to industry. The last sentence of this section was included to clarify that new units are not to be used toward achieving rule compliance. However, since the definition of "unit" at §117.10 excludes units placed into service after November 15, 1992, this sentence is unnecessary and the staff deleted it. In addition, the title of the section has been modified by the staff from "Revision of Control Plan" to "Revision of Final Control Plan," to better represent the contents of the rule.

Section 117.119—Notification, Recordkeeping, and Reporting Requirements. HL&P commented that §117.119(a), which requires very burdensome recordkeeping, should be deleted and existing rules for major upsets and maintenance should apply. Section 117.119(a) has been revised to make it consistent with the requirements of the industrial rule and less burdensome to utilities. Recordkeeping and reporting is required that is specific to this particular rule, so existing General Rule provisions regarding major upsets and maintenance

should not be applied. See the response at §117.219 to comments of Chevron regarding recordkeeping.

HL&P commented that §117.119(b) should be clarified to state that it only applies to "affected units subject to the emission specification of §117.105." The staff agrees and has revised the rule to state that §117.119(b) is applicable only to units subject to emission specifications of §117.105 or §117.107.

HL&P commented that §117.119(c) should be deleted since it redundantly requires submittal of performance testing data covered under §117.111 and §117.115. Although the identification of reporting requirements for testing conducted under §117.111 or CEMS performance evaluations conducted under §117.113 is redundant, it has been repeated here for clarity.

HL&P indicated that the phrase "process operating time" should be deleted from §117.119(d)(1) since its intent is unclear and it does not appear to be relevant. The staff has revised §117.119(d)(1) to change "process operating time," which came from NSPS, 40 CFR 60.7, to read "unit operating time."

HL&P commented that the language of §117.119(d)(5) should be clarified so that the CEMS operating time is a function of unit operating time. A facility should not be penalized for taking a CEMS out of service during a unit outage to perform instrument maintenance. For reporting purposes, CEMS downtime is already expressed as a function of "total operating time;" therefore, a facility is not being penalized for taking a CEMS out of service during an outage to perform instrument maintenance. The staff has revised §117.119(d)(5) to refer to "total unit operating time" for clarity.

HL&P commented that §117.119(e) should clarify that only hourly operating data is required. Hourly data during off-line periods is not required. The staff agrees and has revised §117.119(e) to not require hourly data during off-line periods and make it consistent with the requirements for industrial sources.

HL&P requested that the reference to "pounds per hour (block one-hour average)" in §117.119(e)(1) be deleted. HL&P suggested noting that these recordkeeping requirements are only applicable to utility boilers and not gas turbines, since gas turbines are subject to different averaging periods. HL&P suggested that hourly reporting of the fuel burned be deleted from §117.119(e)(3) and that §117.119(e)(6) also be deleted. HL&P suggested that §117.119 creates duplicate recordkeeping and reporting requirements that are already subject to the NSPS requirements per 40 CFR 60, Subpart Db; only the NSPS recordkeeping and reporting requirements should be required for these units. The staff agrees that the reference to pound-per-hour emissions in §117.119(e)(1) is no longer generally applicable, since the staff agreed to remove the utility boiler pound-per-hour emission limits. The staff disagrees that §117.119(e)(1) only applies to utility boilers. This paragraph is intended to apply to each unit which monitors emissions directly. Regarding fuel use recordkeeping,

the staff notes that the proposed paragraph in the industrial head, §117.219(f), requires hourly records of fuel burned as well. Hourly fuel use is generally needed to calculate hourly emission rates. However, since the staff has established 24-hour and 30-day emission rate limits, the staff has reconsidered the requirement to maintain hourly fuel use records for each affected unit in both the utility and industrial sections of the proposed rule. In order to simplify recordkeeping, the staff has required that all applicable records be maintained at a frequency equal to the applicable emission specification averaging period, or monthly, for exempt units. Regarding auxiliary boiler notification, reporting, and recordkeeping requirements, the majority of §117.119 reflects current NSPS requirements. In order to further simplify the §117.119 requirements, the staff allows in §117.113(d) an option to allow auxiliary boilers to comply with any applicable monitoring requirements under 40 CFR Part 60.

GHASP recommended requiring notification and reporting be provided to local agencies, in addition to the TACB, for cold start-ups or shutdowns, performance testing, and continuous monitor evaluations. The staff agrees with the comment and has changed the proposed rule language to allow the local air pollution control agencies to be notified of testing and receive test reports, since these procedures are standard convention with the local air pollution control agencies.

GHASP recommended requiring that, for any exceedances, notification be provided to the TACB within 24 hours, a written report provided within ten days, and a summary report submitted within three months. The staff's intent in requiring notification and reporting of exceedances is to facilitate enforcement. Little would be gained by requiring notification and reporting any sooner after the occurrence of an exceedance than is currently recommended. The reporting of exceedances within three months after a violation is timely enough to allow vigorous and effective administration of enforcement procedures.

EPA suggested that §117.119(a) and (e) require that records be made available to EPA, as well as the TACB, upon request. The staff agrees, and has revised §117.119(a) and (e) accordingly.

EPA suggested that the first sentence of §117.119(d)(5) be revised to read "...unless otherwise requested by the Executive Director of the TACB." The staff agrees, and has revised §117.119(d)(5) accordingly.

Section 117.121-Alternative Case Specific Specifications. GHASP recommended consideration of environmental control and effects on human health, welfare, and the environment in determining approval of alternative emission specifications. Section 117.121 states that approval of alternative emission specifications is "based on the determination that such specifications are the result of the lowest emission limitation the unit is capable of meeting after the application of reasonably available control technology." Approval depends on a unit's mitigating circumstances. Since the determination is based on a unit's capability, technological and economic considerations are the relevant

circumstances in determining appropriate alternative emission specifications and the language of §117.121 reflects this. The effects on human health, welfare, and the environment are always important considerations in making pollution control decisions.

EPA commented that §117.121 does not make clear how "substantially equivalent emission reductions" would be determined. This comment has been superseded by a subsequent EPA letter. See the response at §117.121 and §117.221 to EPA's comment regarding alternate case specific specifications.

EPA withdrew its earlier comment that alternate RACT had to be based on substantially equivalent emission reductions, but instead could be based on technical and economical considerations. Also, EPA suggested that a plant using a system-wide emission limit not be allowed to apply for an alternate RACT limit for any unit in the system. See the response at §117.221 to EPA's comment regarding alternate case specific specifications. Language has also been added specifying procedures for appealing the Executive Director's decision to the board. See the response at §117.550 to comments of TCC et al. regarding permit requirements.

Although unaffected by the current proposal, Texas Utilities Services, Inc. (TU) submitted comments. It submitted comments out of concern that the proposed rulemaking will set the precedent for the development of NO_x RACT rules for the Dallas/Fort Worth area. It contended that the proposed limits are too low for natural gas, wall-fired utility boilers; do not follow the guidance of EPA's presumptive RACT limits; do not represent a reasonable first step toward ozone attainment; are too costly when compared with those for similar industrial sources in other states; and create an unnecessary economic burden. Therefore, limits should be set at EPA recommended levels until the UAM is performed.

TU recommended deleting the proposed CO emission limits and monitoring requirements, and argued that the ammonia emission limit should be deleted from the rule. It also recommended that emission limits be based on a 30-day averaging period, and supported the 0.30 lb NO_x/MMBtu limit for fuel oil-firing if applied only during the ozone season. It suggested that sources complying with the system-wide averaging of §117.107 be allowed to include units firing fuel oil or a mixture of fuel oil and natural gas in their system-wide average, instead of having to comply with a single, fixed emission limit.

TU's specific concerns were also expressed by other commenters and are addressed by the staff elsewhere in this evaluation of testimony, except for the following issues.

The staff does not agree with setting RACT limits at EPA-recommended levels until UAM modeling is performed. The staff sought to postpone NO_x RACT rules in the Dallas/Fort Worth area until completion of modeling because previous UAM modeling suggested that there would be little or no ozone benefits from NO_x reductions. To go forward with NO_x reductions in an area where lower observed VOC/NO_x ratios and modeling suggest little

benefit and could not be cost-effective if following EPA's utility NO_x RACT recommendations resulted in the need to reduce actual emissions.

Concerning the application of fuel oil limits only during the ozone season, the staff has retained a year-round emission limit. Although TU derives minimal heat input from fuel oil firing, particularly during non-peak ozone months, the emission specification for fuel oil firing is intended to cover circumstances in which a utility chooses to burn fuel oil more extensively. Year round emission limits are applied to prevent excessive emissions and possible ozone exceedances during those months.

The staff disagrees with the idea of including units firing fuel oil in a system-wide averaging plan. Units operating on fuel oil, or a combination of fuels, could be included in a systemwide average, thereby raising the system-wide emission limitation and creating allowances for other units in the system to operate at higher emission rates. This could occur because system-wide averaging is based on a unit's heat input at maximum rated capacity, instead of actual heat input rate. High-capacity units could then produce greater NO_x emissions, up to the amount allowed by including the oil or gas/oil unit in the system-wide average, while the liquid fuel-fired unit operates at low loads. This inconsistency has the potential to create RACT equivalency problems resulting in EPA's disapproval. Historically, oil firing in electric utility units in Texas has been due to emergency natural gas curtailments. These periods usually represent only a few hours of operation per year. Allowing emissions averaging with an emission limit 50% higher than normal and based on such a low annual capacity factor would definitely result in the system-wide emission limit producing fewer reductions than individual limits.

Industrial Costs-General. Oxy commented that Chapter 117 does not follow the RACT guidance set forth in EPA's NO_x Supplement to the General Preamble, and recommended that the rules not be stricter than EPA's guidance. Mobil commented that the rules go far beyond RACT and sometimes exceed Best Available Control Technology (BACT).

In the NO_x Supplement to the General Preamble, EPA addresses certain issues pertaining to NO_x RACT which were either covered in insufficient detail or not covered at all in the original General Preamble. The NO_x Supplement was intended by EPA to serve as an adjunct to, not a replacement for, guidance previously furnished to the States to aid in their development of NO_x RACT rules. Of primary importance are the ACT documents, which contain background information on source emissions, control technologies and their availability, and control costs for categories of stationary sources which emit more than 25 tons per year of NO_x. The staff has relied extensively upon the ACT documents in its development of NO_x RACT rules. In particular, the proposed rules for gas turbines, internal combustion engines, industrial boilers, and industrial process heaters generally conform to EPA's RACT guidance contained in the ACT documents.

It is important to note that the *NO_x* Supplement to the General Preamble suggests numerical emission limits only for certain utility boilers. Conformance with these recommended RACT limits for utility boilers is discussed in the response to HL&P's comment regarding Utility Electric Generation, Utility Costs-General. Under §4.6, "RACT for Certain Electric Utility Boilers" in the *NO_x* Supplement, EPA suggests that RACT for other utility boilers and other source categories not addressed in the Supplement be set at "comparable" levels, taking into consideration cost, cost-effectiveness, and emission reductions. By adhering to the guidance contained in the ACT documents, the staff believes that EPA's criteria for acceptable RACT limits have been satisfied.

With regard to the rule being more stringent than BACT for new source review, it should be noted that after November 15, 1992, BACT is no longer the review criterion for permitting new or modified major stationary sources in the Houston/Galveston or Beaumont/Port Arthur ozone nonattainment areas. Under the updated new source review rules, major net increases by these sources must apply controls representing the lowest achievable emission rate (LAER) and obtain emission offsets in order to construct and operate. The *NO_x* RACT rule for existing sources generally follows very closely EPA's guidance in the ACT documents. In cases where the TACB rule is more stringent than EPA RACT guidance (most notably for utility boilers), strictly applying the suggested EPA limits would have resulted in no emission reductions at all. Rather than require large reductions from some sources at the expense of other sources which might require little or no reductions, the staff has sought to accomplish modest reductions overall while distributing the burden of emission abatement equitably.

Amoco Chem and Amoco Oil stated that the staff should publish reduction targets which quantify the *NO_x* reductions needed from mobile and stationary sources in each ozone nonattainment area, and suggested that the staff define a "reasonable" cost per ton *NO_x* reduced and implement rules starting with the most cost-effective control strategies.

In an ideal situation, the ultimate level of emission reductions required to attain the ozone standard would be available before the rule development process ever began. In actuality, the TACB will rely heavily on the UAM to develop predictive scenarios in each ozone nonattainment area, showing ozone reductions obtained from various combinations of VOC and *NO_x* reductions. Preliminary first-round UAM results for the Houston/Galveston and Beaumont/Port Arthur ozone nonattainment areas are not expected until early 1994. Useful as the data may be, the UAM's role at this preliminary stage will be limited mainly to confirming directional guidance in the overall ozone control strategy and allowing an initial attainment SIP to be written. Further modeling will be conducted after 1994 to fine-tune predictions of necessary reductions from mobile and stationary sources. The reduction targets obtained from the 1994 modeling may be modified downwards as a result of the post-1994 modeling. However, the available evidence from UAM runs nationwide suggests that the estimated 20% *NO_x* reduction obtained from major

sources (10% overall) from first-round *NO_x* RACT will not be sufficient to attain the ozone standard.

With regard to implementing rules with priority given to the most cost-effective controls, the staff believes that it has taken such an approach since the first meetings with industry began in March of 1992 to discuss the *NO_x* RACT rules. Some control requirements initially considered by the staff have been postponed until the next round of rulemaking so that industry can start to work now on technically feasible *NO_x* reduction plans at a reasonable cost. The plant-wide emissions averaging concept in the rule gives industry much flexibility in applying the most cost-effective controls first.

Enron recommended that the staff evaluate lost revenues in its analysis of the rule's economic impact. The evaluation of lost revenues resulting from installation of controls to comply with the rule is a complex issue. Ideally, retrofits should occur during scheduled outages so that lost revenues may be minimized during plant shutdowns. For gas turbine cogeneration, many factors will determine the net economic balance between the additional cost of fuel to produce steam for turbine *NO_x* abatement, and the extra revenues gained from electricity produced with the steam. The early implementation of *NO_x* RACT gives cogeneration sources additional knowledge about such changes as increases in output capacity, which may be relevant in renegotiating upcoming electric contracts. In any case, the staff would need much more detailed information about revenue structures and long-range economic planning in the cogeneration industry in order to properly evaluate lost revenues. EPA is expected to develop replicable procedures for allowing phased RACT beyond May 31, 1995. It is not known whether the schedules for major overhauls of gas turbines would provide a basis for justifying phased RACT.

Waukesha commented that the staff underestimated control costs for internal combustion engines. The staff used cost information from control equipment vendors and the draft ACT document for internal combustion engines to arrive at cost figures for installing non-selective catalytic reduction and air/fuel ratio controllers on rich-burn engines. The staff recognizes the validity of other sources of cost data such as that provided by the commenter, and believes that, regardless of the particular method used to estimate costs, the cost-effectiveness range obtained (about \$350-650 per ton *NO_x* reduced) is still a very reasonable figure.

Southern Union Company (Southern) commented that use of natural gas engines can provide lower overall emissions than electric motors. The staff disagrees that natural gas-fired engines emit less *NO_x* than electric motors deriving power from fossil fuel-fired power plants. In fact, the *NO_x* emissions produced per cubic foot of natural gas burned in reciprocating internal combustion engines are much higher than *NO_x* emissions generated from external combustion sources such as utility boilers in the production of equivalent power for electric drive motors. The conversion of heat to work has an efficiency of about

35%, whether the power is obtained from a gas-fired engine or a fossil fuel-fired power plant. An engine controlled to 2.0 g *NO_x*/hp-hr emits 0.60 lb *NO_x*/MMBtu, which is comparable to coal-fired utility boiler emissions and is three times higher than the allowable limit for gas-fired utility boilers proposed in the present *NO_x* RACT rule.

DuPont commented that CEMS do not reduce *NO_x* but greatly increase cost of implementing the rule, and that the TACB should allow parametric monitoring.

Although a CEMS unit does not function as a *NO_x* control device per se, the *NO_x* emissions data collected by a CEMS do play a vital role in alerting the operator to certain conditions which can result in excess *NO_x* emissions. Thus, the importance of a CEMS unit as a tool for facilitating emission reductions cannot be underestimated. Moreover, the contributions of CEMS data industry-wide will be instrumental in helping to develop emissions trading programs, set emission limits in future rulemaking, and improve the accuracy of the emissions inventory and inputs to the UAM.

The staff is not opposed to parametric monitoring in principle, but believes that certain issues regarding the ability of parametric methods to accurately predict *NO_x* emissions should be resolved before implementing a parametric approach across the board. For the meantime, use of CEMS to measure emissions directly is a proven method for determining emissions, and its investment value extends far beyond the immediate concerns of the present rule. The staff also believes that, aside from these general benefits, the cost of CEMS can be partially justified solely on the need to effectively enforce the rules.

TMOGA, Amoco Chem, Amoco Oil, Chevron, Mobil, Oxy, HL&P, and GHP commented that the staff has underestimated costs for CEMS, stack testing, and overall implementation of the rule.

The staff initially used EPA CEMS cost estimation methods to arrive at a projected capital cost of \$125,000 per CEMS unit and an annual operating cost of \$71,000 per unit. Using TCC's figures, the cost estimates were \$250,000 capital cost and \$57,000 annual operating cost per unit. Information received from an equipment vendor on actual operating experience for dilution CEMS indicates typical annual operating costs less than \$10,000 per year. New Jersey estimates annual operating costs for gas turbine CEMS, which mainly use extractive systems, to be in the range of \$10,000-15,000 per unit. Since annual operating costs dominate the overall cost of CEMS, the staff most likely overestimated these costs in its projections. The staff recommends allowing as many as three emissions units to share one *NO_x* CEMS, which should further reduce the costs of rule implementation.

In its estimates of stack sampling costs at about \$2,000 per test, the staff assumed that the average cost per test would decrease with multiple tests being conducted at the same plant. Amoco Chem's and Amoco Oil's estimates of \$5,000-15,000 per test may be valid for a single test, but usually not for multiple tests at a single plant. The staff has not included costs for installing sampling platforms and ports in its estimates to date, but

will continue to provide guidance on the placement and installation of such items.

With regard to staff cost-estimates for overall implementation of the rule, some variation in published control cost figures is to be expected. The staff relied to a large extent upon the EPA Office of Air Quality Planning and Standards document, "The Clean Air Act Section 183(d) Guidance on Cost-Effectiveness" (EPA-450/2-91-008, November 1991), for guidance on cost-effectiveness of NO control measures for various source types. Generalized cost estimates across the industry for a class of sources usually cannot completely account for individual differences among sources within that class. Thus, while other commenters' cost estimates may be equally valid, the staff believes that the use of EPA's cost figures is a judicious and technically defensible approach.

For industrial boilers and heaters, the lack of certain data from individual units such as monitored emissions, one-time emission tests, heat input capacity, furnace volumes, and firebox temperatures makes cost estimation difficult. The staff has incorporated some of industry's suggestions in developing these limits, and waits for initial control plans from affected sources before reassessing control costs.

Section 117.103-Exemptions. Regarding §117.203, concerning Exemptions, Sterling Chemicals (Sterling) requested that TACB consider the performance capabilities of combustion sources burning waste fuels containing organic nitrogen and recovering waste heat. Sterling recommended that instead of setting alternative RACT standards in §117.221, TACB should retain the flexibility to exempt such sources from RACT standards altogether. See the earlier response to Texaco's comment in §117.205 for the staff's position on boiler and industrial furnace (BIF) units. If, after the application of reasonably available control technology, the unit cannot meet the RACT limit, then the affected person can make an application to the Executive Director for a different emission limit through §117.221. The staff believes that exempting these sources now will not keep them from having RACT limits placed upon them in future rulemaking.

TCC, TMOGA, Exxon Chem, and Exxon suggested that references to "cold start-up and shutdown" in §117.203(a) be deleted and that the rule should reference the General Rules regarding major upset and maintenance. They also suggested that this subsection reference §117.207, as well. GHASP opposed exemptions for start-up and shutdown emissions. The staff agrees with the commenters (TCC, TMOGA, Exxon Chem, and Exxon) that references to cold start-up and shutdown of units be deleted and that the rule should defer to TACB's existing General Rules regarding major upset and maintenance (§§101.6, 101.7, and 101.11). The staff disagrees with the comment by GHASP that the rule should not exempt these emissions because the comment does not consider the existence of the provisions of the General Rules. See the responses at §117.10 to TCC's comment regarding the definitions of cold start-up and shutdown and GHASP's

comment concerning the definition of emission rate. The staff is interested in reproposing definitions in future rulemaking to address this issue. The staff has deleted the definitions for cold start-up and shutdown in §117.10 and the references to start-up and shutdown in §117.203(a).

Air Products and Chemicals, Incorporated (Air Products) suggested that landfill gas recovery facilities should be exempt from the NO_x RACT rule, claiming adverse economic impact of controls and inherent environmental benefits provided by such facilities. Air Products requested exemption of its natural gas-fired engines located at a landfill. The staff agrees that the contaminants found in the waste gas that is produced in a landfill can cause unacceptable degradation of catalytic converter performance. However, there are other control techniques such as prestratified charge which may be applied reasonably on a retrofit basis. In Air Products' case, fuel quality is not an issue since it has converted to natural gas fuel. The staff disagrees with Air Products' contention that the difference between its current 5.0 g NO_x/hp-hr limit and the proposed RACT limit would impose unreasonable additional costs on its facility. If its catalyst life is actually three-five years, it will be able to replace its catalyst with a new charge to meet the 2.0 g NO_x/hp-hr limit within its anticipated maintenance schedule, prior to the May 31, 1995, final compliance date of this rule. The staff believes that adding a layer of catalyst to the existing catalyst or cleaning it more frequently may be more cost-effective methods of obtaining compliance with the proposed emission limit. The staff also notes that the cost of installing the natural gas pipeline to the facility is not related to the proposed rule.

TCC, Exxon Chem, Exxon, Mitchell Energy Corporation, and EPA suggested rewording §117.203(b)(1) to reflect that new rich-burn engines are subject to §117.206, relating to Emission Specifications for New, Rich-Burn Engines. The staff has deleted the proposed requirements for new sources in §117.206, making the suggested wording unnecessary. See response to Manufacturers of Emission Controls Association's (MECA) comment under §117.206.

TMOGA and Mobil suggested that units which had undergone a BACT review and were granted a permit to start-up at the time of promulgation of the rule be exempted. Amoco Chem and Amoco Oil requested that §117.203(b)(1) be retained as proposed. The staff does not agree with TMOGA and Mobil on the suggestion to exempt any permitted source from RACT controls. BACT is an evolutionary standard, so the earliest permits written by the TACB may not represent RACT today. A clear line between existing units subject to RACT and those which are not (because they are new sources) needs to be drawn. The rule is proposed to affect sources in existence prior to November 15, 1992, the FCAA Amendments date by which the NO_x RACT rules were to be promulgated. Other advantages of including BACT permitted units placed into service prior to November 15, 1992 are that a minimum uniform level of testing, monitoring, recordkeeping, and reporting requirements is established. Including existing BACT units in the RACT rule also gives more flexibility for persons to place ad-

ditional controls on units when this is cost-effective.

Sterling operates a number of combustion units which incinerate very low Btu off-gas from air oxidation processes with supplemental fuel. Sterling's opinion is that these units are exempt from emission limitations because these units are incinerators. The commenter is concerned about possible confusion between boilers, which are subject to the rule, and incinerators, which are exempt. The staff notes the EPA definition of boiler in 40 CFR 260.10, which states that a boiler is an enclosed device using controlled flame combustion and having the following characteristics: the combustion chamber and primary energy recovery section must be of integral design; thermal recovery efficiency must be at least 60%; and at least 75% of the recovered energy must be "exported" (i.e., not used for internal uses such as preheating of combustion air or fuel, or driving combustion air fans or feed water pumps). The staff suggests Sterling consider this definition to determine whether or not the combustion units that burn low Btu off-gases are boilers or incinerators.

Sterling requested clarification as to whether the exemption in §117.203(b)(6) applied only to gas-fired engines. Sterling also requested clarification as to whether the exemption in §117.203(b)(6)(A) applies to periodic testing of equipment. Sterling suggested that periods of testing not be included in the allowed hours of operation. The exemptions in §117.203(b)(6) are not intended to apply only to gas-fired engines. The proposed wording states "engines." Liquid fuel-fired engines operating in these services or at these hours are also exempt. For simplicity in enforcing the hour-per-year limitations with a run-time meter, all hours of engine operation, including those for test purposes, are to be included. However, the staff recommends increasing the number of hours allowed under this exemption to cover both testing and minimal service, as discussed in the response to suggestions to raise the number of hours allowed, under §117.203(b)(6)(C) as follows.

Exxon Chem suggested adding "such as a loss of power" to the definition of any officially declared disaster or state of emergency, in §117.203(b)(6)(A). The staff believes that a loss of power does not necessarily constitute an officially declared disaster. The operating hour exemption in §117.203(b)(6)(B) provides for the operation of engines and turbines during losses of power which are not officially declared disasters.

GHASP objected to the exemption of gas turbines or engines used exclusively in agricultural operations. Due to the generally small size and seasonal operation of gas engines used in agricultural operations, the staff considers the exemption of such sources to be technically and economically justified. The staff has retained this exemption as proposed.

TCC and TMOGA recommended that the annual low capacity factor in §117.203(b)(6)(C), qualifying engines and turbines for exemption, be raised from 200 hours per year to 850 hours per year. Exxon Chem and Exxon suggested raising the figure to 876 hours per

year, and Star Enterprise (Star), to 438 hours per year. GHASP objected to the exemption of industrial peaking gas turbine units, since these units often operate in the high ozone season. Stationary industrial engines and turbines often run either close to continuous operation or less than ten percent of annual capacity, about 850 hours per year. Requiring emission controls for equipment which is limited to run no more than ten percent of annual capacity is not cost-effective. Considering the magnitude of NO_x emissions generated continuously by other sources on a year-round basis, the exemption of the relatively few peaking units for the reasons cited appears reasonable. The staff has raised the annual low capacity factor for both utility and industrial gas turbines and internal combustion engines to 850 hours per year. The staff also has revised rule sections relating to exemptions for both utility and industrial sources, and continuous demonstration of compliance, to reflect this change.

TCC, TMOGA, Amoco Oil, and Exxon Chem objected to the permanent loss of exemptions if the hours-per-year limit is exceeded for gas turbines or engines. The staff intends "permanent loss of exemption" to mean that if a unit exceeds the given exemption levels, then it has to comply with the applicable emission limits from that point on. The staff believes this is a reasonable requirement which will prevent abuse of the exemptions for equipment which would not otherwise meet the exemption requirements.

EPA suggested adding the word "calendar," revising the phrase to read "less than 200 hours per calendar year," thus making it consistent with the wording in §117.203(b)(6)(B). The staff agrees, and has revised §117.203(b)(6)(C) to include the word "calendar."

Association of Texas Intrastate Natural Gas Pipelines (ATINGP) commented that engines rated 150 hp are unlikely to emit the 25 tons per year or 50 tons per year of NO_x specified as major in the Houston/Galveston or Beaumont/Port Arthur ozone nonattainment areas, respectively. Exemption limits for internal combustion engines were computed by back-calculating from the minimum yearly NO_x emissions qualifying a source as major (25 tons per year in the Houston/Galveston area), using an emission factor of 18 g NO_x/hp-hr and assuming continuous operation. The 18 g NO_x/hp-hr emission factor represents manufacturers' emission estimates for a typical rich-burn engine operating at the best fuel economy carburetor setting. The engine rating of 144 hp thus calculated was rounded up to 150 hp since operation is always less than 100% of capacity, resulting in a 150 hp exemption limit for affected internal combustion engines in §117.203(b)(8). This calculation shows that an engine rated at 150 hp emits right at the 25 tons per year level defined as major for the Houston/Galveston area, but emits at about half the 50 tons per year level qualifying it as major in the Beaumont/Port Arthur area. In order to correct for this disparity, the staff has raised the exemption level in §117.203 for rich-burn engines in the Beaumont/Port Arthur area to 300 hp and revised other rule sections accordingly.

Section 117.205—Emission Specifications. Regarding §117.205, concerning Emission Specifications, Oxy stated that thermal reactors and process heaters should be exempt from Chapter 117 since they are not mentioned in the EPA's NO_x Supplement to the General Preamble. The staff does not agree with Oxy that thermal reactors and process heaters should be exempt from the rule. The FCAA Amendments require NO_x RACT to be implemented on all major sources; EPA interprets "major" to mean both individual units and collections of units at a plant with potential major emissions. Even though process heaters are not specifically mentioned in the NO_x Supplement to the General Preamble, EPA states, "other source categories can be important in individual areas." Recognizing the importance of NO_x emissions from process heaters, EPA has prepared an ACT Document entitled NO_x Emissions from Process Heaters (draft September 1992; final February 1993). The staff believes that the regulation of thermal reactors and process heaters is appropriate because of the large population of these units in the Houston/Galveston and Beaumont/Port Arthur ozone nonattainment areas.

Oxy stated that the NO_x Supplement to the General Preamble specifies NO_x emission limits only for large boilers. Oxy suggested that TACB adopt similar procedures for RACT determination for smaller units. The staff does not agree that RACT for boilers and heaters which are smaller than 250.0 MMBtu/hr heat input should be established on a case-by-case basis as implied as an option in the General Preamble. The staff has used the ACT for process heaters, as well as other documentation, to establish emission limits for process heaters and industrial boilers less than 250.0 MMBtu/hr heat input. Section 117.221 allows for case-by-case determinations, in the event that the affected person cannot meet the RACT limits individually in §117.205, or through plant-wide averaging in §117.207.

TCC, TMOGA, Amoco Oil, Chevron, Dow, Exxon Chem, Exxon, Mobil, Oxy, Phillips Petroleum Company (Phillips), Shell Oil Company/Shell Chemical Company (Shell), Sterling, and Champion International Corporation (Champion) requested that TACB change the hourly averaging period for affected units to a rolling 30-day average; Texaco and Star recommended a 24-hour average as a minimum.

The staff agrees with the commenters and has included a 30-day rolling average emission limit in lb NO_x/MMBtu, calculated each day as the average of all the hourly data for the preceding 30 operating days for industrial boilers and process heaters which are monitored with a CEMS. The benefits to industry of long-term compliance averaging are the ability to assign lower emission limits to units and the reduction or elimination of exceedances caused by short-term emission fluctuations. The compromise facilitates progress on implementation of a first-round emission reduction rule. Reducing the likelihood of compliance problems may further industry's willingness to make deeper emission reductions, which are probably needed.

The TACB will benefit from the better infor-

mation for ozone attainment planning as emission limits become more representative of actual emissions. In the presence of numerous sources in an area or grid, the short-term NO_x emissions in the aggregate are far more uniform than the short-term emissions of individual units. Although some commenters suggested a compromise of a 24-hour averaging period (Texaco and Star), the staff has included the rolling 30-day average. However, the staff does not agree that a 30-day rolling average should apply for CO and ammonia limits. The one-hour averaging period for CO is due to the direct relationship between CO emissions and the primary, one-hour averaging period of the CO NAAQS. In contrast, the relation between NO_x emissions and the ozone standard is not as well defined but is thought to be dependent on longer term emissions. The staff recommends increasing the ammonia limit to 20 ppmv but changing the averaging period to one-hour to simplify compliance testing. Refer to the response to Exxon at §117.205(e) for more detail on the ammonia slip-emission limit.

TRC suggested incorporating a RACT limit for petroleum coke-fired boilers of 0.55 lb NO_x/MMBtu based on a rolling 24-hour average into §117.205(a). Due to the way the *Texas Register* interprets APTRA to require public notice in the *Texas Register* for any new emission limitations, the staff has not incorporated an emission limit for petroleum coke-fired boilers into §117.205(a) at this time.

Exxon Chem suggested deletion of the term "detailed" from units "subject to a detailed NO_x best available control technology review" at §117.205(a)(2).

The intent of the proposed §117.205(a)(2) is to allow newer boilers and heaters placed into operation in the last ten years, which have undergone review in accordance with a TACB NO_x BACT permit guideline effective March 1982, to be allowed the permit emission limit as the RACT limit. The guidance for industrial boilers and heaters rated more than 40 MMBtu/hr heat input was that BACT should be considered 0.12 lb NO_x/MMBtu heat input, lower heating value, for gas fuel, which is the primary industrial fuel on the Texas Gulf Coast. The policy memo was in response to the development of new burners specifically designed to reduce NO_x emissions, which now could be called "first generation" LNB. As discussed in the staff's June 1992 NO_x RACT position paper, the intent of the TACB's NO_x RACT rule was (and is) that units subject to these specific BACT limits after March 1982 would not be required to lower their NO_x limits further under a RACT rule. The incremental reductions obtained by going from first-to second-generation LNB will be less cost effective than going from uncontrolled emissions to second generation LNB and was not considered RACT. The staff also notes that 0.12 lb NO_x/MMBtu lower heating value, is approximately equal to 0.11 lb NO_x/MMBtu, high heating value. The RACT rule is based on high heating value. Thus, the BACT limit for these units is very close to the lowest of the proposed RACT limits. The staff believes that the relative recency and stringency of the March 3, 1982 memo provides a technically justifiable basis for establishing RACT for these boilers and heaters.

The issue is complicated because of the fact that BACT is handled case-by-case. In some instances there may have been sufficient documentation to demonstrate that a limit higher than 0.12 lb/MMBtu was appropriate for gas-fired boilers or heaters, but these are expected to be very few. The intent in using the word "detailed" is to avoid assigning BACT limits which are less stringent than the RACT limits of §117.205(a)(3) in cases where there is no technical justification. The term was proposed to reduce the possibility of confusion as to whether a unit's NO_x emissions have been subject to new source review under Chapter 116. A common TACB Permits Division practice is to incorporate emission limits for grandfathered units into the maximum allowable emission rate table of a permit in cases in which no NO_x BACT control requirements have been imposed on the equipment, for codification purposes. Another possibility is that a unit constructed or modified under a permit involving NO_x BACT review issued after the March 3, 1982 memo establishing specific guidelines for TACB Permits Division NO_x BACT review for industrial boilers and heaters was "grandfathered" from the policy because of the length of time the permit application was pending review prior to the new policy, or the policy may have been overlooked. Cases in which existing boilers or heaters were included in a permit are of concern. Reliance on EPA AP-42 emission factors would clearly show that detailed BACT review had not occurred, but other situations are likely to be less clear-cut.

The technical staff believes that a BACT review after March 3, 1982, which includes a sound technical basis for allowing a higher limit than the TACB BACT policy memo limit is justification for setting the RACT limit equal to the BACT limit, even if the §117.205(a)(3) emission limit is lower. However, the standard as proposed may lead to difficulty in implementation in a consistent manner. After discussing the issue further with TACB legal counsel, the staff has reconsidered the issue of including the term "detailed" and has deleted it.

EPA now takes the position that the rule may not be approvable unless the lower of the RACT emission limits of §117.205(a)(3) or the permit limit apply. A February 28, 1990 EPA policy memo from John Calcagni to the EPA Regions is relevant to this issue. The memo states: "We are aware that certain old LAER emission limits are less stringent than reasonably available control technology (RACT) that have been more recently established for some new stationary sources in the ozone nonattainment areas of various Regions. This is an expected result of control technology continuing to improve. The old LAER limits do not preempt RACT in these cases, and in fact, the more recent RACT limits may redefine LAER for future determinations."

The staff notes conversely that if a BACT limit is more stringent than the RACT limit, the BACT limit governs and must be used in calculating the plant-wide allowable emission. Not to do so would allow double crediting of emissions reductions under BACT and RACT Gas turbine facilities of Phibro Refining, Union Carbide/Linde, and possibly a few

others were placed into operation prior to November 15, 1992 (hence "units" for rule purposes), at a 25 ppmv NO_x limit. The EPA and the TACB could not allow a more stringent BACT limit to provide an emissions credit for these sources under plant-wide RACT averaging, since this reliance on the same reductions would be "double counting." However, if a BACT unit is economical to control, a company may choose to assign and take credit for an allowable emission under the plant-wide average which is more stringent than the BACT limit.

EPA would prefer that the more stringent of an applicable LAER, BACT, or RACT limit would be used to define RACT for averaging purposes. A modification to the rule for clarification will be proposed in the second round of rulemaking for the summer of 1993.

Mobil stated that §117.205(a)(2) and §117.203(b)(1) are redundant. The RACT rules were proposed for existing equipment placed into service prior to November 15, 1992. If the industrial boiler and process heater units had undergone a BACT review after TACB set permit NO_x BACT guidelines for heaters and boilers, then their RACT emission limit would be the BACT emission limit specified in the permit. The other requirements of this proposed regulation concerning recordkeeping and monitoring requirements are RACT requirements that are required for all units affected by the rule. The staff has retained the wording as proposed.

TRC has suggested that if they revise the emission limit downward in their current permit, it is possible that the limit will not be federally enforceable. If the lower limit was not federally enforceable, the TACB might not be able to take credit for the paper reductions in the attainment modeling. TACB Regulation VI (Chapter 116) has been submitted to the EPA and approved as part of the State of Texas' SIP. The TACB permits are considered to be federally enforceable by EPA.

TRC suggested that TACB clarify the applicability of the proposed §117.205 to the petroleum coke-fired boiler operated at AES Deepwater. TRC pointed out that the current TACB permit for the unit has a BACT limit of 0.70 lb NO_x/MMBtu and that the unit has incorporated all the latest design techniques for the reduction of NO_x. TRC believes that the permitted limit would be RACT for the petroleum coke-fired boiler. The staff has discussed the applicability of the rules to this particular unit in the response to TRC's comment in §117.10. The staff has not been able to verify that the unit has had all the latest NO_x design techniques installed. The staff does agree that the permit limit for the unit will qualify as the RACT limit according to the specifications of the proposed §117.205(a)(2).

Chevron expressed the appreciation of limiting the applicability of the rule to boilers and heaters greater than or equal to 100.0 MMBtu/hr heat input. Oxy stated that emission limits below 0.20 lb NO_x/MMBtu are too stringent for units greater than or equal to 100.0 MMBtu/hr heat input. Oxy referred to the NO_x Supplement to the General Preamble in citing limits for these type of units.

EPA has informed the TACB of the need to develop RACT specifications for all major sources including industrial boilers and process heaters less than 100.0 MMBtu/hr heat input. The staff disagrees with the comment that the limits below 0.20 lb NO_x/MMBtu are too stringent for units greater than or equal to 100.0 MMBtu/hr heat input based on the NO_x Supplement to the General Preamble. The NO_x Supplement states that the limits for certain utility boilers shall be 0.20 lb NO_x/MMBtu for tangentially fired, oil/gas burning units and 0.30 lb NO_x/MMBtu for wall fired, oil/gas burning units. The Supplement then states that NO_x RACT for other sources will be set at levels that are comparable to these limits.

The staff plans to achieve modest first round reductions for both utility and industrial boilers. The staff has set comparable emission limits for units greater than or equal to 100.0 MMBtu/hr heat input based on EPA ACT guidance, CARB/SCAQMD limits, and industry workgroup meetings. Furthermore, the Supplement states in §4.2 that EPA has historically recommended source-category-wide presumptive RACT limits, and plans to continue this practice.

TCC, TMOGA, Amoco Chem, Amoco, Exxon Chem, Exxon, Mobil, and Texaco suggested new emission limits considering extremely high firebox temperatures and to allow a choice between emission limits based on firebox temperature and preheated air temperature. Exxon Chem and Exxon both proposed a table that incorporates limits based on firebox temperature and preheated air. Amoco Chem and Amoco Oil also made a statement that induced draft heaters are given no correction factors at all.

The staff has revised the process heater emission limits to allow for a choice between air preheat and firebox temperature effects on the gas-fired process heaters. The staff does not agree with the suggestion that we revise the section to allow a new emission limit for firebox temperatures of greater than 1,800 degree Fahrenheit. The staff believes this concern is adequately addressed in §117.205(a)(3)(C)(ii), which allows for a correction due to high firebox temperatures. In addition, the emission limits for units that have high firebox temperatures which have undergone BACT analysis in Texas are on the order of 0.08 lb NO_x/MMBtu using the same control technologies, which is consistent with the proposed levels of RACT for existing process heaters.

The proposed limits represent an agreement reached during work group meetings with the trade groups representing affected persons. Some of the commenters' proposed limits are actually more stringent than the proposed limits in the rule.

The type of draft was only used as a basis for differentiation between units using preheated air and units with elevated firebox temperatures. Exxon states, "Our experience is that the type of process heat draft (mechanical or natural) has very little effect on NO_x emissions." This statement contradicts the statement made by Gordon Strickland, Vice President-Technical Services, Chemical Manufacturers Association, in a letter dated September 9, 1992, to William Neuffer with EPA.

Mr Strickland points out that forced draft NO_x emission factors are the same or even higher than natural draft emission factors in the EPA's ACT document on process heaters. Mr. Strickland states, "However, sometimes forced draft designs will give a reduction in NO_x (as much as 40 percent) versus natural draft burners, even without air of [sic] fuel staging." Once the staff made the decision to differentiate process heaters based on the type of draft, then factors affecting each type were researched. For mechanical draft units, the degree of preheated air showed the most effect on emissions; and for natural draft units, the firebox temperature showed the most effect. The emission limits were then evaluated and proposed on this basis.

The staff disagrees that induced draft heaters are given no correction factors. Induced draft heaters are included with mechanical draft heaters, since there is a mechanical device which either forces or induces draft to the heater. If the induced draft heater has air preheat, then emission limit allowances are given based upon the temperature of the preheated air. However, if there is no air preheat and the firebox temperature is high, the rule as proposed does not allow a correction based on its having an elevated firebox temperature. As a result, the staff has revised limits for gas-fired process heaters by deleting the reference to mechanical draft and natural draft. The resulting limits will provide an either/or situation. Either the heater will have an emission limit based on the temperature of the preheated air, or the heater will have an emission limit based on the firebox temperature.

Texas Petrochemicals Corporation (TPC) suggested using a heat release rate per unit area of water wall furnace tube instead of a volumetric heat release rate. TPC believes that the volumetric heat release rate is not as accurate.

The staff is retaining the use of the heat release rate as a volumetric standard based on and for consistency with EPA's definitions of heat release rate, high heat release rate, and low heat release rate in 40 CFR, §60.41b.

TPC suggested a new RACT emission limit of 0.28 lb NO_x/MMBtu for boilers with preheated air built before 1950. The staff disagrees with the comment that an emission limit of 0.28 lb NO_x/MMBtu for boilers built before 1950 utilizing preheated air be included in the rule. TPC has not presented supporting documentation that the RACT emission limit suggested for this type of unit is proper. The proposed rule already takes into consideration boilers utilizing air preheat and the staff believes that this is sufficient.

TPC requested that the TACB consider the effects of firebox temperature for both gas-fired, mechanical draft process heaters and gas-fired industrial boilers. The staff has changed the gas-fired process heater emission limits to allow for a choice between either a limit based on firebox temperature or a limit based on the temperature of the preheated air. The staff disagrees with TPC on the subject of considering firebox temperature for gas-fired boiler emission limits. The proposed rule accounts for the heat release rate

which indirectly accounts for the temperature in the firebox. The staff disagrees that furnace size is directly related to heat transfer surface and flame temperature. Boilers are meant for heating water and/or producing steam. The flame temperature typically is not as varied as it is among process heaters, and therefore is not considered to be a factor in setting emission limits for boilers.

TCC and Exxon Chem suggested a clarification of §117.205(a)(4) to show that some combustion units can have more than one fuel gas source, and that the total hydrogen content of all fuel gas streams must be greater than 50% by volume in order to receive a correction factor. The staff agrees with the need for wording changes to §117.205(a)(4), §117.207(h), and §117.213(f) to clarify the calculation of hydrogen by volume for fuel streams. The staff has added the clarification to each of the sections listed.

TMOGA, Mobil, and Texaco suggested a 1.125 multiplier for fuel gas streams containing 25% to 50% hydrogen by volume. Texaco suggested an allowance for fuel gas streams which contain anything less than 50% hydrogen by volume.

The ACT document for process heaters states, "One source reports that for a heater fired with fuel gas containing 50 percent or more hydrogen, NO_x emissions can increase 20 to 50 percent over the same heater fired with natural gas" (pages 4-8). None of the available data would indicate that hydrogen concentrations between 25% to 50% have a significant effect on NO_x emissions. The effects of increasing emission levels of NO_x are only noticed and documented in vendor tests for streams containing a minimum of 50% hydrogen by volume. For fuels with hydrogen concentrations less than 50% by volume, the commenters have not presented supporting documentation that the emission limits should be adjusted by a factor of 1.125. As a result, the emission limit multiplier for hydrogen will remain as it is instituted in the rule, without any additional multipliers for fuel gas hydrogen content.

Mobil also requested that the relaxation should not be limited to an eight-hour continuous period. The eight-hour period is the minimum time period in which the 1.25 multiplier can be used, since the sampling requirements will only show data for two or three sampling/analysis data points. A shorter period for applying the multiplier would require shorter and more frequent sampling and analysis periods. The eight-hour time period in §117.205(a)(4) will remain as worded.

Chevron stated that the sampling and analysis requirement in §117.205(a)(4) for hydrogen should be once every 24 hours. However, Chevron withdrew the comment in a letter dated April 23, 1993. The staff believes that the sampling requirements for hydrogen containing fuels is attainable through the use of online gas chromatography or mass spectrometry. The use of on-line gas chromatography is fairly common in refineries for the analysis of hydrogen sulfide in the fuel gas (as required by NSPS, Subpart J, 40 CFR §60.104). Such analyses have data taken and recorded into computers which assist in recordkeeping requirements. The staff

believes that one 24-hour sample is insufficient data to demonstrate that the hydrogen level was greater than 50% over that entire 24-hour period, let alone any eight-hour period. The sampling requirements will remain as they were proposed.

TCC, Dow, Exxon Chem, Phillips, and Star recommended raising the gas turbine CO limit in §117.205(b) from 50 to 150 ppmv, and Exxon recommended 100 ppmv. Star and Champion suggested a 24-hour rolling average TCC, TMOGA, and Amoco Oil suggested eliminating the CO limit for gas turbines.

Section 117.205(b) proposes a 50 ppmv CO limit referenced to 15% O₂ for stationary gas turbines rated 10 MW or greater. In its review of part-load emissions data from General Electric, the staff determined that emissions higher than 50 ppmv at 15% O₂ are possible for industrial gas turbines. Accounting for the difference between O₂ correction terms, the gas turbine CO limit equivalent to 400 ppmv proposed for industrial boilers and heaters at 3.0% O₂ is $400 \times ((20.9-3)/(20.9-15))$, or 132 ppmv at 15% O₂. The staff has included this as the CO limit for industrial stationary gas turbines. The CO limit of 400 ppmv in §117.105(j) applies to all utility units, including utility stationary gas turbines. Due to APTRA requirements, the staff will revise the CO limit for utility gas turbines in future rulemaking. With regard to the suggestion to eliminate the CO limit for gas turbines, protection of the one-hour CO NAAQS necessitates adopting an emission standard and retaining the hourly compliance limit as proposed. See the response to HL&P's comment in §117.105 for additional discussion on CO limits.

Champion commented that the staff estimates of steam injection control costs are underestimated, and recommended exempting gas turbines with control costs greater than \$2,000 per ton of NO_x controlled. Champion projected a cost-effectiveness of \$4,384 per ton of NO_x to control its two General Electric F5M' turbines.

The staff relied to a large extent upon EPA's ACT document on stationary gas turbines (final report issued January 1993) for its estimates of turbine control costs and cost-effectiveness. The cost figures for control to 42 ppmv NO_x for 12 model gas turbines are in the \$500 to \$2,000 cost-effectiveness range. The staff recognizes that for specific turbines the cost-effectiveness figures may be higher, but considers the proposed limits and typical cost ranges to be reasonable.

The staff has also found that estimating emission control costs is difficult. Although the General Electric F5M' model operated by Champion was not evaluated in the ACT document, a similar General Electric Frame 5 model rated 50% higher MW output than the F5M' was included in the ACT. The ACT's total annual cost estimate for reducing NO_x emissions from 142 ppmv to 42 ppmv, using steam injection, from the model Frame 5 turbine was \$487,000, corresponding to \$957 per ton NO_x reduced. It is not known whether Champion's cost figures reflect the effect of increased power output resulting from steam injection, which would partially offset the

costs it cited. There is also the possibility that dry low-NO_x combustors instead of wet injection and the related turbine upgrades could result in better cost-effectiveness figures for NO_x emissions reductions.

Amoco Oil, Oxy, and Champion questioned the inclusion of CO emission limits in a rule that is meant to control NO_x. Mobil suggested that there be no specific limits for secondary pollutants in §117.205(d) and §117.207(e), as long as the NAAQS standards are not violated. Oxy suggested that any increases in secondary pollutants should not have to be permitted if within allowable increases. CO limits are included in the rule because of the potential for increases in CO emissions when combustion modifications are made to reduce NO_x emissions. The staff recognizes the need to protect the NAAQS for CO while in the process of attaining the NAAQS for ozone. The TACB is not staffed to enable case-by-case permitting of all the sources, that would require a review due to increases in CO or ammonia. The rule currently allows for exemptions from permitting for certain sources, and the concept of General Permits will be addressed in future rulemaking. See also at §117.105 the response to HL&P's comment regarding CO emission limits. The need for CO limits remains and the staff has retained the proposed limits.

Engine & Compressor Systems (ECS) commented that the NO_x emission limit for rich-burn engines manufactured prior to September 1982 should be raised to 5.0 g NO_x/hp-hr. MECA recommended that the NO_x emission limit for rich-burn engines be lowered to 0.5 + 1.0 g NO_x/hp-hr. The staff believes the 2.0 g NO_x/hp-hr limit reflects RACT for rich-burn engines. The TACB Permits Program still uses 2.0 g NO_x/hp-hr as a BACT limit. The design basis for nonselective catalytic reduction (NSCR) evaluation in the ACT document for internal combustion engines is 2.0 g NO_x/hp-hr. A lower standard could also be reasonable, since under best operating conditions an NSCR catalyst on a rich-burn engine can virtually eliminate NO_x. However, an additional layer of catalyst may also be required to meet a more stringent emission limit. Performance of any catalyst degrades with time, eventually requiring catalyst replacement. The staff lacks field data on NSCR service life and is not able to estimate the costs of increased catalyst replacement which a lower standard would necessitate. If a more stringent limit results in relatively low incremental catalyst replacement costs, as the staff suspects, companies may be able to use the averaging elements of the rule effectively by assigning lower limits to some engines. The staff would prefer that the cost-benefits of lower limits be evaluated by the companies in this case. Regarding the suggestion that rich-burn engines manufactured prior to September 1982 be allowed a 5.0 g NO_x/hp-hr limit, the staff recognizes that older engines may require engine maintenance in order for NSCR to operate properly. The staff believes it is reasonable to expect companies to perform engine maintenance if it is needed to comply with the 2.0 g NO_x/hp-hr limit.

Exxon requested a 20 ppm ammonia slip-emission limit. The staff agrees and has added a 20 ppmv emission limit based on a

one-hour averaging time period. This recommended change is to allow a more lenient emission limit for selective non-catalytic reduction processes which can require higher ammonia slip limits. The ten ppm increase in ammonia emissions is anticipated to be negligible in its effects on the environment. The new recommended averaging period change will allow compliance performance testing to be performed with greater ease.

Enron expressed support for exempting heat recovery steam generators (HRSG) from emission limits in the proposed rule. The staff agrees and has retained the HRSG exemption in the proposed rule. The staff does not think it likely that HRSGs may actually cause NO_x reductions at the proposed 42 ppmv gas turbine NO_x limit. See the response to Enron's comment at §117.207(f). The staff has some concerns about the calculation procedures used to compute gas turbine/duct burner emission rates, which continue to be investigated. The changes in moisture and oxygen content in the stream and the point of actual sampling need to be accounted for carefully in calculating relative emissions.

Texaco requested clarification on the exemption of boilers and industrial furnaces (BIFs) regarding the time periods which BIF units actually burn hazardous waste. The staff has exempted BIF units which burn hazardous waste and which are regulated as existing facilities by 40 CFR, Part 266, Subpart H. If the unit is not classified as a BIF and the provisions of §117.201 apply to the unit, then the unit must comply with the rule. If a unit is classified as a BIF according to 40 CFR Part 266, Subpart H, then it will be completely exempt from emission specifications in the proposed rule, regardless of the time periods in which it operates as a BIF unit.

MECA recommended that a reasonable emission limit be established for lean-burn engines, and stated that the absence of a limit would encourage the installation of more uncontrolled lean-burn engines (even if subject to new source review), or would result in the conversion of rich-burn engines to lean-burn to avoid controls.

With regard to possible consequences of not having an emission limit for lean-burn engines in the meantime, the staff does not agree that more uncontrolled lean-burns will be installed as a result. New source review requirements for ozone nonattainment areas in effect since November 15, 1992, call for the application of lowest achievable emission rate (LAER) (or BACT if the source nets out of nonattainment review). This may well amount to installation of electric drive motors in place of internal combustion engines, which are inherently high emitters of NO_x.

Further, the staff does not agree that rich-burn engines will necessarily be converted to lean-burn in order to avoid application of the rule. The proposed rule definitions of lean-burn and rich-burn engines specify that the exhaust gas O₂ concentration shall be determined from the uncontrolled exhaust stream. This means that once an engine has been built as rich-burn, it always remains a rich-burn engine for purposes of rule applicability. These definitions were included expressly to prevent circumvention of the rule by modify-

ing a rich-burn engine to give it lean-burn characteristics. This would not preclude a rich-burn engine from being modified to a lean-burn configuration, but the rich-burn emission limit would still apply to the converted engine. See the staff response to MECA's comment under §117.207(f), following, concerning emission limits for lean-burn engines.

MECA commented that major new sources in ozone nonattainment areas should be subject to case-by-case LAER evaluation rather than to RACT rules for existing sources, and recommended that §117.206, relating to Emission Specifications for New, Rich-Burn Engines, be deleted. MECA further commented that the 2.0 g NO_x/hp-hr limit for new rich-burn engines in §117.206(a) is too high for LAER. Star commented that the block one-hour average in §117.206(a) should be changed to a less restrictive 24-rolling average.

Section 117.206 was included in the original rule proposal because of an apparent conflict between the 150 hp applicability limit proposed for existing RACT sources and the 500 hp applicability limit for new sources provided by TACB Standard Exemption 6. The intent was to close the loophole for new engines rated less than 500 hp which, if exempted under Standard Exemption 6, would have had less-stringent control requirements than existing engines under the RACT rule. The staff believes that new rich-burn engines should be subject to applicable new source review requirements of TACB Regulation VI, including LAER review, for ozone nonattainment areas. It will be more appropriate to address these exemption applicability issues in a future revision of Standard Exemption 6, especially since other concerns about the exemption have been raised which could require revision. Therefore, TACB is withdrawing the proposed §117.206 at this time.

It is important to note that increasing the compliance averaging period beyond one hour necessitates the use of CEMS as a practical matter for enforcement purposes. Even though an emission limit and averaging time are no longer proposed for new engines in the rule, other rule sections specify a one-hour block average for certain existing sources such as industrial boilers and heaters for which CEMS is not required.

MECA commented that §117.206(b) provides a total exemption for new or modified lean-burn engines, and emphasized the need for a reasonable emission limit for lean-burn engines. As originally proposed, §117.206(b) would have exempted only emergency standby or peaking engines operating less than 200 hours per year, referenced in §117.203(b)(6), and stationary internal combustion engines rated less than 150 hp, referenced in §117.203(b)(8). Exemption of all new lean-burn engines was never proposed in this section or elsewhere in the rule. The potential applicability of nonattainment new source review provisions of Regulation VI was specifically referenced in §117.206(d). See the previous response to MECA's comment concerning LAER evaluation and new source review, and MECA's comment under §117.207(f) concerning establishing reasonable emission limits for lean-burn engines.

Section 117.207-Alternative Plant-Wide Emissions Specifications. MECA and Star expressed support for §117.207. Star stated that subsection (f) should be as flexible as possible by including controlled individual units versus the proposed inclusion of the entire class of units. MECA suggested that a lower emission limit for lean-burn engines should be instituted and have this emission specification placed in §117.205(f). The staff appreciates the support. See the response to the comment in §117.207 for further discussion on the inclusion of single, exempted units in §117.207(f). The staff is not able to recommend a more stringent limit for the lean-burn engines at this time; however, it will be considered in future rulemaking.

EPA expressed support of the concept of averaging as specified in §117.207, but stated, "the EPA must be assured that RACT equivalent emission reductions will occur." EPA further stated that the use of maximum rated capacity rather than actual heat input in calculating equivalency between the averaging group and the plant-wide emission limit does not meet EPA's methodology.

The averaging allowed under §117.207(a)-(h) is equivalent to RACT. Equivalency is demonstrated by the application of RACT emission limits to each affected source and using performance testing and emissions monitoring to verify compliance. The staff has deleted §117.207(i) at the request of EPA to ensure equivalency. See the response to the comment by EPA in §117.207.

Since TACB was trying to write a NO_x RACT rule in the specified timeframe mandated by Congress in the 1990 FCAA Amendments, and EPA guidance was not available on the use of maximum rated capacities at the this time, the staff believes that the emission limits combined with the averaging provisions constitutes RACT for the affected sources. This is the third condition in EPA's comment in which EPA has stated that they would accept the use of maximum rated capacities.

Champion recommended that TACB consider, on a case-by-case basis, credits for NO_x reductions which will be achieved one year after the May 1995 compliance date for RACT. The staff does not agree with the concept of allowing prospective emission reductions to be used for compliance purposes. However, §117.540 sets forth a mechanism for phased RACT and §117.221 allows for alternative RACT on a case-by-case basis.

GHASP opposed the concept of alternative plant-wide emission options. "In particular we object to the weakening of this weak proposal that when a unit in a system-wide emission system was found in violation that all units in that system would then be in violation. By taking away this enforcement hammer TACB ensures that industry will not operate as carefully to prevent exceedences (sic) and violations of these rules." GHASP's particular objection is pertinent to the system-wide emission cap approach which was included in a June draft version of the rule for electric utilities only and was not included in the actual proposed rule version. The rule currently relies on a plant-wide emission average with individual emission limits. Individual limits are enforced individually, unlike the group limit of

a facility cap in which compliance can be determined only if all units simultaneously report emissions. The staff supports the comment as it applies to facility caps. The plant-wide emission average with individual limits has been implemented successfully by the SCAQMD in the State of California in SCAQMD's 1109 rule.

TMOGA and Mobil requested that flexibility be provided in §117.207 through a combination of parametric monitoring and CEMS. The flexibility would come by way of one facility site-wide enforceable limit versus individual unit emission limits. Compliance with the single, site-wide emission limit would come through monitoring each of the affected sources with an operating parameter monitoring system (OPMS) or CEMS. The staff has eliminated the operating parameter monitoring requirements in §117.213(a), primarily due to the staff's concern about the accuracy of the data from the parametric monitoring system. See the response to the comment by TCC in §117.213. Industry has rejected the staff's attempts to require the installation of CEMS to monitor all units affected by emission limits. A single, plant-wide emission limit plan would not be enforceable without accurate monitoring of each affected unit. The staff is evaluating a facility cap concept for future rulemaking that does address a single, plant-wide emission limit. See the response to the comment by TCC in §117.207, as well

TCC, TMOGA, Amoco Chem, Amoco Oil, Chevron, Dow, Exxon Chem, Exxon, Mobil, Phillips, and Shell suggested a "facility cap" concept on a pound per hour basis. The staff is presently working on this concept and intends to consider its development in a second round of rulemaking in the summer of 1993. The facility cap is an alternate to the plant-wide emission limit as proposed in §117.207, and is perceived to be beneficial in making NO_x reductions. There are several factors which need to be addressed to the satisfaction of EPA and TACB in proposing such a concept. The need to demonstrate equivalent reductions and the use of monitoring to demonstrate compliance are two key issues.

TCC and Texaco believe that the rule calls for enforceable limits on each individual unit. TCC suggested that the rule allow for a plant cap limit with appropriate demonstrations. The proposed rule uses individual unit emission limits in both §117.205 and §117.207. The staff does not agree with Texaco's suggestion that the rule requires dual compliance with both of these sections. The first sentence of §117.207, "Alternative Plant-Wide Emission Specifications," clearly states that this section may be used to achieve compliance with §117.205. Under this section, the plantwide emission limit is calculated using the individual emission limits in §117.205. The individual emission limits of §117.205 are used with units' maximum rated capacities to determine the calculated plant-wide emission limit; individual enforceable limits are then assigned by the affected person to each unit. By enforcing the individual limits set by the affected person, an alternate means of compliance with §117.205 is achieved. The concept of a facility cap is being considered for future rulemaking.

Oxy requested that the system-wide limit available for the electric utilities should also apply to the industrial units. The staff has recognized the benefit of plant-wide and system-wide averaging to the affected community. The staff believes that since the industrial sector has a wider variety of NO_x sources than do the electric utilities, that NO_x RACT trading would be the best method to allow industrial system-wide averaging. A detailed trading program will be considered in future rulemaking. The staff believes that this is the appropriate format to address the complexities of averaging emissions from a multitude of sources and sites. The primary concern is demonstrating equivalent reductions among the affected units. The electric utilities are required to install CEMS on their units through Title IV of the 1990 FCAA Amendments, which simplifies the demonstration of compliance with a system-wide limit. The affected industrial sources are not required to install CEMS on all units, thereby complicating the demonstration of equivalency.

TCC, TMOGA, Chevron, Exxon Chem, Exxon, Mobil, Oxy, Phillips, Star, and Champion stated that the requirement to include an entire class of exempted equipment to be controlled if any unit is to be included in the plant-wide averaging specification allowed in §117.207(f) is an extreme requirement. Chevron said, "The requirement for the class of units is arbitrary and capricious and serves no value to the environment, but unnecessarily reduces flexibility and adds cost." The use of the option to include exempt classes in plant-wide averaging is entirely up to the affected facility. The rule is structured to ensure that all controlled sources of a particular class of equipment are included into plant-wide averaging, and not just the clean, uncontrolled, exempted units which would help toward the plant-wide average without actually reducing emissions. It must also be noted that the staff believes that many of these exempted classes of equipment will require individual emission limits in the future. Enron recommended that duct burners be included as an opt-in class of exempted units in §117.207(f), since they may reduce NO_x emissions.

The staff disagrees that duct burners will reduce NO_x emissions. A presentation by Jon Backlund of COEN (a manufacturer of duct burners) at the February 10, 1993, Council of Industrial Boiler Owners conference reported that reburning occurs at high turbine NO_x emissions (e.g., 250 ppmv NO_x), but that no reburning is observed at low turbine NO_x emissions.

The staff recognizes the need to establish a RACT limit for duct burners in future rulemaking to comply with EPA's interpretation of the FCAA Amendments. However, most duct burners, which have been permitted in the last ten years and use LNB, probably emit at a level consistent with RACT. In developing RACT for duct burners, the staff believes the duct burner limit should either recognize existing actual emissions as RACT or perhaps set an emission limit which would require any high emitters to install controls such as LNB. The latter option should be used only if there are actual units which could reduce emissions by retrofitting burners.

The staff is concerned that the result of the TACB establishing a duct burner limit may be that no additional duct burner controls would be required, and, just as important, that higher gas turbine emissions would be allowed as a consequence of plant-wide averaging. The staff does not believe this approach is consistent with RACT.

MECA commented that in §117.207(f), lean-burn engine emission controls should be required rather than be optional in a plantwide emission limit. The staff recognizes that lean-burn engines will require NO_x RACT rules in order to comply with EPA's FCAA Amendments interpretation of applying NO_x RACT to all major sources. Lean-burn engines were deleted from the June 1992 draft NO_x RACT rule to facilitate early rule adoption. In doing so, the staff considered that establishing RACT is more difficult, emissions are more variable, and control options are more complicated for lean-burn than for rich-burn engines. Engine rebuilds and selective catalytic converters are two effective control techniques for lean-burns, but the costs may be an order of magnitude higher than rich-burn NSCR. Lean-burn engine parameter adjustments are not as effective in reducing emissions, but may allow additional controls to be added later without violating the principle of "buildable steps." The population of lean-burns is older than that of the rich-burns. For instance, Amoco operates 16 1940's vintage lean-burn engines at a compressor station. Rebuilding such old engines to be low emitters may not be practicable or cost-effective. Other possibilities, such as selective catalytic reduction (SCR) or conversion to electric drive, may be very expensive and require long-range economic planning. The staff sees a significant potential cost-effectiveness benefit in promoting more flexible emission trading schemes before requiring such sources to greatly reduce their emissions.

TMOGA, Exxon Chem, Exxon, Mobil, Nalco FuelTech (Nalco), and Chevron disagreed with the emission limit for CO boilers which was proposed in §117.207(f)(1). Amoco Oil requested that §117.207(f)(1) be deleted entirely and is willing to participate in a study to evaluate NO_x control technologies.

The staff agrees that an emission limit of 0.10 lb NO_x/MMBtu may be BACT for refinery CO boilers. However, it must be noted that SCAQMD has a 0.03 lb NO_x/MMBtu standard for refinery boilers and process heaters in SCAQMD's Rule 1109. Suggestions for emission limits ranging from 0.30 lb NO_x/MMBtu (Exxon Chem and Exxon) to 1.0 lb NO_x/MMBtu (Mobil and Nalco) were made, as well as deleting §117.207(f)(1) entirely (Amoco Oil). The staff believes that a joint study between the refiners and the TACB to evaluate the NO_x emissions from FCCU CO boilers is worthwhile. However, the staff believes that there is presently enough information to recommend a new limit of a 50% reduction of NO_x across the CO boiler, as a unit, to encourage use of the inclusion of CO boilers as an entire class in the alternative plant-wide emission limit. This approach is a direct result of the wide range of actual NO_x emissions from the various types of CO boilers currently in use in the ozone nonattainment areas. The assignment of one

emission limit in a lb NO_x/MMBtu format may be too restrictive for some units and too lenient for others. A percent reduction will allow all CO boilers the same opportunity for reductions.

The following items have been added or explained to facilitate the use of a percent reduction of a CO boiler into §117.207(f)(1). The staff has revised the term "heat input" as it relates specifically to a CO boiler be revised. This revision will allow the calculation of the heat input term in the denominator of the lb/MMBtu term which is used in determining the emission rate. The conversion from ppmv of NO_x to lb NO_x/MMBtu will require the knowledge of the FCCU regenerator off-gas volumetric flowrate and the CO boiler exhaust volumetric flowrate at different operating conditions (for example, at varying CO boiler auxiliary firing rates and regenerator flowrates). The NO_x concentration in ppmv can then be converted into a mass flowrate using these volumetric flowrates. CO boilers which are opted into §117.207(f)(1) will have the calculations for the conversion from NO_x concentration in ppmv to lb NO_x/MMBtu submitted to the Executive Director for approval as part of the initial control plan. The staff has clarified the requirement to submit calculations for CO boilers in §117.209(7).

Texaco commented that the language in §117.207(f)(3) which references using the emission specifications in §117.205(a) needs clarification as to the heat input size. The staff agrees and the wording in §117.207(f)(3) has been changed to show that the emission limits of §117.205(a)(3)(A)-(E) are to be used for the applicable type of unit.

TCC, TMOGA, Exxon Chem, and Exxon suggested that definition of mass emission loading be incorporated into §117.207(g). The staff does not believe that the suggested definition would clarify the proposed rule. See the response to TCC's comment in §117.10.

Chevron expressed support for using 1990 as the baseline year for reductions, using shutdown units in calculating the plant-wide emission limit. Due to comments by EPA, §117.207(i), regarding the use of shutdown credits has been deleted. See the response to the comment made by EPA in §117.207.

EPA expressed concern over the use of shutdown or curtailments in an averaging plan which regulates emission rates, not total source emissions. EPA stated, "The EPA's policy, however, is that shutdown units cannot be used to meet a RACT averaging plan. RACT assumes that control technology is installed on each applicable unit. Since a source would not be required to install RACT on a unit that is shutdown, shutdowns cannot be included in a RACT averaging group." Based on EPA's comments, subsection (i) has been deleted from §117.207 to eliminate including shutdown equipment in the plant-wide emission limit averaging option. EPA noted, however, that it would allow shutdowns in a facility cap option. EPA stated, "If, however, a NO_x emissions cap (i.e., mass NO_x emissions per unit time basis) is established for a group of units at a facility, a permanent shutdown may be credited towards compliance with the emission cap. Since total emissions are limited (at a RACT

equivalent level), any decreases in production, including shutdowns, could be creditable towards compliance with the emissions cap." The concept of a facility cap will allow the inclusion of retired units since their actual emissions will be considered.

TCC, TMOGA, Amoco Oil, Chevron, Exxon Chem, Exxon, Mobil, Oxy, and Phillips objected to the requirement that shutdown units which are to be included in the plant-wide emission section must be permanently disabled. They stated that NO_x controls could be installed before the unit is restarted, or that the unit could undergo a BACT review through a permit application, in case of a disaster or other circumstance which would warrant bringing the unit back into service. Section 117.207(i), regarding the use of shutdown credits has been deleted. If the facility cap concept were to be adopted in future rulemaking, shutdown units would not have to be rendered permanently inoperable. As a result, this approach should satisfy TCC, TMOGA, Amoco Oil, Chevron, Exxon Chem, Exxon, Mobil, Oxy, and Phillips.

Texaco asked that TACB give guidance on certifying a unit's 1990 operational level and maximum rated capacity. Since the 1990 operational level will not appear in the rule due to the recommended removal by EPA of the subsection containing this reference, guidance will not be required. The maximum rated capacity is defined in §117.10.

Section 117.208—Operating Requirements. Oxy suggested that TACB offer the option of meeting either emission limits or operating requirements, but not both. The requirements in §117.208 specify that the operation of the affected equipment must be done in compliance with the emission limits of §117.205 and with the limits submitted by the affected persons in the compliance plan required in §117.215 of the proposed rule. The rule also requires that all equipment affected by the emission limits in §117.205 comply with basic operational requirements. The staff, therefore, believes that this section is beneficial in reducing NO_x emissions in conjunction with the emission limit specifications. The requirements of §117.208 have been retained for the affected equipment.

TCC, TMOGA, Exxon Chem, Exxon, and Mobil requested that §117.208(a) defer to the General Rules in referencing the major upset and maintenance periods as specified in §117.208(a). The commenters also requested that the section include a reference to the emission limitations in §117.207, as well as the reference to §117.205. The staff agrees and has reworded §117.208(a) to defer to the major upset and maintenance provisions identified in the General Rules in 101.6, 101.7, and 101.11. See the response to TCC's comment in §117.203. The staff also agrees with the comment regarding a reference to the emission limitations in §117.205 and §117.207 and has added appropriate wording.

Enron suggested that the staff revise §117.208(a) to include all start-ups and shutdowns, both hot and cold. The staff will further consider start-up and shutdown definitions in future rulemaking. See the previous response by TCC in this section.

Texaco suggested that §117.208(a) be moved to §117.205(f) for clarification. Subsection (f) in §117.205 exempts specific types of units from the emission limits in §117.205. Subsection (a) in §117.208 states that the units subject to the emission limits in §117.205 comply with those emission limits. The basis for §117.208 is to require the affected equipment to be operated in a manner such that the units comply with the emission limits in §117.205 and with the limits submitted by the affected persons in the compliance plan in §117.215 of the proposed rule. This section is particularly important for units without CEMS installed to ensure continuous emissions reductions. Section 117.208 also requires that all equipment affected by the emission limits in §117.205 comply with basic operational requirements. Section §117.208 remains as it was proposed, other than the recommended revisions to reference major upsets, maintenance, and §117.207.

TCC, TMOGA, Exxon Chem, and Mobil requested that words be added to §117.208(b) to reflect a facility cap. As mentioned earlier in the response to TCC's comment in §117.207, the facility cap concept may be considered for future rulemaking.

TCC and Exxon Chem requested that the operating requirements in paragraphs (1)-(6) in §117.208(c) be deleted. TCC stated, "In a number of situations, these proposed operating restrictions would result in unnecessary retrofit costs on older units, with little or no benefit in terms of real NO_x reductions." The staff disagrees that the requirements should be deleted. The purpose is to require equipment to be operated in such a manner as to reduce NO_x emissions over the entire operating range. These requirements will ensure that NO_x reductions are achieved, particularly for units without CEMS installed. The staff believes that they are beneficial and necessary, without being costly or burdensome.

TCC, TMOGA, Exxon Chem, and suggested that the phrase "but are not limited to," in §117.208(c) be deleted. The reason is that the phrase could promote regulatory uncertainty because of its ambiguity. The staff agrees with the request and has deleted the phrase from §117.208(c).

TMOGA and Mobil recommended that the operating requirements for FGR in §117.208(c)(2) and (3) be eliminated because the retrofit ductwork may not allow accurate metering of the FGR rate. Paragraph (2) requires that the proportional design rate of FGR be maintained, consistent with combustion stability, over the operating range. This requirement can be implemented with the use of FGR curves, which should be based on vendor data for the FGR system. Metering may be required initially to determine the curves, but other means would be available to provide the information to graphically represent the FGR curves. Paragraph (3) requires that any unit utilizing induced draft FGR be operated such that the operation of FGR over the operating range is not restricted by artificial means. This requirement has nothing to do with metering of the FGR rate, only that no artificial means be used to restrict the FGR operation (such as closing dampers) which would minimize NO_x reduc-

tions. These requirements are beneficial and necessary, and have been retained as proposed.

ATINGP commented that in §117.208(c)(6), air-fuel ratio (AFR) controllers may be duplicate controls unnecessary for NSCR to meet emission limits. Section 117.208 requires any engine using NSCR as a control method to be equipped with an automatic AFR controller. There is a very narrow band of AFR for which NSCR works, and an AFR controller is necessary for NSCR to operate properly.

TCC commented that §117.208(c)(7), which specifies procedures for periodic measurement of NO_x and CO emissions after certain engine maintenance operations, should be moved to §117.213, relating to Continuous Demonstration of Compliance. Routine operation of internal combustion engines, including periodic engine maintenance, O₂ sensor replacement, and catalyst cleaning or replacement, causes changes in engine performance which are likely to increase NO_x and CO emissions. Performing regular NO_x and CO measurements at least quarterly will improve the chances of detecting conditions of excessive emissions which otherwise might go undetected between stack tests conducted biennially or every 15,000 operating hours. The staff believes that these are valid operating requirements for internal combustion engines. The emissions measured by portable analyzers are not used directly for determining compliance, and the staff does not see the benefit gained from moving the requirements to §117.213.

Section 117.209-Initial Control Plan Procedures. Regarding §117.209, Initial Control Plan Procedures, Oxy and Phillips suggested that submittal of initial compliance plans is unnecessary and should be eliminated from the rule. The initial compliance plan required by §117.209 provides a demonstration that companies are making their best effort to comply with the rule requirements by May 31, 1995. The initial plan as required by the rule is an interactive planning tool, not an enforcement tool against specific future allowable emission rates. Compliance with the individual emission limits of §117.205 or the company-assigned enforceable emission limits of §117.207 must be established in the final compliance plan.

The information provided allows the staff to assist companies in creating an approvable final compliance plan for a complicated rule. Also, the information provided will identify issues which may be resolved in a straightforward manner prior to the final compliance date, such as identification of approvable alternate fuel gas analysis methods. The information provided will be functionally the most accurate major point source NO_x emissions inventory yet obtained for the areas, which will benefit development of technically sound ozone reduction policy.

Finally, the plans are needed by the TACB to develop an objective evaluation of the need for a phased RACT schedule. Industry could have a strong incentive to provide this information. If the TACB does not receive information on affected units as requested, the TACB would presume that the rule requirements for those affected units have no impact on meet-

ing the May 31, 1995 implementation date and would not be able to consider them in evaluating the need for any phased RACT by rulemaking under §117.541(b).

Shell suggested that alternative methods of continuous monitoring be submitted with the initial control plan and be subject to the Executive Director's approval, with an appeal to the Board if necessary. Star suggested appointment of an independent arbitrator to appeal the Executive Director's approval of an initial control plan.

The staff disagrees with these suggestions and does not consider the proposed requirement to install CEMS an item for appeal. The staff has negotiated over a long period with industry to retain the proposed requirement for NO_x CEMS on the largest NO_x emitters in the Houston/Galveston and Beaumont/Port Arthur ozone nonattainment areas. Existing programs such as NSPS, Subpart Db, and TACB Permits practice require NO_x CEMS on new boilers rated more than 100 MMBtu/hr heat input, as compared to existing boilers rated more than 250 MMBtu/hr heat input in the proposed rule. The NSPS program was developed well before the shift in emphasis toward NO_x control in ozone attainment strategy. In response to Star's suggestion to appoint an independent arbitrator to consider these appeals, the staff notes that the TACB does not have the authority to delegate its decision making powers in this way.

The emissions variability from actually monitored units the staff has encountered while evaluating and developing NO_x emission limits for both utility and industrial sources has strengthened the belief that sound NO_x emissions reductions programs are not possible without systematic emissions monitoring. As discussed in responses in §117.213, the staff has recommended specific changes to reduce the costs of implementing the monitoring provisions while retaining the fundamental ability to measure the emissions.

Texaco suggested that the TACB provide guidance on an acceptable format for presenting the information required in the Initial Control Plan. The staff intends to develop this guidance. Suggested uniform reporting formats will assist the TACB in evaluating the information presented.

Texaco stated that a company should have an opportunity to revise the initial control plan required in §117.209. Texaco suggested that a reference to the control plan revision ability of §117.217 be added in §117.209. The wording in §117.209 has been revised in the same manner as §117.109. See the response to HL&P's comment in §117.109 and HL&P's comment in §117.117, relating to Revision of Control Plan.

TCC, Amoco Chem, Amoco Oil, Exxon Chem, and Baker & Botts (B&B) suggested that the TACB clarify that the initial control plan is not an enforceable document, but that it is merely a planning document.

The staff agrees with this comment to the extent that the initial control plan is intended to be a planning document for use by the owner or operator and the TACB. The selection of assigned emission rates in the initial

control plan will not be an enforceable issue. The submission of the initial control plan and the seven requirements contained in this section are enforceable issues; the TACB expects the affected persons to comply by submitting a complete initial control plan.

Amoco Chem, Amoco Oil, Exxon Chem, B&B, and TCC requested that the requirement for TACB Executive Director approval of the initial control plan be deleted. B&B also suggested a provision to allow sources that cannot meet the May 31, 1995 compliance date to be able to request approval of a later compliance date in the initial control plan and to list specific control plan milestones as part of that request.

The staff has retained the proposed rule language concerning Executive Director approval in the rule. The approval by the Executive Director of the initial control plan is for the purpose of ensuring that a NO_x reduction control plan is being implemented by each affected person. The May 31, 1995 final compliance date will be reevaluated one year after the adoption of the proposed rule, as specified in §117.540(b). Section 117.540(a) already allows an affected person to apply for a change in the final compliance date. The staff disagrees with the comment to incorporate a provision to allow a request for a compliance date later than May 31, 1995, which would include specific schedule milestones. The staff recommends not allowing a request for a final compliance date extension in §117.209.

TCC, TMOGA, Exxon Chem, Exxon, Mobil, Oxy, and Phillips requested that the listing threshold in §117.209(1) for combustion sources with a maximum rated capacity of greater than 5.0 MMBtu/hr heat input be raised to 40.0 MMBtu/hr heat input. The staff disagrees with this request. Section 117.201 states that the rule is applicable to industrial boilers and process heaters with a maximum rated capacity of 40.0 MMBtu/hr heat input or greater. The purpose of listing all combustion sources greater than 5.0 MMBtu/hr heat input is to gather information on all potential major point sources of NO_x emissions. However, the units greater than 5.0 MMBtu/hr heat input and less than 40.0 MMBtu/hr heat input have no other requirements in the proposed rule. The staff does not believe that this listing requirement is sufficient reason to state that these units have rules applicable to them.

TCC and Exxon Chem objected to the wording of §117.209(1) and suggested that the phrase "anticipated annual heat input" be deleted because it adds no value to the initial control plan. The staff sees benefits of requiring both the maximum rated capacity and the anticipated annual heat input of the affected industrial boilers and heaters. The anticipated annual heat input data is generally available, can readily be included in the initial control plan, and it is a number which will be required in setting a facility cap, which is an option to be considered for future rulemaking. As a simplification, the staff recommends revising the requirement of listing the anticipated annual heat input of each unit to requiring the listing of the anticipated annual capacity factor of each unit in the proposed rule. The annual capacity factor provides the same in-

formation as the anticipated annual heat input, except that it is expressed as a percentage.

TMOGA and Mobil stated that the requirement in §117.209(1) to list the facility identification number and emission point number for each piece of equipment identified in §117.209(1) is nonproductive and requires significant additional work. The facility identification number and emission point numbers are integral to the TACB in identifying equipment. Listing these identifiers will assist the TACB staff in studying the initial control plans. The facility identification number and emission point number identifiers are the key to relating the equipment at the facility to emission inventory data, permits, and other relevant information. These identifiers should be readily available to both the staff and industry, and should be included in the initial control plan because of their usefulness.

TCC and Exxon Chem requested that the word "anticipated" be added before the phrase "construction schedule" in §117.209(5).

The staff agrees with this comment and has added the word "anticipated" before the phrase "construction schedule" in §117.209(5).

EPA requested that a more specific construction schedule be submitted in the initial control plan as in §117.109(c)(6) for the utilities.

The staff believes that the requirement to list anticipated, specific construction dates in §117.209(5) as in §117.109(c)(6) would be worthwhile. The specific dates would allow the TACB to better evaluate the final compliance date and the need for "phased RACT" by future rulemaking. The staff is aware that the dates are subject to change, due to scheduling difficulties. The staff's intention is that these dates will not be enforceable, but they should be submitted in the initial control plan. However, because of the way the *Texas Register* interprets APTRA to require public notice in the *Texas Register* for any new requirements, the staff cannot recommend requiring additional, specific construction dates. Therefore, the staff has retained the schedule required in §117.209(5), as proposed.

TCC, TMOGA, Exxon Chem, and Exxon suggested that the words "retired or decommissioned" in §117.209(6) be replaced with "shutdown and rendered inoperable."

The staff believes that, on the basis of clarity and consistency, the suggested words be added to the phrase "retired or decommissioned." The staff recommends changing the wording to include the phrase "shutdown and rendered inoperable."

TCC, TMOGA, and Exxon Chem requested that the phrase "mass rate" be replaced with the phrase "emission rate" in §117.209(7) and the reference to the plant-wide emission limit be deleted. This would facilitate the inclusion of a facility cap into the proposed rule. TCC, TMOGA, and Exxon Chem requested a new paragraph to be included in §117.209 to request that the basis for compliance with the plant-wide emission limit under the facility cap be included in the initial control plan.

See the response to TCC's comment in §117.207 pertaining to facility caps. These comments will be addressed during the consideration of a facility cap in future rulemaking.

EPA requested that §117.209(7) also require a calculation of the plant-wide emission limit and a preliminary analysis of unitspecific emission limits for each affected unit.

The intent of §117.209(7) is to require the basis for the calculations which should include the plant-wide emission calculations and the preliminary assignment of the individual emission rates for the affected units. The staff believes that this explanation will document the intent of the rule language, but recommends clarification that these calculations include those pertinent to CO boilers in §117.209(7). See the response to TMOGA's comment in §117.207 for clarification of the requirements for calculations for CO boilers.

Section 117.211-Initial Demonstration of Compliance. Regarding §117.211, Initial Demonstration of Compliance, Star and Chevron requested an allowance in §117.211 for difficulty in retrofitting older units with sampling ports and platforms in §117.211.

The staff has been made aware by industry that the sampling ports and platforms are not always available. Section 101.9, concerning Sampling Ports, requires the installation of platforms and sampling ports for use by the TACB to determine the nature and quantity of emissions. The staff recognizes that there may be difficulty in providing these arrangements, and is currently working to assist industry in facilitating the sampling. One approach to economic reasonableness in installing platforms is that sampling platforms should first be installed on units which are being modified with NO_x control equipment during turnarounds or plant outages. The units which are not being modified should have less priority on sampling platform installation.

GHASP requested elimination of the phrase "or as near thereto as practicable" from §117.211(a). This comment is in reference to testing at the maximum operating capacity of a unit. The staff's position is that a unit may not always be able to test at its maximum rated capacity due to safety, operational, or other concerns. The phrase "or as near thereto as practicable" takes these factors into consideration. The staff recommends retaining the wording as proposed.

Amoco Chem, Amoco Oil, Phillips, and Texaco suggested that the TACB allow testing of one unit to suffice for testing of all other identical units for the initial demonstration of compliance. The variability of such tests causes concern for the staff. Phillips stated, "Many of the heaters at this facility have identical designs and firing rates (i.e., an ethylene unit has five identical furnaces that are all fired at the same rate). One stack test would suffice for identical furnaces." In a recent permit, C-18816, Phillips performance tested six ethylene cracking furnaces in Unit 33. Furnace Number 2 burns butane, Furnace Number 5 burns propane and ethane, and Furnace Numbers 1, 3, 4, and 6 burn propane. The furnaces are identical in all other

respects, yet the testing showed a range of NO_x emissions from 0.053 lb NO_x/MMBtu for Furnace Number 6 to 0.078 lb NO_x/MMBtu for Furnace Number 2. This variability is large enough to warrant testing each unit. Since a TACB representative will not be required to be present during testing, the staff also believes that all units should be tested. This requirement would minimize the chance of submitting only the best test results for one unit out of a group of identical equipment.

Amoco Chem said, in their discussion of this topic, "TACB has stated that these initial stack tests are for planning purposes, not a strict demonstration of compliance." The staff wants to clarify this statement by stating that testing results for affected equipment will be enforceable; the testing results for the equipment exempted from emission specifications will not be enforceable. The testing results for the affected equipment must be enforceable since the results will be used to verify compliance with the individual limits in the plant-wide emission limit control plan. Further, if exempted equipment is opted into the plant-wide emission limit control plan, the testing results from that equipment will be enforceable, as well.

Amoco Oil requested that the testing requirements in §117.211(c) for FCCU units be deleted. The staff's position is that since the FCCU's are major sources of NO_x emissions, the need for testing to determine the quantity of emissions is reasonable. Amoco Oil's recommendation for deletion of testing of FCCU's goes against the statement made by them when they state, "there has been very little emphasis placed on gathering data to properly evaluate the proper RACT levels from FCCU CO boilers." Without testing data, proper FCCU emission limits can not be determined. The concern over emission limits for FCCU's has prompted the staff to explore and recommend an optional percent reduction type limit for CO boilers used to opt into §117.207, in lieu of a numerical emission limit. See the response to TMOGA's comment in §117.207 concerning CO boiler emission limits.

TCC, TMOGA, Amoco Oil, and Exxon Chem requested that the testing requirement for gas turbine HRSG's be deleted. Amoco Oil stated, "Such emissions represent less than 15% of the NO_x emissions from large gas turbines."

Large gas turbines and accompanying HRSG's can be quite large sources of NO_x emissions. Due to the potential of HRSG's being major sources, the staff believes that the HRSG testing requirement is reasonable and has retained it in the rule.

TCC, TMOGA, Amoco Oil, Exxon Chem, and Exxon requested a delay in the installation of CEMS for unmodified units until the final compliance date.

The staff agrees with the request, and has extended the compliance date for CEMS installation for unmodified units from April 1, 1994 to May 31, 1995. The process of budgeting, contracting, installation, and certification testing for CEMS will commence after rule adoption. The staff believes that the proposed schedule, which requires these steps

to occur within 11 months of rule adoption, may be difficult to implement in every case. The resources of many CEMS manufacturers and service contractors will be in high demand between May 1993 and early 1995 because FCAA Title IV requires 2100 utility NO_x CEMS to be installed and operating by January 1, 1995. One outcome of maintaining the proposed schedule could be higher costs and lower quality CEMS. Although the FCAA Amendments require that RACT measures be implemented "as expeditiously as practicable but no later than May 31, 1995," the Title IV demand may make the 11 month schedule more difficult.

TMOGA, Chevron, Exxon, Mobil, Oxy, Phillips, and Star requested that all units greater than 40.0 MMBtu/hr heat input and less than 100.0 MMBtu/hr heat input and all unmodified units be allowed to test using portable analyzers. Oxy, Phillips, and Star stated that the TACB should allow the use of portable monitoring equipment for equipment testing in §117.211. The staff believes that the use of portable test equipment, such as the commenters have suggested, is valid for those units which are exempt from emission limits and has changed the rule to allow such testing. Due to the required enforceability of testing affected units, the staff believes that the affected units will require certified stack testing to be performed. See the earlier responses to comments by TCC and Amoco Chem in §117.211 for related discussions.

TMOGA and Mobil requested that all process heaters greater than 100.0 MMBtu/hr heat input and less than 200.0 MMBtu/hr heat input and all industrial boilers greater than 100.0 MMBtu/hr heat input and less than 250.0 MMBtu/hr heat input be tested by a certified tester.

The staff agrees that the test methods for establishing rule compliance must be "certified" EPA reference methods. Currently, the TACB does not have a certification program for testers and the proposed rule reflects this point.

TMOGA and Mobil requested that all process heaters greater than 200.0 MMBtu/hr heat input and all industrial boilers greater than 250.0 MMBtu/hr heat input have CEMS certification testing by the final compliance date and that portable testing results be allowed for compliance requirements prior to the final CEMS certification testing. The staff agrees with this request and has added rule language in §117.213 which allows for a 30-day compliance test utilizing CEMS. The staff has used the CEMS testing requirements of 40 CFR 60.46b(e) as guidance. Section 117.211 was proposed with 40 CFR 60.46b(e) as a model compliance method for CEMS certification. See the earlier response to TCC's comment in §117.211 for a related discussion.

TMOGA and Mobil requested that TACB allow flexibility in test procedures, for example in the sample port size requirements, and using the "F" factor method to calculate the flue gas mass flow rate. The staff is considering the use of such ideas and methods, as long as the accuracy of the test data is not compromised. The staff expects to give procedural guidance on this and other testing issues.

TMOGA and Mobil requested that the TACB allow for new, equivalent EPA test methods in §117.211, should any be adopted by EPA. The staff agrees with the request and the appropriate changes have been made to §117.211(f).

TCC, Amoco Chem, Amoco Oil, Exxon Chem, and Chevron requested that the TACB allow unmodified units to test these units using TCC test protocols or best available methods, such as portable analyzers. TCC submitted test protocols in Attachment II in their comments which outline the testing procedures. The TACB is currently evaluating these protocols to determine their usefulness. The staff expects to give procedural guidance on this and other testing issues.

TMOGA, Exxon Chem, and Mobil requested that the labeling requirements in §117.211(g) be deleted. The commenters state that equipment labeling will provide no benefit to the TACB. Exxon Chem expressed concern about the clear identification of equipment to contractors working in the plant. The staff believed that the labeling of equipment would benefit inspectors from the TACB and local programs by aiding them in associating individual emission sources with applicable rules, permit allowables, operating restrictions, and control requirements. However, any possible benefits were never fully explored, and the staff has deleted labeling requirements.

Section 117.213-Continuous Demonstration of Compliance. TCC and Exxon Chem requested that all the operating parameter monitoring requirements be deleted from §117.213(a). Amoco Chem and Amoco Oil suggested that only operating parameter monitoring requirements for steam/water injected gas turbines which are larger than 30 MW would be acceptable. The staff believes that the ability of operating parameter monitoring systems to estimate emissions is not yet fully proven, especially for industrial boilers and process heaters. The factors that affect the generation of NO_x are not always easy to monitor, such as residence time in the flame envelope, flame temperature, and the air to fuel ratio at the flame envelope interface. These factors make it difficult to monitor NO_x emissions by way of equipment operating parameters.

The staff realizes that the additional time required for performance testing to optimize the predictive ability of an operating parameter monitoring system would be a burden on industry to meet the final compliance date.

The staff is also awaiting EPA guidance on the enhanced monitoring program as a part of Title V of the 1990 FCAA Amendments. Evaluation of enhanced monitoring is expected to be a case-by-case permit review by the Permits Program beginning in 1996. The staff is anticipating working with industry to develop policies on operating parameter monitoring requirements. Due to these concerns, the staff believes that the requirement of implementing operating parameter monitoring requirements for the industrial boilers and process heaters listed in this subsection is not feasible now. However, the staff believes that the requirements of installing O₂ monitors and totalizing fuel flow meters are still beneficial. Also, these instruments are needed for

determining emission rates if CEMS are subsequently required. The staff has deleted the requirement to install, calibrate, maintain, and operate an OPMS in §117.213(a), but, has retained the requirements to install O₂ analyzers and totalizing fuel flow meters.

Champion objected to the requirement in §117.213(a) for the installation of an O₂ analyzer. Champion stated, "It seems inappropriate to require as a minimum an O₂ analyzer and fuel totalizer just for the purpose of collecting data of little benefit." The staff understands that an O₂ monitor can be influenced by air leakage which may prevent a good correlation with NO_x emissions. For units equipped with CEMS, an O₂ analyzer is a definite requirement. The staff will allow industry flexibility in locating and timing the installation of the O₂ analyzers in meeting the requirements of §117.213(a). The staff believes that the data collected from the O₂ analyzers and the fuel flow meters are beneficial in terms of predicting NO_x emissions. The staff has retained the installation of the O₂ analyzers and totalizing fuel flow meters in §117.213(a). See the following comment by Champion for the staff's response to the requirement of totalizing fuel flow meters, as well.

Champion objected to the requirement in §117.213(a) which requires the installation of a totalizing fuel flow meter. Champion stated, "A fuel totalizer would be of no benefit even in situations where steam or air to fuel ratios are used as a surrogate for continuous compliance. It is recommended that this section be amended to require TACB approval of an OPMS system and that approval should be based on the merits of the system proposed"

The staff has deleted the requirement to install, calibrate, maintain, and operate an OPMS in §117.213(a), while retaining the requirement to install O₂ analyzers and totalizing fuel flow meters. See the previous response to the TCC comment in §117.213. However, the staff does not agree that the requirement to install totalizing fuel flow meters would serve no benefit. At a minimum, fuel usage data is beneficial to TACB since it gives the TACB staff actual operating histories of affected equipment. This information will assist the staff in setting emission limits, determining compliance with the proposed rule as far as low capacity unit exemptions, and presenting data with which the staff can estimate NO_x emissions. See the earlier response to TCC's comment in §117.213, as well.

TMOGA and Mobil stated that the continuous determination of compliance by parametric modeling will not occur until after EPA has published guidelines and procedures for developing parametric models. Units which do not require CEMS should be stack tested under §117.211, after which no further testing of these units would be required, unless specifically requested by the TACB.

They also suggested that §117.213(a) clarify that the initial demonstration of compliance will be by the performance test determination of the emission rate and will be utilized as data for use in the site-wide demonstration of compliance.

The staff has deleted of the parametric modeling requirements of §117.213(a) because of the lack of federal guidance on developing these methods, and fundamental staff concerns about the capability of such methods to adequately characterize NO_x emissions from boilers and heaters. If parametric methods are developed, the staff believes they would need to be reviewed case-by-case by the staff, which is not practical by May 31, 1995. The staff may address in future rulemaking the issue of appropriate methods for demonstrating continuous compliance for industrial boilers in the 100.0 MMBtu/hr heat input to 250.0 MMBtu/hr heat input range and process heaters in the 100.0 MMBtu/hr heat input to 200.0 MMBtu/hr heat input range. See response in this section to TCC's suggestion to delete the requirement to develop operating parameter monitoring methods.

The staff clarifies that the initial demonstration of compliance as specified in §117.211 provides the test procedures for determining initial compliance with either the individual emission limits of §117.205 or the plant-wide limits of §117.207. The staff disagrees with the commenters that §117.213(a) should clarify the method for the initial demonstration of compliance, since §117.213 applies to ongoing demonstration of compliance after the initial demonstration.

Shell suggested revising the wording in §117.213(b) to reflect that CEMS and fuel flow meters should measure NO_x on a 30-day rolling average, not an hourly average.

The staff agrees and has modified the wording in §117.213(b) to reflect the 30-day rolling average. See the earlier response to TCC's comment in §117.205.

Oxy, Phillips, Shell, Star, and Sterling suggested elimination of the CEMS requirements in §117.213(b) and, wherever possible, use of an OPMS to monitor NO_x emissions. See the response to TMOGA's comment in §117.207 and the response to TCC's comment in §117.213 for the staff's position on OPMS.

Oxy stated, "It should be pointed out that the monitoring of CO is rather difficult and expensive. Whatever is the perceived advantage of CO monitoring, it is certainly lost due to the poor reliability of the instrumentation used and the quality of data obtained. At any rate, the imposition of a CO limit within the NO_x rule is inappropriate."

The staff's position is that CO monitoring is accurate and reliable. The masking effects of water and carbon dioxide (CO₂) are not a problem for current monitors using nondispersive infrared spectrophotometry as the measurement technique. A unique solution to the masking effects of water and CO₂ is to place the detector cells in series rather than in parallel. The method is known as negative filtering, and use of this method yields quite accurate data. Nondispersive infrared spectrophotometry is used also as the test method to demonstrate compliance for the 100 ppmv CO limit for BIF units. It is true that CO-trim combustion control has not gained widespread use. Although it is a system whose technology is reliable and effective, other methods of control were developed

that supplanted CO-trim. See the earlier response to Amoco Oil's comment in §117.205 for additional discussion.

TCC requested that the exempted units listed in §117.205(f)(3)-(5) also be exempt from CEMS requirements. The staff agrees with the request. The staff's intention in the proposed rule was not to require the installation of CEMS on the units in §117.205(f)(3)-(5). The staff anticipates the need to extend NO_x RACT requirements to all major sources. The staff will consider in future rulemaking placing emission limitations and monitoring requirements on the currently exempted equipment in the proposed rule. For clarity in this round of rulemaking, the staff has specified that the units in §117.205(f)(3)-(5) are not subject to CEMS monitoring requirements.

TCC, Amoco Chem, Amoco Oil, and Sterling requested the allowance of "switching" of up to four stacks (or multiple stacks according to Amoco Chem and Amoco Oil) for stack monitoring using only one CEMS. The staff agrees with the concept of switching using one CEMS to monitor multiple units and will allow up to three units be monitored by each CEMS. The CEMS would still need to obtain four data points per hour per unit. The CEMS certification procedures and relative accuracy test audit (RATA) must still be met. Based on previous experience, the staff believes that units with similar exhaust streams are the best candidates for meeting these accuracy requirements. The sharing of more than three units tends to be technically impracticable and may increase data unavailability due to CEMS downtime.

TCC, TMOGA, Amoco Oil, Chevron, Exxon Chem, and Sterling requested that TACB allow four quarterly cylinder gas audits (CGA), with the fourth CGA substituting for the annual RATA, as required in §117.213(b). Section 117.213(b) has been modified to provide that in lieu of the annual RATA, a fourth CGA be performed as the quality assurance procedure for CEMS, along with requiring three quarterly CGA's. Also, the section now references 40 CFR 60, Appendix F, Procedure 1, §5.1.2 for the CGA quality assurance procedure.

TCC, TMOGA, Amoco Oil, and Exxon Chem requested that TACB allow for an alternative design of the sampling port as referenced in TCC's Attachment II. The staff agrees with the commenters about the difficulty of locating the sampling ports in reference to 40 CFR 60.13 on existing equipment. The staff expects to give procedural guidance on this and other testing issues.

Amoco Chem and Amoco Oil requested that the TACB allow the use of either an O₂ or a CO diluent monitor in §117.213(b), but not both. The CO monitor measures the concentration of CO, and is not to be used as a diluent monitor. The O₂ monitor measures the stack gas O₂ level, and is used as a diluent monitor. As an alternate, a CO₂ monitor could be installed as a diluent monitor, but an O₂ monitor would still have to be installed to measure the stack gas O₂ level.

Exxon Chem requested that the words "in stack" in §117.213(b) be replaced with "exhaust" to allow different placement of CEMS

in existing equipment. The staff agrees with this comment and believes that CEMS installation should be given some latitude in installation location. If EPA guidelines for placement of CEMS cannot be followed, then the owner or operator should be able to install a CEMS in the next best location for measuring NO_x, as long as the location is representative in characterizing the emissions being emitted to the environment. The staff has changed the word "exhaust" to the words "in stack" in §117.213(b).

Amoco Chem and Amoco Oil requested an allowance for heaters with two identical stacks to install CEMS on only one stack but still provide separate O₂ analyzers on each stack. The staff's position is that if one CEMS is allowed to monitor up to three stacks, then this particular twin stack arrangement should still have both stacks monitored with one CEMS monitor. The current operating practice of Amoco Chem is to keep both sides of the heater as uniform as possible, which indicates that they have separated control over each side. Also, Monitoring NO_x emissions from each stack will help tell Amoco Chem how closely their process control is affecting NO_x emissions.

TCC, TMOGA, Exxon Chem, and Enron commented that in §117.213(b)(3), CEMS should not be required for gas turbines rated more than 30 MW, and that parametric modeling should be allowed as an alternative. TCC and Dow suggested that parametric modeling of gas turbine emissions could result in overestimation of NO_x emissions compared to direct measurement by CEMS. Amoco Oil commented that poor mixing in the turbine exhaust makes CEMS accuracy questionable. Enron stated that enforcing the NO_x limit may be difficult with turbine and duct burner combinations. Only a limited number of units of any type (fewer than 10% of major emitters) will be required to have NO_x CEMS under the rule. As a whole, monitors are required on the largest emission sources, thus maximizing the NO_x emissions directly measured for enforcement. The 45 gas turbines rated more than 30 MW are among the largest emitters in the area. The 1988 emissions inventory showed that 31 of the largest 50 industrial NO_x emitters are gas turbines rated more than 30 MW. The total number of gas turbine CEMS required by the rule could be fewer than 25, or one-sixth of the total turbine population, with the recommendation to allow sharing of one CEMS by up to three turbines at appropriate sites.

A small change in NO_x concentration in the gas turbine exhaust will affect total emissions to a greater degree than comparable changes for boilers and heaters because of the higher exhaust air flow rates of gas turbines. Parametric modeling will not be sensitive to all factors which affect emissions. If parametric modeling is more conservative than CEMS, industry could benefit from gas turbine CEMS, since demonstrating lower actual emissions could reduce the amount of reductions needed in the future. Also, the large gas turbines are good candidates for more effective emission control technologies such as dry low-NO_x burners and selective catalytic reduction. If these advanced control methods were applied under a market-oriented control

strategy, an industrial purchaser of emission reduction credits resulting from use of these technologies would be assured of full value.

Amoco Oil's concern about poor mixing does not account for the loss of stratification which may be present very near the turbine exit. The turbine power blades provide exhaust stream mixing but also may "throw" the bulk flow cyclonically. EPA siting requirements and the staff's review of alternative sites will ensure that the CEMS will be placed in a representative location in the exhaust stream.

With regard to enforcement difficulties caused by turbine and duct burner combinations, the rule does not require the CEMS to be located in front of any duct burner. If the CEMS accounts for the duct burner emission contribution in a manner that allows turbine compliance to be determined (as is done routinely for permitted sources), an in-stack location would be preferred.

Oxy and Nalco suggested eliminating the CEMS requirements in §117.213(b)(4) for units using a chemical reagent for NO_x reductions. They stated that CEMS requirements should be based on unit size and type alone. The staff disagrees with this suggestion. The requirement for NO_x CEMS on these types of controlled units is necessary for the purposes of continuous demonstration of compliance and relates to the staff's position on OPMS reliability.

Amoco Chem and Amoco Oil pointed out that there are other devices which can monitor the fuel flow usage but would not fit a strict definition of "meter." They stated that there are also instances in which units may have zero fuel flow, such as, with a low annual capacity boiler or heater. The staff's definition of totalizing fuel flow meters takes into account the concern of these commenters that the devices that they currently use to monitor fuel flow may not fit the definition of "meter." The staff's intent is that a totalizing fuel flow meter should log the fuel flow on a nonresettable, mechanical readout, or transmit electronic data to allow fuel usage totalization to be performed by a computer. For low annual capacity boilers or heaters which are rendered inoperable by installing blind flanges with carseals, these units would qualify as having zero fuel flow. If the blind flanges or carseals were to be removed and fuel was supplied to the unit, then the fuel usage would have to be monitored through a totalizing fuel flow meter.

TCC and Exxon Chem do not see the value of installing fuel flow meters in §117.213(c) and requested that the subsection be deleted. The staff disagrees. The rule requires the installation of totalizing fuel flow meters on the equipment outlined in §117.213(c) due to the potential of each of these units to be classified as a major source of NO_x emissions. Testing requirements will establish NO_x emissions at specific firing rates, and fuel usage data will provide the TACB with information which would allow the TACB to ascertain the level of NO_x emissions based on fuel usage and testing results. In addition, this data will be beneficial in determining future RACT limits for equipment in these size categories.

GHASP recommended that the option for installing elapsed time meters in §117.213(d) be removed and that biennial stack testing be required for all affected units. The referenced option of installing an elapsed time meter in lieu of performing biennial engine stack sampling was obtained from revised TACB Standard Exemption Number 6, effective July 20, 1992. The relaxation in frequency of testing requirements was negotiated with industry for engines which are frequently relocated. Since relocated engines are treated as new sources subject to the nonattainment requirements under Chapter 116, the NO_x RACT rule could have perhaps eliminated the relaxation. However, the TACB cannot make the rule more stringent than originally proposed without re-proposing the rule, and the enforcement benefit is not clear at this point. In the future, Title V enhanced monitoring guidance from EPA may require more stringent methods of demonstrating continuous compliance methods for internal combustion engines. The staff is maintaining in §117.213(d) the option to perform compliance testing on either an actual run time basis or a biennial basis, as proposed.

TCC, Amoco Oil, Dow, and Exxon suggested applying the continuous monitoring requirements of §117.213(e) to gas turbines rated 30 MW or greater; TMOGA and Exxon Chem suggested the same for units rated 10 MW or greater. Dow expressed support for retaining the option for steam-to-fuel or water-to-fuel ratio monitoring. The staff is retaining the rule language as proposed in order to require CEMS on the largest NO_x emitters (see the previous response to TCC's comment under §117.213(b)). Under the proposed rule, the majority of regulated gas turbines will rely on steam-to-fuel or water-to-fuel ratio monitoring to demonstrate continuous compliance with the NO_x emission limit of §117.205(d). This type of parameter monitoring is generally supported by industry. In its comments, TCC does not give reasons why it might object to steam-to-fuel or water-to-fuel ratio monitoring for units between 10 and 30 MW. TMOGA's and Exxon's comments apparently correct for this discrepancy by suggesting parameter monitoring for all regulated turbines.

TCC, TMOGA, Dow, and Exxon Chem commented that gas turbines not using steam or water injection for NO_x control (or gas turbines using dry low-NO_x combustors) should install totalizing fuel flow meters. The staff intended the requirement in §117.213(c)(4) for stationary gas turbines to install totalizing fuel flow meters to apply to all gas turbines rated 1 MW or greater. However, as worded in the proposed rule, this requirement would apply only to turbines rated between 1 and 10 MW. In keeping with APTRA notice requirements, the staff recommends this change for later rulemaking.

TCC suggested incorporating wording changes in §117.213(f) to reflect that some combustion units can have more than one fuel gas source, and that the total hydrogen content of all fuel gas streams must be greater than 50% by volume in order to receive a correction factor. The staff agrees with the request and has incorporated the suggested wording changes. See the response to TCC's comment in §117.205.

TCC, TMOGA, Exxon Chem, Exxon, and Mobil requested that the TACB allow for alternate methods of fuel gas analysis in §117.213(f). The staff agrees with the commenters in allowing for other methods of fuel gas analysis which are demonstrated to be equivalent to those listed in §117.213(f). The staff has referred alternate methods of fuel gas analysis which are equivalent to American Society of Testing and Materials (ASTM) Method D-1945-81 and ASTM Method D-2650-83 in §117.213(f).

Dow requested consideration for fuel gas streams that are 100% hydrogen by volume. Dow suggested that the requirement for analysis of streams that are 100% hydrogen by volume be eliminated. The staff agrees with the statement that a fuel gas supply which is 100% hydrogen should not have to follow the sampling requirements as stated in §117.213(f) and has incorporated the following items into the rule. As part of the continuous demonstration of compliance, the hydrogen fuel gas stream shall be analyzed initially to demonstrate that the gaseous fuel is 99% hydrogen by volume or greater. The process flow diagram of the process unit that is the source of the hydrogen shall be supplied to the TACB to illustrate the source and supply of the hydrogen stream. The affected person will be required to certify that the gaseous fuel stream containing hydrogen will continuously remain, as a minimum, at 99 percent hydrogen by volume or greater during its use as a fuel to the combustion source.

TCC, TMOGA, Dow, Exxon Chem, and Exxon suggested incorporating wording changes in §117.213(h) for 30-day rolling averages, mass emission loading, and facility caps.

The staff has previously addressed these comments. The staff recommends emission limits based on a 30-day rolling average for industrial boilers and process heaters that are monitored with CEMS; recommends not incorporating the term "mass emission loading," and recommends addressing the concept of facility caps in future rulemaking. See the responses for 30-day rolling averages in TCC's comment in §117.205 and mass emission loading and facility caps in TCC's comment in §117.207, as well.

GHASP opposed the provision which does not allow for revisiting combustion unit labeling requirements before every five years. GHASP stated that the Executive Director needs flexibility to determine if the issue needs to be revisited earlier. The staff's intent was that the requirement was to identify equipment according to the TACB designations for facility identification numbers and emission point numbers. The staff believed that the five-year schedule for labeling was sufficient to address the intent of the requirement; however, the requirements for labeling are being deleted. See the response to TMOGA's comment in §117.211.

TCC, TMOGA, Exxon Chem, and Exxon requested that the equipment labeling requirements in §117.213(i) be deleted. The staff agrees, and is deleting the labeling requirements. See the response to TMOGA's comment in §117.211.

Section 117.215-Final Control Plan Procedures. TCC, TMOGA, Exxon Chem, and Exxon requested incorporation of the following phrases: "maximum allowable emission rate," "maximum allowable mass emission loading," and "facility cap" into §117.215(b)(1). The staff recommends modifying §117.215(b)(1) to incorporate the phrase "maximum allowable emission rate." The implementation of the "facility cap" concept and "maximum allowable emission loading," however, will be considered during future rulemaking. See the earlier response to TCC's comment in §117.207.

Amoco Oil, Oxy, Phillips, and Star suggested replacing the word "unit" with the word "plant" in §117.215(b)(1). The staff disagrees with this comment. An owner or operator of a plant who elects to achieve compliance with a plant-wide emission limitation is required to assign individual emission limitations for each affected unit within the plant. These individual emission limits are important for continuous demonstration of compliance purposes and are also necessary for the TACB to be able to effectively enforce the regulation and determine compliance with the emission limits. See the earlier response to TCC's comment in §117.207.

EPA requested clarifying the approval process for maximum allowable NO_x emission rates for each affected unit. An owner or operator is required to assign maximum allowable emission limits to the affected units and submit a list of these units with the assigned limits to the Executive Director for approval. The Executive Director approves the assigned emission limits if he determines that the plant will be capable of complying with a plant-wide emission limitation.

Section 117.217-Revision of Final Control Plan. Regarding §117.217, concerning Revision of Final Control Plan, TCC, Amoco Chem, Amoco Oil, and Exxon Chem suggested clarifying the section to identify that this section is applicable to the final compliance plan required in §117.215. The staff agrees with the commenters in clarifying §117.217 to state that it is applicable to the final control plan required in §117.215. The staff has made wording changes to this section to clarify this point.

EPA has stated that the revisions to the final control plan should be required to be approved by the Executive Director.

The staff agrees with this comment and has incorporated appropriate wording into the proposed §117.217.

Section 117.219-Notification, Recordkeeping, and Reporting Requirements. Regarding §117.219, concerning Notification, recordkeeping, and Reporting Requirements, Chevron, Oxy, Star, and Texaco requested that the section be eliminated because the requirements are redundant with the General Rules and NSPS. Chevron stated that reporting requirements for non-NSPS sources should be identical to NSPS requirements. TCC, TMOGA, Exxon Chem, and Texaco proposed a new subsection that states that notification, record-keeping, and reporting for NSPS units fulfill the requirements of §117.219. Star commented that excessive re-

porting requirements only enable the TACB to extract large fines for paperwork errors. The requirements for notification, recordkeeping, and reporting in the rule are essential for the agency to maintain track of the progress made toward compliance with the rule, for enforcement purposes necessary to ensure compliance with the rule, and to assist in the development of future rules. The current federal NSPS, Subpart A, General Provisions, for recordkeeping and reporting have been followed as a model for virtually every requirement, except for fuel use records, which are needed to establish mass emission rates over time. The rule will extend the NSPS recordkeeping and reporting requirements to existing sources. By following NSPS, the staff believes redundant requirements have been minimized.

TCC, TMOGA, Amoco Chem, Amoco Oil, Exxon Chem, and Mobil requested that the hourly record requirement in §117.219(a) be deleted because it is already covered in the General Rules. The staff disagrees with the commenters. Section 101.7 requires notification of maintenance-related emissions but does not require recordkeeping of pertinent data onsite as does §117.219(a).

EPA requested that they also be able to inspect the records required in §117.219(a). The staff agrees with this comment and the rule language has been changed to allow records to be available for inspection by the TACB, EPA, as well as any local air pollution control agency having jurisdiction.

GHASP requested that the local agencies also be notified of testing and receive test reports as required in the proposed §117.219. The staff agrees with the comment and the rule language has been changed to allow the local air pollution control agencies to be notified of testing and to receive test reports, since these procedures are standard convention with the local air pollution control agencies.

TCC, Amoco Chem, Amoco Oil, and Exxon Chem requested that §117.219(b)(1) be deleted because they do not see the need to notify the TACB of performance testing. TMOGA and Mobil suggested that the TACB should only be notified about testing performed by certified performance testers. The staff believes that notification of testing done to comply with the proposed rule is important, especially since the TACB representatives will not be required to be present during the testing. However, the staff believes that a relaxation of the notification requirements will enable the affected persons to complete the testing without restraint. The staff has revised §117.219(b)(1) to require verbal notification 15 days before any testing is to be done, with a written notice sent within 15 days after testing is completed. TCC, TMOGA, Exxon Chem, Exxon, and Mobil requested that the TACB change the submittal dates in §117.219(c) for the stack testing and CEMS performance testing results.

TCC, Exxon Chem, and Exxon stated that the results of performance testing and CEMS performance evaluations should be submitted 90 days after such testing is done, and results used for demonstrating compliance with §117.520 should be submitted 30 days after

the final compliance date. TMOGA and Mobil requested that the results of the CEMS performance testing should be submitted by the final compliance date. The staff agrees with the request to submit performance testing results by the final compliance date. The testing requirements have been relaxed, and the staff does not believe that additional time beyond the final compliance date to submit the performance testing results is needed. The staff is retaining the requirement that the CEMS performance testing results be submitted by the final compliance date as proposed in §117.520(2).

GHASP requested that the TACB should be notified of exceedances in §117.219(d) within 24 hours and receive a written report within 10 days, in addition to the quarterly summary reports. The staff proposed the requirements in §117.219(d) based on information that the agency normally requests in such circumstances. The staff notes that the quarterly reporting of excess emissions is independent of the requirements for reporting emission exceedances as soon as possible after occurrence of upsets under §101.6. The staff is retaining the subsection as proposed.

TCC and Exxon Chem recommended that the reporting of excess emissions in §117.219(d) not include reporting upset or maintenance emissions since these emissions are already required to be reported in the General Rules. The staff is requesting that exceedances of the applicable emission limitations of §117.205 or §117.207 be reported. The reports required in the General Rules will satisfy the identical request for reports that may be required in §117.219, so that any duplication of effort is not necessary. Other notification requirements of the proposed subsection (d) in §117.219 concerning exceedances shall be adhered to by the owner or operator. The staff is retaining the subsection as it is proposed.

TCC, TMOGA, Amoco Oil, Chevron, Exxon Chem, Exxon, Mobil, Phillips, and Star requested that the requirements for equipment labeling in §117.219(g) be eliminated.

The staff disagrees and is retaining the subsection as proposed. See the earlier response to TMOGA's comment in §117.211.

Section 117.220-Alternate Methods of Control. Regarding §117.220, concerning Alternate Methods of Control, Chevron stated that this section is important for flexibility, and should be retained. Exxon Chem, Exxon, and EPA stated that §117.220 is unnecessary and should be deleted, since regulation specifies emission limits, not control methods, alternate RACT determination through the proposed §117.221 is more appropriate. Section 117.220 has been withdrawn. Section 117.205 specifies RACT emission limits and not RACT methods of control or control equipment. The affected industry is given the choice to decide on the best method of control to comply with those emission limits. Approving an alternate RACT determination as provided in §117.221 rather than an alternate method of control, is the more appropriate approach.

Section 117.221-Alternative Case Specific Specifications Regarding §117.221, concerning Alternative Case Specific Specifications, GHASP stated that this section should also consider effects on human health, welfare,

and the environment in addition to technological and economic factors. The staff agrees with this comment and would expect the Executive Director to consider these factors in the review process.

EPA stated that emission reductions which are "substantially equivalent" to limits of §117.205 are not necessary. RACT should be based on technical and economical considerations. EPA also stated that any alternate RACT determination must be approved by EPA. The staff agrees with this comment and has made wording changes relating to EPA approval in §117.221 to reflect this concern.

TCC, TMOGA, Amoco Oil, Exxon Chem, Oxy, Phillips, Star, and B&B stated that this section should include language which allows the Executive Director's decision to be appealed to the Board (not a contested case hearing) and an arbitrator to be selected. The commenters also requested that the last sentence, "approval does not necessarily satisfy federal requirements," be deleted. The staff agrees with the comment on the inclusion of an appeals procedure. Appeals to the Board for Executive Director decisions pertaining to permitting are allowed under §103.81. The staff has incorporated language into §117.221 to allow for an appeals procedure. The comment requesting the deletion of the last sentence, which states that approval does not necessarily satisfy federal requirements, is contrary to an EPA requirement. Therefore, the staff recommends that the wording concerning EPA approval be retained in §117.221.

Amoco Oil, Oxy, Phillips, TCC, GHP, and Star expressed support for the provisions in §117.221 and recommended no changes to the proposed section.

EPA stated that it is not apparent why §117.221 is necessary, since the authority to approve an alternate control method is given under §117.220. The staff believes approving an alternate RACT determination is more appropriate than approving an alternate method of control, since the rule specifies emission rates and not control methods. Section §117.220 has been withdrawn.

EPA stated that a plant using a plant-wide emission limit should not be allowed to apply for alternate RACT limit for any unit in the plant. An alternate RACT limit for an affected unit may only be granted if the Executive Director, after considering the technological and economic circumstances, determines that the unit is incapable of meeting the emission rates of either §117.205 or §117.207. Although the staff agrees with the concept of this comment, the staff believes some flexibility should be permitted by granting the affected industry the right to make their case to the Executive Director regarding alternate RACT determinations. The affected industry will, however, be required in this case to provide proof that they were unable to meet a plant-wide emission limitation after the application of RACT. See the earlier response to TCC's comment in §117.207 for further discussion.

General Comments. Regarding general comments on Subchapter C (Acid Manufacturing), TCC and DuPont recommended the elimina-

tion of rules for adipic and nitric acid plants, stating that these sources make an insignificant contribution to overall NO_x emissions. Miles noted that a typical power plant emits more NO_x per hour than its nitric acid plant emits in a year.

There are four nitric acid plants and one adipic acid plant affected by the rule; together, they contribute about 0.2% of the total NO_x emissions subject to emission limits by the rule. Although the percentage contribution is small, nitric and adipic acid plants are nonetheless "major sources" (defined by the 1990 FCAA Amendments as having the potential to emit 25 tons per year for sources in the Houston area or 50 tons per year for sources in the Beaumont area) and therefore subject to RACT rulemaking. For source categories such as nitric acid and adipic acid plants, which have relatively few affected sources, comparing these emissions to the total emissions of all regulated sources or to emissions from specific large sources is not meaningful or appropriate as a criterion for control.

DuPont commented that many combustion sources emit much more NO_x than adipic or nitric acid plants, but are exempted by the rule. The staff considered several factors in the development of exemptions, including the time available to develop regulations by November 15, 1992, the availability of EPA technical guidance, and economic reasonableness and technical feasibility of control. The first NO_x RACT technical guidance EPA provided the states was for nitric and adipic acid manufacturing plants, in December 1991. The availability of this ACT document facilitated the staff's early development of the required NO_x RACT regulations. Although the staff now has ACT guidance for most major stationary source categories covering probably more than 95% of total major stationary source emissions, some categories remain unaddressed. The staff intends to develop appropriate regulations for all categories and size ranges of major NO_x sources in an expeditious manner. In the case of adipic and nitric acid plants, all of the affected sources currently apply control technology consistent with RACT. The intent of the current rulemaking is to set emission limits which reflect demonstrated levels of control already being achieved by these sources. Compliance with the rule would be expected to fulfill the sources' obligation under the FCAA Amendments to implement RACT, although further reductions may be required in the future to attain the ozone standard.

Section 117.305-Emission Specifications. Regarding §117.305, concerning Emission Specifications, DuPont commented that the proposed emission limit of 2.0 lb NO_x/ton adipic acid produced is not appropriate for a short-term standard, but 2.5 lb NO_x/ton is achievable with a 30-day rolling average. As reported in EPA's ACT document for nitric and adipic acid manufacturing plants, sampling of the absorber at DuPont's adipic acid plant in 1988 showed a range of NO_x emissions from 500 ppmv to 1,500 ppmv, averaged over a three-day period at the maximum operating rate. The ACT document applied an equivalence ratio to relate the permitted emission level (4,500 ppm = 700 tons per year) to

the measured emission rate (500 to 1,500 ppm = 77 to 223 tons per year), then divided these annual NO_x emissions by the annual adipic acid production rate to obtain NO_x emission factors of 0.81 to 2.45 lb NO_x/ton of adipic acid produced. The ACT document assumed a linear relationship between NO_x concentration in ppmv and the annual emission rate in tons per year. The staff agrees that this assumption may not adequately account for short-term emissions, although sampled emissions at the maximum operating rate were significantly below the permitted emission rate which was based on information supplied by DuPont. DuPont commented that NO_x emissions from the adipic acid plant absorber can be as high as 2.2 lb NO_x/ton to 2.5 lb NO_x/ton, averaged over three hours. DuPont further noted that variations in production rate and reaction temperature require a longer averaging period, and recommended a 30-day rolling average. The staff is setting the standard at 2.5 lb NO_x/ton, using a 24-hour rolling average, and believes that this represents a satisfactory compromise while addressing DuPont's concerns. §117.405 Emission Specifications. Regarding §117.405, concerning Emission Specification, Miles commented that an emission limit of 2.0 lb NO_x/ton of 100% nitric acid produced is the lowest rate achievable for strong nitric acid plants, using a 24-hour rolling average. DuPont also expressed support for a 2.0 lb NO_x/ton standard on a 24-hour rolling average. DuPont recommended adoption of a 2.0 lb NO_x/ton standard, but on a 30-day rolling average. The staff has reviewed additional information since proposing the 1.0 lb NO_x/ton emission limit for nitric acid plants, and is setting 2.0 lb NO_x/ton of 100% nitric acid produced, with a 24-hour rolling average, as the rule emission limitation. DuPont presented comments supporting both a 24-hour and a 30-day rolling average, and the staff believes that the more restrictive 24-hour rolling average is achievable by all affected sources.

Miles and DuPont recommended that periods of start-up or shutdown should be exempt from the standard for a duration not to exceed three hours. DuPont recommended that emission specifications as well as periods of excess emissions should not apply during periods of major upset or maintenance under the TACB General Rules. The staff agrees that start-up and shutdown conditions should be exempt from the rule's emission limitations, and believes that three hours appears to be a reasonable period to exclude such emissions from applicability of the rule. The staff received numerous comments in the utility and industrial portions of the rule to the effect that the start-up/shutdown exemptions were unnecessary, since §101.11(b) already provides this exemption. The staff agrees with these commenters. Although the staff rule proposal defines the length of start-up/shutdown periods for electric utility units, as allowed in §101.11, it does not for industrial units. The staff now believes that more work would be needed to develop technically sound time periods for start-up/shutdown for the various categories of industrial combustion sources. For the sake of rule consistency, the staff has made no changes to the proposed rule regarding the length of start-up

and shutdown periods at this time.

Miles recommended the addition of a 600 ppmv limit based on a 24-hour rolling average for nitric acid plants. Prior to proposal of the current rule, §117.2 of Regulation VII set an emission standard of 600 ppmv for all nitric acid manufacturing plants in the state. The 600 ppmv limitation is equivalent to 7.0 lb NO_x/ton 8.0 lb NO_x/ton of 100% acid, compared to the 2.0 lb NO_x/ton standard (applicable only in designated counties in the Houston and Beaumont ozone nonattainment areas) in the current rule proposal. Since all four affected nitric acid plants typically operate well within the 2.0 lb NO_x/ton range, and since exemption of start-up, shutdown, and maintenance conditions is already provided by TACB General Rule §101.11(b), the staff believes that implementing a 600 ppmv limit with a 24-hour averaging period is inconsistent with RACT and, therefore, inappropriate.

Section 117.309, §117.409—Control Plan Procedures. DuPont objected to the detailed reporting requirements in §117.309(1)-(4) and §117.409(1)-(4), claiming that this would set a precedent, and suggested more general language for control plan requirements.

The staff patterned the control plan procedures in §117.309 and §117.409 after procedures set forth in §115.932 of TACB Regulation V, "Control of Air Pollution from Volatile Organic Compounds," using almost identical language, so in this respect the staff does not agree that implementing such requirements in the proposed rule would set a precedent. DuPont's proposed language, referring to "major milestones in the implementation process," would be expected to result in reporting the same dates and schedules as contained in the proposed rule. In addition, the only equipment likely to be ordered and installed to achieve compliance with the rule, and therefore subject to the reporting requirements of this section, is the NO_x CEMS for DuPont's adipic acid plant. The staff recommends adding language to §117.309 and §117.409 providing for approvability requirements and revisions to the control plan, replacing "exact dates" with "anticipated dates," and retaining paragraphs (1)-(4).

Section 117.313(c), §117.413(c)—Continuous Demonstration of Compliance. DuPont recommended that a CGA be allowed once per calendar quarter in lieu of the annual RATA in order to meet the CEMS auditing requirements of §117.313(b) and §117.413(b).

The staff agrees, and recommends changes to §117.313(b) and §117.413(b) as reflected in the response to TCC et al. under §117.213.

Regarding §117.313(c) and §117.413(c), concerning Continuous Demonstration of Compliance, Miles suggested that emissions data be expressed in ppmv and lb/hr, on a rolling 24-hour average. DuPont recommended using a rolling 30-day average. Procedures are specified in §117.413(c) for expressing recorded CEMS data in terms of both ppmv and lb/ton acid produced. The staff believes this will be adequate for field inspectors and plant operations personnel to accurately determine emissions by observing CEMS readouts. Expressing recorded emissions data in lb/hr is optional, but not necessary to verify compliance with the standard. With regard to the averaging period for continuous emission

monitors, see the response to Miles under §117.319, §117.419.

Section 117.319, §117.419—Notification, Recordkeeping, and Reporting Requirements. Regarding §117.319 and §117.419, concerning Notification, Recordkeeping, and Reporting, Miles recommended that a 24-hour rolling average and 24 contiguous one-hour periods be incorporated into the wording of §117.419. DuPont recommended incorporating a rolling 30-day average and 30 contiguous 24-hour periods in §117.319 and §117.419. As originally proposed, §117.419(c) defined a period of excess emissions as any three-hour period in which the average NO_x emissions (arithmetic average of three contiguous one-hour periods) as measured by a CEMS exceeded the standard. The staff has revised this section to reflect that a 24-hour rolling average, consisting of 24 contiguous one-hour periods, will be used to determine periods of excess emissions. A minimum of four data points are required for each hourly period. The staff has revised §117.319, the corresponding rule for adipic acid plants, to reflect a rolling 24-hour averaging period.

Section 117.321, §117.421—Alternative Case Specific Specifications. Regarding §117.321 and §117.421, concerning Alternative Case Specific Specifications, Miles commented that differences between weak and strong nitric acid plants justify alternative case flexibility; the regulations may not be applicable to both types of plants. The staff recognizes differences between weak and strong nitric acid plants and believes the standard is achievable for both types of plants. The rule is applicable to both weak and strong nitric acid plants.

DuPont recommended inclusion of a procedure for appealing decisions of the Executive Director to the Board in §117.321 and §117.421. The staff agrees and is adding appeal provisions to §117.321 and §117.421. See the response to TCC et al. at §117.221.

Section 117.510—Compliance Schedule for Utility Electric Generation. HL&P suggested that the requirement for progress reports in §117.510(2) is unnecessary and should be deleted. The staff agrees that progress reports are not necessary unless a source is complying with a phased RACT approach. In that case, compliance with approved compliance milestones in accordance with §117.540(a) are enforceable and will represent RACT, so progress reports will be necessary to facilitate enforcement. Phased RACT reporting requirements may be implemented in supplementary rulemaking which EPA recommends to create a replicable procedure by the state in granting phased RACT without the need for EPA approval. Phased RACT requirements are addressed in §117.540, so the staff has eliminated the requirement for progress reports and deleted §117.510(2).

HL&P stated that if progress reporting per §117.510(2) is not deleted, its requirements should be made consistent with industrial progress report requirements. This includes compliance status, reporting requirements, and completed milestones during the compliance implementation period. The staff agrees. Section 117.510(2) has been deleted.

HL&P suggested that §117.510(3) and §117.119 are redundant, but the dates in the two sections are not. They should be revised for consistency. The staff does not believe that §117.119 and §117.510 are redundant, since §117.119 specifies details of notification, recordkeeping, and reporting, while §117.510 gives schedules. However, the dates specified in §117.510(3) and §117.119(c) are inconsistent. The staff has revised §117.510(3) and §117.510(4) to require submittal of continuous monitor evaluations by May 31, 1995.

HL&P said that the dates in §117.510 should be made consistent with the dates specified under §117.115. Since §117.115 does not specify any dates except to refer to the final compliance date identified in §117.510, the claim of inconsistency cannot be substantiated.

GSU suggested that §117.510 relax from five days to one month the requirement for notification of completion of each separate step in a compliance plan.

See the previous response to HL&P's comment.

GSU recommended that the specific 250 ton per year CO increase which triggers permit amendments should be removed, and that permits or permit amendments should only be required for projects which are not environmentally beneficial. See the response at §117.550 to comments of TCC et al regarding permit requirements.

Section 117.520—Compliance Schedule For Commercial, Institutional, and Industrial Combustion Sources. Star, Texaco, and Chevron voiced their opinion that the May 31, 1995, final compliance date in §117.520 is unrealistic. The staff recognizes the difficulties in scheduling to meet the final compliance date and is addressing these concerns. The staff is recommending changes in the testing dates and equipment testing methods to alleviate this particular concern. The staff has proposed §117.540 to allow the Executive Director to reevaluate the May 31, 1995 final compliance date based on control plans; availability of NO_x control equipment, engineering services, and construction labor, and the dates of planned and actual outages of units subject to the emission limitations. However, the 1990 FCAA Amendments specify a final compliance date of May 31, 1995 for NO_x controls to be implemented. Therefore, the staff believes that the proposed rule accounts for the difficulties in meeting the final compliance date in the most effective manner possible.

TCC, TMOGA, Amoco Oil, Chevron, Exxon Chem, Exxon, Mobil, Oxy, and Phillips requested that the six-month progress reports be eliminated from §117.520(2).

The staff agrees with the request and has deleted that the six-month progress reports be deleted from §117.520(2).

Dow requested that the subparagraph listing the schedule for performing testing on modified units in §117.520(3)(A) be deleted. Exxon Chem recommended deleting the phrase "and no later than 60 days before any applicable compliance date" in

§117.520(3)(A). TCC, TMOGA, Amoco Chem, Dow, Mobil, Texaco, and Enron requested an extension of the CEMS testing date to May 31, 1995 for unmodified units as required in §117.520(3)(B). Exxon Chem requested that the testing results be submitted 90 days after testing is completed. Texaco, TPC, TCC, and Chevron stated that requiring unmodified units to test by April 1, 1994 does not support the intent of the rule. The staff agrees that the schedule for testing requirements needs adjusting, and has modified §117.520(3)(A) to require at least initial emissions checks using portable emission analyzers to be completed by April 1, 1994. Further, the rule now requires that all CEMS performance testing and all compliance testing be accomplished and test results submitted by May 31, 1995. TMOGA and Mobil requested that TACB recognize a CEMS installation on an unmodified unit as being a modification, or require 50% of CEMS orders to be placed by April 1, 1994. The staff disagrees with the commenters. The staff believes that CEMS installations do not qualify the unit as being modified. For the purposes of this paragraph, a modified unit is meant to be a unit that has NO_x abatement equipment installed to make NO_x reductions. The staff has made changes to the compliance schedule for testing requirements. See the previous response to Dow's comment in §117.221.

Section 117.530—Compliance Schedule For Nitric Acid and Adipic Acid Manufacturing Sources. Miles stated that the final compliance date of May 31, 1995 in §117.530 is overly optimistic. Although the impact of the May 31, 1995 final compliance date upon affected sources will vary, it does not appear to be a problem for nitric and adipic acid plants, which currently appear to be substantially in compliance with the proposed standards. See the staff's response to Star's comment under §117.520, relating to Compliance Schedule for Commercial, Institutional, and Industrial Combustion Sources.

DuPont recommended that the requirement for 60-day progress reports be eliminated from §117.530(2) for nitric acid and adipic acid plants. The staff agrees, and has deleted the requirement for 60-day progress reports from the rule.

Section 117.540—Compliance Schedule Deviation. TCC, Amoco Chem, Amoco Oil, Chevron, Dow, Exxon Chem, Exxon, Oxy, Phillips, Star, HL&P, and B&B expressed support for extending compliance dates through EPA's phased implementation approach. Although the proposed final compliance date is thought to be generally reasonable, the TACB staff recognizes the possibility that full implementation of the emission reductions required in this rule by May 31, 1995 may not be reasonable in every case.

EPA opposed the language contained in §117.540 and stated that the section should be revised to reflect the provisions of the EPA's Title I General Preamble. EPA listed provisions which must be included in the rulemaking in order for it to be approvable. EPA published its policy guidance in the NO_x Supplement to the General Preamble on November 25, 1992, five days after TACB proposed the NO_x RACT rules. The staff has

reworded §117.540(a) in accordance with the specifications of EPA's February 12, 1992 comment letter to allow for the definition of RACT as a set of phased measures.

Exxon recommended cost-justified alternate compliance schedule procedures. The staff believes that the final compliance date can fundamentally affect RACT cost. A market axiom is that if implementation of a cost item can be postponed successfully, it is cost-effective. The staff also recognizes that an implementation schedule can have a greater effect on a rule's costs than the cost of required emission control equipment. This may be particularly applicable to continuously operating processes and in instances where emission control technology is rapidly evolving. The staff has considered the time available for the implementation of control technology in the development of the proposed emission limits, and believes it to be reasonable. However, in view of the rapid developments in this area, the staff plans to review the May 31, 1995 compliance date in April of 1994 to determine whether any change is appropriate.

The FCAA requires all RACT to be installed by May 31, 1995. As written, it does not explicitly allow for cost-based extensions. EPA's interpretation of the RACT requirements allows for consideration of the unavailability of equipment and the effects of RACT implementation on system reliability.

Also, costs of delaying rules are also difficult to assess from the environmental standpoint. Second-round emission reductions could be more difficult to implement in a timely fashion if these first-round reductions are delayed. Such delays would be likely to reduce the probability of achieving the ozone standard in Beaumont by 1999 or Houston by 2007, which increases costs in terms of public health and welfare. The FCAA requirements reflect a general consensus that failure to implement timely emissions reductions will result in unacceptable costs to the environment. The FCAA provisions for "bump-up" which require more stringent future emission requirements for failure to attain the ozone standard should also be considered in evaluation of a phased schedule. Industry's failure to implement cost-effective controls in a timely fashion could cause bump-up costs to be imposed on persons who otherwise would not be affected.

Miles suggested adding wording allowing process modifications as a factor in granting a compliance schedule extension. Star suggested that problems with equipment delivery or unit turnaround schedules be considered when evaluating requests for compliance date extensions. The staff does not believe that compliance extensions should generally be deferred until process modifications occur. The staff does believe that routine maintenance or unit turnarounds may be considered as a factor in evaluating cost-effectiveness of installing controls by May 31, 1995, since these may be related to system reliability. Units that will undergo process modifications after May 31, 1995 may be able to defer controls now under plant-wide averaging and take credit for the new emission controls in a later round of NO_x reductions.

EPA suggested that further rulemaking be considered to incorporate future EPA guidance on replicable procedures to avoid the need for case-by-case EPA approval for phased RACT. EPA does not have a scheduled date for providing national guidance on replicable procedures which would allow states to approve phased RACT without case-by-case EPA approval. After consultation with the EPA Region 6 office, the staff recommends a second-round proposal for rulemaking to provide such replicable procedures. This proposal may be patterned on the replicable procedures EPA has provided for "Phase I NO_x Compliance Extensions" for coal-fired electric utility boilers subject to the low-NO_x burner requirements of FCAA Title IV.

HL&P and B&B commented that initial control plans should only be planning documents, except in cases where sources will be unable to meet the May 31, 1995 compliance deadline. They suggested removing the blanket prohibition of deviation from terms of the control plans, and recommended language to specify that compliance plan milestones are enforceable only in instances where sources will be unable to meet the May 31, 1995 deadline. Oxy suggested including §117.109 and §117.209, relating to Initial Control Plan Procedures, in the list of rules eligible for compliance schedule deviation. GHASP suggested public notice and hearing if affected sources deviate from their initial compliance plans in §117.540(a).

The language specified by EPA in their February 12, 1993 comments on phased RACT does not include the requirement that no person shall deviate from the terms of the initial compliance plan. The staff has replaced the first two sentences of proposed §117.540(a) with the language specified by EPA. The staff agrees that persons who do not seek a phased RACT schedule and who comply with the rule requirements by May 31, 1995 should not be held to the terms of the initial compliance plans, since in these cases the plan is only a planning document. The final compliance plan is used to determine compliance in cases where rule compliance is achieved by May 31, 1995. On the other hand, approval of a phased RACT schedule necessitates enforceable provisions requiring implementation of specific steps in a plan. The terms of the initial compliance plan should be used to develop an approvable phased compliance schedule.

TCC, Amoco Oil, Chevron, Dow, Exxon Chem, Exxon, Oxy, Phillips, B & B, and Star suggested the need to specify a mechanism to appeal the Executive Director's decisions under §117.540(a). Star commented that an independent arbitrator should be selected. These comments are well taken, and the staff has added language for an appeal mechanism in this section of the rule. However, the TACB cannot and should not delegate its authority to an independent arbitrator. Therefore, no provisions for arbitration are being recommended.

Phillips and Star expressed support for reevaluation of final compliance dates one year after rule adoption. Sterling suggested determination of final compliance dates within six months of rule adoption. There is a need to recognize that some sources can meet the May 31, 1995 compliance deadline, whereas

others may not be able to. The rule provides a mechanism to reevaluate final compliance dates one year after adoption. The staff believes that this timetable is adequate to address the relevant issues that may arise between now and May 31, 1995, and does not recommend reevaluation of final compliance dates any sooner than one year from the date of rule adoption.

EPA commented that §117.540(b), which provides for reevaluation of the final compliance date by the TACB rulemaking, should be made consistent with the phased RACT approach outlined in the NO_x Supplement to the General Preamble TCC, Amoco Oil, Exxon Chem, HL&P, and B&B suggested rewording the subsection to reflect phased RACT. The staff has made revisions to §117.540 which would incorporate phased RACT requirements into the rule, making it consistent with guidance from the NO_x RACT Supplement and the EPA Region 6 office. The staff believes that the adopted version satisfies the commenters' requests.

B&B commented that appeal of rulemaking decisions is provided for in TACB Chapter 103, Procedural Rules, making an appeals procedure in §117.540(b) unnecessary. The staff agrees that a procedure for the appeal of rulemaking decisions is already established by the Texas Clean Air Act, and does not recommend including a specific appeals procedure for this portion of the rule.

Section 117.550—Permit Requirements. Star, Chevron, and Mobil suggested that permitting provisions in §117.550 need to be as flexible as possible. HL&P stated that compliance deadlines cannot be met if construction permits are required. TCC, TMOGA, and Exxon suggested that permits should not be required if capacity increase results solely from NO_x RACT control measures.

Oxy and Phillips requested eliminating the phrase "must not result in an increase of the unit's or the facility's production capacity" in §117.550(a) (1) since some NO_x controls reduce emissions while increasing capacity.

The staff recognizes that if industry is to comply with the short schedule to implement NO_x RACT as required by the FCAA, there will not be time in each case to receive a permit amendment for addition of control equipment. The proposed exemption from permits has been adopted as proposed. Since publication of the proposal, industry has sought more flexible methods of authorizing NO_x emission control projects. Items of additional flexibility suggested by industry have included eliminating BACT review for production increases or for CO emission increases in excess of 100 tons per year if associated with the NO_x control project. The TACB policy to require BACT review for modifications of existing facilities which increase output could be set aside if some of these suggestions are adopted, resulting in fewer emission reductions since BACT emission limits would be avoided. The need to make use of production capability increases without case-by-case permitting has not been clearly established by industry. With CO, the available literature suggests that NO_x control technology can be operated in most cases in such a manner as to avoid CO increases. The staff has some concerns that

if CO emissions are allowed to increase up to 400 ppmv in every case, CO increases far larger than reasonable may result.

Exxon, GSU, and EPA expressed support for new source review exclusion for NO_x RACT controls if the exclusion was consistent with WEPACO rulemaking and the units were not rendered less "environmentally beneficial." The EPA has not extended the WEPACO utility policy by rulemaking to industrial sources as earlier suggested. EPA cited the relative small source population and uniformity of technology within the utility industry in its rationale for not extending the WEPACO utility policy immediately to non-utility source categories. The TACB staff notes that the technical literature suggests that CO increases from utility units are less likely than from smaller industrial units. Nonetheless, based on EPA's comments and the desire to facilitate the rapid implementation of NO_x control projects, the staff recommends consideration of an exemption for pollution control projects which includes extending the WEPACO exclusion from federal permitting to industrial source categories in a second round of TACB rulemaking during the summer of 1993.

TCC, TMOGA, Chevron, Exxon Chem, HL&P, and GHP suggested that this §117.550 use the General Permit provisions of the Texas Clean Air Act (TCAA) to authorize RACT controls. The staff recommends that the use of General Permits, as provided by the TCAA, be addressed as a mechanism for authorizing NO_x RACT emission control projects in a rulemaking proposal initiated immediately following adoption of the current proposal. In the interim, prior to any future rule adoption, the staff recognizes the compressed time schedule of the final compliance date and has proposed maintaining the current proposed exemption to facilitate emission control projects that may occur this summer which do not necessitate large CO increases.

TCC, TMOGA, and Exxon Chem suggested a revised list of conditions for increases other than NO_x which are not addressed in §117.550(2) and that a notice of intent to comply with a General Permit must be filed with the initial control plan. The staff recommends proposing future rulemaking to address capacity and corollary pollutant increases. However, the staff would propose for the General Permits to limit the cases where there would be General Permit authorization for use of capacity increases associated with the installation of NO_x controls. Some use of capacity increase should be subject to BACT permitting.

The staff considers the revised language suggested by TCC, TMOGA, and Exxon Chem to those include concepts far broader than included in the proposed rule. Therefore, because of the way that the *Texas Register* interprets APTRA to require public notice in the *Texas Register* for substantively new requirements or issues, the staff recommends that a General Permit policy be addressed in second round rulemaking.

The staff is not sure that the suggested format for notice of intent to be covered by a General Permit is beneficial. The staff recommends that the future rulemaking address these issues.

Section 117.560-Rescission. The EPA requested deleting the language in §117.560 suspending rule requirements during EPA review of TACB findings, and deleting the wording concerning delaying compliance date by the amount of elapsed time of EPA review. The EPA stated that the FCAA Amendments do not provide for such actions. The staff agrees with the comment and has deleted the appropriate wording.

EPA stated that the language regarding removal of rule requirements within a given nonattainment area is not necessary; some NO_x RACT requirements could still apply if the TACB demonstrates "excess emission reductions" test of the FCAA Amendments, §182(f). The staff agrees with the comment and has deleted the wording concerning removal of the rule requirements for an affected nonattainment area. Should EPA find grounds for rescission, the staff would recommend that rulemaking be proposed to address the findings of the EPA Administrator as to the NO_x RACT requirements that would apply to the nonattainment area if the Administrator were to approve the TACB request.

TCC, Amoco Oil, Chevron, Exxon Chem, Phillips, HL&P, GSU, and Star expressed support for the rescission provisions and no changes were recommended. The staff disagrees with the commenters due to the previous EPA comments which, if not addressed by deleting the proposed wording, could jeopardize the approvability of the NO_x RACT rule.

GHASP objected to rescission, since other non-ozone related problems such as health, welfare, and environment are ignored. The staff does not completely disagree with the comment. The 1990 FCAA Amendments, §182(f)(1), state that NO_x requirements shall not apply in the case of oxides of nitrogen for those sources for which the Administrator determines (when the Administrator approves a plan or plan revision) that net air quality benefits are greater in the absence of reductions of oxides of nitrogen from the sources concerned. The staff proposed this section only to make an allowance for the possibility that rescission may be required, based on Urban Airshed Modeling results. In order to rescind the rule, net air quality benefits would be considered. The staff has made wording changes as outlined in the previous EPA's comments in this section.

Oxy stated that rescission is unnecessary if the need for NO_x reductions are established first. The staff agrees with the concept that Oxy has presented. The need for NO_x reductions has been established in the Houston/Galveston and Beaumont/Port Arthur ozone nonattainment areas, based on the severity of the ozone problem, the high monitored ratios of ambient VOC to NO_x, and the results of grid modeling conducted in other areas with similar high ratios of VOC to NO_x. Rescission is not considered to be a realistic scenario, but was included to facilitate rule implementation. Since the staff did not have results from the UAM for the affected nonattainment areas before the regulation was proposed, the section on rescission is required.

Section 117.570-Alternate Means of Compliance-Trading. TMOGA, Amoco Chem, Amoco Oil, Oxy, GHP, GSU, Star and Chevron

expressed support for trading provisions in §117.570. Star suggested that trading needs to be as flexible as possible to allow for cost-effective NO_x compliance. The staff acknowledges the interest in expanding flexible emissions reduction programs and would plan to incorporate some of the new trading ideas into a future NO_x rulemaking.

GSU suggested that emission trading be allowed between sources in different ozone nonattainment areas under certain conditions. EPA has yet to formulate a policy on trading between different ozone nonattainment areas. There are two conditions that EPA is considering for this type of trading, based on new source offset trading provisions in the FCAA. First, credits would be obtained from an area with an equal or higher nonattainment classification as the area in which the source seeking credits is located. Second, credits should have a beneficial air quality impact on the area in which the source seeking credits is located.

TCC, Exxon Chem, and HL&P suggested that the TACB banking rule be used to allow trading of NO_x emission reduction credits for initial compliance with the NO_x RACT rule or for delayed compliance with the rule. The TACB banking rule, as adopted February 19, 1993, is limited to providing offsets for applicable nonattainment new source review rules. Extending the banking rule to facilitate NO_x RACT trading is an issue for future rulemaking.

Section 117.601-Gas-Fired Steam Generation. GHASP requested that the records in §117.601(e) should be maintained for at least four years to be consistent with other sections of the rule. The staff's intent was to only recodify the existing Regulation VII and not to make the requirements stricter. A four-year recordkeeping requirement could be considered in future rulemaking.

GHASP requested deletion of the phrase "during regular business hours" in §117.601(e). The staff's intent was to only recodify the old §§117.1-117.4 and not to require state and local agencies to extend or increase regular business hours.

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

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

Issued in Austin, Texas, on May 19, 1993.

TRD-9323202 Lane Hartscock
Deputy Director, Air Quality
Planning
Texas Air Control Board

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For further information, please call: (512) 908-1451

Subchapter A. Definitions

• 31 TAC §117.10

The new rule is adopted under the Texas Health and Safety Code (Vernon 1990), Texas Clean Air Act, §382.017, which provides TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

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

Annual capacity factor—The total annual fuel consumed by a unit divided by the fuel which could be consumed by the unit if operated at its maximum rated capacity for 8,760 hours per year.

Applicable ozone nonattainment area—The following areas, as designated pursuant to the 1990 Federal Clean Air Act Amendments.

(A) Beaumont/Port Arthur ozone nonattainment area—An area consisting of Jefferson, Hardin, and Orange counties.

(B) Houston/Galveston ozone nonattainment area—An area consisting of Harris, Liberty, Waller, Chambers, Fort Bend, Galveston, Brazoria, and Montgomery counties.

Auxiliary steam boiler—Any combustion equipment within an electric power generating system, as defined in this section, that is used to produce steam for purposes other than generating electricity.

Block one-hour average—An hourly average of data, collected starting at the beginning of each clock hour of the day and continuing until the start of the next clock hour.

Boiler or steam generator—Any combustion equipment fired with solid, liquid, and/or gaseous fuel used to produce steam.

Btu—British thermal unit.

Chemical processing gas turbine—A gas turbine that vents its exhaust gases into the operating stream of a chemical process.

Daily—A calendar day starting at midnight and continuing until midnight the following day.

Electric power generating system—All boilers, steam generators, auxiliary steam boilers, and gas turbines used in an electric power generating system owned or operated by a municipality or a Public Utility Commission of Texas regulated utility that are located within the Houston/Galveston or Beaumont/Port Arthur ozone nonattainment areas.

Emergency standby gas turbine or engine—A gas turbine or engine operated only as a mechanical or electrical power source for a facility when the primary power source has been rendered inoperable, except due to power interruption pursuant to an interruptible power supply agreement.

Heat input—The chemical heat released due to fuel combustion in a unit, using the higher heating value of the fuel. This does not include the sensible heat of the incoming combustion air. In the case of carbon monoxide (CO) boilers, the heat input includes the enthalpy of all regenerator off-gases and the heat of combustion of the incoming carbon monoxide and of the auxiliary fuel. The enthalpy change of the fluid catalytic cracking unit regenerator off-gases refers to the total heat content of the gas at the temperature it enters the CO boiler, referring to the heat content at 60 degrees Fahrenheit, as being zero.

High heat release rate—A ratio of boiler design heat input to firebox volume (as bounded by the front firebox wall where the burner is located, the firebox side waterwall, and extending to the level just below or in front of the first row of convection pass tubes) greater than or equal to 70,000 British thermal units (Btu) per hour per cubic foot.

Horsepower rating—The engine manufacturer's maximum continuous load rating at the lesser of the engine or driven equipment's maximum published continuous speed.

Industrial boiler or steam generator—Any combustion equipment, not including utility or auxiliary steam boilers as defined in this section, fired with liquid, solid, or gaseous fuel, that is used to produce steam.

International Standards Organization (ISO)—ISO standard conditions of 59 degrees Fahrenheit, 1.0 atmosphere, and 60% relative humidity.

Lean-burn engine—A spark-ignited or compression-ignited, Otto cycle, diesel cycle, or two-stroke engine that is operated with an exhaust stream oxygen concentration of 4.0% by volume, or greater. The exhaust gas oxygen concentration shall be determined from the uncontrolled exhaust stream.

Low annual capacity factor boiler, process heater, or gas turbine supplemental waste heat recovery unit—An industrial

boiler, process heater, or gas turbine supplemental waste heat recovery unit with maximum rated capacity:

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

(B) greater than or equal to 100 MMBtu/hr and an annual heat input less than or equal to $2.2(10^{11})$ Btu/yr.

Low heat release rate—A ratio of boiler design heat input to firebox volume less than 70,000 Btu per hour per cubic foot.

Major Source—Any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit:

(A) at least 25 tons per year (tpy) of nitrogen oxides (NO_x) and is located in the Houston/Galveston ozone nonattainment area;

(B) at least 50 tpy of NO_x and is located in the Beaumont/Port Arthur ozone nonattainment area.

Maximum rated capacity—The maximum design heat input, expressed in MMBtu/hr, unless:

(A) the unit is a boiler, utility boiler, or process heater operated above the maximum design heat input (as averaged over any one-hour period), in which case the maximum operated hourly rate shall be used as the maximum rated capacity; or

(B) the unit is limited by operating restriction or permit condition to a lesser heat input, in which case the limiting condition shall be used as the maximum rated capacity; or

(C) the unit is a stationary gas turbine, in which case the manufacturer's rated heat consumption at the International Standards Organization (ISO) conditions shall be used as the maximum rated capacity, unless limited by permit condition to a lesser heat input, in which case the limiting condition shall be used as the maximum rated capacity; or

(D) the unit is a stationary, internal combustion engine, in which case the manufacturer's rated heat consumption at Diesel Equipment Manufacturer's Association conditions shall be used as the maximum rated capacity, unless limited by permit condition to a lesser heat input, in

which case the limiting condition shall be used as the maximum rated capacity.

Megawatt (MW) rating—The continuous MW rating or mechanical equivalent by a gas turbine manufacturer at ISO conditions, without consideration to the increase in gas turbine shaft output and/or the decrease in gas turbine fuel consumption by the addition of energy recovered from exhaust heat.

Nitric acid—Nitric acid which is 30% to 100% in strength.

Nitric acid production unit—Any facility producing nitric acid by either the pressure or atmospheric pressure process.

Nitrogen oxides (NO_x)—The sum of the nitric oxide and nitrogen dioxide in the flue gas or emission point, collectively expressed as nitrogen dioxide.

Parts per million by volume (ppmv)—All ppmv emission limits specified in this rule are referenced on a dry basis.

Peaking gas turbine or engine—A stationary gas turbine or engine used intermittently to produce energy on a demand basis.

Plant-wide emission limit—The ratio of the total allowable nitrogen oxides mass emissions rate dischargeable into the atmosphere from affected units at a major source when firing at their maximum rated capacity to the total maximum rated capacities for those units.

Plant-wide emission rate—The ratio of the total actual nitrogen oxides mass emissions rate discharged into the atmosphere from affected units at a major source when firing at their maximum rated capacity to the total maximum rated capacities for those units.

Process heater—Any combustion equipment fired with liquid and/or gaseous fuel which is used to transfer heat from combustion gases to a process fluid, superheated steam, or water for the purpose of heating the process fluid or causing a chemical reaction. The term "process heater" does not apply to any unfired waste heat recovery heater that is used to recover sensible heat from the exhaust of any combustion equipment, or to boilers or steam generators as defined in this section.

Rich-burn engine—A spark-ignited, Otto cycle, four-stroke, naturally aspirated or turbocharged engine that is operated with an exhaust stream oxygen concentration of less than 4.0% by volume. The exhaust gas oxygen concentration shall be determined from the uncontrolled exhaust stream.

Stationary gas turbine—Any gas turbine system that is gas and/or liquid fuel fired with or without power augmentation. This unit is either attached to a foundation at a facility or is portable equipment operated at a specific facility for more than 90 days in any 12-month period. Two or more gas turbines powering one shaft shall be treated as one unit.

Stationary internal combustion engine—A reciprocating engine either attached to a foundation or if not so attached is operated or is intended to be operated at a

single facility for more than six months, including any replacement engine for a specific application which lasts or is intended to last for more than six months.

System-wide emission limit—The ratio of the total allowable nitrogen oxides mass emissions rate dischargeable into the atmosphere from affected units in an electric power generating system when firing at their maximum rated capacity to the total maximum rated capacities for those units.

System-wide emission rate—The ratio of the total actual nitrogen oxides mass emissions rate discharged into the atmosphere from affected units in an electric power generating system when firing at their maximum rated capacity to the total maximum rated capacities for those units.

Unit—Any boiler, steam generator, process heater, stationary gas turbine, or stationary internal combustion engine, as defined in this section, which is placed into service prior to November 15, 1992.

Utility boiler or steam generator—Any combustion equipment owned or operated by a municipality or Public Utility Commission of Texas regulated utility, fired with solid, liquid, and/or gaseous fuel, used to produce steam for the purpose of generating electricity.

Wood—Wood, wood residue, bark, or any derivative fuel or residue thereof in any form, including, but not limited to, sawdust, sander dust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.

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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Texas Air Control Board

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Subchapter B. Combustion at Existing Major Sources Utility Electric Generation

- 31 TAC §§117.101, 117.103, 117.105, 117.107, 117.109, 117.111, 117.113, 117.115, 117.117, 117.119, 117.121

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

§117.101. *Applicability.*

(a) The provisions of this undesignated head (relating to Utility Electric Generation) shall apply to utility boilers, steam generators, auxiliary steam boilers, and gas turbines used in an electric power generating system owned or operated by a municipality or a Public Utility Commission of Texas regulated utility located within the Houston/Galveston and Beaumont/Port Arthur ozone nonattainment areas.

(b) The provisions of this undesignated head are applicable for the life of each affected unit within an electric power generating system or until this undesignated head or sections of this title which are applicable to an affected unit are rescinded.

§117.103. *Exemptions.*

(a) The provisions of §117.105 of this title (relating to Emission Specifications) or §117.107 of this title (relating to Alternative System-Wide Emission Specifications) shall not apply during periods of major upset or maintenance under the requirements of §101.6 of this title (relating to Notification Requirements for Major Upset), §101.7 of this title (relating to Notification Requirements for Maintenance), and §101.11 of this title (relating to Exemptions from Rules and Regulations).

(b) Units exempted from the provisions of this undesignated head (relating to Utility Electric Generation) include the following:

(1) any new units placed into service after November 15, 1992;

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

(3) stationary gas turbines, which are:

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

(B) used as emergency standby gas turbines or engines and demonstrated to operate less than 850 hours per calendar year; or

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

(c) The owner or operator of any utility boiler, steam generator, or auxiliary steam boiler using the exemption of subsection (b)(2) of this section shall install and maintain totalizing fuel meters for each individual unit, as approved by the Executive

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

§117.105. *Emission Specifications*

(a) No person shall allow the discharge into the atmosphere from any utility boiler, steam generator, or auxiliary steam boiler, emissions of nitrogen oxides (NO_x) in excess of 0.26 pound per million (MM) British thermal unit (Btu) heat input on a rolling 24-hour average and 0.20 pound per MMBtu heat input on a 30-day rolling average while firing natural gas or a combination of natural gas and waste oil.

(b) No person shall allow the discharge into the atmosphere from any utility boiler or steam generator, NO_x emissions in excess of 0.38 pound per MMBtu heat input for tangentially-fired units on a rolling 24-hour averaging period or 0.43 pound per MMBtu heat input for wall-fired units on a rolling 24-hour averaging period while firing coal.

(c) No person shall allow the discharge into the atmosphere from any utility boiler, steam generator, or auxiliary steam boiler, NO_x emissions in excess of 0.30 pound per MMBtu heat input on a rolling 24-hour averaging period while firing fuel oil only.

(d) No person shall allow the discharge into the atmosphere from any utility boiler, steam generator, or auxiliary steam boiler, NO_x emissions in excess of the heat input weighted average of the applicable emission limits specified in subsections (a)-(c) of this section on a rolling 24-hour averaging period while firing a mixture of natural gas and fuel oil, as follows:

$$\text{Emission Limit} = [a(0.26) + b(0.30)] / (a + b)$$

Where:

a = is the percentage of total heat input from natural gas.

b = is the percentage of total heat input from fuel oil.

(e) Each auxiliary steam boiler which is an affected facility as defined by New Source Performance Standards (NSPS) 40 Code of Federal Regulations (CFR), Part 60, Subparts D, Db, or Dc shall be limited to the applicable NSPS NO_x emission limit, unless the boiler is also subject to a more stringent permit emission limit, in which case the more stringent emission limit applies. Each auxiliary boiler subject to an emission specification under this subsection is not subject to the emission specifications of subsection (a) or (c) of this section.

(f) No person shall allow the discharge into the atmosphere from any stationary gas turbine with a megawatt (MW) rating greater than or equal to 30 MW and an annual electric output in MW-hours of greater than or equal to the product of 2,500 hours and the MW rating of the unit, NO_x emissions in excess of a block one-hour average of 42 parts per million by volume (ppmv) at 15% oxygen (O₂), dry basis, while firing natural gas.

(g) No person shall allow the discharge into the atmosphere from any stationary gas turbine with a MW rating greater than or equal to 30 MW and an annual electric output in MW-hours of greater than or equal to the product of 2,500 hours and the MW rating of the unit, NO_x emissions in excess of a block one-hour average of 65 ppmv at 15% O₂, dry basis, while firing fuel oil.

(h) No person shall allow the discharge into the atmosphere from any stationary gas turbine used for peaking service with an annual electric output in MW-hours of less than the product of 2,500 hours and the MW rating of the unit, NO_x emissions in excess of a block one-hour average of 0.20 pound per MMBtu heat input while firing natural gas.

(i) No person shall allow the discharge into the atmosphere from any stationary gas turbine used for peaking service with an annual electric output in MW-hours

of less than the product of 2,500 hours and the MW rating of the unit, NO_x emissions in excess of a block one-hour average of 0.30 pound per MMBtu heat input while firing fuel oil.

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

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

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

§117.107. Alternative System-Wide Emission Specifications.

(a) An owner or operator may achieve compliance with the nitrogen oxides (NO_x) emission limits of §117.105 of this title (relating to Emission Specifications) by achieving compliance with a system-wide emission limitation. Any owner or operator who elects to comply with system-wide emission limits shall reduce emissions of NO_x from affected units so that, if all such units were operated at their maximum rated capacity, the system-wide emission rate from all units in the system would not exceed the system-wide emission limit as defined in §117.10 of this title (relating to Definitions), and shall establish enforceable emission limits for each affected unit in the system. A pound per million (MM) Btu emission limit based on a

rolling 24-hour averaging period and a pound per MMBtu emission limit based on a 30-day averaging period shall apply to each gas-fired unit in the system. A pound per MMBtu emission limit based on a rolling 24-hour averaging period shall apply to each coal-fired unit in the system.

(b) An owner or operator of any gaseous and liquid fuel-fired utility boiler, steam generator, auxiliary steam boiler, or gas turbine which derives more than 50% of its annual heat input from gaseous fuel shall use only the appropriate gaseous fuel emission limit of §117.105 of this title at maximum rated capacity in calculating the system-wide emission limit and shall assign to the unit the maximum allowable NO_x emission rate while firing gas, calculated in accordance with subsection (a) of this section. The owner or operator shall also:

(1) comply with the assigned maximum allowable emission rate while firing natural gas only;

(2) comply with the liquid fuel emission limit of §117.105 of this title while firing liquid fuel only; and

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

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

(d) Solely for purposes of calculating the system-wide emission limit, the allowable mass emission rate for each

affected unit shall be calculated from the emission specifications of §117.105 of this title, as follows.

(1) The NO_x emissions rate (in pounds per hour) for each affected utility

boiler, steam generator, or auxiliary steam boiler is the product of its maximum rated capacity and its NO_x emission specification of §117.105 of this title.

(2) The NO_x emissions rate (in pounds per hour) for each affected station-

ary gas turbine is the product of the in-stack NO_x, the turbine manufacturer's rated exhaust flow rate (expressed in pounds per hour at megawatt (MW) rating and International Standards Organization (ISO) flow conditions), and (46/28) (10⁻⁶);

Where:

$$\text{In-stack NO}_x = \text{NO}_x (\text{allowable}) \times (1 - \%H_2O/100) \times [20.9 - \%O_2(1 - \%H_2O/100)]/5.9$$

Where:

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

%H₂O = the volume percent water in the stack gases, as calculated at MW rating and ISO flow conditions

%O₂ = the volume percent oxygen in the stack gases on a wet basis, as calculated at the MW rating and ISO flow conditions.

§117.109. Initial Control Plan Procedures. The owner or operator of any major source which has units subject to §117.105 of this title (relating to Emission Specifications) or §117.107 of this title (relating to Alternative System-Wide Emission Specifications) shall submit, for the approval of the Executive Director, an initial control plan for installation of nitrogen oxides (NO_x) emissions control equipment to meet the requirements of §117.105 of this title or §117.107 of this title. The Executive Director shall approve the plan if it contains

all the information specified in this section. Revisions to the initial control plan shall be submitted with the final control plan. The initial control plan shall be submitted in accordance with the schedule specified in §117.510 of this title (relating to Compliance Schedule For Utility Electric Generation) and shall contain the following:

(1) a list of all combustion units at the source with a maximum rated capacity greater than 5.0 million Btu per hour; all stationary, reciprocating internal combustion which are located in the Houston/Galveston ozone nonattainment area and rated

150 horsepower (hp) or greater, or located in the Beaumont/ Port Arthur ozone nonattainment area and rated 300 hp or greater; all stationary gas turbines with a megawatt (MW) rating of greater than or equal to 1.0 MW; to include the maximum rated capacity, anticipated annual heat input capacity factor, the facility identification numbers as submitted to the Emissions Inventory Division of the Texas Air Control Board (TACB), and the emission point numbers as listed on the Maximum Allowable Emissions Rate Table of any applicable TACB permit for each unit;

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

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

(4) identification of the election to use individual emission limits as specified in §117.105 of this title or the system-wide emission limit specified in §117.107 of this title to achieve compliance with this rule;

(5) a list of units to be controlled and the type of control to be applied for all such units, including an anticipated construction schedule;

(6) a list of any units retired, decommissioned, or shut down and rendered inoperable as a result of compliance with this regulation; and

(7) the basis for calculation of the mass rate of NO_x emissions for each unit to demonstrate that each unit will achieve the NO_x emission rates specified in §117.105 of this title or §117.107 of this title.

§117.111. Initial Demonstration of Compliance.

(a) All units which are identified in the control plan required by §117.109 of this title (relating to Initial Control Plan Procedures) and are subject to the emission limitations of §117.105 of this title (relating to Emission Specifications) or §117.107 of this title (relating to Alternative Plant-Wide Emission Specifications), shall be tested for nitrogen oxides (NO_x), carbon monoxide (CO), and oxygen (O₂) emissions. Units which inject urea or ammonia into the exhaust stream for NO_x control shall be tested for ammonia emissions. Such tests shall be performed in accordance with the schedule specified in §117.510(3) of this title (relating to Compliance Schedule For Utility Electric Generation).

(b) The tests required by subsection (a) of this section shall be used for determination of initial compliance with either the emission limits of §117.105 of this title or the assigned emission limits of §117.107 of this title, as applicable. Test results shall be reported in the units of the applicable emission limits and averaging periods.

(c) Continuous emissions monitoring systems (CEMS) required by §117.113(a) of this title (relating to Continuous Demonstration of Compliance) shall be installed and operational prior to con-

ducting performance testing under subsection (a) of this section. Verification of operational status shall, as a minimum, include completion of the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device.

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

(1) To comply with the NO_x emission limit in pound per million (MM) Btu on a rolling 30-day average, NO_x emissions from a unit are monitored for 30 successive unit operating days and the 30-day average emission rate is used to determine compliance with the NO_x emission limit. The 30-day average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during the 30-day test period.

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

(3) To comply with the CO emission limit in parts per million by volume on a rolling 24-hour average, CO emissions from a unit are monitored for 24 consecutive hours and the rolling 24-hour average emission rate is used to determine compliance with the CO emission limit. The rolling 24-hour average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during the 24-hour test period.

§117.113. Continuous Demonstration of Compliance.

(a) The owner or operator of each affected unit, as defined in §117.101 of this title (relating to Applicability), except for exempted units listed in §117.103 of this title (relating to Exemptions); peaking units as defined in §1.1 or §1.2 of Appendix E of 40 Code of Federal Regulations (CFR) Part 75, subject to the monitoring requirements of Appendix E; gas turbines monitored in accordance with subsection (e) of this section; and auxiliary boilers as defined in §117.10 of this title (relating to Definitions), monitored in accordance with subsection (d) of this section, shall install, calibrate, maintain, and operate an in-stack continuous emissions monitoring system (CEMS) to measure nitrogen oxides (NO_x)

on an individual basis. The CEMS shall be installed by the time of compliance with the emission limits specified in §117.105 of this title (relating to Emission Specifications) or §117.107 of this title (relating to Alternative System-Wide Emission Specifications). Each CEMS shall be capable of measuring the following:

- (1) NO_x;
- (2) carbon monoxide;
- (3) oxygen or carbon dioxide as a diluent; and
- (4) exhaust or fuel flow rate.

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

(c) The owner or operator of each peaking unit as defined in 40 CFR Part 75, Appendix E §1.1 or §1.2, may monitor operating parameters for each unit in accordance with Appendix E and calculate NO_x emission rates based on those procedures or use CEMS in accordance with subsection (a) of this section to monitor NO_x emission rates.

(d) The owner or operator of each auxiliary boiler as defined in §117.10 of this title shall install, calibrate, maintain, and operate a CEMS in accordance with subsection (a) of this section or comply with the appropriate (considering boiler maximum rated capacity and annual heat input) industrial boiler monitoring requirements of §117.213 of this title (relating to Continuous Demonstration of Compliance).

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

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

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

(B) install, calibrate, maintain, and operate a continuous monitoring system to monitor and record the average hourly fuel and steam or water consump-

tion. The system shall be accurate to within $\pm 5.0\%$. The steam-to-fuel or water-to-fuel ratio monitoring data shall constitute the method for demonstrating continuous compliance with the applicable emission specification of §117.105 of this title;

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

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

§117.115. Final Control Plan Procedures.

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

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

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

under the requirements of §117.107 of this title;

(2) submit a list to the Executive Director for approval of the maximum allowable NO_x emission rates identified in paragraph (1) of this subsection and maintain a copy of the approved list for verification of continued compliance with the requirements of §117.107 of this title; and

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

§117.117. Revision of Final Control Plan. A revised final control plan may be submitted by the owner or operator, along with any required permit applications. Such a plan shall adhere to the emission limits and the final compliance dates of this undesignated head (relating to Utility Electric Generation). The revision of the final control plan shall be subject to the review and approval of the Executive Director.

§117.119. Notification, Recordkeeping, and Reporting Requirements.

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

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

(1) verbal notification of the date of any performance testing conducted under §117.111 of this title (relating to Initial Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed; and

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

(c) The owner or operator of an affected unit shall furnish the Executive Director and any local air pollution control agency having jurisdiction a copy of any performance testing conducted under §117.111 of this title or any CEMS performance evaluation conducted under §117.113 of this title within 60 days after completion of such testing or evaluation.

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

(1) the magnitude of excess emissions computed in accordance with 40 Code of Federal Regulations, Part 60, §60.13(h), any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the unit operating time during the reporting period. For gas turbines using steam-to-fuel or water-to-fuel ratio monitoring to demonstrate compliance in accordance with §117.113(e)(1)(B) of this title, excess emissions are computed as each one-hour period during which the hourly steam-to-fuel or water-to-fuel ratio is less than the ratio determined to result in compliance during the initial performance test required by §117.111 of this title.

(2) specific identification of each period of excess emissions that occurs during start-ups, shutdowns, and malfunctions of the affected unit. The nature and cause of any malfunction (if known) and the corrective action taken or preventative measures adopted;

(3) the date and time identifying each period during which the continuous monitoring system was inoperative, except for zero and span checks and the nature of the system repairs or adjustments;

(4) when no excess emissions have occurred or the continuous monitoring system has not been inoperative, repaired, or adjusted, such information shall be stated in the report;

(5) if the total duration of excess emissions for the reporting period is less than 1.0% of the total unit operating time for the reporting period and the CEMS or steam-to-fuel or water-to-fuel ratio monitoring system downtime for the reporting period is less than 5.0% of the total unit operating time for the reporting period, only

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

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

- (1) emission rates in units of the applicable standards;
- (2) gross energy production in MW-hr (not applicable to auxiliary boilers);
- (3) quantity and type of fuel burned;
- (4) the injection rate of reactant chemicals (if applicable); and
- (5) CEMS, continuous operating parameter monitoring system, or steam-to-fuel or water-to-fuel ratio monitoring system data, as applicable, pursuant to §117.113 of this title. The records shall include:

(A) the date, time, and duration of any malfunction in the operation of the monitoring system, except for zero and span checks, if applicable, and a description of system repairs and adjustments undertaken during each period;

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

(C) actual emissions or operating parameter measurements, as applicable.

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

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

Issued in Austin, Texas, on May 19, 1993.

TRD-9323204 Lane Hartsock
Deputy Director, Air Quality
Planning
Texas Air Control Board

Effective date: June 9, 1993

Proposal publication date: November 20, 1992

For further information, please call: (512) 908-1451

◆ ◆ ◆
Commercial, Institutional, and Industrial Sources

- 31 TAC §§117.201, 117.203, 117.205, 117.207-117.209, 117.211, 117.213, 117.215, 117.217, 117.219, 117.221

The new rules are adopted under the Texas Health and Safety Code (Vernon 1990), Texas Clean Air Act, §382.017, which pro-

vides TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§117.201. Applicability. The provisions of this undesignated head (relating to Commercial, Institutional, and Industrial Sources) shall apply to the following units located at any major stationary source of nitrogen oxides (NO_x) located within the Houston/Galveston or Beaumont/Port Arthur ozone nonattainment areas:

(1) commercial, institutional, or industrial boilers and process heaters with a maximum rated capacity of 40 million Btu per hour or greater;

(2) stationary gas turbines with a megawatt (MW) rating of 1.0 MW or greater; and

(3) stationary internal combustion engines which are:

(A) located in the Houston/Galveston ozone nonattainment area with a horsepower (hp) rating of 150 hp or greater; or

(B) located in the Beaumont/Port Arthur ozone nonattainment area with a horsepower rating of 300 hp or greater.

§117.203. Exemptions.

(a) The provisions of §117.205 of this title (relating to Emission Specifications) or §117.207 of this title (relating to Alternative Plant-Wide Emission Specifications) shall not apply during periods of major upset or maintenance under the requirements of §101.6 of this title (relating to Notification Requirements for Major Upset), §101.7 of this title (relating to Notification Requirements for Maintenance), and §101.11 of this title (relating to Exemptions from Rules and Regulations).

(b) Units exempted from the provisions of this undesignated head (relating to Commercial, Institutional, and Industrial Sources) include the following:

(1) any new units placed into service after November 15, 1992;

(2) any commercial, institutional, or industrial boiler or process heater with a maximum rated capacity of less than 40 million (MM) Btu per hour;

(3) any electric utility power generating boiler;

(4) flares, incinerators, fume abaters, sulfur recovery units, and sulfur plant reaction boilers;

(5) dryers, kilns, or ovens used for drying, baking, cooking, calcining, and vitrifying;

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

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

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

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

(7) stationary gas turbines with a megawatt (MW) rating of less than 1.0 MW; and

(8) stationary internal combustion engines which are:

(A) located in the Houston/Galveston ozone nonattainment area with a horsepower (hp) rating of less than 150 hp, or

(B) located in the Beaumont/Port Arthur ozone nonattainment area with a horsepower rating of less than 300 hp.

§117.205. Emission Specifications.

(a) No person shall allow the discharge of air contaminants into the atmosphere to exceed the emission limits of this section, except as provided in §117.207 of this title (relating to Alternative Plant-Wide Emission Specifications). For units which operate with continuous emission monitors in accordance with §117.213(b) of this title (relating to Continuous Demonstration of Compliance), the emission limits shall apply as the mass of nitrogen oxides (NO_x) emitted per unit of energy input (pound NO_x per million (MM) Btu), on a rolling 30-day average period, or as the mass of NO_x emitted per hour (pounds per hour), on a block one-hour average. For units which do not operate with continuous emission monitors, the emission limits shall apply as the mass of NO_x emitted per hour (pounds NO_x per hour), on a block one-hour average. The mass of NO_x emitted per hour shall be calculated as the product of the unit's maximum rated capacity and its applicable limit (in pound NO_x per MMBtu), as follows.

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

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

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

(B) the NO_x emission limit is the limit calculated as the permit Maximum Allowable Emission Rate Table emission limit in pounds per hour, divided by the maximum heat input to the unit in MMBtu per hour (MMBtu/hr), as represented in the

permit application. In the event the maximum heat input to the unit is not explicitly stated in the permit application, the rate shall be calculated from Table 6 of the permit application, using the design maximum fuel flow rate and higher heating value of the fuel, or, if neither of these are available, the unit's nameplate heat input.

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

(A) gas-fired boilers, as follows:

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

(ii) low heat release boilers with preheated air greater than or equal to 200 degrees Fahrenheit and less than 400 degrees Fahrenheit of air preheat, 0.15 lb NO_x/MMBtu of heat input;

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

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

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

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

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

(i) based on air preheat temperature:

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

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

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

(ii) based on firebox temperature:

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

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

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

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

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

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

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

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

(c) No person shall allow the discharge into the atmosphere from any gas-fired, rich-burn, stationary, reciprocating internal combustion engine, emissions in excess of a block one-hour average of 2.0 grams NO_x per horsepower hour (g NO_x/hp-

hr) and 3.0 g CO/hp-hr for engines which are:

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

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

(d) No person shall allow the discharge into the atmosphere from any boiler or process heater subject to NO_x emission specifications in subsection (a) of this section, CO in excess of 400 ppmv based on a block one-hour average.

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

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

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

(2) any low annual capacity factor boiler or process heater as defined in §117.10 of this title (relating to Definitions);

(3) boilers and industrial furnaces which are regulated as existing facilities by the United States Environmental Protection Agency at 40 CFR Part 266, Subpart H;

(4) fluid catalytic cracking units (including CO boilers);

(5) supplemental waste heat recovery units used in turbine exhaust ducts;

(6) any lean-burn, stationary, reciprocating internal combustion engine; and

(7) any stationary gas turbine with a MW rating less than 10.0 MW.

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

§117.207. Alternative Plant-Wide Emission Specifications.

(a) An owner or operator may achieve compliance with the emission limits of §117.205 of this title (relating to Emission Specifications) by achieving equivalent nitrogen oxides (NO_x) emission reductions obtained by compliance with a plant-wide emission limitation. Any owner or operator who elects to comply with a plant-wide emission limit shall reduce emissions of NO_x from affected units so that if all such units were operated at their maximum rated capacity, the plant-wide emission rate of NO_x from these units would not exceed the plant-wide emission limit as defined in §117.10 of this title (relating to Definitions) and shall establish an enforceable emission limit for each affected unit at the source. For units which operate with continuous emission monitors in accordance with §117.213(b) of this title (relating to Continuous Demonstration of Compliance), the emission limits shall apply as the mass of NO_x emitted per unit of energy input (pound NO_x per million (MM) Btu), on a rolling 30-day average period, or as the mass of NO_x emitted per hour (pounds per hour), on a block one-hour average. For units which do not operate with continuous emission monitors, the emission limits shall apply as the mass of NO_x emitted per hour (pounds per hour), on a block one-hour average.

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

(c) An owner or operator of any gaseous and liquid fuel-fired unit which derives more than 50% of its annual heat input from gaseous fuel shall use only the appropriate gaseous fuel emission limit of §117.205 of this title at maximum rated capacity in calculating the plant-wide emission limit and shall assign to the unit the maximum allowable NO_x emission rate while firing gas, calculated in accordance with subsection (a) of this section. The owner or operator shall also:

(1) comply with the assigned maximum allowable emission rate while firing gas only;

(2) comply with the liquid fuel emission limit of §117.205 of this title while firing liquid fuel only; and

(3) comply with a limit calculated as the actual heat input weighted sum of the assigned gas-firing allowable emission rate and the liquid fuel emission limit of §117.205 of this title while operating on liquid and gaseous fuel concurrently.

(d) An owner or operator of any gaseous and liquid fuel-fired unit which derives more than 50% of its annual heat input from liquid fuel shall use a heat input

weighted average of the appropriate gaseous and liquid fuel emission specifications of §117.205 of this title in calculating the plant-wide emission limit and shall assign to the unit the maximum allowable NO_x emission rate, calculated in accordance with subsection (a) of this section.

(e) An owner or operator of any unit operated with a combination of gaseous (or liquid) and solid fuels shall use a heat input weighted average of the appropriate emission specifications of §117.205 of this title in calculating the plant-wide emission limit and shall assign to the unit the maximum allowable NO_x emission rate, calculated in accordance with subsection (a) of this section.

(f) The owner or operator of exempted units as defined in §117.205(f) of this title may elect to include one or more of an entire equipment class of exempted units into the alternative plant-wide emission specifications as defined in this section. The equipment classes which may be included in the alternative plant-wide emission specifications as an entire population of units at the major source include the following: fluid catalytic cracking unit carbon monoxide (CO) boilers; lean-burn, gas-fired, stationary, reciprocating internal combustion engines rated 150 horsepower (hp) or greater; boilers, steam generators, or process heaters with a maximum rated ca-

capacity of greater than or equal to 40 million Btu per hour (MMBtu/hr) and less than 100 MMBtu/hr; and stationary gas turbines with a megawatt (MW) rating of greater than or equal to 1.0 MW and less than 10.0 MW. Low annual capacity factor boilers or process heaters and low annual capacity factor gas turbines or engines as defined in §117.10 of this title and §117.203(b)(6)(B) of this title are not to be considered as part of that class of equipment. The individual emission limits that are to be used in calculating the alternative plant-wide emission specifications are, as follows:

(1) fluid catalytic cracking unit CO boilers, 50% NO_x reduction across the inlet of the CO boiler to the outlet of the CO boiler, with the outlet concentration in parts per million by volume converted into a pound (lb) NO_x/MMBtu of heat input;

(2) lean-burn, gas-fired, stationary, reciprocating internal combustion engines rated 150 hp or greater, 5.0 grams NO_x/horsepower-hour (g NO_x/hp-hr) under all operating conditions;

(3) boilers, steam generators, or process heaters with a maximum rated capacity of greater than or equal to 40 MMBtu/hr and less than 100 MMBtu/hr, the emission specifications in §117.205(a) of this title for the applicable type of unit; and

(4) stationary gas turbines with a MW rating of greater than or equal to 1.0 MW and less than 10.0 MW, 42 parts ppmv NO_x at 15% oxygen (O₂), dry basis.

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

(1) The NO_x emission rate (in lbs per hour) for each affected boiler and process heater is the product of its maximum rated capacity and its NO_x emission specification of §117.205 of this title.

(2) The NO_x emission rate (in lbs per hour) for each affected stationary internal combustion engine is the product of the applicable NO_x emission specification of §117.205 of this title (expressed in g/hp-hr) and the engine manufacturer's rated heat input (expressed in MMBtu/hr) at the engine's hp rating; divided by the product of the engine manufacturer's rated heat rate (expressed in Btu/hp-hr) at the engine's hp rating and 454(10⁶).

(3) The NO_x emission rate (in lbs per hour) for each affected stationary gas turbine is the product of the in-stack NO_x, the turbine manufacturer's rated exhaust flow rate (expressed in lbs per hour at MW rating and International Standards Organization (ISO) flow conditions) and (46/28)(10⁶):

Where:

$$\text{In-stack NO}_x = \text{NO}_x(\text{allowable}) \times (1 - \% \text{H}_2\text{O}/100) \times \\ [20.9 - \% \text{O}_2(1 - \% \text{H}_2\text{O}/100)]/5.9$$

Where:

NO_x (allowable) = the applicable NO_x emission specification of §117.205 of this title (expressed in ppmv NO_x at 15% O_2 , dry basis)

$\% \text{H}_2\text{O}$ = the volume percent of water in the stack gases, as calculated at MW rating and ISO flow conditions

$\% \text{O}_2$ = the volume percent of O_2 in the stack gases on a wet basis, as calculated at MW rating and ISO flow conditions.

(4) The NO_x emission rate (in lbs per hour) for each affected gas-fired boiler and process heater firing gaseous fuel which contains more than 50% hydrogen (H₂) by volume, over an annual basis, in which the fuel gas composition is sampled and analyzed every three hours, may use a multiplier of 1.25 times the product of its maximum rated capacity and its NO_x emission specification of §117.205 of this title. Double application of the H₂ content multiplier using this paragraph and §117.205(a)(4) of this title is not allowed.

(h) The owner or operator of any gas-fired boiler or process heater firing gaseous fuel which contains more than 50% H₂ by volume, over an eight-hour period, in which the fuel gas composition is sampled and analyzed every three hours, may use a multiplier of 1.25 times the emission limit assigned to the unit in this section for that eight-hour period, not applicable to units under subsection (g)(4) of this section. The total H₂ volume in all gaseous fuel streams will be divided by the total gaseous fuel flow volume to determine the volume percent of H₂ in the fuel supply.

§117.208. Operating Requirements.

(a) Except during major upset or maintenance as referenced in §101.6 of this title (relating to Notification Requirements for Major Upset), §101.7 of this title (relating to Notification Requirements for Maintenance), and §101.11 of this title (relating to Exemptions from Rules and Regulations), the owner or operator shall operate any unit subject to the emission limitations of §117.205 of this title (relating to Emission Specifications) in compliance with those limitations.

(b) The owner or operator shall operate any unit subject to the plant-wide emission limit of §117.207 of this title (relating to Alternative Plant-Wide Emission Specifications) such that the assigned maximum nitrogen oxides (NO_x) emission rate for each unit expressed in units of the applicable emission limit and averaging period, is in accordance with the list approved by the Executive Director pursuant to §117.215 of this title (relating to Final Control Plan Procedures).

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

(1) Each boiler shall be operated with oxygen (O₂) or carbon monoxide (CO) trim (or both)

(2) Each boiler and process heater controlled with forced flue gas recirculation (FGR) to reduce NO_x emissions shall be operated such that the proportional design rate of FGR is maintained, consistent with combustion stability, over the operating range.

(3) Each boiler and process heater controlled with induced draft FGR to reduce NO_x emissions shall be operated such that the operation of FGR over the operating range is not restricted by artificial means.

(4) Each unit controlled with steam or water injection shall be operated such that injection rates are maintained to limit NO_x concentrations to less than or equal to the NO_x concentrations achieved at maximum rated capacity (corrected to 15% O₂ on a dry basis for gas turbines).

(5) Each unit controlled with post combustion control techniques shall be operated such that the reducing agent injection rate is maintained to limit NO_x concentrations to less than or equal to the NO_x concentrations achieved at maximum rated capacity.

(6) Each stationary internal combustion engine controlled with nonselective catalytic reduction shall be equipped with an automatic air-fuel ratio (AFR) controller which operates on exhaust O₂ or CO control and maintains AFR in the range required to meet the engine's applicable emission limits.

(7) Each stationary internal combustion engine shall be checked for proper operation of the engine by recorded measurements of NO_x and CO emissions at least quarterly and as soon as practicable after each occurrence of engine maintenance which may reasonably be expected to increase emissions, O₂ sensor replacement, or catalyst cleaning or catalyst replacement. Stain tube indicators specifically designed to measure NO_x concentrations shall be acceptable for this documentation, provided a hot air probe or equivalent device is used to prevent error due to high stack temperature, and three sets of concentration measurements are made and averaged. Portable NO_x analyzers shall also be acceptable for this documentation.

§117.209. Initial Control Plan Procedures. The owner or operator of any major source which has units subject to §117.205 of this title (relating to Emission Specifications) or §117.207 of this title (relating to Alternative Plant-Wide Emission Specifications) shall submit, for the approval of the Executive Director, an initial control plan for installation of nitrogen oxides (NO_x) emissions control equipment to meet the requirements of §117.205 of this

title or §117.207 of this title. The Executive Director shall approve the plan if it contains all the information specified in this section. Revisions to the initial control plan shall be submitted with the final control plan. The initial control plan shall be submitted in accordance with the schedule specified in §117.520 of this title (relating to Compliance Schedule for Commercial, Institutional, and Industrial Combustion Sources) and shall contain the following:

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

(2) identification of all units subject to the emission specifications of §117.205 of this title or §117.207 of this title;

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

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

(5) a list of units to be controlled and the type of control to be applied for all such units, including an anticipated construction schedule;

(6) a list of any units retired, decommissioned, or shutdown and rendered inoperable as a result of compliance with this regulation,

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

(A) the calculation of the CO boiler heat input;

(B) the calculation of the appropriate CO boiler volumetric inlet and exhaust flowrates; and

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

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

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

§117.211. Initial Demonstration of Compliance.

(a) All units which are identified in the control plan required by §117.209 of this title (relating to Initial Control Plan Procedures) and are subject to the emission limitations of §117.205 of this title (relating to Emission Specifications) or §117.207 of this title (relating to Alternative Plant-Wide Emission Specifications), shall be tested for nitrogen oxides (NO_x), carbon monoxide (CO), and oxygen (O₂) emissions while firing gaseous fuel (and as applicable, hydrogen (H₂) fuel for units which may fire more than 50% H₂ by volume, and liquid fuel). Units which inject urea or ammonia into the exhaust stream for NO_x control shall be tested for ammonia emissions. Performance testing of these units shall be performed in accordance with the schedule specified in §117.520(2) of this title (relating to Compliance Schedule for Commercial, Institutional, and Industrial Combustion Sources).

(b) The performance tests required by subsection (a) of this section shall use the test methods referenced in subsection (f) or (g) of this section and shall be used for determination of initial compliance with either the emission limits of §117.205 of this title or the assigned emission limits of §117.207 of this title, as applicable. Test results shall be reported in the units of the applicable emission limits and averaging periods.

(c) The units listed in this subsection shall be tested for NO_x, CO, and O₂ emissions while firing gaseous fuel (and as applicable, H₂ fuel for units which may fire more than 50% H₂ by volume) and/or liquid fuel at the maximum rated capacity or as near thereto as practicable. Testing using portable analyzers is acceptable for the units listed in this subsection. The testing shall be performed in accordance with the schedule

specified in §117.520(1) of this title. The units listed are as follows:

(1) process heaters and boilers with a maximum rated capacity greater than or equal to 40.0 million Btu per hour (MMBtu/hr) and less than 100.0 MMBtu/hr, except for low annual capacity factor boilers and process heaters as defined in §117.10 of this title (relating to Definitions);

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

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

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

(5) stationary gas turbines with a megawatt (MW) rating of greater than or equal to 1.0 MW and less than 10.0 MW, except for low annual capacity factor gas turbines as defined in §117.203(b)(6)(B) of this title (relating to Exemptions), or peaking gas turbines as defined in §117.203(b)(6)(C) of this title; and

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

(d) Any continuous emissions monitoring system (CEMS) required by §117.213(b) of this title (relating to Continuous Demonstration of Compliance) shall be installed and operational prior to conducting performance testing under subsection (a) of this section. Verification of operational status shall, as a minimum, include completion of the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device.

(e) Testing conducted prior to the effective date of this rule may be used to demonstrate compliance with the standards

specified in §117.205 of this title or §117.207 of this title or to satisfy the additional testing requirements of subsection (c) of this section, if the owner or operator of an affected facility demonstrates to the Executive Director that the prior performance testing at least meets the requirements of subsections (a), (b), (c), (d), (f), and (g) of this section. The Executive Director reserves the right to request performance testing or CEMS performance evaluation at any time.

(f) Compliance with the emission specifications of §117.205 of this title or §117.207 of this title for units operating without CEMS shall be demonstrated while operating at the maximum rated capacity, or as near thereto as practicable, by application of the following test methods:

(1) Test method 7E or 20 (40 CFR, Part 60, Appendix A) for NO_x;

(2) Test Method 10, 10A, or 10B (40 CFR 60, Appendix A) for CO;

(3) Test Method 3A or 20 (40 CFR 60, Appendix A) for O₂;

(4) Test Method 2 or 19 (40 CFR 60, Appendix A) for exhaust gas flow; and

(5) American Society of Testing and Materials (ASTM) Method D-1945-81, ASTM Method D-3588-81, or ASTM Method D-2650-83 for fuel composition; or

(6) EPA approved alternate test methods or minor modifications to these test methods as approved by the Executive Director.

(g) Initial compliance with the emission specifications of §117.205 of this title or §117.207 of this title for units operating with CEMS in accordance with §117.213(b) of this title shall be demonstrated using the CEMS as follows.

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

(2) For units complying with a NO_x emission limit in pounds per hour, block one-hour average, any one-hour period after CEMS certification testing required in §117.213(b) of this title is used to determine compliance with the NO_x emission limit

(3) For units complying with a CO emission limit, block one-hour average, any one-hour period after CEMS certifica-

tion testing required in §117.213(b) of this title is used to determine compliance with the CO emission limit

(h) Testing with portable analyzers may be used to satisfy the emissions test requirements for units listed in subsection (c) of this section, and for providing initial compliance plan information for all units which are subject to emission limits. The information shall be provided in accordance with the schedule specified for submission of the initial control plan in §117.520 of this title.

§117.213. Continuous Demonstration of Compliance.

(a) The owner or operator of units listed in this subsection and subject to the provisions of this undesignated head (relating to Commercial, Institutional, and Industrial Sources) shall install, calibrate, maintain, and operate an oxygen (O₂) monitor to measure exhaust stack O₂ concentration and a totalizing fuel flow meter to measure the fuel usage. The O₂ monitors and totalizing fuel flow meters shall be installed by the time of compliance with the emission limits specified in §117.205 of this title (relating to Emission Specifications) or §117.207 of this title (relating to Alternative Plant-Wide Emission Specifications) for the following units:

(1) each commercial, institutional, and industrial boiler with a rated heat input greater than or equal to 100 million Btu per hour (MMBtu/hr) and less than 250 MMBtu/hr and an annual heat input greater than 2.2(10¹¹) Btu per year (Btu/yr); and

(2) each process heater with a rated heat input greater than or equal to 100 MMBtu/hr and less than 200 MMBtu/hr and an annual heat input greater than 2.2(10¹¹) Btu/yr.

(b) The owner or operator of units listed in this subsection and subject to the provisions of this undesignated head shall install, calibrate, maintain, and operate a continuous exhaust NO_x monitor, a carbon monoxide (CO) monitor, an O₂ (or carbon dioxide) diluent monitor, and a totalizing fuel flow meter. The required continuous emissions monitoring systems (CEMS) and fuel flow meters will be used to measure NO_x, CO, and O₂ emissions for each affected unit. One CEMS may be used to monitor up to three units. Any CEMS shall meet all the requirements of 40 Code of Federal Regulations (CFR), Part 60, §60.13; 40 CFR 60, Appendix B, Performance Specification 2 and 3, and quality assurance procedures of 40 CFR 60, Appendix F, Procedure 1, Section 5.1.2, except that a cylinder gas audit may be performed in lieu of the annual relative accuracy test audit required in Section 5.1.2. The CEMS shall be subject to the approval of the Executive

Director under any permit issued pursuant to Title V of the 1990 Federal Clean Air Act (FCAA) Amendments.

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

(A) each commercial, institutional, and industrial boiler with a rated heat input greater than or equal to 250 MMBtu/hr and an annual heat input greater than 2.2(10¹¹) Btu/yr;

(B) each process heater with a rated heat input greater than or equal to 200 MMBtu/hr and an annual heat input greater than 2.2(10¹¹) Btu/yr;

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

(D) each unit which uses a chemical reagent for reduction of NO_x; and

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

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

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

(1) process heaters and commercial, institutional, and industrial boilers with a rated heat input greater than or equal to 40.0 MMBtu/hr and less than 100.0 MMBtu/hr;

(2) low annual capacity factor boilers and process heaters as defined in §117.10 of this title (relating to Definitions);

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

(4) stationary gas turbines with a MW rating greater than or equal to 1.0 MW or less than 10.0 MW.

(d) The owner or operator of any stationary gas engine subject to the emission specifications of §117.205 of this title or §117.207 of this title shall install and maintain a totalizing fuel flow meter and perform biennial stack testing of engine emissions of NO_x and CO, measured in accordance with the methods specified in §117.211(f) of this title (relating to Initial Demonstration of Compliance). In lieu of performing stack sampling on a biennial calendar basis, an owner or operator may elect to install and operate an elapsed operating time meter and shall test the engine within 15,000 hours of engine operation after the previous emission test. The owner or operator who elects to test on an operating hour schedule shall submit, in writing, to the Texas Air Control Board and any local air pollution agency having jurisdiction, biennially after the initial demonstration of compliance, documentation of the actual recorded hours of engine operation since the previous emission test, and an estimate of the date of the next required sampling.

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

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

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

(f) The owner or operator of any gas-fired boiler or process heater firing gaseous fuel which contains more than 50% H₂ by volume, shall sample, analyze, and record every three hours the fuel gas composition to comply with the emission specifications of §117.205 of this title or §117.207 of this title. The total H₂ volume flow in all gaseous fuel streams to the unit will be divided by the total gaseous volume flow to determine the volume percent of H₂ in the fuel supply to the unit. Fuel gas analysis shall be tested according to American Society of Testing and Materials (ASTM) Method D-1945-81 or ASTM Method D-2650-83, or other methods which are demonstrated to the satisfaction of the Executive Director to be equivalent. A gaseous fuel stream containing 99% H₂ by volume or greater may use the following procedure to be exempted from the sam-

pling and analysis requirements of this subsection.

(1) A fuel gas analysis must be performed initially using one of the test methods in this subsection to demonstrate that the gaseous fuel stream is 99% H₂ by volume or greater.

(2) The process flow diagram of the process unit which is the source of the H₂ shall be supplied to the Texas Air Control Board (TACB) to illustrate the source and supply of the hydrogen stream.

(3) The owner or operator shall certify that the gaseous fuel stream containing H₂ will continuously remain, as a minimum, at 99% H₂ by volume or greater during its use as a fuel to the combustion unit.

(g) After the initial demonstration of compliance required by §117.211 of this title, compliance with either §117.205 of this title or §117.207 of this title, as applicable, shall be determined by the methods required in this section. Compliance with the emission limitations may also be determined at the discretion of the Executive Director using any TACB compliance method.

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

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

§117.215. Final Control Plan Procedures.

(a) For sources complying with §117.205 of this title (relating to Emission Specifications), the owner or operator of an

affected source shall submit a final control report to show compliance with the requirements of §117.205 of this title by the date specified in §117.520(4) of this title (relating to Compliance Schedule for Commercial, Institutional, and Industrial Combustion Sources). The report shall include a list of all affected units showing the method of control of nitrogen oxides (NO_x) emissions for each unit and the results of testing required in §117.211 of this title (relating to Initial Demonstration of Compliance).

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

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

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

(3) submit a list summarizing the results of testing of each unit at maximum rated capacity, in accordance with the requirements of §117.211 of this title.

§117.217. *Revision of Final Control Plan.* A revised final control plan may be submitted by the owner or operator, along with any required permit applications. Such a plan shall adhere to the emission limits and the final compliance dates of this undesignated head (relating to Commercial, Institutional, and Industrial Sources). New units, including functionally identical replacement units, shall not be incorporated into the plan. The revision of the final control plan shall be subject to the review and approval of the Executive Director.

§117.219. Notification, Recordkeeping, and Reporting Requirements.

(a) For units subject to the exemptions allowed under §117.203(a) of this title (relating to Exemptions), hourly records shall be made of start-up and/or shutdown events and maintained for a period of at least two years. Records shall be available for inspection by the Texas Air Control Board (TACB), United States Environmen-

tal Protection Agency (EPA), and any local air pollution control agency having jurisdiction upon request. These records shall include, but are not limited to: type of fuel burned; quantity of each type fuel burned; and the date, time, and duration of the procedure.

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

(1) verbal notification of the date of any performance testing conducted under §117.211 of this title (relating to Initial Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed; and

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

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

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

(1) the magnitude of excess emissions computed in accordance with 40 Code of Federal Regulations, Part 60, §60.13(h), any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the unit operating time during the reporting period. For gas turbines using steam-to-fuel or water-to-fuel ratio monitor-

ing to demonstrate compliance in accordance with §117.213(e)(2) of this title, excess emissions are computed as each one-hour period during which the hourly steam-to-fuel or water-to-fuel ratio is less than the ratio determined to result in compliance during the initial performance test required by §117.211 of this title;

(2) specific identification of each period of excess emissions that occurs during start-ups, shutdowns, and malfunctions of the affected unit, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted;

(3) the date and time identifying each period during which the continuous monitoring system was inoperative, except for zero and span checks and the nature of the system repairs or adjustments;

(4) when no excess emissions have occurred or the continuous monitoring system has not been inoperative, repaired, or adjusted, such information shall be stated in the report;

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

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

(1) the magnitude of excess emissions (based on the quarterly emission checks of §117.208(c)(7) of this title (relating to Operating Requirements) and the biennial emission testing required for demonstration of emissions compliance in

accordance with §117.213(d) of this title), computed in pounds per hour and grams per horsepower hour, any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the engine operating time during the reporting period;

(2) specific identification, to the extent feasible, of each period of excess emissions that occurs during start-ups, shutdowns, and malfunctions of the engine, catalytic converter, or air-fuel ratio controller, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted

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

(1) on an hourly basis for units complying with an emission limit enforced on a block one-hour average;

(2) on a daily basis for units complying with an emission limit enforced on a rolling 30-day basis; and

(3) on a monthly basis for units exempt from the emission specifications based on annual heat input or hours of operation per calendar year.

§117.221. Alternative Case Specific Specifications. Where a person can demonstrate that an affected unit cannot attain the requirements of §117.205 of this title (relating to Emission Specifications), as applicable, the Executive Director, on a case-by-case basis after considering the technological and economic circumstances of the individual unit, may approve emission specifications different from §117.205 of this title for that unit based on the determination that such specifications are the result of the lowest emission limitation the unit is capable of meeting after the application of reasonably available control technology. In determining whether to approve alternative emission specifications, the Executive Director may take into consideration the ability of the plant at which the unit is located to meet emission specifications through plant-wide averaging at maximum capacity. Any person affected by the decision of the Executive Director may appeal to the Board by filing written notice of appeal with the Executive Director within 30 days after the decision. Such appeal is to be taken by written notification to the Executive Direc-

tor. Section 103.71 of this title (relating to Request for Action by the Board) should be consulted for the method of requesting Board action on the appeal. Executive Director approval does not necessarily constitute satisfaction of all federal requirements nor eliminate the need for approval by the United States Environmental Protection Agency in cases where specified criteria for determining equivalency have not been clearly identified in applicable sections of this undesignated head (relating to Commercial, Institutional, and Industrial Sources).

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

Issued in Austin, Texas, on May 19, 1993.

TRD-9323206 Lane Hartscock
Deputy Director, Air Quality
Planning
Texas Air Control Board

Effective date: June 9, 1993

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For further information, please call: (512) 908-1451

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Subchapter C. Acid Manufac-
turing

Adipic Acid Manufacturing

- 31 TAC §§117.301, 117.305, 117.309, 117.311, 117.313, 117.319, 117.321

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

§117.305. Emission Specifications. No person may allow emissions of nitrogen oxides, calculated as nitrogen dioxide, from the absorber of any adipic acid production unit to exceed 2.5 pounds per ton of adipic acid produced, on a 24-hour rolling average.

§117.309. Control Plan Procedures. Any person affected by this undesignated head (relating to Adipic Acid Manufacturing) shall submit a control plan to the Executive Director on the compliance status of all required emission controls and monitoring systems by April 1, 1994. The Executive Director shall approve the plan if it contains all the information specified in this section. Revisions to the control plan shall be submitted to the Executive Director for approval. The control plan shall provide a detailed description of the method to be

followed to achieve compliance, specifying the anticipated dates by which the following steps will be taken:

(1) dates by which contracts for emission control and monitoring systems will be awarded or dates by which orders will be issued for the purchase of component parts to accomplish emission control or process modification;

(2) date of initiation of on-site construction or installation of emission control equipment or process modification;

(3) date by which on-site construction or installation of emission control equipment or process modification is to be completed; and

(4) date by which final compliance is to be achieved.

§117.313. Continuous Demonstration of Compliance.

(a) The owner or operator of any facility subject to the provisions of this undesignated head (relating to Adipic Acid Manufacturing) shall install, calibrate, maintain, and operate a continuous emissions monitoring system (CEMS) for measuring nitrogen oxides (NO_x) from the absorber.

(b) Any CEMS installed subject to subsection (a) of this section shall meet all requirements of 40 Code of Federal Regulations (CFR), Part 60, §60.13; 40 CFR 60, Appendix B, Performance Specification 2; and quality assurance procedures of 40 CFR 60, Appendix F, Procedure 1, Section 5.1.2, except that a cylinder gas audit may be performed in lieu of the annual relative accuracy test audit required in Section 5.1.2.

(c) The owner or operator of an affected facility shall establish a conversion factor for the purpose of converting monitoring data into units of the emission standard (in pounds NO_x per ton of acid produced) as specified in 40 CFR 60, Subpart G, §60.73(b). NO_x emissions data recorded by the CEMS shall be represented in terms of both parts per million by volume and pounds NO_x per ton of acid produced.

(d) After the initial demonstration of compliance required by §117.311 of this title (relating to Initial Demonstration of Compliance), compliance with §117.305 of this title (relating to Emission Specifications) shall be determined by the methods required in this section. Compliance with the emission limitations may also be determined at the discretion of the Executive Director using any Texas Air Control Board compliance method.

§117.319. Notification, Recordkeeping, and Reporting Requirements.

(a) The owner or operator of an affected facility shall submit to the Executive Director written notification, as follows:

(1) verbal notification of the date of any continuous emissions monitoring systems (CEMS) performance evaluation conducted under §117.313(b) of this title (relating to Continuous Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed; and

(2) verbal notification of the date of any performance testing conducted under §117.311 of this title (relating to Initial Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed.

(b) The owner or operator of an affected facility shall furnish the Executive Director and any local air pollution control agency having jurisdiction a copy of any CEMS performance evaluation conducted under §117.313 of this title, or any performance testing conducted under §117.311 of this title, within 60 days after completion of such evaluation or testing. For purposes of demonstrating compliance with §117.530 of this title (relating to Compliance Schedules For Nitric Acid and Adipic Acid Manufacturing Sources), such results shall be submitted no later than 30 days before the final compliance date specified in §117.530 of this title.

(c) The owner or operator of an affected facility shall report in writing to the Executive Director on a quarterly basis all periods of excess emissions, defined as any 24-hour period during which the average nitrogen oxides (NO_x) emissions (arithmetic average of 24 contiguous one-hour periods) exceed the emission limitation in §117.305 of this title (relating to Emission Specifications) and the monitoring system performance. All reports shall be postmarked or received by the 30th day following the end of each calendar quarter. Written reports shall include the following information:

(1) the magnitude of excess emissions computed in accordance with 40 Code of Federal Regulations, Part 60, §60.13(h), any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the process operating time during the reporting period;

(2) specific identification of each period of excess emissions that occurs during start-ups, shutdowns, and malfunctions of the affected unit, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted;

(3) the date and time identifying each period during which the CEMS was inoperative, except for zero and span checks and the nature of the system repairs or adjustments;

(4) when no excess emissions have occurred or the continuous monitoring system has not been inoperative, repaired, or adjusted, such information shall be stated in the report;

(5) if the total duration of excess emissions for the reporting period is less than 1.0% of the total operating time for the reporting period and the CEMS downtime for the reporting period is less than 5.0% of the total operating time for the reporting period, only a summary report form (as outlined in the latest edition of the Texas Air Control Board (TACB) "Guidance for Preparation of Summary, Excess Emission, and Continuous Monitoring System Reports") shall be submitted, unless otherwise requested by the Executive Director of the TACB. If the total duration of excess emissions for the reporting period is greater than or equal to 1.0% of the total operating time for the reporting period or the CEMS downtime for the reporting period is greater than or equal to 5.0% of the total operating time for the reporting period, a summary report and an excess emission report shall both be submitted.

(d) The owner or operator of an affected facility shall maintain written records of all continuous emissions monitoring and performance test results, hours of operation, and daily production rates. Such records shall be kept for a period of at least two years and shall be made available upon request by authorized representatives of TACB, United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction.

§117.321. Alternative Case Specific Specifications. Where a person can demonstrate that an affected unit cannot attain the requirements of §117.305 of this title (relating to Emission Specifications), as applicable, the Executive Director, on a case-by-case basis after considering the technological and economic circumstances of the individual unit, may approve emission specifications different from §117.305 of this title for that unit based on the determination that such specifications are the result of the lowest emission limitation the unit is capable of meeting after the application of reasonably available control technology. Any person affected by the decision of the Executive Director may appeal to the Board by filing written notice of appeal with the Executive Director within 30 days after the decision. Such appeal is to be taken by written notification to the Executive Director. Section 103.71 of this title (relating to Request for Action by the Board) should be consulted

for the method of requesting Board action on the appeal Executive Director approval does not necessarily constitute satisfaction of all federal requirements nor eliminate the need for approval by the United States Environmental Protection Agency in cases where specified criteria for determining equivalency have not been clearly identified in applicable sections of this undesignated head (relating to Adipic Acid Manufacturing).

This agency hereby certifies that the 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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TPD-9323207

Lane Hartsock
Deputy Director, Air Quality
Planning
Texas Air Control Board

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For further information, please call (512) 908-1451

Nitric Acid Manufacturing

- 31 TAC §§117.401, 117.405, 117.409, 117.411, 117.413, 117.419, 117.421

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

§117.405. Emission Specifications. No person may allow emissions of nitrogen oxides, calculated as nitrogen dioxide, from the absorber of any nitric acid production unit to exceed 20 pounds per ton of nitric acid produced, the production being expressed as 100% nitric acid, on a 24-hour rolling average.

§117.409. Control Plan Procedures. Any person affected by this undesignated head (relating to Nitric Acid Manufacturing) shall submit a control plan to the Executive Director on the compliance status of all required emission controls and monitoring systems by April 1, 1994. The Executive Director shall approve the plan if it contains all the information specified in this section. Revisions to the control plan shall be submitted to the Executive Director for approval. The control plan shall provide a detailed description of the method to be followed to achieve compliance, specifying the anticipated dates by which the following steps will be taken:

- (1) dates by which contracts for emission control and monitoring systems

will be awarded or dates by which orders will be issued for the purchase of component parts to accomplish emission control or process modification;

- (2) date of initiation of on-site construction or installation of emission control equipment or process modification;

- (3) date by which on-site construction or installation of emission control equipment or process modification is to be completed, and

- (4) date by which final compliance is to be achieved.

§117.413. Continuous Demonstration of Compliance.

(a) The owner or operator of any facility subject to the provisions of this undesignated head (relating to Nitric Acid Manufacturing) shall install, calibrate, maintain, and operate a continuous emissions monitoring system (CEMS) for measuring nitrogen oxides (NO_x) from the absorber

(b) Any CEMS installed subject to subsection (a) of this section shall meet all requirements of 40 Code of Federal Regulations (CFR), Part 60, §60.13; 40 CFR 60, Appendix B, Performance Specification 2; and quality assurance procedures of 40 CFR 60, Appendix F, Procedure 1, Section 5.1.2, except that a cylinder gas audit may be performed in lieu of the annual relative accuracy test audit required in Section 5.1.2.

(c) The owner or operator of an affected facility shall establish a conversion factor for the purpose of converting monitoring data into units of the emission standard (in pounds NO_x per ton of acid produced, expressed as 100% nitric acid) as specified in 40 CFR 60, Subpart G, §60.73(b). NO_x emissions data recorded by the CEMS shall be represented in terms of both parts per million by volume and pounds NO_x per ton of acid produced, expressed as 100% nitric acid.

(d) After the initial demonstration of compliance required by §117.411 of this title (relating to Initial Demonstration of Compliance), compliance with §117.405 of this title (relating to Emission Specifications) shall be determined by the methods required in this section. Compliance with the emission limitations may also be determined at the discretion of the Executive Director using any Texas Air Control Board compliance method.

§117.419. Notification, Recordkeeping, and Reporting Requirements.

(a) The owner or operator of an affected facility shall submit to the Executive Director written notification, as fol-

lows:

- (1) verbal notification of the date of any continuous emissions monitoring systems (CEMS) performance evaluation conducted under §117.413(b) of this title (relating to Continuous Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed; and

- (2) verbal notification of the date of any performance testing conducted under §117.411 of this title (relating to Initial Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed.

(b) The owner or operator of an affected facility shall furnish the Executive Director and any local air pollution control agency having jurisdiction a copy of any CEMS performance evaluation conducted under §117.413 of this title (relating to Continuous Demonstration of Compliance), or any performance testing conducted under §117.411 of this title (relating to Initial Demonstration of Compliance), within 60 days after completion of such evaluation or testing. For purposes of demonstrating compliance with §117.530 of this title (relating to Compliance Schedules For Nitric Acid and Adipic Acid Manufacturing Sources), such results shall be submitted no later than 30 days before the final compliance date specified in §117.530 of this title.

(c) The owner or operator of an affected facility shall report in writing to the Executive Director on a quarterly basis all periods of excess emissions, defined as any 24-hour period during which the average nitrogen oxides emissions (arithmetic average of 24 contiguous one-hour periods) as measured by a CEMS exceed the emission limitation in §117.405 of this title (relating to Emission Specifications) and the monitoring system performance. All reports shall be postmarked or received by the 30th day following the end of each calendar quarter. Written reports shall include the following information:

- (1) the magnitude of excess emissions computed in accordance with 40 Code of Federal Regulations, Part 60, §60.13(h), any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the process operating time during the reporting period;

- (2) specific identification of each period of excess emissions that occurs during start-ups, shutdowns, and malfunctions of the affected unit. The nature and cause of any malfunction (if known) and the corrective action taken or preventative measures adopted;

(3) the date and time identifying each period during which the CEMS was inoperative, except for zero and span checks and the nature of the system repairs or adjustments;

(4) when no excess emissions have occurred or the continuous monitoring system has not been inoperative, repaired, or adjusted, such information shall be stated in the report;

(5) if the total duration of excess emissions for the reporting period is less than 1.0% of the total operating time for the reporting period and the CEMS downtime for the reporting period is less than 5.0% of the total operating time for the reporting period, only a summary report form (as outlined in the latest edition of the Texas Air Control Board (TACB) "Guidance for Preparation of Summary, Excess Emission, and Continuous Monitoring System Reports") shall be submitted, unless otherwise requested by the Executive Director of TACB. If the total duration of excess emissions for the reporting period is greater than or equal to 1.0% of the total operating time for the reporting period or the CEMS downtime for the reporting period is greater than or equal to 5.0% of the total operating time for the reporting period, a summary report and an excess emission report shall both be submitted.

(d) The owner or operator of an affected facility shall maintain written records of all continuous emissions monitoring and performance test results, hours of operation, and daily production rates. Such records shall be kept for a period of at least two years and shall be made available upon request by authorized representatives of TACB, United States Environmental Protection Agency, or any local air pollution control agency having jurisdiction.

§117.421. Alternative Case Specific Specifications. Where a person can demonstrate that an affected unit cannot attain the requirements of §117.405 of this title (relating to Emission Specifications), as applicable, the Executive Director, on a case-by-case basis after considering the technological and economic circumstances of the individual unit, may approve emission specifications different from §117.405 of this title for that unit based on the determination that such specifications are the result of the lowest emission limitation the unit is capable of meeting after the application of reasonably available control technology. Any person affected by the decision of the Executive Director may appeal to the Board by filing written notice of appeal with the Executive Director within 30 days after the decision. Such appeal is to be taken by written notification to the Executive Director. Section 103.71 of this title (relating to Request for Action by the Board) should be consulted

for the method of requesting Board action on the appeal. Executive Director approval does not necessarily constitute satisfaction of all federal requirements nor eliminate the need for approval by the United States Environmental Protection Agency in cases where specified criteria for determining equivalency have not been clearly identified in applicable sections of this undesignated head (relating to Nitric Acid Manufacturing).

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

Issued in Austin, Texas, on May 19, 1993

TRD-9323208 Lane Hartssock
Deputy Director, Air Quality
Planning
Texas Air Control Board

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For further information, please call (512) 908-1451

Nitric Acid Manufacturing- General

• 31 TAC §§117.451, 117.455, 117.458

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

§117.451. Applicability The emission limitations specified in §117.455 of this undesignated head (relating to Emission Specifications) shall apply to all nitric acid production units in the state, with the exception that for nitric acid production units located in applicable ozone nonattainment areas, the emission limitations of §117.405 (relating to Emission Specifications) shall apply after May 31, 1995.

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-9323209 Lane Hartssock
Deputy Director, Air Quality
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For further information, please call (512) 908-1451

Subchapter D. Administrative Provisions

• 31 TAC §§117.510, 117.520, 117.530, 117.540, 117.550, 117. 560, 117.570

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

§117.510. Compliance Schedule For Utility Electric Generation. All persons affected by the provisions of the undesignated head (relating to Utility Electric Generation) in Subchapter B of this chapter shall be in compliance as soon as practicable, but no later than May 31, 1995 (final compliance date). Additionally, all affected persons shall meet the following compliance schedules and submit written notification to the Executive Director

(1) no later than April 1, 1994, submit a plan for compliance in accordance with §117.109 of this title (relating to Initial Control Plan Procedures),

(2) conduct applicable continuous emissions monitoring system (CEMS) evaluations and quality assurance procedures as specified in §117.113 of this title (relating to Continuous Demonstration of Compliance) no later than January 1, 1995,

(3) install all nitrogen oxides (NO_x) abatement equipment, implement all NO_x control techniques, and submit the results of the CEMS performance evaluation and quality assurance procedures to the Texas Air Control Board no later than May 31, 1995,

(4) conduct applicable tests for initial demonstration of compliance as specified in §117.111 of this title (relating to Initial Demonstration of Compliance) no later than 60 days after May 31, 1995

§117.520. Compliance Schedule For Commercial, Institutional, and Industrial Combustion Sources. All persons affected by the provisions of the undesignated head (relating to Commercial, Institutional, and Industrial Sources) in Subchapter B of this chapter shall be in compliance as soon as practicable, but no later than May 31, 1995 (final compliance date). All affected persons shall meet the following compliance schedules and submit written notification to the Executive Director

(1) no later than April 1, 1994, submit a plan for compliance in accordance with §117.209 of this title (relating to Initial Control Plan Procedures),

(2) install all nitrogen oxides (NO_x) abatement equipment and implement

all NO_x control techniques no later than May 31, 1995;

(3) for units operating without continuous emissions monitoring system (CEMS), conduct applicable tests for initial demonstration of compliance as specified in §117.211 of this title (relating to Initial Demonstration of Compliance); and submit the results by April 1, 1994, or as early as practicable, but in no case later than May 31, 1995;

(4) for units operating with CEMS and complying with the NO_x emission limit in pound per million Btu on a rolling 30-day average, conduct the applicable tests for the initial demonstration of compliance as specified in §117.211 of this title and submit the results of the applicable CEMS performance evaluation and quality assurance procedures as specified in §117.213 of this title (relating to Continuous Demonstration of Compliance) within 60 days after May 31, 1995.

§117.530. Compliance Schedule For Nitric Acid and Adipic Acid Manufacturing Sources. All persons affected by the provisions of the undesignated head (relating to Adipic Acid Manufacturing) in Subchapter C of this chapter or the provisions of the undesignated head (relating to Nitric Acid Manufacturing) in Subchapter C of this chapter shall be in compliance as soon as practicable, but no later than May 31, 1995 (final compliance date). All affected persons shall meet the following compliance schedules and submit written notification to the Executive Director:

(1) no later than April 1, 1994, submit a control plan for compliance as specified in §117.309 of this title (relating to Control Plan Procedures) and §117.409 of this title (relating to Control Plan Procedures);

(2) conduct applicable continuous emissions monitoring system (CEMS) performance evaluation and quality assurance procedures as specified in §117.313 of this title (relating to Continuous Demonstration of Compliance) and §117.413 of this title (relating to Continuous Demonstration of Compliance); provide previous testing documentation for any claimed test waiver as allowed by §117.311(d) of this title (relating to Initial Demonstration of Compliance) or §117.411(d) of this title (relating to Initial Demonstration of Compliance); and conduct applicable performance testing as specified in §117.311 of this title and §117.411 of this title, by:

(A) no later than January 1, 1994, for affected facilities not performing process modification or installation of a CEMS device as part of the control plan specified in §117.309 of this title and §117.409 of this title; and

(B) no later than May 31, 1995, for affected facilities performing process modification or installation of a CEMS device as part of the control plan specified in §117.309 of this title and §117.409 of this title;

(3) within 60 days after the applicable date specified in paragraph (2)(A) or (B) of this section, submit the results of CEMS performance evaluation and quality assurance procedures and the results of performance testing specified in paragraph (2) of this section.

§117.540. Phased Reasonably Available Control Technology (RACT).

(a) The owner or operator affected by the provisions of this chapter (relating to Control of Air Pollution from Nitrogen Compounds) who believes that compliance by May 31, 1995, is not practicable may submit a petition for phased RACT. The process for submitting a petition and receiving approval shall be based on the following.

(1) The petition shall be submitted with the applicable initial control plan required in §117.109 of this title (relating to Initial Control Plan Procedures), §117.209 of this title (relating to Initial Control Plan Procedures), §117.309 of this title (relating to Control Plan Procedures), or §117.409 of this title (relating to Control Plan Procedures); or as soon as possible after determination by the owner or operator that compliance by May 31, 1995 is not practicable.

(2) The owner or operator of the proposed unit shall submit information to the Texas Air Control Board (TACB) and a copy to the United States Environmental Protection Agency (EPA) Regional Office in Dallas which will demonstrate all of the following.

(A) Compliance by May 31, 1995, is impracticable due to the unavailability of nitrogen oxides abatement equipment, engineering services, or construction labor; system unreliability; or other technological and economic factors (such as costs of additional outages necessitated by compliance with the emission specifications of this title by May 31, 1995, as demonstrated by comparison to costs of actual historical and planned outages) as the TACB determines is appropriate.

(B) There is a proposed stage-by-stage program for compliance and clearly specified compliance milestones for each unit.

(C) There is a commitment to implement the portion of the phased RACT petition that can be implemented by May 31, 1995.

(3) The Executive Director shall approve a petition for phased RACT if the Executive Director determines that compliance is not practicable by May 31, 1995, because of the unavailability of nitrogen oxides abatement equipment, engineering services, or construction labor; system unreliability; or other technological and economic factors (such as costs of additional outages necessitated by compliance with the emission specifications of this title by May 31, 1995, as demonstrated by comparison to costs of actual historical and planned outages) as the TACB determines is appropriate.

(4) Any person affected by the Executive Director's decision may appeal the decision to the Board within 30 days after the date of the decision. Such appeal is to be taken by written notification to the Executive Director. Section 103.71 of this title (relating to Request for Action by the Board) should be consulted for the method of requesting Board action on the appeal. Approved petitions for phased RACT may be revised by the Executive Director upon a showing of just cause by the applicant.

(5) Approval of a phased RACT schedule by the TACB does not waive any applicable federal requirements or eliminate the need for approval by the EPA.

(6) The holder of an approved phased RACT determination shall comply with each specified compliance milestone and each date for compliance provided in the approved petition, as well as any other condition established in the approval.

(b) The Executive Director shall initiate a re-evaluation of the final compliance dates specified in this undesignated head (relating to Administrative Provisions) one year after the adoption of this chapter. The Executive Director shall evaluate the practicability of all sources complying with §117.105 of this title (relating to Emission Specifications), §117.107 of this title (relating to Alternative System-Wide Emission Specifications), §117.205 of this title (relating to Emission Specifications), §117.207 of this title (relating to Alternative Plant-Wide Emission Specifications), §117.305 of this title (relating to Emission Specifications), and §117.405 of this title (relating to Emission Specifications), by May 31, 1995. The Executive Director shall base the evaluation on the information contained in the control plans required by §117.109 of this title, §117.209 of this title, §117.309 of this title, and §117.409 of this title. In evaluating the practicability of compliance by May 31, 1995, the Executive Director shall take into consideration the availability of nitro-

gen oxides abatement equipment, engineering services, construction labor; the system reliability of all affected units; or other technological and economic factors (such as costs of additional outages necessitated by compliance with the emission specifications of this title by May 31, 1995, as demonstrated by comparison to costs of actual historical and planned outages) as the TACB determines is appropriate. Within 15 months after adoption of these rules, the Executive Director shall publish notice in the *Texas Register* the intent to either retain or extend by rulemaking the final compliance dates of this undesignated head.

§117.560. Rescission. If, after reviewing the results of the Urban Airshed Model for a nonattainment area, the Texas Air Control Board (TACB) determines after conducting public hearings that the additional reductions of nitrogen oxides (NO_x) in the nonattainment area would not contribute to attainment of the National Ambient Air Quality Standards for ozone in that nonattainment area, then the TACB shall have the Executive Director submit such findings and results to the United States Environmental Protection Agency (EPA) Administrator for a determination under the 1990 Federal Clean Air Act Amendments, §182(f). If the EPA Administrator approves the TACB's finding, then the requirements of this chapter shall be repropounded in rulemaking to address the findings of the Administrator as to the applicable NO_x requirements.

§117.570. Alternate Means of Compliance-Trading.

(a) The Executive Director may approve alternate means of compliance with this chapter (relating to Control of Air Pollution From Nitrogen Compounds), including the use of emission reduction credits. The alternative compliance plan may include the trading of emission reduction credits between sources owned by the same company as well as between sources owned by different companies. Any alternative compliance plan may be approved if the Executive Director determines that it will provide substantially equivalent emission reductions to those required by this chapter and satisfactory means for determining ongoing compliance with the approved alternative compliance plan, including monitoring. Executive Director approval does not necessarily constitute satisfaction of all federal requirements, nor eliminate the need for approval by the United States Environmental Protection Agency (EPA) of any alternate method.

(b) The Executive Director may consider the establishment of a facility cap as an alternate means of compliance with this chapter. A facility cap plan submitted

under this provision may be approved if the Executive Director determines that it will provide substantially equivalent emission reductions to those required by this chapter and establishes satisfactory means for determining ongoing compliance with the facility cap, including appropriate monitoring and recordkeeping requirements. Executive Director approval does not necessarily constitute satisfaction of all federal requirements, nor eliminate the need for approval by the EPA of any alternate method.

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-9323210 Lane Hartsock
Deputy Director, Air Quality
Planning
Texas Air Control Board

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For further information, please call: (512) 908-1451

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Subchapter E. Gas-Fired Steam Generation

• 31 TAC §117.601

The new rule is adopted under the Texas Health and Safety Code (Vernon 1990), Texas Clean Air Act, §382.017, which provides TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§117.601. Gas-Fired Steam Generation.

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

(b) No person shall allow emissions of nitrogen oxides (NO_x), calculated as ni-

trogen dioxide (NO₂), from any "opposed-fired" steam generating unit of more than 600,000 pounds per hour (lbs/hr) maximum continuous steam capacity to exceed 0.7 pound per million (lb/MM) Btu heat input, maximum two-hour average, at maximum steam capacity. An "opposed-fired" steam generating unit is defined as a unit having burners installed on two opposite vertical firebox surfaces.

(c) No person shall allow emissions of NO_x, calculated as NO₂, from any "front-fired" steam generating unit of more than 600,000 lbs/hr maximum continuous steam capacity to exceed 0.5 lb/MMBtu heat input, maximum two-hour average, at maximum steam capacity. A "front-fired" steam generating unit is defined as a unit having all burners installed in a geometric array on one vertical firebox surface.

(d) No person shall allow emissions of NO_x, calculated as NO₂, from any "tangential-fired" steam generating unit of more than 600,000 lbs/hr maximum continuous steam capacity to exceed 0.25 lb/MMBtu heat input, maximum two-hour average, at maximum steam capacity. A "tangential-fired" steam generating unit is defined as a unit having burners installed on all corners of the unit at various elevations.

(e) Existing gas-fired steam generating units of more than 600,000 lbs/hr, but less than 1,100,000 lbs/hr, maximum continuous steam capacity are exempt from the provisions of this section, provided the total steam generated from the unit during any one calendar year does not exceed 30% of the product of the maximum continuous steam capacity of the unit times the number of hours in a year. Written records of the amount of steam generated for each day's operation shall be made on a daily basis and maintained for at least three years from the date of each entry. Such records shall be made available for inspection by employees of state and local agencies having jurisdiction 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.

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TRD-9323211 Lane Hartsock
Deputy Director, Air Quality
Planning
Texas Air Control Board

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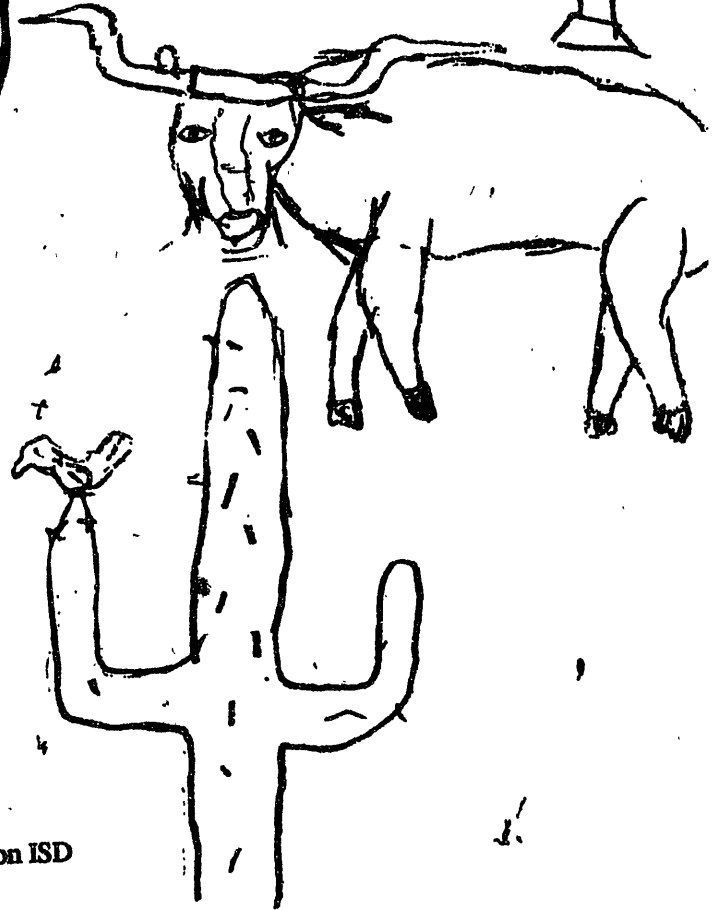
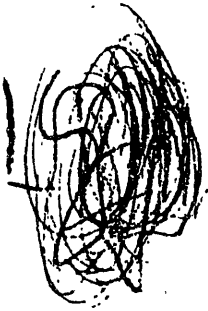
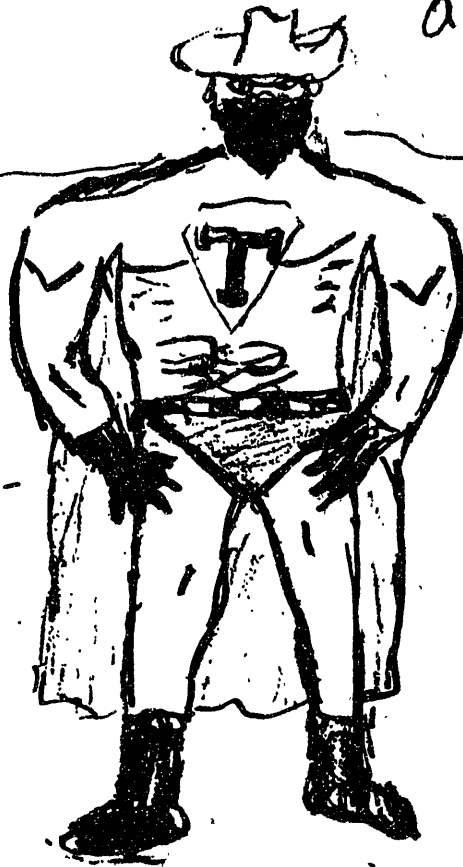
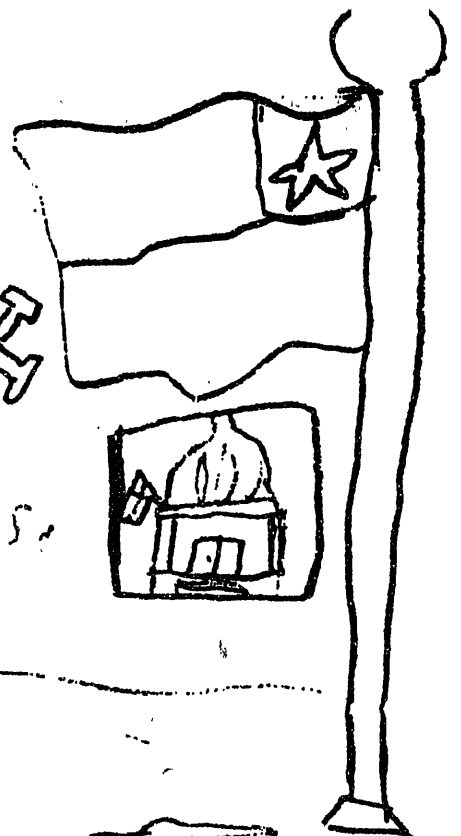
For further information, please call: (512) 908-1451

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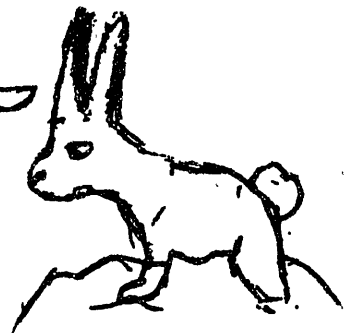


TEX

Defender of all Texas animals.



Name: David Smyth
Grade: 4
School: Evers Park Elementary, Denton ISD





Name: Huston Smith
Grade: 4
School: Evers Park Elementary, Denton ISD

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours 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 of Agriculture

Wednesday, June 2, 1993, 2:30 p.m. The Egg Marketing Advisory Board of the Texas Department of Agriculture will meet at the Texas Department of Agriculture, 1700 North Congress Avenue, Stephen F. Austin Building, Room 924-A, Austin. According to the agenda summary, the board will make introductions; discuss and act on policy regarding copies of inspection reports; temperature requirements for shell eggs; TDA marketing opportunities; legislative changes; cooperative inspection agreement; inspection plan; out of state record inspections; and discuss other business.

Contact: Bob Tarrant, P.O. Box 12847, Austin, Texas 78711, (512) 463-7401.

Filed: May 21, 1993, 1:53 p.m.

TRD-9323291

Texas Commission for the Blind

Tuesday, June 8, 1993, 2:00 p.m. The San Angelo District Office of the Texas Commission for the Blind will meet at 441 Rio Concho Drive, Holiday Inn/Stephen F. Austin, San Angelo. According to the complete agenda, the purpose of this forum is to receive public input on agency programs and services. Public comments and suggestions will be used to update the State Plan of the Texas Commission for the Blind. Persons unable to attend may send comments to the Public Information Office, 4800 North Lamar Boulevard, Suite 320, Austin, Texas 78756. Due to the possibility of last minute changes, please call to confirm meeting date and location at 1-800-

252-5204. Persons with disabilities who have special communication or other needs who are planning to attend the forum should contact the Commission's San Angelo District Office, (915) 949-4501. Requests should be made as far in advance as possible.

Contact: Andrew A. Wier, 4800 North Lamar Boulevard, Austin, Texas 78756, (512) 459-2615.

Filed: May 21, 1993, 9:40 a.m.

TRD-9323259

Friday, June 11, 1993, 1:00 p.m. The Waco District Office of the Texas Commission for the Blind will meet at IH-35 and Lake Brazos Drive, Holiday Inn, Waco. According to the complete agenda, the purpose of this forum is to receive public input on agency programs and services. Public comments and suggestions will be used to update the State Plan of the Texas Commission for the Blind. Persons unable to attend may send comments to the Public Information Office, 4800 North Lamar Boulevard, Suite 320, Austin, Texas 78756. Due to the possibility of last minute changes, please call to confirm meeting date and location at 1-800-252-5204. Persons with disabilities who have special communication or other needs who are planning to attend the forum should contact the Commission's Waco District Office, (817) 772-9284. Requests should be made as far in advance as possible.

Contact: Andrew A. Wier, 4800 North Lamar Boulevard, Austin, Texas 78756, (512) 459-2615.

Filed: May 21, 1993, 9:40 a.m.

TRD-9323260

Texas Education Agency

Thursday-Friday, June 3-4, 1993, 9:00 a.m. The Commission on Braille Textbook Production of the Texas Education Agency will meet in the Marina Conference Room, Radisson Marina Hotel, 300 North Shoreline Boulevard, Corpus Christi. According to the agenda summary, on Thursday, the commission will call the meeting to order; make welcoming remarks; announcements; hear chairman's preview; discuss status of Senate Bill 1363; the legislature's response to the braille commission report; braille file production methods: description, comparison, and contrast; publisher file production methods: description, comparison, and contrast; four joint working sessions; and wrap-up. On Friday, the commission will call the meeting to order; make welcoming remarks; discuss review of draft instructions for preparing textbook files needed for the next three years; update on efforts to develop accessible electronic instructional media systems; status of braille production for school year 1993-1994; hear public comments; and wrap-up.

Contact: Charles Mayo, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9606.

Filed: May 21, 1993, 8:50 a.m.

TRD-9323254

Thursday, June 17, 1993, 6:30 p.m. The State Board of Education (SBOE) Task Force on Elementary and Early Childhood Education of the Texas Education Agency will meet at the Arlington Independent School District, 1203 West Pioneer Parkway, Arlington. According to the complete agenda, the task force will hold a public hearing to receive public comment on a range of issues. The task force is examining

the quality and effectiveness of student learning in elementary schools and early childhood education. The panel's work will be similar to successful practices already undertaken in middle school and high school education. Those individuals wishing to pre-register may do so by calling (512) 463-9701 by noon on Tuesday, June 15. Registration will be on a first-come, first-served basis and speakers will be limited to three minutes. There will also be on-site registration of speakers, and speakers are asked to bring ten copies of any handouts they wish to distribute.

Contact: Dan Arrigona, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: May 24, 1993, 3:07 p.m.

TRD-9323367

Tuesday, June 15, 1993, 6:30 p.m. The State Board of Education (SBOE) Task Force on Elementary and Early Childhood Education of the Texas Education Agency will meet at the Socorro Independent School District, 12300 Eastlake, El Paso. According to the complete agenda, the task force will hold a public hearing to receive public comment on a range of issues. The task force is examining the quality and effectiveness of student learning in elementary schools and early childhood education. The panel's work will be similar to successful practices already undertaken in middle school and high school education. Those individuals wishing to pre-register may do so by calling (512) 463-9701 by noon on Tuesday, June 15. Registration will be on a first-come, first-served basis and speakers will be limited to three minutes. There will also be on-site registration of speakers, and speakers are asked to bring ten copies of any handouts they wish to distribute.

Contact: Dan Arrigona, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: May 24, 1993, 3:10 p.m.

TRD-9323368

Texas Employment Commission

Tuesday, June 1, 1993, 9:00 a.m. The Texas Employment Commission will meet at the TEC Building, Room 644, 101 East 15th Street, Austin. According to the agenda summary, the commission will discuss approval of prior meeting notes; hear staff reports; consider new legislation and possible action with respect thereto; discuss internal procedures of commission appeals; consider and possibly act on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 22; an set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: May 24, 1993, 4:07 p.m.

TRD-9323379

Fire Fighters' Pension Commission

Friday, June 4, 1993, 9:00 a.m. The Administrative Division of the Fire Fighters' Pension Commission will meet at the Royce Hotel, Gemini Room, Woodward at IH-35 South, Austin. According to the agenda summary, the Senate Bill 411 Statewide Volunteer Fire Fighters' Retirement Fund Board of Trustees will meet, as prescribed by Article 6243.e3, Texas Civil Statutes, to discuss investments; policy on worthless securities; transaction fees; custodian contract proposal; and review of reports by Actuary, Accountant, Plan Consultant, and FFPC staff.

Contact: Helen L. Campbell, 3910 South IH-35, Suite 235, Austin, Texas 78704, (512) 462-0222.

Filed: May 24, 1993, 9:40 a.m.

TRD-9323344

Office of the Governor

Friday, May 28, 1993, 9:30 a.m. The Automobile Theft Prevention Authority of the Office of the Governor will meet at the John Reagan Building, Room 106, 105 West 15th Street, Austin. According to the agenda summary, the authority will call the meeting to order; make introductions; hear report by Department of Public Safety; report on grantees and programs; report on schedule for grant process; border solutions committee reports; legislative committee report; marketing committee report; and adjourn.

Contact: Linda Young, 221 East 11th Street, Austin, Texas 78701, (512) 463-1919.

Filed: May 20, 1993, 3:09 p.m.

TRD-9323237

Texas Department of Insurance

Tuesday, June 1, 1993, 9:00 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 13th Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether underwriting guidelines of Southern Farm Bureau, Texas Farm Mutual

Bureau Insurance Company and Texas Farm Bureau Underwriters Insurance Company are a trade secret.

Contact: Melissa Slusher, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

Filed: May 24, 1993, 3:55 p.m.

TRD-9323377

Tuesday, June 1, 1993, 1:30 p.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 13th Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Norman Lee Bedford, Tyler, who holds a Group I, Legal Reserve Life Insurance Agent's license and Group II Insurance Agent's license.

Contact: Melissa Slusher, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

Filed: May 24, 1993, 3:54 p.m.

TRD-9323375

Tuesday, June 1, 1993, 1:30 p.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 13th Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application for amendment of the Articles of Incorporation of Hochheim Prairie Insurance Company, Yoakum, increasing the authorized capital.

Contact: Melissa Slusher, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

Filed: May 24, 1993, 3:55 p.m.

TRD-9323376

Wednesday, June 2, 1993, 1:30 p.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 13th Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application of Dennis J. Onstott, Seabrook, for a solicitor's license.

Contact: Melissa Slusher, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

Filed: May 24, 1993, 3:54 p.m.

TRD-9323374

Thursday, June 3, 1993, 9:00 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 13th Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Phil Edward Watts, of Zephyr, who holds a Group I, Legal Re-

serve Life Insurance Agent's license.

Contact: Melissa Slusher, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

Filed: May 24, 1993, 3:54 p.m.

TRD-9323373

Thursday, June 3, 1993, 1:30 p.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 13th Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application of Dennis D. Lambert of Tyler, for a Group I, Legal Reserve Life Insurance Agent's license.

Contact: Melissa Slusher, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

Filed: May 24, 1993, 3:54 p.m.

TRD-9323371

Thursday, June 3, 1993, 1:30 p.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby I, 13th Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Alton Glen Angelle, of Port Neches, who holds a local recording agent's license.

Contact: Melissa Slusher, 333 Guadalupe Street, Hobby II, Austin, Texas 78701, (512) 475-2983.

Filed: May 24, 1993, 3:54 p.m.

TRD-9323372

Wednesday, June 9, 1993, 1:30 p.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, Room 100, 333 Guadalupe Street, Austin. According to the complete agenda, the board will hold a public hearing under Docket Number 1990 to consider a Joint Application for Relief from Administrative Law Judge's Decision and Request for Expedited Action relating to premium by territory data of certain State Farm Insurance Companies.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: May 25, 1993, 8:32 a.m.

TRD-9323389

Lamar University System

Monday, May 24, 1993, 9:00 a.m. The Committees of the Lamar University System met at the John Gray Institute, Map Room, 855 Florida, Beaumont. According to the revised agenda summary, the building

and grounds and the finance and audit committees met.

Contact: James A. (Dolph) Norton, P.O. Box 11900, Beaumont, Texas 77705, (409) 880-2304.

Filed: May 20, 1993, 10:22 a.m.

TRD-9323225

Texas Commission on Law Enforcement Officer Standards and Education

Wednesday, June 2, 1993, 10:00 a.m. The Law Enforcement Management Institute of the Texas Commission on Law Enforcement Officer Standards and Education will meet at the TCLEOSE Headquarters, 1033 LaPosada, Austin. According to the agenda summary, the commission will call the meeting to order; recognize visitors; make introductions of newly appointed member(s); election of chairman, vice-chairman, and secretary; discuss approval of the minutes of the March 16, 1993, board meeting; discuss and act on legislative issues, special issues topic and schedules; proposed amendment to §213.1, Definitions and §213.20, Participant Selection and Class Assignment for the Graduate, Management Institute (GMI); hear staff activity reports; discuss future board meeting dates; hear public comments on any topic without discussion; and adjourn.

Contact: Fred Toler, 1033 LaPosada, Suite 175, Austin, Texas 78752, (512) 450-0188.

Filed: May 20, 1993, 11:18 a.m.

TRD-9323228

Monday, June 14, 1993, 1:30 p.m. The Texas Commission on Law Enforcement Officer Standards and Education will meet at the Doubletree Hotel, 6505 IH-35 North, Austin. According to the agenda summary, the commission will call the meeting to order; introduce new commissioners; recognize visitors; hear Basic Peace Officer Curriculum Standing Revisions Committee report; update on test for new BPOC; discuss proposed amendments to §211.77, Minimum Training Standards for Peace Officers; §217.10, Psychological Declaration; and §211.65, Academy Licensing; and final adoption of amendment to §211.85, Proficiency Certificates; academy evaluations; academy license application of San Marcos Police Department; discuss staff activities/reports; and adjourn.

Contact: Fred Toler, 1033 LaPosada, Suite 175, Austin, Texas 78752, (512) 450-0188.

Filed: May 25, 1993, 9:00 a.m.

TRD-9323393

Tuesday, June 15, 1993, 9:00 a.m. The Texas Commission on Law Enforcement Officer Standards and Education will meet at the Doubletree Hotel, 6505 IH-35 North, Austin. According to the agenda summary, the commission will call the meeting to order; introduce new commissioners and elect chairman, vice-chairman and secretary; recognize visitors; discuss approval of the minutes of March 29-30, 1993 meetings, discuss and possibly act on proposed amendment to §211.77, Minimum Training Standards for Peace Officers; §217.10, Psychological Declaration; and §211.65, Academy Licensing; and on final adoption of proposed amendment to §211.85, Proficiency Certificates; academy license application of San Marcos Police Department; consider final orders on revocations, agreed final orders on suspensions; report on voluntary surrenders; public comments on any subject without discussion will be received; and adjourn.

Contact: Fred Toler, 1033 LaPosada, Suite 175, Austin, Texas 78752, (512) 450-0188.

Filed: May 25, 1993, 9:00 a.m.

TRD-9323394

Texas Department of Licensing and Regulation

Monday, June 14, 1993, 9:00 a.m. The Inspections and Investigations: Personnel Employment Services of the Texas Department of Licensing and Regulation will meet at 920 Colorado, E.O. Thompson Building, Room 1012, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension, or revocation of the license for Dawn L. Treharne doing business as Careers El Paso Employment Agency for violation of Texas Civil Statutes, Article 5221a-7, §§3(a)(3), 3(a)(9), 7(a), and 7(c), 16 TAC, §§63.71(a)(3), 63.71(a)(8), 63.21(a), and 63.40(a), Business Commerce Code, Chapter 17, Article 6252-13a, and Article 9100.

Contact: Paula Hamje, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: May 20, 1993, 4:18 p.m.

TRD-9323243

Tuesday, June 29, 1993, 9:00 a.m. The Inspections and Investigations: Tow Trucks of the Texas Department of Licensing and Regulation will meet at 920 Colorado, E.O. Thompson Building, Room 1012, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension, or revocation of the license for Frank

Thompson doing business as A-F Garage for violation of Texas Civil Statutes, Article 6687-9b, §2 and §8, 16 TAC, Chapter 80, Article 6252-13a, and Article 9100.

Contact: Paula Hamje, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: May 20, 1993, 4:19 p.m.

TRD-9323244

Wednesday, June 30, 1993, 9:00 a.m.: The Inspections and Investigations: Tow Trucks of the Texas Department of Licensing and Regulation will meet at 920 Colorado, E.O. Thompson Building, Room 1012, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension, or revocation of the license for Pedro Ramos Llamas for violation of Texas Civil Statutes, Article 6687-9b, §2 and §8, 16 TAC, Chapter 80, Article 6252-13a, and Article 9100.

Contact: Paula Hamje, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: May 20, 1993, 4:18 p.m.

TRD-9323242

Texas State Board of Medical Examiners

Tuesday, June 1, 1993, 9:00 a.m. The Hearings Division of the Texas State Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the complete agenda, the agenda includes probationary appearances on the following physicians: Larry Ray Birdwell, D.O.; Bradly Bundrant, M.D.; Robert Moreton Davis, M.D.; Rodney Norman Dotson, M.D.; Scott Richard Elkin, D.O.; David A. Katendahl, M.D.; John Alonzo Luker, M.D.; A.E. Minyard, M.D.; Douglas Hall Rankin, M.D.; and Alfred Vaughn Williams, M. D.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: May 20, 1993, 2:16 p.m.

TRD-9323235

Monday, June 7, 1993, 9:00 a.m. The Hearings Division of the Texas State Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the complete agenda, the agenda includes probationary appearances and a request for termination of probation; and the division will meet in executive session under authority of Article 6252-17, as related to Article 4495b, §§2.07(b), 3.05(d), 4.05(d), 5.06(s)(1), and Op. A. G. 1974, Number H-484.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: May 20, 1993, 12:43 p.m.

TRD-9323276

Tuesday, June 8, 1993, 9:00 a.m. The Hearings Division of the Texas State Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the complete agenda, the agenda includes probationary appearances, a request for modification of probation, and a request for termination of probation; and the division will meet in executive session under authority of Article 6252-17, as related to Article 4495b, §§2.07(b), 3.05(d), 4.05(d), 5.06(s)(1), and Op. A.G. 1974, Number H-484.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: May 20, 1993, 12:43 p.m.

TRD-9323277

Tuesday, June 22, 1993, 9:00 a.m. The District Review Committee Number Four of the Texas State Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the complete agenda, the committee will call the meeting to order; discuss election of officers; review of multiple liability files; and adjourn. The committee will meet in executive session under authority of Article 6252-17, as related to Article 4495b, §§2.07(b), 3.05(d), 4.05(d), 5.06(s)(1) and Op. A.G. 1974, Number H-484.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: May 20, 1993, 12:43 p.m.

TRD-9323278

Texas Municipal Retirement System

Saturday, June 5, 1993, 9:00 a.m. The Board of Trustees of the Texas Municipal Retirement System will meet at 1200 North IH-35, Austin. According to the complete agenda, the board will hear and discuss approval of the minutes of the March 5, 1993, meeting; review and approve service retirements and disability retirements; Supplemental Death Benefits payments; consider Extended Supplemental Death Benefits coverage; review and act on financial statements; audit report, act on recommendations in auditor's management letter; hear presentation of actuarial report, presentation of 1994 contribution rates, presentation and approval of Supplemental Death Benefits contribution rates for 1994; presentation of 1992 annual report; consider comprehensive compensation/classification study for TMRS; report by legal counsel; report by

director; and consider any other business before the board.

Contact: Gary W. Anderson, P.O. Box 2225, Austin, Texas 78768, (512) 476-7577.

Filed: May 21, 1993, 12:11 p.m.

TRD-9323275

Board of Nurse Examiners

Tuesday-Wednesday, May 25-26, 1993, 8:00 a.m. The Board of Nurse Examiners will meet in emergency revised agenda at 1812 Centre Creek Drive, Room 203, Austin. According to the emergency revised agenda summary, the board will take action on additional proposed board orders such as Declaratory Orders and ALJ proposals for decisions. The emergency status is necessary because action is required on these orders prior to the next regularly scheduled meeting in July.

Contact: Erlene Fisher, Box 140466, Austin, Texas 78714, (512) 835-8675.

Filed: May 20, 1993, 3:32 p.m.

TRD-9323241

Tuesday-Wednesday, May 25-26, 1993, 8:00 a.m. The Board of Nurse Examiners met at 1812 Centre Creek Drive, Room 203, Austin. According to the complete emergency revised agenda, the board took action on the license of Ann McTier, TX #510507, Voluntary Surrender. The emergency status was necessary as action was required prior to the next regularly scheduled meeting in July.

Contact: Erlene Fisher, Box 140466, Austin, Texas 78714, (512) 835-8675.

Filed: May 24, 1993, 3:57 p.m.

TRD-9323378

Texas Board of Pardons and Paroles

Tuesday-Wednesday, June 1-2, 1993, 9:30 a.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 3915 Market Street, Tyler. According to the complete agenda, the panel(s) composed of three board member(s) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: May 21, 1993, 10:49 a.m.

TRD-9323265

Tuesday-Wednesday, June 1-2, 1993, 1:30 p.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 1550 East Palestine, Suite 100, Palestine. According to the complete agenda, the panel(s) composed of three board member(s) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: May 21, 1993, 10:50 a.m.

TRD-9323269

Tuesday-Friday, June 1-4, 1993, 1:30 p.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 2503 Lake Road, Suite 2, Huntsville. According to the complete agenda, the panel(s) composed of three board member(s) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: May 21, 1993, 10:49 a.m.

TRD-9323267

Thursday, June 3, 1993, 9:00 a.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 1212 North Velasco, Suite 201, Angleton. According to the complete agenda, the panel(s) composed of three board member(s) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: May 21, 1993, 10:50 a.m.

TRD-9323268

Thursday-Friday, June 3-4, 1993, 9:00 a.m. The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 1550 East Palestine, Suite 100, Palestine. According to the complete agenda, the panel(s) composed of three board member(s) will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: May 21, 1993, 10:49 a.m.

TRD-9323266

Texas Property and Casualty Insurance Guaranty Association

Tuesday, May 25, 1993, 2:00 p.m. The Board of Directors of the Texas Property and Casualty Insurance Guaranty Association held an emergency meeting at 9420 Research Boulevard, Echelon III, Suite 400, Austin. According to the complete agenda, the board observed a presentation; discussed a proposal by State and County Mutual Insurance Company to assume a block of Guaranty Mutual Insurance Company's policies; and observed a presentation and discussed a proposal by Old American Mutual Insurance Company to assume a block of Union Pacific Insurance Company's policies. The emergency status was necessary to consider matters relating to the assets of insurance estates within court ordered time constraints.

Contact: Al Belmarez, 9420 Research Boulevard, Echelon III, Suite 400, Austin, Texas 78759, (512) 345-9335.

Filed: May 25, 1993, 9:37 a.m.

TRD-9323401

Texas Department of Public Safety

Thursday, June 3, 1993, 2:00 p.m. The State Emergency Management Council of the Division of Emergency Management of the Texas Department of Public Safety will meet at the EOC Council Room, 5805 North Lamar Boulevard, Austin. According to the complete agenda, the council will

hold LRPC nominations; give updates on HMTUSA; and schedule next meeting.

Contact: Ed Schaefer, 5805 North Lamar Boulevard, Austin, Texas 78752, (512) 465-2434.

Filed: May 24, 1993, 4:11 p.m.

TRD-9323380

Public Utility Commission of Texas

Tuesday, June 1, 1993, 10:00 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the commission will hold a prehearing conference in Docket Number 11975-application of Southwestern Bell Telephone Company for approval of pricing flexibility for Megalink III service in the Dallas-Fort Worth and Houston market areas pursuant to Public Utility Substantive Rule 23. 27.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 20, 1993, 3:23 p.m.

TRD-9323240

Tuesday, June 1, 1993, 10:00 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the commission will hold a prehearing conference in Docket Number 11999-application of Houston Lighting and Power Company for approval of tariff for economic improvement service-rate schedule EIS.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 24, 1994, 3:03 p.m.

TRD-9323362

Monday, June 7, 1993, 9:00 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 prehearing conference in Docket Number 12014-application of Deaf Smith Electric Cooperative, Inc., for approval of revised tariffs.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 24, 1993, 3:05 p.m.

TRD-9323364

Monday, June 7, 1993, 10:00 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite

450, Austin. According to the complete agenda, the commission will hold a prehearing conference in Docket Number 10831-application of Southwestern Bell Telephone Company to revise its tariff to redefine the point of demarcation ("DEMARC") and the location of the network interface (NI).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 20, 1993, 3:23 p.m.

TRD-9323239

Monday, June 28, 1993, 1:00 p.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 11823-complaint of Raye E. Stiles against GTE Southwest, Inc.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 24, 1993, 3:06 p.m.

TRD-9323366

Wednesday, September 8, 1993, 9:00 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 11784-application of Sugar Land Telephone Company for approval of new service-All Star.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 24, 1993, 3:06 p.m.

TRD-9323365

Texas Savings and Loan Department

Monday, June 7, 1993, 10:00 a.m. The Texas Savings and Loan Department will meet at 300 West 15th Street, Room 408, Austin. According to the agenda summary, the department will hold a hearing to accumulate a record of evidence in regard to the application of Sulphur Springs Loan and Building Association, Sulphur Springs, Hopkins County, for a loan office to be located at 101 East North Front, New Boston, Bowie County, from which record the commissioner will determine whether to grant or deny the application.

Contact: Shirley T. Burton, 2601 North Lamar Boulevard, Austin, Texas 78701, (512) 475-1350.

Filed: May 21, 1993, 1:09 p.m.

TRD-9323279

Thursday, June 10, 1993, 9:00 a.m. The Texas Savings and Loan Department will meet at 300 West 15th Street, Room 408, Austin. According to the agenda summary, the department will accumulate a record of evidence in regard to the application of Coastal Banc Savings Association for a branch office at 4400 Vance Jackson, San Antonio (purchase from Guardian Savings Association), from which record the commissioner will determine whether to grant or deny the application.

Contact: Shirley T. Burton, 2601 North Lamar Boulevard, Austin, Texas 78701, (512) 475-1350.

Filed: May 21, 1993, 1:14 p.m.

TRD-9323288

Thursday, June 10, 1993, 9:00 a.m. The Texas Savings and Loan Department will meet at 300 West 15th Street, Room 408, Austin. According to the agenda summary, the department will accumulate a record of evidence in regard to the application of Coastal Banc Savings Association for a branch office at 511 Nolana, McAllen (purchase from Bank United, FSB), from which record the commissioner will determine whether to grant or deny the application.

Contact: Shirley T. Burton, 2601 North Lamar Boulevard, Austin, Texas 78701, (512) 475-1350.

Filed: May 21, 1993, 1:10 p.m.

TRD-9323280

Thursday, June 10, 1993, 9:00 a.m. The Texas Savings and Loan Department will meet at 300 West 15th Street, Room 408, Austin. According to the agenda summary, the department will accumulate a record of evidence in regard to the application of Coastal Banc Savings Association for a branch office at 10838 Leopard, Corpus Christi (purchase from Guardian Savings Association), from which record the commissioner will determine whether to grant or deny the application.

Contact: Shirley T. Burton, 2601 North Lamar Boulevard, Austin, Texas 78701, (512) 475-1350.

Filed: May 21, 1993, 1:11 p.m.

TRD-9323281

Thursday, June 10, 1993, 9:00 a.m. The Texas Savings and Loan Department will meet at 300 West 15th Street, Room 408, Austin. According to the agenda summary, the department will accumulate a record of evidence in regard to the application of Coastal Banc Savings Association for a branch office at 2308 South 77, Harlingen (purchase from Bank United, FSB), from which record the commissioner will determine whether to grant or deny the application.

Contact: Shirley T. Burton, 2601 North Lamar Boulevard, Austin, Texas 78701, (512) 475-1350.

Filed: May 21, 1993, 1:11 p.m.

TRD-9323282

Thursday, June 10, 1993, 9:00 a.m. The Texas Savings and Loan Department will meet at 300 West 15th Street, Room 408, Austin. According to the agenda summary, the department will accumulate a record of evidence in regard to the application of Coastal Banc Savings Association for a branch office at 103 American Plaza, 711 North Carancahau, Corpus Christi (purchase from Guardian Savings Association), from which record the commissioner will determine whether to grant or deny the application.

Contact: Shirley T. Burton, 2601 North Lamar Boulevard, Austin, Texas 78701, (512) 475-1350.

Filed: May 21, 1993, 1:12 p.m.

TRD-9323283

Thursday, June 10, 1993, 9:00 a.m. The Texas Savings and Loan Department will meet at 300 West 15th Street, Room 408, Austin. According to the agenda summary, the department will accumulate a record of evidence in regard to the application of Coastal Banc Savings Association for a branch office at 4060 Weber Road, Corpus Christi (purchase from Guardian Savings Association); from which record the commissioner will determine whether to grant or deny the application.

Contact: Shirley T. Burton, 2601 North Lamar Boulevard, Austin, Texas 78701, (512) 475-1350.

Filed: May 21, 1993, 1:12 p.m.

TRD-9323284

Thursday, June 10, 1993, 9:00 a.m. The Texas Savings and Loan Department will meet at 300 West 15th Street, Room 408, Austin. According to the agenda summary, the department will accumulate a record of evidence in regard to the application of Coastal Banc Savings Association for a branch office at 301 East Main Street, Brenham (purchase from Guardian Savings Association), from which record the commissioner will determine whether to grant or deny the application.

Contact: Shirley T. Burton, 2601 North Lamar Boulevard, Austin, Texas 78701, (512) 475-1350.

Filed: May 21, 1993, 1:13 p.m.

TRD-9323285

Thursday, June 10, 1993, 9:00 a.m. The Texas Savings and Loan Department will meet at 300 West 15th Street, Room 408, Austin. According to the agenda summary,

the department will accumulate a record of evidence in regard to the application of Coastal Banc Savings Association for a branch office at 1192 West Dallas, Conroe (purchase from Guardian Savings Association), from which record the commissioner will determine whether to grant or deny the application.

Contact: Shirley T. Burton, 2601 North Lamar Boulevard, Austin, Texas 78701, (512) 475-1350.

Filed: May 21, 1993, 1:13 p.m.

TRD-9323286

Thursday, June 10, 1993, 9:00 a.m. The Texas Savings and Loan Department will meet at 300 West 15th Street, Room 408, Austin. According to the agenda summary, the department will accumulate a record of evidence in regard to the application of Coastal Banc Savings Association for a branch office at 6100 Broadway, San Antonio (purchase from Guardian Savings Association), from which record the commissioner will determine whether to grant or deny the application.

Contact: Shirley T. Burton, 2601 North Lamar Boulevard, Austin, Texas 78701, (512) 475-1350.

Filed: May 21, 1993, 1:14 p.m.

TRD-9323287

Thursday, June 10, 1993, 9:00 a.m. The Texas Savings and Loan Department will meet at 300 West 15th Street, Room 408, Austin. According to the agenda summary, the department will accumulate a record of evidence in regard to the application of Coastal Banc Savings Association for a branch office at 6610 Blanco, San Antonio (purchase from Guardian Savings Association), from which record the commissioner will determine whether to grant or deny the application.

Contact: Shirley T. Burton, 2601 North Lamar Boulevard, Austin, Texas 78701, (512) 475-1350.

Filed: May 21, 1993, 1:15 p.m.

TRD-9323289

School Land Board

Tuesday, June 1, 1993, 10:00 a.m. The School Land Board will meet at the General Land Office, Room 831, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the complete agenda, the board will discuss approval of previous board meeting minutes; pooling applications, Giddings (Austin Chalk-3), Brazos and Burleson Counties; GG (Strawn 5400) Field, King County; Big S. (Strawn), King County; USM (Queen) Field, Pecos County; Wildcat Field, Matagorda County; applica-

tions to lease highway rights-of-way for oil and gas, Fayette County; direct land sale to Texas Department of Transportation, Wise County; consideration of tracts, terms and conditions for a sealed bid land sale for August 3, 1993; coastal public lands-commercial easement amendments and commercial easement hardship applications, Laguna Madre, Cameron County; commercial easement renewals, Laguna Madre, Cameron County; Dickinson Bay, Galveston County; Taylor Lake, Harris County; lease application, Cayo del Grullo, Kleberg County; easement applications, Tres Palacios Bay, Matagorda County; Matagorda Bay, Calhoun County; Chocolate Bay, Calhoun County; and Hynes Bay, Refugio County; structure permit terminations, structure permit requests, and structure permit renewals, structure permit amendment, Laguna Madre, Kleberg County and Laguna Madre, Kenedy County; structure permit rebuilding request, Bastrop Bay, Brazoria County; meet in executive session to discuss pending and proposed litigation; consider closing documents for land trade, El Paso County; consider closing documents for land trade, El Paso County; land trade, El Paso County; consider land trade, El Paso County; first option to purchase under Texas Natural Resources Code, Section 31.159, Texas Youth Commission lands, Navarro County; consider first option to purchase under Texas Natural Resources Code, §31.159, Texas Youth Commission lands, Navarro County.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: May 24, 1993, 4:24 p.m.

TRD-9323382

Board for Lease of State-owned Lands

Tuesday, June 1, 1993, 9:00 a.m. The Board for Lease of Texas Department of Criminal Justice of the Board for Lease of State-owned Lands will meet at the General Land Office, Room 833, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the board will discuss approval of the minutes of the previous board meeting; consider and possibly approve bids received for the June 1, 1993 special oil and gas lease sale.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: May 24, 1993, 4:23 p.m.

TRD-9323381

The Texas A&M University System, Board of Regents

Wednesday, May 26, 1993, 1:00 p.m. The Board of Regents of the Facilities Planning and Building Committee of the Texas A&M University System met at the Facilities Planning and Construction Building, Conference Room 200, Texas A&M University, College Station. According to the complete agenda, the purpose of this orientation meeting was to review the process and procedures dealing with construction projects for the Texas A&M University System; including project initiation, selection of architects/engineers, program of requirements, design, bidding, award, and construction phase action.

Contact: Vickie Running, Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: May 20, 1993, 2:07 p.m.

TRD-9323231

Thursday, May 27, 1993, 9:00 a.m. The Facilities Planning and Building Committee of the Board of Regents of the Texas A&M University System met at the Facilities Planning and Construction Building, Conference Room 200, Texas A&M University, College Station. According to the complete agenda, the board acted on bids; appropriations for design; initiation of construction projects; conveyance of easements; selection of architects/engineers; and reports from system administration.

Contact: Vickie Running, Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: May 21, 1993, 2:03 p.m.

TRD-9323293

Thursday-Friday, May 27-28, 1993, 1:30 p.m. and 8:30 a.m., respectively. The Board of Regents of the Texas A&M University System will meet at the Texas A&M University, Board of Regents Meeting Room, College Station. According to the complete agenda, the board will discuss initiation of construction projects; construction matters for the system parts; selection of architect/engineers; correction and approval of the minutes; revision of the Revenue Financing System Commercial Paper Program; authorization for the sale of permanent university fund bonds, Series 1993; resolutions; increase and establish fees; appropriation of funds; authorization to change the title of an executive position; authorization of degrees; appointment to the board of TAMUS's private enterprise research center; graduate tuition; establishment of centers; license agreements; proposed lease of microwave tower site; appointment of peace officer; naming of facilities; acquisition and disposition of real estate; emeritus titles; appointments and

promotions; budget and fiscal transfers; salary increases and new positions; terminations; tenure; gifts, grants, loans and bequests; reports from system administration; and approval of ground lease between Texas A&M University and Texas A&M University Development Foundation.

Contact: Vickie Running, Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: May 21, 1993, 2:03 p.m.

TRD-9323294

Texas Southern University

Thursday, May 27, 1993, 4:00 p.m. The Board of Regents Finance Committee of Texas Southern University met at Texas Southern University, 3715 Blodgett/TSU Warehouse, Houston. According to the complete agenda, the board considered matters relating to financial reporting systems and budgets; fiscal reports from the administration; investments; and informational items.

Contact: Everett O. Bell, 3100 Cleburne, Houston, Texas 77004, (713) 529-8911.

Filed: May 24, 1993, 9:39 a.m.

TRD-9323342

Tuesday, June 1, 1993, 5:00 p.m. The Board of Regents Personnel and Academic Affairs Committee of Texas Southern University will meet at Texas Southern University, 3100 Cleburne/School of Law Building, Room 221, Houston. According to the complete agenda, the board will consider report on progress of academic activities and programs; and personnel actions.

Contact: Everett O. Bell, 3100 Cleburne, Houston, Texas 77004, (713) 529-8911.

Filed: May 24, 1993, 9:38 a.m.

TRD-9323340

Friday, June 4, 1993, 8:30 a.m. The Board of Regents of Texas Southern University will meet at the Texas Southern University Library, Fifth Floor, Houston. According to the complete agenda, the board will consider approval of the minutes; report of the president; report from standing committee; and meet in executive session.

Contact: Everett O. Bell, 3100 Cleburne, Houston, Texas 77004, (713) 529-8911.

Filed: May 24, 1993, 9:39 a.m.

TRD-9323341

Texas Department of Transportation

Tuesday, May 25, 1993, 9:30 a.m. The Texas Transportation Commission of the Texas Department of Transportation met at the Dewitt C. Greer Building (First Floor), 125 East 11th Street, Austin. According to the emergency revised agenda summary, the commission added supplement to the agenda as follows: Dallas County-IH-35 East-authorize agreements with the City of Dallas for certain improvements and temporary closure of a portion of the IH-35E Frontage Road and certain entrance and exit ramps for the purpose of conducting the Dallas Grand Prix auto race. The emergency status was necessary as immediate action was required to avoid adverse impacts on the safety of traveling public and the welfare of citizens and the economy.

Contact: Myrna Klipple, 125 East 11th Street, Austin, Texas 78701, (512) 463-8576.

Filed: May 20, 1993, 10:43 a.m.

TRD-9323227

Tuesday, May 25, 1993, 11:30 a.m. The Texas Transportation Commission of the Texas Department of Transportation held an emergency meeting at the Dewitt C. Greer Building (First Floor), 125 East 11th Street, Austin. According to the complete agenda, the commission discussed approval of revision to Austin Fiscal Year 1993-1995 Transportation Improvement Program; and to Fiscal Year 1994-1995 Statewide Transportation Improvement Program: economic stimulus funds; transfer centers: Berkman, Bluffsprings, Briarcliff, Govalle, Rogge, Woodward, ACC/Campus, Northcross; STP 4(c) funds; feasibility study for the East Austin Intermodal Center; 1994 and 1995 projects moved to 1993; and additional Section nine formula funds requested. The emergency status was necessary as immediate consideration was essential in order to secure immediate federal funding and to avoid any adverse economic impact to the transportation providers, transportation users, and the public.

Contact: Al Luedecke, 125 East 11th Street, Austin, Texas 78701, (512) 465-7346.

Filed: May 25, 1993, 9:10 a.m.

TRD-9323396

Tuesday, June 1, 1993, 10:00 a.m. The Texas Transportation Commission of the Texas Department of Transportation will meet at the Dewitt C. Greer Building (First Floor), 125 East 11th Street, Austin. According to the complete agenda, the commission will discuss personnel matters in-

cluding the position of Executive Director.

Contact: Josie Pellegrino, 125 East 11th Street, Austin, Texas 78701, (512) 463-8576.

Filed: May 24, 1993, 10:46 a.m.

TRD-9323350

The University of Texas Health Center at Tyler

Thursday, June 3, 1993, 11:30 a.m. The Animal Research Committee of the University of Texas Health Center at Tyler will meet at the Biomedical Research Building, Room 116, U.T. Health Center, Highways 155 and 271, Tyler. According to the complete agenda, the committee will discuss approval of the minutes; hear chair's report and veterinarian's report-Dr. Schmid; discuss new business; protocol on the use of mouse neutrophil elastase for antibodies; addendum to extend expiration dates on protocols Numbers 30, 31, 61, 72, 74-76, 79, 81, 86, 88, 91, 93, and 94; addenda to protocol on use of mice for antibody production; on ultrasound therapy and collagen synthesis; and use of rats to study effects of clenbuterol; and adjourn.

Contact: Louisa Schmid, Ph.D., D.V.M., P.O. Box 2003, Tyler, Texas 75710, (903) 877-7657.

Filed: May 20, 1993, 2:57 p.m.

TRD-9323236

Texas Water Commission

Wednesday, June 2, 1993, 9:00 a.m. The Texas Water Commission will meet at 1700 North Congress Avenue, Stephen F. Austin Building, Room 118, Austin. According to the agenda summary, the commission will consider approving the following matters on the contested agenda: setting interim rates; 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.

TRD-9323335

Wednesday, June 2, 1993, 9:00 a.m. The Texas Water Commission will meet at 1700 North Congress Avenue, Stephen F. Austin Building, Room 118, Austin. According to the agenda summary, the commission will consider approving the following matters on

the uncontested agenda: proposed waste disposal well permit; minor amendment to waste disposal well; new water quality permits; amendments to water quality permits; minor amendments to water quality; renewal to water quality permits; water right permits; water rate matters; hearing examiner's settled cases; 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.

TRD-9323334

Tuesday, July 6, 1993, 10:00 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Matagorda County Courthouse, County Courtroom, Room 300, 1700 Seventh Street, Bay City. According to the agenda summary, the commission will hold a public hearing on application by Beach Road Utilities, Inc. for permit to authorize the discharge of treated wastewater from a facility to serve the Colorado River Estates Subdivision in Matagorda County.

Contact: Deborah Thomas, P.O. Box 13087, Austin, Texas 78701, (512) 463-7875.

TRD-9323247

Thursday, July 8, 1993, 9:00 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the County Commissioner's Courtroom, New Administration Building, Second Floor, 301 North Thompson, Conroe. According to the agenda summary, the commission will hold a public hearing on application by DBC Utilities, Inc. for permit renewal for authorization to discharge treated domestic wastewater effluent.

Contact: Linda Sorrells, P.O. Box 13087, Austin, Texas 78701, (512) 463-7875.

TRD-9323332

Thursday, July 8, 1993, 1:00 p.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the County Commissioners Courtroom, New Administration Building, Second Floor, 301 North Thompson, Conroe. According to the agenda summary, the commission will hold a public hearing to consider an application by Runnels Septic Service, Inc. for permit to authorize the disposal of treated domestic wastewater effluent.

Contact: Linda Sorrells, P.O. Box 13087, Austin, Texas 78701, (512) 463-7875.

Filed: May 25, 1993, 8:53 a.m.

TRD-9323391

Thursday, July 8, 1993, 3:00 p.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the County Commissioners Courtroom, New Administration Building, Second Floor, 301 North Thompson, Conroe. According to the agenda summary, the commission will hold a public hearing on application by the Woodlands Corporation for permit to authorize the discharge of treated domestic wastewater effluent.

Contact: Linda Sorrells, P.O. Box 13087, Austin, Texas 78701, (512) 463-7875.

TRD-9323331

Texas Workers' Compensation Insurance Fund

Tuesday-Wednesday, May 25-26, 1993, 2:30 p.m. and 8:30 a.m., respectively (Rescheduled from Tuesday, May 25, 1993, 4:30 p.m.). The Board of Directors of the Texas Workers' Compensation Insurance Fund met at the Four Seasons Hotel, First Street and San Jacinto Street, Austin. According to the complete agenda, on Tuesday, the board called the meeting to order; took roll call; heard public participation; added to agenda: presentation and proposal for development of a fund board governance policy and assistance related to its implementation. On Wednesday, the board discussed election of secretary to the board of directors.

Contact: Jodie Bowen, 100 Congress Avenue, Suite 300, Austin, Texas 78701, (512) 322-3851.

Filed: May 21, 1993, 11:03 a.m.

TRD-9323271

Texas Workers' Compensation Research Center

Friday, May 28, 1993, 9:00 a.m. The Board of Directors of the Texas Workers' Compensation Research Center will meet at the Texas Workers' Compensation Insurance Fund, 100 Congress Avenue, Suite 300, Austin. According to the agenda summary, the board will continue a meeting held on Friday, May 21, 1993 at 11:30 a.m. The board will discuss and possibly act on the following items: call the meeting to order; discuss approval of minutes of the meeting of March 26, 1993; meet in executive session; make announcements; contract processing over \$10,000; discuss and possibly approve budget revisions; presentation by UT Center for the Study of Human Resources; consider proposal and possibly contract award on vocational rehabilitation; presentation by Texas A&M Public Policy Research Institute; consider proposal and

possibly contract award on nonsubscription to the Texas Workers' Compensation System; arbitration; research progress report; discuss future Research Center capabilities; research agenda-general discussion of Fiscal Year 1994; confirm meeting of July 9, 1993; and adjourn.

Contact: Lavon Guerro, 3636 Executive Center Drive, Suite G-22, Austin, Texas 78731, (512) 346-6197.

Filed: May 25, 1993, 9:48 a.m.

TRD-9323402

Regional Meetings Meetings Filed May 20, 1993

The Andrews Center Board of Trustees met at 703 West Patten, Mineola, May 25, 1993, at 4:00 p.m. Information may be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75712, (903) 597-1351. TRD-9323229.

The Deep East Texas Regional Mental Health Mental Retardation Services Board of Trustees met in the Ward R. Burke Community Room, Administration Facility, 4101 South Medford Drive, Lufkin, May 25, 1993, at 3:00 p.m. Information may be obtained from Sandra J. Vann, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141. TRD-9323232.

The Golden Crescent Regional Planning Commission Board of Directors met in the GCRPC Board Room, Regional Airport, Building 102, Victoria, May 26, 1993, at 5:00 p.m. Information may be obtained from Patrick J. Kennedy, P.O. Box 2028, Victoria, Texas 77962-2028, (512) 578-1587. TRD-9323251.

The Heart of Texas Region Mental Health Mental Retardation Center Board of Trustees met at 110 South 12th Street, Waco, May 25, 1993, at 11:45 a.m. Information may be obtained from Helen Jasso, P.O. Box 890, Waco, Texas 76703, (817) 752-3451. TRD-9323234.

The Panhandle Regional Planning Commission Board of Directors met at 415 West Eighth Street, PRPC Board Room, Amarillo, May 27, 1993, at 11:00 a.m. Information may be obtained from Rebecca Rusk, P.O. Box 9257, Amarillo, Texas 79105-9257. TRD-9323224.

The Pecan Valley Mental Health Mental Retardation Region Board of Trustees met at the Pecan Valley MHMR Region Clinical Office, 104 Charles Street, Granbury, May 26, 1993, at 8:30 a.m. Information may be obtained from Dr. Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401, (817) 965-7806. TRD-9323226.

Meetings Filed May 21, 1993

The Austin-Travis County Mental Health Mental Retardation Center Board of Trustees met at 1430 Collier Street, Board Room, Austin, May 27, 1993, at 7:00 a.m. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764-3548, (512) 447-4141. TRD-9323330.

The Coastal Bend Council of Governments Membership will meet at the Nueces County Courthouse, Commissioners Courtroom, Third Floor, 901 Leopard Street, Corpus Christi, May 28, 1993, at 2:00 p.m. Information may be obtained from John P. Buckner, P.O. Box 9909, Corpus Christi, Texas 78469, (512) 883-5743. TRD-9323261.

The Dallas Area Rapid Transit (DART) Audit Committee met at 1401 Pacific Avenue (DART Headquarters), Board Conference Room C, Dallas, May 25, 1993, at 11:00 a.m. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9323274.

The Dallas Area Rapid Transit (DART) Finance Committee met at 1401 Pacific Avenue (DART Headquarters), Board Conference Room C, Dallas, May 25, 1993, at 1:00 p.m. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9323273.

The Dallas Area Rapid Transit (DART) (Revised agenda). Board of Directors met at 1401 Pacific Avenue (DART Headquarters), DART Board Room, Dallas, May 25, 1993, at 3:00 p.m. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9323328.

The Dallas Area Rapid Transit (DART) Board of Directors met at 1401 Pacific Avenue (DART Headquarters), DART Board Room, Dallas, May 25, 1993, at 3:00 p.m. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9323272.

The East Texas Council of Governments Private Industry Council met at the Kilgore Community Inn, Kilgore, May 27, 1993, at noon. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9323329.

The Kempner Water Supply Corporation Board of Directors met at the Kempner Water Supply Corporation Office, Highway 190, Kempner, May 27, 1993, at 7:00 p.m. Information may be obtained from Doug Lavender or Alton Myers, P.O. Box 103, Kempner, Texas 76539, (512) 932-3701.

TRD-9323264.

The Lower Rio Grande Valley Development Council Annual Membership and Board of Directors met at the Harlingen Chamber of Commerce, 311 East Tyler Street, Harlingen, May 27, 1993, at 1:30 p.m. Information may be obtained from Kenneth N. Jones, Jr., 4900 North 23rd Street, McAllen, Texas 78504, (210) 682-3481. TRD-9323258.

The Middle Rio Grande Development Council Texas Review and Comment System Committee met at the Holiday Inn, 920 East Main Street, Sage Room, Uvalde, May 26, 1993, at 4:00 p.m. Information may be obtained from Dora T. Flores, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9323253.

The North Central Texas Council of Governments Executive Board met at Centerpoint Two, Second Floor, 616 Six Flags Drive, Arlington, May 27, 1993, at 12:45 p.m. Information may be obtained from Edwina J. Shires, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 640-3300. TRD-9323257.

The North Plains Groundwater Conservation District Number Two Board of Directors met at 603 East First Street, Dumas, May 25, 1993, at 11:00 a.m. Information may be obtained from Richard Bowers or Carla Gray, 603 East First Street, Dumas, Texas 79029, (806) 935-6401. TRD-9323292.

The Parmer County Appraisal District Board of Directors will meet at 305 Third Street, Bovina, June 10, 1993, at 7:30 p.m. Information may be obtained from Ron Procter, P.O. Box 56, Bovina, Texas 79009, (806) 238-1405. TRD-9323307.

The Sharon Water Supply Corporation Board of Directors met at the Sharon Water Supply Corporation Office, Route 5, Box 50361, Winnsboro, May 24, 1993, at 7:00 p.m. Information may be obtained from Gerald Brewer, Route 5, Box 50361, Winnsboro, Texas 75494, (903) 342-3525. TRD-9323252.

The Texas Panhandle Mental Health Authority Executive Committee met at 7120 I-40 West, Suite 150, Amarillo, May 27, 1993, at 10:00 a.m. Information may be obtained from Mellisa Talley, 7120 I-40 West, Suite 150, Amarillo, Texas 79116, (806) 353-3699. TRD-9323290.

The West Central Texas Municipal Water District met at 410 Hickory Street, Abilene, May 27, 1993, at 9:30 a.m. Information may be obtained from Virginia Duncan, P.O. Box 2362, Abilene, Texas 79604, (915) 673-8254. TRD-9323255.

Meetings Filed May 24, 1993

The Bastrop Central Appraisal District Appraisal Review Board will meet at the Bastrop Central Appraisal District, 1200 Cedar Street, Bastrop, June 1, 1993, at 10:00 a.m. Information may be obtained from Dana Ripley, P.O. Drawer 578, Bastrop, Texas 78602, (512) 321-3925. TRD-9323355.

The Bastrop Central Appraisal District Appraisal Review Board will meet at the Bastrop Central Appraisal District, 1200 Cedar Street, Bastrop, June 8, 1993, at 8:30 a.m. Information may be obtained from Dana Ripley, P.O. Drawer 578, Bastrop, Texas 78602, (512) 321-3925. TRD-9323354.

The Bastrop Central Appraisal District Appraisal Review Board will meet at the Bastrop Central Appraisal District, 1200 Cedar Street, Bastrop, June 21, 1993, at 8:30 a.m. Information may be obtained from Dana Ripley, P.O. Drawer 578, Bastrop, Texas 78602, (512) 321-3925. TRD-9323353.

The Deep East Texas Council of Governments Grants Application Review Committee met at the Lufkin Civic Center, 601 North Second Street, Lufkin, May 27, 1993, at 11:00 a.m. Information may be obtained from Rusty Phillips, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704. TRD-9323339.

The Golden Crescent Private Industry Council Planning Committee met at 2705 Houston Highway, Meeting Room Number Two, Victoria, May 24, 1993, at 11:45 a.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9323351.

The Golden Crescent Private Industry Council met at 2401 Houston Highway, Victoria, May 24, 1993, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9323352.

The Jack County Education District Board of Directors met at the Jacksboro ISD Agriculture Building, 819 West Belknap, Jacksboro, May 27, 1993, at 3:00 p.m. Information may be obtained from Terasa McNeill, 812 West Belknap, Jacksboro, Texas 76458, (817) 567-5544. TRD-9323356.

The Jones-Stonewall County Education District Number 28 Board of Trustees held an emergency meeting at the Appraisal District Office, 1137 East Court Plaza, Anson, May 27, 1993, at 1:00 p.m. The emergency status was necessary as reasonably unforeseeable situations required immediate board action. Information may be obtained from

Susan Holloway, 1137 East Court Plaza, Anson, Texas 79501, (915) 823-2422. TRD-9323369.

The Nolan County Central Appraisal District Appraisal Review Board will meet at the Nolan County Courthouse, Third Floor, Sweetwater, May 28, 1993, at 7:00 a.m. Information may be obtained from Steven G. Beck, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421. TRD-9323346.

The Region 18 Education Service Center Board of Directors will meet at 2811 La Force Boulevard, Midland, June 3, 1993, at 7:00 p.m. Information may be obtained from Dr. Vernon Stokes, P.O. Box 60580, Midland, Texas 79711, (915) 563-2380. TRD-9323347.

The San Patricio County Appraisal District Appraisal Review Board will meet at the Appraisal District Office, 1146 East Market, Sinton, June 8, 1993, at 9:00 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402. TRD-9323345.

The South Texas Private Industry Council, Inc. will meet at 901 Kennedy Street, Zapata, June 3, 1993, at 4:00 p.m. Information may be obtained from Myrna V. Herbst, P.O. Box 1757, Laredo, Texas 78044-1757, (512) 722-0546. TRD-9323349.

The Upper Leon River Municipal Water District Board of Directors met at the General Office of the Filter Plant, Lake Proctor, Comanche, May 27, 1993, at 6:30 p.m. Information may be obtained from Gary D. Lacy, P.O. Box 67, Comanche, Texas 76442, (817) 879-2258. TRD-9323384.

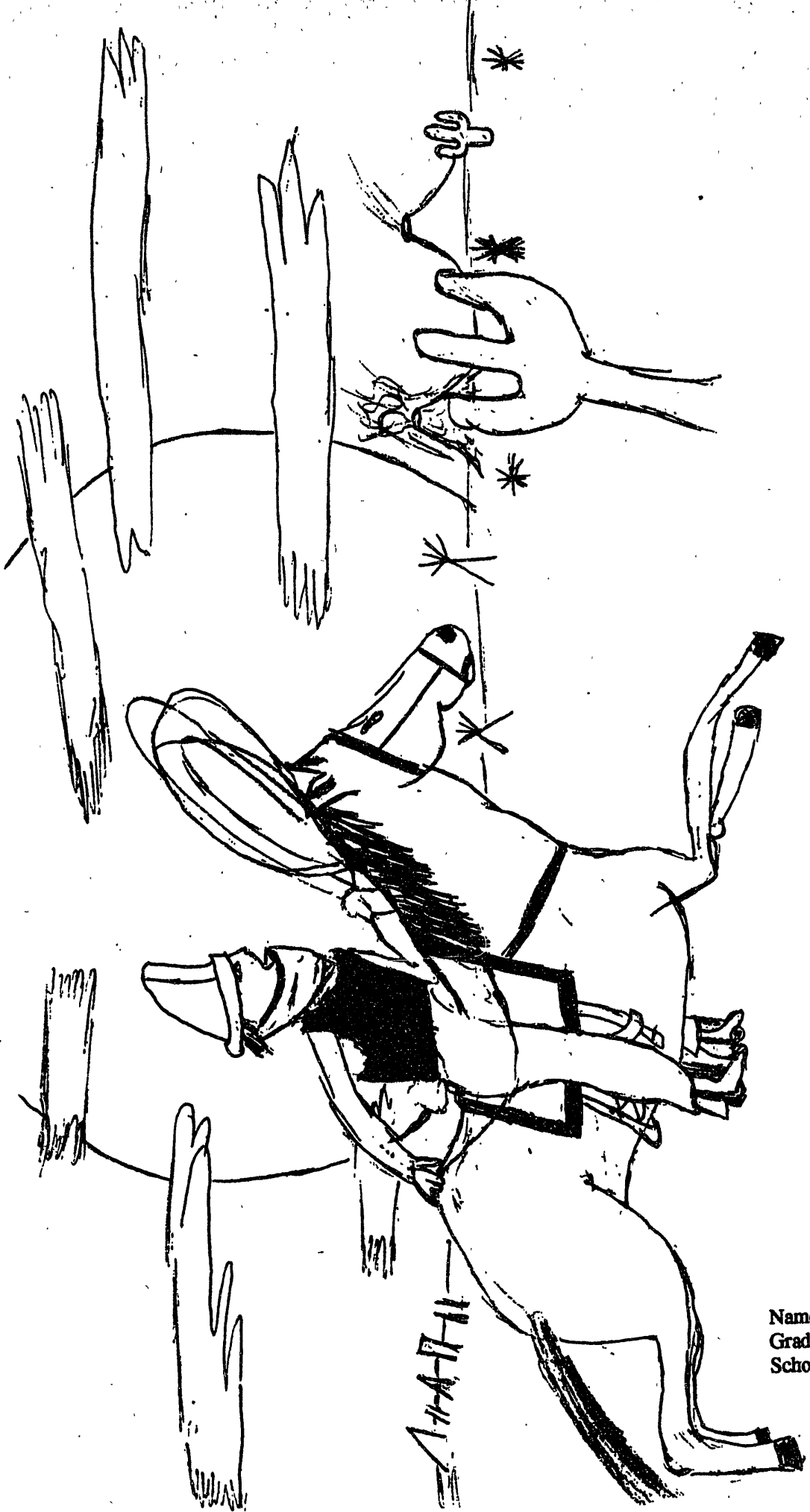
Meetings Filed May 25, 1993.

The Brazos Valley Development Council Brazos Valley Regional Advisory Committee on Aging will meet at the Council Offices, 3006 East 29th Street, Suite Two, Bryan, June 1, 1993, at 2:00 p.m. Information may be obtained from Roberta Lindquist, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 776-2277. TRD-9323392.

The Pecan Valley Mental Health Mental Retardation Region (Emergency revised agenda). Board of Trustees met at the Pecan Valley MHMR Clinical Office, 104 Charles Street, Granbury, May 26, 1993, at 8:30 a.m. The emergency status was necessary due to approval of purchase of properties. Information may be obtained from Dr. Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401, (817) 965-7806. TRD-9323398.

The Region VII Education Service Center Board of Directors will meet at the Kilgore Community Inn, Kilgore Room, Highway 259, Kilgore, June 2, 1993, at 6:00 p.m. Information may be obtained from Don J. Peters, 818 East Main Street, Kilgore, Texas 75662, (903) 984-3071. TRD-9323395.





Ridem Cowboys!!!

Name: Amanda Richard
Grade: 4
School: Evers Park Elementary, Denton ISD

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Ark-Tex Council of Governments Request for Proposal

The Texarkana Urban Transportation Study (TUTS) is soliciting proposals for the development of a Public Transportation Feasibility Study.

This study will explore public transit options for the Texarkana urban area, focusing on a Para-Transit/Demand-Response System designed to serve Texarkana's transportation needs. Exploration of a fixed route system will not be considered in this study at this time. If a demand/response system is implemented, a fixed route system will be explored based upon the experience and findings of the demand/response system.

Potential respondents with questions may contact Elaine Wray, Regional Development Manager, Ark-Tex Council of Governments, P.O. Box 5307, Texarkana or call (903) 832-8636. The deadline for proposal submission is June 11, 1993.

Issued in Texarkana, Texas, on May 18, 1993.

TRD-9323233 Beverly Cherney Pearson
Director of Program Operations
Ark-Tex Council of Governments

Filed: May 20, 1993

State Banking Board Notice of Hearing

The Hearing Officer of the State Banking Board will conduct a hearing on June 30, 1993, at 9:00 a.m., at 2601 North Lamar Boulevard, Austin, on the charter application for Farmers and Merchants Bank, Mart. The application is a conversion from the Farmers and Merchants National Bank, Mart, Texas, to a state-chartered bank. The banking services currently provided by the Farmers and Merchants National Bank will continue to be provided by the Farmers and Merchants Bank.

Anyone desiring to appear at the hearing must file a written notice of intent to appear, including a brief statement of position, with this office at least ten days prior to the hearing. A copy of this notice, and all other pleadings, must be sent to each party to the hearing. If no protest is filed at least ten days prior to the date set for the hearing, the Commissioner may cancel the hearing and the State Banking Board shall vote to determine whether the necessary conditions have been established, based on the application. All parties appearing at the hearing are requested to provide the State Banking Board with three copies of all exhibits received as evidence, excepting poster size exhibits and photographs.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, Texas Department

of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1317.

Issued in Austin, Texas, on May 18, 1993.

TRD-9323189 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: May 19, 1993

Texas Department of Banking Notice of Application

Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a bank to file an application with the Banking Commissioner for the Commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the Commissioner.

On May 18, 1993, the Banking Commissioner received an application to acquire control of Crosby Bancshares, Inc., Crosby, thereby acquiring control of the Crosby State Bank, Crosby, by Robert N. Murray, Ralph S. O'Connor, Stanley D. Stearns, John H. Lindsey, Schuyler M. Tilney, W. Temple Webber Jr., Louis B. Cushman, John H. Styles, Richards K. Gordon, Albert B. Fay Jr., Clive Runnells, and Thomas Pierce Runnells all of Houston; Jess A. Fields of Humble; and Steven J. Gibson of Magnolia.

Additional information may be obtained from: William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1317.

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

TRD-9323296 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: May 21, 1993

Texas Commission for the Deaf and Hearing Impaired Notice of Public Hearing

The Texas Commission for the Deaf and Hearing Impaired (TCDHI) will hold a public hearing on Friday, June 11, 1993, at 2:00 p.m., at the Inn at San Luis, 5400 Sea Wall Boulevard, Galveston, Texas, 77551 in the Crystal Ballroom, to receive public comment as consumer contribution on any services provided by or issues related to TCDHI.

Registration to speak at the hearing may be done on site 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

officer as may be necessary to ensure a complete record. Testimony will be restricted to five minutes per speaker. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Any person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who have special communication or accommodation needs and who plan to attend the hearings may contact Loyce Kessler, Administrative Assistant, Texas Commission for the Deaf and Hearing Impaired, P.O. Box 12904, Austin, Texas 78711, (512) 444-3323.

Parties interested in expressing consumer views who are unable to attend the hearing may submit written comments to Loyce Kessler at the previously stated address. To be considered, all comments must be received by TCDHI no later than 5:00 p.m. on Tuesday, June 15, 1993.

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

TRD-9323256 Ralph H. White
Interim Executive Director
Texas Commission for the Deaf and
Hearing Impaired

Filed: May 21, 1993

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Texas Department of Health
Notice of Emergency Cease and Desist
Order

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Inayat I. Lalani, M.D. (registrant-R12629) of Fort Worth to cease and desist from having mammographic procedures performed by individuals who are not properly credentialed under Texas Civil Statutes, Article 4512m. The bureau determined that the continued use of radiation sources at this facility by individuals who are not properly credentialed to perform mammographic procedures constitutes an immediate threat to public health and safety. The registrant is further required to provide evidence satisfactory to the bureau regarding the actions taken to correct this violation, and the methods to prevent the recurrence of the violation.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8 a.m. to 5 p.m. (except holidays).

Issued in Austin, Texas on May 18, 1993.

TRD-9323230 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: May 20, 1993

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Texas Health and Human Services
Commission
Public Notice

The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 93-04, Amendment Number 389.

The amendment incorporates the eligibility and utilization control elements applicable when recipients are enrolled in a Health Maintenance Organization (HMO). The amendment is effective June 1, 1993.

If additional information is needed, please contact Mary Noell, (512) 338-6585.

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

TRD-9323187 Bryan P. Sperry
Deputy Commissioner
Texas Health and Human Services
Commission

Filed: May 19, 1993

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Texas Higher Education Coordinating
Board

Notice of Meeting

The 1993 Texas Plan Advisory Committee will meet on Tuesday, June 1, 1993, at the Coordinating Board Office located at 7745 Chevy Chase Drive in Austin. The meeting will be held in Room 5.139 and is scheduled to begin at 9:30 a.m. and end at 2:00 p.m. The committee will meet to begin developing a new Texas Educational Opportunity Plan and to be prepared to implement it when the present plan expires next year. For further information please contact Dr. Betty James at (512) 483-6140.

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

TRD-9323295 Sharon Jahaman
Administrative Secretary
Texas Higher Education Coordinating Board

Filed: May 21, 1993

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Texas Department of Human Services
Notice of Correction of Error

The Texas Department of Human Services (DHS) submitted adopted amendments to §47.1903 and §47.4901 in its Primary Home Care chapter. The adopted amendments contained an error as published in the May 18, 1993, issue of the *Texas Register* (18 TexReg 3242). On page 3242, the effective date for both amendments should be July 1, 1993, instead of June 1, 1993.

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

TRD-9323313 Nancy Murphy
Section Manager, Policy and Document
Support
Texas Department of Human Services

Filed: May 21, 1993

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Public Notice

The Texas Department of Human Services (DHS) amended §19.1807, concerning rate setting methodology, in its Long Term Care Nursing Facility Requirements for Licensure and Medicaid Certification rule chapter. The amendment added supplemental reimbursement for ventilator-dependent residents as an allowed cost of care for qualified nursing facility residents. Local DHS offices have copies of the amendment for public review, or contact Pam McDonald (512) 450-4086.

Issued in Austin, Texas, on May 10, 1993.

TRD-9323250

Nancy Murphy
Agency Liaison
Texas Department of Human Services

Filed: May 20, 1993

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**North Central Texas Council of
Governments**

Consultant Contract Awards

In accordance with Texas Civil Statutes, Article 5252-11c, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the February 23, 1993, issue of the *Texas Register* (18 TexReg 1204). The consultant is to develop the Energy and Environment Immediate Action Plan for Alternative Fuels for the Dallas-Fort Worth Metropolitan Area.

The consultant selected to conduct this study is DeShazo, Starek and Tang, Inc., 330 Union Station, Dallas, Texas 75202. The maximum amount of the contract is \$79,491. The contract began April 26, 1993, and will terminate in approximately six months.

At the conclusion of this project, the consultant will prepare a final report describing the study purpose, recommendations from each task, methods, procedures, and final recommendations. The report will also include energy savings and air quality benefits.

Issued in Austin, Texas, on May 18, 1993.

TRD-9323338

Mike Eastland
Executive Director
North Central Texas Council of
Governments

Filed: May 24, 1993

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In accordance with Texas Civil Statutes, Article 5252-11c, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the January 29, 1993, issue of the *Texas Register* (18 TexReg 615). The consultant is to produce a video that will encourage chief executive officers of major companies in the Dallas-Fort Worth metropolitan area to promote alternative commute modes to and from work within their companies.

The firm selected to conduct this video is Staats Falkenberg and Partners, Inc., P.O. Box 1466, Austin, Texas 78767. The maximum amount of the contract is \$39,972. The contract will begin May 19, 1993, and will terminate in approximately three months.

This video is to provide a positive influence from top-level management in encouraging employees to curtail single-occupant automobile trips by telecommuting, carpooling, vanpooling, using public transit, varying work schedules to avoid peak-hour driving, or walking to work to reduce emissions from automobiles in the Dallas-Fort Worth region.

Issued in Austin, Texas, on May 18, 1993.

TRD-9323348

Mike Eastland
Executive Director
North Central Texas Council of
Governments

Filed: May 24, 1993

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**Texas Department of Protective and
Regulatory Services**

**Evaluation and Treatment Services for
Families and Children, Houston Region
Request for Proposal**

The Texas Department of Protective and Regulatory Services is requesting proposals (RFP) for evaluation and treatment services for children who have been abused and/or neglected and their significant others in Brazoria County and in Fort Ben/Galveston/Liberty/Chambers Counties (these last four counties comprise one service area).

Eligible Applicants. Eligible offerors include government entities, private non-profit and for profit agencies, partnerships, and individuals. Historically underutilized businesses are encouraged to submit proposals.

Term and Total Value. The effective dates of any contract awarded under this RFP will be September 1, 1993, through August 31, 1994. A maximum of \$125,000 for Brazoria County and \$250,000 for Fort Bend/Galveston/Liberty/Chambers Counties is available to fund the contract(s).

Limitations. Funding of the selected proposal will be depended upon available federal and/or state appropriations. The department reserves the right to reject any and all offers received in response to this RFP and to cancel this RFP if it is deemed in the best interest of the department.

Offerors' Conference. An offerors' conference is scheduled to be held June 11, 1993. All respondents to this RFP will be notified of the offerors' conference location and time.

Deadlines. All proposals to be considered for funding through this RFP must be received by 5:00 p.m., July 14, 1993. Proposals received after this deadline will not be accepted. Modifications to the original proposal must also be received prior to 5:00 p.m., July 14, 1993.

Evaluation and Selection. A panel of program and administrative staff from the department will rank and score the proposals. The evaluation method and criteria will be specified in advance. Considerations are cost, client accessibility to services, staffing, and work plan.

Contact Person. To obtain a complete copy of the RFP, please contact Nancy E. Cook, Contract Manager, or Barbara Horton, Contract Technician, Protective Services for Families and Children, Texas Department of Protective and Regulatory Services (MC 176-7), 4635 Southwest Freeway, Suite 325, Houston, Texas 77027, (713) 940-5177 or (713) 940-5190.

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

TRD-9323248

Nancy Murphy
Agency Liaison
Texas Department of Protective and
Regulatory Services

Filed: May 20, 1993

Family Preservation Services for Families and Children, Houston Region Request for Proposal

The Texas Department of Protective and Regulatory Services, Children's Protective Service branch, is requesting proposals (RFP) for family preservation services for families in which abused and/or neglect of a child has been confirmed. The goal is to prevent further child maltreatment. Services are to be provided in the client's home. Contractors must provide services to families throughout Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties (all one allocation area) in Region 11.

Eligible Applicants. Eligible offerors include public agencies, private non-profit agencies, and private agencies including professional corporations, partnerships, and individuals. Historically underutilized businesses are encouraged to submit proposals. Contractors must maintain professional liability insurance.

Term and Total Value. The effective dates of any contract awarded under this RFP will be September 1, 1993, through August 31, 1994. A maximum of \$500,000 is available to fund the contract(s). Estimated expenditure by county based on historical data is: Brazoria County-\$16,129; for Fort Bend-\$80, 645; Galveston-\$64,516; Harris-\$274,194; and Montgomery-\$64,516.

Limitations. Funding of the selected proposal(s) will be dependent upon available federal and/or state appropriations. The department reserves the right to reject any and all offers received in response to this RFP and to cancel this RFP if it is deemed in the best interest of the department.

Offerors' Conference. An offerors' conference is scheduled to be held June 9, 1993. All respondents to this RFP will be notified of the offerors' conference location and time.

Deadlines. All proposals to be considered for funding through this RFP must be received by 4:00 p.m., July 12, 1993. Proposals received after this deadline will not be accepted. Modifications to the original proposal must also be received prior to 4:00 p.m., July 12, 1993.

Evaluation and Selection/ A panel of program and administrative staff from the department will rank and score the proposals. The evaluation method and criteria will be specified in advance. Considerations are cost of service, agency experience and staff qualifications, quality of work, and service delivery plan.

Contact Person. To obtain a complete copy of the RFP, please contact Nancy E. Cook, Contract Manager, or Barbara Horton, Contract Technician, Protective Services for Families and Children, Texas Department of Protective and Regulatory Services (MC 176-7), 4635 Southwest Freeway, Suite 325, Houston, Texas 77027, (713) 940-5177 or (713) 940-5190.

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

TRD-8323249 Nancy Murphy
Agency Liaison
Texas Department of Protective and
Regulatory Services

Filed: May 20, 1993

Public Utility Commission of Texas Notice of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 1, 1993, to amend a Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

Docket Title and Number. 12016-Application of West Texas Utilities Company and Texas Utilities Electric Company to amend certificated service area boundaries within Upton County before the Public Utility Commission of Texas.

The Application. In Docket Number 12016, requests approval of an application to amend certificated service area boundaries within Upton County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas, on May 19, 1993.

TRD-8323238 John M. Rentrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: May 20, 1993

Railroad Commission of Texas Notice of Hearing on Statewide Rule 91

The public hearing on proposed Statewide Rule 91 relating to the cleanup of spills of crude oil from oil and gas exploration and production activities (16 TAC §3.91) will be held on June 25, 1993, at 9:00 a.m. in Room 1-111 of the William B. Travis State Office Building, 1701 North Congress Avenue, Austin. If all comments cannot be heard on June 25, 1993, the hearing will continue on subsequent working days. The proposed rule was published on March 30, 1993, in the *Texas Register* (18 TexReg 1985).

Any person may appear and offer comments at the public hearing. Cross-examination of witnesses will not be allowed although the presiding examiners may ask questions of any person testifying.

Please direct written comments to the attention of Jane Hoffman. All comments must be in writing in order to insure consideration and a place in the record.

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

TRD-8323270 Mary Rose McDonald
Assistant Director, Legal Division-Gas
Utilities/LP Gas
Railroad Commission of Texas

Filed: May 21, 1993

**Texas Department of Transportation,
Division of Aviation**

Request for Proposals

The following request for proposals for providing professional engineering services is filed under the provision of Texas Civil Statutes, Article 664-4.

The Division of Aviation will solicit and receive proposals for professional engineering services for the preparation of Airport Action Plans for the following airports: Greenville, Llano, and Port Isabel. An Airport Action Plan is an abbreviated or shortened form of the standard Airport Master Plan. The Airport Action Plans are intended to assist local airport sponsors with immediate needs and will focus on physical facilities and requirements, operational safety, management strategies, revenue sources and capabilities, and community support. The selected consultant will prepare all three Action Plans.

Those interested consultants should submit five copies of brief proposals consisting of the minimum number of pages sufficient to provide necessary information to: Texas Department of Transportation, Division of Aviation, Attention: Anna Saldana, P.O. Box 12607, Austin, Texas 78711, (512) 476-9262; 410 East Fifth Street, Austin, Texas 78701.

Proposals must be received by 4:00 p.m., Friday, June 11, 1993.

Procedures for award-Procedure for award will be in accordance with FAA Advisory Circular AC 150/5100-14B.

The estimated project cost is \$52,500.

The Division of Aviation reserves the right to reject any or all proposals received and to conduct new consultant selection procedures for future projects.

The Proposal Shall Include: firm name, address, phone number, and person to contact regarding the proposal; proposed project management structure identifying key personnel and subconsultants (if any); qualifications and recent experience of the firm, key personnel and subconsultants relative to the performance of similar services for FAA or TxDOT (TAC/TDA) projects; technical approach—a detailed discussion of the tasks or steps to accomplish the project; proposed project schedule, including major tasks and target completion dates; list of in-state references including the name, address, and phone number of the person most closely associated with the firm's prior project performance; statement regarding an Affirmative Action Program; plan to utilize Disadvantage Business Enterprises (DBEs) in contracting, subcontracting and procurement efforts associated with this project including: the names and addresses of DBE firms that will participate in the contract; a description of the work each named DBE firm will perform; and percentage of the contract amount to be contracted by each named DBE; certification that all franchise taxes are paid or that consultant is not subject to franchise taxes.

Proposals will be reviewed by a consultant selection committee in order to identify from three to five consultants who will be interviewed by the committee. The final consultant selection will be made following completion of interviews.

If there are any questions concerning the project, please contact Charles Riordan, Project Manager, Division of

Aviation, Texas Department of Transportation, at (512) 476-9262.

Issued in Austin, Texas, on May 19, 1993.

TRD-9323170

Diane L. Northam
Legal Administrative Assistant
Texas Department of Transportation

Filed: May 19, 1993

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**Texas Water Commission
Enforcement Orders**

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An agreed enforcement order was issued to Fisher County (Permit Number MSW-0963) on May 10, 1993, assessing \$3,120 in administrative penalties with \$1,320 deferred.

Information concerning any aspect of this order may be obtained by contacting Samita Mehta, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 908-2045.

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

TRD-9323245

Gloria A. Vasquez
Chief Clerk
Texas Water Commission

Filed: May 20, 1993

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Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Harrison Mullins (TWC Facility ID Number 57897) on May 18, 1993, assessing \$720 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Maria Sanchez, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 475-2264.

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

TRD-9323333

Gloria A. Vasquez
Chief Clerk
Texas Water Commission

Filed: May 21, 1993

◆ ◆ ◆
Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to OXI-TECH Metal Finishing, Inc. (SWR Number 52106) on April 30, 1993, assessing \$142,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Glenn Hall, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 908-2057.

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

TRD-9323246 Gloria A. Vasquez
Chief Clerk
Texas Water Commission

Filed: May 20, 1993

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**Notice of Application For Waste
Disposal Permit**

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of May 17-21, 1993.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7906.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number, and type of application—new permit, amendment, or renewal.

B and B Sewer Company; the Oakwood Village Wastewater Treatment Facilities; the plant site is approximately 300 feet west of Goslin Road and approximately 1,500 feet south of Root Road in Harris County; renewal; 12303-01.

Central Power and Light Company; the E.S. Joslin Steam Electric Station; the plant site is approximately 1.5 miles

south of State Highway 35 near the City of Point Comfort, Calhoun County; renewal; 01303. *

FFP Operating Partners, LP; the wastewater treatment facility will serve a restaurant, fuel stations, and other facilities associated with a truck stop; the plant site is at the northeast corner of the intersection of U.S. Highway 75 and FM Road 455 in Collin County; new; 13661-01.

Grant Road Public Utility District; the wastewater treatment facilities; are approximately 30 miles northwest of downtown Houston, approximately one-half mile south of Grant Road near the Kluge Road crossing of Little Cypress Creek in Harris County; renewal; 11887-01.

City of Florence; the wastewater treatment facilities; are 1/2 mile south of the City of Florence and 3/4 mile east of State Highway 195 in Williamson County; renewal; 10944-01.

Harris County Water Control and Improvement District Number 109; the wastewater facility will serve a residential subdivision; the plant site is at 13415 Bammel-North Houston Road in the City of Houston, 0.57 mile southwest of the intersection of Veterans Boulevard (Stuebner-Airline Road) and Bammel-North Houston Road in Harris County; new; 11026-02.

Harris-Fort Bend Counties Municipal Utility District Number Three; the wastewater treatment facilities; are approximately two miles generally east from the intersection of FM Road 1463 and Interstate Highway 10, and approximately 4,200 feet south of Interstate Highway 10 and 800 feet east of Katy-Fort Bend Road in Harris and Fort Bend Counties; renewal; 12498-01.

Houston Lighting and Power Company; the applicant operates the Webster Steam Electric Station; the plant site is approximately three miles northeast via FM Road 582 of the City of Webster, Harris County; renewal; 01044.

Luce Bayou Public Utility District; the Idleloch-Lochshire Subdivision Wastewater Treatment Plant; the plant site is 3.5 miles north of the intersection of FM Road 1960 and FM Road 2100 at a point two miles north of Huffman, Harris County; renewal; 11167-01.

James E. Petersen; the wastewater treatment facilities; are approximately 7,500 feet west of the intersection of U.S. Highway 290 and FM Road 529 and south of the intersection of Fairview Road and FM Road 529 in Harris County; renewal; 12398-01.

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

TRD-9323336 Gloria A. Vasquez
Chief Clerk
Texas Water Commission

Filed: May 21, 1993
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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.
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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