Texas Register

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Texas Register

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

Secretary of State
John Hannah, Jr.

Director
Dan Procter

Assistant Director
Dee Wright

Circulation/Marketing
Roberta Knight
Jill S. Ledbetter

TAC Editor
Dana Blanton

TAC Typographer
Madeline Chrisner

Documents Section
Supervisor
Patty Webster

Document Editors
Janiene Allen
Robert Macdonald

Open Meetings Clerk
Jamie Alworth

Production Section
Supervisor
Ann Franklin

Production Editors/
Typographers
Carla Carter
Janice Rhea
Mimi Sanchez

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How to Use the Texas Register

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

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

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

Emergency 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Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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
40 TAC §3.704.....950, 1820

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

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

Case Management

Pharmacy Services

Medical Transportation

Family Planning

Legal Services

Texas Department of Health

Texas Air Control Board

Texas Department of Human Services

Texas Department of Protective and Regulatory Services

Open Meeting Sections

In Addition Sections

Texas Bond Review Board

Office of Consumer Credit Commissioner

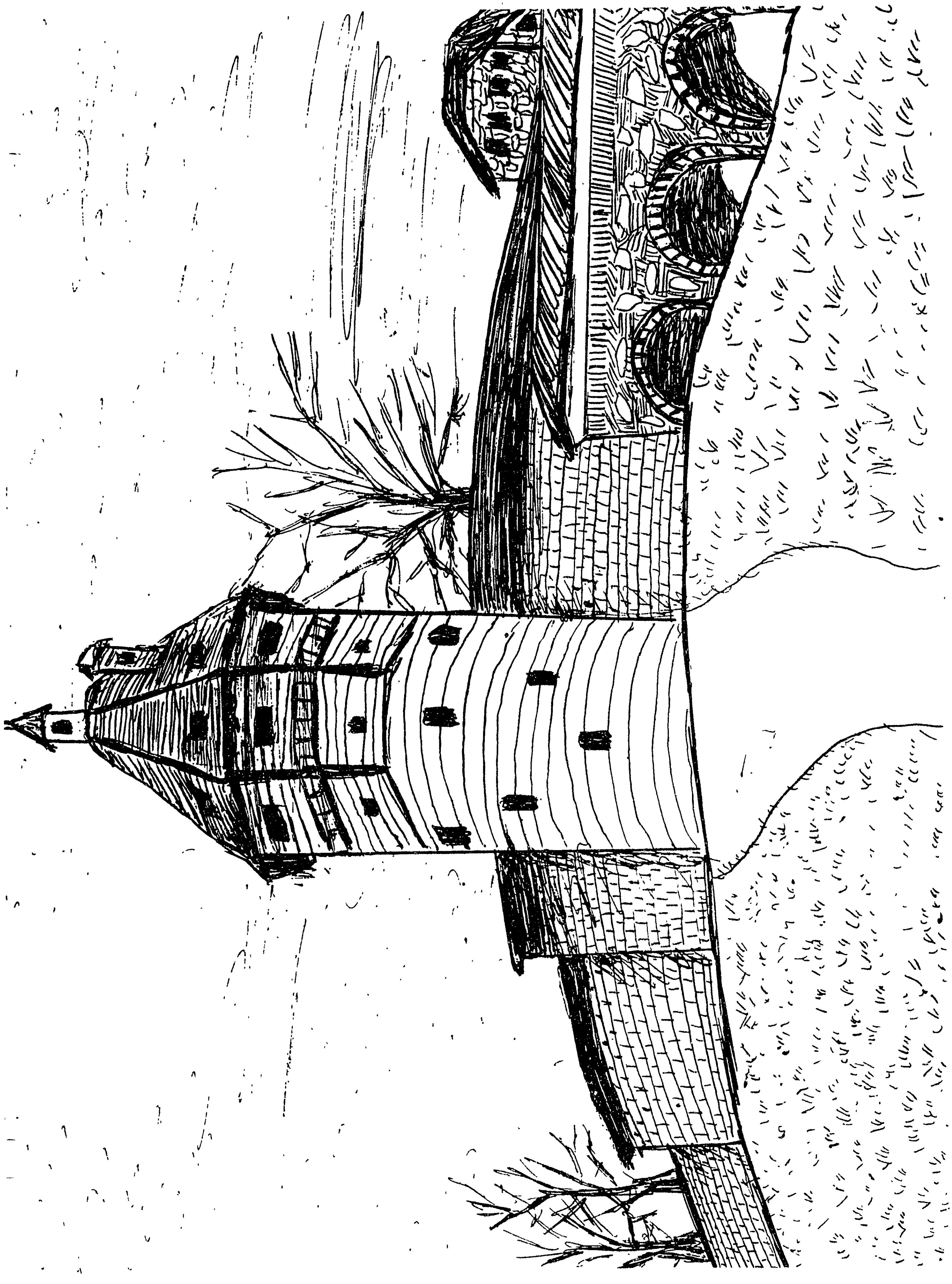
Texas Natural Resource Conservation Commission

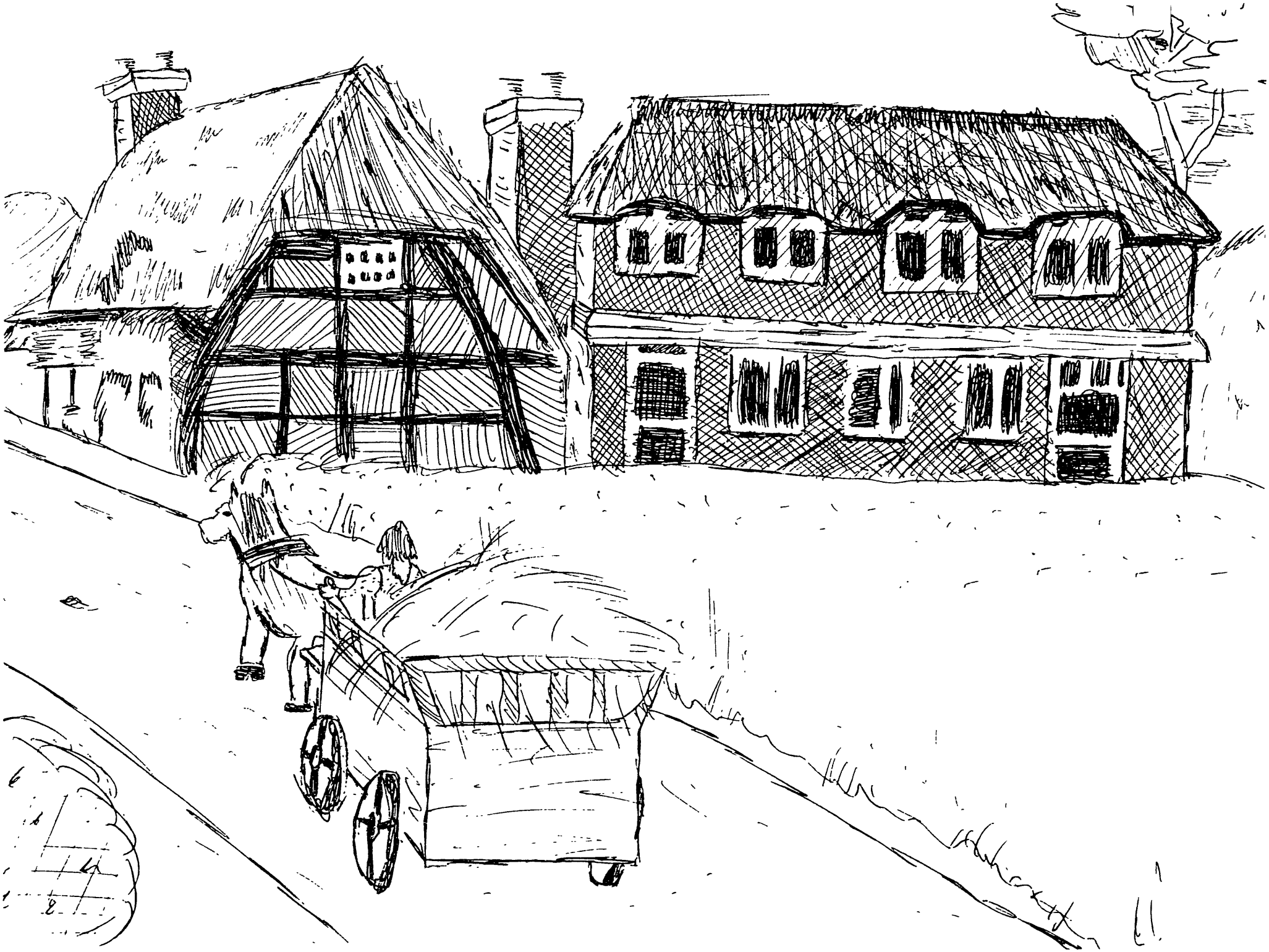
Texas Department of Protective and Regulatory Services

Railroad Commission of Texas

The University of Texas System

Texas Water Commission





Emergency Sections

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

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

TITLE 7. BANKING AND SECURITIES

Part I. State Finance Commission

Chapter 3. Banking Section

Subchapter B. General

• 7 TAC §3.38

The Finance Commission of Texas (the Commission) adopts on an emergency basis new §3.38, concerning application of a state banking association to convert to a state limited banking association. The section adopted on an emergency basis is contemporaneously proposed for public comment in this issue of the *Texas Register*.

This section is adopted on an emergency basis because the Commission finds that a requirement of state law, namely, the mandate of Article XVI, §16(c), of the Texas Constitution, requires adoption of this rule on fewer than 30 days' notice, to ensure that state banks have the same right and opportunity as national banks to convert to state limited banking associations pursuant to Texas Civil Statutes, Article 342-310, on September 1, 1993. Article 342-310, as amended and renumbered by House Bill Number 1212, 73rd Legislature, 1993, is effective September 1, 1993. Statutory citations in this preamble and in the body of new §3.38 are to the statutes as amended by the 73rd Legislature, 1993.

The new section is adopted under Texas Civil Statutes, Article 342-113(4), which provide the Commission with the authority to promulgate general rules and regulations to permit state banks to transact their affairs in any manner which they could do were they organized and operating as national banks

§3.38. Conversion of a State Banking Association to a Limited State Banking Association.

(a) A state banking association that desires to become a state limited banking association may do so, in addition to any other method authorized by law, by conversion pursuant to Texas Civil Statutes, Article 342-310, in the same manner as it could do if it was organized and operating as a national bank under the laws of the United States, subject to the provisions of subsection (b) of this section.

(b) A state banking association that wishes to convert to a state limited banking association pursuant to Texas Civil Statutes, Article 342-310, must obtain the approval of its board of directors and its shareholders as if such conversion was a merger pursuant to Part V of the Texas Business Corporation Act, including the obligation to pay dissenters' rights in the manner contemplated therein.

Issued in Austin, Texas, on August 30, 1993.

TRD-9328005 Everette D. Jobe
General Counsel
Texas Department of Banking

Effective date: August 31, 1993

Expiration date. December 30, 1993

For further information, please call. (512) 475-1300

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Part II. Banking Department of Texas

Chapter 25. Prepaid Funeral Contracts

• 7 TAC §25.23

The Texas Department of Banking (the "Department") adopts on an emergency basis new §25.23, establishing fees applicable to the regulated, prepaid funeral services and merchandise industry, sometimes referred to as the prepaid funeral benefits industry, pursuant to Texas Civil Statutes, Article 548b, as amended effective September 1, 1993 (the "Act"). A proposed version of §25.23 was published at 18 TexReg 4723, and comments have been received as well as a hearing requested. Based on written comments received, the emergency section has been revised from the proposed version. A public hearing is being held on the proposed section on September 2, 1993, and any final, adopted rule will take into account all written and oral submissions.

The Department adopts §25.23 on an emergency basis to define terms, set application fees, and establish examination fees to be assessed against and collected from each prepaid funeral benefits licensee based on the number of each licensee's total outstanding unmatured contracts, for the purpose of recovering the cost of examination and the equitable or proportionate cost of maintenance and operation of the Department and the enforcement of the Act.

The new section is adopted on an emergency basis to ensure that all necessary rules are in place to fund regulation of the industry and implement the provisions of House Bill Number 2499, 73rd Legislature, 1993, effective September 1, 1993. The Department finds that a requirement of state law requires adoption of this section on fewer than 30 days' notice because §2 and §8 of the Act require that the prepaid funeral benefits industry bear its equitable or proportionate share of the cost of maintenance and operation of the Department and pay the cost of enforcement of the Act. Failure to have an appropriate section in place during the interim period between the effective date of amendments to the Act and final adoption of the section would cripple the ability of the Department to fund regulation of this industry.

The new section is adopted under Texas Civil Statutes, Article 548b, §§1(A)(d), 2, 3, 5(a)(4)(D)(ix), and 8, as effective September 1, 1993, pursuant to House Bill 2499, 73rd Legislature, 1993, which empowers the Department to set fees.

§25.23. Fees.

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

(1) "Act" means Texas Revised Civil Statutes, Article 548b, as amended.

(2) "Commissioner" means the Banking Commissioner of Texas.

(3) "Department" means Texas Department of Banking.

(4) "Examination" means the process of evaluating the financial condition of a permit holder's prepaid funeral benefit operation, either by a field examination or an internal Department review of financial statements and reports in lieu of a field examination.

(5) "Fiscal year" means the 12-month period from September 1st to August 31st of the next succeeding calendar year.

(6) "Excess Earnings" means funds in trust accounts, including all realized and unrealized gains and losses, that exceed 110% of all sums paid by purchasers on contracts.

(7) "Permit holder" means a person having a valid permit to sell prepaid funeral benefits.

(8) "Prepaid funeral benefits" means prearranged or prepaid funeral or

cemetery services or funeral merchandise, including caskets, grave vaults, and all other articles of merchandise incidental to a funeral service. The term does not include a grave lot, grave space, grave marker, monument, tombstone, crypt, niche, or mausoleum unless it is sold in contemplation of trade or barter for services and merchandise to which the Act applies.

(9) "Seller" means a person selling, accepting funds or premiums for, or soliciting contracts for prepaid funeral benefits or contracts or policies of insurance to fund prepaid funeral benefits in this state.

(b) Application Fees. The application fees set forth in this subsection are either specifically set out in the Act or have been set in accordance with the Act to reasonably approximate the agency's cost of processing new applications, applications for withdrawal of funds, or applications for renewal of permits, including any associated review, investigation, and examination, except for extraordinary expenses for out of state investigation of new applicants. Except as otherwise provided in this subsection, all fees are due at the time the application is filed and are nonrefundable. Failure to timely pay fees or costs shall be grounds for denial of the application.

(1) New Permit Application Fee. An applicant for a new prepaid funeral benefits permit shall pay a nonrefundable $500 fee. In addition to the application fee, an applicant shall pay any extraordinary costs incurred by the Department pursuant to any out of state investigation of the applicant as required by §3 of the Act. Extraordinary costs shall be paid by the applicant within 20 days after written request by the Department.

(2) Conversion Application Fee. An applicant for the conversion of a trust-funded prepaid funeral benefits operation to an insurance-funded prepaid funeral benefits operation shall pay a $1,000 fee per application.

(3) Application Fee for Withdrawal of Excess Earnings. Pursuant to §5 of the Act, an applicant for the withdrawal of excess earnings shall pay a fee of $1,000 per permit or a fee not to exceed $5,000 for consolidated applications of more than five permits.

(4) Renewal Application Fee. To renew a permit, the permit holder shall pay a $500 fee. At the Department's election, the renewal fee shall be due and payable with and in addition to the first installment on the examination fee under subsection (c)(1) of this section on or before the date of permit expiration.

(c) Examination Fees. The Department shall assess and collect nonrefundable examination fees in accordance with this subsection. Any assessed fee or an installment payment as part of a fee is due at the time of billing.

(1) Annual Examination Fee. The Department shall annually assess each seller an examination fee, not to exceed $7,500 in a fiscal year, at a rate of not more than $1.75 per unmatured contract of the permit holder. The number of unmatured contracts of the permit holder shall be the number of unmatured contracts reported by the permit holder in the most recent annual report on file with the Department, subject to adjustment for errors or mistakes in such annual report. The Department may levy this fee in quarterly or fewer installments in such periodically adjusted amounts as reasonably appear necessary to defray the costs of examination and the equitable or proportionate cost of maintenance and operation of the Department and the enforcement of the Act, and to avoid the accumulation of unnecessary fund balances.

(2) Excess Examination Fee. In addition to and separate from any other fees under this subsection, a seller shall pay the excess cost of conducting more than one field examination during the same fiscal year as may be deemed necessary by the Department, at a rate of $500 per examiner per day.

(3) Minimum Examination Fee. If the examination fee as computed under paragraph (1) of this subsection is less than $25, a minimum examination fee of $25 shall be levied and collected.

Issued in Austin, Texas, on August 30, 1993.

TRD-9328015 Everette D. Jobe
General Counsel
Texas Department of Banking

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For further information, please call: (512) 475-1300

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Chapter 26. Perpetual Care Cemeteries

• 7 TAC §26.1

The Texas Department of Banking ("the Department") adopts on an emergency basis new §26.1, establishing fees applicable to regulated perpetual care cemetery corporations pursuant to the Health and Safety Code, Chapter 712, as amended effective September 1, 1993 (the "Act"). A proposed version of §26.1 was published at 18 TexReg 4724, and comments have been received as well as a hearing requested Based on written comments received, the emergency section has been revised from the proposed version. A public hearing is being held on the proposed section on September 2, 1993, and any final, adopted rule will take into account all written and oral submissions.

The Department adopts new §26.1 on an emergency basis to define terms, set filing fees for corporations giving notice of intent to the Department to operate perpetual care cemeteries, set filing fees for filing the annual statement of funds by regulated corporations, and establish examination fees pursuant to the Act, assessed against and collected from each examined corporation based on the reasonable and necessary costs to defray the costs of administering the Act.

The section is adopted on an emergency basis to ensure that all necessary rules are in place to fund regulation of the industry and implement the provisions of House Bill Number 1213, 73rd Legislature, 1993, effective September 1, 1993. The Department finds that a requirement of state law requires adoption of this section on fewer than 30 days' notice because the Act as amended requires that the perpetual care cemetery industry bear its equitable or proportionate share of the cost of maintenance and operation of the Department to defray the cost of administering the Act. Failure to have an appropriate section in place during the interim period between the effective date of amendments to the Act and final adoption of the section would cripple the ability of the Department to fund regulation of this industry.

The new section is adopted under the Health and Safety Code, §§712.0031, 712.042, and 712.044, effective September 1, 1993, pursuant to House Bill Number 1213, 73rd Legislature, 1993, which empowers the Department to set fees.

§26.1. Fees and Assessments.

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

(1) "Act" means the Health and Safety Code, Chapter 712, as amended.

(2) "Commissioner" means the Banking Commissioner of Texas

(3) "Corporation" means a corporation subject to the Act that is organized under the Act, Chapter 712, or any corresponding statute in effect before September 1, 1993, to operate one or more perpetual care cemeteries in Texas.

(4) "Department" means the Texas Department of Banking.

(5) "Examination" means the process of evaluating the financial condition of a perpetual care cemetery corporation, either by field examination or internal Department review of financial statements and reports in lieu of or in addition to field examination.

(6) "Fiscal year" means the 12-month period from September 1st to August 31st of the next succeeding calendar year.

(b) Filing Fees. The filing fees set forth in this subsection are either specifi-

cally set out in the Act or have been set in accordance with the Act to reasonably approximate the agency's cost of administering the Act with respect to each particular filing.

(1) Notice Fee. Pursuant to the Act, §712.0031, each Corporation required to file notice of intent to operate a perpetual care cemetery with the Department shall submit with such notice a nonrefundable fee of $500.

(2) Annual Statement of Funds Fee. A Corporation shall pay an annual nonrefundable $500 fee to file the annual statement of funds required under the Act.

(3) Time of payment. Except as otherwise provided in this section, all fees are nonrefundable and due at the time the related documentary filing is made. Failure to timely pay fees or costs under this section shall be grounds for enforcement action by the Department under the Act.

(c) Examination Fees. The Department shall assess and collect nonrefundable examination fees in accordance with this subsection. Any assessed fee or an installment payment as part of a fee is due at the time of billing.

(1) Annual Examination Fee. The Department shall annually assess each Corporation an examination fee, not to exceed $5,000 in a fiscal year, at a rate of not more than $0.0012 per dollar of the book value of the total perpetual care cemetery trust assets of the regulated corporation. The Department may levy this fee in quarterly or fewer installments in such periodically adjusted amounts as reasonably appear necessary to defray the costs of examination. The examination fee or an installment thereof is due at the time of billing.

(2) Minimum Examination Fee. If the examination fee as computed under paragraph (1) of this subsection is less than $25, a minimum examination fee of $25 shall be levied and collected.

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TRD-9328014 Everette D. Jobe
General Counsel
Texas Department of Banking

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For further information, please call: (512) 475-1300

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TITLE 16. ECONOMIC REGULATIONS

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter CC. Tow Trucks

• 16 TAC §§5.802, 5.803, 5.805, 5.806

The Railroad Commission of Texas repeals on an emergency basis §§5.802, 5.803, 5.805, and 5.806 and adopts on an emergency basis new §§5.802, 5.803, 5.805, and 5.806, concerning the regulation and operation of tow trucks. The existing language in §§5.802, 5.803, 5.805, and 5.806 was administratively transferred from Texas Department of Licensing and Regulation rules as specified in the August 10, 1993, issue of the *Texas Register* (18 TexReg 5326).

This repeal of existing rules and adoption of new rules will allow existing and new tow truck operators to promptly register with the commission tow trucks that are not registered with the commission as of September 1, 1993, and to comply with insurance requirements for those tow trucks. Proposed rules applicable to all tow trucks, including those registered with the commission as of September 1, 1993, will be separately published for public comment.

Without these emergency rules, the commission anticipates that manual registration would be necessary for an estimated 1,500-2,000 tow trucks within a 30-45 day period, resulting in an estimated delay of one week to one month in issuing the certificates of registration. Such delay could cause a tow truck operator to be unable to legally respond to requests for towing in emergency situations. The commission presently registers more than 700,000 vehicles annually using an automated procedure and is not equipped to manually register numerous tow trucks in a short period of time. In addition, if certificates of registration for tow truck operators are delayed due to manual processing, the commission may not be able to rapidly verify that the tow truck operators have the insurance required for their operations. Therefore, the commission finds an imminent peril to the public safety and welfare if the current rules are not repealed and new rules are not adopted on an emergency basis.

The repeals are adopted on an emergency basis as a result of Senate Bill 452 and Senate Bill 958, 73rd Legislature, 1993, which transferred jurisdiction of the regulation and operation of tow trucks from the Texas Department of Licensing and Regulation to the Railroad Commission of Texas.

§5.802. Definitions.

§5.803. Registration Requirements.

§5.805. Insurance Requirements.

§5.806. Fees.

Issued in Austin, Texas, on August 30, 1993.

TRD-9328111 Mary Ross McDonald
Assistant Director, Legal Division-Gas Utilities/LP Gas
Railroad Commission of Texas

Effective date: September 1, 1993

Expiration date: December 31, 1993

For further information, please call: (512) 463-7094

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The new sections are adopted on an emergency basis under Senate Bill 452, §11, 73rd Legislature, 1993, which orders the Railroad Commission of Texas to adopt rules, in the interest of public safety, that provide requirements for registration and maintenance of registration, including minimum insurance requirements for the operation of tow trucks and minimum safety standards regarding the operation of tow trucks.

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

Act–Texas Civil Statutes, Article 6687-9b.

Original application–The required application form to obtain certificates of registration.

Certificate of registration–The document issued by the commission authorizing the operation of a specific tow truck.

Commercial motor vehicle or commercial carrier–Have the same meanings as ascribed to them in §5.501 of this title (relating to Definitions).

Commission–The Railroad Commission of Texas.

Consent tow–Any tow conducted with the permission of, or at the direction of, the towed vehicle's legal or registered owner, or such owner's authorized representative. Except as set forth in the definition of "nonconsent tow" in this section, a tow will be considered a consent tow where the owner is able to give consent.

Director–The director of the Transportation/Gas Utilities Division of the commission, or a designee of the director.

Mechanical device–A mechanical, electrical or hydraulic winch or wheel lift permanently attached to or used in combination with a commercial motor vehicle.

Mini-wrecker or auto trailer–A vehicle without motive power used in combination with a commercial motor vehicle, and which is adapted or used to tow, winch or otherwise move another motor vehicle.

Motor Carrier Act–Texas Civil Statutes, Article 911b.

Motor Carrier Safety Act-Texas Civil Statutes, Article 6701d.

Motor vehicle-A vehicle subject to registration under the Certificate of Title Act (Texas Civil Statutes, Article 6687-1), or any other self-propelled device permitted to travel on a public highway.

Non-tow truck or tow device-A commercial motor vehicle used in combination with a mini-wrecker, auto trailer or other towing device, and which is not equipped with a mechanical device.

Nonconsent tow-Any tow conducted without permission of, or not at the direction of, the towed vehicle's legal or register owner, or such owner's authorized representative. Regardless of this definition, certified law enforcement officials may control the scene of an accident in the manner they deem appropriate and order a nonconsent tow.

Operate-Driving or causing to be driven a tow truck on a public highway.

Operator-Any person operating, or causing to be operated, a tow truck on a public highway of this state.

Owner-A person owning, leasing or otherwise using, either directly or indirectly, a tow truck on a public highway of this state.

Person-An individual or other legal entity.

Registration year-The period between January 1st and December 31st of each year.

Renewal application-The required application form to renew certificates of registration.

Tow truck-A commercial motor vehicle equipped with, or used in combination with a mechanical device, mini-wrecker, or auto trailer, and which is adapted or used to tow, winch or otherwise move a motor vehicle.

Vehicle-As defined in Texas Civil Statutes, Article 6675a-1.

§5.803. Registration Requirements.

(a) Every current certificate of registration issued by the Texas Department of Licensing and Regulation before September 1, 1993, shall be valid until midnight December 31, 1993, unless otherwise cancelled or suspended by the commission. This provision shall expire on January 1, 1994.

(b) Every tow truck shall have its own certificate of registration. A certificate of registration is not assignable or transferable, except as follows in this section.

(c) Every certificate of registration expires at midnight on December 31st of each year.

(d) A certificate of registration authorizes a tow truck to be operated in the state of Texas, provided the operator of the tow truck complies with all other applicable state laws. This act and its rules do not in any way reduce, diminish or otherwise affect the jurisdiction of the commission to enforce the Motor Carrier Act.

(e) The original certificate of registration shall be kept in the tow truck at all times and presented immediately upon request to any certified law enforcement official or commission representative.

(f) A person desiring to operate a tow truck not registered with the commission as of September 1, 1993, shall file a completed application and the appropriate fee with the commission on a form prescribed by the director. The original application must be signed by the owner or the owner's authorized representative.

(g) All applications shall include an affidavit, signed by the owner or the owner's authorized representative, stating that all tow trucks sought to be registered are in compliance with the safety requirements of this subchapter and all other applicable state laws.

(h) If the applicant is a corporation, the individual who signs the original application form, by signing the application, certifies that the corporation is in good standing with the State Comptroller of Public Accounts, and that all taxes or other assessments owed the state are paid.

(i) On or before October 15th of each year, the commission shall issue a renewal application to each owner which has, in the preceding registration year, received a certificate of registration for a tow truck. The renewal application shall be on a form prescribed by the director for that purpose. A person desiring to engage in the operation of a tow truck during any period of the next registration year shall complete and submit a renewal application before December 1st of each year. A renewal application shall be accompanied by the required renewal fee for each tow truck sought to be registered, and shall be signed by the owner or owner's authorized representative.

(j) No renewal certificates of registration shall be issued for any tow trucks for which a renewal application is submitted when the renewal application bears a postmark after January 1st of the previous registration year. An owner must submit a new application to obtain a certificate of registration after that date.

(k) A certificate of registration may be transferred during a current registration year from a tow truck which has been retired from service to one that has been placed in substitution of the retired tow truck. Substitution may be made by the owner when the retired tow truck's certificate of registration is returned to the commission and its request for substitution is submitted on a completed form prescribed by the director for that purpose, accompanied by the required fee.

(l) Before a new tow truck is put into service during a current registration year, the owner shall apply to the commission for a certificate of registration on the form prescribed by the director for that purpose and pay the required fees.

(m) Every certificated owner shall be assigned a unique number. That number shall remain the owner's number until such time as the owner fails to renew its certificates of registration or until such time as its certificates of registration are cancelled by the commission. An owner shall refer to its unique number in all correspondence with the commission.

§5.805. Insurance Requirements.

(a) Every owner of a tow truck not registered with the commission as of September 1, 1993, shall file and maintain evidence of currently effective bodily injury and property damage automobile liability insurance in the following minimum amounts:

(1) for a tow truck, together with the towed vehicle, having a gross vehicular weight, registered weight, or actual weight of 26,000 pounds or under, $300,000 combined single limit for bodily injuries to or death of all persons injured or killed in any accident, and loss or damage in any one accident to the property of others; or

(2) for a tow truck, together with the towed vehicle, having a gross vehicle weight, registered weight, or actual weight exceeding 26,000 pounds, $500,000 combined single limit for bodily injuries to or death of all persons injured or killed in any accident, and loss or damage in any one accident to the property of others.

(b) Except as follows, every owner of a tow truck not registered with the commission as of September 1, 1993, shall maintain and have on file with the commission evidence of cargo or on-hook insurance coverage. The intent of this subsection is to require insurance covering damage to a towed vehicle during which time the owner is the bailee of the vehicle being towed. The term "damage" shall include, but is not limited to damage to the towed vehicle that is a direct or indirect result of an improper hookup or improper towing. The minimum insurance coverage required under this subsection shall be:

(1) $10,000 for the loss of or damage to the vehicle towed by any one tow truck which, together with the towed vehicle, has a gross vehicular weight, registered weight, or actual weight of 26,000 pounds or less; or

(2) $25,000 for the loss of or damage to the vehicle towed by any one tow truck which, together with the towed vehicle, has a gross vehicular weight, registered weight, or actual weight exceeding 26,000 pounds.

(c) In lieu of cargo or on-hook insurance, an owner may secure gargagekeepers' legal liability insurance with direct primary coverage in an amount not less than that prescribed in subsection (b) of this section.

(d) An owner who is exclusively engaged in the towing of property owned by it may, in its original application and in every renewal application, certify that all tow trucks operated by it are used exclusively to transport its own property. An owner or operator so certifying will be exempt from the requirements of subsections (b)-(c) of this section.

(e) No owner shall operate a tow truck over the public highways of this state without the insurance coverage required by this section filed with the commission.

(f) Evidence of insurance required in this section shall be filed on a form prescribed by the director and shall be duly completed and executed by an authorized representative of an insurance company holding a certificate of authority to transact business in the State of Texas, or by a surplus lines insurer that meets the requirements of the Insurance Code, Article 1.14-2, and rules adopted by the Texas Department of Insurance under that article.

(g) Notwithstanding the provisions of subsection (a) of this section, an owner may be authorized to self-insure for bodily injury and property damage liability in lieu of filing proof of insurance. The authorization for an owner to self-insure may be granted upon the same showing required of a motor carrier under the terms of §5.182 of this title (relating to Qualifications as Self-Insurer).

(h) If insurance coverage lapses, the owner shall immediately cease all operations of tow trucks owned by it. The director shall notify the owner of any such lapse, and that all certificates of registration held by it shall be subject to cancellation.

(i) The owner who files, or causes to be filed, evidence of bodily injury or property damage insurance shall pay the appropriate fee.

§5.806. Fees. The following are nonrefundable fees charged in connection with this Act.

(1) For each tow truck sought to be registered with an original application postmarked before January 1, 1994, the fee shall be $50.

(2) The fee for adding newly acquired tow trucks during a current year shall be $60, prorated according to paragraph (4) of this section; except, during the first registration year the original application is filed the fee shall be $120 prorated as set out in paragraph (4) of this section.

(3) The fee for substituting a certificate of registration from one tow truck to another or for replacing a lost or stolen certificate of registration shall be $10.

(4) An owner making an original application for certificates of registration or for requesting the addition of newly acquired tow trucks during a current registration year shall pay a prorated fee based on the number of months left in the registration year.

(5) The filing fee for the submission of evidence of bodily injury and property damage insurance shall be $25. This fee is a one-time fee unless another filing is required because of a change in insurance companies.

Issued in Austin, Texas, on August 30, 1993.

TRD-9328114 Mary Ross McDonald
Assistant Director, Legal Division-Gas Utilities/LP Gas
Railroad Commission of Texas

Effective date: September 1, 1993

Expiration date: December 31, 1993

For further information, please call: (512) 463-7094

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TITLE 22. EXAMINING BOARDS

Part XV. Texas State Board of Pharmacy

Chapter 281. General Provisions

• 22 TAC §281.48

The Texas State Board of Pharmacy adopts on an emergency basis an amendment to §281.48 concerning Informal Disposition of a Contested Case. The amendment is adopted on an emergency basis to ensure that all necessary requirements are in place to implement provisions of new §17D of the Texas Pharmacy Act, which becomes effective September 1, 1993. The amendment adopted on an emergency basis is being simultaneously proposed for public comment in this issue of the *Texas Register.*

The amendment is adopted on an emergency basis under the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes), §16(a), which provides the Texas State Board of Pharmacy the authority to adopt rules for the proper administration and enforcement of the Act; the Texas Pharmacy Act, §17B(c), which becomes effective September 1, 1993, and requires that the board adopt a form for complaints; and the Texas Pharmacy Act, §17D, which becomes effective September 1, 1993, and requires that the Board adopt rules governing informal disposition of contested cases.

§281.48. Informal Disposition of a Contested Case.

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

(b) Prior to the imposition of disciplinary sanction(s) against a license, the licensee shall be offered an opportunity to attend an informal conference and show compliance with all requirements of law, in accordance with the Administrative Procedure and Texas Register Act, §18(c) (Texas Civil Statutes, Article 6252-13a).

(c) Informal conferences shall be attended by the executive director/secretary or his designated representative, legal counsel of the agency or an attorney employed by the office of the attorney general, and other representative(s) of the agency as the executive director/secretary and legal counsel may deem necessary for proper conduct of the conference. The licensee and/or the licensee's authorized representative(s) may attend the informal conference and shall be provided an opportunity to be heard.

(d) In any case where charges are based upon information provided by a person ("complainant") who filed a complaint with the board, the complainant may attend the informal conference, unless the proceedings are confidential under the Texas Pharmacy Act, §27A, or other applicable law. A complainant who chooses to attend an informal conference shall be provided an opportunity to be heard with regard to charges based upon the information provided by the complainant. Nothing herein requires a complainant to attend an informal conference.

(e) Informal conferences shall not be deemed meetings of the board and no formal record of the proceedings at such conferences shall be made or maintained.

(f)[(b)] Any proposed consent order shall be presented to the board for its review. At the conclusion of its review, the board shall approve or disapprove the proposed consent order. Should the board approve the proposed consent order, the appropriate notation shall be made in minutes of the board and the proposed consent order shall be entered as an official action of the board. Should the board disapprove

the proposed consent order, the case shall be scheduled for public hearing.

Issued in Austin, Texas, on August 31, 1993.

TRD-9328097 Fred S. Brinkley, Jr.
Ececutive Director/Secretary
Texas State Board of Pharmacy

Effective date: September 1, 1993

Expiration date: December 31, 1993

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

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• 22 TAC §281.73.

The Texas State Board of Pharmacy adopts on an emergency basis new rule §281.73 concerning Complaints. The section describes the procedures for filing complaints made to the Board. The section adopted on an emergency basis is simultaneously proposed for public comment in this issue of the Texas Register.

The section is adopted on an emergency basis to ensure compliance with provisions described in Senate Bill 621 passed by the 73rd Legislature which added new Section 17B to the Texas Pharmacy Act and becomes effective September 1, 1993. The provisions of this Act become effective September 1, 1993. Section 17B(c) of the new Act provides that "the board by rule shall adopt a form for the filing of complaints made to the board."

The new rule is adopted on an emergency basis under the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes) Section 16(a), which provides the Texas State Board of Pharmacy the authority to adopt rules for the proper administration and enforcement of the Act and Texas Pharmacy Act Section 17B(c), which becomes effective September 1, 1993, and requires that the board adopt a form for complaints.

§281.73. Complaints. Complaints may be filed with the agency orally by phone or in person at the agency's office, or in any written form, including submission of a completed complaint form. A complaint form shall be maintained at the agency's office for use at the request of any complainant. The complaint form shall request information necessary for the proper processing of the complaint by the agency, including, but not limited to:

(1) Complainant's name, address, and phone number;

(2) Name, address and phone number of subject of complaint, if known;

(3) Date of incident; 4) Name and description of drug(s) involved, if any; and

(5) Complete description of incident giving rise to complaint.

Issued in Austin, Texas, on August 31, 1993.

TRD-9328095 Fred S. Brinkley, Jr.
Executive Secretary/Secretary
Texas State Board of Pharmacy

Effective date: September 1, 1993

Expiration date: December 31, 1993

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

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Chapter 283. Licensing Requirements for Pharmacists

• 22 TAC §283.9 and §283.10

The Texas State Board of Pharmacy adopts on emergency basis amendments to §283.9 and §283.10 concerning Fee Requirements for Licensure by Examination and Reciprocity and Requirements for Application for a Pharmacist License Which Has Expired. The amendments adopted on an emergency basis are simultaneously proposed for public comment in this issue of the *Texas Register*. The sections are adopted on an emergency basis to ensure compliance with provisions of the Texas Pharmacy Act as amended by Senate Bill 621 passed by the 73rd Legislature. Senate Bill 621 amends the Texas Pharmacy Act, §24, to specify that a pharmacist license that has been expired for one year or more cannot be renewed and the person must apply for a new license. This provision becomes effective September 1, 1993.

The amendments are adopted under the Texas Pharmacy Act, §16(a) which gives the Board the Authority to adopt rules for the proper administration of the Act; and §24(g) which specifies that the Board may not renew a license that has been expired one year or more.

§283.9. Fee Requirements for Licensure by Examination and Reciprocity.

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

(e) Once an applicant has successfully completed all requirements of licensure, the applicant will be notified of licensure as a pharmacist and of his or her pharmacist license number and the following is applicable:

(1) The notice letter shall serve as authorization for the person to practice pharmacy in Texas for a period of 30 days from the date of the notice letter.

(2) The applicant shall complete a pharmacist license application and pay one pharmacist licensee fee as specified in §295.5 [§291.5] of this title (relating to Pharmacist License or Renewal Fees).

(3) The provisions of §295.7 of this title (relating to Pharmacist License Renewal) apply to the timely receipt of an application and licensure fee.

(4) If application and payment of the pharmacist license fee are not received by the board within 30 days from the date of the notice letter, the person's license to practice pharmacy shall expire. A person may not practice pharmacy with an expired license. The license may be renewed according to the following schedule.

(A) If the notice letter has been expired for [(not more than)] 90 days or less, the person may become licensed by making application and paying to the board one license fee and a fee that is one-half of the examination fee for the license.

(B) If the notice letter has been expired for more than 90 days but less than one year, [(2 years,)] the person may become licensed by making application and paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

(C) If the notice letter has been expired for one year [two years] or more, the person shall apply for a new license.

§283.10. Requirements for Application for a Pharmacist license Which Has Expired.

(a) Expired less than 90 days. If a person's license has been expired for 90 days or less, the person may renew the license by:

(1) paying to the board the required renewal fee and a fee that is one-half of the examination fee for a license; and

(2) [after September 1, 1991, reporting] Reporting completion of the required number of contact hours of approved continuing education.

(b) Expired more than 90 days. If a person's license has been expired for more than 90 days but less than one year, [2 years,] the person may renew the license by:

(1) paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for a license; and

(2) [after September 1, 1991, reporting] Reporting completion of the required number of contact hours of approved continuing education.

(c) Expired for one year or more. If a person's license to practice pharmacy in Texas has been expired for one year or more, the person may not renew the license and shall apply for a new license.

(d) (No change.)

(e) Alternatives to re-examination. In lieu of re-examination as specified in subsection (d) of this section, the board may issue a license to a person whose license has been expired for one year or more, if

the person meets the requirements of subsection (f) or (g) of this section and has not had a license granted by any other state suspended, revoked, canceled, surrendered, or otherwise restricted for any reason.

(f) Persons practicing pharmacy in another state. The board may issue a license to a person who was licensed as a pharmacist in Texas, moved to another state, is licensed in the other state, and has been engaged in the practice of pharmacy in the other state for the two years preceding the application if the person meets the following requirements:

(1) (No change.)

(2) submits to the board certification that the applicant:

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

(C) [after September 1, 1991, has] Has completed a minimum of 24 contact hours of approved continuing education during the preceding two license years.

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

(g) Persons not practicing pharmacy. The board may issue a license to a person who was licensed as a pharmacist in this state, but has not practiced pharmacy for the two years preceding application for licensure under the following conditions:

(1) the person's Texas pharmacist license has been expired for less than 10 years, the person shall:

(A) make application for licensure to the board on a form prescribed by the board;

(B) pass the Texas Pharmacy Jurisprudence Examination with a grade of 75 (the passing grade may be used for the purpose of licensure for a period of two years from the date of passing the examination);

(C) pay the examination fee set out in §283.9 of this title (relating to Fee Requirements for Licensure by Examination and Reciprocity); and

(D) complete approved continuing education and/or board-approved internship requirements according to the following schedule:

(i) if the Texas pharmacist license has been expired for more than one year but less than two years the applicant shall complete 12 contact hours of approved continuing education; three years the applicant shall complete 24 contact hours of approved continuing education;

(ii) [(i)] if the Texas pharmacist license has been expired for more than two years but less than three years the applicant shall complete 24 contact hours of approved continuing education;

(iii) [(i)] if the Texas pharmacist license has been expired for more than three years but less than four years the applicant shall complete 36 contact hours of approved continuing education;

(iv) [(iii)] if the Texas pharmacist license has been expired for more than four years but less than five years the applicant shall complete 36 contact hours of approved continuing education and 500 hours of internship in a board-approved internship program;

(v) [(iv)] if the Texas pharmacist license has been expired for more than five years but less than six years the applicant shall complete 36 contact hours of approved continuing education and 700 hours of internship in a board-approved internship program;

(vi) [(v)] if the Texas pharmacist license has been expired for more than six years but less than seven years the applicant shall complete 36 contact hours of approved continuing education and 900 hours of internship in a board-approved internship program;

(vii) [(vi)] if the Texas pharmacist license has been expired for more than seven years but less than eight years the applicant shall complete 36 contact hours of approved continuing education and 1,100 hours of internship in a board-approved internship program;

(viii) [(vii)] if the Texas pharmacist license has been expired for more than eight years but less than nine years the applicant shall complete 36 contact hours of approved continuing education and 1,300 hours of internship in a board-approved internship program; and

(ix) [(viii)] if the Texas pharmacist license has been expired for more than nine years but less than ten years the applicant shall complete 36 contact hours of approved continuing education and 1,500 hours of internship in a board-approved internship program.

(2) Any hours of approved continuing education earned within two years prior to the applicant successfully passing the Texas Pharmacy Jurisprudence examination may be applied towards the continuing education requirement.

(3) Any hours worked as a licensed pharmacist in another state during the two years prior to the applicant successfully passing the Texas Pharmacy Jurisprudence Examination may be applied towards the internship requirement.

(4) All requirements for licensure shall be completed within 2 years from the date the applicant successfully passes the Texas Pharmacy Jurisprudence examination.

(5) If the person's Texas pharmacist license has been expired for 10 years or more, the applicant shall apply for licensure by examination as specified in §283.7 of this title (relating to Examination Requirements).

Issued in Austin, Texas, on August 31, 1993.

TRD-9328093

Fred S. Brinkley, Jr.
Executive Director/Secretary
Texas State Board of Pharmacy

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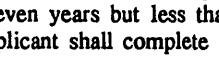
For further information, please call: (512) 832-0661

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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 1. ADMINISTRATION

Part V. General Services Commission

Chapter 115. Building Property Services Division

Space Allocation

• 1 TAC §115.50

The General Services Commission proposes new §115.50, concerning office space allocation for Article I and II agencies in leased or owned space. The proposed section establishes a maximum allocation of office space for agencies under Articles I and II of the General Appropriations Act; states types of space to which the rule does not apply; provides definitions; and establishes a procedure for requesting space in excess of the maximum allocation.

Tom Fitzpatrick, director of office of facility planning, has determined that for the first five year period this section is in effect there will be significant fiscal implications to state government based on reductions in total office area requirements for state agencies and reductions in total space leased. The resulting cost savings have been estimated to be approximately $2 million in fiscal year 1994; $4 million in fiscal year 1995; $6 million in fiscal year 1996; $8 million in fiscal year 1997; and $8 million in fiscal year 1998.

Mr. Fitzpatrick also has determined that for each year the section is in effect the public benefit anticipated as a result of enforcing the section will be administrative rules consistent with applicable statutory provisions and reduced facility costs through limiting the allocation of space for state agencies. There is no anticipated economic cost to persons required to comply with the proposed section.

Comments on the proposal may be submitted to Judith Porras, General Counsel, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new section is proposed under Texas Civil Statutes, Article 601b, §34, House Bill 2626, 73rd Legislative Session, which provide the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of this Article.

§115.50. Space Allocation.

(a) Texas Civil Statutes, Article 601b, §6.021, require the commission to allocate space to state agencies in the best and most efficient manner possible and provides that the commission may not allocate space to an Article I or II Agency that exceeds an average of 153 square feet for each agency employee for each agency site for usable office space.

(b) By August 31, 1995, office space under the commission's jurisdiction shall be allocated to Article I or II agencies at an average space allocation ratio of not more than 153 square feet of usable office space per agency employee for each agency site. For the purpose of calculating the space allocation ratio at a particular site, all offices, workstations, workspaces, storage spaces, support spaces, and circulation spaces within the agency's net usable square footage shall be included except that type of space listed in subsection (d) of this section.

(c) Each state agency shall propose a plan acceptable to the commission for meeting the target allocation. Such plans shall be submitted by March 31, 1994.

(d) This section applies to use of office facilities obtained through the commission including both state-owned and leased space.

(1) This section does not apply to:

(A) agency sites where 15 or fewer employees are located;

(B) aircraft hangar space;

(C) radio antenna space;

(D) boat storage space;

(E) vehicle parking space;

(F) residential space for a Texas Department of Mental Health and Mental Retardation program;

(G) residential space for a Texas Youth Commission program;

(H) space to be utilized for less than one month for meetings, conferences, seminars conventions, displays, examinations, auctions, or similar purposes;

(I) warehouse space;

(J) laboratory space;

(K) storage space exceeding 1,000 gross square feet;

(L) hearing rooms required to conduct hearings required under the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a); or,

(M) library space.

(2) The following types of rooms, when clearly enumerated in space requests, will be excluded by the commission from calculation of the space allocation ratio:

(A) state or regional computer operations centers;

(B) full-time, shared state or regional training centers;

(C) rehabilitation workshops;

(D) client waiting areas at client-service locations,

(E) client training classrooms;

(F) space provided to itinerant staff of another agency at client-service locations;

(G) playrooms, at client-service locations;

(H) observation rooms in clinical or protective services offices;

(I) conference rooms scheduled by the commission for shared use;

(J) telephone/data closets;

(K) trial preparation rooms and litigation file rooms at litigation offices of the Attorney General;

(L) testing areas and public waiting areas at Department of Public Safety driver license offices;

(M) medical examination rooms and clinical laboratories of the Department of Health;

(N) storage areas for pharmaceuticals and medical supplies or for client equipment and appliances; and

(O) a pro rata share of internal circulation space associated with excluded uses at the site.

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

(1) Agency employee-The full-time-equivalent of a person performing services on-site under the direction of a state agency, including hours worked by "full-time employees", "part-time employees" and "consultant and contract individuals" as those terms are defined by the State Auditor; including employees paid from funds maintained outside the Treasury, and including hours worked by volunteers performing necessary services.

(2) Agency head-The highest ranking executive officer responsive to a policy-making board or commission with full-time responsibility for the operations of the agency.

(3) Agency site-A building or building complex on a single site or under a single lease contract, where agency business is transacted or services are provided.

(4) Article I or II agency-A state agency listed in Article I or II of the General Appropriations Act.

(5) Net usable square feet-An area within the exterior walls of a building identified as needed by the occupying agency to carry out its function, including interior hallways for the exclusive use of the occupying agency, but shall not include areas reserved for:

(A) public hallways, restrooms, stairwells, and elevator shafts;

(B) mechanical rooms or closets for heating, air conditioning, plumbing, janitorial, electrical, telephone, and other general building services;

(C) interior atriums, courts, etc., for public use; and

(D) fire tower and fire tower court.

(6) Space allocation ratio-The ratio of the total usable office space (in square feet) to the total number of agency employees at the subject site. At sites where two or more agencies are co-located, the sum of agency employees at the site shall be considered.

(7) Space use study-A study conducted by the commission to determine space requirements for the necessary functions of state agencies.

(8) State agency-

(A) any department, commission, board, office, or other agency in the executive branch of state government created by the constitution or a statute of this state, except the Texas High-Speed Rail Authority;

(B) the Supreme Court of Texas, the Court of Criminal Appeals of Texas, a court of civil appeals, or the Texas Civil Judicial Council; or

(C) a university system or an institution of higher education as defined in the Texas Education Code, §61.003, as amended, other than a public junior college.

(9) Usable office space-For the purpose of calculating an agency's space allocation ratio, that portion of the net usable square feet of an agency site which houses agency staff and operations other than those rooms specifically excluded under subsection (c) of this section.

(f) If an agency desires more than 153 square feet of usable office space per agency employee at a particular site, a written request must be submitted to the commission, demonstrating that it meets one of the criteria in subsection (g) of this section.

(1) Each request must be signed by the agency head and the chairman of the agency's governing body. This authority may not be delegated.

(2) The commission will grant or deny a request in writing.

(3) A summary of all requests and a copy of any requests granted by the commission will be provided to the Legislative Budget Board, the Governor's Budget and Planning Office, and the chairman of the House Appropriations Committee.

(g) The commission may allocate usable office space in excess of 153 square feet per agency employee, if the commission determines that:

(1) A strict application of the standard to a given site would unavoidably and critically impair an agency's functions;

(2) The number of persons routinely working in a space is substantially different from the agency employee calculation;

(3) Based upon a space use study conducted by the commission, a particular type of space should be excluded; or

(4) A request is consistent with an agency's plan, previously accepted by the commission, for implementation of this rule.

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

Issued in Austin, Texas, on August 31, 1993.

TRD-9328065 Judith Porras
General Counsel
General Services Commission

Earliest possible date of adoption: October 8, 1993

For further information, please call: (512) 463-3583

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Chapter 117. Centralized Services Division

Business Machine Repair

• 1 TAC §117.41

The General Services Commission proposes an amendment to §117.41, concerning business machine repair services. The amendments streamline and consolidate existing rules, and outline the scope of business machine repair services for governmental entities.

Michael N. Powers, director for inter-agency services division, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state agencies and other government entities as a result of enforcing or administering the section.

Mr. Powers also has determined that for each year of the first five years the section is in effect state and other governmental entities will benefit from streamlined regulations.

Comments may be submitted to Judith Porras, General Counsel, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new section is proposed under Texas Civil Statutes, Article 601b, which provide the General Services Commission with the authority to promulgate rules to accomplish the purpose of the Article.

§117.41. Business Machine Repair Services [General].

(a) Under Texas Civil Statutes, Article 601b, §11.03, business machine repair services **must be** [are] offered to State agencies located in Austin. [(Attorney General's Opinion Numbers M-1199 and M-1284, 1979.)]

(b) Business machine repair services may be provided to other governmental entities under agreements which comply with the requirements of the Interagency Cooperation Act (Chapter 771, Texas Government Code) or the Interlocal Cooperation Act (Chapter 791, Texas Government Code).

(c) No privately-owned machines shall be serviced.

(d) Payment for repair service shall be secured by voucher prepared by the Commission, promptly verified by the appropriate agency. The Commission may refuse to do additional repair work for an agency so long as that agency holds unprocessed a previous voucher.

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

Issued in Austin, Texas, on August 31, 1993.

TRD-9328062 Judith Porras
General Counsel
General Services Commission

Earliest possible date of adoption: October 8, 1993

For further information, please call: (512) 463-3583

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• 1 TAC §117.42, §117.43

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

The General Services Commission proposes the repeal of §117.42 and §117.43, concerning business machine repair services. The repeal will consolidate existing rules. The significant content of these repealed sections is proposed to be consolidated into amended §117.41.

Michael N. Powers, director for inter-agency services division, has determined that for the first five-year period the repeals will be in effect there will be no fiscal implications for state agencies and other governmental entities as a result of repealing these repeals.

Mr. Powers also has determined that for each year of the first five years the repeals are in effect state agencies and other governmental entities will benefit from simplified regulations.

Comments may be submitted to Judith Porras, General Counsel, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The repeals are proposed under Texas Civil Statutes, Article 601b, which provide the General Services Commission with the authority to promulgate rules to accomplish the purpose of that Article.

§117.42. Machines Entitled to Service.

§117.43. Payment for Repair.

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

Issued in Austin, Texas, on August 31, 1993.

TRD-9328063 Judith Porras
General Counsel
General Services Commission

Earliest possible date of adoption: October 8, 1993

For further information, please call: (512) 463-3583

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TITLE 4. AGRICULTURE

Part IX. Texas Veterinary Medical Diagnostic Laboratory

Chapter 102. Pullorum Disease and Fowl Typhoid Program

• 4 TAC §§102.1-102.10

The Texas Veterinary Medical Diagnostic Laboratory proposes amendments to §§102.1-102.10, concerning the control and erodication of pullorum disease and fowl typhoid from poultry flocks in Texas. The proposed amendment deals primarily with a transfer of authority between the Texas Agricultural Experiment Station and the Texas Veterinary Diagnostic Lab.

A K. Eugster, executive director, Texas Veterinary Medical Diagnostic Laboratory, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Eugster also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that poultry products will be free of salmonella, pullorum, and typhoid organisms; the protection of poultry product consumers; and enhancement of U.S. and international trade of poultry and their products. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to A. Konrad Eugster, Executive Director, TVMDL, P.O. Drawer 3040, College Station, Texas 77841-3040.

The amendments are proposed under the Agriculture Code, §168.002, which provides the Texas Agricultural Experiment Station with the authority to promulgate and administer a program to control and eradicate pullorum disease and fowl typhoid.

§102.1. Applicability and Scope. These rules shall apply to all firms or persons producing hatching eggs, or hatching, selling, or exhibiting domesticated poultry within the State of Texas.

§102.2. Definitions and Terms. The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

Dealer–A firm or person other than a flockowner or hatchery who offers poultry or hatching eggs for sale or trade

Flock–

(A) All the poultry and eggs under the same owner-ship or management on any given premise or on adjacent premises; and

(B) all poultry under the control or ownership of a dealer.

Hatchery–Equipment on one premises operated or controlled by any person or firm for the hatching of poultry eggs.

Infected flock–A flock in which one or more birds has been diagnosed and confirmed by isolation of Salmonella pullorum or Salmonella gallinarum to be infected with pullorum disease or fowl typhoid.

Multiplier flock–A flock that originates from a primary breeding flock and that is intended for production of hatching eggs.

Negative test result–An approved testing procedure in which the blood or serum antigen mixture fails to clump.

Official test–Serological testing using a Texas Veterinary Medical Diagnostic Laboratory (TVMDL) approved testing procedure conducted by a recognized laboratory and/or TVMDL personnel.

Positive test result–An approved testing procedure in which there is complete or nearly complete clumping of the blood or serum antigen mixture.

Poultry–Chickens, turkeys, game birds, and all other domestic fowl.

Primary breeding flock–A flock that is maintained for the purpose of establishing, continuing, or improving parent lines.

Products-Poultry or hatching eggs.

Recognized laboratory-A laboratory approved by TVMDL for performing approved serological testing procedures and bacteriological culture techniques.

Testing agent-An employee, agent, or representative of TVMDL authorized by TVMDL to perform approved serological testing procedures and bacteriological culture techniques.

§102.3. Methods of Compliance. All firms or persons hatching or selling domesticated poultry within the State of Texas must have a pullorum-typhoid status at least equivalent to that specified by the National Poultry Improvement Plan of the Animal and Plant Health Inspection Service of the United States Department of Agriculture. A firm or persons may obtain such status by compliance with one of the following methods.

(1) Those firms or persons currently qualified under the National Poultry Improvement Plan are recognized as meeting the requirement of these sections.

(2) Any firm or person presently under a program of monitoring and testing breeder birds for pullorum and typhoid, which is equivalent to the required program, may have the program approve by the Texas Veterinary Medical Diagnostic Laboratory (TVMDL).

(3) A firm or person unable to obtain a pullorum typhoid status at least equivalent to that specified by the National Poultry Improvement Program by compliance with one of the methods outlined in paragraphs (1) and (2) of this section must submit his flock to an official test. A flock in which all test results are negative shall be considered to have a pullorum-typhoid status equivalent to that specified by the National Poultry Improvement Plan. The following testing procedures may be used to comply with this regulation:

(A) All birds in the primary breeder flocks are tested and all birds in multiplier flocks are tested.

(B) All birds in the primary breeder flocks are tested, and birds in the multiplier flocks are tested according to the following:

Year	Size of Flock	Number tested
1st	More than 2,000	25% of flock
	500-2,000	500
	Less than 500	All in flock
2nd	More than 2,000	20% of flock
	400-2,000	400
	Less than 400	All in flock
3rd	More than 2,000	15% of flock
	300-2,000	300
	Less than 300	All in flock
4th	More than 2,000	10% of flock
	200-2,000	200
	Less than 200	All in flock
5th	More than 2,000	5.0% of flock
	100-2,000	100
	Less than 100	All in flock

The amount of testing in multiplier flocks will be based or origin of the flock, the present testing program, and the number of years of continuous operation without evidence of pullorum or typhoid in a hatchery supply flock or in progeny from the hatchery.

(C) All birds in the primary breeder flocks are tested. Multiplier flocks are not required to test.

(D) At least 300 birds from the primary breeder flocks are tested. No test is required in multiplier flocks.

(E) Under the methods described in subparagraphs (B), (C), and (D) of this section, in lieu of blood testing, TVMDL may determine that a primary breeding flock, a multiplier breeding flock, game birds, and waterfowl may comply with this regulation if a bacteriologic monitoring program and a bacteriologic examination has been made of samples of down or fluff shed by baby poultry in the hatchery. At least three negative cultures on samples collected on three separate hatches are required. In making such determination, TVMDL shall consider the origin of the flock and any history of pullorum disease or fowl typhoid in the flock or on the premises in which the flock has been housed, incubated, brooded, or ranged. The TVMDL may require blood testing of flocks when there is any cause to suspect infection with pullorum disease or fowl typhoid. Before compliance by this method can be approved by TVMDL, the firm or person owning the flock must agree to submit specimens to an approved laboratory when excessive mortality in birds under four weeks of age has occurred.

(4) A dealer may qualify by purchasing hatching eggs or the poultry only from pullorum-typhoid free flocks as established under the Texas Pullorum-Typhoid Program or the National Poultry Improvement Plan or an equivalent program.

§102.4. Submission of Positives to a Recognized Laboratory and Restrictions on Sale and Movement Pending Laboratory Testing.

(a) Each flockowner or dealer of poultry indicating a positive test result in tests conducted by a testing agent shall submit such birds from the flock to a recognized laboratory for confirmation. If laboratory examination fails to reveal Salmonella pullorum or Salmonella gallinarum organisms, the flock shall be considered negative. If a flockowner or dealer of poultry refuses to pen and/or present poultry for field testing by a testing agent, or if a field test indicates a positive result and a flockowner or dealer of poultry fails to submit such poultry to a recognized laboratory for confirmation, or if a flockowner or dealer offers for sale poultry lacking a pullorum-typhoid status equivalent to that specified by the National Poultry Improvement Plan of the United States Department of Agriculture, Animal and Plant Health Inspection Service, TVMDL may designate the entire flock an infected flock.

(b) The number of poultry to be submitted for laboratory confirmation of serologic tests shall be all reactor birds up to five or as otherwise determined by TVMDL or its representative.

(c) The TVMDL may order any flockowner or dealer who has refused to pen or present poultry for field testing by a testing agent, or who has offered for sale poultry lacking a pullorum-typhoid status equivalent to that specified by the National Poultry Improvement Plan of the United States Department of Agriculture, Animal and Plant Health Inspection Service, or who fails to submit to a recognized laboratory for confirmation poultry which has indicated a positive test result in a field test, to refrain from selling, trading, or moving his flock or hatching eggs without receiving prior written permission from the Texas Animal Health Commission or TVMDL. Such order shall remain in effect until the flock has been determined by field or laboratory examination to be free of Salmonella pullorum or Salmonella gallinarum organisms, or in cases where such organisms are present, until the Texas Animal Health Commission has imposed a quarantine or otherwise acted to restrict the movement of birds or eggs to prevent the further spread of the infection.

§102.5. Procedures for Handling Infected Flocks and Their Products.

(a) Any infected flock shall be reported to the Texas Animal Health Commission, who will impose a quarantine or otherwise restrict the movement of birds or eggs to prevent further spread of the infection. An infected flock may be disposed of in one of the following manners:

(1) Birds reacting to the pullorum-typhoid test may be removed from the flock and all remaining birds in the flock serologically tested. If, as a result of two consecutive negative flock tests, the first not less than 21 days later, the flock shall be considered to have a pullorum-typhoid status at least equivalent to that specified by the National Poultry Plan. The flock must not be treated with antibiotics or other drugs that may mask the presence of the disease.

(2) The flock may be moved to a state or federally inspected poultry processing establishment accompanied by a written certificate issued by the Texas Animal Health Commission or its representative.

(3) The flock may be depopulated without recompense to the owner under supervision of the Texas Animal Health Commission and/or Texas Veterinary Medical Diagnostic Laboratory (TVMDL).

(b) The TVMDL may require the testing of any flock when such testing is necessary to the control and eradication of pullorum disease and fowl typhoid. The owner must pen and/or present his birds for testing at a time and place designated by a testing agent of TVMDL.

(1) All incubating eggs from infected flocks shall be removed from the incubator and destroyed under Texas Animal Health Commission and TVMDL supervision prior to hatching, except that by special permission eggs may be hatched under quarantine of the eggs and the progeny.

(2) Fowl typhoid (S. gallinarum) positive flock/s must follow the Texas Animal Health Commission (TAHC) rules and regulations outlined in Chapter 57.11(a)(4), which states:

"(4) When Fowl Typhoid (S. gallinarum) infection is confirmed in a flock, the farm on which the flock is located shall be placed under quarantine and the flock depopulated. Following depopulation and burial or incineration of all poultry, nest material, and litter, the premise and facilities shall be cleaned and disinfected. The premise shall remain quarantined for at least 180 days following depopulation during which time poultry shall not be reintroduced to the premises. Following removal of the quarantine, repopulation of the premises may be allowed with poultry that have been tested negative to fowl typhoid."

§102.6. Cleaning and Disinfecting. Premises found to have housed, incubated, brooded, or ranged an infected flock shall be cleansed and disinfected under the supervision of Texas Veterinary Medical Diagnostic Laboratory (TVMDL) personnel within 15 days following depopulation, unless an extension of time is granted. No infected premises shall be restocked with poultry or eggs for hatching purposes until the above cleaning and disinfecting requirement is certified complete by TVMDL.

§102.7. Texas Pullorum-Typhoid Certified Flock and Approved Hatchery Classification. A flock classification of "Texas pullorum-typhoid certified" is established to recognize and identify those flocks that are free of pullorum disease and fowl typhoid.

(1) A flock of poultry may attain this status by meeting the requirements of one of three alternatives. The alternatives are the following:

(A) A flock may attain this status when each chicken or turkey breeder flock 16 weeks of age or older and other poultry approaching sexual maturity, and before eggs are hatching, has been tested by an approved serological testing procedure, conducted by authorized Texas Veterinary Medical Diagnostic Laboratory (TVMDL) personnel, with no positive reactors.

(B) A flock may attain this status when it is a flock originating from Texas Pullorum-Typhoid Certified flocks, U.S. Pullorum-Typhoid Clean, or the equivalent to that specified by the National Poultry Improvement Plan by one of the methods described in §102.3 of this title (relating to Methods of Compliance).

(C) A flock found to be infected with pullorum disease may attain this status by two consecutive negative tests not less than 21 days apart provided that all eligible poultry on the premises have been included in such tests. These flocks must be retested one year from the date of their last negative test (100% test).

(2) A flock of poultry which has been certified may be recertified each year under this system if there is no serological or other evidence of pullorum disease or fowl typhoid and all birds added to the flock are U.S. Pullorum-Typhoid Clean, Texas Pullorum-Typhoid Certified, or the equivalent.

(3) Any hatchery in the state must be approved by the Texas Veterinary Medical Diagnostic Laboratory (TVMDL). Hatcheries desiring approval must be inspected and approved by a representative of TVMDL. Factors which will be considered by TVMDL in the approval process include physical facilities, hatchery sanitation, the source and identification of all hatching eggs, and the cleaning, disinfecting, and biosecurity practices of the hatchery. Only eggs or products from flocks which meet the United States pullorum-typhoid clean status, according to the National Poultry Improvement Plan or a Texas pullorum-

typhoid certified flock or hatchery or equivalent, may be used by the hatchery. It is the responsibility of the hatchery management to require that only eggs from qualified flocks are placed in the incubators. Failure to enforce this requirement is a violation of the Pullorum-Typhoid Act and may result in quarantine and/or prosecution.

(4) Approved hatcheries shall be subject to periodic inspections. Failure to meet the requirements of these regulations is cause for withdrawal of the approval status of the hatchery.

§102.8. Exhibition of Poultry. All poultry going to public exhibition must originate from pullorum-typhoid clean sources and must be accompanied by a certificate of source or purchase. Poultry going to exhibition which are not accompanied by a certificate of source or purchase will be declared an infected flock by the Texas Veterinary Medical Diagnostic Laboratory (TVMDL). Organizers and sponsors of public exhibition are required to bar from exhibition any poultry not accompanied by certificate of source or purchase.

§102.9. Registration.

(a) All hatcheries must register and submit the following information to the Pullorum-Typhoid Program, Texas Veterinary Medical Diagnostic Laboratory, Drawer 3040, College Station, Texas 77841-3040:

(1) hatchery name, address, capacity, and type of poultry hatched;

(2) name and address of each supplier of hatching eggs and location of breeder flocks.

(b) All independent breeding flocks not associated with a registered hatchery must register, giving flock size, breed, where eggs are hatched, and location of flock. A testing report form completed by a testing agent will satisfy the requirement for registration of a flock.

§102.10. Public Sales. All poultry offered for public sale or trade at markets such as trade days, flea markets, auctions, or any other public sale must originate from pullorum-typhoid clean flocks or hatcheries. The seller must furnish proof of the source of poultry or hatching eggs offered for public sale. The owner or management of an market or public sale shall prevent the sale, trade, or offer for sale of any bird that is not properly qualified under the Texas Pullorum-Typhoid Program. Failure to enforce this requirement may result in the issuing of an order prohibiting any further sale of poultry on the grounds. All birds from states other than Texas must be accompanied by a health certificate from the state of origin, including a negative pullorum-typhoid test within 30 days of the sale. All poultry not properly identified and qualified as pullorum-typhoid clean is prohibited from sale and must be returned to the owner or dealer's premises.

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 College Station, Texas, on August 2, 1993.

TRD-9327724 A. K. Eugster
Executive Director
Texas Veterinary Medical Diagnostic Laboratory

Earliest possible date of adoption: October 8, 1993

For further information, please call: (409) 845-9000

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TITLE 7. BANKING AND SECURITIES

Part I. Finance Commission of Texas

Chapter 3. Banking Section

Subchapter B. General

• 7 TAC §3.31, §3.32

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

The State Finance Commission of Texas (the Commission) proposes the repeal of §3.31 and §3.32, concerning certain application fees that are to be replaced by proposed new §3.37, published for comment in this issue of the *Texas Register*.

Pursuant to Texas Civil Statutes, Article 342-112(2), the Banking Commissioner and the Commission are charged with establishing reasonable and necessary fees for the administration of the Banking Code, Texas Civil Statutes, Article 342-101 et seq. Existing §3.31 establishes a $5,000 application fee for a state bank or trust company charter and imposes the cost of investigation upon the applicant. Existing §3.32 imposes a change of domicile fee of $150, refundable in the event the application is denied. Proposed new §3.37 sets filing fees for certain types of applications for banks, trust companies and others, and will duplicate the types of fees presently imposed by §3.31 and §3.32.

Allen Barr, deputy director, Corporate Activities Division, Texas Department of Banking, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals in that the fees are being replaced by new fees in proposed §3.37.

Mr. Barr also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be the elimination of duplicate fee provisions once proposed §3.37 is adopted. There will be no effect on small businesses. No economic cost will result to entities as a result of the repeals of these sections.

Comments on the proposed repeals to be considered by the Commissioner and the Commission must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to Everette D. Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The repeals are proposed under the general rulemaking authority of the Commissioner and the Commission with regard to fees for the administration of the Banking Code pursuant to the Texas Civil Statutes, Article 342-112(2).

The following are the articles that are affected by the proposed repeal of §3.31 and §3.32:

Section 3.31–Texas Civil Statutes, Articles 3921, 342-331, 342-363, and 342-1101.

Section 3.32–Texas Civil Statutes, Article 342-311.

§3.31. Application Fees for State Bank or Trust Company Charters.

§3.32. Domicile Change Fee.

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

Issued in Austin, Texas, on August 30, 1993.

TRD-9328006 Everett D. Jobe
General Counsel
Texas Department of Banking

Earliest possible date of adoption: October 8, 1993

For further information, please call: (512) 475-1300

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• 7 TAC §3.37

The Finance Commission of Texas (the Commission) and the Banking Commissioner of Texas (the Commissioner) propose new §3.37, concerning application fees and recovery of investigative costs. In this issue of the *Texas Register*, the Commission and the Commissioner are also proposing the repeal of §3.31 and §3.32, concerning certain application fees that will be subsumed by new §3.37.

Pursuant to Texas Civil Statutes, Article 342-112(2), the Commissioner and the Commission are charged with establishing reasonable and necessary fees for the administration of the Banking Code, Texas Civil Statutes, Article 342-101 et seq. Existing §3.31 sets a $5,000 application fee for a state bank or trust company charter and imposes

the cost of investigation upon the applicant. Existing §3.32 imposes a change of domicile fee of $150, refundable in the event the application is denied. Other application fees have been imposed pursuant to instructions distributed with application forms.

The purpose of any fee charged by the Commissioner, whether the fee is for applications, annual assessments, examinations, recovery of costs, or other purposes, is to enable the Texas Department of Banking (the Department) to be self-supporting. Texas Civil Statutes, Article 342-112(3), provide that all fees must be deposited in the Banking Department Expense Fund, from which all expenses incurred by the Department must be paid. State law prohibits payment of Department expenses form any other funds of this State.

As a policy matter, the Commissioner and the Commission propose to reduce the Department's heavy reliance on examination fees, impose appropriate application fees and cost deposits to make identifiable services of the Department self-sustaining to the extent possible, and calculate periodic assessment fees in sufficient amount to fund the remaining unrecovered regulation expenses of the Department. This effort is being undertaken with respect to every industry regulated by the Commissioner with the objective of having each industry pay its proportionate share of the cost of regulation. To that end, proposed new §3.37 sets filing fees for certain types of applications for banks, trust companies and others, and for protests filed against such applications, provides for payment of filing fees at the time of filing and for the nonrefundability of filing fees generally, sets the amount of application fees at the estimated base cost of processing the application or at the amount set by statute, and provides for recovery of investigative costs incurred by the Department in certain situations.

The adoption of new §3.37 will result in better matching of the actual cost of regulation with the service provided for the purpose of achieving economic self-sufficiency for application processing within the Department. A further purpose of the proposed new §3.37 is to consolidate all bank and trust company application fees in one section for ease of reference.

The Commission and the Commissioner direct the reader's attention to the provisions of House Bill Number 1212, 73rd Legislature, 1993, effective September 1, 1993, which amends and renumbers several of the articles affected by this rulemaking proposal. Statutory citations in this preamble and in the body of proposed new §3.37 are to the statutes as amended by the 73rd Legislature, 1993.

Allen Barr, deputy director, Corporate Activities Division, Texas Department of Banking, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. While the proposed rule will result in an increase in revenue from application fees, the increased revenue will decrease the amount of Departmental operational expenses that must be recouped from the banking and trust industries through assessment fees. Mr. Barr estimates that the amount of increased revenue from application fees (and the corresponding decrease in the base upon which assessment fees are calculated) to be $250,000 in each year for the first five years the proposed section is in effect.

Mr. Barr also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is the economic self-sufficiency of the Department with respect to processing certain applications and the reduction in assessment fees to the banking and trust industries as a result of increased revenues from the application process. No net economic cost will result to persons required to comply with the proposed section with the exception of small businesses that seek to use the term "bank," "trust," or similar terms in their corporate names, and must file an application to the Department for permission to do so. The anticipated, aggregate economic cost to these small businesses will be $10, 000 for each year of the five-year period, or an estimated 200 applications at a filing fee of $50 per application. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by the section. Based on past experience, substantially all applicants seeking permission to use terms in their corporate names otherwise prohibited by Texas Civil Statutes, Article 342-902, will be small businesses.

Comments on the proposal to be considered by the Commission and the Commissioner must be submitted in writing within 30 days after publication of the proposed section in the *Texas Register* to Everette D. Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The new section is proposed under Texas Civil Statutes, Article 342-112(2), which provide the Commissioner and the Commission with the authority to establish reasonable and necessary fees for administration of the Banking Code. Alternate statutory authority for certain fees can be found in Texas Civil Statutes, Articles 3921 (bank charter fees), 342-331(c), 342-363(c), (bank charter fees and costs), 342-401a(J) (fees and costs for review of stock transfer), 342-903(1)(c) (branch office application fees), 342-1005(4) (application fees for foreign bank agencies), 342-1007(c) (renewal application fees for foreign bank agencies), and 342-1102 (certain statutory provisions applicable to trust companies). The Commissioner expressly proposes those aspects of this section that are within her sole authority to do so. The Commission expressly proposes those aspects of this section that are within its sole authority to do so.

The following are the articles and sections that are affected by the proposed new §3.37: Texas Civil Statutes, Articles 3921, 342-305, 342-306, 342-310, 342-311, 342-331, 342-332, 342-363, 342-368, 342-401a, 342-513, 342-607, 342-902, 342-903, 342-912, 342-913, 342-1006, 342-1007, 342-1101, 7 TAC §3.7 (relating to Bank Subsidiary Corporations), 7 TAC §3 61 (relating to Acquisition or Change of Control of Trust Companies), 7 TAC §3.91 (relating to Establishment and Closing of a Branch Bank), 7 TAC §3.93 (relating to Loan Production Offices) and Texas Business Corporation Act Articles 2.01(B)(4), 2.05(A)(2), and 3.03(A).

§3.37. Application Fees and Cost Deposits.

(a) Basis of Fees. The Banking Commissioner has determined that the filing fees set forth in subsection (b) of this section are either set by statute or, when added to any required investigative cost reimbursement set forth in subsection (f) of this section, approximate the agency's cost of processing the application, including any associated review, investigation and examination.

(b) Filing Fees. An applicant shall pay the filing fee established in the following schedule of fees:

Fee	Type of Filing
$5,000	Bank or Trust Company Charter pursuant to Texas Civil Statutes Article 3921, 342-306, 342-310, 342-331, 342-363, or 342-1101
$3,000	Merger pursuant to Texas Civil Statutes Article 342-305
$1,500	Branch pursuant to Texas Civil Statutes Article 342-903 and §3.91 of this title
$1,000	Branch Relocation pursuant to Texas Civil Statutes Article 342-903 and §3.91 of this title
$1,500	Bank Subsidiary pursuant to §3.7 of this title, to exceed the parameters of Texas Civil Statutes Article 342-513
$3,000	Transfer of Stock pursuant to Texas Civil Statutes Article 342-401a or §3.61 of this title
$1,000	Change of Domicile pursuant to Texas Civil Statutes Article 342-311
$3,000	Foreign Bank Agency License pursuant to Texas Civil Statutes Article 342-1005(4) and Article 342-1006
$500	Foreign Bank Agency License Renewal pursuant to Texas Civil Statutes Article 342-1007
$500	Capital Notes or Debentures pursuant to Texas Civil Statutes Article 342-607
$150	Amendment of Bank or Trust Company Charter pursuant to Texas Civil Statutes Article 3921, and Articles 342-332, 342-368 and/or 342-1102
$200	Acquisition of a Bank Holding Company pursuant to Texas Civil Statutes Article 342-912
$200	Subsidiary of a Bank Holding Company pursuant to Texas Civil Statutes Article 342-913
$100	Registration of Loan Production Office pursuant to §3.93 of this title
$50	Application for a letter stating no objection to the use by an unregulated entity of a business corporation name containing a term listed in Texas Civil Statutes Article 342-902(2)

(c) Additional Charter Amendment Fee. In addition to the fee required by subsection (b) of this section, pursuant to Texas Civil Statutes, Article 3921, if an amendment of supplement to the charter of articles of association of a state bank increases the authorized capital of the bank in excess of $10, 000, the bank shall pay an additional fee of $10 for each $10,000 increase or fraction thereof, up to a maximum fee of $2,500.

(d) Fee for Protest Filing. Any person filing a protest to the application of another person for a bank or trust company charter or for a branch banking facility shall pay a fee of $2,500 simultaneously with such protest filing, to partially offset the agency's increased cost of processing and reduce the costs incurred by the applicant resulting solely from the protest.

(e) Fees Nonrefundable. All filing fees shall be paid at the time of filing and shall be nonrefundable. Except for charter application fees and fees established by statute, the Banking Commissioner may reduce or waive any filing fee upon a showing of substantial hardship.

(f) Required Reimbursement of Investigative Costs. In addition to the filing fees set forth in subsection (b) of this section, applicants for a bank or trust company charter shall pay costs incurred in any investigation, review, or examination deemed appropriate by the Department of Banking at the rate of $500 per examiner per day. Such costs shall be paid by the applicant upon written request of the Department. Failure to pay a bill for investigative costs in addition to the application fee shall be grounds for denial of the application. The Banking Commissioner may in the exercise of discretion reduce or waive payment of any costs upon a showing of substantial hardship, and may elect to allow a successful applicant to reduce future assessments by all or a part of investigative costs paid.

(g) Severability. If any fee or cost recovery set forth in this section is finally determined by a court of competent jurisdiction to be beyond the scope of agency authority to adopt, such fee or cost reimbursement shall be severed from this section and the remainder of this section shall remain fully enforceable.

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

Issued in Austin, Texas, on August 30, 1993.

TRD-9328007 Everette D. Jobe
General Counsel
Texas Department of Banking

Earliest possible date of adoption: October 8, 1993

For further information, please call: (512) 475-1300

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• 7 TAC §3.38

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

The Finance Commission of Texas (the Commission) proposes new §3.38, concerning the application of a state banking association to convert to a state limited banking association.

Article XVI, §16(c), of the Texas Constitution provides that a state bank "has the same rights and privileges that are or may be granted to national banks of the United States domiciled in this State." Pursuant to Texas Civil Statutes, Article 342-113(4), the Commission is charged with promulgating rules to "permit state banks to transact their affairs in any manner ... which they could do ... were they organized and operating as a National bank under the laws of the United States...." Through an apparent oversight, House Bill Number 1212, 73rd Legislature, 1993, provided for the conversion of national banks to state limited banking associations but not for conversion of state banks to state limited banking associations. State banks can become state limited banking associations, but only through a presumably more costly and time consuming method known as "phantom" mergers or "interim bank" mergers. The Commission proposes new §3.38 to preserve competitive parity between state and national banks as mandated by the Texas Constitution and Article 342-113(4).

The section as proposed will permit but not require a state bank that wishes to convert to a state limited banking association to do so in the same manner as a national bank is authorized to do. Any state bank that chooses to take advantage of the option presented by this section must obtain the approval of its board of directors and its shareholders as if such transaction was a merger pursuant to Part V of the Texas Business Corporation Act, including the obligation to pay dissenters' rights in the manner contemplated therein.

The Commission directs the reader's attention to the provisions of House Bill Number 1212, 73rd Legislature, 1993, effective September 1, 1993, which amends and renumbers several of the articles affected by this rulemaking proposal. Statutory citations in the body of proposed new §3.38 are to the statutes as amended by the 73rd Legislature, 1993.

Everette D. Jobe, general counsel, Texas Department of Banking, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Jobe also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is the enhancement of competitive equality of state banks to national banks. There will be no effect on small businesses. No economic cost will result to entities as a result of complying with the proposed section.

Comments on the proposal to be considered by the Commission must be submitted in writing within 30 days after publication of the proposed section in the *Texas Register* to Everette D. Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The new section is proposed under Texas Civil Statutes, Article 342-113(4), which provide the Commission with the authority to promulgate general rules and regulations to permit state banks to transact their affairs in any manner which they could do were they organized and operating as national banks.

The following are the articles and sections that are affected by the proposed new §3.38: Texas Constitution Article XVI, §16, and Texas Civil Statutes, Articles 342-310 and 342-363.

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

Issued in Austin, Texas, on August 30, 1993.

TRD-9328004 Everette D Jobe
General Counsel
Texas Department of Banking

Earliest possible date of adoption: October 8, 1993

For further information, please call: (512) 475-1300

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Subchapter E. Banking House and Other Facilities

• 7 TAC §3.91

The Finance Commission of Texas (the Commission) and the Banking Commissioner of Texas (the Commissioner) propose new §3.91, concerning the application of a state bank to establish a branch bank pursuant to Texas Civil Statutes, Article 342-903. Existing §3.91, proposed for repeal at 18 TexReg 1985, is repealed in this issue of the *Texas Register*. A prior proposed version of §3.91, published at 18 TexReg 2249, is being withdrawn in this issue of the *Texas Register*.

Article XVI, §16(c), of the Texas Constitution provides that a state bank "has the same rights and privileges that are or may be granted to national banks of the United States domiciled in this State." Pursuant to Texas Civil Statutes, Article 342-113(4), the Commission is charged with promulgating rules to "permit state banks to transact their affairs in any manner ... which they could do ... were they organized and operating as a National bank under the laws of the United States...." The intent of these provisions is to preserve competitive parity between state and national banks.

Prior to its amendment in 1991, Article 342-903 was substantially more restrictive regarding the right of a state bank to establish branches. Pursuant to 12 United States Code, §36(c), national banks can branch to the same extent as state banks. In 1987, a federal court interpreted the definition of "state bank" in 12 United States Code, §36(h), ("institutions carrying on the banking business" under state law) to include a state savings and loan association, which had statewide branching power. Department of Banking and Consumer Finance of Mississippi v. Clarke, 809 F.2d 266 (5th Cir.), cert. denied, 483 U.S. 1010 (1987). On June 14, 1988, a federal court in Texas reached the same result in State of Texas v. Clarke, 690 F.Supp. 573 (W. D. Tex. 1988).

In response to these developments in federal law, the Commission, pursuant to its power under Article 342-113(4) to preserve competitive parity by rule, promptly amended §3.91 effective October 25, 1988, published at 13 TexReg 5203, to greatly exceed the scope of Article 342-903 and permit statewide branching for state banks. In 1990, the Commission again amended §3.91, published at 15 TexReg 431, to add a requirement that an administrative hearing be held and a requirement, among others, of demonstrated public need for the branch bank, reasoning that these requirements were coextensive with requirements applicable to state savings and loan associations and thereby the same as applicable to national banks. One commenter had argued to no avail that the new requirements were more onerous than those applicable to national banks, pointing to the federal regulation pertaining to the branch application process, 12 Code of Federal Regulations §5.10 and §5.30. Experience over the past three years has proven the commenter correct. Protestants have for the most part used the protest and hearing process to attempt to obtain proprietary and confidential information of their competitor and to drive up the cost of obtaining regulatory approval of a branch for their competitor.

In 1991, Texas Civil Statutes, Article 342-903, was greatly liberalized to permit state banks to branch virtually at will upon the prior written approval of the Commissioner, limited only to the condition that the Commissioner not have "any significant supervisory or regulatory concerns." Acts 1991, 72nd Legislature, Chapter 515, §2. New versions of §3.91 were proposed in October of 1991, 16 TexReg 6107, and April of 1993, 18 TexReg 2249, in attempts to implement this new, unfettered discretion of the Commissioner with regard to branching of state banks, but neither was adopted. Most commenters argued that the new proposals were too restrictive.

The Commission and the Commissioner propose new §3.91 to preserve competitive parity between state and national banks as mandated by the Texas Constitution and Article 342-113(4), and to implement the full amount of discretion the Texas Legislature has entrusted to the Commissioner. The sec-

tion as proposed will permit but not require the Commissioner to hold a hearing in the event valid and substantive reasons exist why the written submissions of the applicant and any protestants are inadequate to fully develop the possibility of supervisory or regulatory concerns which, in the final analysis, is a purely discretionary decision of the Commissioner. Hearings, if granted, will be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, to the extent feasible and not in conflict with Article XVI, §16(c), of the Texas Constitution. The new section as proposed also defines with specificity the concept of "significant supervisory or regulatory concerns" to provide applicants, commenters, and protestants alike with fair notice of the requirements of the Commissioner and the basis of branching decisions.

Everette D. Jobe, general counsel, Texas Department of Banking, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Jobe also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing or administering this section is the enhancement of competitive equality of state banks to national banks. There will be no effect on small businesses. No economic cost will result to persons as a result of complying with the proposed section.

Comments on the proposal to be considered by the Commission and the Commissioner must be submitted in writing within 30 days after publication of the proposed section in the *Texas Register* to Everette D. Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The new section is proposed under Texas Civil Statutes, Article 342-113(4), which provide the Commission with the authority to promulgate general rules and regulations to permit state banks to transact their affairs in any manner which they could do were they organized and operating as national banks, and under Texas Civil Statutes, Article 342-903, §1(c) and §2(b), which empowers the Commissioner to promulgate standards and procedures for branch applications.

The following are the articles and sections that are affected by the proposed new §3.38: Texas Constitution Article XVI, §16, and Texas Civil Statutes, Article 342-903, and proposed 7 TAC §3.37 as published in this issue of the *Texas Register.*

§3.91. Establishment and Closing of a Branch Bank.

(a) Definition of Branch. For purposes of this section, "branch," "branch bank," or "branch office" is any location away from a state bank's principal banking house at which the bank receives deposits, pays checks, or lends money, including a drive-in facility located more that 1,000 feet from the nearest wall of the principal banking house or any branch office of the bank, but not including an unmanned teller-machine subject to Texas Civil Statutes, Article 342-903a, a loan production office operated in compliance with §3.93 of this title (relating to Loan Production Offices), or a state or federally licensed armored car service or other courier service transporting items for deposit or payment unless the risk of loss of items in the custody of such service is borne by the employing bank, or unless the items are deemed to be in customer accounts at the employing bank and insured by the Federal Deposit Insurance Corporation. The purpose of the Banking Commissioner (the Commissioner) in promulgating this definition is to ensure that significant banking functions are made available to the public only through authorized facilities, and it should be liberally construed to effectuate that purpose.

(b) Forms. A state bank that desires to operate a branch shall complete and file a branch application on forms promulgated by the Texas Department of Banking (the Department). Application forms and instructions are available from the Department on request.

(c) Filing. The Department will advise the applicant when a branch application has been reviewed and found to be complete. If the application is reviewed and found to be incomplete, the Department will advise the applicant as to what further information must be furnished before the application will be complete and accepted for filing. The Department will accept an branch application for filing after it has determined that the application is complete and accompanied by the proper application fee as set forth in §3. 37(b) of this title (relating to Application Fees and Cost Deposits).

(d) Investigative Costs. The Department may investigate facts in connection with any application. Costs incurred in any investigation deemed appropriate by the Department shall be paid by the applicant as set forth in §3.37(f) of this title.

(e) Public Notice.

(1) When notified of the acceptance of its completed application for filing, the applicant shall publish notice of the application, together with the statement set forth in paragraph (2) of this subsection, in a newspaper of general circulation in the community where the proposed branch is to be located. The applicant will furnish the Department with a copy of the notice and a publisher's affidavit attesting to the date of its publication.

(2) The notice shall state the fact of the application, the proposed location of the branch, and substantially the following text as a separately stated paragraph: "Any person wishing to comment on this application, either for or against, may file written comments with the Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294 within 14 days of the date of this publication. Such comments will be made a part of the record before and considered by the Banking Commissioner. Any person wishing to formally protest and oppose the proposed branch and participate in the application process may do so by filing a written notice of protest with the Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294 within 14 days of the date of this publication, together with a filing fee of $2,500. The protest fee may be reduced or waived by the Banking Commissioner upon a showing of substantial hardship."

(f) Public Comment and Protest. For a period of 14 days after publication of notice or such longer period as the Commissioner may allow for good cause shown, the public may submit written comments or protests regarding the application. Persons submitting comments will not be entitled to further notice of or participation in the branch application proceedings but all comments submitted will be made a part of the record. Each protestant will have the rights and responsibilities set forth in subsections (h) and (i) of this section.

(g) Criteria for branch approval: Significant supervisory or regulatory concerns.

(1) In concluding whether the Commissioner has any significant supervisory concerns regarding a proposed branch, the Commissioner will consider the financial effect of the branch on the applicant, the management abilities of the applicant, and the history and prospects of the applicant and its affiliates regarding fulfillment of responsibilities to regulatory agencies and to the public, including, but not limited to, the responsibility of the applicant to meet the credit needs of its entire community pursuant to the Community Reinvestment Act (CRA), 12 United States Code, §2901 et seq.

(2) In concluding whether the Commissioner has any significant regulatory concerns regarding a proposed branch, the Commissioner will consider the need to maintain a sound banking system and will follow the principles that the marketplace normally is the best regulator of economic activity, and that competition promotes a sound and more efficient banking system that serves customers well. Accordingly, absent significant supervisory concerns, the general policy of the Commissioner is to approve applications to establish and operate branches, provided that approval would not otherwise violate the provisions of federal or state law (including any requirements for federal banking agency approval).

(3) In evaluating whether the Commissioner should have any significant supervisory or regulatory concerns as set forth in paragraphs (1) and (2) of this subsection, the Commissioner will consider written material in the record, including the application, comments on file, and protests on file and any replies of the applicant, the Department's files as they relate to the current financial condition of the applicant, and any data that the Commissioner may properly officially notice. Specifically, the Commissioner will at least consider:

(A) the Department's files as they relate to the current financial condition of the applicant, including but not limited to, its capital, asset quality, management, earnings and liquidity (These files are confidential pursuant to Texas Civil Statutes, Article 342-210 and are not open or available to either the applicant or a protestant in the absence of a court order);

(B) costs of establishing the proposed branch office, including costs of purchasing or leasing the branch site, necessary furnishings, staffing and equipment and effect of these costs on the operations of the applicant as a whole;

(C) whether projected earnings appear reasonable and sufficient to support expenses attributable to the branch without jeopardizing the safety and soundness of the applicant;

(D) depth and quality of management of the applicant and the proposed branch;

(E) compliance with the CRA as determined by the rating assigned in the applicant's most recent CRA evaluation;

(F) the applicant's responsiveness to recommendations made in past state and federal bank examination reports and whether the applicant has generally been operated in substantial compliance with all applicable state and federal laws;

(G) whether the proposed branch name clearly identifies the branch as such or whether it is likely to confuse and mislead the public; and

(H) whether the security measures proposed for the branch are adequate under the proposed plan of operation.

(4) The Commissioner will direct the Department to assemble, evaluate, and make a recommendation regarding all relevant documentation and data as set forth in this subsection; provided, however, that if a hearing is granted pursuant to subsection (i) of this section, the Commissioner will request the Department's hearing officer (Hearing Officer) to discharge this function. Portions of the record so assembled that are confidential pursuant to Texas Civil Statutes, Article 342-210, shall be segregated and clearly marked as confidential.

(h) Protest.

(1) A protest may be initiated by notifying the Department in writing of the intent to protest the application within the time period allowed by subsection (f) of this section, accompanied by the filing fee as set forth in §3.37(d) of this title. If the protest is untimely, the filing fee will be returned to the protestant. If the protest is timely, the Department will notify the applicant of the protest and mail or deliver a complete copy of the application to the protestant within 14 days after receipt of the protest, provided the protestant first signs an agreement, in form specified by the Department, protecting the confidential portions of the application from misuse or improper disclosure, and files the unaltered agreement with the Department within the 14 day period.

(2) The protestant shall file a detailed protest responding to each substantive statement contained in the application within 20 days after receipt of the application. The protestant's response shall indicate with regard to each such statement whether it is admitted or denied. The applicant shall file a written reply to the detailed response within 10 days after the response is filed. Both the detailed response and the reply thereto shall be verified by affidavit and shall contain a certificate of service on the opposing party. When applicable, statements in the response and in the reply may be supported by references to data available in sources of which official notice may properly be taken. Comments received by the Department and any replies of the applicant to such comments will also be made available to the protestant.

(3) The Commissioner may extend any time period set forth in this subsection for good cause shown. Good cause includes, but is not limited to, failure of the Department to furnish required documentation, forms or information within a reasonable time to permit its effective use by the recipient, or failure of a party to timely serve a filed document on an opposing party. The filing date is the date the document is actually received by the Department and not the date of mailing. Failure to timely file a required document shall be deemed a withdrawal of the application or protest, as applicable.

(i) Hearing.

(1) Pursuant to Texas Civil Statutes, Article 342-903, and Texas Constitution Article XVI, §16(c), the Commissioner may not be compelled to hold a hearing prior to granting or denying approval to establish a branch.

(2) However, in the exercise of discretion, the Commissioner will consider granting a hearing on a branch application at the request of either the applicant or a protestant. The Commissioner may order a hearing even if no hearing has been requested by the parties. Any party requesting a hearing must indicate with specificity what issues are involved that cannot be determined on the basis of the record compiled pursuant to subsection (g) of this section and why the issues cannot be so determined. The request for hearing and the Commissioner's decision with regard to granting a hearing will be made a part of the record.

(3) If a hearing is not requested or if a request for hearing is denied, the Commissioner will consider the application in the manner set forth in and solely on the basis of the written record established pursuant to subsection (g) of this section.

(4) If a hearing is granted, the Commissioner will instruct the Hearing Officer to enter appropriate order(s) and conduct the hearing under the Administrative Procedure Act, Texas Government Code, Chapter 2001, to the extent feasible and not in conflict with Texas Constitution, Article XVI, §16(c). Issues will be limited to those on which testimony is absolutely necessary, and the Hearing Officer may require testimony to be submitted in written form and prefiled. No evidence will be received on matters that are not in dispute. No issues or evidence will be considered that are not relevant to the standards set forth in subsection (g) of this section or that are not supported by the application, response, or reply.

(j) Beginning Operations. Any branch approved pursuant to this section must begin operations within 18 months from the date of approval unless the Commissioner extends that date in writing. Approval will automatically expire 18 months from the date of approval if no extension is granted.

(k) Emergency Branches. The procedures set forth in subsections (e), (f) , (h), and (i) of this section do not apply to branch applications made as a part of a transaction for the purpose of assuming all or a portion of the assets and liabilities of any bank deemed by the Commissioner to be in an unsafe condition.

(l) Branch Relocation. A bank may, with prior written approval of the Commissioner, relocate an approved branch to a location within the community served by the branch. The procedures outlined in this section for approval of branches shall not apply to the relocation of an approved

branch. The bank shall file an application to relocate a branch accompanied by the required application fee pursuant to §3.37 of this title.

(m) Closing a Branch. At least 60 days before closing an approved branch, the bank shall provide the Department with a copy of a resolution adopted by a majority of the board of directors at a duly convened meeting authorizing the branch to be closed. Notice of the closing shall be conspicuously posted in the lobby of the branch continuously for at least 30 days prior to the date of closing. The bank shall notify the Department when the branch location has been officially closed. The bank cannot thereafter reopen the branch except upon application for a new branch in compliance with this section.

(n) Parity provision. This section should be liberally interpreted to allow state chartered banks to branch to the same extent as national banks. See Texas Constitution, Article XVI, §16(c); Texas Civil Statutes, Article 342-113(4).

Fee	Type of Filing
$5,000	Bank or Trust Company Charter pursuant to Texas Civil Statutes Article 3921, 342-306, 342-310, 342-331, 342-363, or 342-1101
$3,000	Merger pursuant to Texas Civil Statutes Article 342-305
$1,500	Branch pursuant to Texas Civil Statutes Article 342-903 and §3.91 of this title
$1,000	Branch Relocation pursuant to Texas Civil Statutes Article 342-903 and §3.91 of this title
$1,500	Bank Subsidiary pursuant to §3.7 of this title, to exceed the parameters of Texas Civil Statutes Article 342-513
$3,000	Transfer of Stock pursuant to Texas Civil Statutes Article 342-401a or §3.61 of this title
$1,000	Change of Domicile pursuant to Texas Civil Statutes Article 342-311
$3,000	Foreign Bank Agency License pursuant to Texas Civil Statutes Article 342-1005(4) and Article 342-1006
$500	Foreign Bank Agency License Renewal pursuant to Texas Civil Statutes Article 342-1007
$500	Capital Notes or Debentures pursuant to Texas Civil Statutes Article 342-607
$150	Amendment of Bank or Trust Company Charter pursuant to Texas Civil Statutes Article 3921, and Articles 342-332, 342-368 and/or 342-1102
$200	Acquisition of a Bank Holding Company pursuant to Texas Civil Statutes Article 342-912
$200	Subsidiary of a Bank Holding Company pursuant to Texas Civil Statutes Article 342-913
$100	Registration of Loan Production Office pursuant to §3.93 of this title
$50	Application for a letter stating no objection to the use by an unregulated entity of a business corporation name containing a term listed in Texas Civil Statutes Article 342-902(2)

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

Issued in Austin, Texas, on August 30, 1993.

TRD-9328008 Everette D. Jobe
General Counsel
Texas Department of Banking

Earliest possible date of adoption: October 8, 1993

For further information, please call: (512) 475-1300

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Chapter 4. Currency Exchange

• 7 TAC §4.3

The Finance Commission of Texas (the Commission) proposes an amendment to §4.03, concerning recordkeeping and reporting requirements under the Currency Exchange Act, Texas Civil Statutes, Article 350 (the Act), to require licensees under the Act to keep additional records regarding currency exchange and transmission transactions.

Pursuant to the Act, §7, the Commission is required to adopt rules necessary to implement the Act, specifically including rules regarding recordkeeping and reporting requirements. After initial adoption of the Act and before having the benefit of experience examining or regulating currency exchange or transmission businesses, the Banking Commissioner of Texas (the Commissioner) recommended that the Finance Commission

adopt a rule setting forth minimal recordkeeping and informational reporting, which was adopted and is currently in effect. Since the adoption of the existing section, the Commissioner and the Texas Department of Banking (the Department) have had the opportunity to examine numerous licensees and have developed a better understanding of the business operations of licensees and the types of records that would be of the most assistance to the Department and the Commissioner in carrying out their duties under the Act.

The additional records will assist the Department's examiners in fulfilling the examination requirement of the Act and increase the efficiency of the examination function. This increased efficiency should shorten the average amount of time required to conduct an examination of a licensee and should therefore lower the cost of examination to the licensee.

Pursuant to 31 Code of Federal Regulations, Part 103, currency exchange businesses currently are required to maintain records similar to those reflected in subsection (d)(1)(A) of the amendment as proposed. As a result, that portion of the proposed amendment should not require any significant change in the manner in which currency exchange businesses maintain their records. In subsection (d)(2)(A), the Commission proposes to extend those same recordkeeping requirements to currency transmission businesses. Subsection (d) (3)(A) will provide the Department with basic information regarding the type and volume of business handled by the licensees and will enable the Department to ensure that the amount of the bond posted by the licensee under the Act is sufficient and complies with the Department's rules with respect to bonding.

Brian R. Herrick, assistant general counsel, Texas Department of Banking, has determined that for each year of the first five years the section is in effect there will be fiscal implications as a result of enforcing or administering the section. The proposed amendment will have no effect on state or local government but will increase the cost of compliance with the rule for small businesses by an estimated $.05 per currency exchange or currency transmission transaction processed by the licensee in the amount of $1,000 or more. Any additional cost should be in large part offset by a reduction in the examination fee charged by the Department, because less time will be required to examine the operations of a licensee under the Act as a result of increased accuracy and completeness in recordkeeping. The cost of compliance per $100 of sales will be approximately the same for small businesses and the largest businesses.

Mr. Herrick also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide more detailed records for the transactions regulated under the Act, thus increasing the efficiency and effectiveness of the examination process. The efficiency achieved should enhance the orderly administration of the Act and ensure that the purposes of the Act are substantially fulfilled.

The economic cost to persons who are required to comply with the amendment as proposed will be an estimated additional $.05 per currency exchange or currency transmission transaction processed by the licensee in the amount of $1,000 or more. Any additional cost should be in large part offset by a reduction in the examination fee charged by the Department, because less time will be required to examine the operations of a licensee under the Act as a result of increased accuracy and completeness in recordkeeping.

Comments on the proposal may be submitted to Brian R. Herrick, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The amendment is proposed under Texas Civil Statutes, Article 350, §7, which require that the Commission adopt rules necessary to implement Article 350, including rules related to recordkeeping and reporting requirements.

Texas Civil Statutes, Article 350 and Article 489d are affected by the proposed amendment of §4.03

§4 03. Reporting and Recordkeeping.

(a) Persons holding a license (Licensees) pursuant to Texas Civil Statutes, Article 350 (the Act) shall maintain separate accounting books and records in Texas relating to their operations. All books and records maintained by Licensees [in accordance with this section] shall be located where they are readily accessible to the Department of Banking.

(b) Licensees shall comply with all federal laws and regulations affecting their operations, and shall maintain records of all [any] filings made pursuant to and [or] documentation required under all [any] applicable federal laws and [or] regulations, including [, but not limited to,] the requirements set forth in 31 United States Code, §5313 and 31 Code of Federal Regulations, [Title 31 United States Code, §5313, and Title 31 Code of Federal Regulations,] Part 103.

(c) Each Licensee shall, in a form prescribed by the Banking Commissioner, file quarterly written reports with [to] the Department of Banking.

(d) In addition to the records required to be maintained under subsections (a) and (b) of this section, Licensees shall keep the following records.

(1) Currency Exchange.

(A) No Licensee may engage in a currency exchange transaction in an amount of $1,000 or more unless the Licensee issues sequentially numbered receipts for each of those transactions. Duplicate copies of the receipts must be maintained by the Licensee for a period of at least five years. The receipts must include the following information:

(i) the name and address of the customer;

(ii) the social security number of the customer, or if the customer is an alien and does not have a social security number, then the passport number, alien identification card number, or other official document of the customer evidencing nationality or residence (e.g., a provincial driver's license with indication of home address);

(iii) the date of birth of the customer;

(iv) the name and address of the person on whose behalf the transaction is being conducted if the customer is conducting the transaction on behalf of another person, together with the appropriate identification for such other person specified in clause (ii) of this subparagraph;

(v) the date of the transaction;

(vi) the location of the office where the transaction was conducted;

(vii) the amount and type of currency received and given in exchange;

(viii) the rate of exchange;

(ix) the amount of any service charges or fees paid or assessed in connection with the transaction; and

(x) the initials of the employee of the Licensee effecting the transaction.

(B) In addition, the Licensee shall verify the customer's name and address by examination of a document that contains the name, address, and a photograph of the customer and is customarily acceptable within the banking community as a means of identification when cashing checks for nondepositors. The Licensee shall record the specific identifying information on the receipt (e.g., state of issuance and number of driver's license).

(C) Contemporaneous currency exchange transactions of the same or different types of currency made by or on behalf of the same person totaling $1,000 or more shall be treated as one transaction. Multiple transactions made by or on behalf of the same person during one business day totaling $1,000 or more shall be treated as one transaction if an individual employee, director, offi-

cer, or partner of the Licensee knew or should have known that the transactions occurred.

(2) Currency Transmission.

(A) No Licensee authorized to engage in currency transmission may enter into a currency transmission transaction in an amount of $1,000 or more unless the Licensee issues sequentially numbered receipts for each of those transactions. Duplicate copies of the receipts must be maintained by the Licensee for a period of at least five years. The receipt must indicate whether the transaction was initiated or terminated at the Licensee's business and must include the following information:

(i) the name and address of the customer, whether sender or recipient;

(ii) the social security number of the customer, or if the customer is an alien and does not have a social security number, then the passport number, alien identification card number, or other official document of the customer evidencing nationality or residence (e.g., a provincial driver's license with indication of home address);

(iii) the date of birth of the customer;

(iv) the name and address of the person on whose behalf the transaction is being conducted, if the customer is conducting the transaction on behalf of another person, together with the appropriate identification for such other person specified in clause (ii) of this subparagraph;

(v) the date of the transaction;

(vi) the location of the office where the transaction was conducted;

(vii) the amount of the transmission in U.S. dollars;

(viii) the rate of exchange, if applicable;

(ix) the designated recipient's name, address, and telephone number, if the customer is the sender;

(x) the sender's name, address, and telephone number, if the customer is the recipient and that information is available to the Licensee;

(xi) any instructions or messages relating to the transmission;

(xii) the amount of any service charges or fees assessed or paid in connection with the transaction; and

(xiii) the method of payment (e.g., cash, check, credit card, etc.).

(B) In addition, the Licensee shall verify the customer's name and address by examination of a document that contains the name and address of the customer and is customarily acceptable within the banking community as a means of identification when cashing checks for nondepositors, and shall record the specific identifying information on the receipt (e.g., state of issuance and number of driver's license).

(C) Contemporaneous transactions initiated by or on behalf of the same person or received by or on behalf of the same person totaling $1,000 or more shall be treated as one transaction. Multiple transactions during a single business day initiated by or on behalf of the same person or received by or on behalf of the same person and totaling $1,000 or more shall be treated as one transaction if an individual employee, director, officer, or partner of the Licensee knew or should have known that the transactions occurred.

(3) A Licensee must maintain a chronological log or logs for each calendar month on which shall be recorded the following information for each transaction:

(A) the date of the transaction;

(B) the location of the office where the transaction was conducted;

(C) the amount and type of currency received and given in exchange, or the amount of the transmission, as applicable;

(D) the rate of exchange, if applicable;

(E) the amount of any service charges or fees assessed in connection with the transaction; and

(F) the number of the receipt issued in connection with the transaction, if any.

(e) Failure to comply with this section shall be grounds for denial, revocation, or suspension of a license as provided in the Act, §6, and assessment of a civil penalty in accordance with the Act, §15.

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

Issued in Austin, Texas, on August 30, 1993.

TRD-9328012 Everette D. Jobe
General Counsel
Texas Department of Banking

Earliest possible date of adoption: October 8, 1993

For further information, please call: (512) 475-1300

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Part II. Banking Department of Texas

Chapter 13. Practice and Procedure

Subchapter A. Hearing Procedures

Hearings

• 7 TAC §13.71

The Finance Commission of Texas (the Commission) and the Banking Commissioner of Texas (the Commissioner) propose new §13.71, concerning recovery of administrative costs in hearings conducted relative to the Department of Banking. All costs related to conduct of the hearing and prosecution of the State's case are currently recoverable from the applicant seeking approval and the proposed §13.71 will permit a portion of such costs to be assessed to the applicant in opposition in appropriate circumstances.

Applicants to the Department of Banking seeking approval for certain actions are charged fees and assessed costs for the purpose of enabling the function of processing applications to be self-supporting. Texas Civil Statutes, Article 342-112(3), provides that all fees must be deposited in the Banking Department Expense Fund, from which all expenses incurred by the Department must be paid. State law prohibits payment of Department expenses from any other funds of this State.

Applicants who are forced to seek a hearing because of agency opposition to the application are thus charged for the cost of the hearing, including internal costs such as staff time and external costs such as the fee for a court reporter and costs of preparing the transcript. Applicants to the Department in opposition to a filed application who force a hearing to be held currently are not charged any portion of the incurred costs, artificially increasing the cost to the applicant seeking approval, sometimes prohibitively. Circumstances in the past have convinced the Banking Commissioner that, on occasion, the only reason for a protest, albeit unstated, is to increase the cost to the original applicant. Proposed §13.71 allows the Commissioner, in the exercise of discretion, to equitably divide the costs associated with the hearing among the parties

The Commission and the Banking Commissioner direct the reader's attention to the provisions of House Bill Number 1212, 73rd Legislature, 1993, effective September 1, 1993, which amends and renumbers several of the articles affected by this rulemaking proposal. Statutory citations in this preamble are to the statutes as amended by the 73rd Legislature, 1993.

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

Mr. Jobe also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to equitably distribute the costs of conducting administrative hearings among the parties. There will be no effect on small businesses. The possible economic cost to persons who are required to comply with the section as proposed will be the recovery costs imposed on a party or parties requiring the hearing.

Comments on the proposal to be considered by the Banking Commissioner and the Commission must be submitted in writing within 30 days after publication of the proposed section in the *Texas Register* to Everette D. Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705.

The new section is proposed under Texas Civil Statutes, Article 342-112(2), which provide the Commissioner and the Commission with the authority to establish reasonable and necessary fees for the administration of the Banking Code.

The following are the articles and sections that are affected by the proposed new §13.71: Texas Civil Statutes, Articles 342-305, 342-306, 342-310, 342-311, 342-331, 342-363, 342-903, 342-1101, and 7 TAC §3.91 (relating to Establishment of a Branch Bank).

§13.71. Recovery of Administrative Costs.

(a) The filing of a protest against granting an application previously filed with the Department of Banking is itself an application seeking action from the Department. For purposes of subsection (b) of this section, the original applicant and all protestants are collectively referred to as the applicants.

(b) The Commissioner may for good cause, after notice and hearing, impose direct administrative costs incurred by the Department of Banking on the applicants before the Commissioner, in addition to other sanctions and cost recoveries provided by law or these rules. Direct administrative costs incurred by the Department include but are not limited to the estimated, fully allocated cost of Department employees participating in the hearing, internal and external or out-of-pocket expenses incurred by the Department, administrative law judge fees and expenses, court reporter fees and expenses, investigative costs, witness fees and deposition expenses, witnesses' travel expenses, reasonable fees for professional services of expert witnesses, and the reasonable cost of a study, analysis, audit, or other project the Commissioner finds to have been necessary in preparation of the state's case.

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

Issued in Austin, Texas, on August 30, 1993.

TRD-9328011 Everette D. Jobe
General Counsel
Texas Department of Banking

Earliest possible date of adoption: October 8, 1993

For further information, please call: (512) 475-1300

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TITLE 16. ECONOMIC REGULATIONS

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter W. Registration of Commercial Carriers

• 16 TAC §5.501

The Railroad Commission of Texas proposes an amendment to §5 501, concerning definitions as they pertain to the registration of commercial carriers. The amendment is proposed as a result of legislative changes made by the 73rd Legislature, 1993, which transferred jurisdiction over the licensing of vehicle storage facilities from the Texas Department of Licensing and Regulation to the Railroad Commission of Texas, effective September 1, 1993. The proposed amendment adds tow trucks to the definition of the term "commercial motor vehicle," and specifically exempts tow trucks from the requirements of the commission's rules concerning the registration of commercial carriers.

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

Barbara H. Owens, hearings examiner, also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to bring the rule into conformity with the new authority the commission has acquired over the licensing of vehicle storage facilities, and the rules administratively transferred or promulgated pursuant to that authority. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

The amendment is proposed pursuant to Senate Bill 452, which amends Texas Civil Statutes, Article 6687-9a, §4(b), to require the commission to adopt rules establishing requirements for the licensing of persons to operate vehicle storage facilities. The amendment is also proposed pursuant to Texas Civil Statutes, Article 911b, §4(a), which provide the commission with power and authority to prescribe all rules and regulations necessary for the government of motor carriers and for the safety of operations of motor carriers.

The following are the articles that are affected by this rule: Section 5. 501–Texas Civil Statutes, Articles 911b and 6687-9a.

§5.501. Definitions.

(a) For the purposes of this subchapter, the term commercial motor vehicle shall mean any motor vehicle transporting property in furtherance of any commercial enterprise, which motor vehicle has a gross vehicular weight or an actual weight (including any trailer or towed vehicle) of more than 26,000 pounds, and shall mean any motor vehicle requiring hazardous material placarding, regardless of weight. **The term shall also mean a motor vehicle equipped with, or used in combination with a mechanical device, miniwrecker, or auto trailer, and which is adapted or used to tow, winch or otherwise move a motor vehicle, regardless of weight.**

(b) (No change.)

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, the following are not subject to the provisions of this subchapter:

(1)-(8) (No change.)

(9) a tow truck registered with the commission pursuant to §5. 803 of this title (relating to Tow Truck Registration Requirements).

(d) Notwithstanding the provisions of subsection (a) of this section, the following are not commercial motor vehicles:

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

(4)[(5)] a motor vehicle operated by or on behalf of a farmer or rancher, an agricultural cooperative of which the farmer or rancher is a member, a gin, or an elevator.

[(4) a tow truck registered with the Texas Department of Labor and Standards pursuant to the provisions of Texas Civil Statutes, Article 6687-9b, §1].

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

Issued in Austin, Texas, on August 25, 1993.

TRD-9328110 Mary Ross McDonald
Assistant Director, Legal Division-Gas Utilities/LP Gas
Railroad Commission of Texas

Earliest possible date of adoption: October 8, 1993

For further information, please call: (512) 463-7095

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Subchapter CC. Tow Trucks

• 16 TAC §§5.801-5.816

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

The Railroad Commission of Texas proposes the repeal of §§5.801-5.816, and proposes new §§5.801-5.816, concerning the regulation and operation of tow trucks. This proposal is made pursuant to Senate Bill 452 and Senate Bill 958, 73rd Legislature, 1993, which transferred jurisdiction of the regulation and operation of tow trucks from the Commission of Licensing and Regulation to the Railroad Commission of Texas. New Subchapter CC will contain the new rules for use by the Railroad Commission of Texas.

Jackye Greenlee, assistant director-central operations, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Carrie L. McLarty, hearings examiner, has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be to provide comprehensive instructions to the public regarding the licensing and regulation of tow truck operations. There will be no effect on small businesses. There is no economic cost to persons who are required to comply with the repeals in the form of filing and registration fees.

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

The repeals are proposed under Senate Bill 452, §11, 73rd Legislature, 1993, which orders the Railroad Commission of Texas to adopt rules, in the interest of public safety, that provide requirements for registration and maintenance of registration, including minimum insurance requirements for the operation of tow trucks and minimum safety standards regarding the operation of tow trucks.

§5.801. Authority.

§5.804. Exemptions.

§5.807. Tow Trucks as Commercial Vehicles.

§5.808. Inspection and Investigation by the Commission.

§5.809. Denial, Revocation, or Suspension for a Criminal Conviction.

§5.810. Administrative Sanctions.

§5.811. Criminal Penalty Sanctions.

§5.812. General Technical Requirements.

§5.813. Technical Requirements for Accident Scene Tow Trucks.

§5.814. Technical Requirements for Recovery of Vehicles for a Lien Holder.

§5.815. Sanctions-Revocation or Suspension Because of a Criminal Conviction.

§5.816. Technical Requirements-All Tow Trucks.

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

Issued in Austin, Texas, on August 31, 1993.

TRD-9328108 Mary Ross McDonald
Assistant Director, Legal Division-Gas Utilities/LP Gas
Railroad Commission of Texas

Earliest possible date of adoption: October 8, 1993

For further information, please call: (512) 463-7094

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

The new sections are proposed under Senate Bill 452, §11, 73rd Legislature, 1993, which orders the Railroad Commission of Texas to adopt rules, in the interest of public safety, that provide requirements for registration and maintenance of registration, including minimum insurance requirements for the operation of tow trucks and minimum safety standards regarding the operation of tow trucks.

The following is the article that is affected by this rule: Subchapter CC-Texas Civil Statutes, Article 6687-9b.

§5.801. Authority. The rules in this subchapter are promulgated under the authority of the Texas Tow Truck Act (Texas Civil Statutes, Article 6687-9b), the Texas Motor Carrier Act (Texas Civil Statutes, Article 911b), and the Motor Carrier Safety Act (Texas Civil Statutes, Article 6701d).

§5.804. Exemptions. The following vehicles are excluded from regulation under the Act and exempted from registration under the Act:

(1) As to out-of-state tow trucks only:

(A) a tow truck that is registered under the motor vehicle registration laws of another state;

(B) a tow truck that is operated in connection with and based at a towing business located in another state;

(C) a tow truck that is registered with a department or agency of another state;

(D) a tow truck that is regulated under the laws of another state that, as to the operation of tow trucks, has established standards that equal or exceed the requirements of the Act; and

(E) a tow truck that is operated only temporarily or occasionally on the highways of this state.

(2) The following are also exempted from the provisions of this subchapter:

(A) a tow truck owned by and used exclusively in the service of the United States, the State of Texas, a county, a city, or a school district;

(B) a light commercial vehicle having a manufacturer's rated capacity of one ton or less to which a chain, strap or rented tow bar or towing device is affixed and that is operated by an individual not in an automotive or motor vehicle business;

(C) a vehicle that is towing a race car, a motor vehicle for exhibition, or an antique motor vehicle, and is not being operated as part of a business or profession;

(D) a recreational vehicle, as defined by the Texas Commercial Drivers License Act (Texas Civil Statutes, Article 6687b-2), including subsequent amendments to that definition, towing another vehicle for a noncommercial purpose;

(E) a commercial transport vehicle that is capable of hauling four or more motor vehicles;

(F) a vehicle used only for towing motorcycles and which is incapable of towing any other type vehicle;

(G) a non-tow truck or tow device used by a rental car agency to move vehicles for customer use;

(H) a non-tow truck or tow device used in agricultural operations for agricultural purposes; and

(I) a non-tow truck or tow device owned by a licensee of the Motor Vehicle Board of the Texas Department of Transportation in transporting a vehicle owned by the licensee or a customer of the licensee.

§5.807. Tow Trucks as Commercial Vehicles. Notwithstanding any provision of this subchapter, a tow truck is a commercial motor vehicle and the owner of a tow truck is a commercial carrier as those terms are defined in §5.501 of this title (relating to Definitions). Any violation of this Act or rule adopted in this subchapter respecting safety or insurance shall be the same as having violated the Motor Carrier Act, the Motor Carrier Safety Act or a rule adopted by the commission relating to those acts.

§5.808. Inspection and Investigation by the Commission.

(a) The commission or its authorized representative shall exercise all the authority given it under the Motor Carrier Act, and may examine the books, records, accounts, letters, memoranda, documents, checks, vouchers, or telegrams of a tow truck owner.

(b) Any person who applies for or has received a certificate of registration shall have given its implied consent for an authorized inspector of the commission to audit, examine, or inspect any business record, document, book, account, equipment, or facility of that person. The refusal of a person to consent to such audit, examination or inspection shall constitute a violation under this subchapter.

§5.809. Denial, Revocation, or Suspension for a Criminal Conviction. An owner who has a felony or misdemeanor conviction that directly relates to the duties and responsibilities involved in the operation of a tow truck, including any conviction for a crime involving moral turpitude, may be denied certificates of registration or have a certificate of registration suspended or revoked by the commission.

§5.810. Administrative Sanctions.

(a) When the term "violation" or "violate," in either singular or plural form, is used in this section it shall mean:

(1) any violation of the Act, or rule or order adopted or issued related to the Act;

(2) any violation of the Motor Carrier Act, or rule or order adopted or issued related to that act;

(3) any violation of the Motor Carrier Safety Act, or rule or order adopted or issued related to that act;

(4) any felony or misdemeanor conviction of an owner that directly relates to the duties and responsibilities involved in operating a tow truck; or

(5) any revocation of an owner's felony probation, parole, or mandatory supervision.

(b) If an owner commits a violation the commission may:

(1) deny, revoke, or suspend the owner's certificate of registration;

(2) assess an administrative penalty in an amount not to exceed that permitted by Texas Civil Statutes, Article 911b, §4(a)(12); or

(3) place the owner on probation.

(c) If a suspension is probated, the commission may require the owner to:

(1) report regularly to the commission or its designee on the matter made the basis of probation; or

(2) limit areas of operations to the areas prescribed by the commission.

(d) If, after investigation of a possible violation by an authorized inspector of the commission, the investigator determines that a violation has occurred, the investigator shall issue a report to the director, stating the facts on which the conclusion that a violation occurred is based. Upon reviewing the report, the director shall recommend what sanctions, if any, should be imposed upon the violator. If it is recommended by the director that sanctions should be imposed, the recommendation to the commission shall be based on the following factors which the commission may consider when ordering sanctions:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount or action necessary to deter future violations;

(4) the amount of monetary gain realized by the owner charged;

(5) efforts made to correct the violation;

(6) if the violation involves a felony conviction or probation, parole, or mandatory supervision revocation:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the safe operation and insuring of a tow truck;

(C) the extent to which a certificate of registration might offer an opportunity to engage in further criminal activity of the same type as that in which the owner was previously involved;

(D) the relationship of the crime to the ability, capacity, or fitness to perform the responsibilities of operating a tow truck;

(E) the extent and nature of the owner's past criminal activity;

(F) the amount of time elapsed between the owner's last criminal activity;

(G) the conduct and work activity of the owner prior to and following the criminal activity;

(H) whether or not the owner was a minor at the time of the conviction of the crime;

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

(J) other evidence of the person's present fitness as deemed appropriate; and

(7) any other matters that justice may require.

(e) The director shall give written notice of the violation to the owner. The notice shall include:

(1) a brief summary of the charges;

(2) a statement of the proposed sanction, and any accompanying conditions; and

(3) a statement of the right of the owner charged to a hearing on the occurrence of the violation and the sanction and any terms thereof.

(f) Not later than the 20th day after the date on which the notice is received, the owner charged may accept the recommendation of the director made under this rule, including the sanction and all accompanying conditions, or make a written request for a hearing on the charges made. The director may extend the time for the owner charged to reply to the recommendation, provided that in the opinion of the director, a good-faith effort to negotiate a settlement of the violation has begun.

(g) If the owner charged with the violation accepts the recommendation of the director, the commission may issue an order approving the recommendation of the director (or other sanction as may be agreed upon between the director and the owner charged) ordering the recommended sanction and accompanying conditions be imposed upon that owner. The commission may refuse to issue an order approving the recommendation of the director and enter an order approving a lesser sanction, and it may require a hearing, or direct that further negotiations be made with the owner charged.

(h) If the owner charged fails to respond in a timely manner to the notice, or if the owner requests a hearing, the director shall set a hearing and the charges heard.

§5.811. Criminal Penalty Sanctions.

(a) A person commits an offense if it operates a tow truck that:

(1) does not have a valid certificate of registration issued under the Act;

(2) operates a tow truck that does not have:

(A) a valid certificate of registration issued under this Act; and

(B) a valid tow license plate attached to the rear of the tow truck that is clearly visible from the rear of the truck.

(b) A person convicted of a violation of this section shall be punished by a fine of not less than $200 and not more than $500.

§5.812. General Technical Requirements.

(a) Each tow truck must display a tow truck license plate issued by the Texas Department of Transportation under Texas Civil Statutes, Article 6675a-1. The plate must be permanently attached to the rear of the vehicle and in clear visible view.

(b) Each tow truck shall have the owner's:

(1) legal business or legal assumed name;

(2) city, or county (if the owner's place of business is in an unincorporated area); and

(3) telephone number.

(c) The identification markings shall be durably inscribed or affixed on each side of the tow truck in letters of no less than two inches, in contrasting colors, and clearly visible at 50 feet for a person with a normal vision range.

(d) If the owner claims an exemption to the cargo, hook-up, or similar insurance requirements of this subchapter, there must be durably affixed on each side of the tow truck, in letters at least two inches high, the words "Not For Hire."

(e) Every tow truck owner shall comply with the law regarding brakes contained in Texas Civil Statutes, Article 6701d, §132, or rules adopted by the Public Safety Commission relating to motor carrier safety.

(f) No tow truck shall tow more than its actual weight unless it has a 35,000 pound winch capacity (single or dual line), a 5/8 inch cable or its equivalent, and air brakes. If a certified law enforcement officer at the scene of an accident determines that the scene must be cleared immediately, and a heavy-duty tow truck is not available, the officer may waive this requirement at the scene.

(g) When a tow truck is towing two or more vehicles, it must be able to tie into and operate the service brakes on the rearmost towed vehicle. This provision does not apply if the rearmost towed vehicle has only vacuum brakes and the tow truck is not equipped with a pneumatic braking system.

(h) A tow truck equipped with a mechanical device shall have, as a minimum:

(1) a winch that has a winch line and boom with a lifting capacity of not less than 8,000 pounds single line capacity; or

(2) a wheel lift with a lifting capacity of not less 2,500 pounds.

(i) A tow truck used in combination with a mini-wrecker or auto trailer equipped with a mechanical device shall have a lifting capacity of not less than 5,000 pounds, and it shall have a towing capacity of not less than 7,000 pounds whether or not it is equipped with a mechanical device.

(j) Each tow truck shall have the following standard equipment:

(1) for a tow truck towing a motor vehicle that has wheels in contact with the ground a mechanical device or other equipment sufficient to prevent the swinging of the motor vehicle being transported;

(2) standard J-hook-up chains and at least two 5/16 inch link steel safety chains for tow trucks with a registered weight of 10,000 pounds or less;

(3) at least two 3/8 inch steel safety chains or their equivalent for tow trucks with a registered weight over 10,000 pounds;

(4) rope, wire, or straps suitable for securing doors, hoods, trunks or other parts of the motor vehicle being towed for the safe tow of such motor vehicle; and

(5) outside rear view mirrors on both sides of the tow truck.

(k) A tow truck operator towing a vehicle that does not have functioning tail lights, or turn signals, while being towed shall supply the towed motor vehicle with functioning tail lights or turn signals.

(l) A tow truck operator shall perform a safety wrap sufficient to secure the towed motor vehicle in the event of failure of the mechanical device used in towing the motor vehicle.

(m) Safety chains shall be used on all tows performed by an operator.

(n) Tow trucks with a slip-in bed must have the bed properly secured to the frame of the truck by a minimum of eight one-half inch diameter bolts of which at least four must be at the front of the slip-in bed.

(o) A tow truck with a mechanical device shall not be used to lift or tow more than its safe lifting capacity as recommended by the manufacturer.

(p) A tow truck operator must have a valid driver's license of the proper class.

(q) A tow truck shall, at all times, meet the motor vehicle inspection standards required by law.

(r) No tow truck operator shall tow a vehicle contrary to the recommended towed vehicle's manufacturer's safety policies and procedures regarding hook-up and towing.

(s) A tow truck owner shall inform consumers or service recipients of the name, mailing address, and telephone number of the commission for purposes of directing unresolved complaints to the commission. The information pertaining to any unresolved complaints may be included on:

(1) a written tow truck slip or ticket;

(2) a sign prominently displayed at the place of payment; or

(3) any other bill for service.

(t) The term "unresolved complaint" as used in this section shall mean a good-faith effort between the tow truck owner and the consumer or service recipient, to reach an amiable solution to their to dispute, and are unable to do so.

(u) At no time shall any owner tow a vehicle while there is a person in the towed vehicle. Violation of this provision shall subject the violator to the administrative penalty sanctions as set out in this subchapter.

§5.813. Technical Requirements for Accident Scene Tow Trucks.

(a) A tow truck responding to, or towing from, the scene of an accident shall be equipped with at least the following:

(1) a ten pound BC fire extinguisher or two five pound BC fire extinguishers. All fire extinguishers shall be properly filled, operable, and located so as to be readily accessible for use. Fire extinguishers shall meet, at least, the minimum requirements of the National Fire Protection Handbook, 14th edition (1976), and shall be labeled by a national testing laboratory;

(2) a crowbar or wrecking bar;

(3) a broom or other device for clearing highways of debris;

(4) three portable red emergency reflectors, orange safety cones, or flares;

(5) a container to carry glass and debris cleaned from a highway;

(6) a spotlight or flashlight; and

(7) flashing warning lights that comply with the Uniform Act Regulating Traffic on Highways (Texas Civil Statutes, Article 6701d, §124(d)) .

(b) A tow truck operator shall ensure that, while a motor vehicle is being lifted in preparation for towing, no one but the operator and certified law enforcement officers shall be within a safe distance of the tow truck.

(c) A tow truck operator responding to the scene of an accident shall remove from the highway debris resulting from an accident which may impede the orderly flow of traffic. This includes broken glass or other light weight debris that can easily be removed by one person, unless the operator is requested to perform other clean-up services in connection with an accident by an a certified law enforcement official or other authorized government official, and which clean-up does not involve the removal of the cargo carried by a vehicle associated with the wreckage.

(d) Certified law enforcement officials may do whatever is necessary to control the scene of an accident when an emergency situation exists.

§5.814. Technical Requirements for Recovery of Vehicles for a Lien Holder.

(a) An operator shall not tow a motor vehicle for a lien holder using towing pins or towing blades more than one mile, unless the operator rehooks the towed motor vehicle and observes all the requirements set forth in this subchapter.

(b) The requirements for safety wraps and safety chains do not apply during the first one mile where the towing pins or tow blade are used. Thereafter, they must be utilized as set forth in §5.812 of this subchapter (relating to General Technical Requirements).

§5.815. Leases.

(a) A person who, through a lease, memorandum, or agreement, assumes supervision, direction, or control of a tow truck which is to be used exclusively or primarily for the conduct of its business, is a tow truck owner under the rules of this subchapter.

(b) Any person operating a tow truck pursuant to a lease, memorandum, or agreement shall file an executed copy of the lease, memorandum, or agreement with the Department of Public Safety.

(c) A person who acquires use of a tow truck through lease, memorandum or agreement shall maintain full direction and control over the operation of the tow truck and its operator at all times in which the lease, memorandum or agreement is in effect.

§5.816. Assumed Business Names.

(a) An owner shall not operate any tow truck under more than one assumed business name.

(b) Every tow truck owner operating a tow truck under an assumed business name shall file such name with the county clerk's office of the county in which it resides or in which it bases a tow truck. If a corporation, a tow truck owner shall file its assumed business name with the secretary of state.

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

Issued in Austin, Texas, on August 31, 1993

TRD-9328113 Mary Ross McDonald
Assistant Director, Legal Division-Gas Utilities/LP Gas
Railroad Commission of Texas

Earliest possible date of adoption: October 8, 1993

For further information, please call: (512) 463-7094

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Subchapter DD. Vehicle Storage Facilities

• 16 TAC §§5.902, 5.903, 5.905, 5.906, 5.908, 5.909, 5.913-5. 920

The Railroad Commission of Texas proposes amendments to §§5.902, 5.903, 5.905, 5.906, 5.908, 5.909, and 5.913-5.920, concerning vehicle storage facilities. In Senate Bill 452, the 73rd Legislature, 1993 transferred jurisdiction over the licensing of vehicle storage facilities from the Texas Department of Licensing and Regulation to the Railroad Commission of Texas, effective September 1, 1993. Rules that are adopted by the Texas Department of Licensing and Regulation prior to September 1, 1993, are to remain in effect as rules of the Railroad Commission of Texas after that date. Consistent with the legislation, the rules contained in Chapter 79 of this title (relating to Vehicle Storage Facilities) were administratively transferred to Chapter 16, Subchapter DD, of this title (relating to Vehicle Storage Facilities), effective September 1, 1993. The proposed amendments will not be effective prior to September 1, 1993.

Jackye Greenlee, assistant director-central operations, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections

Barbara H. Owens, hearings examiner, also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to bring the rules into conformity with statutory requirements and with the overall regulatory scheme of the Railroad Commission of Texas There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

The amendments are proposed pursuant to House Bills 709 and 710, which amend Texas Civil Statutes, Article 6687-9a, §2 and §14, and pursuant to Senate Bill 452, which amends Texas Civil Statutes, Article 6687-9a, §4(b), to require the commission to adopt rules establishing requirements for the licensing of persons to operate vehicle storage facilities, to ensure that licensed storage facilities maintain adequate standards for the care of stored vehicles. The amendments are also proposed pursuant to Texas Civil Statutes, Article 911b, §4(a), which provide the commission with power and authority to prescribe all rules and regulations necessary for the government of motor carriers and for the safety of operations of motor carriers.

The following are the articles that are affected by these rules: §§5.902, 5.903, 5.905, 5.906, 5.908, 5.909, and 5.913-5.920-Texas Civil Statutes, Articles 911b and 6687-9a.

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

Commission-The **Railroad Commission of Texas** [Commission of the Texas Department of Licensing and Regulation].

[Commissioner-The Commissioner of the Texas Department of Licensing and Regulation.]

[Department-The Texas Department of Licensing and Regulation.]

Director-The director of the Transportation/Gas Utilities Division of the commission or his or her designee.

Vehicle storage facility-A garage, parking lot, or any facility owned or operated by a person other than a governmental entity, **except as provided in §5.919(f) of this title (relating to Technical Requirements-Storage Fees/Charges)**, for storing or parking ten or more vehicles. Ten or more vehicles shall mean the capacity to park or store ten or more vehicles a year.

§5.903. Licensing Requirements.

(a) A person must hold a current license issued by the **commission** [commissioner] in order to operate a vehicle storage facility.

(b) (No change.)

(c) A license to operate a vehicle storage facility issued by the **commission** [commissioner] is valid only for the physical location **indicated** [located] on the license.

(d) An application for a license to operate a vehicle storage facility must be made under oath and must contain:

(1)-(8) (No change.)

(9) a statement indicating whether or not the facility has an all weather surface as required by **§5.918** [§79.100] of this title (relating to Technical Requirements);

(10) a statement indicating whether or not the facility has the signs posted in the proper locations required by **§5. 918** [§79.100] of this title (relating to Technical Requirements); and

(11) a statement indicating whether or not the facility has the lighting required by **§5.918** [§79.100] of this title (relating to Technical Requirements).

(e) (No change.)

(f) Each license issued by the **commission** [commissioner under this Act] expires on the anniversary date of when it is issued.

(g) A licensee may apply annually, on a form provided by the **commission** [department], to renew the license.

(h)-(i) (No change.)

§5.905. Insurance Requirements.

(a) Each license applicant shall file with the **commission** [department] a certificate of insurance evidencing the required garagekeeper's legal liability insurance for the vehicle storage facility.

(b) No insurance policy or certificate of insurance will be accepted by the **commission** [commissioner] unless issued by an insurance company licensed and authorized to do business in this state in the form prescribed or approved by the State Board of Insurance and signed or countersigned by an authorized agent of the insurance company. [The commissioner will accept a certificate of insurance issued by a surplus lines insurer that meets the requirements of the Insurance Code, Article 1.14-2, and rules adopted by the State Board of Insurance under that article, if accompanied by an affidavit as proof of inability to obtain insurance from any insurance company authorized to do business in this state.]

(c) (No change.)

(d) The vehicle storage facility's insurance policy shall provide that the insurance company will give the **commission** [department] 30 days written notice of any policy cancellation or expiration.

(e) (No change)

§5.906. Responsibilities of the Licensee-Accepting Vehicles for Storage.

(a) (No change.)

(b) After accepting for storage a vehicle registered in Texas, the vehicle storage facility must notify the vehicle's last registered owner and all recorded lienholders by certified/registered mail within **five** [seven] days, but in no event sooner than within 24 hours of receipt of the vehicle. If the certified/registered letter is returned unclaimed, refused, or moved, left no forwarding address, publication in a newspaper is not required. If the identity of the last registered owner cannot be determined, if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and address of all lienholders, notice in one publication in one newspaper of general circulation in the area where the vehicle was towed from is sufficient.

(c) (No change.)

(d) It shall be a defense to an action initiated by the **commission** [department] for violation of this section that the facility has attempted, in writing, but been unable to obtain information from the foreign registry department.

(e) The vehicle storage facility operator may not charge an owner more than $25 for this notification. **However, if a vehicle is removed by the owner within 24 hours after the date the operator receives the vehicle, then no notification is required under this section, and no notification fee may be charged to the owner by the vehicle storage facility operator.**

(f) (No change.)

(g) All notifications shall state:

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

(5) the vehicle storage facility number preceded by the words "**Railroad Commission of Texas** [Texas Department of Licensing and Regulation] Vehicle Storage Facility License Number"; and

(6) (No change.)

(h) (No change.)

§5.908. Responsibilities of the Licensee-Documentation.

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

(c) All required documentation shall be made available by the licensee, his agent, or his employee for inspection and copying upon request by **commission** [department] personnel, or a certified law enforcement officer within his jurisdiction, during the same hours the vehicle storage facility must ensure that vehicles are available for release to the vehicle owner.

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

§5.909. Responsibilities of the Licensee-Vehicle Transfers.

(a) When a motor vehicle has been delivered to a storage facility, the vehicle may not be moved from that facility within the first 31 days of storage without the

vehicle owner's authorization. If it becomes necessary to move the vehicle during the first 31 days of storage because of storage facility capacity problems, neither the registered vehicle owner or recorded lienholder(s) may be assessed an additional charge. The vehicle storage facility must send notice in accordance with §5.906(b) [§79.70(b)] of this title (relating to Responsibilities of the Licensee-Accepting Vehicles for Storage), except that the notice must be sent no less than 72 hours prior to moving the vehicle.

(b) If a vehicle is moved from a storage facility, the licensee shall:

(1) charge only those fees otherwise permitted by §5.919 [§79.101] of this title (relating to Technical Requirements-Storage Fees/Charges) after the vehicle is towed to another location without the vehicle owner's permission;

(2) (No change.)

(3) allow the vehicle owner or his/her authorized representative to obtain possession of the vehicle upon presentation of any one of the following:

(A) (No change.)

(B) a commission-approved [department-approved] affidavit of right of possession;

(C)-(G) (No change.)

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

§5.913. Sanctions-Administrative Sanctions.

(a) If a licensee, a partner of a licensee, a principal in the licensee's business, or an [am] employee of the licensee, with the licensee's knowledge, violates the Act, or a rule or order promulgated under the Act, the **commission or its designee may issue a written warning to the licensee specifying the violation. In addition, the commission may, after notice and a hearing** [commissioner shall]:

[(1) issue a written warning to the licensee specifying the violation;]

(1)[(2)] deny, revoke, or suspend a license; or

(2)[(3)] place a person on probation whose license has been suspended.

(b) If a suspension is probated, the **commission** [commissioner] may require the person to:

(1) report regularly to the **commission or its designee** [commissioner] on matters that are the basis of the probation; or

(2) limit practice to the areas prescribed by the **commission** [commissioner].

(c) If, after investigation of a possible violation **by an authorized inspector of the commission** [and the facts surrounding that possible violation], the **investigator** [commissioner] determines that a violation has occurred, the **investigator** [commissioner] shall issue a preliminary report **to the director**, stating the facts on which the conclusion that a violation occurred is based[, recommending that an administrative sanction be imposed on the person charged, and recommending the precise nature and conditions, if any, of that proposed sanction]. **Upon reviewing the report, the director shall recommend to the commission what sanctions, if any, should be imposed upon the violator. If it is determined by the director that sanctions should be imposed, the recommendation to the commission shall be based on the following factors, which the commission may consider when ordering sanctions** [The commissioner shall base the recommended sanction, and any accompanying conditions, on the following factors]:

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

(d) **The director** [Not later than the 14th day after the day on which the preliminary report is issued, the commissioner] shall give written notice of the violation to the person charged. The notice shall include:

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

(e) Not later than the 20th day after the date on which the notice is received, the person charged may accept the **recommendation** [determination] of the **director** [commissioner] made under this rule, including the recommended sanction and all accompanying conditions, or make a written request for a hearing on that **recommendation** [determination]. **The director may extend the time for the person charged to reply to the recommendation, provided that in the opinion of the director, a good-faith effort to negotiate a settlement of the violation has begun.**

(f) If the person charged with the violation accepts the **recommendation** [determination] of the **director** [commissioner], the **commission may** [commissioner shall] issue an order approving the **recommendation (or other sanction as may be agreed upon between the director and the person charged)** [determination] and ordering that the recommended sanction and accompanying conditions be imposed upon that person. **The commission may refuse to issue an order approving the recommendation of the director, and may enter an order approving a different sanction, or require a hearing, or direct that further negotiations be made with the person charged.**

(g) If the person charged fails to respond in a timely manner to the notice, or if the person requests a hearing, the **director** [commissioner] shall set a hearing, give written notice of the hearing to the person, and designate a hearings examiner to conduct the hearing.

[(h) If an administrative hearing is held, and the person wishes to dispute the administrative sanction imposed, not later than the 30th day after the date on which the decision is final as provided by the Administrative Procedure and Texas Register Act, §16(c) (Texas Civil Statutes, Article 6252-13a), the person charged shall file a petition for judicial review contesting the fact of the violation and/or the administrative sanction. Judicial review is subject to the substantial evidence rule and shall be instituted by filing a petition with a Travis County district court as provided by the Administrative Procedure and Texas Register Act, §19 (Texas Civil Statutes, Article 6252-13a). A motion for rehearing is a prerequisite to appeal under this section.]

§5.914. Sanctions-Administrative Penalty/Fine.

(a) If a person violates the Act, or a rule or order adopted or issued by the **commission** [commissioner] relating to the Act, the commission may, in addition to or in lieu of a sanction imposed under §5.913 [§79.90] of this title (relating to Sanctions-Administrative Sanctions), assess an administrative penalty in an amount not to exceed $1,000 for each violation.

(b) (No change.)

(c) If, after investigation of a possible violation **by an authorized inspector of the commission** [and the facts surrounding that possible violation], the **investigator** [commissioner] determines that a violation has occurred, the **investigator** [commissioner] shall issue a preliminary report **to the director**, stating the facts on which the conclusion that a violation occurred is based[, recommending that an administrative penalty not to exceed $1,000 for each violation be imposed on the person charged, and recommending the amount of that proposed penalty.] **Upon reviewing the report, the director shall recommend to the commission what administrative penalty, if any, should be imposed upon the person charged; such administrative penalty shall not exceed $1,000 for each violation imposed upon the person charged. If it is determined by the director that an administrative penalty should be imposed, the recommendation to the commission shall be based on the following factors, which the commission may consider when ordering an administrative penalty** [The commissioner shall base the recommended amount of the proposed penalty on the following factors]:

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

(d) **The director** [Not later than the 14th day after the day on which the preliminary report is issued, the commissioner] shall give written notice of the violation to the person charged. The notice shall include:

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

(e) Not later than the 20th day after the date on which the notice is received, the person charged may accept the **recommendation** [determination] of the **director** [commissioner] made under this rule, including the recommended penalty, or make a written request for a hearing on that **recommendation** [determination].

(f) If the person charged with the violation accepts the **recommendation** [determination] of the **director** [commissioner], the commission **may** [shall] issue an order approving the **recommendation (or other penalty as may be agreed upon between the director and the person charged)** [determination] and ordering that the person pay the recommended penalty. **The commission may refuse to issue an order approving the recommendation of the director, and may enter an order approving a different penalty, or require a hearing, or direct that further negotiations be made with the person charged.**

(g) If the person charged fails to respond in a timely manner to the notice, or if the person requests a hearing, the **director** [commissioner] shall set a hearing, give written notice of the hearing to the person, and designate a hearings examiner to conduct the hearing.

[(h) If an administrative hearing is held, not later than the 30th day after the date on which the decision is final as provided by the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a) §16(c), the person charged shall:

[(1) pay the penalty in full; or

[(2) file a petition for judicial review contesting the fact of the violation and/or the administrative penalty/fine. Judicial review is subject to the substantial evidence rule and shall be instituted by filing a petition with a Travis County district court as provided by Administrative Procedure and Texas Register Act, §19 (Texas Civil Statutes, Article 6252-13a). A motion for rehearing is a prerequisite for appeal under this section. If this petition for judicial review is filed, the person must forward the amount of the administrative penalty/fine to the department for deposit in an escrow account, or post a supersedeas bond with the department in the amount of the penalty/fine, until judicial review is final.

[(i) A person charged with a penalty who is financially unable to comply with subsection (h)(2) of this section is entitled to judicial review if the person files with the court, as part of the person's petition for judicial review, a sworn statement that the person is unable to meet the requirements of that subsection.

[(j) Except as provided by subsection (i) of this section, failure to forward the amount assessed or post the bond with the department, in the manner and within the period prescribed by the department, results in a waiver of legal rights to judicial review. If the person charged fails to forward the amount assessed or post the bond, the commissioner or the attorney general may bring an action for the collection of the penalty.]

§5.915. Sanctions-Injunctive Relief and Civil Penalty.

(a) If it appears that a person is in violation of, or is threatening to violate, the Act or [of] a rule or order promulgated under the Act, the **commission** [commissioner], or the attorney general at the **commission's** [commissioner's] request, may institute an action for injunctive relief to restrain the person from continuing the violation and for civil penalties not to exceed $1,000 for each violation and not exceeding $250, 000 in the aggregate.

(b) If the **commission** [commissioner] or the attorney general prevails in an action under this section, the **commission** [commissioner] or the attorney general is entitled to recover reasonable attorney's fees and court costs.

§5.916. Sanctions-Criminal Penalty.

(a) A person commits an offense if the person:

(1) operates a vehicle storage facility that does not have a valid license issued under the Act; or

(2) violates any rule adopted by the commission under the Act.

(b) **A person convicted of an offense under this section shall be punished by a fine of not less than $200 and not more than $500** [An offense under this section is a Class C misdemeanor].

(c) **A person commits a separate offense for each day the person acts in violation of this section.**

(d)[(c)] A peace officer or license and weight inspector for the Department of Public Safety may make an arrest for a violation of a rule adopted under the Act.

§5.917. Sanctions-Revocation or Suspension Because of a Criminal Conviction.

(a) The **commission** [commissioner] may revoke, suspend, or deny a license issued under the Act, or place a person on probation whose license has been suspended, if the **commission** [commissioner] determines that a licensee, a partner of the licensee, a principal in the licensee's business, or an employee of the licensee has been finally convicted of:

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

(b) The **commission** [commissioner] may also, after hearing, suspend, revoke, or deny a certificate of registration because of a person's felony probation revocation, parole revocation, or revocation of mandatory supervision.

(c) In determining whether a criminal conviction directly relates to the operation of a vehicle storage facility, the **commission** [commissioner] shall consider:

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

(d) In determining the present fitness of a person who has been convicted of a crime, the **commission** [commissioner] shall also consider:

(1) (No change.)

(2) **whether or not the person was a minor** [the age of the person] at the time of the commission of the crime;

(3)-(6) (No change.)

(e) It shall be the responsibility of the applicant, to the extent possible, to secure and provide the **commission** [department] the recommendations of the prosecution, law enforcement, and correctional authorities as required.

(f) The applicant shall also furnish proof, in such form as may be required by the **commission** [department], that he or she has maintained a record of steady employment, has supported his or her dependents per court order, has otherwise maintained a record of good conduct, and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

§5.918. Technical Requirements. Each vehicle storage facility:

(1) shall notify consumers and service recipients of the name, mailing address, and telephone number of the **commission** [department] for purposes of directing complaints to the **commission** [department]. The licensee may use a sticker or rubber stamp to convey the required information. The notification shall be included on:

(A)-(C) (No change.)

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

(4) shall have a clearly visible and readable sign at its main entrance setting out the name of the storage lot, the street address, the telephone number, the hours, within one hour of which vehicles will be released to vehicle owners, and the storage lot's state license number preceded by [either] the phrase "VSF License Number"[, "License Number", "State License Number" or "TDLR Number"];

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

(9) shall have a publicly listed and operable telephone where the licensee can be contacted. If the telephone number is changed from the number set out in the vehicle storage license application, the licensee shall give the **commission** [department] written notice of the change prior to the date the new number is used. The notice shall include the storage lot's name, its location, its license number, the old telephone number, and the new telephone number;

(10)-(11) (No change.)

§5.919. Technical Requirements-Storage Fees/Charges.

(a) A vehicle storage facility operator may not charge an owner more than $25 for notification under **§5.906(b)** [§79.70(b)] of this title (relating to Accepting Vehicles for Storage).

(b) A vehicle storage facility operator may not charge an owner more than $10 for **any action taken by or at the direction of the operator or owner of the vehicle storage facility necessary to preserve, protect, or service a vehicle stored or parked at the facility** [preservation of a stored motor vehicle].

(c) A vehicle storage facility operator may not charge less than $5.00 or more than $15 for each day or part of a day for storage of a vehicle. **A daily storage fee may be charged for a day regardless of whether the vehicle is stored for 24 hours of the day, except that a daily storage fee may not be charged for more than one day if the vehicle remains at the vehicle storage facility less than 12 hours. For the purposes of this subsection, a day is considered to begin and end at midnight.**

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

(f) For purposes of this section, "vehicle storage facility" includes a garage, parking lot, or any type of facility owned by a governmental entity for storing or parking ten or more vehicles.

§5.920. Technical Requirements-Other Statutes and Administrative Rules; City Ordinances. Each vehicle storage facility must meet the requirements of all other applicable statutes and administrative rules promulgated thereunder and all applicable city ordinances in addition to meeting the requirements of these rules. The following statutes and ordinances are at least some of the other laws which may impact your operation of a vehicle storage facility. You should contact the named agency for more information.

(1) (No change.)

(2) Texas Tow Truck Act, Texas Civil Statutes, Article 6687-9b. This act regulates the operation of tow trucks in the State of Texas. This statute is administered by the **Railroad Commission of Texas** [Department of Licensing and Regulation].

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

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

Issued in Austin, Texas, on August 31, 1993.

TRD-9328109 Mary Ross McDonald
Assistant Director, Legal Division-Gas Utilities/LP Gas
Railroad Commission of Texas

Earliest possible date of adoption: October 8, 1993

For further information, please call: (512) 463-7095

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TITLE 22. EXAMINING BOARDS

Part XV. Texas State Board of Pharmacy

Chapter 281. General Provisions.

• 22 TAC §281.48

(Editor's Note: The Texas State Board of Pharmacy proposes for permanent adoption the amendment it adopts on an emergency basis in this issue. The text of the amendment is in the Emergency Rules section of this issue.)

The Texas State Board of Pharmacy proposes an amendment to §281.48, concerning Informal Disposition of a Contested Case. The amendment as proposed will bring the Texas Pharmacy Rule of Procedure into compliance with the directives included in new §17D of the Texas Pharmacy Act as added by Senate Bill 621 passed by the 73rd Legislature to be effective September 1, 1993.

These rules outline procedures for informal conferences, including providing provisions, when applicable and permitted by law, for complainants to have the opportunity to be heard at an informal conference.

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

Mr. Brinkley has determined that for each year of the first five years the rule as proposed will be in effect the public benefit anticipated as a result of enforcing the rule as proposed will be to allow the complainant the opportunity to be heard when an informal settlement conference regarding their complaint is held. There is no cost for businesses to comply with the rule. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

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

The new rule is proposed under the Texas Pharmacy Act, (, Texas Civil Statutes, Article 4542a-1), §16(a), which provides the Texas State Board of Pharmacy the authority to adopt rules for the proper administration and enforcement of the Act; the Texas Pharmacy Act, §17B(c), which becomes effective September 1, 1993, and requires that the board adopt a form for complaints; and the Texas Pharmacy Act, §17D, which becomes effective September 1, 1993, and requires that the Board adopt rules governing informal disposition of contested cases.

The following statutes that is affected by this rule: Texas Civil Statutes, Article 4542a-1.

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

Issued in Austin, Texas, on August 31, 1993.

TRD-9328096 Fred S. Brinkley, Jr.
Executive Director/Secretary
Texas State Board of Pharmacy

Proposed date of adoption: December 20, 1993

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

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• 22 TAC §281.73

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

The Texas State Board of Pharmacy proposes new §281.73, concerning Complaints. The section describes the procedures for filing complaints made to the Board.

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

Mr. Brinkley has determined that for each year of the first five years the rule as proposed will be in effect the public benefits anticipated as a result of enforcing the rule as

proposed will be the outlining in rule the procedures for filing a complaint against a pharmacist or pharmacy. There is no cost for businesses to comply with the rule. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

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

The new section is proposed to ensure compliance with provisions described in Senate Bill 621 adopted by the 73rd Legislature. Senate Bill 621 was passed by the 73rd Legislature and adds a new §17B to the Texas Pharmacy Act which becomes effective September 1, 1993. Section 17B provides that "the board by rule shall adopt a form for the filing of complaints made to the board."

The new rule is proposed under the Texas Pharmacy Act (Texas Civil Statutes, Article 4542a-1) §16(a), which provides the Texas State Board of Pharmacy the authority to adopt rules for the proper administration and enforcement of the Act, and the Texas Pharmacy Act, §17B(c), which becomes effective September 1, 1993, and requires that the board adopt a form for complaints.

The following statute is affected by this rule: Texas Civil Statutes, Article 4542a-1.

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

Issued in Austin, Texas, on August 31, 1993.

TRD-9328094 Fred S. Brinkley, Jr.
Executive Director/Secretary
Texas State Board of Pharmacy

Proposed date of adoption: December 20, 1993

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

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Chapter 283. Licensing Requirements for Pharmacists

• 22 TAC §283.9, §283.10

(Editor's Note: The State Board of Pharmacy proposes for permanent adoption the amended sections it adopts on an emergency basis in this issue. The text of the amended sections is in the Emergency Rules section of this issue.)

The Texas State Board of Pharmacy proposes amendments to §283.9 and §283.10 concerning Fee Requirements for Licensure by Examination and Reciprocity and Requirements for Application for a Pharmacist License Which Has Expired. The rule amendments as proposed will implement provisions of the Texas Pharmacy Act, §16(a) and §24(g), as amended by Senate Bill 621 passed by the 73rd Legislature which will become effective September 1, 1993. These amendments change the Act to specify that a pharmacist may not renew a license that has been expired for one year rather than two years. These amendments outline the procedures a pharmacist must follow to obtain a new license.

Fred S. Brinkley, Jr., R.Ph., M.B.A., has determined that there will not be fiscal implications as a result of enforcing or administering the rule. There will be no effect on state or local government for the first five-year period the rule will be in effect. Mr. Brinkley has determined that for each year of the first five years the rule as proposed will be in effect: the public benefits anticipated as a result of enforcing the rule as proposed will be the protection of the public health and welfare by outlining procedures to assure that procedures are in place for the issuance of a pharmacists license. There is no cost for businesses to comply with the rule. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

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

The amendments are proposed under the Texas Pharmacy Act, §16(a), which gives the Board the Authority to adopt rules for the proper administration of the Act; and §24(g), which specifies that the Board may not renew a license that has been expired one year or more.

The following is statute affected by this rule: Texas Civil Statutes, Article 4542a-1.

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

Issued in Austin, Texas, on August 31, 1993.

TRD-9328092 Fred S. Brinkley, Jr.
Executive Director/Secretary
Texas State Board of Pharmacy

Proposed date of adoption: December 20, 1993

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

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 317. Design Criteria for Sewerage Systems

Sewage Collection System

The Texas Natural Resource Conservation Commission proposes the repeal of §317.2, and new §317.2, concerning design of sewerage collection systems. The repeal §317.2 and the new §317.2 relate to Sewage Collection System. The section establishes minimum design standards for the installation of gravity sewage collection lines. The section proposes to define minimum acceptable standards and recommended guidelines which must be met in order to obtain construction approval. The authority vested in the chapter has been granted to the Texas Natural Resource Conservation Commission by the 70th Legislature under the Texas Water Code, §26.034.

The following changes reflect the changes in the document.

New §317.2(a)(1) defines the minimum cycle life of a collection system to be 50 years. Section 317.2(a)(2) defines the minimum material standards for the pipe selection of sanitary sewer lines. Section 317.2(a)(4)(B) expands on the testing method, lists a chart that may be used and allows for testing times to be terminated at specific points during the test if there is not a pressure drop. Section 317.2(a)(5)(A) states that the design engineer shall define the maximum trench width with a minimum clearance of four inches below and on both sides of the pipe. Stones larger than six inches in diameter shall not be used for backfill. Section 317.2(c)(5)(A) of this section states brick manholes shall not be used. Section 317.2(c)(5)(H) covers testing of manholes. Section 317.2(d) addresses alternative sewer systems in detail.

Stephen Minick, division of budget and planning, has determined that for the first five years the repeal is in effect there will be fiscal implications as a result of enforcement and administration of the repeal. No significant effects on state government are anticipated. The section as proposed will potentially have effects on local governments. The effect of these rules will be to adopt performance-based standards for materials, design and construction of sewage collection systems. The application of these standards may reflect a difference in cost of new installed systems when compared to systems currently in place. The actual amount and whether the difference is positive or negative can only be determined on a case-by-case basis. Generally, the use of performance-based standards will ensure that substandard systems, which may be of lower cost, are not installed. In instances where collection systems may be designed which would exceed standards, in order to provide for additional margins of safety or uncertainties of installation, the use of the proposed performance standards and requirements could have the effect of minimizing unnecessary costs to system owners or operators. Under this section as proposed, an engineer responsible for the design of a collection system shall also certify that the system was constructed as approved by the commission. The on-site inspection required to comply with this provision will represent an additional cost which will vary with each case based on the size of the project, its complexity, and the relative costs of the personnel involved.

The potential effects on small businesses are those which relate to engineering firms providing consultant services to collection system owners and operators. It is anticipated that the new requirements related to engineering design of collection systems will have cost implications for design engineers. These costs are not anticipated to reflect significant

increases in overall project costs, but may be felt more significantly in smaller firms where these costs represent a larger percentage of total costs and revenues. Any costs attributable to the changes in engineering requirements are anticipated to be short-term and should decrease as experience with the new requirements is obtained.

Mr. Minick also has determined that for the first five years this repeal is in effect the public benefit anticipated as a result of enforcement of and compliance with the repeal will be improvements in the design and construction of sewage collection systems; maximization of the return on capital investment by system owners and operators; minimization of long-term operation, maintenance and replacement costs for collection systems; and improvements in the quality of the surface water resources of the state. There are no additional costs anticipated for any individual required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Vic Ramirez, Staff Attorney, Legal Division, Texas Natural Resource Conservation Commission, 1700 North Congress Avenue, P.O. Box 13087, Austin, Texas 78711-3087. Comments will be accepted until 5:00 p.m., 30 days after the date of this publication.

• 30 TAC §317.2

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

The repeal is proposed under the authority of the Texas Water Code, §§5. 103, 5.105, 5.120 and 26.023, which provide the Texas Natural Resource Conservation Commission with the authority to promulgate rules as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state and to establish and approve all general policies of the commission.

§317.2. Sewage Collection System.

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 September 1, 1993.

TRD-9328105 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: October 8, 1993

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

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The new section is proposed under the Texas Water Code, §26.023, which provides the Texas Natural Resource Conservation Commission with the authority to make rules setting water quality standards for all water in the state. The section is also proposed under the Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of this state.

§317.2. Sewage Collection System.

(a) General Requirements.

(1) Design. Sewer lines shall be designed for the estimated future population to be served, plus adequate allowance for institutional and commercial flows. The collection system design shall provide a minimum structural life cycle of 50 years. The collection system design shall provide for the minimization of anaerobic conditions. The owner of the collection system shall provide full-time inspection under the direction of the registered professional engineer responsible for the design during the entire construction and testing phases of the project. The engineer responsible for the design shall also certify to the Executive Director that the project was constructed as approved.

(2) Pipe Selection. The choice of sewer pipe shall be based on the chemical characteristics of the water delivered by public and private water suppliers, the character of industrial wastes, the possibilities of septicity, the exclusion of inflow and infiltration, the external forces, internal pressures, abrasion, and corrosion resistance. For all installations, if a pipe as a whole or an integral structural component of the pipe will deteriorate when subjected to corrosive internal conditions, a Commission-approved coating or liner shall be installed at the pipe manufacturing facility unless the final engineering design report, including calculations and data, submitted by the engineer demonstrates that the design and operational characteristics of the system will maintain the structural integrity of the system during the minimum life cycle. The sewer pipe to be used shall be identified in the plans and technical specifications with its appropriate ASTM, ANSI, or AWWA specification numbers for both quality control (dimensions, tolerances, etc.) and installation (bedding, backfill, etc.).

(A) Flexible Pipe. The engineer shall submit an engineering report that includes the method of defining the modulus of soil reaction, (E'), for the bedding material, (E'_b), and the natural soil (E'_n), or other specific information to quantify the effect of the in-situ material on the effective modulus, (E'_e). The report shall also include design calculations for E'_e, prism load, live loads, long-term deflection, strain, bending strain, buckling, and wall crushing. The design calculations shall include all information pertinent to the determination of an adequate design including, but not limited to: pipe diameter and material with reference to appropriate standards, modulus of elasticity, tensile strength, pipe stiffness or ring stiffness constant converted to pipe stiffness as described below, Leonhardt's zeta factor or E'_e from another acceptable method, the conversion factor used to obtain vertical deflection when using the Modified Iowa Equation, trench width, depth of cover, water table elevation, etc. Pipe stiffness shall be related to Ring Stiffness Constant (RSC) by the following equation:

$$PS = C \times RSC \times \frac{8.337}{D}$$

PS = Pipe Stiffness, psi;

C = Conversion Factor, (0.80);

RSC = Ring Stiffness Constant; and,

D = Mean Pipe Diameter, in.

In all cases the design procedure, such as outlined in this subsection, shall dictate the minimum pipe stiffness whether less than or greater than 46 psi, however, direct-bury installations of flexible pipe material may consider a minimum stiffness requirement to ensure ease of handling, transportation, and construction. Special consideration shall be given to the pipe stiffness at the expected installation temperature. The resistance of each material to the failure modes of strain, buckling, and wall crushing shall be justified to the satisfaction of the Executive Director by the engineer In all situa-

tions, the design methodology shall be consistent with currently accepted design practices and acceptable to the Executive Director. In the design of sanitary sewer systems using trenchless technology, other design methodology may be considered appropriate, depending upon the type of pipe selected and other specific conditions.

(B) Rigid Pipe. The engineer shall submit an engineering report that includes the trench width, water table, and depth of cover, etc. For rigid conduits the minimum strengths for the given class shall be noted in the appropriate standard for the pipe material. For the purpose of this section, rigid pipe is defined as concrete, vitrified clay, or ductile iron pipe.

(C) Other pipe materials may be considered on a case-by-case basis by the Executive Director. The design and installation of such materials shall generally follow the guidelines for flexible or rigid pipe with appropriate exceptions.

(3) Jointing Material. The materials used and methods to be applied in making joints shall be included in the technical specifications. Materials used for sewer joints shall have a satisfactory record of preventing infiltration and root entrance. Rubber gaskets, PVC compression joints, high compression polyurethane, welded, or other types of factory made joints are required.

(4) Testing of Installed Pipe. An infiltration, exfiltration, or low-pressure air test shall be specified. Copies of all test results shall be made available to the Executive Director upon request. Tests shall conform to the following requirements:

(A) Infiltration or Exfiltration Tests. The total infiltration or exfiltration, as determined by a hydrostatic head test, shall not exceed 50 gallons per inch diameter per mile of pipe per 24 hours at a minimum test head of two feet above the crown of the pipe at the upstream manhole, or at least two feet above existing groundwater, whichever is greater. For construction within the 25 year flood plain, the infiltration or exfiltration shall not exceed ten gallons per inch diameter per mile of pipe per 24 hours at the same minimum test head. If the quantity of infiltration or exfiltration exceeds the maximum quantity specified, remedial action shall be undertaken in order to reduce the infiltration or exfiltration to an amount within the limits specified.

(B) Low Pressure Air Test. The low pressure air test shall conform to the procedures described in ASTM C-828, ASTM C-924, ASTM C-969, or other appropriate procedures. For sections of pipe less than 36-inch average inside diameter, the following procedure shall apply unless the pipe is to be joint tested. The pipe shall be pressurized to 3.5 psi greater than the pressure exerted by groundwater above the pipe. Once the pressure is stabilized, the minimum time allowable for the pressure to drop from 3.5 pounds per square inch gauge to 2.5 pounds per square inch gauge shall be computed from the following equation:

$$T = \frac{0.085 \times D \times K}{Q}$$

T = time for pressure to drop 1.0 pound per square inch gauge in seconds

K = 0.000419×D×L, but not less than 1.0

D = average inside pipe diameter in inches

L = length of line of same pipe size being tested, in feet

Q = rate of loss, 0.0015 cubic feet per minute per square foot internal surface shall be used

Since a K value of less than 1.0 shall not be used, there are minimum testing times for each pipe diameter as follows:

Pipe Diameter (inches)	Minimum Time (seconds)	Length for Minimum Time (feet)	Time for Longer Length (seconds)
6	340	398	0.855(L)
8	454	298	1.520(L)
10	567	239	2.374(L)
12	680	199	3.419(L)
15	850	159	5.342(L)
18	1020	133	7.693(L)
21	1190	114	10.471(L)
24	1360	100	13.676(L)
27	1530	88	17.309(L)
30	1700	80	21.369(L)
33	1870	72	25.856(L)

The test may be stopped if no pressure loss has occurred during the first 25% of the calculated testing time. If any pressure loss or leakage has occurred during the first 25% of the testing period, then the test shall continue for the entire test duration as outlined or until failure. Lines with a 27-inch average inside diameter and larger may be air tested at each joint. If the joint test is used, a visual inspection of the joint shall be performed immediately after testing. The pipe is to be pressurized to 3.5 psi greater than the pressure exerted by groundwater above the pipe. Once the pressure has stabilized, the minimum time allowable for the pressure to drop from 3.5 pounds per square inch gauge to 2.5 pounds per square inch gauge shall be ten seconds.

(5) Bedding.

(A) Trenching, Bedding, and Backfill. The width of the trench shall be minimized, but shall be ample to allow the pipe to be laid and jointed properly and to allow the backfill to be placed and compacted as needed. The trench sides shall be kept as nearly vertical as possible. As used herein, a trench shall be defined as that open cut portion of the excavation up to one foot above the pipe. The engineer shall specify the maximum trench width. When wider trenches are necessary, the appropriate bedding class and pipe strength shall be used. A minimum clearance of four inches below and on each side of all pipes to the trench walls and floor shall be provided. Bedding classes A, B, or C, as described in ASTM C 12 (ANSI A 106. 2), Water Environment Federation (WEF) Manual of Practice (MOP) No. 9, or American Society of Civil Engineers (ASCE) MOP 37 shall be used for all rigid pipes, provided that the proper strength pipe is used with the specified bedding to support the anticipated load(s). Embedment classes I, II, or III, as described in ASTM D-2321 (ANSI K65.171) shall be used for all flexible pipes, provided the proper strength pipe is used with the specified bedding to support the anticipated load, except that ASTM D-2680 may be used if the pipe stiffness is 200 psi or greater. Backfill shall be of suitable material removed from excavation except where other material is specified. Debris, large clods or stones greater than six inches in diameter, organic matter, or other unstable materials shall not be used for backfill. Backfill shall be placed in such a manner as not to disturb the alignment of the pipe. Water line crossings shall be governed by special backfill requirements specified in §317.13 of this title (relating to Appendix E-Separation Distances).

(B) Deflection Testing. Deflection tests shall be performed on all flexible pipes. For pipelines with inside diameters less than 27 inches, a rigid mandrel shall be used to measure deflection. For pipelines with an inside diameter 27 inches and greater, a method approved by the Executive Director shall be used to test for vertical deflections. Other methods shall provide a precision of two tenths of one percent (0.2%) deflection. The test shall be conducted after the final backfill has been in place at least 30 days. No pipe shall exceed a deflection of 5.0%. If a pipe should fail to pass the deflection test, the problem shall be corrected and a second test shall be conducted after the final backfill has been in place an additional 30 days. The tests shall be performed without mechanical pulling devices. The design engineer should recognize that this is a maximum deflection criterion for all pipes and a deflection test less than 5.0% may be more appropriate for specific types and sizes of pipe. The design engineer shall certify, to the Executive Director, that the entire installation has passed the deflection test within 30 days of the testing. This certification shall be provided for the Commission to consider the requirements of the approval to have been met.

(1) Mandrel Sizing. The rigid mandrel shall have an outside diameter

(O.D.) equal to 95% of the inside diameter (I.D) of the pipe. The inside diameter of the pipe, for the purpose of determining the outside diameter of the mandrel, shall be the average outside diameter minus two minimum wall thicknesses for O.D.-controlled pipe and the average inside diameter for I.D. controlled pipe, all dimensions shall be per appropriate standard. Statistical or other "tolerance packages" shall not be considered in mandrel sizing.

(2) Mandrel Design. The rigid mandrel shall be constructed of a metal or a rigid plastic material that can withstand 200 psi without being deformed. The mandrel shall have nine or more "runners" or "legs" as long as the total number of legs is an odd number. The barrel section of the mandrel shall have a length of at least 75% of the inside diameter of the pipe. A proving ring shall be provided and used for each size mandrel in use.

(3) Method Options. Adjustable or flexible mandrels are prohibited. A television inspection is not a substitute for the deflection test. A deflectometer may be approved for use on a case-by-case basis. Mandrels with removable legs or runners may be accepted on a case-by-case basis.

(4) Site Inspections. The Executive Director shall, on a random basis, perform site inspections of deflection testing. To facilitate these inspections, the design engineer shall notify the Executive Director at least ten working days prior to the deflection test and should be in attendance. The Executive Director shall not accept the design engineer's certification, as required above, if proper notice was not provided.

(5) Protecting Public Water Supply. Water lines and sanitary sewers shall be installed no closer to each other than nine feet between outside diameters. Where this cannot be achieved, the sanitary sewer shall be constructed in accordance with §317.13 of this title (relating to Appendix E-Separation Distances). No physical connection shall be made between a drinking water supply, public or private, and a sewer or any appurtenance. An air gap of a minimum of two pipe diameters shall be maintained between all potable water outlets and the water surface elevation of sewer appurtenances.

(6) Excluding Surface Water. Proposals for the construction of combined sewers will not be approved. Roof, street, or other types of drains which will permit entrance of surface water into the sanitary sewer system shall not be acceptable.

(7) Active Geologic Faults. For systems to be located in areas of known active geologic faults, the design engineer shall locate any faults within the area of the collection system and the system shall be laid out to minimize the number of sewers crossing faults. Where crossings are unavoidable, the engineering report shall specify design features to protect the integrity of the sewer. Consideration should be given to joints providing maximum deflection and to providing manholes on each side of the fault so that a portable pump may be used in the event of sewer failures. Service connections within 50 feet of an active fault should be avoided.

(8) Erosion Control. Erosion or sedimentation control that minimizes the effects of runoff shall be provided during the construction phase of a project. This requirement will be reviewed on a case-by-case basis.

(b) Capacities.

(1) Sources. The peak flow of domestic sewage, peak flow of waste from industrial plants, and maximum infiltration rates shall be considered in determining the hydraulic capacity of sanitary sewers.

(2) Existing Systems. The design of extensions to sanitary sewers should be based on the data from the existing system. If this is not possible, the design shall be based on data from similar systems or §317.2(b)(3) of this title (relating to New Systems).

(3) New Systems. New sewers shall be designed on the basis of an estimated daily sewage flow contribution as shown in the table in §317.4(a) of this title (relating to Wastewater Treatment Facilities). Minor sewers shall be designed such that when flowing full they will transport wastewater at a rate approximately four times the system design daily average flow. Main trunk, interceptor, and outfall sewers shall be designed to convey the contributed minor sewer flows.

(c) Design Details.

(1) Minimum size. No sewer other than service laterals and force mains shall be less than six inches in diameter.

(2) Slope. All sewers shall be designed and constructed with slopes sufficient to give a velocity when flowing full of not less than 2.0 feet per second. The grades shown in the following table are based on Manning's formula with an assumed "n factor" of 0. 013 and constitute minimum acceptable slopes. The minimum acceptable "n" for design and construction shall be 0.013. The "n" used takes into consideration the slime, grit, and grease layers that will hinder hydraulics as the pipe matures.

Size of Pipe In Inches I.D.	Minimum Slope in percent	in percent
6	0.50	12.35
8	0.33	8.40
10	0.25	6.23
12	0.20	4.88
15	0.15	3.62
18	0.11	2.83
21	0.09	2.30
24	0.08	1.93
27	0.06	1.65
30	0.055	1.43
33	0.05	1.26
36	0.045	1.12
39	0.04	1.01
>39	*	*

* For lines larger than 39 inches in diameter, the slope may be determined by Manning's formula to maintain a minimum velocity greater than 2. 0 feet per second when flowing full and a maximum velocity less than ten feet per second when flowing full.

$$V = \frac{1.49}{n} \times R_h^{0.67} \times \sqrt{S}$$

V = velocity (ft/sec)

n = Manning's roughness coefficient (0.013)

R_h = hydraulic radius (ft)

S = slope (ft/ft)

(3) High Velocity Protection. Where velocities greater than ten feet per second will occur when the pipe is flowing full, at slopes greater than those listed above, special provisions shall be made to protect against pipe displacement by erosion of the bedding and/or shock.

(4) Alignment. Sewers shall be laid in straight alignment with uniform grade between manholes unless slight deviations from straight alignment and uniform grade are justified to the satisfaction of the Executive Director.

(5) Manhole Use. Manholes shall be placed at points of change in alignment, grade, or size of sewer, at the intersection of sewers and the end of all sewer

lines that will be extended at a future date. Any proposal which deviates from this requirement shall be justified to the satisfaction of the Executive Director. Cleanouts with watertight plugs may be installed in lieu of manholes at the end of sewers which are not anticipated to be extended within one year of completion of construction.

(A) Type. Manholes shall be monolithic, cast-in-place concrete, fiberglass, precast concrete, HDPE, or of equivalent construction. Brick manholes shall not be used; however, one layer of fired clay brick may be used for final manhole adjustment where one six-inch concrete ring will exceed the specified tolerances.

(B) Spacing. The maximum recommended manhole spacing for sewers with straight alignment and uniform grades are in the following table. Reduced manhole spacing may be necessary, depending on the utility's ability to maintain its sewer lines. Areas subject to flooding require special consideration to minimize inflow.

Pipe Diameter (inches)	Maximum Manhole Spacing (feet)
6 - 15	500
18 - 30	800
36 - 48	1000
54 or larger	2000

(C) Inflow and Infiltration Control. Manholes should not allow surface water to drain into them. If manholes are located within the 100-year flood plain, the manhole covers shall have gaskets and be bolted or have another means of preventing inflow. Where gasketed manhole covers are required for more than three manholes in sequence, an alternate means of venting shall be provided at less than 1,500-foot intervals. Vents should be designed to minimize inflow. Impervious material should be utilized for manhole construction in these areas in order to minimize infiltration.

(D) Manhole Diameter. Manholes shall be of sufficient inside diameters to allow personnel to work within them and to allow proper joining of the sewer pipes in the manhole wall. The inside diameter of manholes shall be not less than 48 inches.

(E) Manhole Inverts. The bottom of the manhole shall be provided with a "U"-shaped channel that is as much as possible a smooth continuation of the inlet and outlet pipes. For manholes connected to pipes less than 15 inches in diameter the channel depth shall be at least half the largest pipe diameter. For manholes connected to pipes 15 to 24 inches in diameter the channel depth shall be at least three-fourths the largest pipe diameter. For manholes connected to pipes greater than 24 inches in diameter the channel depth shall be at least equal to the largest pipe diameter. In manholes with pipes of different sizes, the tops of the pipes shall be placed at the same elevation and flow channels in the invert, sloped on an even slope from pipe to pipe. The bench provided above the channel shall be sloped at a minimum of 0.5 inch per foot. Where sewer lines enter the manhole higher than 24 inches above the manhole invert, the invert shall be filleted to prevent solids deposition. A drop pipe should be provided for a sewer entering a manhole more than 30 inches above the invert.

(F) Manhole Covers. Manhole covers of nominal 24-inch or larger diameter are to be used for all sewer manholes.

(G) Manhole Access. Design of features for entering manholes shall be guided by the following criteria:

(i) It is suggested that entrance into manholes in excess of four feet deep be accomplished by means of a portable ladder. Other designs for ingress and egress should be given careful evaluation considering the safety hazards associated with the use of manhole steps under certain conditions.

(ii) Where steps are used, they shall be made of a non-corrosive material and be in accordance with applicable OSHA specifications as published by the U. S. Department of Labor.

(H) Testing. Manholes shall be tested separately and independently of the wastewater lines. All wastewater lines coming into the manhole shall be sealed with an internal pipe plug, then the manhole shall be filled with water and maintained full for at least one hour. The maximum leakage shall be 0.025 gallons per foot diameter per foot of manhole depth per hour. For concrete manholes a wetting period of 24 hours may be used prior to testing in order to allow saturation of the concrete. Other methods of manhole testing, such as vacuum testing, may be allowed by the Executive Director on a case-by-case basis.

(6) Sag Pipes (Inverted Siphons). Sag pipes shall have two or more barrels, a minimum pipe diameter of six inches and shall be provided with necessary appurtenances for convenient flushing and maintenance. The manholes shall have adequate clearances for rodding, and in general, sufficient head shall be provided and pipe sizes selected to assure velocities of at least three feet per second at design flows. The inlet and outlet details shall be arranged so that the normal flow is diverted to one barrel. Provisions shall be made such that either barrel may be taken out of service for cleaning.

(d) Alternative Sewer Systems. Use of pressure sewers may be considered when justified by unusual terrain or geological formations, low population density, difficult construction, or other circumstances where a pressure system would offer an advantage over a gravity system. An alternative sewer system will be considered for approval only when conditions make a gravity collection system impractical.

(1) Management. A responsible management structure shall be established, to the satisfaction of the Executive Director, to be in charge of the operation and mainte-

nance of an alternative sewer system. A legally binding service agreement shall be required to insure the low pressure sewer system is properly constructed and maintained. The required elements of the service agreement are as follows:

(A) The document must be legally binding.

(B) Existing septic tanks that are to be used for primary treatment prior to the discharge into an alternative sewer system must be cleaned, inspected, repaired, or replaced if necessary, to minimize inflow and infiltration into the new collection system prior to connection.

(C) The utility shall have approval authority for the design of the system including all materials and equipment prior to the installation of a septic tank or a grinder pump lift station. The materials shall comply with standard specifications submitted to and approved by the Executive Director.

(D) The utility must be able to approve the installation of the septic tank or grinder pump lift-station after construction to ensure the installation was as specified.

(E) The utility must be responsible for the operation and maintenance of the system, including any septic tanks and grinder pump lift-stations incorporated.

(F) The utility must be able to stop any authorized discharges from any collection system appurtenances in order to prevent contamination of State waters.

(G) The utility shall submit a maintenance schedule to the Executive Director which outlines routine service inspections for each grinder pump lift-station, septic tank, and other components.

(H) Pumping units, grinder pumps, and septic tanks shall be regarded as integral components of the system and not as a part of the home plumbing.

(I) Provision to ensure collection system integrity during a power outage (two-year event) shall be incorporated into the design.

(2) Design Considerations. The following shall be submitted to and approved by the Executive Director:

(A) the number of units pumping at any one time;

(B) flow velocities in the range of three to five feet per second;

(C) the installation of air relief valves;

(D) the provision of means to flush all lines in the system;

(E) the installation of cleanouts; and

(F) development of procedures whereby portions of the pressure system may be rerouted with temporary lines in the event of leaks, construction, or repair.

(3) Pipe Selection. Pipe which will be used in this type of sewer application shall have a minimum sustained working pressure rating of 100 pounds per square inch gauge as per appropriate standard. Joints appropriate for the pipe selected shall be specified. Pipe selection shall also conform to subsection (a)(1), (2), (3), and (5) of this section.

(4) Hydrostatic Testing. All pressure pipe installations shall be tested for leakage. Copies of all test results shall be made available to the Executive Director upon request. Leakage shall be defined as the quantity of water that must be supplied into the pipe or any valved section thereof, to maintain pressure within five pounds per square inch of the specified test pressure after the air in the pipeline has been expelled. The test pressure shall be either a minimum of 25 pounds per square inch gauge or 1.5 times the maximum force main design pressure, whichever is larger. The maximum allowable leakage shall be calculated using the formula below. If the quantity of leakage exceeds the maximum amount calculated, remedial action shall be taken to reduce the leakage to an amount within the allowable limit as follows:

$$L = \frac{S \times D \times \sqrt{P}}{133,200}$$

L = leakage in gal/hr

S = length of pipe in ft

D = inside diameter of pipe in inches

P = pressure in pounds per square inch

(5) Pumps. Pumping units and grinder pumps used in pressure sewer systems should be reliable, easily maintained, and should have compatible characteristics.

(A) Pumps and grinder pump units shall be provided with two backflow prevention devices and shall be easily accessible for maintenance.

(B) Sufficient holding capacity shall be provided in the pumping compartment to allow for wastewater storage during power outages and equipment failures. Storage volume should be based on power supply outage records and replacement equipment availability.

(C) Pumping units shall not be installed in the settling chamber of a septic tank if the septic tank is to be used for solids reduction.

(D) Alarms, warning lights, or other suitable indicators of unit malfunction shall be installed at each pumping station.

(E) Whenever any pumping station handles waste from two or more residential housing units or from any public establishment, dual grinder pump units shall be provided to assure continued service in the event of equipment malfunction.

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 September 1, 1993.

TRD-9328106 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource
Conservation
Commission

Earliest possible date of adoption: October 8, 1993

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

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 7. BANKING AND SECURITIES

Part I. State Finance Commission

Chapter 3. Banking Section

Subchapter E. Banking House and Other Facilities

• 7 TAC §3.91

The State Finance Commission has withdrawn from consideration for permanent adoption a proposed new §3.91 which appeared in the March 10, 1993, issue of the *Texas Register* (18 TexReg 2249). The effective date of this withdrawal is August 31, 1993.

Issued in Austin, Texas, on August 30, 1993.

TRD-9328010 Everette D. Jobe
General Counsel
State Finance Commission

Effective date: August 31, 1993

For further information, please call: (512) 475-1300

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 145. Long Term Care

Subchapter G. Licensing and Medical Certification Standards for Nursing Homes

• 25 TAC §145.111

The Texas Department of Health has withdrawn from consideration for permanent adoption a proposed amendment to §145.111, which appeared in the June 8, 1993, issue of the *Texas Register* (18 TexReg 3614). The effective date of this withdrawal is August 30, 1993.

Issued in Austin, Texas, on August 23, 1993.

TRD-9328001 Susan K. Steeg
General Counsel
Texas Department of Health

Effective date: August 30, 1993

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

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D. BROWN

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 1. ADMINISTRATION

Part V. General Services Commission

Chapter 113. Purchasing

• 1 TAC §113.18

Purchases of Information Resources Technology

The General Services Commission adopts the repeal of §113.18, concerning purchases of information resources technology, without changes to the proposed text as published in the July 6, 1993, issue of the *Texas Register* (18 TexReg 4369)

The repeal of §113.18 is to conform to Senate Bill 381, §1 28, Acts of the 73rd Legislature, which repeals Texas Civil Statutes, Article 601b, §3. 021, concerning purchases or leases of automated information and telecommunications items.

The repeal of §113.18 deletes obsolete language.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 601b, Article 3, which provide the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of Article 3.

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

Issued in Austin, Texas, on August 31, 1993

TRD-9328056 Judith M. Porras
General Counsel
General Services Commission

Effective date. September 21, 1993

Proposal publication date. July 6, 1993

For further information, please call. (512) 463-3583

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• 1 TAC §113.25

The General Services Commission adopts an amendment to §113 25, concerning purchase of motor vehicles, without changes to the proposed text as published in the July 6, 1993, issue of the *Texas Register* (18 TexReg 4369)

The amendment conforms §113.25 to House Bill 2626, Acts of the 73rd Legislature, §20, which amends Texas Civil St 'utes, Article 601b, §3.29.

The amendment allows for the purchase of vehicles with a wheelbase of up to 116 inches or SAE net horsepower of 280, if they are converted to use compressed natural gas or another alternative fuel.

No comments were received regarding adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 601b, which provide the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of the Article.

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

Issued in Austin, Texas, on August 31, 1993.

TRD-9328058 Judith M. Porras
General Counsel
General Services Commission

Effective date: September 21, 1993

Proposal publication date: July 6, 1993

For further information, please call (512) 463-3583

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• 1 TAC §§113.91, 113.93, 113.95, 113.97, 113.99

The General Services Commission adopts the repeal of §§113.91, 113.93, 113 95, 113.97, and 113.99, concerning competitive cost review, without changes to the proposed text as published in the July 6, 1993, issue of the *Texas Register* (18 TexReg 4369).

The repeals are to conform to House Bill 2626, §68, Acts of 73rd Legislature, effective September 1, 1993, which repeals Texas Civil Statutes, Article 601b, Article 13, concerning the competitive cost review program

The repeals delete obsolete language.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 601b, which provide the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of the Article

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

Issued in Austin, Texas, on August 31, 1993.

TRD-9328059 Judith M. Porras
General Counsel
General Services Commission

Effective date: September 21, 1993

Proposal publication date: July 6, 1993

For further information, please call. (512) 463-3583

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Chapter 115. Building and Property Services Division

• 1 TAC §115.32

The General Services Commission adopts an amendment to §115.32, concerning emergency leases, without changes to the proposed text as published in the July 23, 1993, issue of the *Texas Register* (18 TexReg 4785)

The amendment increases the maximum term of emergency leases from 12 months to 24 months and deletes the requirement that the purpose of emergency leases be to provide time for acquiring space in accordance with Article 6.

The longer term for such emergency leases will increase flexibility in scheduling commencement dates of bid leases, minimize the cost of emergency leases, and avoid the risk of unnecessary relocation of offices, with the resultant expense and disruption of client services.

No comments were received regarding adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 601b, §6.12, which provide the General Services Commission with the authority to promulgate rules necessary to administer its functions under Texas Civil Statutes, Article 601b, Article 6.

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

Issued in Austin, Texas, on August 31, 1993.

TRD-9328061 Judith M. Porras
General Counsel
General Services Commission

Effective date. September 21, 1993

Proposal publication date: July 23, 1993

For further information, please call: (512) 463-3583

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Chapter 117. Centralized Services Division

• 1 TAC §§117.11-117.18

The General Services Commission adopts the repeal of §§117.11-117.18, concerning interagency cooperation contracts, without changes to the proposed text as published in the July 6, 1993, issue of the *Texas Register* (18 TexReg 4370).

The repeals are to conform to House Bill 2626, 73rd Legislature, §19, 53-56, and 68, which eliminate former requirements for commission approval and audit of interagency contracts.

The repeals delete obsolete language.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 601b, which provide the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of the Article.

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

Issued in Austin, Texas, on August 31, 1993.

TRD-9328060 Judith M. Porras
General Counsel
General Services Commission

Effective date: September 21, 1993

Proposal publication date: July 6, 1993

For further information, please call: (512) 463-3583

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Chapter 123. Facilities Construction and Space Management Division

Selection of Architect/Engineers for Professional Services

• 1 TAC §123.15

The General Services Commission adopts an amendment to §123.15, concerning the selection of architects and engineers, without changes to the proposed text as published in the June 4, 1993, issue of the *Texas Register* (18 TexReg 3543).

The amendment better ensures equal opportunity for historically underutilized firms to obtain state contracts for architectural and engineering services.

The amendment to §123.15 requires the commission to consider a firm's experience on comparable construction projects and to formulate a list of firms to be considered which includes at least 50% historically underutilized businesses, unless the commission's HUB certification office approves less than 50%.

One written comment was received. The commenter suggested that using agencies not be permitted to make recommendations of firms because the commission's procedure could be bypassed. The commenter stated the opinion that requiring the "short list" to consist of 50% HUBs is disproportionate and unlikely to be achievable and that the selection procedure should give "extra selection criteria merit" to all firms that have not previously worked for the state whether or not minority or female owned.

Elliott and Hamill Architects commented against the section.

The commission disagrees that permitting using agencies to recommend firms will bypass the commission's selection process, as any firm must be selected through the commission's stated procedures. Also, permitting using agency recommendations reflects statutory requirements.

The commission also disagrees that the 50% standard or the definition of historically underutilized businesses should be changed. The purpose of the amendment is to address achieving the commission's goals for contracting with historically underutilized businesses, as defined in Texas Civil Statutes, Article 601b. At this time, the 50% target is considered appropriate and necessary to ensure an equal opportunity for selection. The amendment does not limit, prohibit, or restrict any firm from being selected; it does not modify or lessen technical competence requirements for selection. It insures an opportunity to be selected, but it is not intended to and does not insure or guaranty selection of a HUB firm.

The amendment is adopted under Texas Civil Statutes, Article 601b, §5. 22(b), which provide the General Services Commission with the authority to promulgate rules to accomplish the purpose of Article 5.

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

Issued in Austin, Texas, on August 31, 1993.

TRD-9328057 Judith Monaco Porras
General Counsel
General Services Commission

Effective date: September 21, 1993

Proposal publication date. June 4, 1993

For further information, please call: (512) 463-3583

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Chapter 125. Travel and Transportation Division

• 1 TAC §125.65

Reduction and/or Waiver of Required Fleet Percentages

The General Services Commission adopts an amendment to §125 65, concerning Travel and Transportation Division, without changes to the proposed text as published in the July 6, 1993, issue of the *Texas Register* (18 TexReg 4370).

Senate Bill 7 passed by the 73rd Legislature, concerning school finance issues contains provisions which discontinue the commission authority to waive the requirements of the Texas Alternative Fuels Program for school districts. School districts will now be allowed to certify their own waivers with general oversight provided by the Texas Education Agency. These amendments are necessary to reflect this change.

The section will streamline the process for school districts to seek waivers from the requirements of this program in compliance with applicable statutes.

No comments were received regarding adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 601b, Article 14, which provide the General Services Commission with the authority to promulgate rules necessary to implement that article.

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

Issued in Austin, Texas, on August 31, 1993.

TRD-9328055 Judith M. Porras
General Counsel
General Services Commission

Effective date: September 21, 1993

Proposal publication date: July 6, 1993

For further information, please call: (512) 463-3583

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TITLE 7. BANKING AND SECURITIES

Part I. State Finance Commission

Chapter 3. Banking Section

Subchapter E. Banking House and Other Facilities

• 7 TAC §3.91

The Finance Commission of Texas (the Commission) adopts the repeal of §3.91, concerning banking house and other facilities, without changes to the proposed text as published in the March 30, 1993, issue of the *Texas Register* (18 TexReg 1985).

The repealed section, governing branch banking in Texas, has been rendered obsolete by action of the Texas Legislature in amending Texas Civil Statutes, Article 342-903. In 1991, Texas Civil Statutes, Article 342-903, was greatly liberalized to permit state banks to branch virtually at will upon the prior written approval of the Commissioner, limited only to the condition that the Commissioner not have "any significant supervisory or regulatory concerns." Acts 1991, 72nd Legislature, Chapter 515, §2. The repealed section imposed more rigorous requirements

on state banks and their branching decisions than is warranted under the current state of banking law in the United States.

A proposed version of §3.91, published at 18 TexReg 2249, is being withdrawn and a new proposed §3.91 is published for comment in this issue of the *Texas Register*.

Article XVI, §16(c), of the Texas Constitution provides that a state bank "has the same rights and privileges that are or may be granted to national banks of the United States domiciled in this State." Pursuant to Texas Civil Statutes, Article 342-113(4), the Commission is charged with promulgating rules to "permit state banks to transact their affairs in any manner ... which they could do ... were they organized and operating as a National bank under the laws of the United States...." The intent of these provisions is to preserve competitive parity between state and national banks. The Commission has determined that the intent of these provisions, as applied to branch banking, is best served by repeal of §3.91 even in the absence of a replacement section. Branch banking decisions of the Banking Commissioner of Texas will be made pursuant to the naked statutory provisions of Texas Civil Statutes, Article 342-903, unaided by any rule, until such time as a new §3. 91 is adopted.

The repeal is deleting obsolete and burdensome requirements from state law regarding branch banking that are no longer justified.

No comments were received regarding the proposed repeal of the pre-existing §3.91. To the extent comments received on the withdrawn proposal for a replacement section can be viewed as comments on the proposed repeal, all were favorable.

The repeal is adopted under Texas Civil Statutes, Article 342-113 and Article 342-903, which provide authority to the Commission to adopt rules regarding branch banking and the implied authority to repeal or amend rules previously adopted on that subject.

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

Issued in Austin, Texas, on August 30, 1993.

TRD-9328009 Everette D Jobe
General Counsel
Texas Department of Banking

Effective date: September 21, 1993

Proposal publication date: March 30, 1993

For further information, please call: (512) 475-1300

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Part II. Banking Department of Texas

Chapter 25. Prepaid Funeral Contracts

• 7 TAC §25.21, §25.22

The Texas Department of Banking (the "Department") adopts new §25.21, §25 22, concerning the Department's Joint Memorandum of Understanding with the Texas Funeral Service Commission and the Texas Department of Insurance. There are no changes to the proposed text as published in the June 11, 1993, issue of the *Texas Register* (18 TexReg 3650), except as necessary to correct grammatical and typographical errors, and the text will not be republished.

New §25.21 outlines the statutory requirements of Texas Civil Statutes, Article 4582b, §4(l), which mandates the adoption of the rule embodied in new §25.22. New §25.22 sets out the manner in which the three agencies will coordinate their statutory responsibilities in the area of prepaid funeral services and transactions.

The new rules are designed to improve regulation of prepaid funeral services and insurance and to provide more appropriate and timely responses to consumer complaints through better coordination of the three agencies.

No comments were received regarding adoption of the rules.

The new rules are adopted under Texas Civil Statutes, Article 4582b, §4(l) , which mandate that the Department, the Texas Funeral Service Commission, and the Texas Department of Insurance enter into a Joint Memorandum of Understanding and promulgate it as a rule. These rules are also adopted under Texas Civil Statutes, Article 548b, §2, which provide that the Department is authorized to prescribe reasonable rules and regulations incidental to the orderly administration of the prepaid funeral benefits statute, Finally, rules are also adopted under Texas Civil Statutes, Article 6252-13a, §4 and §5, which authorize and require each state agency to adopt rules of practice setting out the nature and requirements of available procedures and to prescribe the procedures for adoption of rules by a state administrative agency.

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

Issued in Austin, Texas, on August 30, 1993

TRD-9328013 Everette D Jobe
General Counsel
Texas Department of Banking

Effective date. September 21, 1993

Proposal publication date. June 11, 1993

For further information, please call: (512) 475-1300

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TITLE 16. ECONOMIC REGULATIONS

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

Conservation Rules and Regulations

• 16 TAC §3.31

The Railroad Commission of Texas adopts an amendment to §3.31, concerning gas well allowable, without changes to the proposed text as published in the July 27, 1993, issue of the *Texas Register* (18 TexReg 4923).

This amendment changes, from the 20th to the 25th day of the month, the date by which the commission must determine the lawful demand for gas. This change is authorized by the Texas Natural Resources Code, §86.085, as amended by Senate Bill 141.

The change is necessary to allow commission staff adequate time to determine the lawful demand for gas and to assign allowables accordingly.

One commenter expressed concern over the potential delay in getting allowables assigned. The commission disagrees. Determination of demand on or before the 25th of the month will leave ample time to assign allowables. Texas Mid-Continent Oil and Gas Association expressed neither support for, nor opposition to, the amendment.

The amendment is adopted pursuant to the Texas Natural Resources Code, §§81.051, 81.052, 85.053, 85.055, 86.041, 86.042, and 86.085, which provides the commission with the authority to adopt rules for the following purposes: to govern and regulate persons and their operations under the jurisdiction of the commission; to determine the lawful market demand for gas to be produced from each reservoir; to effectuate the provisions and purposes of the Texas Natural Resources Code, Chapter 86.

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

Issued in Austin, Texas, on August 30, 1993.

TRD-9328002 Mary Ross McDonald
Assistant Director, Legal Division-Gas Utilities/LP Gas Section
Railroad Commission of Texas

Effective date: September 20, 1993

Proposal publication date. July 27, 1993

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

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TITLE 22. EXAMINING BOARDS

Part XXV. Structural Pest Control Board

Chapter 593. Licenses

• 22 TAC §593.21

The Structural Pest Control Board adopts an amendment to §593.21, without changes to the proposed text as published in the June 1, 1993, issue of the *Texas Register* (18 TexReg 3495).

The amendment is adopted to clarify the training hours needed to obtain a technician-apprentice license.

The section increases the number of classroom training hours from 20 to 22, allowing two full hours for each required subject.

No comments were received regarding adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 135b-6, which provide the Structural Pest Control Board with the authority to establish standards for testing, licensing, and regulating persons, engaged in the business of structural pest control.

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

Issued in Austin, Texas, on August 26, 1993.

TRD-9327983 Benny M. Mathis, Jr.
Executive Director
Structural Pest Control Board

Effective date: September 20, 1993

Proposal publication date: June 1, 1993

For further information, please call: (512) 835-4066

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

(Editor's Note: Acts, 1991, 72nd Legislature, First Called Session, Chapter 15, §1.07 provided for the transfer of certain programs from the Texas Department of Human Services to the Department of Public Health effective September 1, 1993. These programs included preventive health services, early periodic screening and diagnosis and treatment, family planning, the purchased health services program, and the indigent health care program Subsequently, by Acts 1993, 73rd Legislature, Regular Session, Chapter 747, the programs became the responsibility of the Texas Department of Health. The Texas Department of Health is the contract agency designated by the Texas Health and Human Services Commission to operate the programs that are part of the medical assistance program (Medicaid).

The Texas Register is administratively transferring and duplicating the following rules listed in the table below from Title 40., Part I. Texas Department of Human Services to Title 25. Part I. Texas Department of Health. The table lists the old section number and the new section number that correspond to them.)

Texas Department of Health
Rules
Rules transferred from Texas Department of Human Services

Old Rules	New Rules
Chapter 14. County Indigent Health Care Program	**Chapter 14. County Indigent Health Care Program**
Subchapter A. County Program Administration	Subchapter A. County Program Administration
§14.1 and §14.2	§14.1 and §14.2
Subchapter B. Determining Eligibility	Subchapter B. Determining Eligibility
§§14.101 - 14.109	§§14.101 - 14.109
Suchapter C. Providing Services	Subchapter C. Providing Services
§§14.201 - 14.205	§§14.201 - 14.205
Subchapter D. Case Management	Subchapter D. Case Management
§14.301 and §14.302	§14.301 and §14.302
Subchapter E. SLIAG Reimbursement for County Indigent Health Care Program Services Provided to Eligible Legalized Aliens	Subchapter E. SLIAG Reimbursement for County Indigent Health Care Program Services Provided to Eligible Legalized Aliens
§§14.401 - 14.405	§§14.401 - 14.405

Old Rules	New Rules
Chapter 29. Purchased Health Services	**Chapter 29. Purchased Health Services**
Subchapter A. Medicaid Procedures for Providers	Subchapter A. Medicaid Procedures for Providers
§§29.1 - 29.5	§§29.1 - 29.5
Subchapter B. Medicaid Eyeglass Program	Subchapter B. Medicaid Eyeglass Program
§§29.101 - 29.105	§§29.101 - 29.105
Subchapter D. Medicaid Home Health Program	Subchapter D. Medicaid Home Health Program
§§29.301 - 29.311	§§29.301 - 29.311
Subchapter E. Medicaid Chiropractic Program	Subchapter E. Medicaid Chiropractic Program
§29.401 §29.403	§29.401 §29.403
Subchapter F. Physicians Services	Subchapter F. Physicians Services
§§29.501 - 29.504	§§29.501 - 29.504
Subchapter G. Hospital Services	Subchapter G. Hospital Services
§§29.601 - 29.607 §29.609 and §29.610	§§29.601 - 29.607 §29.609 and §29.610
Subchapter H. Laboratory, X-Ray, and Radiation Therapy	Subchapter H. Laboratory, X-Ray, and Radiation Therapy
§29.701 and §29.702	§29.701 and §29.702

Old Rules	New Rules
Subchapter I. Podiatry Services	Subchapter I. Podiatry Services
§29.801 and §29.802	§29.801 and §29.802
Subchapter J. Ambulance Services	Subchapter J. Ambulance Services
§29.901 and §29.902	§29.901 and §29.902
Subchapter K. Definitions	Subchapter K. Definitions
§29.1001	§29.1001
Subchapter L. General Administration	Subchapter L. General Administration
§§29.1101 - 29.1128	§§29.1101 - 29.1128
Subchapter M. Rural Health Clinics	Subchapter M. Rural Health Clinics
§§29.1201 - 29.1204	§§29.1201 - 29.1204
Subchapter N. Ambulatory Surgical Centers	Subchapter N. Ambulatory Surgical Centers
§§29.1301 - 29.1303	§§29.1301 - 29.1303
Subchapter O. Dentists' Services	Subchapter O. Dentists' Services
§29.1402	§29.1402
Subchapter P. Hearing Aid Services	Subchapter P. Hearing Aid Services
§§29.1501 - 29.1504	§§29.1501 - 29.1504
Subchapter Q. Nurse-Midwife Services	Subchapter Q. Nurse-Midwife Services
§§29.1601 - 29.1603	§§29.1601 - 29.1603
Subchapter R. Birthing Center Services	Subchapter R. Birthing Center Services
§§29.1701 - 29.1703	§§29.1701 - 29.1703

Old Rules	New Rules
Subchapter S. Maternity Clinic Services	Subchapter S. Maternity Clinic Services
§§29.1801 - 29.1804	§§29.1801 - 29.1804
Subchapter T. Psychologists' Services	Subchapter T. Psychologists' Services
§29.1901 and §29.1902	§29.1901 and §29.1902
Subchapter U. Physical Therapists Services	Subchapter U. Physical Therapists Services
§29.2001 and §29.2002	§29.2001 and §29.2002
Subchapter V. Certified Registered Nurse Anesthetists' Services	Subchapter V. Certified Registered Nurse Anesthetists' Services
§§29.2101 - 29.2103	§§29.2101 - 29.2103
Subchapter W. Chemical Dependency Treatment Facility Services	Subchapter W. Chemical Dependency Treatment Facility Services
§§29.2201 - 29.2203	§§29.2201 - 29.2203
Subchapter Y. Federally Qualified Health Center Services	Subchapter Y. Federally Qualified Health Center Services
§§29.2401 - 29.2404	§§29.2401 - 29.2404
Subchapter Z. Certified Family Nurse Practitioner and Pediatric Nurse Practitioner	Subchapter Z. Certified Family Nurse Practitioner and Pediatric Nurse Practitioner
§§29.2501 - 29.2503	§§29.2501 - 29.2503

Old Rules	New Rules
Subchapter AA. School Health and Related Services	Subchapter AA. School Health and Related Services
§§29.2601 - 29.2603	§§29.2601 - 29.2603
Subchapter BB. Coordinated Care	Subchapter BB. Coordinated Care
§29.2701	§29.2701
Chapter 31. Case Management	**Chapter 32. Case Management**
Subchapter B. Case Management for Children Who are Blind and Visually Impaired	Subchapter A. Case Management for Children Who are Blind and Visually Impaired
§§31.101 - 31.107	§§32.101 - 32.107
Subchapter D. Case Management for High-Risk Pregnant Women and High-Risk Infants	Subchapter C. Case Management for High-Risk Pregnant Women and High-Risk Infants
§31.301 - 31.307	§§32.301 - 32.307
Subchapter E. Early Childhood Intervention	Subhcapter D. Early Childhood Intervention
General Provisions	General Provisions
§§31.401 - 31.408	§§32.401 - 32.408
Reimbursement Methodology for the Early Childhood Intervention Program	Reimbursement Methodology for the Early Childhood Intervention Program
§31.501 - 31.506	§§32.501 - 32.506

Old Rules	New Rules
Chapter 33. Early and Periodic Screening, Diagnosis and Treatment	**Chapter 33. Early and Periodic Screening, Diagnosis and Treatment**
Subchapter B. Penalties	Subchapter A. Penalties
§33.13	§33.13
§33.14	§33.14
Subchapter E. Recipient Rights	Subchapter B. Recipient Rights
§§33.61 - 33.63	§§33.61 - 33.63
§33.66	§33.66
Subchapter H. Eligibility	Subchapter C. Eligibility
§33.112	§33.112
Subchapter I. Periodicity	Subchapter D. Periodicity
§33.122	§33.122
§33.123	§33.123
§33.125	§33.125
Subchapter J. Medical Phase	Subchapter E. Medical Phase
§§33.131 - 33.135	§§33.131 - 33.135
§33.139	§33.139
§33.140	§33.140
Subchapter P. Special Dental Cases	Subchapter F. Special Dental Cases
§33.263	§33.263
Subchapter R. Dental Services	Subchapter G. Dental Services
§§33.301 - 33.311	§§33.301 - 33.311
§§33.314 - 33.318	§§33.314 - 33.318
§33.320	§33.320
§§33.322 - 33.327	§§33.322 - 33.327

Old Rules	New Rules
Subchapter S. Dental Utilization Review	Subchapter H. Dental Utilization Review
§§33.331 - 33.338	§§33.331 - 33.338
Subchapter T. EPSDT Eyeglass Program	Subchapter I. EPSDT Eyeglass Program
§§33.401 - 33.405	§§33.401 - 33.405
Chapter 35. Pharmacy Services	**Chapter 35. Pharmacy Services**
Subchapter A. Participation	Subchapter A. Participation
§§35.101 - 35.110	§§35.101 - 35.110
Subchapter B. Administration	Subchapter B. Administration
§§35.201 - 35.205	§§35.201 - 35.205
Subchapter C. Medications	Subchapter C. Medications
§§35.301 - 35.303	§§35.301 - 35.303
Subchapter D. Limitations	Subchapter D. Limitations
§§35.401 - 35.408	§§35.401 - 35.408
Subchapter E. Audits	Subchapter E. Audits
§35.501 and §35.502	§35.501 and §35.502
Subchapter F. Reimbursement	Subchapter F. Reimbursement
§§35.601 - 35.610	§§35.601 - 35.610

Old Rules	New Rules
Subchapter G. Pharmacy Claims	Subchapter G. Pharmacy Claims
§§35.701, 35.702, 35.704, 35.705, 35.707- 35.709	§§35.701, 35.702, 35.704, 35.705, 35.707 - 35.709
Subchapter H. Texas Drug Code Index - Additions, Retentions, and Deletions	Subchapter H. Texas Drug Code Index - Additions, Retentions, and Deletions
§§35.801 - 35.804	§§35.801 - 35.804
Subchapter U. Support Documents	Subchapter I. Support Documents
§35.9001	§35.901
Chapter 39. Medical Transportation	**Chapter 40. Medical Transportation**
Program Overview §39.1	Program Overview §40.1
Eligibility for Program Services §§39.101 - 39.105	Eligibility for Program Services §§40.101 - 40.105
Program Services Limitations §39.201 and §39.202	Program Services Limitations §40.201 and §40.202
Provider Participations §§39.301 - 39.305	Provider Participations §§40.301 - 40.305
Payment Procedures and Record Keeping §39.401 and §39.402 §§39.405 - 39.408	Payment Procedures and Record Keeping §40.401 and §40.402 §§40.405 - 40.408
Monitoring and Evaluation §§39.501 - 39.503	Monitoring and Evaluation §§40.501 - 40.503
Contract Termination and Expiration §39.601 and §39.602	Contract Termination and Expiration §40.601 and §40.602

Old Rules	New Rules
Transportation Services for Indigent Cancer Patients §39.1001 and §39.1002	Transportation Services for Indigent Cancer Patients §40.701 and §40.702
Chapter 56. Family Planning	**Chapter 56. Family Planning**
Subchapter A. Program Information	Subchapter A. Program Information
§§56.101 - 56.103	§§56.101 - 56.103
Subchapter B. Client Rights	Subchapter B. Client Rights
§§56.201 - 56.209	§§56.201 - 56.209
Subchapter C. Provider Program Requirements	Subchapter C. Provider Program Requirements
§§56.301 - 56.306	§§56.301 - 56.306
Subchapter D. Purchased Services	Subchapter D. Purchased Services
§§56.401 - 56.404	§§56.401 - 56.404
Subchapter E. Joint TDH/DHS Family Planning Agency Provider Standards (Titles V, X, XIX, and XX)	Subchapter E. Joint TDH/DHS Family Planning Agency Provider Standards (Titles V, X, XIX, and XX)
§§56.501 - 56.524	§§56.501 - 56.524
Subchapter F. Administrative Requirements for Agency Providers	Subchapter F. Administrative Requirements for Agency Providers
§§56.601 - 56.607	§§56.601 - 56.607
Subchapter G. Genetic Services	Subchapter G. Genetic Services
§§56.701 - 56.703	§§56.701 - 56.703

Old Rules	New Rules
Subchapter H. Family Planning Program Services Provided by Texas Department of Human Services (DHS) Direct Delivery Staff, Family Health Services Nurses, and Contracted Health Providers	Subchapter H. Family Planning Program Services Provided by Texas Department of Health (DOH) Direct Delivery Staff, Family Health Services Nurses, and Contracted Health Providers
§56.801 and §56.802	§56.801 and §56.802
Subchapter I. Joint TDH/DHS AIDS Prevention	Subchapter I. Joint TDH/DHS AIDS Prevention
§§56.901 - 56.904	§§56.901 - 56.904
Chapter 79. Legal Services	**Chapter 79. Legal Action Relating to Providers of Medical Assistance**
***Note: The following rules are duplicated from the Texas Department of Human Services**	
Subchapter V. Fraud or Abuse Involving Medical Providers	Subchapter A. Fraud or Abuse Involving Medical Providers
§§79.2101 - 79.2105 §§79.2110 - 79.2119	§§79.2101 - 79.2105 §§79.2110 - 79.2119
Subchapter X. Recovery of Benefits Wrongly Received	Subchapter B. Recovery of Benefits Wrongly Received
§§79.2301, 79.2303, 79.2304	§§79.2301, 79.2303, 79.2304
Subchapter Y. Civil Monetary Penalties	Subchapter C. Civil Monetary Penalties
§§79.2401 - 79.2408	§§79.2401 - 79.2408

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

Chapter 122. Federal Operating Permits

The Texas Air Control Board (TACB) adopts new §§122.10-122.12, 122. 120, 122.122, 122.130, 122.132-122.134, 122.136, 122.138, 122.139, 122.141, 122.143, 122.145, 122.150, 122.152-122.155, 122.161, 122.163-122.165, 122.201, 122.202, 122.204, 122.210-122.213, 122.215-122.217, 122.219-122.221, 122.231, 122.233, 122.241, 122.243, 122.310-122.312, 122.314, 122.316, 122.410, 122.411, 122.420-122.422, 122.425, 122.427, 122.430, 122.432, 122.434, 122.435, 122. 437, 122.438, and 122.440, concerning Federal Operating Permits. Sections 122. 10-122.12, 122.120, 122.122, 122.130, 122.132-122.134, 122.136, 122.138, 122. 139, 122.141, 122.143, 122.145, 122.150, 122.152-122.155, 122.161, 122.163-122. 165, 122.201, 122.202, 122.204, 122.210-122.213, 122.215-122.217, 122.219-122. 221, 122.231, 122.233, 122.241, 122.243, 122.311, 122.312, 122.314, 122.316, 122.411, 122.420, 122.421, 122.430, 122.432, 122.434, 122.435, 122.437, and 122.440 are adopted with changes to the proposed text as published in the May 11, 1993, issue of the *Texas Register* (18 TexReg 3017). Sections 122. 310, 122.410, 122.422, 122.425, 122.427, and 122.438 are adopted without changes and will not be republished.

The new chapter is written to adopt the federal operating permit program as required in new Part 70 of Chapter I: Title 40 of the Code of Federal Regulations (40 CFR 70). Title V of the Federal Clean Air Act Amendments of 1990 (FCAAA or the Act), enacted on November 15, 1990, requires the United States Environmental Protection Agency (EPA) to promulgate regulations within 12 months of enactment that require and specify the minimum elements of state operating permit programs. The new CFR Part 70 contains these provisions. The new TACB Regulation XII is created to adopt the regulatory authority of the federal operating permit program required under §70.4(b) of 40 CFR 70 regarding elements of the initial program submission. Throughout the preamble, "Regulation XII" refers to Chapter 122; "Regulation VI" reters to Chapter 116.

The chapter is organized into five subchapters: Subchapter A-Definitions; Subchapter B-Permit Requirements; Subchapter C-Permit Issuances, Revisions, and Renewals; Subchapter D-Affected State Review, EPA Review, and Citizen Petition; and Subchapter E-Acid Rain. There is a state-only requirement included in §122.132(a)(5) of this title (relating to Application and Required Information) to establish a maximum emission rate and operational limitation for grandfather facilities. This applies to facilities which were constructed prior to September 1, 1971 and thereby predate the Texas new source review program. One section in the new rules, §122.122 (relating to Potential to Emit), will become part of the Texas State Implementation Plan. Regulation XII does not include a permit shield which is an optional provision of the federal rules in Part 70.

Comments were solicited by the TACB on issues under consideration for adopting a permit shield.

On February 22, March 10, March 24 and 25, and April 8, 1993, roundtable meetings were held by the staff with the regulated community and the general public. The purpose of the roundtable meetings was to solicit comments from the regulated community and the general public regarding the draft rules.

Public hearings were held on June 2, 1993, in Houston, on June 3, 1993, in Arlington, and on June 4, 1993, in Austin to consider the proposed new rules. The public comment period closed on June 11, 1993. Testimony was received from 56 commenters. The following commenters generally supported the proposed rules with some suggested changes: Pennzoil Company (Pennzoil); Texas Mid-Continent Oil & Gas Association (TMOGA); Ensearch Processing Incorporated (Ensearch); Marathon Oil Company (Marathon); Dupont; Texas Utilities Services (TU); El Paso Electric Company (El Paso); 3M Company (3M); Exxon Company, U.S.A. (Exxon-Houston); Lone Star Chapter of the Sierra Club (Sierra); Texas Chemical Council (TCC); Chevron U.S.A. Products Company (Chevron Products); Natural Gas Pipeline Company of America (Natural Gas); Houston Lighting & Power (HL&P); Union Carbide Chemicals and Plastics Company Inc. (Union Carbide); ARCO Oil and Gas Company (AOGC); Gas Processors Association (GPA). The following commenters suggested changes to the proposed rules without stating their position on the overall proposal: Small, Craig and Werkenthin (Small-Craig); Exxon Chemical Americas (Exxon Chem); Texas Instruments Incorporated (TI); American Electronics Association (AEA), Jones, Day, Reavis and Pogue (Jones-Day); Lower Colorado River Authority (LCRA); Phillips Petroleum Company (Phillips); Gulf States Utilities Company (GSU); U.S. Environmental Protection Agency (EPA); Central Power and Light (CP&L); Rescar Incorporated (Rescar); Browning-Ferris Industries (BFI); Lone Star Gas Company (Lone Star); Chevron U. S.A. Production Company (Chevron Production); Enron Pipeline and Liquids Group (ENRON); Lloyd, Gosselink, Fowler, Blevins & Mathews, P.C. (Lloyd-Gosselink); Southwestern Public Service Company (SPSC); International Association of Drilling Contractors (IADC); and eight individuals. One of the eight individual commenters expressed total opposition to the proposed rules.

The following commenters generally supported the proposed rules without making specific suggestions: Mobil Oil Corporation; Monsanto; Texas Paper Industry; Fina Oil and Chemical Company; Greater Houston Partnership; and GATX Terminals Corporation. Amoco Oil Company, Exxon Company U.S.A. (Exxon-Baytown), and Diamond Shamrock supported the comments by TMOGA. Ethyl Corporation; Dow Chemical Company; Amoco Chemical Company; Holnam Texas Limited Partnership; and ASARCO Incorporated supported the comments by TCC. A total of 26 commenters supported the proposed concept of separating the federal operating permit from the new source review permit and three commenters were opposed to the concept. Amoco Chem, Pennzoil, and Marathon supported the use of General Permits as proposed by the staff. Marathon, TMOGA, and Mobil supported the staff's concept on addressing grandfather sources in the context of the rule. Mobil and Pennzoil supported the staff's concept of the application shield. Pennzoil commented that the definition of emission unit is an improvement, as far as clarity, on the federal definition. Enserch and Mobil supported the definition of major source as proposed by the staff. Under the definition of major source, subparagraph (B), GPA and Lone Star supported the exclusion of fugitive emissions in non-listed source categories.

The proposed rule preamble solicited comments on a permit shield which is an optional feature of the 40 CFR 70 program and which Texas has chosen not to include in its program. A total of 28 comments were received on this issue with 20 in favor of the shield and eight opposed. There were seven written responses to a list of 15 questions relating to the permit shield that were included in the rule preamble.

A new §122.152(d) (Notifications of TACB and Others) has been added to provide for notice to the agency of publication of public notice and to provide consistency with other public notice requirements. AOGC, Pennzoil, and Chevron Production commented that the proposed rule does not incorporate all of the federal requirements from 40 CFR 70, including those pertaining to emissions trading and alternate operating scenarios. Marathon and TMOGA also commented that the final rule should encourage the use of alternate operating scenarios. 3M requested that the final rule allow anticipated operating scenarios to be identified in operating permits as required in 40 CFR 70. 3M commented that the final rule should authorize emissions caps for each site, if requested, and allow emissions trading

within the site. 3M suggested language for two new subsections under §122.141 to allow for both these changes. The staff recognizes that both emissions trading and alternate operating scenarios were included in 40 CFR 70. The staff designed the proposed operating permit program (permit content and scope) to allow such changes provided that such changes do not affect an applicable requirement, and provided that Regulation VI and the Texas State Implementation Plan (SIP) allows such emission trading and alternate operating scenarios. Regulation VI does not allow for a facility to "trade emissions" without best available control technology (BACT) and an emissions impacts review. Nor does Regulation VI allow a source to vary its operating scenario, unless expressly allowed under an existing preconstruction authorization. The staff believes that both emissions trading and alternate operating scenarios are appropriately addressed under the current Regulation VI New Source Review (NSR) program.

Union Carbide commented that the TACB's proposed interim approval was appropriate for the state. The commenter suggested that the maximum allowable control technology (MACT) determinations required under the FCAAA, §112(g) and §112(j) "not be implemented across all sources until they are formally covered by the (state's) complete/final program." The staff believes the responsibility to implement §112(g) and §112(j) is not restricted only to the time after the full program approval is obtained The staff understands, based on guidance from EPA, that the §112(g) provisions (case-by-case MACT determinations, triggered by new construction, reconstruction, or modifications of major, named sources) of the FCAAA apply only to those sources for which a permit is required. This would mean the responsibility to apply for §112(g) MACT determinations would fall only to those sources required to submit permit applications under the interim program. All sources would be required to meet §112(g) requirements upon full delegation of the program. The staff has added §122.161(c) to reflect the effective date of §112(g). The omission of similar guidance concerning the §112(j) program by EPA is interpreted by the staff to mean that all sources affected by §112(j) will be required to apply for MACT determination regardless of their status under an interim program. The §112(j) program requires the states to make source category wide MACT determinations if the EPA fails to promulgate a standard according to a predetermined schedule. Since this program is not isolated to source by source determinations of a standard, as is the §112(g) program, basing source applicability determinations on the date a source becomes subject to the permitting program is not appropriate. The staff believes the MACT standards are intended to apply to all major sources covered by the §112(c) source category list. The responsibility of an individual source to abide by the standards is not a function of the applicability date of the permit program, but rather the applicability date of the standard. The staff intends to request delegation of the §112(j) program from EPA after the proposed §112(j) and §112(l) rules are promulgated For those sources not covered by the interim program, §112(j) standards will be determined and administered by the state after delegation through §112(l). No change has been made to the proposal since this comment is outside the scope of this rule package. The staff believes these implementation issues are best addressed during rulemaking specific to these programs. All determinations will eventually become part of the permits issued under Regulation XII and adequate authority is provided in the proposed chapter.

TMOGA commented that language should be added in the preamble or in a guidance document to indicate that the applicant can assign a numbering scheme to the emission units, if so desired. The commenter pointed out that this would allow for consistency with the current system used in emission inventories. The staff agrees with this suggestion but proposes to address it in the guidance documents, rather than in the final rule.

Pennzoil requested that the staff develop and issue the General Application Form for Federal Operating Permit (referenced in §122.132(a)) as soon as possible. Natural Gas suggested that a standard permit application format be developed for the natural gas transmission industry in order to streamline the review process for both the industry and the agency. 3M recommended that the staff develop a "Permit Manual" to help applicants navigate through the new application and review process and stated that such a manual would greatly assist applicants in their efforts to comply with the regulations and conserve staff resources by acting as a practical reference for the regulated community. The staff agrees that well written and "user friendly" guidance documents and application forms are essential to the implementation of this program. The proposed timing of the program submittal to EPA is such that the forms will be among the final items submitted to EPA by November 15, 1993 The staff believes that it is extremely important to have clear and concise application requirements in the forms. Following the program submittal in November, the staff intends to develop further and more detailed guidance documents for the regulated community's use.

TCC made suggestions for changes in writing style and capitalization of all defined terms throughout the regulation which do not alter the meaning of the proposed rules. Some of the suggested language will enhance the clarity of the final rule and this has been changed. Due to the large number of minor language changes requested such as punctuation and capitalization, the staff does not note in the comments each minor change recommended in the final rule. Other significant changes requested by TCC to the content of the proposed rule are noted in the comments There are additional clarifications to the proposed rules.

DuPont recommended the use of general permits to incorporate new applicable requirements at a site. TCC requested and suggested specific language in §122 143(1)(H) and §122 233(c) of the proposed rule describing this use As was discussed at the roundtables, the staff does envision the general permits serving this function and the proposed version of the rule did allow for such use. However, since the staff cannot envision every possible use of these permits, the staff does not recommend narrowly defining their use in the final rules.

Chevron Production requested that the staff clearly identify which fugitive emissions must be included in the Title V applicability determination and which must be addressed in the permit application. The staff believes that the first part of this comment refers to the definition of major source. In subparagraph (A) of the definition, no mention is made of any exclusion allowed for fugitive emissions. The staff understands, from EPA, that all fugitive emissions must be included in the determination of major under this subparagraph. The second condition of major in subparagraph (B) allows the exclusion of fugitive emissions except for the source categories noted. The third condition of major source in subparagraph (C) has been revised to allow, consistent with federal rules, the same exclusion noted in subparagraph (B). The staff intends to develop guidance documents to aid the applicant supplying the required information. The staff believes that these documents are the appropriate forum to address how the fugitive emissions should be included in the application.

EPA commented that the final rule should specifically prohibit the use of variances under a federal operating permit program. The staff agrees with EPA's position that no variances may be issued from the requirements to obtain a federal operating permit. Therefore, a new subsection (b) has been added to §122.141.

GPA suggested allowing concurrent NSR and federal operating permit reviews to facilitate a single public notification process. The staff recognizes that the situation posed by GPA may occur and concurs that efforts should be made to conduct a simultaneous review when circumstances permit. The staff believes that the final rule does not prohibit simultaneous review, however, such review may not always be possible. Therefore, no change to the rule language has been made.

Rescar requested that changes which qualify under operational flexibility (§122.221) should not require permit amendments under Regulation VI. Revision of Regulation VI is beyond the scope of this proposal. The staff believes that the requirements of the current NSR program serve a valuable function in maintaining and improving the air quality in the state. The staff believes that the requirements of the NSR program should remain intact, and independent of the implementation of the federal operating permit program.

One individual suggested the 30-day public comment period for each permit be extended an additional 30 days. The 30-day comment period is a statutory provision in the Texas Clean Air Act (TCAA), §382.0561. Section 122 316(2)(C) provides that if a hearing is requested during the public comment period, the comment period is automatically extended to the close of the hearing. The staff believes that the proposed comment period allows sufficient time for the public to comment on the permit application.

EPA noted that, at this time, there is no final EPA policy on what constitutes an acceptable phase-in schedule for sources under an interim program. EPA further stated that the staff must provide any required information in the request for interim approval. The staff intends, in the program submittal, to provide compelling reasons for interim program approval by EPA. The staff will provide all information requested by EPA related to interim approval with the program submittal.

One individual requested that the final rules require that a pollution prevention plan be developed and submitted with each permit application and that TACB should pressure EPA into an agreement with Mexico to develop a program similar to the federal operating permit program. Pollution prevention plans are not required under Part 70; consequently, this request is beyond the scope of this rulemaking. The staff agrees that pollution prevention is a worthwhile objective. However, the federal operating permits are intended to be codifying permits only, the program is not intended to address this issue.

The second comment does not require any changes to the proposed rules and is beyond the scope of this rule package.

One individual opposed allowing any general permits to be issued under the final rule. In support of this position, the commenter cited the staff's long held belief in case-by-case determinations. 40 CFR Part 70 §70.6(d) provides that general permits must comply with all requirements applicable to other Part 70 permits and the general permit must identify the criteria by which a source may qualify for such a permit. The staff does believe that the proposed utilization of general permits will result in efficient use of state resources to provide effective and enforceable permits. The general permits concept has many similarities to the Standard Exemption List which the TACB has administered for years. For these reasons, the staff is retaining the general permits, as proposed.

TCC suggested changes to various sections of the proposed rule to make clear that the federal operating permit does not affect the ability to commence construction or modification of a facility, only the ability to operate the facility under certain circumstances. The staff agreed with the intent of TCC's suggestion and §122.161(b) is added for clarification.

In addition to the testimony received, the staff has identified two areas where rule changes are necessary to ensure the smooth implementation of the new permitting process. First, the staff has added a new §122.152(d), relating to Notification of TACB and Others, to provide for notice to the agency of publication of public notice. The staff also noted during review of the comments that the proposed rules failed to make it clear that an owner or operator of a site which satisfies the criteria of §122.120, concerning Applicability, must not only apply for, but also obtain, a permit in order to operate. A new subsection (f) to §122.201, concerning Permits addresses this oversight.

In the preamble of the proposed rule the agency requested comments from the public on 16 issues for consideration in determining whether or not to include a permit shield as an option in the Federal Operating Permit Program. A number of commenters who supported inclusion of the permit shield chose to respond to those issues. One commenter who opposed inclusion of the permit shield also responded to the 16 issues. Following this paragraph are the sixteen issues from the proposed rule and a brief summary of the commenters' responses.

Should a permit shield as written in 40 CFR §70.6(f), or some variation of that permit shield, be part of the Federal Operating Permit Program in Texas?

Generally, the commenters responded that the permit shield, since allowed by federal rule, should also be included in the state rule and consequently, the state program. As noted, one commenter opposed inclusion of the permit shield. Many of the commenters who supported the inclusion of a permit shield also noted that the permit shield should be included in order to provide the permittee protection from enforcement due to a reinterpretation of an applicable requirement by the permitting authority

How would enforceable regulatory language be written which would provide for a narrow permit shield (for example, for reinterpretation of an applicable requirement in the permit)?

Overall, the commenters stated that the permit shield had been narrowed sufficiently during federal rulemaking. Several commenters stated that in general they did not support a permit shield which would allow the staff to reinterpret an applicable requirement, after a permit is issued and during its five-year term, without reopening the permit pursuant to the procedural requirements in the final rules One commenter stated that it is unnecessary to define narrow language for a shield because proper operation is the only "shield" necessary.

In what ways is a permit shield necessary to make a proper applicability determination?

One commenter acknowledged that the existence of a permit shield in Texas is not necessary to make proper applicability determinations but noted that it would protect them from enforcement for reinterpretation of applicable requirements after permit issuance. Other commenters maintained that the availability of a permit shield offers an added incentive to industry to come forward with difficult applicability questions early in the permit application in order to obtain a permit shield for protection from enforcement when applicability determinations are reinterpreted by the staff subsequent to issuance of the permit. One commenter stated that a permit shield is not necessary to make a proper applicability determination.

What additional planning certainty would the permit shield provide to the regulated community beyond what is currently available through proper applicability determinations?

Generally, the commenters responded that the permit shield provides stability to the regulated community since it offers protection from enforcement due to reinterpretation of the applicable requirements by the staff or general public. The commenters believed that the permittees would be able to operate with a high degree of confidence that compliance with the permit will result in avoidance of enforcement proceedings, hence the permit would provide a credible base for business and compliance planning. One commenter stated that planning certainty is not the goal of the Texas Clean Air Act, protection of the clean air resources and public health is the goal. Proper plant operation, accurate permit information, and compliance will give planning certainty to the regulated community.

A permit shield would only apply to the operating permit Therefore, how would the permit shield be written such that it does not promote confusion over what applicable requirements are subject to enforcement because of their inclusion in other permits or regulations, even though they are shielded in the operating permit?

The commenters were split in their opinions of exactly what would be shielded from enforcement action. Some commenters believed that the permit shield would provide protection from enforcement of the applicable requirement, regardless of whether the applicable requirement was in a permit or rule outside of the federal operating permit program. Other commenters believed that the permit shield would not extend to state only requirements. These commenters suggested that the permit must delineate which requirements are federally enforceable and requirements that are included pursuant to the state's authority. One commenter stated that to avoid confusion over enforcement, the staff should avoid writing a permit shield that some might construe as a defense against agency or public action against corporate abuse, nuisance, or health hazard even while operating under the terms of the permit since the permit may not be complete and may not be adequate to avoid impacts

Since the Operating Permit Program is being implemented as a separate program from the pre-construction NSR program in Texas, how would the permit shield be written in order to avoid enforcement inconsistencies in a two-permit system?

Again, the commenters varied in their responses, depending on their opinion of how extensive the enforcement protection provided by the permit shield would be. Those commenters who believed that the permit shield would provide complete protection from enforcement of the applicable requirement acknowledged that inconsistencies could occur. However, these commenters believed that the inconsistency in enforcement would be resolved when the operating permit was modified to incorporate the NSR permit, at renewal of the operating permit, or when the staff reopened and revised the operating permit Other commenters, who believed that the permit shield would shield only enforcement action under the operating permit, believed no inconsistencies would occur. One commenter stated that compliance with the representations in the permit application and the operating permit is necessary and noncompliance should be cause for agency action

How would the permit shield be written such that it would not interfere with the use of the operating permit as an enforcement tool?

The commenters pointed out that the permit shield would offer no protection from noncompliance with the terms and conditions of the permit. One commenter stated that the operating permit is intended as an enforcement tool and all complicating interference, such as a proposed shield against enforcement, should be avoided.

How would the permit shield be written to avoid inequities in enforcement between major sources that hold operating permits and minor sources that do not hold operating permits, and consequently could not use the permit shield?

The commenters believed that the permit shield would not create inequities in enforcement between major and minor sources. The commenters noted that the staff would not target minor sources for enforcement based on a change in agency policy or regulatory interpretation. The commenters also pointed out that the major sources are subject to a detailed regulatory analysis as well as extensive monitoring and recordkeeping requirements, thus resulting in a higher degree of enforcement exposure for major sources. At least two commenters suggested that the permit shield concept be extended to minor sources and standard exemptions under Regulation VI. One commenter stated that to avoid inequities between major sources with operating permits and minor sources without operating permits the permit shield should not be adopted.

How would a permit shield affect the filing of citizen's suits or affect enforcement actions taken by local governments and the Environmental Protection Agency?

The commenters generally agreed that the permit shield would not affect the filing of citizen suits. The commenters believed that the protection offered by the permit shield is from enforcement action based on a reinterpretation of an applicable requirement. One commenter stated that compliance and good corporate behavior are the best "shield" and corporate abuse of permit language to the extent that public or agency action is indicated should not be impeded in the protection of the clean air resources by some narrowly written protection of a "shield."

What mechanisms would be available to correct misapplication of the permit shield and provide timely compliance with applicable requirements?

The commenters suggested that the compliance with the correct applicable requirements could be insured through any of the following: an agreed order, reopening, and revision of the permit, or at renewal of the permit. One commenter stated that it would appear that there would be no effective mechanism to correct misapplication of a permit shield. The same commenter also noted that there could be unforeseen health impacts or nuisance conditions without legal remedy, a result clearly not in the public interest.

How would the permit shield be written such that it would not significantly slow or affect review of operating permit applications and subsequent issuance?

The commenters generally believe that the permit shield would provide protection against later reinterpretations of the applicable requirements. This, the commenters stated, would encourage a more thorough regulatory review of the application by the agency prior to issuance of the permit. The commenters also noted that the staff may require additional information needed for the application review to be submitted in a timely manner consistent with the 18-month review period. One commenter stated that the inclusion of the permit shield might make the permit reviewer more cautious and slow permit issuance since there would be less opportunity to take action to correct a permit that allowed a condition of pollution to occur.

How would the benefits of the permit shield outweigh the resource requirements on the part of the State to implement the permit shield?

The commenters, for the most part, did not believe that a resource limited environment should prevent implementation of the permit shield as an option in the program given the degree to which the program will be funded through the emission fees. The commenters also stated that the benefits of a more thorough regulatory analysis would far outweigh any additional cost to the program. One commenter stated that there are no perceived benefits to the state or the public from the inclusion of a permit shield in the final rule.

How would the permit shield be written in order to encourage thorough applications by the regulated community?

In general, the commenters supported the language in the federal rule for use in the final rules. Again they stated that such use would create a strong incentive for the applicant to supply a thorough and complete application to the staff. One commenter stated that it is likely that a more complete and accurate application will be submitted if there is no shield against future enforcement.

How would the permit shield be written such that the responsibility for applicability determinations remains with the regulated community?

The commenters indicated that the permit shield will not influence the regulated community's responsibility concerning applicability determinations. Rather, it will insure that the burden is on the applicant to come forward during the review and identify questions regarding the applicability of the requirements. The commenters noted again that granting a permit shield will not prevent the agency from reviewing the basis for such grant and revoking the permit shield through a reopening and revision of the permit, if appropriate. One commenter stated that the applicant will take more care and more responsibility with the permit if he realizes that he is not shielded from enforcement action for impacts from his facility.

What mechanisms, other than a permit shield, could provide for equitable protection in enforcement due to changes in interpretation of applicable requirements?

The commenters had several suggestions for other mechanisms for addressing this issue. One commenter suggested that the enforcement rules be revised to address enforcement subsequent to a new interpretation of an applicable requirement. Another commenter suggested that protection from enforcement in this situation could be addressed in a formal agency enforcement policy. And one commenter suggested that no changes be made in the interpretation of the applicable requirements during the permit term unless the permit goes through the procedural requirements of reopening, including notice and comment procedures. One commenter stated that the Board has always taken a responsible course in its dealings with industry in the past and any need for a permit change would be based on justified health or nuisance impacts and not engender enforcement action unless egregious corporate behavior occurred.

Please consider other issues that are germane to the implementation of a permit shield in the operating permit program.

One commenter stated that protection of public health concerns is more important than protection of a business right to pollute the air.

Several commenters also suggested language regarding the permit shield for the final rules. Their proposed language, for the most part, had the same intent and was at least as broad as the language regarding the permit shield in the federal rule. The commenters who opposed the permit shield believed that industry should be held responsible for operations at their sites and to allow otherwise is contrary to the public interest. TCC suggested a new section, §122.166, to reconcile the various positions discussed on the permit shield issue during the roundtables held on the draft Regulation XII. The staff reviewed carefully all the comments regarding the permit shield. The staff does not agree with all the comments provided by the commenters supporting inclusion of the permit shield on each of the 16 issues. The staff does agree with a number of commenters who believed that the regulated community should not be shielded from responsibility for their operations and emissions. However, based on the analysis of the comments, the staff does not believe that the commenters who support inclusion of the permit shield are necessarily requesting such protection. Rather, it appears the commenters who support inclusion of the permit shield are requesting some assurance, in the final rules, of the consistency, certainty, and validity of staff interpretations of the language of the applicable requirements upon which applicability determinations can be made in permit applications. The staff agrees that it is the appropriate responsibility of the agency to provide interpretations of regulatory language and believes that one of the functions of the operating permit program is to provide such interpretations. Therefore, §122.145 (Permit Content Requirements) has been revised to include a subsection (e) which allows for interpretations of specific language and the definition of specific terms in an applicable requirement to be attached to the permit. Thereafter, those interpretations may not be modified and subsequent en-

forcement action taken until the permittee is notified and the permit revised. This subsection serves the dual purpose of insuring consistent and certain interpretations of the language of the applicable requirements by the staff and providing consistent and timely compliance for the regulated community. At the same time, the regulated community retains responsibility for their operations and emissions.

Marathon, TMOGA, Amoco, Exxon Baytown, Ethyl, DuPont, and Chevron supported the definitions of grandfather sources and the methods outlined to establish grandfather rates. Eight individuals stated that grandfather facilities should be permitted at their existing emission rates and not in excess of their verified historical production rates. The staff agrees and believes the procedures outlined in the proposed rules provide for the concerns raised by the commenters. The proposed rules require the applicant to propose an actual grandfather rate or a presumptive grandfather rate for each grandfather emission unit. The actual grandfather rate, as defined, would limit the emission unit to the maximum annual emission rate or parameters that are related to emissions (e.g., production, fuel firing rate, throughput, sulfur content, etc., as appropriate) at which the emission unit actually operated and emitted prior to September 1, 1971, for 12 consecutive months. The staff believes this approach satisfies the commenters' request of only allowing the units to emit or operate at their verified historical production rate. The presumptive grandfather rate will seek to establish a grandfather rate that as closely as possible reflects the actual grandfather rate. The staff review involves the determination of the reasonableness of the information provided to establish the actual grandfather rate or the presumptive grandfather rate. If the information is determined to not reflect grandfather rates, additional information may be requested or alternate procedures may be required for establishing the grandfather rate. The establishment of a grandfather rate shall not affect the requirement that any facility must operate in compliance with all TACB rules and regulations including 31 TAC Chapter 116.

Pennzoil suggested that approval of rates for grandfathered facilities should be made at the regional office level. The staff believes that this is an appropriate function of the application review process and approval should remain a central office function. The regional office will be involved at the request of the central office in conducting the application review.

Jones-Day questioned why the establishment of grandfather levels was being undertaken in the Title V operating permit program. It is their opinion that establishing grandfather rates and units are applicable only to Regulation VI permits. Since Regulation VI permits and Title V permits are to be separated into a dual permit system, they believe that TACB should deal with the grandfather issue in the context of Regulation VI, or combine new source review and Title V into a single permit system. This issue was discussed at the roundtables and there was general agreement to establish grandfather rates in the proposed rules. The staff does not believe that it is necessary to have a single permit system to address the grandfather issue in the operating permit. Therefore, the grandfather rules will be retained as proposed.

SPSC commented that limiting grandfathered units to maximum emission rates based on known or approximated actual, historical emissions is an unconstitutional taking of property and a contradiction of legislative intent. The TCAA, §382.0518 requires a construction permit for any person who constructs any new facility or engages in the modification of any existing facility which may emit air contaminants into the air. The staff agrees that stationary sources that existed prior to August 30, 1971, and that met the requirements of now repealed §382.060, were not required to obtain a permit from the TACB at the time the TCAAA were amended to provide permitting authority to the TACB. However, the staff disagrees with the commenter that those sources that met this criteria were allowed to operate at full design capacity if they had not previously operated at that level. Regulation VI established an effective date of September 1, 1971, for registration of new or modified sources. March 1, 1972, was the effective date for requiring a permit for construction of new or modified sources. If a source needed to increase its operating capacity on or after March 1, 1972, the source was, and is, required to obtain a construction permit from the TACB. The TCAA, §382.003(a) defines a "modification" to be "any physical change in, or change in the method of operation of a stationary source which increases the amount of any air pollutant emitted by such source into the atmosphere or that results in the emission of any air pollutant not previously emitted." The definition of "modification" set a regulatory limit on a facilities operation and any physical change or operational change which results in a significant increase in emissions requires such a facility to obtain a TACB permit pursuant to §382.0518(a). The staff also disagrees that the longstanding interpretation of grandfather rates constitutes an unconstitutional taking of design capacity. The definition of "modification" clearly indicates that any changes to the method of operation that result in a significant increase in air pollutants or result in the emission of a new pollutant will require a permit. The staff does not agree that the Regulation XII requirement for establishing grandfather rates is a "taking of property." Any activity that meets the criteria of a "modification" is merely required to undergo a TACB Regulation VI preconstruction permit review.

Chevron Production and Union Carbide stated that the presumptive grandfather rate procedure should provide amnesty for any company found in violation of 31 TAC Chapter 116. This issue was discussed in the roundtables and the staff agreed to the establishment of presumptive grandfather rates in addition to actual grandfather rates to address the concerns of the regulated community regarding the impact of the final rule on potential enforcement actions. Therefore, staff has not added any provision to the final rule to grant amnesty for any violation of Chapter 116 or any other chapter of this title.

EPA and SPSC commented that Kansas or Colorado could fall under the definition of affected states since both those states are within 50 miles of a Texas border. Exxon Chem and Exxon Baytown recommended that the term be more narrowly defined as a state whose air quality is affected to the extent that a Prevention of Significant Deterioration (PSD) increment may be exceeded. The staff agrees that Kansas or Colorado could potentially be affected states and recommends their inclusion on the list of potentially affected states in the affected states definition. Limiting the right of an affected state to comment on a permit application is prohibited by 40 CFR 70; consequently, the staff has not incorporated the second revision.

Chevron Production commented that the staff has exceeded the requirements of 40 CFR 70 by defining under air pollutant, in §122.010, all pollutants listed under Title I of the Act, §112(b) or §112(r), rather than those pollutants listed under Title I of the Act, §112(b) or §112(r) and which are also subject to a standard covering a specific source category. EPA commented that the definition was not complete since subparagraph (F) did not specifically reference the Act, §112(g) or (j). EPA stated that potentially some pollutants regulated under Title I of the Act, §112 would not fall under the proposed definition. HL&P suggested modifying subparagraph (E), to allow for an EPA determination that Title VI requirements need not be contained in a federal operating permit. The staff agrees with Chevron Production and the definition of subparagraph (F) has been revised to reflect the requirements of 40 CFR 70. The staff points out that subparagraph (F) of the definition does reference the Act, §112(b) which lists all pollutants regulated under the Act, §112(g) or (j). Subparagraph (E) has been revised to allow for such an EPA exclusion through future rulemaking.

EPA made the following comments on the definition of applicable requirement. First, under subparagraph (A), EPA stated that the specific references to the Texas SIP approved chapters are incorrect. EPA recommended that all references to specific state rules be deleted and the final rule just reference the SIP in general terms. Secondly, under subparagraph (B), EPA commented that references to Part C and Part D of Title I of the Act should be deleted. Finally, under subparagraph (L) of the definition, EPA suggested that the final rule should not explicitly state that the National Ambient Air Quality Standards (NAAQS) are not applicable requirements. The TCC and DuPont recommended revising subparagraph (B) in order to clarify which preconstruction permits are applicable requirements under the final rule. Pennzoil commented that the language in subparagraph (A) in the definition clarifies the SIP requirements which may be applicable to a facility. Pennzoil supported such clarity in that it will enhance both compliance and enforcement of the final rule.

HL&P, SPSC, and Pennzoil noted an apparent publishing error in subparagraph (D). Pennzoil requested that the error be corrected according to the printed copy of the proposed rule distributed by the staff. TCC commented that subparagraph (F) should be

deleted since the proposed rule, in effect, would be adopting by reference various EPA rules that have not yet been promulgated. This would, TCC commented, constitute an unconstitutional delegation of TACB's rulemaking powers. TCC made the same comment on subparagraphs (A)(ii) and (B) in the definition of major source, as well as in other sections. TCC suggested that, to allay EPA's concerns about "failure to adopt future rules", the agency should make a commitment in the submittal package to EPA to initiate rulemaking at such time as EPA initiates its rulemaking.

In the staff's opinion, this definition forms the cornerstone for the federal operating permit program. The staff believes that the regulated community and the general public must have available a detailed and understandable list of the state and federal requirements which are applicable requirements under this program. To accomplish this goal, the staff has delineated, very carefully, the specific applicable requirements under this program. The staff believes that the proposed definition in the final rule meets the requirements of 40 CFR 70, and therefore, the changes suggested by EPA will not be incorporated. In the interest of clarification the staff has made the change in subparagraph (B) suggested by TCC and Dupont. The error noted by HL&P, SPSC, and Pennzol was apparently a printing error and does not appear in the final rule. 40 CFR 70 requires that the state submit a program that, at a minimum, assures adequate authority to issue permits in compliance with all the requirements of Title V of the Act and of 40 CFR 70 (including any requirements established pursuant to the Act, §504(b) or §114(a)(3)), all applicable requirements of Title IV of the Act and regulations promulgated thereunder, and all applicable requirements of Title I of the Act Should EPA promulgate any later requirements, the staff will conduct any required rulemaking to implement such rulemaking. 40 CFR §70.10 provides for sanctions if the state fails to submit an approvable program. Therefore, the final rule provides for adequate authority as required by 40 CFR 70 and there will be no changes with regards to these comments.

TCC commented that the definition of deviation was too vague to be implemented in the real world. TCC suggested that the definition be clarified and that the definition reflect compliance with applicable requirements rather than permit requirements. The staff agrees that the definition should reflect compliance with an emission limitation or standard rather than a permit requirement and has made such change However, the staff disagrees with the proposed clarification which would, in effect, limit the definition of deviation to actual violations of the emission limitation or standard. This inappropriately places the permittee in the position of determining its own violations, rather than the regulatory agency. The definition has been revised to track the definition of deviation in the draft of the proposed 40 CFR 64.

DuPont recommended that the definition of emission unit be rewritten to allow grouping of emission points into emission units. TCC recommended that the definition of emission unit be rewritten to allow several emission units to be assigned a single emission unit number. EPA requested that the definition unit be clarified with regard to fugitive emissions. The staff agrees with these comments insofar as similar emission units could be grouped together in the application as long as the applicable requirements and the permit requirements are the same for each permit unit in the grouping. The staff has grouped the similar emission units together under §122.132 (regarding Application and Requirement Information), rather than rewriting the definition. The staff has clarified the definition to comply with EPA's request.

One individual requested that the term "reasonably" be defined in the definition of fugitive emissions. The definition of fugitive emissions in Regulation XII closely tracks the definition in 40 CFR §70.2. Therefore, there will be no change to the definition.

Chevron Production and EPA commented that 40 CFR 70 limits inclusion of fugitive emissions to those belonging to "those air pollutants that have been regulated for that category," which is more explicit than the §122.10 definition of major source which simply includes, under subparagraph (B)(xxvii) , those fugitive emissions for sources in a stationary source category. They suggested listing those categories of stationary sources that will include fugitive emissions in the determination of whether a source is major 3M recommended that the definition of major source be rewritten to allow the exclusion of all emissions resulting from research and development/laboratory operations. The staff agrees with Chevron and EPA, however, the Administrative Procedure and Texas Register Act (APTRA) does not allow any change in the proposed rule that is more restrictive. Therefore, the proposed language has been retained under subparagraph (B)(xxvii). The Board agrees with 3M's concern about research and development operations and addressed this by allowing a separation for these facilities in the definition of site

In subparagraph (C) of the definition of major source, EPA and Pennzoil noted that no provision had been made to include major sources in nonattainment areas designated after adoption of the final rule. EPA commented that the oil and gas exclusion in subparagraph (D) can only be used for the purpose of determining whether a Title III source is major. Pennzoil requested that the term "associated equipment" used in subparagraph (D), be specifically defined in §122.10 of the final rules. Pennzoil included suggested language for the definition. An individual was opposed to the oil and gas exclusion in subparagraph (D).

Lloyd-Gosselink commented that subparagraph (A) should specifically state whether fugitive emissions are to be included when determining whether a site is a major source and requested that the fugitive emissions of hazardous air pollutants not be considered in that determination. The staff agrees with the commenters and has revised the definition to include major sources in nonattainment areas designated after adoption of the final rule in subparagraph (C)(i). The staff has clarified subparagraph (D) to comply with EPA's comment Since the staff cannot envision every possible piece of equipment that might qualify under this term, Pennzoil's suggested revision to subparagraph (D) is not included. The staff notes that the oil and gas exclusion in subparagraph (D) is part of the Act, §112.

Further, the staff agrees with the intent of the exclusion, which is to eliminate the applicability of emissions which are located at such a distance from the site as to have virtually no impact on the area surrounding the site. The definition of major source in 40 CFR 70 which corresponds to subparagraph (A) does not allow any exclusion for fugitive sources. The exclusion of the fugitive emissions noted in the previous comment would potentially allow the exclusion of a major source and thus is prohibited by the federal rule. The revision suggested by Lloyd-Gosselink is not included. The staff will consider writing General Permits for these type of facilities.

EPA proposed minor language changes in order to clarify the definition of both proposed permit and site. The definitions have been clarified to comply with EPA's comments by replacing an incorrect reference in the definition for proposed permit and adding "under common control" after "persons" in the definition for site

Small-Craig commented that the definition of preconstruction authorization should refer to Chapter 120 (relating to certain solid and hazardous waste management facility units) where appropriate The staff agreed that preconstruction authorization should refer to Chapter 120 and also to Chapter 121, and has changed the definition of preconstruction authorization.

DuPont commented that the definition of relevant emission unit should be revised to allow the exclusion of insignificant activities as listed in 40 CFR 70. 40 CFR 70 provides for defining insignificant activities in the states' program; however, it is not a requirement of 40 CFR 70. The staff has studied the merits of using insignificant activities as allowed under 40 CFR 70. The staff takes the viewpoint that attempting to include in the final rule all activities which would qualify as insignificant is not practical, considering the variety of activities at the sites. The staff chose, instead, to eliminate certain activities at a site by the determination of whether the emission units involved are "relevant," which means, is the emission unit subject to one of the applicable requirements? This approach is consistent with the intent of the program and limits the number of activities and emission units requiring review at each site. This definition is retained in the final rule as originally proposed.

An individual was opposed to using 1980 dollars in the subparagraph (A) of the definition of responsible official. The commenter suggested that 1992 dollars be used. Pennzoil requested that the staff clarify the definition to indicate that affected sources refers only to acid rain sources. The definition in the proposed rule is identical to the definition of responsible official in 40 CFR 70. The staff does not believe it is appropriate to deviate from the federal definition and the language in subparagraph (A) has been retained. Affected source is a defined term in

§122.12 (Acid Rain Definitions); throughout the proposed rule, affected source is used only as defined in the definition. Consequently, Pennzoil's suggested change has not been incorporated.

TU and TMOGA commented that the stationary sources included in the definition of site should be limited to those belonging to a single major industrial grouping. To support their position, TU and TMOGA cited consistency with 40 CFR 70, and the federal permitting programs. The TU and TMOGA also proposed language to accomplish the change. The staff believes that a great deal of confusion would be created in attempting to sort out which emission units belong or support a particular major industrial grouping. The integrity of the site as far as applicability under the final rule has been maintained.

DuPont recommended that the definition of state only requirement be rewritten to address whether the state only requirement is an applicable requirement under the final rule. EPA commented that the reference to the federal operating permit program should be deleted from the definition. The staff agrees that the portion of the proposed rule noted as a state only requirement was not intended to be an applicable requirement under the proposed rule. The staff has revised the definition to clarify that applicable requirements are not state only requirements. The staff agrees with EPA and has revised the definition to delete the reference to Federal Operating Permits.

EPA suggested that the definition of Title I modification be deleted from the final rule. In order to promote a general understanding of the program, the staff has attempted to present the requirements of the federal operating program as clearly as possible in the proposed rule. The staff believes that the meaning of Title I modification is subject to misinterpretation and the term will not be deleted.

Pennzoil and SPSC commented that in an apparent misprint, the Texas Register version of the proposed rule combined the definitions of Title I modification and stationary source The error noted was apparently a printing error and does not appear in the final rule

GSU, LCRA, SPSC, TU, El Paso, CP&L, and HL&P commented that the grandfather definitions in §122.11 would make it very difficult for them to operate their electric grandfathered generators in the manner that is often required to meet peak electrical demands or to respond to major electrical outages in the power grid. They stated that the units are designed with a maximum power generation potential and while the use of full potential may not have been required prior to September 1, 1971, the unit and/or units may currently be operating at much higher levels than any level of operation prior to September 1, 1971, and it would be impossible to drop back to the pre-1971 operational level This issue was also raised in the roundtables held on the draft Regulation XII. The staff responded to these issues by conducting two separate meetings with the electric utilities to discuss the issues raised during the roundtables and the issues commented on during the public comment period of the rulemaking procedure. The first meeting was conducted on May 25, 1993, and the main topic of discussion centered on the operational strategies employed by the utilities during different seasonal peaks and emergencies. At this meeting, a revised definition for actual grandfather rate was presented to the staff for consideration. The problem, as defined, was limited to electric utilities and most of the units involved would be required to obtain an acid rain permit under 40 CFR 72 as a part of a federal operating permit. The staff revised the definition proposed by the electric utilities at the May 25, 1993, meeting and distributed the revised definition to each utility by letter dated June 30, 1993. Another meeting was conducted on July 14, 1993, to consider a final definition. During this meeting a final definition was agreed upon by the parties involved. Therefore, the staff has included a definition for actual grandfather rate for electric utilities in Subchapter E (Acid Rain) of the final rules. The final definition, contains the term "Maximum Continuous Rating." This term has been added to the definitions in §122.12 (Acid Rain Definitions) as "The heat input required to attain the maximum documented steam condition or to achieve the maximum documented electrical output "

Sierra commented, in §122.11 (Definitions), that the actual grandfather rate should be defined as "the emission rate, production rate for today, supported by accurate historical data to support the representations made by the applicant." The staff agrees and believes the procedures outlined in the proposed rule provided for the concerns of the commenter. The proposed rule requires the applicant to establish for each grandfather emission unit an actual grandfather rate or a presumptive grandfather rate. The definition for actual grandfather rate, as proposed, is consistent with established policy for defining grandfather rates. The proposed grandfather rate is subject to review by the staff at the time the application is submitted. Section 122. 132(a)(5)(B)(ii) provides for review of an actual grandfather rate representation and allows for the staff to require revisions to the application if the representations for an actual grandfather rate do not appear to be correct The staff may also require the determination of a presumptive grandfather rate in lieu of an actual grandfather rate. Section 122.132(a)(5)(E) states that establishment of the presumptive grandfather rate does not remove any liabilities or potential enforcement action for past or future exceedances of the actual grandfather rate in violation of 31 TAC Chapter 116 In addition, the revised definition for presumptive grandfather rate makes it clear that regardless of grandfather rates compliance with all rules and regulations of the TACB including Chapter 116 is required. Therefore, the proposed methods of establishing the grandfather rates will remain in the final rule with only minor clarifying changes made in §122.132 rather than in the definitions.

AOGC, DuPont, and TCC suggested language changes to the definition of grandfather facilities to clarify the terms. There are minor revisions to the first three definitions in §122.11 to clarify the definitions.

EPA suggested that all definitions contained in 40 CFR §72.2 or, at a minimum, the definitions contained in the Model Acid Rain Rule be incorporated by reference. Section 122.411(b) has been revised to clarify that the final rule incorporates all of the Acid Rain Rules, including the definitions, by reference.

Chevron Production requested that the staff formally exempt in §122.120 of the proposed rules all non-major sources until EPA, as outlined in 40 CFR 70, removes any non-major source type from exemption. DuPont made the same request for a specific category of non-major sources. TCC requested that the final rule contain the specific source category exemptions identified in 40 CFR 70. The staff has no objection to the final rule noting the general exemption of the non-major sources allowed under 40 CFR 70 and the change has been made. However, the staff finds it redundant to list each specific source category exemption

TU requested that the final rules mirror 40 CFR 70 and specifically state, in §122.120 (Applicability), that a source is not required to obtain a permit solely because it is subject to regulations or requirements under the Act, §112(r). The staff agrees that it is appropriate to narrow the list of non-major sources which may be brought under the final rule through further EPA rulemaking, and this change has been added as §122.120(4)(B).

EPA noted that §122.120 does not provide for the applicability of non-major sources which, as a result of rulemaking by EPA, are no longer exempt from the obligation to obtain a federal operating permit. EPA further noted that applicability of solid waste incineration units had not been addressed in the proposed rule. The staff agrees with both comments and §122. 120 has been revised to acknowledge the applicability of solid waste incineration units and the potential applicability of non-major sources.

Pennzoil recommended that in order to clarify that the certified registrations discussed in §122 122 of the proposed rules will be a means to limit a site's potential to emit, the staff should either define in §122.10 the term "certified registration," or reference §122.122 in the definition of potential to emit The intent of §122.122 (concerning Potential to Emit) is to allow federally enforceable emission limits at a site in order for the site to limit its potential to emit. The staff understands the concerns of the commenter and clarifications have been made to §122 122.

Chevron Production noted that §122.122 (Potential to Emit) would allow federally enforceable limitations on a source's potential to emit. TCC and DuPont suggested rewriting this section to clarify both the federal enforceability of the registrations and the source's ability to lower the emission rates even below past operational rates Section 122 122 has been revised to clarify that the registrations are federally enforceable. Regarding the emission rates, in the proposed rule no lower limit was placed on the emission rates listed in the registrations This issue will not be addressed to any greater extent.

An individual requested that under §122.122 all upsets, releases, spills, etc be included in

the certified registration of emissions, and only so many per year allowed. Emissions from upsets, releases, and spills are not included in calculating a site's potential to emit as defined in the federal rules. Therefore, this section has been left intact with regard to this comment. Situations regarding upsets are addressed under TACB Chapter 101.

EPA commented that §122.122 must be incorporated into the Texas SIP in order for those certified registration of emissions, proposed under §122.122, to be federally enforceable. The staff intends to submit to EPA, as a SIP revision, the adopted version of §122.122.

Exxon Chem recommended that §122.122(b) apply only to those emissions which fall under an applicable requirement. The intent of the proposed section is to establish a federally enforceable emission limit for the entire site to determine applicability of the final rule. Regardless of whether an applicable requirement exists for a particular pollutant at that site, applicability will be determined on the basis of whether any air pollutant is emitted at rates defined as major. Therefore, staff has not placed any further limitation on the type of emissions included in the registration. However, the staff has added §122.122(d) to clearly place the burden on the applicant to insure that the registration adequately limits the site's potential to emit.

An individual requested that §122.122(d) be rewritten to require registration to be kept at the site and to maintain constant accessibility of the registration. This issue was discussed at the roundtables, where the staff was reminded that many of the sites which may maintain these registrations are in remote locations and without a physical structure available to house the registration. The staff agreed that allowing access at an agreed location is sufficient for enforcement and compliance purposes.

AOGC commented that the proposed interim application submittal schedule in §122.130 does not track the federal requirement such that one-third of the applications for those sources received during the interim program may be either approved or disapproved in the first year of the interim program. The staff disagrees with this comment and believes that one-third of the permits in the interim program will be issued under the proposed schedule in the first year after program approval from EPA.

Chevron Production commented that the proposed interim application submittal schedule in §122.130 imposes a significant burden on the smaller sources. Chevron Production requested that the staff consider other options for scheduling the application submittal. This issue was discussed at the roundtables and general understanding for the proposed schedule was reached. In determining which sources to pull into the interim program, the staff considered a number of options including delineating sources by SIC codes, counties, attainment/nonattainment areas, and complexity of the source types. The staff believes that the schedule proposed in the final rule allows the most reasonable utilization of resources on the part of both the state and private sector.

HL&P recommended staggering the issuance of the Title IV Acid Rain Permits in order to best utilize staff resources both in the TACB and in the regulated community. The commenter recommended allowing a 12-month application schedule for all sources subject to the final rule. The proposed rule provided for as much flexibility as possible while still assuring EPA that applications will be submitted in sufficient time to allow for issuance of one-third of the permits in the first year as required in 40 CFR 70. In order to meet the mandatory permitting deadlines in the federal Acid Rain Rules, the staff believes it is necessary to call the affected sources in as quickly as possible and opposes the suggested change.

Natural Gas requested that the natural gas transmission industry be given 18 months under the interim application submittal schedule in §122.130(b) to submit all applications. 40 CFR 70 requires all applications under both the interim and full program to be submitted no later than 12 months after each approval date.

TCC, DuPont, ENRON, Pennzoil, TMOGA, and Dow recommended that §122.130 be rewritten in order to clarify the intent of this section. SPSC commented that §122.130(b) appears contradictory in that all affected sources are required to submit applications with six months of the effective date of the interim program and are also required, in §122.130(b)(1)(B)(iii), to submit 10% of any applications belonging to an owner/operator within six months of the same date. Exxon Chem suggested changing §122 130 (Responsibility to Apply) to clarify the use of preconstruction authorization as a trigger date for permit applications. In light of the number of requests for clarifying changes, the staff has written §122.130 solely for the purpose of clarifying those requirements contained therein.

Small-Craig commented that the interim approval approach for the permitting program leaves the effective date of the §112(g) case-by-case MACT determination requirement in doubt. This commenter suggested that §122.130(b) be revised to reflect that the §112(g) requirements apply only to sources required to submit permit applications under the interim program. Consistent with guidance from the EPA, the staff believes the Act, §112(g), provisions (case-by-case MACT determinations, triggered by new construction, reconstruction, or modifications of major, named sources) should apply only to those sources for which a permit is required. This would mean the responsibility to apply for §112(g) MACT determinations would fall only to those sources required to submit permit applications under the interim program. All sources would be required to meet §112(g) requirements upon full approval of the program by EPA Section 122.161 has been revised to reflect the effective date of §112(g)

TU requested that the applicability date in §§122.130(d), 122.133(a), and 122.163(b) be changed to the date the site commences operation, rather than the issuance or approval date of the preconstruction authorization. This issue was discussed at the roundtables, where the participants could not develop a definition identifying the commencement of operation. Consequently, the consensus appeared to be tying the applicability date to a readily identified action such as permit issuance. The staff still supports this concept.

Chevron Production, 3M, and DuPont requested that the staff list, in §122. 132, insignificant activities which the applicant need not include in the application and also, as allowed in 40 CFR 70, list emission limits below which the applicant need not quantify emission levels. The staff has studied the merits of using insignificant activities and emission limits as allowed under 40 CFR 70. The staff takes the viewpoint that attempting to include in the final rule all activities or emissions which would qualify as insignificant is not practical, considering the variety of activities and emissions at the sites. The staff chose instead to eliminate certain activities at a site by the determination of whether the emission units involved are "relevant," which means, is the emission unit subject to one of the applicable requirements. This approach is consistent with the intent of the program and limits the number of activities and emission units requiring review at each site. The proposed language in the final rule will be retained.

EPA commented that §122.132 is written too narrowly and should instead mirror 40 CFR §70.5(c). EPA suggested such changes in two subsections of §122.132. The staff believes that §122.132 (Application and Required Information) should broadly outline the information required in the federal rule and give the staff the authority to require such information. This suggestion would be more appropriately addressed in the application forms and the guidance document which will follow, more narrowly, the requirements of 40 CFR §70.5(c)

AEA and TI commented that certain emissions units should be combined for the purposes of proposing monitoring, recordkeeping, and reporting protocol, as required under §122.132(a). The staff has no objection to combining similar emission units which have the same applicable requirements. Section 122 132(a)(1) has been revised.

DuPont commented, in §122.132(a), that the applicable protocol should be submitted rather than a proposed protocol. The staff believes that, particularly in the case of the new monitoring, recordkeeping, and reporting requirements under 40 CFR 70 and 40 CFR 72, the permit engineer should review the proposed protocols.

TCC and TMOGA suggested that, rather than request a proposed protocol for each emission unit, the language in §122.132(a) should be modified to ask for proposed protocol as required for each emission unit; thus implying that some relevant emission units would not be required to submit some or all of the protocols referenced. Marathon commented that §122.132(a) should be rewritten to clarify the fact that not all relevant emission units at a site require monitoring, testing, recordkeeping, or reporting conditions in the permit. Although the federal rule allows recordkeeping to substitute for monitoring in some cases, 40 CFR 70 does require monitoring, recordkeeping, and reporting require-

ments for each relevant emission unit. Consequently, the suggested changes are prohibited by the federal rule.

An individual requested that the term "relevant" be removed from §122. 132(a)(2), stating that all emission units are relevant. Relevant emission unit is a defined term in the proposed rule. The term "relevant" refers only to whether any applicable requirements apply to that unit, not to the relative value or importance of the unit at the site.

AOGC commented that §122.132(a)(5)(A) does not provide for determining emissions limitations as required for compressor engines regulated under TACB Standard Exemption 6. AOGC recommends that a procedure similar to that for grandfather units be used to establish emission limitations. The engines or engine trains installed under Standard Exemption 6, referenced by AOGC, were apparently installed in accordance with applicable provisions of Regulation VI, and therefore, appear to be in compliance with the Standard Exemption as it existed at that time The units are not grandfathered and cannot utilize the procedures for presumptive grandfather emission units. However, Regulation VI provides for establishing federally enforceable emission limitations for standard exemptions. Also, for determining the applicability of the federal operating permit program, stationary sources without other federally enforceable emission limitations may limit their potential to emit by maintaining a certified registration of emissions. Therefore, the staff believes that the rule will adequately address AOGC's concerns.

DuPont commented that §122.132(a) requires the submittal of too much information, some of which could be supplied through other agency programs. DuPont recommended using these programs to supply information to the federal operating permit program. The staff believes that in order to process the applications in a timely manner, the reviewing permit engineer should receive information directly from the applicant rather than searching the other programs in the agency for data which may be out-of-date or incorrect. The staff agrees that the amount of information required under this program is significant. The staff envisions a sophisticated computer database as the only reasonable means of handling the large volume of information necessary for this program The staff is actively pursuing the development of such a computer system.

Enron and Exxon Houston commented that §122.132(a) should require only reasonable and reasonably available information rather than any information deemed necessary by the staff. The staff envisions the application as the end result of a thorough regulatory review of the applicable requirements for the emission units at the site. In order to audit such a review, the staff must have access to information on those emission units. The proposed rule allows the staff the authority to review the necessary information The staff understands the commmenter's concerns and believes that the application forms and the guidance document will more appropriately address the type of information the reviewing engineer might require.

HL&P commented that no basis exists in 40 CFR 70 for the requirement in §122 132(a) to submit information identifying potentially applicable requirements. HL&P recommended this requirement be taken out. Enron, TMOGA, and Marathon commented that the basis for why an applicable requirement does not apply should not be a requirement of this section. The commenters further suggested a statement of negative applicability be substituted for this requirement. In order to properly audit an application, the staff believes that the reviewing engineer should be aware of the reason why a potentially applicable requirement does not apply to a particular emission unit A simple statement of negativity would not provide an acceptable degree of assurance.

Enron recommended that the requirement in §122.132(a), to submit a risk management plan in accordance with the Act, §112(r)(7), be revised to reflect the possibility that the federal rule may not be promulgated prior to the application submittal deadline. The staff understands that the last element of the federal rule referenced will be proposed in November of 1993. The staff also understands that the federal rule is scheduled to be promulgated prior to the first application submittal deadline listed in the final rule Consequently, §122 132(a) has been retained intact with regard to this comment

TMOGA commented that §122 132(b)(2) should be rewritten to reference the requirement in §122.143(1)(H) that any permit with more than three years remaining to expiration shall be reopened to reflect new regulatory requirements. The staff believes that referencing a requirement to reopen a permit in the section discussing the compliance plan is confusing.

Union Carbide commented that §122 132(b) could be interpreted to require a compliance plan for an entire site rather than the relevant emission units under the permit Union Carbide requested clarification of the intent of this subsection. The staff agrees with the commenter and §122 132(b)(1) and (2) has been revised to require a compliance plan for the relevant emission units in the application

TCC commented that the compliance certification discussed in §122 132(c) is a periodic report that follows after permit issuance and that 40 CFR 70 only requires the application to include the applicant's plans to submit future compliance certifications. TCC requested that this subsection be revised to distinguish between a statement of intent to comply and the periodic compliance certifications required after permit issuance The staff disagrees with the commenter. Section 70.5(c)(9) of the federal rule clearly requires that a compliance certification be submitted with each application. Section 122.132(c) will be retained intact with regard to this comment.

An individual requested that §122 132(d) be rewritten to require the applicant to send a copy of the application to the local air pollution control agencies. The proposed rule does not prohibit the review of the applications by the local air pollution control agencies. To determine the breadth and depth of the local programs' participation in the federal operating permit, the staff intends to hold discussions with the local programs to develop an agreement much like the implementation agreement with EPA. The staff believes that such involvement should be addressed through agency policy and guidance documents rather than in the final rule.

EPA commented that §122.133 should include the 40 CFR 70 requirement that applications be submitted no earlier than 18 months prior to expiration of the permit. In order to comply with the 40 CFR 70 requirement, the change has been made in this section and also in §122.241(b) (Permit Renewals).

HL&P suggested language with the intent of clarifying the meaning of "timely" in §122.133(a) TMOGA was concerned that §122 133(a) could be construed to supersede §122.130 (Responsibility to Apply). TMOGA and TCC suggested that the subsection be clarified. The staff agrees with the commenters that the proposed language could be misinterpreted; consequently, §122 133(a) has been rewritten to clarify the original intent of the section.

TMOGA and TCC were concerned that §122.133(b) could be interpreted to require applications for significant permit modifications prior to issuance of the permit. Both requested clarification of this section. The staff understands the concerns raised by the commenters, however, an application for a significant permit modification is not required for a permit that does not yet exist.

AEA, an individual, and TI requested that "complete application" be defined in §122 134. The staff does not recommend attempting to define a complete application in §122.134. The staff believes that the final rule should outline the broad requirements of an application, and that the application forms and guidance document should be the arena to address specific detailed elements.

Enron and TMOGA commented that §122.134(a) should be revised to allow an application to be complete if all reasonable and reasonably available information has been provided. Enron also suggested that the additional information that may be requested by the staff under §122.134(b) and §122. 138 be limited to the information required under §122 132(a) Marathon suggested that the final rule limit the information required for the application to be deemed complete by the exclusion of the following language, "...information deemed necessary to determine the applicability of, or to impose, any applicable requirement" TMOGA recommended alternate language to define the information requirements of this section. The purpose of the operating permit program is to provide codification of all applicable requirements. Staff believes that requiring the submission of any information necessary to determine the applicability of or to codify any applicable requirement is reasonable. In addition, the elements included in §122.132 reflect the requirements of 40 CFR §70 5(c), relating to standard application forms and required information. 40 CFR §70.5(a)(2) specifies that to be deemed complete, an application must provide all information required pursuant to §70.5(c). Therefore, the staff's proposal is consistent with the requirements of 40 CFR 70. Staff

does not believe that TMOGA's suggested language provides any additional clarification, except for changing the word "impose" in §122.132(a) to "codify."

An individual opposed §122 134(b) which allows, unless the agency notifies the applicant otherwise, automatic completeness 60 days after receipt by the agency. 40 CFR 70 specifies that the states' program will provide an automatic completeness determination 60 days after the application is received by the state, unless the state otherwise notifies the applicant that the application submittal was incomplete

Exxon Chem requested §122 136(a) be modified to allow applicants, who failed to submit information or submitted incorrect information, more than 60 days to correct the application. The staff believes that 60 days is sufficient time for an applicant to correct an application

DuPont commented that §122 136(c) should allow the staff to request additional information from an applicant only after consultation with the applicant.

The determination of what information is required to continue or complete the permit review should be made by the reviewing engineer This will provide greater flexibility and can potentially reduce review time

Enron and TMOGA commented that §122 138 should include language which states that the applicant is not required to comply with the conditions of the permit until after the permit is issued, and for permit modification application, the permit holder need only comply with the terms and conditions of the existing permit until a modified permit is issued. The staff believes that the initial permits are not enforceable until issued by the board or its designee However, it was not clear in the proposed rule which terms and conditions, the proposed or existing, the permittee shall comply with during the time period between commencing operation and the issuance or denial of the permit revision In order to comply with the intent of 40 CFR 70, which allows changes to be made and operation of those changes to commence prior to issuance of a permit revision, §122 217 (Permit Addition Procedures) and §122 219 (Significant Permit Modifications) have been reviewed to allow the permittee to comply with the terms and conditions of the proposed permit, rather than those of the existing permit during this interim period

EPA commented that the reference to permit modification in §122 138 should be deleted 40 CFR 70 requires significant permit modifications to meet all the procedural requirements of permit issuance As a result, the applications for a significant permit modification must meet the timely and complete criteria in the federal rule The staff interprets 40 CFR 70 as allowing the application shield for those sources which are subject to the procedural requirements and meet the timely and complete criteria in the federal rule This section has been retained intact with regard to this comment and does allow the application shield for significant permit modifications

TCC requested revising §122 138 to allow the application shield for sources that submitted only a timely application, rather than, as proposed, a timely and complete application. 40 CFR 70 specifies that the application shield may be extended only to those applications which are both timely and complete, as described by the federal rule.

TMOGA recommended clarifying §122.138 to eliminate confusion on who sets the deadline for the submittal of additional information. The staff agrees with the commenter and §122.138 has been clarified to clearly allow the executive director the necessary authority to set deadlines for the submittal of additional information.

An individual opposed §122.139(4) and suggested that the nine month time frame be revised to 12 months. The requirement in §122.139(4) to take action within nine months of receiving the application is a federal requirement of 40 CFR 70.

AOGC commented that the annual compliance certifications required under §122.143 should be required to be submitted at the same time the annual emission inventories are required to be submitted so to avoid a duplication of effort on the part of the regulated community. The staff agrees with the goal of minimizing duplicative effort where 40 CFR 70 allows However, it is unclear to staff at this time how much latitude is available in the submission of compliance certifications Therefore, the phrase "at least" has been added before the phrase "every 12 months" in §122.143(4) to allow for maximum flexibility in submission of compliance certifications

3M suggested language to be added to §122.141 regarding alternative operating scenarios as addressed in 40 CFR §70 6(a)(9) and emission caps as addressed in 40 CFR §70.4(b)(12)(iii). Chevron commented that TACB should include language in §122 143 that addresses alternative operating scenarios and emissions trading There will be no revisions to §122 141 or §122 143 regarding these issues The staff designed the proposed operating permit program (permit content and scope) to allow such changes provided that such changes do not affect an applicable requirement, and provided that Regulation VI and the SIP allow such emission trading and alternate operating scenarios However, insofar as the requirements of 40 CFR 70 conflict with any underlying requirement of the Texas SIP, the SIP requirement governs Regulation VI does not allow for a facility to "trade emissions" without BACT and impacts review Nor does Regulation VI allow a source to vary its operating scenario, unless expressly allowed under an existing preconstruction authorization The staff believes that both emissions trading and alternate operating scenarios are appropriately addressed under the current Regulation VI NSR program In addition, the federal operating permit will not prohibit an emission cap on a facility that meets the requirements of all TACB regulations As appropriate, any necessary conditions will be included in a federal operating permit addressing an emissions cap

An individual requested that all of §122 143 be deleted and opposed the concept of general permits Section 122 143 refers to general permit conditions, i e , the general conditions that will be contained in each permit. This is totally unrelated to the concept of general permits. General permits are addressed in §122.202. Therefore, §122.143 has been retained. With regard to general permits, this concept will be retained also. The federal operating permit is, by and large, a document in which all of the applicable requirements for a source are codified. In many instances, for similar source types with similar applicable requirements, general permits will allow the staff to avoid redundant effort, saving staff resources for other important air quality initiatives.

EPA commented that §122.143 needed additional language to ensure that the permits do include the provisions required under 40 CFR 70, including those provisions concerning emission limitations and standards. Section 122.143 (Permit Conditions) lists only the general conditions with which each permit issued under the final rule must comply. Emission limitations and standards will be specific to the individual sites and as such will be appropriately attached as special conditions to the individual permit. Section 122.145 (Other Requirements) has been revised to clarify this intent.

TCC commented that §122.143(1)(B) should be changed to read, "Permit shall expire five years from the date that TACB takes final action on the proposed permit." Issuing the proposed permit is the final action that TACB will take on the vast majority of permits. Staff agrees with the commenter on when the "five-year clock" begins, that is on issuance of the proposed permit. However, the staff believes that the proposed language states that position more clearly than the suggested revision.

HL&P commented that §122.143(1)(B) appears to conflict with §122.201(b) and §122.241(a). HL&P argued that the former sets the term at five years while the latter two seem to allow permit terms less than five years. HL&P supported a fixed five-year term. Section 122.143(1)(B) states that a permit "shall expire five years from the issuance of the proposed permit." The staff believes that this does not automatically "set the term" at five years, but means that a permit term of over five years will not be allowed. The staff believes that the TACB should retain the flexibility to have permit terms of less than five years as provided by the latter two sections. With this flexibility, it will be possible to coordinate the timing of operating permit renewal with NSR permit renewal.

An individual commented that the phrase "at any time" should be added to §122.143(1)(C)(i). This issue was discussed at the roundtables The draft rule presented at the roundtables provided for inspection of the emission units at any time. However, the staff does not believe it is always reasonable to expect access to records at any time, because not all records are maintained on-site. In addition, all the permittee's staff are not authorized generally to have access to those records and those authorized personnel may not always be available. In addition, the language contained in §122.143(1) (C)(i) mirrors the language contained in §70.6(c)(2)(i).

TMOGA, DuPont, Enron, Chevron, TCC, and Pennzoil requested that the phrase "inspect,

at any time..." in §122.143(1)(C)(iii) be changed to read "inspect, at reasonable times," which reflects the language of §70.6(c)(2)(iii). The basis for this comment is that in certain situations, such as an emergency, it may not be appropriate for representatives of the TACB to be allowed onsite. This issue was addressed during the draft Regulation XII round-tables. Since many sources operate continuously, the staff believes that it is important to have access to a source at any time. The TACB regional staff believes that the wording should be "inspect, at any time." The basis for this is that representatives of the TACB would not voluntarily endanger themselves during an emergency or knowingly hinder efforts to control an emergency. Consequently, in order to address both the concerns of the regional staff and the commenters, the staff has added language to §122.143 which provides for inspection at any time other than when the presence of the TACB personnel would interfere with the ability of the permittee to respond to an emergency situation.

An individual asked that "reasonable period of time" as used in §122. 143(1)(D) be defined This paragraph addresses the amount of time that a permittee has to present records required by a permit to representatives of the TACB or the local air pollution program with jurisdiction. The staff has retained this section as proposed with regard to this comment. This wording was discussed in the draft Regulation XII roundtables at some length. It was determined that inspectors from the TACB or local program could best determine what constitutes a reasonable amount of time on a case-by-case basis.

Pennzoil commented that §122 143(1)(E) did not include the affirmative defense of emergency contained in §70 6(g)(3), and that such defense should be included. The staff believes that §101.6 and §101.11 of the TACB General Rules fulfill the requirements of 40 CFR §70.6(g). Section 101.11 contains language that constitutes a defense from enforcement under upset conditions as long as the procedures of §101 6 are followed.

TCC commented that the language of §122.143(1)(F) is confusing. TCC argued that a permittee is not going to request revocation or termination, and actual termination "stays" all permit conditions. The staff believes that the language in §122.143(1)(F) is required by §70.6(a)(6)(iii).

TCC commented that §122.143(1)(G) should be revised to allow for extensions to be granted by the Executive Director. TCC also requested that this paragraph be rewritten to note that records sent directly to EPA may be sent with a claim of confidentiality The staff agrees with these comments and has added language to §122.143(1)(G) accordingly.

An individual commented that "reasonable period of time" as used in §122. 143(2) regarding the submittal of monitoring data should be defined This issue was a point of discussion at the draft Regulation XII roundtables. It was determined that "reasonable period of time" varies widely depending on the type of monitoring required. Therefore, the staff believes that it is more appropriate that "reasonable period of time" be defined on a source type or case-by-case basis during permit review and may be defined in the special conditions of the permit.

Exxon Chem, TI, AEA, and GPA commented that the reporting conditions contained in §122.143(3)(B) and (C) are redundant. TCC recommended deleting subparagraph (B). TI and AEA recommended deleting subparagraphs (B) and (C) altogether. GPA and Chevron commented that language be added to subparagraph (B) or (C) that reporting is required under one but not both of these subparagraphs. The staff agrees that the reporting requirements of §122. 143(3)(B) and (C) seem redundant. However, the staff does not recommend deletion of those subparagraphs altogether. Subparagraph (B) fulfills the requirements of §70.6(a)(3)(iii)(B) and (C) fulfills the requirements of §70.6(g). The staff does agree with the approach taken by Exxon Chem and GPA. Therefore, language has been incorporated into §122.143(3)(B) which requires reporting except in such cases that reporting is required in subparagraph (C).

TMOGA and Enron commented that §122.143(3) regarding reporting and §122 143(4) regarding compliance certifications should contain wording to change the reporting date to coincide with other reporting requirements and that reports not be required until 45 days following the data collection period so that report compilation can be accomplished. The staff agrees, in principle, with the goal of matching submission dates for reports and compliance certifications where 40 CFR 70 allows. However, EPA has not provided guidance on how much latitude is allowed in the submission of compliance certifications or other required reports. Therefore, the phrase "at least" has been added before the phrase "every six months" in §122 143(3)(A) to allow for maximum flexibility in submission of required reports In addition, the phrase "at least" has been added before the phrase "every 12 months" in §122.143(4) to allow for maximum flexibility in submission of compliance certifications.

DuPont requested that the wording of §122.143(3)(C) be changed to reflect the wording contained in §70.6(g)(3). The rationale is that the subparagraph, as currently worded, and specifically the reference to Chapter 101 (TACB General Rules), is too vague to be used as an affirmative defense of emergency. The staff believes that §101.6 and §101 11 of the TACB General Rules fulfill the requirements of 40 CFR §70 6(g), and that an affirmative defense of emergency can be built by using those sections.

An individual commented that the word "preventative" in §122.143(3)(B) should be "preventive." Staff agrees and this suggestion has been incorporated

Exxon Chemical asked that §122.143(4) be changed to incorporate the idea that the compliance certification should contain a blanket statement of compliance and should detail only noncompliance through the requirements of subparagraphs (A)-(D). Compliance certification requirements are stated in §70 6(c)(5). The staff understands that these requirements are mandated and can not be changed

Exxon Baytown and Marathon supported all of TMOGA's comments on §122.143 (Permit Conditions). In addition, Exxon Baytown supported the comments of Exxon Chem on §122.143. TMOGA, Marathon, TCC, DuPont, AEA, TI, and Exxon Houston commented that the language of §122.145(a) requiring certification by a responsible official for any document required by a permit is overly burdensome. AEA commented that the requirement to certify reports in §122. 145(a) should not be extended to supporting documentation such as calibration data, strip charts, etc. The commenters suggested changing the language in §122.145(a) to require certification by a responsible official only for those documents that will be submitted to the TACB.

The staff agrees that the language contained in §122.145(a) could be overly burdensome and has incorporated language as suggested.

TCC recommended deleting the first sentence of §122.145(a). The commenter's rationale was that the items discussed in this subsection were already discussed in §122.143, and that restatement is confusing. The conditions included in §122.143 are general permit conditions that will be included by reference in every operating permit, much as Texas NSR Permits contain General Provisions. Section 122.145(a) provides authority to include conditions in each operating permit, including those that go beyond the general conditions.

Enron, TMOGA, and Marathon commented that language should be added to §122.145(a) such that the subsection would not be construed to require compliance certification, testing, monitoring, recordkeeping, and reporting for all emission units. The rationale was that the rule, in and of itself, should not require testing and monitoring until enhanced monitoring rules are promulgated. The staff believes that §70 6(a)(3)(i)(B) of the federal rule requires monitoring that is sufficient to demonstrate permit compliance. This is known by the EPA as "gap filler" monitoring requirements, where there may not be monitoring requirements in any applicable requirement. The staff points outs, however, that monitoring does not necessarily mean continuous emissions monitoring. In some cases, such things as recordkeeping may be sufficient to demonstrate permit compliance.

Exxon Chemical commented, regarding §122.145(b)(1), that language should be added to allow the use of equivalent test methods without listing in the permit. The staff agrees that it is possible, in certain instances, to use equivalent test methods. However, the staff also believes that the use of these would need to be approved on a case-by-case or source-type basis. Therefore, equivalent test methods will not be added.

TMOGA, Marathon, and Enron suggested adding a new paragraph, §122.145(b) (4), to allow for a phase-in time after a permit is received to develop and implement monitoring or recordkeeping. The staff agrees that a phase-in time for monitoring and recordkeeping will be needed by most sources upon receipt of a permit. As with NSR permits, the phase-in schedule will be stated in the permit,

on a case-by-case basis, rather than in the rules.

TMOGA, Marathon, TCC, and DuPont expressed concern that the use of the phrase "operating conditions" in §122.145(c)(6) is too broad and needs to be defined. The phrase "which are deemed necessary to characterize emissions" has been added after the phrase "operating conditions."

TMOGA and Marathon commented with regard to §122.145(d), relating to sites with emission units not in compliance at the time of permit issuance, that the TACB should publish a guidance document within six months of "issuance" of the final rule on compliance plans pursuant to §122.132(b) The commenters further stated, that enforcement policies should be developed which give consideration to those companies which make "good faith efforts" to comply with applicable requirements. The staff intends to develop guidance documents, not only relating to compliance issues, but for a wide variety of issues concerning implementation of the federal operating permit program. However, an exact time-frame on issuance of these documents will not be established, but guidance will be developed as soon as possible after the effective date of the final rule. The staff believes that the comments on enforcement policy are outside the scope of this rule package.

DuPont commented that §122.145(d)(2)(A) requires permittees to provide an explanation of why any dates in the schedule of compliance (for sites not in compliance) "were not or will not be met." The commenter argued that most "conscientious permittees" will not intentionally miss a compliance date and that there is no need to predict "non-compliance of a non-compliance schedule. " They recommend deleting the phrase "or will not be." This specific site refers to submission of progress reports for sites with units not in compliance. It is conceivable that at the time of progress report submittal, a permittee may be aware of a compliance schedule date that will be missed for whatever reason. The language which is identical to §70 6(c)(4)(ii), has been maintained.

EPA Region VI commented that §122.150(b), General Permits, seemed to indicate that General Permits would not be promulgated through rulemaking procedures required by the Administrative Procedure and Texas Register Act (APTRA), Texas Civil Statutes, Article 6252-13a. EPA requested that §122. 150(b) be clarified with regard to the public notice requirements for general permits. Section 122.202 sets out the procedures to obtain a General Permit. It is the intention of the TACB to develop a list of General Permits, much like the Standard Exemption List promulgated under TACB Regulation VI. The initial General Permit list will be subject to the APTRA rulemaking procedures which include requirements for public notice and comment, as well as public hearings. EPA and affected states are free to comment during the public comment period or during any hearing. 40 CFR 70, §70.6(d)(2), provides that without repeating the public participation procedures required under §70.7(h) , the TACB may grant a source's request to operate pursuant to a general permit. The intent of §122.150(b) is to merely state that individual General Permits are not subject to the public notice and comment procedures in Subchapter B of the proposed rules Section 122.150(b) has been included as a reference to the procedural requirements listed under §122.202.

EPA commented that §122.152(b) appears to allow for the general availability of the permit file to cease after the permit is issued. The TCAA, §382.040 provides that all board records are public records that are open to inspection by any person during regular office hours, except as subject to §382.041 regarding confidential information. Section 122.152(b) has been clarified to address EPA's concern.

TCC commented that §122 152(c), as written, could be interpreted as requiring the TACB to provide a copy of an actual application and other documents as specified in §122.153 to any person who requests it. 40 CFR Part 70, §70.7(h) provides in part that notice of an application for an operating permit shall be provided to any mailing list of persons that is maintained by the TACB and to those persons who request in writing to be included on any such list. The intent of §122.152(c) is to comply with §70. 7(h) by merely providing notice to those interested persons of the submission of an application for an operating permit or any revision. It is not the intent of the TACB to freely provide a copy of the draft permit and documents required in §122.153 to those who request them. Copies of these documents may be obtained from the TACB central office as well as the TACB regional office file rooms that are open to the public during normal business hours. Section 122 152(c) has been revised to clarify the original intention.

TU commented that the requirements in §122.153 of the proposed rules for public notice of intent to obtain a federal operating permit allows for publication in two sections of two successive issues of a newspaper in general circulation TU requested that the publication requirement be reduced to the minimum required under 40 CFR 70. 40 CFR 70 requires " ..adequate procedures for public notice including offering an opportunity for public comment... " The staff finds it reasonable and adequate to require the same procedures for public notice under this rule as is required under Regulation VI.

EPA commented that §122.153(a) does not require, as does 40 CFR 70, the "emission change involved in any permit modification" to be included in the public notice The TACB believes that §122.153(a)(3) adequately addresses EPA's concern. By merely limiting the description to "emissions changes" the public notice could presumably not mention changes in monitoring, recordkeep- ing, new applicable requirements that do not involve emissions, etc. The reference to "activity" is more inclusive of all possible changes The staff believes that the proposed section satisfies the requirements of 40 CFR 70.

The TCC commented that the phrase "with newspaper of general circulation" ought to be added to §122 153(a) to modify the requirement to publish notice in a municipality nearest the location of the site This would be the case when the municipality where the site will actually be located does not have a newspaper of general circulation. Section 122.153(a) was intended to track the language of the Texas Health and Safety Code, §382.056(a) as well as TACB Regulation VI, regarding notice of intent to obtain a permit.

The TCC commented that §122.153(a)(2) requires a public notice to provide the name of the "company" seeking an operating permit and suggested that an applicant can be an entity other than Company. The staff agrees that applicants may be other entities or persons and the suggested change has been made to §122.153(a)(2).

EPA commented that the word "significant" in §122.153(a)(5) should be deleted. 40 CFR 70 requires that the public notice include "...the emissions change involved in any permit modification...." By referencing any significant permit modification rather than any permit modification, the staff merely acknowledges, for the sake of clarity, that the only type of modification required to undergo public notice is the significant modification.

One individual requested that a 30-day comment period be specified in §122.153(a)(7). The staff has specified a 30-day comment period in §122. 155 (Public Comment Period) which describes the time periods for the comment period as well as procedures for submitting comments and requesting a hearing.

One individual requested that the term "affected person" be defined in §122.153(a)(8). The appropriate methodology in these matters is to review the facts of each request on a case-by-case basis in order to determine whether the person is affected by emissions or if the request is a reasonable request as allowed by the Texas Health and Safety Code, §382.0561(c). Any further definition of "affected person" would still have to allow for case-by-case determination of the relevant factors. Therefore, the staff will not be defining "affected person" in the final rule.

The TCC commented that §122.154(a) and (c) should be changed to allow the Executive Director to have the discretion to approve alternative placement of signs in the event that the current requirements prove to be "inadequate or awkward." The staff has added §122.154(d) to allow for alternate sign placement where it is impractical to comply with the stated requirements, and where the alternate placement will provide equivalent notice.

Exxon Chem and Exxon Baytown recommended changing §122.155(c) to include the permittee when notifying interested parties of the board's proposed final action. This section has been revised.

EPA commented that §122.163(a) should reflect the 40 CFR 70 requirement that the final rule shall be effective upon EPA approval of the federal operating permit program submittal, and not 30 days after publication of the approval date, as written in the proposed rule. The TCC suggested adding language to §122.163(a) to clarify that the effective date of the final rule is the date that the approval of the operating permit program is published in the *Federal Register*. The TCC also sug-

gested that the caveat in §122. 163(c) regarding the failure of the TACB to publish notice of the date of approval of the operating permit program be deleted.

40 CFR Part 70.4(g) provides that the effective date of an operating permit program, including any partial or interim program shall be the effective date of approval by the Administrator. The staff agrees with the TCC comment that the date of approval should be tied to publication of the approval in the *Federal Register*. EPA will publish notice of its approval of the Texas program in the *Federal Register*. The *Federal Register* will indicate the actual date of approval, which should be 30 days after the date of publication in the *Federal Register*. EPA correctly noted that §70. 4(b)(3) requires that state statutes and regulations shall be fully effective by the time the program is approved. The Texas Health and Safety Code, Chapter 382 was amended during the 1993 Legislative Session by House Bill 2049. Section 28 of House Bill 2049 provides that the sections of Chapter 382 pertaining to federal operating permits shall take effect on the effective date of the bill, which was signed and became effective (with the exception of §25) on June 9, 1993. However, the Texas Health and Safety Code, §382.064, provides that applications for federal operating permits are not required to be submitted to the board before the approval of the Title V permitting program by the Administrator. In order to address the concerns of the regulated community, the staff initially proposed that the final rule becomes effective 30 days after the date of approval of the operating permit program by EPA. APTRA, §10(a)(3) provides that if a federal regulation requires that an agency implement a rule by a certain date, then the rule is effective on the prescribed date. In this instance, since §70.4(b)(3) requires that the regulation be effective upon date of program approval, the TACB cannot delay the effective date of the final rule. As such, the final rule will be effective 20 days after it is filed with the *Texas Register*, pursuant to APTRA, §10(a). Section 122.163(a) has been changed so that compliance with the requirements of the regulation will be required upon program approval by EPA.

As for the TCC's concerns regarding the possible failure of the TACB to publish notice of the effective date, it is not the intention of the staff to fail to publish such notice in the *Texas Register*. The purpose of this disclaimer is to put all potential applicants on notice that the effective date is the effective date, and the action or inaction of the TACB is of no consequence, especially since the approval date will be published in the *Federal Register*

The TCC commented that the word "already" in §122.164 makes no sense, and would potentially create unlawful restrictions on protection accorded by State law. The staff agrees that the proposed language in this section could arguably be interpreted to mean that any later laws regarding confidentiality would not apply to documents applicants believe to be confidential, consequently, the word "already" has been deleted from the final rule

One individual requested that the agency determine whether or not documents submitted as confidential are indeed entitled to confidential treatment. The Texas Health and Safety Code, §382.041 provides that members, employees, or agents of the board may not disclose information submitted to the board relating to secret processes or methods of manufacture or production that are identified as confidential when submitted. The agency maintains documents marked as confidential in closed files and notes in the public file that certain information is held confidential. In the event a request is received to view the documents, the agency is authorized by the Texas Open Records Act, Article 6252-17a, to request an opinion from the Texas Attorney General as to whether or not the documents meet any of the exceptions from disclosure provided for in that act. The Open Records Act, §7(c), states that in cases where a third party's privacy or property interests are implicated by a request for information, the governmental body may, but is not required, to submit its reasons as to why the information should or should not be withheld The agency has not made it a practice to submit such reasons as the agency is not in the best position to provide such reasons Section 382 040 provides that all information, documents, and data collected by the board in performing its duties are state property and subject to the limitations in §382.041 (and those of the Open Records Act), and that all records are open to the public during regular agency hours.

The TCC and TMOGA commented that the last sentence of §122 165 should be deleted because §122.211 already requires that the TACB be notified of any change regarding the responsible official. This section has been revised to reference §122 211 rather than repeat those requirements.

HL&P recommended revising §122.201(b) and §122 241(a) to mandate fixed terms for the federal operating permits. For two reasons, the staff believes that the final rules should retain the flexibility to renew the permits prior to the end of the five-year term. First, this allows a permittee the option of scheduling simultaneous NSR and federal operating permits reviews. Secondly, if in the future, the agency moves to a one permit system, then the permits would almost certainly be combined at a renewal Again, flexibility in scheduling the renewal review would be an advantage.

Chevron Production, TMOGA, and Marathon commented that §122 202 should require the TACB to notify all holders of a general permit if that permit is repealed or revised. The staff understands the commenters' concerns, however, the staff believes that the procedural requirements of rulemaking, including public notice will serve as adequate notice of the general permit's proposed revision or revocation and insures efficient use of resources

EPA commented that §122 202 should be changed to require renewal of the general permits every five years Pursuant to 40 CFR 70, the proposed rule provides for general permits to be promulgated through future rulemaking. Since state rules are not required to go through a renewal process, general permits are not required to go through renewal review

HL&P noted that the term "general permit" in §122.202 may also be used, with a different meaning, under other rules. HL&P recommended using a different term, such as "standard permit" or "general federal operating permit" to avoid any potential confusion. The staff shares the commenter's concerns over potential confusion in terminology. Statutory authority allows for the issuance of both standard permits and general permits. Since "general permits" is a federal term under Title V of the Act, the general permits will be issued only under this rule. If other permits by rule are issued pursuant to the NSR program, those permits will be identified as standard permits.

DuPont and Marathon recommended that §122.202 be rewritten to allow sources which qualify, to operate under a general permit without actually applying for the general permit. The federal rule, 40 CFR 70, requires that each source which qualifies for a general permit must apply for that general permit.

TCC recommended that §122.202(b) be revised to require that the terms of each general permit be set out as an appendix to the final rule, so that individuals from out-of-state can obtain a copy of the general permits by obtaining a copy of the published rule. The *Texas Register*, which publishes proposed and adopted rules issued by Texas state agencies, does not allow for publication of appendices or attachments to rules. The only acceptable method is to include the list of general permits within the rule itself. This is an option which may be considered in future rulemaking. The general permits have been incorporated by reference, similar to the way standard exemptions are incorporated into Regulation VI.

Marathon and TMOGA recommended that §122 202(d) specifically allow the use of general permits to incorporate, at a site, new applicable requirements which were not promulgated prior to issuance of the original permit As was discussed at the round- tables, the staff does envision the general permits serving this function and the proposed version of the rule did allow for such use. However, since the staff cannot envision every possible use of these permits, narrowly defining their use in the final rule will not be done.

TCC and TMOGA requested modifying §122 202(d) and (e) to remove the requirement that the general permit must be granted to each individual applicant. TCC commented that although under 40 CFR 70 the sources must apply for a general permit, it is not required that the state respond to each individual application. 40 CFR 70 clearly states that "To sources that qualify, the permitting authority shall grant the conditions and terms of the general permit." The proposed rule allows each general permit to specify whether such grant will be made for each individual general permit application or whether the general permit may specify a reasonable time period after which a source that has submitted an application will be deemed to be authorized to operate under the general permit.

TCC requested that §122.202(f) be revised to allow the general permit to remain in effect until its expiration date at the end of the five-year renewal cycle, regardless of any action

on the part of the agency revising or repealing the general permit. Since each general permit remains perpetually in effect until revision or repeal of the permit, this section will not be revised.

Exxon Chem and Exxon Baytown recommended, under §122.202(g), where the general permit has been revised or revoked, limiting enforcement action for operation without a permit to those periods of operation subsequent to the last possible application date or the date the permit is issued. The staff understands the commenters' concerns regarding enforcement during an interim period between revocation of an existing permit and the granting of a new general permit. Section 122.202(i) has been revised to address such interim periods and §122.2029(e) has been revised to clarify that the application shield will be in place for those applicants who make a timely and complete application.

EPA commented that §122.204 should clearly state that temporary sources which are in and of themselves major, must obtain a federal operating permit. The staff has revised the section to comply with EPA's comment.

IADC requested clarification in §122 204(c) as to which permit will not require revision: that of the temporary source or the site. The staff agrees that §122.204(c) should be clarified with regard to this comment. This section has been clarified to indicate that neither the status of the temporary source or the site is affected by a temporary source which remains at the site for six months or less.

IADC commented that the staff did not specify what effect a temporary source will have on the site's permit status if the temporary source remains longer than six months.

IADC cited potential costly delays in operations and suggested removing the implied requirement in §122 204(c) for a site permit revision for temporary sources which remain on-site longer than six months. The staff believes that a temporary source should be allowed to remain on site for a reasonably short period of time without affecting the permit status of the site. The staff defined a six-month period and believes that this is a more than reasonable length of time. Section 122.204(c) has been revised to clarify the requirement for a site permit revision for temporary sources which remain on site longer than six months. IADC commented that the staff's proposal in §122 204(d) to require the same application information from both permanent and temporary sources is unworkable because much of the information required under Subchapter B of the proposed rules is site- specific. The staff believes that the same applicability determinations required under §122.132 (Application and Required Information) apply to both types of sources. However, the staff understands the commmenter's concerns and believes that the application forms and the guidance document will more appropriately address the type of information the reviewing engineer might require.

IADC commented that the requirement in §122.204(f) to provide ten day's notice prior to moving a temporary source is, in some cases, impractical if not dangerous IADC cited emergency situations, for example, moving a rig on-site to drill a relief well at the site of a blowout. The staff agrees with the commenter and this section has been revised to allow a shorter notification in the event of an emergency.

EPA suggested that §§122.211-122 221 be rewritten in order to clarify the requirements. TCC suggested that due to the numerous varieties of permit revisions, the staff should provide examples of the types of changes contemplated by each. The staff has revised these sections to generally clarify the intent of the requirements The staff intends to provide examples of the different types of permit revisions in the guidance documents.

TCC and Exxon Chem commented that the proposed Regulation XII does not adequately address procedures to incorporate MACT determinations, made under the FCAAA, §112(g), into the proposed federal operating permits. TCC commented that case-by-case MACT determinations could be handled through the state's preconstruction permitting program and the resulting determination(s) incorporated into the operating permit by administrative amendment procedures. TCC stated that some changes to Regulation VI would be necessary to make the requirements of the §112(g) MACT determinations federally enforceable as well as revision of §122 221 of the proposed rules The staff agrees that the most appropriate method to administer §112(g) MACT determinations is through the state's existing preconstruction permitting program. However, the staff also believes the appropriate time to resolve this issue is after the §112(g) and §112(l) (Approval of State Programs and Delegation of Federal Authorities) rules are promulgated. TCC's recommendation to add language allowing administrative incorporation of case-by-case MACT determinations into Regulation XII (and, by reference, rulemaking to modify Regulation VI) is premature. The comment is outside the scope of this rule package. Appropriate rulemaking will be implemented to allow adoption of the §112(g) program after promulgation of the federal rules.

EPA commented that §122.211 must specify the types of changes which the staff will allow under administrative amendments. Section 122.211(a)(5) is identical to the language used in 40 CFR 70 for the same purpose. Since the staff cannot envision every possible change that might qualify under §112 221(5), the staff does not recommend narrowly defining its use in the final rule

An individual requested that §122 211(c) be rewritten to allow public input The commenter further requested that §122 211(f) be rewritten to allow input from local air pollution control agencies. The staff cannot address these comments since §122 211 does not contain either subsection (c) or (f). However, the staff believes that the proposed rules provide substantial opportunities for comment and input from both the general public and local air pollution control agencies, as appropriate.

EPA commented that §122 215(5) would allow, under permit additions, changes which involved reasonably available control technology, PSD, BACT, lowest achievable emission rate, §111, or any case-by-case determinations, with the exception of §112(g) or §112(j) determinations. The staff believes that the proposed rule is consistent with the intent of Congress, 40 CFR 70, the staff's understanding throughout the Title V federal roundtable discussions prior to the promulgation of 40 CFR 70, and EPA staff comments at Air and Waste Management Association workshops

EPA commented that §122.215(7) should specifically prohibit those changes which qualify as significant modifications from the permit addition procedures. The section, now identified as §122 215(c)(3), has been revised to comply with EPA's comment.

An individual requested that §122.217 (Permit Addition Procedures), §122.220 (Significant Permit Modification Application and Procedures), §122.221 (Operational Flexibility), and §122 233 (Permit Reopening Procedures) be rewritten to allow both local air pollution control agency input and a 30-day public comment period The proposed rules do not prohibit the review of the applications by the local air pollution control agencies. To determine the breadth and depth of the local programs' participation in the federal operating permit, the staff intends to hold discussions with the local programs to develop an agreement much like the implementation agreement with EPA The staff believes that such involvement should be addressed through agency policy and guidance documents rather than in the final rule In order to meet the provisions of 40 CFR 70, which require adequate, streamlined, and reasonable procedures for expeditiously processing permit revisions, the staff did not propose that changes qualifying as permit additions, similar to minor modifications in the federal rule, go through a public comment period. The staff believes that the changes which qualify as permit additions are either minor changes at the site, and as such should not require public comment, or involve operational changes which will require review under Regulation VI and a subsequent determination under that chapter as to whether public notice is appropriate for the change at the site. Therefore, the proposed changes to §122.217 will not be made Section 122.220 and §122.233 already required a 30-day public comment period 40 CFR 70 requires that the states' program allow for operational flexibility with only the procedural requirements listed in §122 221 Adding public notice for the changes which qualify under this section is prohibited by the federal rule

An individual requested that §122 217(b) be rewritten to allow 180 days rather than 90 days to complete action on a permit addition application. In order to meet the provisions of 40 CFR 70, which require adequate, streamlined, and reasonable procedures for expeditiously processing permit revisions, the 90-day review requirement has been retained

EPA commented that §122 219 does not require a permittee with a change qualifying as a significant permit modification to revise the permit prior to commencing operation of the equipment subject to the modification The staff finds no such requirement in 40 CFR 70. The staff believes that the only prohibition on

operation in the federal rule is in the case where a change is a Title I modification and the change is also prohibited by the existing permit terms and conditions. That prohibition was listed in §122.219 of the proposed rules.

An individual opposed allowing changes qualifying under §122.219 (Significant Permit Modifications) to be made prior to a 30-day public comment period and input from local air pollution control agencies. The staff believes that the federal operating permit program serves a significantly different, yet complimentary, function to that of the existing NSR program. The NSR program is designed to review applications to build or modify a facility. The purpose of that review is to insure that appropriate control technology will be used at the facility and that the proposed emissions will not adversely affect the health or safety of any citizen. The appropriate time for this review, and when required, the accompanying public comment period, is prior to construction or operation of the new or modified facility. The federal operating permits, on the other hand, are designed to codify all the applicable requirements at the site The best time for such a regulatory review is after the facility has been constructed and is in operation This is why, in both 40 CFR 70 and the proposed rule, the permit application review and the accompanying public comment period usually takes place after the operation commences.

DuPont, Marathon, Pennzoil, TCC, TMOGA and Natural recommended that the length of time required for prior notification under operational flexibility in §122.221 be changed from 30 days to seven days In supporting this position, Natural and TCC cited, as unacceptable, the additional delay involved in lengthening the minimum seven-day notification period required under 40 CFR 70. Marathon and TMOGA pointed out that the agency should react in a prompt manner to these notifications. This issue was discussed in great detail at the roundtables, and the staff understands the concerns of the commenters and the roundtable participants regarding their companies' ability to make changes. To at least partially address those concerns, the staff has revised §122 221(b) to allow the proposed operational changes at the expiration of the notification period, rather than allowing the permittee to make the proposed change, i.e., begin construction, at that time The staff will have sufficient time to review the written notification for applicability under this section, and the permittee will have the additional latitude to make physical changes at the site as necessary while waiting for the expiration of the notification period.

EPA requested that the staff add language, in §122 221, incorporating the federal terms "emissions allowable" and "502(b)(10) changes" to define those changes which qualify under operational flexibility. In order to promote a general understanding of the rule, the staff has attempted to present the requirements of the federal operating permit program as clearly as possible in the proposed rule. For this reason, the staff chose in the proposed rule to clearly define the changes allowed under §502(b)(10) rather than reference the federal section or terminology

An individual opposed limiting cause for reopening a permit to those defined in §122.231(a). The staff believes that it is in the best interest of both the general public and the regulated community to clearly state the conditions under which the permit must be reopened

Pennzoil commented that the requirement in §122.231(a) to reopen a permit when new requirements are adopted should base the three-year limit from the effective date of the new requirement, rather than the publication date. 40 CFR 70 directs that a reopening is triggered when additional applicable requirements become applicable to a Part 70 source. In the context of reopening, the staff believes that applicable requirements become applicable at the promulgation date The staff believes that the use of effective date in the final rule would result in much confusion over its meaning. Effective date could mean the proposal date, the promulgation date, or the compliance date of the new requirement. Section 122.231(a) has been revised to clarify that the trigger date for reopenings is the promulgation date.

Pennzoil commented that revision of the permit in §122 231(a)(1) should be limited to the addition of the new requirement The staff believes that the commenter's concern is addressed in §122 233(a)

EPA commented that §122 231(b) should clearly state that the board is required to terminate, modify, or revoke and reissue a permit for cause, as defined in that section The staff agrees that the federal rule requires the board to act on a permit when cause exists; therefore, §122 231(b) has been revised to comply with EPA's comment

EPA commented that §122 233 does not require the TACB to notify a permittee of its intent to reopen a permit as required in 40 CFR 70 The staff agrees that the final rule must notify the permittee of intent to reopen Section 122 233(b) has been added to comply with EPA's comment

HL&P requested clarification on the intent of §122 241(f), regarding the combination of multiple federal operating permits at a site into a single permit Under §122 201(d), the proposed rule allows the issuance of more than one federal operating permit at a site The staff envisions that large chemical and refinery sites may have several operating permits as well as a number of general permits at a single site Section 122 241(f) simply allows any or all of those permits, particularly the general permits, to be combined at the renewal of the operating permits

EPA commented that §122 310 failed to require the TACB to provide EPA with a copy of the application It is the intention of the staff to require applicants to provide copies of any applications to the EPA The proposed rules require this under §122.132(d)

TCC recommended, in §122 311(c), deleting the reference to "public or affected state" review and simply mentioning the affected state review period The staff agrees that this is an appropriate change and "public or" in §122 311(c) has been deleted. Section 122 311 addresses affected state reviews and not the general public review Section 122.316(2)(F) and (G) detail the procedures the Board must follow regarding public comments received during the public comment period as well as during any hearing

EPA commented that the reference to "significant" permit modification should be deleted from §122 311(a) It is the staff's understanding that EPA's intent is to ensure that every draft permit is submitted to the affected state. To accomplish this end, the staff has revised §122 311(a) to refer to permit revisions rather than significant permit modifications.

TCC suggested clarifying language be added to §122.312(a) that makes it clear that, in the absence of an objection by EPA, and after EPA's 45 day review period, the TACB shall issue the proposed permit as the final permit The staff agrees with the intent of the clarifying comments made by the TCC. The proposed rule requires the board or its designee to take final action on applications for operating permits within 18 months of receipt of a complete permit application In the proposed rule this requirement shall be met by the issuance or denial of the permit which follows the expiration of the EPA 45 day review period. After issuance, unless EPA objects to the issuance of the permit, the permit is final for the purpose of meeting the 18-month deadline as well as for triggering the time period to seek a judicial appeal pursuant the Texas Health and Safety Code, §382 032 Section 122 201(c) has been revised to clarify final action by the Board

The TCC proposed clarifying language to §122 314(a) similar to that suggested in §122.312 regarding the expiration of the EPA 45-day review period and the finality of the permit. TCC also recommended changes to §122. 314(b) regarding the effect of a citizen petition on the effectiveness or finality of a permit issued by the TACB after the expiration of the EPA 45-day review period The staff agrees with TCC's suggested language and §122 314(c) has been added to address this concern After the expiration of the EPA 45-day review period, the proposed permit shall be issued and considered final for state purposes Not only is the permit then final for purposes of judicial appeals brought pursuant to the Texas Health and Safety Code, §382 032, but also final with regard to final action by the state This determination provides a bright line that serves to indicate when the permit is final, when the state has taken final action, and when the citizen petition period begins

An individual stated that the 45-day EPA review period specified in §122 312(a) is not enough time to review a proposed permit 40 CFR 70 requires EPA to object to the issuance of any proposed permit within 45 days of the receipt of the proposed permit Section 122 312(a) tracks the requirements of the federal rule

An individual stated that "any person affected by a decision" of the Board or its designee in §122 314(a) needs to be defined This same individual commented that the phrase "with reasonable specificity" be deleted from §122 314(c) and that "impracticable" as used in that same subsection, be defined The staff believes that the phrase "any person affected

by a decision" is not in need of a special definition as the words are intended to mean just what they say: that any person who is affected by a decision of the Board or its designee may file a citizen review petition with the EPA. Likewise, the staff does not see a need to define "impracticable" nor is it necessary to delete the phrase "with reasonable specificity." Section 122.314(c) is intended to provide petitioners with the ability to petition EPA if the EPA fails to object to the issuance of an operating permit.

An individual stated that a facility should not be allowed to operate if EPA files an objection with the TACB as a result of a citizen petition 40 CFR §70.8(d) provides that if the EPA objects and the permit has been issued, the permit is effective There is no requirement that calls for a cessation of operation in the event that an EPA objection is received. However, the procedural requirements to revoke a permit, i.e., the site authority to operate, are clearly laid out in the proposed rule.

EPA commented that §122 316(1)(A) references "federal source," and requested that this phrase be defined. Rather than adding another definition to the final rule, the references to federal source have been deleted and a description of such sources substituted.

TCC and HL&P commented that a reference was needed to link §122.316 back to §122.155(b) regarding the 30-day time period during which a hearing may be requested. The staff agrees with the comments of the TCC and HL&P and a sentence has been added to the first paragraph of §122.316 to incorporate this suggestion.

TCC suggested that language be added to §122.316(1)(A) that would require persons who request a hearing on an operating permit to provide, at the time of the hearing request, a written statement of interest and a basis for challenging the operating permit application The staff believes it is not appropriate to require persons requesting a hearing to submit the information suggested by the TCC in the actual hearing request. This change would go beyond the scope of the proposed rule because it would require a new procedure to be added to how a hearing is requested and it is inconsistent, with regard to timing, with TACB Procedural Rule §103.33(b).

TCC commented that the provisions of §122.316(2)(C) have the potential to allow for hearing requests to be made after the period during which one may be requested Exxon Chem noted that the hearings examiner's ability to extend the comment period should be limited and HL&P suggested that the comment period not be allowed to extend beyond the initial 30 days provided for in the public notice. The staff opposes making the change suggested by Exxon Chem and HL&P. The staff disagrees that allowing public comment to be submitted until the close of any public hearing will unnecessarily delay the permit process. If a hearing is requested, the staff is required to provide 30 day's advance notice of such hearing. Allowing public comment to be submitted during this 30-day period or at the public hearing will not unduly interfere with the process. The staff does not believe that it is necessary to limit a hearing examiner's discretion to extend the public comment period during any hearing. If this were to become an issue during a hearing, the parties would be able to present arguments regarding an appropriate deadline. The TCC's suggested changes make it clear that even though the public comment period is automatically extended to the close of any public hearing, the opportunity to request a public hearing is limited to that time specified in the publication of the notice of the permit application as required by §122.155. A reference in §122.155(b) has been added to reflect the change

An individual commented that "may be affected" in §122.316(1)(A), "unreasonable" and "reasonable" in paragraph (1)(B), "reasonable" in paragraph (2)(C), and "reasonably ascertainable" and "reasonably available" in paragraph (2)(E) should be defined The commenter also noted that subparagraph (F) should require the TACB to provide copies of the response to comments to the public or individuals who request to be notified of such information The staff has not defined what an "affected person" is for the purposes of hearing requests, for either Regulation VI hearings or for operating permits The preference in these matters is to review the facts of each request on a case-by-case basis in order to determine whether the person is affected by emissions or if the request is a reasonable request as allowed by the Texas Health and Safety Code, §382 0561(c) The staff does not believe that there is a need to specifically define the terms cited by the commenter. These terms are intended to provide for flexibility in the hearing process In response to the comment to place a two-week response limit on the board to respond to a hearing request, the staff does not believe that it is necessary to place a time limit on the actions of the Board or its designee regarding notification of persons who have requested a hearing Operating permits are required to be issued by the Board within 18 months of the receipt of a complete permit application Due to the procedures required by the hearing process for answering comments and notifying affected states and EPA, the staff does not believe that there is any potential for a significant delay in responding to those persons who request a hearing In response to the comment regarding subparagraph (F), the staff points out that §122 155(c) provides that the TACB will provide notice of its proposed final action to any person who commented during the public comment period or during any hearing and to the applicant For clarification purposes, the staff proposes to add language to subparagraph (F) to make it clear that the staff will respond to comments and will provide copies of the response to individuals who participate in a particular hearing

EPA stated that Regulation XII does not include the exemption provisions allowed for by 40 CFR §72.7 and 40 CFR §72 8 EPA also stated that the proposed rule do not clearly state the type of units subject to the Acid Rain Program The intent of the rules was to incorporate by reference all provisions of 40 CFR 72. Language has been added to §122.411(b) to specifically incorporate 40 CFR 72 by reference

EPA commented that §122.410 addresses Standard Acid Rain Requirements, but it does not clearly state that both the Acid Rain Permit and the Acid Rain permit application need to include the standard requirements. The intent of the proposed rule was to incorporate all of the requirements of the Acid Rain Rules, including the requirements expressed in EPA's comment. The rule incorporates by reference all provisions of 40 CFR 72; however, the staff recommends that additional language be added to §122.411 to clarify the incorporation by reference of the Acid Rain Rules

EPA commented that §122.411(b) states that if the Acid Rain Rules are in conflict "with other requirements of this chapter" then the Acid Rain Rules shall take precedence. This could be interpreted as incorporating by reference any provisions of the federal rule that are not specifically included in the proposed rule. The staff intended that, under the language in the rule, the Acid Rain Rules shall take precedence over the requirements of the rule. In order to clarify this intent, language has been added to §122.411 to incorporate by reference all provisions of 40 CFR 72.

EPA commented that §122.421 requires the designated representative whose units become subject to the Acid Rain rules to file an application no later than 12 months after the affected unit becomes subject to the federal operating permit program EPA stated that this appears to contradict 40 CFR §72.30(b), which requires a source with an affected unit to submit a complete application at least 24 months before the later of January 1, 2000, or the date on which the unit commences operation. Section 122.421(b) has been reworded to clarify the language.

EPA stated that §122 425 did not include many of the compliance plan provisions required under 40 CFR §72.40. The staff intended to incorporate by reference all provisions of 40 CFR 72 and language has been added to §122. 411 to address this comment

SPSC suggested that the availability of an annual 30-day true-up period for allowances should be clarified in §122.411 Section 122 411 has been revised to eliminate any uncertainty regarding this matter

TCC suggested changes to §122.430 with regard to adding the term "sulfur dioxide" when addressing allowances. The definition of allowance under §122 12 makes it clear that an allowance is specifically related to sulfur dioxide emissions at the rate of one allowance per one ton of sulfur dioxide emissions

EPA commented that §122.432 does not clearly state that a permit will not be issued unless the designated representative submits a certificate of representation. EPA further stated that each submission by a designated representative must also meet certification requirements The incorporation of 40 CFR 72 by reference in §122 411 has been added and should eliminate any confusion with this comment

HL&P suggested a minor revision in §122 435(b) Section 122.435(b) has been revised to replace "duration" with "term."

EPA commented that §122.435 does not clearly state that §122.215, §122.217, and §122.221 (concerning permit additions and operational flexibility) do not apply to Acid Rain permits. Section 122.435(a) has been clarified to comply with this request.

EPA commented that 40 CFR §72.82 allows for fast-track modification, which is another permit revision option the designated representative is allowed under 40 CFR 72. Section 122.437(b) has been added to allow for the fast-track modification procedure as contained in 40 CFR 72.

An individual commented that §122.437 does not provide for a 30-day public comment period. Section 122.411(a) of the proposed rules specifies that, unless specifically noted otherwise, all affected sources shall comply with the requirements of the final rule for permit issuance, revision, reopening, and renewal including any such requirements for application, public participation, review by affected states, and review by EPA. The public notice requirements of the proposed rule requires a 30-day public comment period. Any exceptions noted in the acid rain section are required by 40 CFR 72.

TCC recommended that §122.440(c) regarding judicial appeal be deleted from the final rule. TCC commented that this section is redundant with the Health and Safety Code, §382.032. The staff agrees with the commenter and §122.440(c) has been removed from the final rule.

EPA commented that §122.440 addresses the limitation on time for filing a judicial appeal, but further states that the Federal Acid Rain Rules limit the administrative appeal period to 90 days or less after issuance of the Acid Rain portion of the permit. The commenter suggested that the language of this section be clarified. The proposed rule did not provide for an administrative appeal to the Board regarding actions taken concerning operating permits. This restriction in no way impacts on the federal appeals process for acid rain permits.

Subchapter A. Definitions

• 31 TAC §§122.10-122.12

The new rules are adopted under the Texas Health and Safety Code (Vernon 1990), Texas Clean Air Act (TCAA), §7382.017, which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§122.10. General Definitions. Unless specifically defined in the Texas Clean Air Act (TCAA or the Act) or in the rules of the Texas Air Control Board (TACB), the terms used by the TACB have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, and in §101.1 of this title, (relating to the General Rules), the following terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Act–The Federal Clean Air Act, as amended, 42 United States Code 7401, et seq.

Affected states–May be New Mexico, Oklahoma, Kansas, Colorado, Arkansas, or Louisiana if either of the following criteria are met:

(A) that State's air quality may be affected by the issuance of a federal operating permit, permit revision, or permit renewal; or

(B) that State is within 50 miles of the site or proposed site.

Air Pollutant–For purposes of this chapter, any of the following regulated air pollutants:

(A) nitrogen oxides;

(B) volatile organic compounds;

(C) any pollutant for which a National Ambient Air Quality Standard has been promulgated;

(D) any pollutant that is subject to any standard promulgated under the Act, §111;

(E) unless otherwise specified by the Administrator by rule, any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act; or

(F) any pollutant listed in the Act, §112(b) or §112(r) and subject to a standard promulgated under the Act, §112.

Applicable requirement–All of the following as they apply to the emission units at a site (including requirements that have been promulgated or approved by the United States Environmental Protection Agency (EPA) through rulemaking at the time of issuance of the permit but have future-effective compliance dates):

(A) any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 Code of Federal Regulations (CFR) 52. For purposes of the Federal Operating Permit Program, Chapters 111-115, and 117-119 of this title (relating to Control of Air Pollution From Visible Emissions and Particulate Matter; Control of Air Pollution From Sulfur Compounds, Control of Air Pollution From Toxic Materials; Control of Air Pollution From Motor Vehicles; Control of Air Pollution From Volatile Organic Compounds; Control of Air Pollution From Nitrogen Compounds; and Control of Air Pollution from Carbon Monoxide) are the only state standards that implement relevant requirements of Title I of the Act;

(B) any term or condition of any preconstruction permits issued pursuant to the undesignated headings of Chapter 116 of this title (relating to Prevention of Significant Deterioration or Nonattainment Review) as necessary to implement the requirements of regulations approved or promulgated through rulemaking under Part C (Prevention of Significant Deterioration) or Part D (Nonattainment) of Title I of the Act;

(C) any standard or other requirement under the Act, §111, relating to New Source Performance Standards (NSPS), including §111(d);

(D) any standard or other requirement under the Act, §112, relating to Hazardous Air Pollutants (HAPS), including any requirement concerning accident prevention under the Act, §112(r)(7);

(E) any standard or other requirement of the acid rain provisions of the Act or the acid rain rules;

(F) any requirements established pursuant to the Act, §504(b) or §114(a)(3), regarding Monitoring, Enhanced Monitoring, and Compliance Certification;

(G) any standard or other requirement governing solid waste incineration, under the Act, §129 (NSPS);

(H) any standard or other requirement for consumer and commercial products, under the Act, §183(e) (Federal Ozone Measures);

(I) any standard or other requirement for tank vessels, under the Act, §183(f), (Tank Vessel Standards);

(J) any standard or other requirement of the program to control air pollution from outer continental shelf sources, under the Act, §328;

(K) any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless EPA has determined that such requirements need not be contained in a federal operating permit; and

(L) any National Ambient Air Quality Standard or increment or visibility requirement under Part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to the Act, §504(e). Except as noted in this subparagraph, ambient air quality standards, net ground level concentration limits, or ambient atmospheric concentration limits, either state or federal, are not applicable requirements under this chapter.

Deviation–Any condition that indicates that an emissions unit has failed to meet an emission limitation or standard imposed by an applicable requirement. If parameter monitoring is used, a period of indeterminate compliance that may occur shall not necessarily be considered a deviation.

Draft permit–The version of a federal operating permit available for purposes of public notice and affected state review under Subchapter B of this chapter (relating to Public Notification and Comment Procedures).

Emission allowable under the permit–A federally enforceable permit term or condition determined at issuance to be required by an applicable requirement, that establishes an emissions limit (including a work practice standard) in the form of the applicable requirement or a federally enforceable emissions cap that the owner or operator of a site has assumed to avoid an applicable requirement to which the site would otherwise be subject.

Emission unit–The smallest discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a point of origin of air pollutants as defined in this Section. A point of origin of fugitive emissions from individual pieces of equipment, e.g., valves, flanges, pumps, and compressors, shall not be considered an individual emission unit. Such fugitive emissions shall be collectively considered as an emission unit based on their relationship to the associated process and those emissions shall be included in the permit application. This term is not meant to alter or affect the definition of the term "unit" for purposes of the acid rain provisions of the Act.

United States Environmental Protection Agency (EPA) or Administrator–The Administrator of the EPA or his designee.

Final action–Issuance or denial of the proposed permit by the board or its designee after the EPA review period as provided in Subchapter D of this chapter (relating to Affected State Review, U.S. Environmental Protection Agency Review, and Citizen Petition).

Fugitive emissions–Those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

General permit–A federal operating permit that meets the requirements of §122.202 of this title (relating to General Permits)

Major source–Any site which emits or has the potential to emit air pollutants as described in subparagraphs (A), (B), or (C) of this definition.

(A) Any site which, in whole or part, is a major source under the Act, §112, which is defined as:

(i) for pollutants other than radionuclides, any site that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any single hazardous air pollutant which has been listed pursuant to the Act, §112(b), 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule; or

(ii) for radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

(B) Any site which directly emits or has the potential to emit, 100 tpy or more of any air pollutant (including any major source of fugitive emissions of any such pollutant, as determined by rule by the United States Environmental Protection Agency). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major source, unless the stationary source belongs to one of the following categories of stationary sources:

(i) coal cleaning plants (with thermal dryers);

(ii) kraft pulp mills;

(iii) portland cement plants;

(iv) primary zinc smelters;

(v) iron and steel mills,

(vi) primary aluminum ore reduction plants;

(vii) primary copper smelters;

(viii) municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) hydrofluoric, sulfuric, or nitric acid plants,

(x) petroleum refineries;

(xi) lime plants;

(xii) phosphate rock processing plants;

(xiii) coke oven batteries,

(xiv) sulfur recovery plants;

(xv) carbon black plants (furnace process);

(xvi) primary lead smelters;

(xvii) fuel conversion plant;

(xviii) sintering plants;

(xix) secondary metal production plants;

(xx) chemical process plants;

(xxi) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units (BTU) per hour heat input;

(xxii) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) taconite ore processing plants;

(xxiv) glass fiber processing plants;

(xxv) charcoal production plants;

(xxvi) fossil-fuel-fired steam electric plants of more than 250 million Btu per hour heat input; or

(xxvii) any other stationary source category which as of August 7, 1980, is being regulated under the Act, §111 or §112

(C) Any site which, in whole or in part, is a major source under Part D of Title I of the Act, including:

(i) any site with the potential to emit volatile organic compounds (VOC) or oxides of nitrogen in a quantity of 100 tpy or more in Collin, Dallas, Denton, or Tarrant Counties, or in any other ozone nonattainment area classified as "marginal or moderate;" 50 tpy or more in El Paso, Hardin, Jefferson, or Orange Counties, or in any other ozone nonattainment area classified as "serious;" 25 tpy or more in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, or Waller Counties, or in any other ozone nonattainment area classified as "severe;" and 10 tpy or more in any ozone nonattainment area classified as "extreme;"

(ii) for Victoria County, sites with the potential to emit 100 tpy or more of VOC;

(iii) for the carbon monoxide nonattainment area in El Paso County, sites with the potential to emit 100 tpy or more of carbon monoxide;

(iv) for the City of El Paso, sites with the potential to emit 100 tpy or more of inhalable particulate matter (PM-10);

(v) for the lead nonattainment area in Collin County, sites with the potential to emit 100 tpy or more of lead.

(D) The fugitive exclusions which apply to subparagraph (B) of this definition shall also apply under subparagraph (C).

(E) Notwithstanding the preceding source categories, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources under subparagraph (A) of this definition and, in the case of any oil or gas exploration or production well (with its associated equipment), such emissions shall not be aggregated for any purpose under subparagraph (A).

Permit or federal operating permit–Any federal operating permit or group of federal operating permits covering a site that is issued, renewed, amended, or revised pursuant to this chapter, or general permit or group of general permits promulgated or granted pursuant to this chapter

Permit Application–An application for a federal operating permit, permit revision, permit renewal, permit reopening, and any other such application as may be required.

Permit revision–Any permit addition, significant modification, or administrative permit amendment that meets the related requirements of Subchapter C of this chapter (relating to Permit Issuances, Revisions, Reopenings, and Renewals).

Potential to emit–The maximum capacity of a stationary source to emit any air pollutant under its physical and operational design or configuration. Any certified registration or preconstruction authorization restricting emissions or any physical or operational limitation on the capacity of a stationary source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in acid rain provisions of the Act or the acid rain rules.

Preconstruction authorization–Any authorization to construct or modify an existing facility or facilities under Chapter 116 of this title (relating to Control of Air Pollution by Permits For New Construction or Modification). In this chapter, references to preconstruction authorization under Chapter 116 of this title also include, where appropriate, preconstruction authorization under Chapter 120 of this title (relating to Control of Air Pollution from Hazardous Waste or Solid Waste Management Facilities) or Chapter 121 of this title (relating to Control of Air Pollution from Municipal Solid Waste Management Facilities).

Proposed permit–The version of a federal operating permit that the Texas Air Control Board (TACB) forwards to United States Environmental Protection Agency for a 45-day review period in compliance with Subchapter D of this chapter (relating to Affected State Review, United States Environmental Protection Agency Review, and Citizen Petition).

Relevant emission unit–Those emission units having one or more applicable requirements as defined in this chapter.

Renewal–The process by which a federal operating permit is reissued at the end of its term

Responsible official–One of the following:

(A) for a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a federal operating permit and either

(i) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) the delegation of authority to such representative is approved in advance by the TACB;

(B) for a partnership or sole proprietorship a general partner or the proprietor, respectively,

(C) for a municipality, state, federal, or other public agency, either a principal executive officer or ranking elected official. For the purposes of this chapter, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e g , a Regional Administrator of the United States Environmental Protection Agency), or

(D) for affected sources.

(i) the designated representative insofar as actions, standards, requirements, or prohibitions under the acid rain provisions of the Act or the acid rain rules are concerned, and

(ii) the designated representative for any other purposes under this chapter.

Significant permit modification–A revision to a federal operating permit that meets the requirements of §122.219 of this title (relating to Significant Permit Modifications).

Site–The total of all stationary sources located on one or more contiguous or adjacent properties, which are under common control of the same person (or persons under common control). Research and development operations shall be treated as a separate site from any manufacturing facility with which they are co-located. A site may contain multiple relevant emission units and grandfathered emission units

State only requirement–A requirement which is not federally enforceable under this chapter or is not an applicable requirement under this chapter.

Stationary source–Any building, structure, facility, or installation that emits or may emit any air pollutant.

Title I modification–Changes at a site that qualify as a modification under Title I of the Act, §111 (New Source Performance Standards) or Title I of the Act, §112(g), or as a major modification under Part C (Prevention of Significant Deterioration) or Part D (Nonattainment Review) of Title I of the Act.

§122.11. Grandfather Definitions for State Only Requirements. The following words and terms, when used in this section shall have the following meanings, unless the context clearly indicates otherwise.

Actual grandfather emission unit (definition used for state only requirement)–An emission unit for which construction or operation started prior to September 1, 1971, and at which either no modification has occurred since September 1, 1971 and, therefore, for which no authorization has been required under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification); or modifications have been authorized only pursuant to a standard exemption under Chapter 116 of this title. Those emission units which started construction between September 1, 1971 and March 1, 1972, and which registered in accordance with Texas Health and Safety Code, §382.060, as that section existed prior to September 1, 1991, are also considered grandfathered units.

Actual grandfather rate (definition used for state only requirement)–The maximum annual emission rate at which the emission unit actually operated and emitted prior to September 1, 1971, for 12 consecutive months, including any increases authorized by standard exemption under Chapter 116 of this title. A grandfather rate shall not be established which violates any emission

limitation or standard required under any chapter of this title.

Presumptive grandfather emission unit (definition for state only requirement)-An emission unit or method of operation for which construction or operation started prior to March 1, 1972, unless the total annual maximum emission rate or operational limits that are related to the annual emissions (e.g., production, fuel firing, throughput, sulfur content, operating hours, etc., as appropriate) for the emission unit are established in a permit, special permit, or special or standard exemption issued pursuant to Chapter 116 of this title.

Presumptive grandfather rate (definition used for state only requirement)-The maximum annual emission rate or data that are related to emissions (e.g., production, fuel firing, throughput, sulfur content, etc., as appropriate) which are selected to reasonably approximate the actual grandfather rate based upon a review of actual historical operations using the procedure outlined in §122.132(a)(5) of this title (relating to Application and Required Information). A grandfather rate shall not be established which violates any emission limitation or standard required under any chapter of this title.

§122.12. Acid Rain Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

Acid rain compliance option-One of the methods of compliance used by an affected unit as described in a compliance plan submitted and approved in accordance with the acid rain rules or the Act, §407.

Acid rain permit-The legally binding portion of the federal operating permit issued by the Texas Air Control Board (TACB) under this chapter including any permit revisions, specifying the acid rain requirements applicable to an affected source, to each affected unit at an affected source, and to the owners and operators and the designated representative of the affected source or the affected unit.

Acid rain rules-The regulations promulgated pursuant to the acid rain provisions of the Act contained in 40 CFR Part 72, et al.

Actual grandfather rate (definition used for state only requirement)-For affected units, auxiliary support systems for affected units, simple combustion turbines, and units which serve a generator with a nameplate capacity of 25 megawatt or less, the actual grandfather rate for actual grandfather emission units shall be the maximum annual emission rate or data related to emissions (e.g., fuel firing, sulfur content, etc., as appropriate) at the documented Maximum Continuous Rating, on a continuous operating basis, of generating units used to meet or to prepare to meet requirements of the electric power grid. Each actual grandfather emission unit that is an affected unit shall be operated in compliance with applicable provisions of the Acid Rain Rules, as defined in this section, including any emission allowance limitations.

Affected source-A site that includes one or more affected units.

Affected unit-A unit that is subject to emission reduction requirements or limitations under the acid rain rules.

Allowance-An authorization, under the acid rain rules, by the United States Environmental Protection Agency to emit up to one ton of sulfur dioxide during or after a specified calendar year.

CEM and COM-Abbreviations for continuous emission monitor(s) and a continuous opacity monitor(s), respectively.

Certificate of representation-The completed and signed submission required by the acid rain rules, for certifying the appointment of a designated representative for an affected source or a group of identified affected sources authorized to represent the owners and operators of such source(s) and of the affected units at such source(s) with regard to matters of the acid rain requirements.

Designated representative-The responsible individual authorized by the owners and operators of an affected source and of all affected units at the site, as evidenced by a certificate of representation submitted in accordance with the acid rain rules, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain requirements. Such matters include, but are not limited to: the holdings, transfers, or dispositions of allowances allocated to a unit; and the submission of or compliance with acid rain permits, permit applications, compliance plans, emission monitoring plans, continuous emissions monitor (CEM), and continuous opacity monitor (COM) certification notifications, CEM and COM certification and applications, quarterly monitoring and emission reports, and annual compliance certifications. Whenever the term "responsible official" is used in this chapter, it shall refer to the "designated representative" with regard to all matters under the acid rain requirements.

Maximum continuous rating-The heat input required to attain the maximum documented steam conditions or to achieve the maximum documented electrical output.

Unit-For the purposes of the acid rain provisions of the Act, a fossil-fuel fired combustion device

Upgraded units-An affected unit that did not serve a generator with a nameplate capacity greater than 25 megawatts on November 15, 1990, but serves such a generator after November 15, 1990.

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-9327949 Cyril Durrenberger
Acting 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 B. Permit Requirements

Applicability

• 31 TAC §§122.120, §122.122

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

§122.120. Applicability. The owner or operator of a site shall submit an application(s) to the Texas Air Control Board (TACB) for a federal operating permit under the requirements of this chapter if the site has one or more of the following:

(1) any major source as defined in §122.10 of this title (relating to General Definitions);

(2) any affected source as defined in §122.12 of this title (relating to Acid Rain Definitions);

(3) any solid waste incineration unit required to obtain a federal operating permit pursuant to the Act, §129(e) of Title I;

(4) any non-major source which the U.S. Environmental Protection Agency, through further rulemaking, has designated as no longer exempt from the obligation to obtain a federal operating permit. For the purposes of this section, non-major source shall be defined as:

(A) any source, including an area source, subject to a standard, limitation, or other requirement under the Act, §111 (NSPS);

(B) any source, including an area source, subject to a standard or other requirement under the Act, §112 (Hazardous Air Pollutants), except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under the Act, §112(r) (Prevention of Accidental Releases); or

(C) any source in a source category designated by the Administrator pursuant to Title III of the Act.

§122.122. Potential to Emit.

(a) For purposes of determining applicability of the Federal Operating Permit program under this chapter, the owner or operator of stationary sources without any other federally enforceable emission rate may limit their sources' potential to emit by maintaining a certified registration of emissions, which shall be federally enforceable. Emission rates in permits, standard exemptions, other preconstruction authorizations, and registrations of emissions provided for under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construciton or Modification) are also federally enforceable emission rates.

(b) All representations in any registration of emissions under this section with regard to emissions shall become conditions upon which the stationary source shall operate. It shall be unlawful for any person to vary from such representation unless the registration is first revised.

(c) The registration of emissions shall include documentation of the basis of emission rates and a certification, in accordance with §122.165 of this title (relating to Certification by a Responsible Official), that the maximum emission rates listed on the registration reflect the reasonably anticipated maximums for operation of the stationary source.

(d) In order to qualify for registrations of emissions under this section, the maximum emission rates listed in the registration must be less than those rates defined for a major source in §122.10 of this title (relating to General Definitions).

(e) The certified registrations of emissions and records demonstrating compliance with such registration shall be maintained on-site, or at an accessible designated location, and shall be provided, upon request, during regular business hours to representatives of the Texas Air Control Board or any air pollution control agency having jurisdiction.

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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Permit Application

• 31 TAC §§122.130, 122.132-122.134, 122.136, 122.138, 122. 139

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

§122.130. Responsibility to Apply.

(a) General requirement. After the effective date of this chapter, the owner or operator shall submit to the Texas Air Control Board (TACB) a timely and complete permit application for each site subject to the requirements of this chapter and in accordance with this section.

(b) Interim program. The following sites are subject to the interim federal operating permit program and as such, the owners or operators of these sites shall submit initial permit applications according to the application submittal schedule for the Interim Program.

(1) any site with an affected source as defined in §122.12 of this title (relating to Acid Rain Definitions);

(2) any site whose primary Standard Industrial Classification (SIC) code (as described in the **Standard Industrial Classification Manual**, 1987) is one of the following (for purposes of this subsection, each site shall have only one primary SIC code):

(A) Petroleum and Natural Gas, 1311;

(B) Natural Gas Liquids, 1321;

(C) Electric Services, 4911;

(D) Natural Gas Transmission, 4922;

(E) Natural Gas Transmission and Distribution, 4923; or

(F) Petroleum Bulk Stations and Terminals, 5171.

(c) Application submittal schedule for the interim program.

(1) No later than six months after the effective date of the interim federal operating permit program, the designated representative of each affected source shall submit a permit application for at least the affected units at the site. Regardless of the effective date of the program and the requirement to file a permit application defined in this section, applications for initial Phase II acid rain permits shall be submitted to the TACB no later than January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides pursuant to the Act, §407. This subsection shall not apply to affected sources that elect to become affected pursuant to the Act, §410.

(2) No later than six months after the effective date of the interim federal operating permit program, the owner or operator of any site listed in subsection (b)(2) of this section shall submit a permit application, except that if any owner or operator has more than one site listed in subsection (b) (2) of this section, then the owner or operator shall submit permit applications for no less than 10% of such sites.

(3) No later than 12 months after the effective date of the interim federal operating permit program, the owner or operator shall submit an initial permit application for those remaining site(s) listed in subsection (b)(2) of this section which did not submit an application pursuant to subsection (c)(2) of this section.

(d) Application submittal schedule after full program approval. All sites, other than those identified in subsection (b) of this section, which satisfy the criteria of §122.120 of this title (relating to Applicability), shall be subject to the fully approved federal operating permit program and shall submit initial permit applications no later than 12 months after the effective date of the fully approved federal operating permit program.

(e) Owners or operators of sites that become subject to this chapter after the effective date of either the interim or full program shall submit permit applications no later than 12 months after the issuance or approval date of the preconstruction authorization required under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

§122.132 Application and Required Information.

(a) A permit application shall include any information, including confidential information, deemed necessary by the Texas Air Control Board (TACB) to determine the applicability of, or to codify any applicable requirement, except that applications for a general permit shall only be required to provide the information necessary to determine qualification for, and to assure compliance with, the general permit. The federal operating permit application shall include, but is not limited to, a General Application Form for Federal Operating Permit, all information requested by that form, and the information described as follows.

(1) for each emission unit, or group of similar emission units:

(A) information identifying each applicable requirement, any corresponding emission limitation, and any corresponding monitoring, reporting, and recordkeeping requirements;

(B) information identifying potentially applicable requirements for that particular type of emission unit and the basis for the determination that those applicable requirements do not apply;

(2) a proposed monitoring, testing, recordkeeping, and reporting protocol for each relevant emission unit at the site;

(3) information as requested by the nationally standardized forms for acid rain portions of permit applications and compliance plans, as required by the acid rain rules;

(4) a statement certifying that a risk management plan, if applicable, or a schedule to submit such plan has been submitted in accordance with the Act, §112(r)(7),

(5) (state-only requirement) the following identifications on the application.

(A) Each grandfather unit at the site shall be identified as a presumptive grandfather unit or an actual grandfather unit, regardless of whether or not that unit is a relevant emission unit.

(B) Each emission unit that would be a presumptive grandfather except for the fact that the total annual maximum emission rate or operational limits that are related to the annual emissions (e.g., production, fuel firing, throughput, sulfur content, operating hours, etc., as appropriate) for the emission unit are established in a permit, special permit, or special or standard exemption issued pursuant to Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

(i) For each emission unit, the application shall identify the total annual maximum emission rate or operational limits that were previously defined and documented, and the permit, special permit, or special or standard exemption number in which this information was established and any documentation or basis for that determination.

(ii) If, during the permit application review, the TACB determines that such emission rates or operational limits that were defined or documented do not reflect actual grandfather rates, then the applicant must supply the information required in subparagraphs (C) or (D) of this paragraph to establish the presumptive grandfather rate.

(C) The application shall provide information to define and document the presumptive grandfather rate for each unit defined in subparagraph (A) of this paragraph at the site Information provided in this section to define and document the presumptive grandfather rate shall include available data related to emissions prior to January 1, 1994 as follows.

(i) The documentation of the presumptive grandfather emission rate shall be based on the best available of data on the emission rate, equipment configuration, and other emissions-related data during the seven-year period prior to January 1, 1994 which best reflect the presumptive grandfather rate.

(ii) The best available data would be the average of 24 consecutive months of emissions data or data that can be related to emissions (such as production rate, fuel firing, throughput, sulfur content, etc.) during the seven-year period referenced in clause (i) of this subparagraph Less than 24 consecutive months of data may be used, upon approval by the TACB during the permit application review, if it is more representative of the range of operations which could be reasonably expected from the existing equipment configuration.

(iii) Any other method proposed by the applicant during the permit application review and that the Executive Director approves as representative of the operations and resulting emissions which may reasonably have occurred prior to 1971 may be used to define the presumptive grandfather rate.

(D) In any event, the actual grandfather rate for the emission unit shall be established if the applicant provides 12 consecutive months of emissions or emissions-related data from prior to September 1, 1971 documenting the operations prior to September 1, 1971 Less than 12 consecutive months of data prior to September 1, 1971 may be used, upon approval by the TACB, if it is determined by the TACB during the permit application review that there is sufficient data to demonstrate that it reflects operations prior to September 1, 1971

(E) Upon issuance of the permit, the presumptive or actual grandfather rate established by the data submitted shall be the grandfather rate in subparagraph (D) of this paragraph which the unit may not operate without first obtaining or qualifying for preconstruction authorization in accordance with the requirements of Chapter 116 of this title. This grandfather rate does not remove the responsibility of the applicant to obtain or qualify for any necessary preconstruction authorization in accordance with the requirements of Chapter 116 of this title prior to making any physical changes or constructing a new facility source at the emission unit regardless of whether this grandfather rate is exceeded as a result of that physical change or construction. A grandfather rate shall not be established which violates any emission limitation or standard required under any chapter of this title. The establishment of this grandfather rate does not remove any liabilities or potential enforcement action for past or future exceedances of the actual grandfather rate in violation of Chapter 116 of this title.

(b) Each federal operating permit application shall include a compliance plan. Such plan shall contain the following:

(1) a description of the compliance status of each relevant emission unit at the site with respect to all applicable requirements;

(2) a statement that all relevant emission units at the site will·

(A) except as provided in paragraph (3) of this subsection, continue to comply with the applicable requirements; and

(B) comply, as required, with any applicable requirements that become effective during the permit term;

(3) for those relevant emissions units not in compliance with applicable requirements:

(A) a narrative description of how the emission unit will come into compliance with the applicable requirements;

(B) a compliance schedule containing a schedule of remedial measures, including, but not limited, to an enforceable sequence of actions; and

(C) a schedule for submission of certified progress reports. After issuance of the permit, the certified progress reports shall be submitted no less frequently than every six months.

(c) A compliance certification shall be included with the federal operating permit application consistent with the requirements of §122 143 of this title (relating to Permit Conditions).

(d) The applicant shall provide to the U S Environmental Protection Agency a copy of the permit application.

(e) A responsible official shall certify, consistent with §122.165 of this title (relating to Certification by a Responsible Official), all information submitted under this section.

§122.133. Timely Application.

(a) A timely application for a site applying for a federal operating permit for the first time is one that is submitted in accordance with §122.130 of this title (relating to Responsibility to Apply).

(b) A timely application for a significant permit modification to a federal operating permit is one filed no later than 12 months after the owner or operator has obtained or qualified for any preconstruction authorization required by TACB Chapter 116 of this title (relating to Control of Air Pollution by Permits For New Construction or Modification).

(c) A timely application for a permit renewal is one that is submitted at least six months, but no earlier than 18 months, prior to the date of permit expiration

§122.134. Complete Application

(a) To be complete, an application shall provide all information required in §122.132 of this title (relating to Application and Required Information) except that

(1) applications for revision to a federal operating permit shall only be required to provide information related to the proposed change; and

(2) applications for a general permit shall only be required to provide the information necessary to determine qualification for, and to assure compliance with, the general permit

(b) The application shall be deemed complete, unless the Texas Air Control Board requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt

§122.136. Application Deficiencies

(a) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a federal operating permit application shall, upon becoming aware of such failure or incorrect submittal, submit such supplementary facts or corrected information no later than 60 days after such discovery.

(b) An applicant shall provide additional information as necessary to address any applicable requirements, as defined in this chapter, that this site becomes subject to after the date the owner or operator filed a complete application.

(c) If while processing an application that has been deemed to be complete, the Texas Air Control Board determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response.

§122.138. Application Shield. If the owner or operator of a site submits a timely and complete application(s) for permit issuance, significant permit modification to a permit, or renewal, the site's failure to have a federal operating permit is not a violation of this chapter until the Executive Director takes final action on the permit application. This protection shall cease to apply if, subsequent to the application being deemed complete, the applicant fails to submit in writing to the Executive Director, by the deadline specified, any additional information identified as necessary to process the application.

§122.139 Application Review Schedule. The Board shall:

(1) under an interim program, for those sites required to file initial applications within the first year of the effective date of the interim program, take final action on at least one-third of those applications annually over a period not to exceed three years after such effective date;

(2) under the fully approved program, for those sites required to file initial applications prior to or within one year of the effective date of the fully approved program, take final action on at least one-third of those applications annually over a period not to exceed three years after such effective date,

(3) except as noted in paragraph (1) or (2) of this section, take final action on an application for a permit, significant permit modification, or permit renewal within 18 months of the date on which the Texas Air Control Board (TACB) deemed an application complete, and

(4) take final action on any complete permit application containing an early reduction demonstration under the Act, §112(i)(5), within nine months of receipt of the complete application

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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Acting Deputy Director, Air Quality Planning
Texas Air Control Board

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Permit Content

- **31 TAC §§122.141, 122.143, 122.145**

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

§122.141. Authority.

(a) Federal operating permits may contain general and special terms and conditions. The permittee shall comply with any and all such terms and conditions.

(b) The board shall not grant a variance, pursuant to the Texas Health and Safety Code, §382.028, from the requirements of this chapter to apply for or operate under a permit.

§122.143. Permit Conditions. Unless otherwise specified in the permit, the permittee shall comply with each of the following conditions

(1) General permit conditions.

(A) Compliance with the federal operating permit does not relieve the permittee's obligation to comply with any other applicable Texas Air Control Board (TACB) rules, regulations, or orders.

(B) The federal operating permit shall expire five years from the issuance of the proposed permit

(C) The permittee shall allow representatives from the TACB or the local air pollution control program having jurisdiction to perform the following

(i) enter upon the permittee's premises where an emission unit is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(ii) have access to and copy any records that must be kept under the conditions of the permit,

(iii) inspect, at any time other than when the presence of the TACB personnel would interfere with the ability of the permittee to respond to an emergency situation, any emission unit, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit, and

(iv) sample or monitor substances or parameters for the purpose of assuring compliance with the permit or applicable requirements at any time.

(D) Records required under this permit shall be provided, upon request, to representatives from the TACB or the local air pollution control program having jurisdiction within a reasonable period of time.

(E) The permittee shall comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or revision; or for denial of a permit renewal application. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(F) The permit may be revised, revoked, reopened and reissued, or terminated for cause as defined in §122.231 of this title (relating to Permit Reopenings). The filing of a request by the permittee or notice of intent by the TACB for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(G) Unless the time is extended by the Board or its designee, the permittee shall furnish within 60 days any information that the Executive Director may request in writing to determine whether cause exists for revising, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Executive Director, copies of records required to be kept by the permit, including any confidential information. It may be required that such records be sent directly to the U.S. Environmental Protection Agency (EPA) along with any claim of confidentiality. Any such claim should be made in accordance with federal law, including 40 Code of Federal Regulations 2

(H) If at the time of promulgation of a new applicable requirement, the permit has three or more years remaining in its term, the permittee shall request a reopening and revision of the permit within 12 months of promulgation of a new applicable requirement not already incorporated into a permit. No such reopening is required if the compliance date of the requirement is later than the permit expiration date, or if the new requirement is incorporated in any federal operating permit held by the site which addresses the emission unit(s) subject to the new requirement.

(I) The permittee shall pay fees to the TACB consistent with the fee schedule in §101.27 of this title (relating to Emission Fees).

(J) Each portion of the permit is severable. Permit requirements in unchallenged portions of the permit shall remain valid in the event of a challenge to other portions of the permit.

(K) The permit does not convey any property rights of any sort, or any exclusive privilege

(2) Recordkeeping conditions. The permittee shall maintain records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information may include, but shall not be limited to, the data from all calibration and maintenance records and all stripchart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit. The data may be stored electronically However, it shall be made available, within a reasonable period of time, in a readable electronic or hard copy form upon request by an authorized representative of the TACB or any local air pollution control program having jurisdiction.

(3) Reporting conditions The permit shall incorporate all applicable monitoring data reporting requirements as follows.

(A) After issuance of the permit, reports of any required monitoring shall be submitted to the TACB at least every six months or more frequently if required by an applicable requirement All instances of deviations shall be clearly identified in such reports. All required reports shall be certified by a responsible official

(B) Within two weeks after occurrence, the permittee shall report, in writing, to the TACB any deviations, the probable cause of such deviations, and any corrective actions or preventative measures taken, except in such cases that all information required under this subsection is submitted, in writing, under subparagraph (C) of this paragraph

(C) Emissions from any upset, start-up, shutdown, or maintenance activities shall be reported as required under Chapter 101 of this title (relating to Notification of Upset and Maintenance Requirements)

(4) Compliance certification conditions After issuance of the permit, compliance certifications shall be submitted to the TACB and EPA at least every 12 months, or more frequently if required by an applicable requirement. The compliance certification shall include at a minimum:

(A) the identification of each term, condition, or applicable requirement of the permit for which the permittee shall certify compliance;

(B) the compliance status of the relevant emission units listed in the permit relative to any applicable term, condition, or applicable requirement over the entire 12-month certification period;

(C) a statement of whether compliance was continuous or intermittent;

(D) the method(s) used for determining the compliance status of each relevant emission unit; and

(E) a certification by a responsible official, consistent with §122.165 of this title (relating to Certification by a Responsible Official), of all the information submitted under this section

§122.145. Permit Content Requirements.

(a) Each federal operating permit shall contain terms and conditions regarding emission limitations and standards, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the applicable requirements. Any document (including reports) submitted to the Texas Air Control Board (TACB) that is specifically required by a permit shall contain a certification by a responsible official.

(b) Each permit shall contain the following terms and conditions with respect to monitoring.

(1) all emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any enhanced monitoring procedures and methods promulgated pursuant to the Act, §504(b) and §114(a) (3);

(2) where the applicable requirements do not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), terms and conditions which require periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the site's compliance with the permit Such monitoring conditions shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping may be sufficient to meet the requirements of this paragraph; and

(3) conditions, as necessary, concerning the use, maintenance, and where appropriate, installation of monitoring equipment or methods.

(c) Each permit shall contain terms and conditions that would require recordkeeping of monitoring information including, but not limited to:

(1) the date, place as defined in the permit, and time of sampling or measurements;

(2) the date(s) analyses were performed;

(3) the company or entity that performed the analyses;

(4) the analytical techniques or methods used;

(5) the results of such analyses; and

(6) the relevant operating conditions which are deemed necessary to characterize emission rates at the time of sampling or measurement.

(d) For sites with emission units not in compliance with the applicable requirements at the time of issuance, the permit shall:

(1) contain a compliance schedule consistent with §122.132(b)(3)(B) of this title (relating to Application and Required Information); and

(2) require progress reports consistent with §122. 132(b)(3)(C) of this title. The progress reports shall include:

(A) dates for achieving the activities, mile-stones, or compliance required in the schedule of compliance, and dates when such activities, milestones, or compliance were achieved; and

(B) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(e) At the discretion of the TACB and based upon a request and sufficient demonstration by the applicant, a federal operating permit may establish certain interpretations of specific language and definition of specific terms in an applicable requirement. These interpretations by the TACB, for the purpose of determining compliance with the specific applicable requirement, shall not be modified by the TACB until notification is provided to the permittee. Within 90 days of notification of a change in interpretation by the TACB, the permittee shall apply for the appropriate permit revision to reflect the new interpretation of the applicable requirement.

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

Issued in Austin, Texas, on August 30, 1993.

TRD-9327952 Cyril Durrenberger
Acting 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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Public Notification and Comment Procedures

• 31 TAC §§122.150, 122.152-122.155

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

§122.150. Applicability.

(a) Permit, significant permit modification, or renewals. Any person who applies for a permit, a significant permit modification, or a permit renewal shall be required to provide for public notification under the procedures in this subchapter.

(b) General permits. General permits are not subject to the public notification and comment procedures of this subchapter. Procedural requirements for general permits are listed under §122.202 of this title (relating to General Permits).

(c) Reopenings. Any permittee whose federal operating permit is reopened under §122.231 of this title (relating to Permit Reopenings) shall be required to provide for public notification of such reopening and revision of the permit under the procedures in this subchapter.

§122.152. Public Notification Requirements.

(a) Notification by applicant. For those federal operating permits or permit applications meeting the criteria in §122.150 of this title (relating to Applicability), the Texas Air Control Board (TACB) shall direct the applicant to conduct public notice of the draft operating permit. The public notice shall be conducted in accordance with §122.153 of this title (relating to Public Notice Format).

(b) Availability of application for review. The TACB shall make available for public inspection the following information related to the application: the completed application (except sections relating to confidential information), the draft federal operating permit, the compliance plan, the compliance certification, and monitoring reports, if required. All such information shall be available for inspection throughout the comment period, and thereafter, during normal business hours, at the TACB Austin office and at the appropriate TACB regional office in the region where the site is located.

(c) The TACB shall provide a copy of the notice of the draft permit, specified in §122.153 of this title, to any person upon written request.

(d) Notification of TACB and others. When newspaper notices are published consistent with §122.153 of this title, the applicant shall furnish a copy of such notices and date of publication to the TACB in Austin; the U.S. Environmental Protection Agency's Regional Administrator in Dallas; all local air pollution control agencies with jurisdiction in the county in which the site is located; and the air pollution control agency of any affected state. Along with such notices furnished to the TACB, the applicant shall certify in accordance with §122.165 of this title (relating to Certification by a Responsible Official), that the signs required by §122. 154 of this title (relating to Sign Posting Requirements) have been posted consistent with the provisions of that section.

§122.153. Public Notice Format.

(a) Publication in public notices section of newspaper. At the applicant's expense, notice of intent to obtain a federal operating permit, a significant permit modification, a reopening to a permit, or a permit renewal, shall be published in the public notice section of two successive issues of a newspaper of general circulation in the municipality in which the site is located, or in the municipality nearest to the location of the site. The notice shall contain the following information:

(1) permit application number;

(2) applicant name and address;

(3) activity or activities involved in the federal operating permit application or reopening;

(4) description of the location of the site or proposed location of the site;

(5) the air pollutants involved in any significant permit modification;

(6) location and availability of copies of the completed permit application, the draft permit, and all other relevant supporting materials;

(7) description of the comment procedures, including the duration of the comment period and a statement of procedures to request a hearing;

(8) notification that a person who may be affected by the emission of air pollutants from the site is entitled to request a hearing pursuant to §122. 316 of this title (relating to Hearing and Comment Procedures); and

(9) name, address, and phone number of the TACB regional office to be contacted for further information.

(b) Publication elsewhere in the newspaper. Another notice with a size of at least 96.8 square centimeters (15 square inches), and whose shortest dimension is at least 7.6 centimeters (three inches), shall be published in a prominent location elsewhere in the same issue of the newspaper and shall contain the information specified in subsection (a)(1)-(4) of this section and note that additional information is contained in the notice published pursuant to subsection (a) of this section in the public notice section of the same issue.

§122.154. Sign Posting Requirements.

(a) At the applicant's expense, a sign or signs shall be placed at the site declaring the filing of an application for a permit and stating the manner in which the Texas Air Control Board (TACB) may be contacted for further information. Such signs shall be provided by the applicant and shall meet the following requirements:

(1) signs shall consist of dark lettering on a white background and shall be no smaller than 18 inches by 28 inches;

(2) signs shall be headed by the words "APPLICATION FOR FEDERAL OPERATING PERMIT" in no less than two-inch, bold-face, block-printed capital lettering;

(3) signs shall include the words "APPLICATION NO." and the number of the permit application in no less than one-inch boldface, block-printed capital lettering (more than one number may be included on the signs if the respective public comment periods coincide);

(4) signs shall include the words "for further information contact" in no less than 1/2-inch lettering;

(5) signs shall include the words "Texas Air Control Board," and the address of the appropriate TACB regional office in no less than one-inch, boldface, capital lettering and 3/4-inch, boldface, lower-case lettering; and

(6) signs shall include the phone number of the appropriate TACB regional office in no less than two-inch, boldface numbers.

(b) The sign or signs shall be in place by the date of publication of the newspaper notice required by §122.153 of this title (relating to Public Notice Format) and shall remain in place and legible throughout the period of public comment provided for in §122.155 of this title (relating to Public Comment Period).

(c) Each sign placed at the site shall be located within ten feet of each (every) property line paralleling a street or other public thoroughfare. Signs shall be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs shall be required along any property line paralleling a public thoroughfare.

(d) The TACB may approve variations from the requirements of subsection (c) of this section if the applicant has demonstrated that it is not practical to comply with the specific requirements of subsection (c) of this section and alternative sign posting plans proposed by the applicant are at least as effective in providing notice to the public. The approval from the TACB under this subsection must be received before posting signs for purposes of satisfying the requirements of this section.

(e) These sign requirements do not apply to properties under the same ownership which are noncontiguous and/or separated by intervening public thoroughfares, unless directly involved by the permit application.

§122.155. Public Comment Period.

(a) A 30-day public comment period shall be held by the Board or its designee on a federal operating permit or renewal application, or on a reopening of a federal operating permit.

(b) The Board or its designee shall receive public comment for 30 days after the last day on which notice of the public comment period is published. During the 30-day public comment period, any person may submit written comments on the draft permit or may, in writing, request a notice and comment hearing pursuant to §122.316 of this title (relating to Hearing and Comment Procedures for Operating Permits).

(c) After the public comment period and the conclusion of any notice and comment hearing convened pursuant to Subchapter D of this chapter (relating to Affected State Review, U.S. Environmental Protection Agency Review, and Citizen Petition), the Board or its designee shall send notice of its proposed final action on the permit application, or renewal application or on the reopening of a federal operating permit, to any person who commented during the public comment period, and to the applicant. The notice shall include:

(1) the response to any comments submitted during the public comment period;

(2) identification of any change in the conditions in the draft permit and the reasons for the change; and

(3) a description of the process for citizen petitions to the U.S. Environmental Protection Agency (EPA) pursuant to §122.312 of this title (relating to U.S. Environmental Protection Agency Review).

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-9327953 Cyril Durrenberger
Acting Deputy Director, Air Quality Planning
Texas Air Control Board

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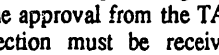

Miscellaneous

• 31 TAC §§122.161, 122.163-122.165

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

§122.161. Miscellaneous.

(a) Unless specifically noted otherwise, requirements under this chapter do not supersede, substitute for, or replace any requirement under any other rule, regulation, or order of the Texas Air Control Board.

(b) None of the requirements in this chapter shall be construed as prohibiting the construction of new or modified facilities, provided that the owner or operator has obtained any necessary preconstruction authorization, as defined in §122.10 of this title (relating to Definitions).

(c) The Act, §112(g), concerning modifications of sources of hazardous air pollutants, shall apply only to those sites satisfying the criteria of §122.130 of this title (relating to Responsibility to Apply). The Act, §112(g), shall apply at the earliest time at which those sites are required to apply in accordance §122.130 of this title.

§122.163. Effective Date.

(a) Compliance with the requirements of this chapter will be required on the date of approval, as published in the *Federal Register*, of the Texas Air Control Board's (TACB) federal operating permit program by the U.S. Environmental Protection Agency.

(b) Sites satisfying the criteria of §122.120 of this title (relating to Applicability) become subject to this chapter either on the effective date of this chapter or upon issuance or approval of a preconstruction authorization required by Chapter 116 of this title (relating to Control of Air Pollution by Permits For New Construction or Modification), whichever is later.

(c) Notice shall be published by the TACB in the *Texas Register* of the effective date of the interim federal operating permit program and the fully approved program. Failure of the TACB to publish shall not affect the effective program dates.

§122.164. Confidential Information. Any information provided to the Texas Air Control Board pursuant to this chapter that relates to secret processes or methods of manufacture or production may be identified as confidential when submitted. Any information so identified is entitled to protection from disclosure to the extent provided by law. If confidential information is submitted, an unclassified synopsis of confidential information shall be provided to ensure a complete public record file. Any information required to be submitted to the U.S. Environmental Protection Agency (EPA) may be submitted pursuant to EPA's procedures governing confidential information.

§122.165. Certification by a Responsible Official. Any certification submitted pursuant to this chapter shall contain a certification of truth, accuracy, and completeness by a responsible official. Unless specified otherwise, any certification required under this chapter shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. The Texas Air Control Board shall be notified, pursuant to §122.211 of this title (relating to Administrative Permit Amendments), of any appointment of a new responsible official.

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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Acting Deputy Director, Air Quality Planning
Texas Air Control Board

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Subchapter C. Permits Issuances, Revisions, Reopenings, and Renewals

Permit Issuance

• 31 TAC §§122.201, 122.202, 122.204

The new rules are adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to adopt rules consistnent with the policy and purposes of the TCAA.

§122.201. Permits.

(a) A federal operating permit may be issued by the Board or its designee only if all of the following conditions have been met:

(1) the Texas Air Control Board has received a complete permit application;

(2) the applicant has complied with the requirements for public participation under Subchapter B of this chapter (relating to Permit Requirements);

(3) the requirements for notifying and responding to affected states under Subchapter D of this chapter (relating to Affected State Review, U.S. Environmental Protection Agency Review and Citizen Petition) have been satisfied;

(4) the conditions of the permit provide for compliance with all applicable requirements and the requirements of this chapter; and

(5) the U.S. Environmental Protection Agency (EPA) has received a copy of the proposed permit, any notices required, and has not objected to issuance of the proposed federal operating permit within the time period specified for the EPA review in Subchapter D of this chapter.

(b) All initial federal operating permits, and all subsequently issued or renewed permits, shall be issued by the Board or its designee with terms not to exceed five years from the issuance of the proposed permit.

(c) Final action by the Board or its designee on an application for a federal operating permit shall be the issuance or denial of the proposed permit as provided in Subchapter D of this chapter.

(d) The Board or its designee may issue more than one federal operating permit at a site.

(e) General permits shall not be required to meet the requirements of this section.

(f) Except as otherwise provided in §122.138 of this title (relating to Application Shield) , the owner or operator of a site which satisfies the criteria of §122.120 of this title (relating to Applicability) shall not operate such site unless the owner or operator has obtained the authority to do so under this chapter.

§122.202. General Permits.

(a) The Texas Air Control Board (TACB) may adopt a general permit covering numerous similar stationary sources if the following conditions are satisfied:

(1) the conditions of the general permit provide for compliance with all applicable requirements and the requirements of this chapter;

(2) the U.S. Environmental Protection Agency is provided the opportunity to object and affected state(s) are provided the opportunity to comment on the general permit prior to its final adoption pursuant to paragraph (3) of this subsection; and

(3) adoption of the general permit complies with the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a).

(b) After adoption of a general permit, such permit shall be listed in the General Permit List. Pursuant to the Texas Health and Safety Code, §382. 051(b), the permit listed in the General Permit List as filed in the Secretary of State's Office and herein adopted by reference, satisfies the permit requirements of the Texas Health and Safety Code, §382.054.

(c) Each general permit shall identify the terms and conditions with which stationary sources shall comply.

(d) Owners or operators of stationary sources that would qualify for a general permit may apply to the Board or its designee for approval under the terms and conditions of the general permit. Those owners or operators of stationary sources that apply for a general permit in accordance with this section shall satisfy the requirements of Subchapter B of this chapter (relating to Permit Requirements). An application for a general permit shall include all information necessary to determine qualification for, and to assure compliance with, the general permit.

(e) If the applicant satisfies the requirements of a timely and complete application, the applicant may operate under the application shield until such time as the Board or its designee grants or denies the application for the general permit.

(f) The Board or its designee shall grant a request for authorization to operate under a general permit to owners or operators of stationary sources that qualify. Such a grant shall not be a final action by the TACB, and therefore, is not subject to judicial review.

(g) The owner or operator of a stationary source shall be subject to enforcement action for operation without a permit if the stationary source, having been granted a general permit, is later determined not to qualify for the conditions and terms of the general permit.

(h) General permits shall not be authorized for affected units under the acid rain program.

(i) The Board may revise or repeal any general permit on the General Permit List pursuant to the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a). Subsequent to such action, and if the grantee's authority to operate under a general permit is affected by such action, the grantee of the revised or repealed permit shall apply for a federal operating permit. If the grantee's authority to operate under a general permit is affected by such action and the grantee wishes to retain authority to operate under a general permit, the grantee shall:

(1) apply by the date specified by the new or revised general permit, but no later than 12 months after the effective date of the new general permit;

(2) prior to applying for the new or revised general permit, continue to comply with the terms and conditions of its existing general permit; and

(3) subsequent to applying for the new or revised general permit, comply with the terms and conditions of the new general permit, rather than the terms and conditions of the existing permit.

§122.204. Temporary Sources.

(a) A temporary source is a stationary source which changes location to another site at least once during any five-year period.

(b) Any temporary source which satisfies the criteria of §122.120 of this title (relating to Applicability) shall apply to the Texas Air Control Board (TACB) for a federal operating permit consistent with this chapter.

(c) Each temporary source which is located at a site for less than six months shall not affect the determination of major for other stationary sources at a site under this chapter, nor does this addition of a temporary source trigger the requirement to revise the existing permit at the site. Each temporary source shall maintain records of duration of its stay at a site.

(d) Applications by temporary sources shall include all information required under Subchapter B of this chapter (relating to Permit Requirements).

(e) The Board or its designee may issue a single permit authorizing emissions from similar operations by the same temporary source at multiple temporary locations. Any permit issued to a temporary source shall meet all requirements under this chapter for issuance of a federal operating permit.

(f) The owner or operator of a temporary source, permitted under this chapter, shall notify the TACB at least 10 days in advance of each change in location, unless the Board or its designee allows for a shorter notice due to an emergency.

(g) No affected units under the acid rain program shall be permitted as a temporary source.

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-9327955 Cyril Durrenberger
Acting Deputy Director, Air Quality Planning
Texas Air Control Board

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Permit Revisions

• 31 TAC §§122.210-122.213, 122.215-122.217, 122.219-122.221

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

§122.210. Applicability.

(a) Except as provided in §122. 221 of this title (relating to Operational Flexibility), the permittee shall submit an application to the Texas Air Control Board for a revision to a federal operating permit under the requirements of this subchapter for those changes or activities which affect or add one or more applicable requirements on any relevant emission unit.

(b) Changes which qualify under §122. 211 of this title (relating to Administrative Permit Amendments) shall follow the procedural requirements in §122.212 of this title (relating to Administrative Permit Amendment Application) and §122.213 of this title (relating to Administrative Permit Amendment Procedures).

(c) All other changes or activities at the site are not subject to the requirements of this chapter.

§122.211. Administrative Permit Amendments. A change at a site may qualify as an administrative permit amendment if the change:

(1) corrects typographical errors;

(2) identifies a change in the name, address, or phone number of any person identified in the permit, e.g., responsible official, or provides a similar minor administrative change at the site;

(3) requires more frequent monitoring or reporting by the permittee;

(4) allows for a change in ownership or operational control of a site where the Texas Air Control Board (TACB) determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the TACB; and

(5) is similar to those in paragraphs (1)-(4) of this section.

§122.212. Administrative Permit Amendment Application. Applications for changes that qualify under this section shall be submitted by the permittee no later than 90 days after the owner or operator has obtained or qualified for any preconstruction authorization required by Chapter 116 of this title (relating to Control of Air Pollution by Permits For New Construction or Modification) or 90 days after the change prompting the administrative amendment request.

§122.213. Administrative Permit Amendment Procedures.

(a) The Board or its designee may make an administrative permit amendment for those changes at a site that qualify as an amendment under §122.211 of this title (relating to Administrative Permit Amendments).

(b) An administrative permit amendment shall be made by the Board or designee consistent with the following conditions:

(1) the owner or operator of the site has submitted an application for the amendment which includes a description of the proposed change and also includes a statement that the proposed change meets the criteria for the use of the permit amendment procedures;

(2) the owner or operator has obtained or qualified for any preconstruction authorization required by the Texas Air Control Board (TACB) Chapter 116 of this title (relating to Control of Air Pollution by Permits For New Construction or Modification).

(c) The TACB shall take no more than 60 days from receipt of an application for an administrative permit amendment to take final action on such application.

(d) The owner or operator may implement the changes addressed in the application for an administrative permit amendment immediately upon receipt by the TACB of the application, if the owner or operator has obtained or qualified for any preconstruction authorization required by TACB Chapter 116 of this title. If no preconstruction authorization is required for the change, then the change may be implemented upon filing the application for an administrative permit amendment.

(e) The site shall be subject to enforcement action if the change at the site is later determined not to qualify for an administrative permit amendment.

(f) The TACB shall submit a copy of the revised permit to the U.S. Environmental Protection Agency.

§122.215. Permit Additions.

(a) A change at a site may qualify as a permit addition if the change satisfies all of the requirements of either subsection (b) or subsection (c) of this section.

(b) The change at the site:

(1) is not addressed or prohibited by the federal operating permit;

(2) does not violate any existing term or condition of the federal operating permit;

(3) does not violate any applicable requirement; and

(4) is not a Title I modification, or otherwise required by the Texas Air Control Board (TACB) to be processed as a significant modification.

(c) The change at the site:

(1) does not violate any applicable requirement;

(2) does not involve removal of monitoring, recordkeeping, or reporting terms and conditions, or a substitution in those terms and conditions promulgated pursuant to federal New Source Performance Standards or National Emissions Standards for Hazardous Air Pollutants;

(3) does not require or change a determination of an emission limitation under the Act, §112(g) or §112(j) of Title I, or a source-specific determination for temporary sources of ambient impacts, visibility analysis, or increment analysis; and

(4) does not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement, and that the site has assumed to avoid an applicable requirement to which the site would otherwise be subject. Such terms and conditions include:

(A) a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I; and

(B) an alternative emissions limit approved pursuant to regulations promulgated under the Act, §112(i)(5); and

(5) is not a Title I modification, or otherwise required by the TACB to be processed as a significant modification.

§122.216. Application for Permit Addition.

(a) The permittee shall submit to the Texas Air Control Board (TACB) an application requesting a permit addition that meets the requirements of §122.215 of this title (relating to Permit Additions) and shall include the following:

(1) a description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(2) the permittee's suggested draft permit conditions; and

(3) certification by a responsible official, consistent with §122.165 of this title (relating to Certification by a Responsible Official), that the proposed change meets the criteria for the use of the permit addition procedures and a request that such procedures be used.

(b) Applications for changes that qualify under this section shall be submitted to the TACB by the permittee no later than 90 days after the owner or operator has obtained or qualified for any preconstruction authorization required by Chapter 116 of this title (relating to Control of Air Pollution by Permits For New Construction or Modification).

§122.217. Permit Addition Procedures.

(a) The Texas Air Control Board (TACB) shall notify the U.S. Environmental Protection Agency (EPA) and any affected state(s) of the requested permit addition.

(b) Within 90 days of the TACB's receipt of a complete application under §122.216 of this title (relating to Application for Permit Addition), or subsequent to the permittee obtaining or qualifying for any preconstruction authorization required by Chapter 116 of this title (relating to Control of Air Pollution by Permits For New Construction or Modification), whichever is later, the TACB shall:

(1) determine that the requested change does not meet the permit addition criteria in §122.215 of this title (relating to Permit Additions) and whether the requested change should be reviewed under the significant permit modification procedures; or

(2) revise the draft permit addition and transmit to EPA the proposed permit addition as required by Subchapter D of this chapter (relating to Affected State Review, U. S. Environmental Protection Agency Review, and Citizen Petition).

(c) The Board or its designee may issue a permit addition for those changes at a site that qualify as an addition under §122.215 of this title. The owner or operator may make the requested change prior to approval of the permit addition provided that the owner or operator has obtained or qualified for any preconstruction authorization required by Chapter 116 of this title (relating to Permits) for the requested changes.

(d) The permit addition shall not become final until after EPA's 45-day review period at renewal of the permit or until EPA has notified the TACB that EPA will not object to issuance of the permit addition, whichever is first.

(e) Until final, the permit addition shall be a state only requirement of the federal operating permit.

(f) Prior to the issuance or denial of a permit addition by the board or its designee, the owner or operator of the relevant emission units affected by the change shall comply with the proposed permit terms and conditions. During this time period, the owner or operator need not comply with the existing permit terms and conditions that the application seeks to modify. However, if the owner or operator of the relevant emission units affected by the change fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions that the application seeks to modify shall be the enforceable terms and conditions.

§122.219. Significant Permit Modifications.

(a) A change at a site may qualify as a significant permit modification only if the change satisfies one or more of the following:

(1) is a Title I modification;

(2) does not qualify as a permit addition, as an administrative amendment, or for operational flexibility;

(3) is a removal of existing monitoring terms and conditions, or a substitution in those terms and conditions promulgated pursuant to federal New Source Performance Standards (NSPS), or National

Emissions Standards for Hazardous Air Pollutants (NESHAP); or

(4) is a removal of recordkeeping or reporting terms and conditions, or a substitution in a recordkeeping or reporting requirement promulgated pursuant to NSPS or NESHAP.

(b) Applications for changes that qualify under this section shall be submitted by the permittee no later than 12 months after the owner or operator has obtained or qualified for any preconstruction authorization required by Chapter 116 of this title (relating to Control of Air Pollution by Permits For New Construction or Modification) for the change.

(c) For changes that qualify as Title I modifications and where the existing federal operating permit prohibits such change, the permittee shall obtain the significant permit modification before commencing any operation.

(d) Except as required in subsection (c) of this section, those changes that qualify as significant permit modifications may commence operation of any corresponding change immediately after obtaining or qualifying for any preconstruction authorization required under Chapter 116 of this title.

(e) Except as provided in subsection (c) of this section, prior to the issuance or denial of a significant permit modification by the Board or its designee, the owner or operator of the relevant emission units affected by the change shall comply with the proposed permit terms and conditions. During this time period, the owner or operator need not comply with the existing permit terms and conditions that the application seeks to modify. However, if the owner or operator of the relevant emission units affected by the change fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions that the application seeks to modify shall be the enforceable terms and conditions.

§122.220. Significant Permit Modification Application and Procedures. The Board or its designee may issue a significant permit modification only for those changes at a site that qualify as a significant modification and meet the following conditions:

(1) the Texas Air Control Board (TACB) has received a complete application;

(2) the applicant has complied with the requirements for public participation under Subchapter B of this chapter (relating to Permit Requirements);

(3) the requirements for notifying and responding to affected States under Subchapter D of this chapter (relating to Affected State Review, U.S. Environmental Protection Agency Review, and Citizen Petition);

(4) the conditions of the permit provide for compliance with all applicable requirements and the requirements of this chapter; and

(5) the U.S. Environmental Protection Agency has received a copy of the proposed permit, any notices required, and has not objected to issuance of the significant permit modification within the time period specified in Subchapter D of this chapter.

§122.221. Operational Flexibility.

(a) A permittee may make changes within a permitted site without applying for or obtaining a permit revision provided that the following conditions are met:

(1) the changes are not Title I modifications;

(2) the changes do not exceed the emissions limitation under the permit; and

(3) the owner or operator has obtained or qualified for any preconstruction authorization required by the Texas Air Control Board (TACB) Chapter 116 of this title (relating to Control of Air Pollution by Permits For New Construction or Modification).

(b) For changes to the federal operating permit which qualify under this section, the permittee shall provide the U.S. Environmental Protection Agency (EPA) and the TACB with written notification. The written notification shall be received by the TACB at least 30 days in advance of operation of the proposed changes unless the Board or its designee approves a shorter period, but in no case shall that period be less than seven days prior to the proposed change.

(c) Written notification shall include the following information:

(1) a description of the change, the date on which the operation resulting from the change is proposed to occur, the emissions resulting from the change, any new applicable requirements that will apply if the change occurs, and any permit term or condition that is no longer applicable as a result of the change; and

(2) certification by a responsible official, consistent with §122.165 of this title (relating to Certification by a Responsible Official), that the proposed change meets the criteria for the use of operational flexibility under this section and a request that such procedures be used.

(d) The permittee, TACB, and EPA shall attach each such notice to their copy of the relevant permit.

(e) Changes that qualify under this section are not subject to the procedural requirements for permit revisions.

(f) Upon satisfying the requirements of this section, the permittee may begin operations which result from the proposed change at the expiration of the time period provided for in subsection (b) of this section.

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-9327956 Cyril Durrenberger
Acting 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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Permit Reopenings

• 31 TAC §122.231, §122.233

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

§122.231. Permit Reopenings.

(a) A permit shall be opened and revised for cause only under one or more of the following circumstances:

(1) additional applicable requirements become applicable to a permitted site which, at the date of promulgation of the additional requirement, has three or more years remaining prior to expiration, except that no such reopening is required if the new requirement is incorporated in any federal operating permit which addresses the emission unit(s) subject to the new requirement;

(2) additional requirements become applicable to an affected unit under the acid rain program;

(3) the federal operating permit contains a material mistake or if inaccurate statements were made in establishing the emissions standards or other terms and conditions of the federal operating permit; or

(4) a determination is made by the Texas Air Control Board that the permit shall be revised or revoked to assure compliance with the applicable requirements.

(b) The Board or its designee shall terminate, revise, or revoke and reissue a federal operating permit for cause.

(c) After receipt of a petition for reopening for cause, as defined in this section, the board or its designee may terminate, revise, or revoke and reissue the permit.

(d) No later than 180 days of receipt of written notification by the U.S. Environmental Protection Agency (EPA) that cause, as defined in this section, exists to terminate, revise, or revoke and reissue a permit pursuant to this section, the Board or its designee shall terminate, revise, or revoke and reissue the permit in accordance with EPA's direction.

(e) No reopening is required under subsection (a) of this section, if the effective date of the requirement is later than the permit expiration date.

§122.233. Permit Reopening Procedures.

(a) Reopenings and revisions under §122.231 of this title (relating to Permit Reopenings) shall comply with the requirements of this chapter for permit issuance, including such requirements for application, public participation, review by affected states, and review by the U.S. Environmental Protection Agency. These procedures shall affect only those parts of the permit for which cause, as defined in §122.231 of this title, to reopen exists.

(b) For reopenings and revisions under §122.231 of this title, the Texas Air Control Board (TACB) shall provide 30 days' notice of intent to reopen, unless the board or its designee allows for a shorter notice due to an emergency.

(c) Reopenings and revisions under §122.231(a)(1) and (2) of this title shall be completed by the TACB not later than 18 months after promulgation of the applicable requirement.

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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Permit Renewals

• 31 TAC §122.241, §122.243

The new rules are adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to adopt rules consistnent with the policy and purposes of the TCAA.

§122.241. Permit Renewals.

(a) Each federal operating permit issued or renewed by the Texas Air Control Board (TACB) shall be subject to review at least every five years after the date of issuance of the proposed permit to determine whether the authority to operate should be renewed.

(b) The TACB shall provide written notice to the permittee that the permit is scheduled for review. Such notice will be provided by certified or registered U.S. mail no less than 12 months prior to the expiration of the permit. The notice shall specify the procedure for filing an application. In order to qualify as a timely application, the application shall be filed by the permittee with the TACB at least six months, but no earlier than 18 months, prior to the date of permit expiration. The application shield is not available to sites that do not submit a timely and complete application. Failure to receive notice as described in this subsection does not affect the applicability of the application shield or the lack thereof, as determined pursuant to Subchapter B of this chapter (relating to Permit Requirements).

(c) A federal operating permit may be renewed by the Board or its designee only if all of the following conditions have been met:

(1) the TACB has received a complete application;

(2) the applicant has complied with the requirements for public participation under Subchapter B of this chapter;

(3) the requirements for notifying and responding to affected states under Subchapter D of this chapter (relating to Affected State Review, U.S. Environmental Protection Agency Review, and Citizen Petition);

(4) the conditions of the permit provide for compliance with all applicable requirements and the requirements of this chapter; and

(5) The U.S. Environmental Protection Agency has received a copy of the proposed permit, any notices required, and has not objected to issuance of the proposed federal operating permit within the time period specified in Subchapter D of this chapter.

(d) In determining whether and under what conditions a permit should be renewed, the Board shall consider:

(1) all applicable requirements as defined in Subchapter A of this chapter (relating to Definitions); and

(2) the site's compliance status with this chapter and the terms and conditions of the existing permit.

(e) The Board may not impose requirements less stringent than those of the existing permit unless the Board determines that the proposed changes will meet the requirements of this chapter.

(f) At the time of renewal, the Board or its designee may combine into a single permit, any federal operating permits, including general permits, at the same site which have satisfied the requirements of this section.

§122.243. Permit Expiration. Permit expiration terminates the site's right to operate unless a timely and complete renewal application has been submitted consistent with §122.133 of this title (relating to Timely Application) and §122.134 of this title (relating to Complete Application). Subsequent to a timely and complete application submittal, the site may continue to operate under the terms and conditions of the permit until the Board or its designee has taken final action on the permit renewal application.

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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Subchapter D. Affected State Review U.S. Environmental Protection Agency Review, and Citizen Petition

• 31 TAC §§122.310-122.312, 122.314, 122.316

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

§122.310. Transmission of Information to the U.S. Environmental Protection Agency (EPA). The Texas Air Control Board shall provide the EPA with a copy of each proposed permit and each final federal operating permit.

§122.311. Affected State Review.

(a) The Texas Air Control Board (TACB) shall provide notice of the draft permit for permit issuance, renewal, permit

revision, and permit reopening to any affected state on or before the time notice is provided to the public under Subchapter B of this chapter (relating to Permit Requirements).

(b) Affected state(s) shall have 30 days from date of notification of the draft permit to comment on the draft permit.

(c) The TACB shall notify the U.S. Environmental Protection Agency and any affected state, in writing, of its refusal to incorporate any or all recommendations into the proposed permit that the affected state submitted during the affected state review period. The notice shall include the TACB's reasons for not accepting any such recommendations that are not based on applicable requirements.

§122.312. U.S. Environmental Protection Agency (EPA) Review.

(a) After the end of the public comment period provided for by §122. 155 of this title (relating to Public Comment Period), the Board or its designee shall submit the proposed permit to the EPA. Upon receipt of a proposed permit, the EPA shall have 45 days to object, in writing, to the issuance of the proposed permit by the Board or its designee pursuant to Subchapter B of this chapter (relating to Permit Requirements) if EPA determines the proposed permit is not in compliance with applicable requirements of the federal operating permit program or the rules promulgated thereunder. If EPA submits such an objection, the proposed permit shall not be issued by the Board or its designee.

(b) If the Board or its designee fails, within 90 days after the date of an objection under subsection (a) of this section, to revise the proposed permit and submit a revised permit in response to the objection, the EPA will issue or deny the permit in accordance with the requirements of the federal program promulgated under Title V of the Act.

§>122.314. Public Petitions to U.S. Environmental Protection Agency (EPA).

(a) If the EPA does not file an objection with the Board or its designee, pursuant to Subchapter D of this chapter (relating to Affected State Review, U.S. Environmental Protection Agency Review and Citizen Petition) , any person, including the applicant, affected by a decision of the Board or its designee under this chapter may petition the EPA to make such an objection within 60 days of the expiration of the EPA's 45-day review period.

(b) A copy of the petition shall be provided to the Texas Air Control Board (TACB) and to the applicant by the petitioner.

(c) The petition for review to EPA under this section does not limit the effectiveness of a permit issued by the board or its designee or the finality of the board's or its designee's action for purposes of an appeal under the Texas Health and Safety Code, §382.032.

(d) Petitions shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in Subchapter B of this chapter (relating to Permit Requirements), unless the petitioner demonstrates in the petition to the EPA that it was impracticable to raise such objections within the public comment period, or that the grounds for such objection arose after the public comment period. The petition shall identify all objections.

(e) Prior to issuance of the permit, if the EPA objects to the permit as a result of a petition filed under this section, the Board or its designee shall not issue the permit until EPA's objection has been resolved.

(f) If the Board or its designee has issued a permit prior to receipt of an EPA objection based on a citizen petition, the permit remains effective and the board or its designee shall have 90 days from the receipt of the EPA's objection to resolve the objection and to terminate, revise, or revoke and reissue the permit. In the event additional information is needed from the permittee, the TACB may request from EPA a 90-day extension to resolve the EPA objection. If the TACB fails to resolve the objection, EPA will revise, terminate, or revoke such permit, and the Board or its designee may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the owner or operator of the site will not be in violation of the requirement to have submitted a timely and complete application.

§122.316. Hearing and Comment Procedures for Operating Permits. Any hearing regarding a federal operating permit will be conducted according to the following procedures and not under the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a). Such hearing shall be convened pursuant to a request in accordance with Subchapter B of this chapter (relating to Permit Requirements).

(1) Requests for notice and comment hearing.

(A) Any person who may be affected by emissions from a site regulated under this chapter may request the Board or its designee to hold a hearing on that owner or operator's application for a federal operating permit or renewal application or the reopening of a federal operating permit.

(B) After reviewing a request for a hearing, the Board or its designee shall decide whether to call the hearing and shall provide written notice to each person who requested a hearing and to the applicant within a reasonable time after receipt of the hearing request. The Board or its designee is not required to hold a hearing if the basis of the request by a person who may be affected is determined to be unreasonable.

(2) Procedures for notice and comment hearing.

(A) The Texas Air Control Board (TACB) shall provide 30 day's advance notice of any hearing regarding a federal operating permit. In addition to publication in the *Texas Register*, notice will be sent to all persons who have made timely written requests for a hearing and to the applicant. The notice shall include:

(i) a statement of the time, place, and nature of the hearing;

(ii) a reference to the particular sections of the statutes and regulations involved; and

(iii) a brief description of the purpose of the hearing.

(B) Whenever a hearing will be held, the Board or its designee shall designate a presiding officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(C) Any person, including the applicant, may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The period for submitting written comments shall be automatically extended to the close of any public hearing. The hearing officer may also extend the period for submitting written comments by so stating at the hearing.

(D) A tape recording or written transcript of the hearing shall be made available to the public.

(E) Any person, including the applicant, who believes that the conditions of the draft permit do not provide for compliance with all applicable requirements as defined in Subchapter A of this chapter (relating to Definitions) or that any condition of a draft permit is inappropriate or that the Board or its designee's preliminary decision to issue or deny the draft permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably

available arguments supporting his or her position by the close of the public comment period, including any public hearing. Any supporting materials shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of state or federal statutes and regulations, U.S. Environmental Protection Agency documents of general applicability, or other generally available reference materials.

(F) All comments received either during the public comment period or during any hearing shall be considered by and responded to by the Board or its designee. The response to comments shall be available to the public and shall be sent to the applicant and any person participating in the public hearing. This response shall:

(i) specify which provisions, if any, of the draft permit have been changed in the proposed permit and the reasons for the change; and

(ii) identify the party making the comments, and briefly describe and respond to all comments on the draft permit raised during the public comment period or during any hearing.

(G) The TACB shall keep a record of all comments and also of the issues raised in the public hearing. This record shall be available to the public.

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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Acting Deputy Director, Air Quality Planning
Texas Air Control Board

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Subchapter E. Acid Rain General Acid Rain Permit Requirements

• 31 TAC §122.410, §122.411

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

§122.411. Operating Permit Interface.

(a) Unless specifically noted in this subchapter, all affected sources shall comply with the requirements of this chapter for permit issuance, revision, reopening, and renewal; including any such requirements for application, public participation, review by affected states, and review by the U.S. Environmental Protection Agency.

(b) The Texas Air Control Board (TACB) hereby adopts and incorporates by reference the provisions of 40 Code of Federal Regulations (CFR) 72 as in effect on the date of this action for purposes of implementing an acid rain program that meets the requirements of Title IV of the Act. If the provisions or requirements of 40 CFR 72 conflict with or are not included in this chapter, the 40 CFR 72 provisions and requirements shall apply and take precedence.

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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Acting Deputy Director, Air Quality Planning
Texas Air Control Board

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Acid Rain Application

• 31 TAC §§122.420-122.422, 122.425, 122.427

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

§122.420. Enforceability of Acid Rain Permit Application. A complete acid rain permit application shall be binding on the owners and operators and the designated representative of the affected source and all affected units at the affected source governed by the acid rain permit application. The application shall be enforceable as an acid rain permit from the date of submission of the permit application until the issuance or denial of the acid rain permit.

§122.421. Timely Application.

(a) Applications for initial Phase II acid rain permits shall be submitted to the Texas Air Control Board no later than six months after the effective date of the interim federal operating permit program, but no later than by January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides pursuant to the Act, §407.

(b) The designated representative of affected units that become subject to the acid rain rules after these filing dates shall file applications no later than 12 months after the affected units become subject to those rules, unless otherwise specified in the acid rain rules.

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

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Acid Rain Permit Issurance, Revocations, and Reopenings

• 31 TAC §§122.430, 122.432, 122.434, 122.435, 122.437, 122.438

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

§122.430. Acid Rain Permit Conditions.

(a) Emissions from the affected units which are subject to the requirements of the acid rain rules shall not exceed any allowances that the affected unit lawfully holds under the acid rain provisions of the Act or the acid rain rules.

(1) No revision to the federal operating permit shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

(2) There is no limit placed on the number of allowances held by the affected unit. The affected unit may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(3) Any such allowance shall be accounted for according to the procedures established in the acid rain rules.

§122.432. Acid Rain Permit Issuance.

(a) In addition to the permit issuance requirements under Subchapter C of this chapter (relating to Permit Issuances, Revisions, Reopenings, and Renewals), for acid rain permits, the applicant shall submit to the U.S. Environmental Protection Agency a certificate of representation for

the designated representative of the affected source in accordance with the acid rain rules.

(b) Each acid rain permit shall have a fixed term of five years commencing on its effective date. Each acid rain permit issued on or before December 31, 1997 in accordance with subsection (c) of this section shall take effect by the later of January 1, 2000, or, where the permit governs a new unit or upgraded unit, the deadline for monitor certification under 40 Code of Federal Regulations 75.

(c) The Board or its designee shall issue or deny an acid rain permit on or before December 31, 1997, (if the operating permit program has received full or interim approval by July 1, 1996) to each affected source provided that the designated representative of the affected source submitted a timely and complete acid rain permit application and meets the requirements of the acid rain rules and of this chapter. Otherwise, the Board or its designee shall issue or deny an acid rain permit within 18 months of receiving a complete acid rain permit application.

§122.434. Acid Rain Permit Shield. Each affected unit operated in accordance with the acid rain permit that governs the affected unit, and that was issued in compliance with the acid rain provisions of the Act and the acid rain rules shall be deemed to be operating in compliance with the acid rain requirements, except as provided in 40 Code of Federal Regulations 72.9(g)(6).

§122.435. Acid Rain Permit Revisions.

(a) The provisions of this subchapter supplement Subchapter C of this chapter (relating to Permit Issuances, Revisions, Reopenings, and Renewals). Where the provisions of this subchapter conflict with Subchapter C of this chapter, the provisions of 40 Code of Federal Regulations 72 shall supersede the operating permit revision procedures with regard to revision of any acid rain permit provision.

(b) No acid rain permit revision shall affect the term of the acid rain permit to be revised. No acid rain permit revision shall excuse any violation of an acid rain requirement that occurred prior to the effective date of the revision.

(c) The existing terms and conditions of the acid rain permit shall apply while any acid rain permit revision is pending.

(d) The standard requirements contained in the acid rain rules shall not be modified or voided by an acid rain permit revision.

(e) Changes that are prohibited by the acid rain permit or changes which are not addressed by the acid rain permit shall not be made by the permittee without first revising the acid rain permit, if such changes are subject to any requirements under the acid rain rules.

§122.437. Acid Rain Permit Revision Procedures.

(a) Permit modifications. The following acid rain permit revisions are permit modifications and shall follow the permit issuance procedures of this chapter and Subpart G of 40 Code of Federal Regulations (CFR) 72:

(1) relaxation of an excess emission offset requirement after approval of the offset plan by the U.S. Environmental Protection Agency (EPA);

(2) incorporation of a final nitrogen oxides alternative emission limitation following a demonstration period; and

(3) determinations concerning failed repowering projects.

(b) Fast track modifications. Notwithstanding subsection (a) of this section, at the option of the designated representative, permit revisions which meet the criteria in 40 CFR 72 for fast track modifications may follow the procedural requirements for fast track modifications listed in 40 CFR 72.

(c) Administrative permit amendments. The following acid rain permit revisions are administrative permit amendments and shall follow the administrative permit amendment procedures of this regulation, except that the Texas Air Control Board (TACB) shall submit the revised portion of the permit to the EPA within ten working days after the date of final action on the request for an administrative amendment:

(1) activation of a compliance option conditionally approved by the TACB; provided that all requirements for activation under the acid rain rules are met;

(2) changes in the designated representative or alternative designated representative; provided that a new certificate of representation is submitted;

(3) changes in the owners or operators; provided that a new certificate of representation is submitted within 30 days of the change;

(4) termination of a compliance option in the permit; provided that all requirements for termination under the acid rain rules shall be met and this procedure shall not be used to terminate a repowering plan after December 31, 1999;

(5) changes in the date, specified in a new unit's acid rain permit, of commencement of operation or the deadline for monitor certification, provided that they are in accordance with the acid rain rules;

(6) the addition of or change in a nitrogen oxides alternative emissions limitation demonstration period; provided that the requirements of the Act, §407 are met; and

(7) incorporation of changes that the EPA has determined to be similar to those in paragraphs (1)-(6) of this subsection.

(d) The following permit revisions shall be deemed to amend automatically and become a part of the affected unit's acid rain permit by operation of law without any further review:

(1) upon recordation by the EPA, all allowance allocations to, transfers to, and deductions from an affected unit's Allowance Tracking System account; and

(2) incorporation of an offset plan that has been approved by the EPA.

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

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Acid Rain Appeals

• 31 TAC §122.440

The new rules are adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to adopt rules consistnent with the policy and purposes of the TCAA.

§122.440. Acid Rain Appeals Procedure.

(a) Appeals of the acid rain portion of an operating permit issued by the Texas Air Control Board (TACB) or its designee that do not challenge or involve decisions or actions of the U.S. Environmental Protection Agency (EPA) under the acid rain provisions of the Act and the acid rain rules shall be conducted according to procedures of the Texas Health and Safety Code, §382.032.

(b) Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the EPA shall follow the procedures specified 40 Code of Federal Regulations (CFR) 78 and the Act, §307. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of

whether a technology is a qualifying repowering technology.

(c) The TACB shall serve written notice on the EPA of any judicial appeal concerning an acid rain provision of any operating permit or denial of an acid rain portion of any operating permit within 30 days of the filing of the appeal.

(d) The Administrator may intervene as a matter of right in any permit appeal involving an acid rain permit provision or denial of an acid rain permit.

(e) The TACB shall serve written notice on the EPA of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an acid rain permit. Following any such determination or order, the Administrator will have an opportunity to review and veto the acid rain permit or revoke the permit for cause.

(f) A failure of the board or its designee to issue an acid rain permit in accordance with the acid rain rules shall be grounds for filing an appeal.

(g) No appeal concerning an acid rain requirement shall result in a stay of any provision of the acid rain permit for which a stay is barred under 40 CFR 78.

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

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part XIX. Texas Department of Protective and Regulatory Services

(Editor's Note: Texas Civil Statutes, Article 4413(502) historical note (Vernon Supplement 1993) states that all functions, powers, duties, funds, and obligations of the Texas Department of Health relating to institutional component of licensing and certification activity other than long-term care facilities be transferred to the Texas Department of Protective and Regulatory Services effective September 1, 1993.

The Texas Register is administratively transferring and duplicating the following rules listed in the table below from Title 25, Part I. Texas Department of Health to the Title 40. Part XIX. Texas Department of Protective and Regulatory Services. The table lists the old section number and the new section number that correspond to them.)

Texas Department of Protective and Regulatory Services Rules

Transferred and Duplicated from the Texas Department of Health

Old Rules	New Rules
Chapter 145. Nursing Facilities and Related Institutions	**Chapter 727. Licensing of Maternity Facilities**
Subchapter B. Standards for Licensure	Subchapter B. Standards for Licensure
§145.43	§727.201
Subchapter D Facility Construction	Subchapter C. Construction Standards for Maternity Facilities
§145.131	§727.301
§145.132	§727.302

The following rules are duplicated from the Texas Department of Health

Subchapter A. Application Procedures	Subchapter A. Application Procedures
§§145.11 - 145.21	§§727.101 - 727.111
Subchapter D. Facility Construction	Subchapter D. General Requirements for All Facilities Facility Construction
§145.141 and §145.142	§727.401 and §727.402
Subchapter E. Medication Aides	Subchapter E. Medication Aides
§§145.161 - 145.174	§§727.501 - 727.514
Subchapter F. Inspections, Surveys and Visits	Subchapter F. Inspections, Surveys and Visits
§145.191 and §145.192	§727.601 and §727.602

Old Rules	New Rules
Subchapter G. Abuse, Neglect, and Exploitation; Complaint and Incident and Investigations	Subchapter G. Abuse, Neglect, and Exploitation; Complaint and Incident and Investigations
§§145.211 - 145.217	§§727.701 - 727.707
Subchapter H. Enforcement	Subchapter H. Enforcement
§§145.231 - 145.234	§§727.801 - 727.804
§145.236	§727.805
§145.238	§727.806
Subchapter I. Trustees for Nursing Facilities	Subchapter I. Trustees for Facilities
§§145.261 - 145.263	§§727.901 - 727.903
Subchapter L. Provisions Applicable to Facilities Generally	Subchapter J. Provisions Applicable to Facilities Generally
§§145.321 - 145.323	§§727.1001 - 727.1003
§§145.325 - 145.327	§§727.1004 - 727.1006

Chapter 3. Income Assistance Services

Subchapter L. Work Registration

• 40 TAC §§3.1201, 3.1202, 3.1203

The Texas Department of Human Services (DHS) adopts amendments to §§3. 1201 and 3.1202 and new §3.1203. The amendment to §3.1202 is adopted with changes to the proposed text as published in the July 20, 1993, issue of the *Texas Register* (18 TexReg 4743). The amendment to §3.1201 and new §3.1203 are adopted without changes to the proposed text, and will not be republished. Also in this issue of the *Texas Register*, the department is adopting an amendment to Chapter 10, Family Self-Support Services, regarding this project.

The justification for the amendments and new section is to provide the policy basis for implementation of employment services under the McLennan County Food Stamp Employment and Training (E&T) Demonstration Project.

The amendments and new section will function by ensuring that food stamp recipients will have the opportunity to receive employment services better targeted to their needs thereby improving their ability to achieve long-term self-sufficiency.

No comments were received regarding the adoption of the amendments and new section. DHS however, is adopting §3.1202(c) with a minor editorial change that replaces the word "to" with the word "with" in the program name for Aid to Families with Dependent Children- Unemployed Parent.

The amendments and new section are adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

§3.1202. Failure to Comply.

(a) In all E&T counties except McLennan County, the Texas Department of Human Services (DHS) disqualifies households for failure to comply with work registration according to requirements stipulated in 7 Code of Federal Regulations (CFR) §273.7(g).

(b) In McLennan County DHS penalizes food stamp household members who fail to comply with food stamp employment services requirements according to the Job Opportunities and Basic Skills (JOBS) procedures specified in §3. 1104 of this title (relating to Failure to Comply). The penalty for a second parent specified in 45 CFR §250.34(c)(2) applies to the food stamp case only as specified in subsection (c) of this section.

(c) Pursuant to 7 CFR §273.7(g)(2), for household members in McLennan County who are penalized due to failure to comply with employment services requirements under Title IV of the Social Security Act, DHS will simultaneously apply a noncompliance penalty, described in subsection (b) of this section, to the food stamp case. This includes the second parent on an Aid to Families with Dependent Children-Unemployed Parent (AFDC-UP) case who is disqualified as specified in 45 CFR §250.34(c)(g)(2).

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

Issued in Austin, Texas, on August 31, 1993.

TRD-9328027 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Effective date: October 1, 1993

Proposal publication date: July 20, 1993

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

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Employment Services

• 40 TAC §10.2301

The Texas Department of Human Services (DHS) adopts an amendment to §10. 2301. The amendment is adopted without changes to the proposed text as published in the July 20, 1993, issue of the *Texas Register* (18 TexReg 6355). Also in this issue of the *Texas Register*, the department is adopting amendments and a new section to Chapter 3, Income Assistance Services, regarding this project.

The justification for the amendment is to provide the policy basis for implementation of employment services under the McLennan County Food Stamp Employment and Training (E&T) Demonstration Project.

The amendment will function by allowing food stamp recipients the opportunity to receive employment services better targeted to their needs, thereby improving their ability to achieve long-term self-sufficiency.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

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

Issued in Austin, Texas, on August 31, 1993.

TRD-9328029 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Effective date: October 1, 1993

Proposal publication date: July 20, 1993

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

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Chapter 48. Community Care for Aged and Disabled

In-Home and Family Support Program

• 40 TAC §48.2703

The Texas Department of Human Services (DHS) adopts an amendment to §48. 2703, without changes to the proposed text as published in the July 23, 1993, issue of the *Texas Register* (18 TexReg 4864).

The justification for the amendment is to revise the copayment schedule based on updated state median income figures compiled by the U.S. Department of Health and Human Services.

The amendment will function by providing public access to the new copayment schedule.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 35, which provides the department with the authority to administer public assistance and support services for persons with disabilities programs.

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

Issued in Austin, Texas, on August 31, 1993.

TRD-9328028 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Human Services

Effective date: October 1, 1993

Proposal publication date: July 23, 1993

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

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Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the Office of the Secretary of State in lobby of 221 East 11th Street, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas Department on Aging

Wednesday, September 8, 1993, 9:30 a.m. The Citizens Advisory Council of the Texas Department on Aging will meet at 1949 South IH-35, Third Floor Large Conference Room, Austin. According to the complete agenda, the council will consider and possibly act on: calling the meeting to order; discuss approval of the minutes of the June 10, 1993, joint meeting of the Texas Department on Aging Board and Citizens Advisory Council (CAC); receive public testimony; hear committee reports; review Senate Bill 383 and discuss implications for CAC; make recommendations for Texas Board on Aging including, but not limited to, possible restructuring; general announcements; and adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: August 31, 1993, 1:44 p.m.

TRD-9328036

Thursday, September 9, 1993, 10:00 a.m. The Networking/Advocacy/Legislation Committee of the Texas Department on Aging will meet at 1949 South IH-35, Third Floor Large Conference Room, Austin. According to the complete agenda, the committee will consider and possibly act on: calling the meeting to order; discuss approval of minutes of July 7, 1993, meeting; work session on the development of an Aging Policy Consortium to include bylaws; membership; responsibility of members; key issues to date; most effective methods of coordination; key groups the Consortium should work with; possibility of membership fees; update on development of an Aging Consortium; discussion with Chair of Citizens Advisory Council on the future role of the Council, local advocacy efforts and issues forums; background and current status of nursing facility waiver program; overview of development of communications plan; and adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: August 31, 1993, 1:42 p.m.

TRD-9328035

Thursday, September 9, 1993, 1:30 p.m. The Audit and Finance Committee of the Texas Department on Aging will meet at 1949 South IH-35, Third Floor Small Conference Room, Austin. According to the complete agenda, the committee will consider and possibly act on: calling the meeting to order; discuss approval of minutes of July 7, 1993, meeting; review Texas Department on Aging (TDoA) operating budget for Fiscal Year 1994; prior internal audit updates; present internal audit of the TDoA Field Operations Division-final report; and adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: August 31, 1993, 1:42 p.m.

TRD-9328034

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The State Bar of Texas

Thursday-Friday, September 9-10, 1993, 10:00 a.m. and 8:30 a.m. respectively. The Commission for Lawyer Discipline of the State Bar of Texas will meet at the Texas Law Center, 1414 Colorado Street, Room 206, Austin. According to the agenda summary, the commission will call the meeting to order; swear in new members; make introductions; review minutes; discuss statistical reports; commission's compliance with rules; operations of general counsel's office; grievance committees; special counsel program; operations of the commission; collection of attorneys fees; litigation dockets; meet in executive session (pursuant to Texas Civil Statutes, Article 6252-17(2)(e) and (g) to discuss pending litigation; cases pending before evidenciary panels of grievance committees; special counsel assignments; personnel matters; reconvene in open meeting to discuss and take action on items discussed during closed executive session; discuss future meetings; matters as appropriate; hear public comment; and adjourn.

Contact: Anne Dorris, P.O. Box 12487, Austin, Texas 78711, (512) 463-1463.

Filed: September 1, 1993, 3:07 p.m.

TRD-9328139

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Texas Catastrophe Property Insurance Association

Monday, September 13, 1993, 7:30 p.m. The Board of Directors of the Texas Catastrophe Property Insurance Association will meet at the Wyndham Austin Hotel at Southpark, 4140 Governor's Row, Austin. According to the complete agenda, the board will call the meeting to order, reminder of antitrust statement; meet in executive session to discuss personnel and litigation matters; and adjourn.

Contact: Frank R. "Buddy" Rogers, 2801 South Interregional, Austin, Texas 78741, (512) 444-9612.

Filed: August 31, 1993, 12:22 p.m.

TRD-9328030

Tuesday, September 14, 1993, 8:30 a.m. The Board of Directors of the Texas Catastrophe Property Insurance Association will meet at the Wyndham Austin Hotel at Southpark, 4140 Governor's Row, Austin. According to the agenda summary, the board will discuss approval of prior minutes; hear committee reports; and discuss normal business items.

Contact: Frank R. "Buddy" Rogers, 2801 South Interregional, Austin, Texas 78741, (512) 444-9612.

Filed: August 31, 1993, 12:23 p.m.

TRD-9328031

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Texas Cosmetology Commission

Sunday, September 12, 1993, 9:00 a.m. The Texas Cosmetology Commission will meet at the Texas Cosmetology Commission, 5717 Balcones Drive, Austin. According to the agenda summary, the commission will call the meeting to order; make introductions; meet in executive session pursuant to Texas Civil Statutes, Article 6252-17, §2(g) to consult with its attorney and seek legal advice with respect to pending or contemplated litigation; reconvene in open session to vote on any matters necessary as a result of its executive session; meet in executive session pursuant to Texas Civil Statutes, Article 6252-17, §2(e) to discuss matters involving the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer, the executive director of the commission, or to hear complaints or charges against the executive director; and reconvene in open session to vote on any matters necessary as a result of its executive session pursuant to 6252-17, §2(g).

Contact: Alicia C. Ayers, P.O. Box 26700, Austin, Texas 78755-0700, (512) 454-4674.

Filed: September 2, 1993, 8:42 a.m.

TRD-9328191

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Texas State Board of Examiners of Professional Counselors

Friday, September 3, 1993, 9:45 a.m. The Complaints Committee of the Texas State Board of Examiners of Professional Counselors held an emergency meeting at the Exchange Building, Room S-400, 8407 Wall Street, Austin. According to the complete agenda, the committee discussed and possibly acted on: an agreed order concerning license of R.H.O.; recess for board meeting and reconvened at 12:30 p.m. to discuss action on pending complaints. The emergency status was necessary due to unforeseeable circumstances.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, call Richard Butler at (512) 458-7488 or T. D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: August 31, 1993, 4:45 p.m.

TRD-9328091

Friday, September 3, 1993, 10:00 a.m. The Texas State Board of Examiners of Professional Counselors held an emergency meeting at the Exchange Building, Room S-400, 8407 Wall Street, Austin. According to the complete agenda, the board discussed approval of the minutes of July 10, 1993, meeting; discussed and possibly acted on in executive session pending litigation relating to Don Rettberg; liability insurance for board members (Section 53, Article V, General Appropriations Act); agreed order concerning the license of R.H.O.; emergency and proposed amendments to 22 TAC, Chapter 681; election of voting delegate and alternate delegate to the American Association of State Counseling Boards. The emergency status was necessary due to unforeseeable circumstances.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, call Richard Butler at (512) 458-7488 or T. D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: August 31, 1993, 4:44 p.m.

TRD-9328089

Friday, September 3, 1993, 12:30 p.m. The Applications, Licensing and Renewals Committee of the Texas State Board of Examiners of Professional Counselors held an emergency meeting at the Exchange Building, Room S-402, 8407 Wall Street, Austin. According to the complete agenda, the committee discussed and possibly acted on applications from Anne Hardy-Holley, David Karl Switzer, and possibly others. The emergency status was necessary due to unforeseeable circumstances.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, call Richard Butler at (512) 458-7488 or T. D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: August 31, 1993, 4:44 p.m.

TRD-9328090

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Texas Department of Criminal Justice-CJAD

Thursday, September 9, 1993, 1:30 p.m. The Judicial Advisory Council Grants Review Committee of the Texas Department of Criminal Justice will meet at the Ceremonial Courthouse, 12th Floor, El Paso County Courthouse, 500 East San Antonio Street, El Paso. According to the complete agenda, the committee will review and make recommendations of Fiscal Year 1994 target programs (grant) funding.

Contact: Virginia Grote, 8100 Cameron Road, Suite 450, Building B, Austin, Texas 78754, (512) 834-8188.

Filed: August 31, 1993, 2:58 p.m.

TRD-9328050

Friday, September 10, 1993, 9:00 a.m. The Judicial Advisory Council of the Texas Department of Criminal Justice will meet at the Ceremonial Courthouse, 12th Floor, El Paso County Courthouse, 500 East San Antonio Street, El Paso. According to the agenda summary, the council will call the meeting to order; introduce guests; discuss approval of minutes; hear divisions reports; Fiscal Year 1994 diversion target programs (grant) funding; CJAD update; state jail facilities; probation advisory committee reports; discuss other administrative business; date and site selection of next meeting; and adjourn.

Contact: Virginia Grote, 8100 Cameron Road, Suite 450, Building B, Austin, Texas 78754, (512) 834-8188.

Filed: August 31, 1993, 2:58 p.m.

TRD-9328049

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Texas Education Agency (TEA)

Wednesday, September 8, 1993, 10:00 a.m. The State Board of Education (SBOE) Task Force on Early Childhood and Elementary Education of the Texas Education Agency will meet at the William B. Travis Building, Room 1-104, 1701 North Congress Avenue, Austin. According to the complete agenda, the task force will hear welcoming remarks by task force chair; presentation on early childhood elementary school reform; task force discussion of early childhood-elementary school reform presentation; and discuss draft policy statement and recommendations.

Contact: Dan Arrigona, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: August 31, 1993, 3:26 p.m.

TRD-9328054

Thursday, September 9, 1993, 10:30 a.m. The State Board of Education (SBOE) Committee of the Whole of the Texas Education Agency (TEA) will meet at the William B. Travis Building, Room 1-104, 1701 North Congress Avenue, Austin. According to the agenda summary, the board will hear public testimony; discuss commissioner's overview of the September 1993 SBOE meeting; status report on student achievement; request for SBOE confirmation regarding the establishment of advisory committees; education for self-responsibility materials; presentation of Early Childhood and Elementary Education Task Force policy recommendations; implications for the SBOE of legislation passed by the 73rd Texas Legislature related to public education; comparison of SBOE and commissioner of education authority in major areas of public education; discuss securities lending services provided by the Master Trust Custodian of the Permanent School Fund; pending litigation [discussion to be held in executive session in accordance with Texas Civil Statutes, Article 6252-17, §2(e), in Room 1-103]; and personnel matters [discussion to be held in executive session in accordance with Texas Civil Statutes, Article 6252-17, §2(g), in Room 1-103].

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: September 1, 1993, 2:26 p.m.

TRD-9328132

Thursday, September 9, 1993, 1:00 p.m. The State Board of Education (SBOE) Committee on Personnel of the Texas Education Agency (TEA) will meet at the William B. Travis Building, Room 1-111, 1701 North Congress Avenue, Austin. According to the agenda summary, the board will hear public testimony; discuss 19 TAC Chapter 149, Education Personnel Development; 19 TAC §137.5, Educator Assessment; 19 TAC §137.194, Teacher Certificate-All Level; University of Texas at Brownsville alternative certification program; approval of tests and passing standards for Examination for the Certification of Educators in Texas; appointment to Fort Sam Houston Independent School District board of trustees; 19 TAC §137.414, Teaching Certificates for Persons with a Criminal Background; Funds for professional development; update and report of the visiting team to the Teach for America organizations; educator excellence indicator system; and status report on the accreditation of school districts.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: September 1, 1993, 2:32 p.m.

TRD-9328133

Thursday, September 9, 1993, 1:00 p.m. The State Board of Education (SBOE) Committee on Students of the Texas Education Agency (TEA) will meet at the William B. Travis Building, Room 1-100, 1701 North Congress Avenue, Austin. According to the agenda summary, the board will hear public testimony; discuss 19 TAC §61.43, Absences; 19 TAC §75.195, Alternatives to Social Promotion 19 TAC Chapter 101, Assessment; list of approved tests for special language programs; request for approval for Texas Tech University Independent study by correspondence high school program; recommended high school programs; and 19 TAC §89.43, Investment Capital Fund.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: September 1, 1993, 2:32 p.m.

TRD-9328134

Thursday, September 9, 1993, 1:00 p.m. The State Board of Education (SBOE) Committee on School Finance of the Texas Education Agency (TEA) will meet at the William B. Travis Building, Room 1-104, 1701 North Congress Avenue, Austin. According to the agenda summary, the board will hear public testimony; discuss school finance update; 19 TAC Chapter 175, Proprietary Schools and Veterans Education; 19 TAC Chapter 176, Driver Training Schools; 19 TAC Chapter 61, Subchapter H, School Facilities Standards; 19 TAC §89.43, Investment Capital Fund; 19 TAC §33.105, Guarantee Program for School District Bonds; 19 TAC §67.97, Penalties [process for assessing penalties to be imposed on publishers for errors in textbooks]; petition for adoption of a rule concerning driving safety courses; report on irregularities related to failure to correct textbooks adopted under Proclamation 68; per capita apportionment for the 1993-1994 school year; request for approval of funds for professional development; 19 TAC §175.127, Minimum Standards for Operation of Proprietary Schools; review of the proposal annual audit plan of the Division of Internal Audit for 1993-1994; and review of the administrative budget and strategic plan for the 1993-1994 fiscal year.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: September 1, 1993, 2:32 p.m.

TRD-9328135

Friday, September 10, 1993, 8:30 a.m. The State Board of Education (SBOE) Committee on Long-Range Planning of the Texas Education Agency (TEA) will meet at the William B. Travis Building, Room 1-104, 1701 North Congress Avenue, Austin. According to the agenda summary, the board will hear public testimony; discuss expert session-"Issues related to a Human Resources View of Work-Force Preparation"; 19 TAC Chapter 65, Subchapter A Center for Educational Technology; status report on teacher supply, demand, and quality policy research project; raising expectations for students to meet real-world needs; federal governmental activities; and "School Safety and Violence Prevention: Shooting Stars-a 'Piece,' Not Peace Comes to School".

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: September 1, 1993, 2:33 p.m.

TRD-9328136

Friday, September 10, 1993, 8:30 a.m. The State Board of Education (SBOE) Committee on the Permanent School Fund (PSF) of the Texas Education Agency (TEA) will meet at the William B. Travis Building, Room 1-109, 1701 North Congress Avenue, Austin. According to the agenda summary, the board will hear public testimony; discuss recommended PSF investment program for September and October and the funds available for the program; alternative investment strategies for the PSF; 19 TAC §33.105, Guarantee Program for School District Bonds; review of PSF securities transactions; report of the PSF manager; and personnel matters [discussion to be held in executive session in accordance with Texas Civil Statutes, Article 6252-17, §2(g).]

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: September 1, 1993, 2:33 p.m.

TRD-9328137

Friday, September 10, 1993, 1:00 p.m. The State Board of Education (SBOE) of the Texas Education Agency (TEA) will meet at the William B. Travis Building, Room 1-104, 1701 North Congress Avenue, Austin. According to the agenda summary, the board will discuss approval of July 9, 1993 SBOE minutes; hear public testimony; discuss resolutions of SBOE; approval of consent agenda; SBOE confirmation regarding establishment of advisory committees; education for self-responsibility materials; education personnel development; educator assessment; teacher certificate-all level; University of Texas at Brownsville alternative certification program; test/passing standards for Examination for the Certification of Educators in Texas; absences; alternatives to social promotion; assessment; approved tests for special language programs; Texas Tech University independent study by correspondence high school program; proprietary schools and veterans education; driver training schools; school facilities standards; investment capital fund; guaran-

tee program for school district bonds; penalties [to be imposed on publishers for errors in textbooks]; petition for adoption of a rule concerning driving safety courses; irregularities related to failure to correct textbooks adopted under Proclamation 68; per capita apportionment for the 1993-1994 school year; request for approval of funds for professional development; center for educational technology; recommended Permanent School Fund investment program for September and October and the funds available for the program; and information concerning agency administration.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: September 1, 1993, 2:33 p.m.

TRD-9328138

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Advisory Commission on State Emergency

Thursday, September 9, 1993, 9:30 a.m. The Planning and Implementation Committee of the Advisory Commission on State Emergency will meet at the Marriott at the Capitol, Salon A and B, 701 East 11th Street, Austin. According to the agenda summary, the committee will call the meeting to order; recognize guests; hear public comment; discuss and consider policy issues and possible rule making regarding identified strategic plan implementation issues; proposed amendment to Rule 251.1 with regard to TDD equipment; consider authorizing telephone companies to begin billing fees in Irion County and the City of Mertzon (Concho Valley Council of Governments) and City of Avinger (Cass County-Ark-Texas Council of Governments); review and consider approval of proposed regional plan amendments; and adjourn. Persons requesting interpreter services for the hearing- and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: September 1, 1993, 4:15 p.m.

TRD-9328188

Thursday, September 9, 1993, 1:30 p.m. The Addressing Committee of the Advisory Commission on State Emergency will meet at the Marriott at the Capitol, Salon F and G, 701 East 11th Street, Austin. According to the agenda summary, the committee will call the meeting to order; recognize guests; hear public comment; discuss and consider possible rule making regarding identified strategic plan implementation issues on rural addressing; review and consider approval of proposed addressing plan amendments; and adjourn.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: September 1, 1993, 4:15 p.m.

TRD-9328189

Thursday, September 9, 1993, 3:30 p.m. The Administration Committee of the Advisory Commission on State Emergency will meet at the Marriott at the Capitol, Salon A and B, 701 East 11th Street, Austin. According to the complete agenda, the committee will call the meeting to order; recognize guests; hear public comment; staff reports; interagency emergency communications instructor training program; ACSEC financial report; discuss and consider the results of the reclassification study and proposed salary recommendations for ACSEC personnel; if necessary, adjourn for executive session to discuss personnel matters, in accordance with Article 6252-17, §2(e); reconvene for discussion and decisions on matters considered in executive session; hear public testimony and consider strategic plan implementation issues regarding the equal application of commission policy to service fee and surcharge funded activities; review and discuss Coastal Bend Council of Governments' 9-1-1 operations as it relates to program reporting and expenditures of service fee; discuss and consider request by the Emergency Communication District of Ector County to hold 1995 9-1-1 Day Celebration in Odessa; and adjourn. Persons requesting interpreter services for the hearing- and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: September 1, 1993, 4:14 p.m.

TRD-9328187

Friday, September 10, 1993, 9:00 a.m. The Advisory Commission on State Emergency will meet at the Marriott at the Capitol, Capitol View Terrace, 701 East 11th Street, Austin. According to the agenda summary, the commission will call the meeting to order; recognize guests; hear public comment; staff update on comments received to date regarding proposed rules 255.1 and 255.9; hear committee reports and consider any action items: administration, planning and implementation, and addressing; staff update on Call Box Project; consider and discuss approval of August meeting of minutes; and adjourn. Persons requesting interpreter services for the hearing- and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: September 1, 1993, 4:14 p.m.

TRD-9328186

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Texas Employment Commission

Wednesday, September 8, 1993, 9:00 a.m. The Texas Employment Commission will meet in Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda summary, the commission will discuss prior meeting notes; meet in executive session to consider relocation of agency headquarters; actions, if any, resulting from executive session; hear staff reports; internal procedures of commission appeals; consider and possibly act on higher level appeals in unemployment compensation cases listed on Commission Docket 36; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: August 31, 1993, 2:53 p.m.

TRD-9328048

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Texas Department of Health

Tuesday, September 7, 1993, 10:00 a.m. The Texas Board of Health of the Texas Department of Health will meet at the Texas Department of Health, Room M-739, 1100 West 49th Street, Austin. According to the complete agenda, the board will meet for orientation by the Texas Department of Health staff.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: August 31, 1993, 4:44 p.m.

TRD-9328088

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Texas Department of Housing and Community Affairs

Friday, September 17, 1993, 10:00 a.m. The Texas Weatherization Policy Advisory Council of the Texas Department of Housing and Community Affairs will meet at the Texas Department on Aging, 1949 IH-35 South, Third Floor Conference Room, Austin. According to the complete agenda, the council will review minutes of the May 26, 1993, meeting; discuss status of the

1993-1994 weatherization program; National Weatherization Conference; Texas Department on Aging Weatherization Program; hear committee report, utility relations; and discuss old and new business. Individuals who require auxiliary aids or services for this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822 or Relay Texas at 1 (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Contact: J. Al Almaguer, 811 Barton Springs Road, Suite 700, Austin, Texas 787, (512) 475-3866.

Filed: September 2, 1993, 8:44 a.m.

TRD-9328192

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Texas Department of Insurance

Wednesday, September 8, 1993, 9:00 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at 333 Guadalupe Street, Room 100, Austin. According to the agenda summary, the board will consider personnel; litigation; solvency; hear commissioner's orders; staff reports; discuss legislative implementation; consider a filing by Allstate Insurance Company of a personal umbrella rate revision in accordance with 28 TAC §5.1201; and consider the disapproval of a Liberty Mutual Insurance Company, et al, commercial general liability endorsement LG 60440193, Amendment Non-Cumulation of Liability (Same Occurrence), pursuant to Article 5. 13-2.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: August 31, 1993, 3:46 p.m.

TRD-9328067

Thursday, September 16, 1993, 11:00 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at 333 Guadalupe Street, Room 100, Austin. According to the complete agenda, the board will hold a public hearing under Docket Number 2054 in the matter of an appeal from a decision of the Texas Workers' Compensation Insurance Facility by Payroll Transfers, Inc. requesting a change in the classification code applicable to workers' compensation insurance in accordance with Article 5.76-2, Section 2. 08 of the Texas Insurance Code.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: August 31, 1993, 3:46 p.m.

TRD-9328066

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Texas Department of Licensing and Regulation

Monday, September 13, 1993, 1:00 p.m. The Architectural Barriers Advisory Committee of the Texas Department of Licensing and Regulation will meet at 920 Colorado Street, E. O. Thompson Building, Austin. According to the agenda summary, the committee will hear subcommittee report (Texas Accessibility Standards); discuss Rule 68.31 and 68.32 relating to variances; Senate Bill 383 relating to the existence, composition and expenses of state agency advisory committees; and contracting services.

Contact: Rick Baudoin, P.O. Box 12157, Austin, Texas 78711, (512) 463-3519.

Filed: September 2, 1993, 9:58 p.m.

TRD-9328210

Tuesday, September 14, 1993, 10:00 a.m. The Inspections and Investigations: Air Conditioning of the Texas Department of Licensing and Regulation will meet at 920 Colorado Street, E. O. Thompson Building, Tenth Floor, 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 Randy Wayne Batchelor doing business as Apollo Appliance Service for violation of Texas Civil Statutes, Article 8861, 16 TAC §75.22(b), Article 6252-13a, and Article 9100.

Contact: Paula Hamje, 920 Colorado Street, E. O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: August 31, 1993, 4:09 p.m.

TRD-9328072

Tuesday, September 14, 1993, 11:00 a.m. The Inspections and Investigations: Talent Agencies of the Texas Department of Licensing and Regulation will meet at 920 Colorado Street, E. O. Thompson Building, Tenth Floor, 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 Sherita Lynne, President, Sherita Lynne, Inc., doing business as Sherita Lynne Modeling Agency for violation of Texas Civil Statutes, Article 5221a-9, §5(a) , 16 TAC §78.40(a), Business and Commerce Code, Chapter 17, Article 6252-13a, and Article 9100.

Contact: Paula Hamje, 920 Colorado Street, E. O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: August 31, 1993, 4:08 p.m.

TRD-9328068

Thursday, September 16, 1993, 9:00 a.m. The Inspections and Investigations: Manufactured Housing of the Texas Department of Licensing and Regulation will meet at 920 Colorado Street, E. O. Thompson Building, Third Floor, 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 Lupe Lara for violation of Texas Civil Statutes, Article 5221f, §7(d), Article 6252-13a, and Article 9100.

Contact: Paula Hamje, 920 Colorado Street, E. O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: August 31, 1993, 4:09 p.m.

TRD-9328071

Thursday, September 16, 1993, 10:00 a.m. The Inspections and Investigations: Manufactured Housing of the Texas Department of Licensing and Regulation will meet at 920 Colorado Street, E. O. Thompson Building, Third Floor, 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 Jose Garza for violation of Texas Civil Statutes, Article 5221f, §7(d), Article 6252-13a, and Article 9100.

Contact: Paula Hamje, 920 Colorado Street, E. O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: August 31, 1993, 4:09 p.m.

TRD-9328070

Thursday, September 16, 1993, 11:00 a.m. The Inspections and Investigations: Manufactured Housing of the Texas Department of Licensing and Regulation will meet at 920 Colorado Street, E. O. Thompson Building, Third Floor, 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 John Brice for violation of Texas Civil Statutes, Article 5221f, §7(d), Article 6252-13a, and Article 9100.

Contact: Paula Hamje, 920 Colorado Street, E. O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: August 31, 1993, 4:09 p.m.

TRD-9328069

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Texas Council on Offenders with Mental Impairments

Monday, September 13, 1993, 2:00 p.m. The Research Committee of the Texas Council on Offenders with Mental Impairments will meet at the Texas Department of

Criminal Justice, Board of Pardons and Paroles, 8610 Shoal Creek Boulevard, Austin. According to the complete agenda, the committee will call the meeting to order; hear introductions; public comments; develop mission statement for the committee; discuss agenda for next meeting; and adjourn.

Contact: Dee Kifowit, 8610 Shoal Creek Boulevard, Austin, Texas 78757, (512) 406-5406.

Filed: August 31, 1993, 10:54 a.m.

TRD-9328023

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Texas Mental Health and Mental Retardation

Thursday, September 9, 1993, 8:30 a.m. The TXMHMR Board Planning and Policy Development Committee of the Texas Mental Health and Mental Retardation will meet at the TXMHMR Central Office, 909 West 45th Street, Auditorium, Austin. According to the agenda summary, the committee will hear citizens comments; legislative update; status report on Medicaid implementation plan; briefing by the State Medicaid Director; update to the board regarding the Community Services Steering Committee; discussion regarding a Master Plan for Community MHMR Centers; State School closure update; goals of the strategic plan; single portal authority; and other issues. If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 323-3255, Ernest Fuentes, 72 hours prior to the meeting.

Contact: Dennis R. Jones, 909 West 45th Street, Austin, Texas 78751, (512) 465-4506.

Filed: August 31, 1993, 2:27 p.m.

TRD-9328045

Friday, September 10, 1993, 8:30 a.m. The TXMHMR Board Audit Committee of the Texas Mental Health and Mental Retardation will meet at the TXMHMR Central Office, 909 West 45th Street, Auditorium, Austin. According to the complete agenda, the committee will hear citizens comments; Fiscal Year 1994 activity report; Fiscal Year 1993 Benchmarks; and consider approval of a tentative plan for Fiscal Year 1994 workload. If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 323-3255, Ernest Fuentes, 72 hours prior to the meeting.

Contact: Dennis R. Jones, 909 West 45th Street, Austin, Texas 78751, (512) 465-4506.

Filed: August 31, 1993, 2:27 p.m.

TRD-9328043

Friday, September 10, 1993, 9:00 a.m. The TXMHMR Board Business and Asset Management Committee of the Texas Mental Health and Mental Retardation will meet at the TXMHMR Central Office, 909 West 45th Street, Auditorium, Austin. According to the complete agenda, the committee will hear citizens comments; consider approval of Fiscal Year 1994 operating budget adjustments; for Denton State School Volunteer Council to build an Orthotics Workshop on the Campus of the Denton State School; consider items related to the West 38th Street planned unit development lease; and approval of an easement to Cellular One on the Austin State Hospital Campus. If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 323-3255, Ernest Fuentes, 72 hours prior to the meeting.

Contact: Dennis R. Jones, 909 West 45th Street, Austin, Texas 78751, (512) 465-4506.

Filed: August 31, 1993, 2:27 p.m.

TRD-9328044

Friday, September 10, 1993, 9:30 a.m. The TXMHMR Board of the Texas Mental Health and Mental Retardation will meet at the TXMHMR Central Office, 909 West 45th Street, Auditorium, Austin. According to the agenda summary, the board will call the meeting to order; hear citizens comments; discuss approval of the minutes of July 29, 1993 meeting; and other issues. If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 323-3255, Ernest Fuentes, 72 hours prior to the meeting.

Contact: Dennis R. Jones, 909 West 45th Street, Austin, Texas 78751, (512) 465-4506.

Filed: August 31, 1993, 2:28 p.m.

TRD-9328046

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Texas Natural Resource Conservation Commission

Wednesday, September 8, 1993, 9:00 a.m. The Texas Natural Resource Conservation Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider Motion for Rehearing on Texcor Industries, for radioactive materials License Number LO4336 and water quality Permit Number 03328, and Recontek of Texas, for Permit Number HW-50324 to store hazardous wastes in Henderson County.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: August 31, 1993, 3:04 p.m.

TRD-9328052

Thursday, September 9, 1993, 10:30 a.m. The Weather Modification Advisory Council of the Texas Natural Resource Conservation Commission will meet at 10001 Birdwell, East Room, Coliseum, Howard County Community College, Big Spring. According to the agenda summary, the council will review the minutes of June 3, 1993, committee meeting; discuss the reorganization of the State Agency on the environment including: formation of the Texas Natural Resource Conservation Commission (TNRCC), and Travel Guidelines for the TNRCC's Advisory Councils; discuss staff reports including: operational cloud-seeding program of the Colorado River Municipal Water District, status of weather-modification research activities including: conduct of data-collection activities during the later summer of 1993 (September); funding prospects for Texas Research in 1994 including: NOAA's Atmospheric Modification Program (AMP) and Bureau of Reclamation's Precipitation-Management Technology-Transfer Program; review and make recommendations on applications for renewal of Texas Weather Modification licenses for 1994 including: Atmospherics Incorporated, Colorado River Municipal Water District and Strategic Weather Services; discuss other business; and schedule next meeting.

Contact: L. Brown, P.O. Box 13087, Austin, Texas 78711, (512) 463-8069.

Filed: September 1, 1993, 3:22 p.m.

TRD-9328142

Friday, September 17, 1993, 9:30 a.m. The Office of Hearings Examiner of the Texas Natural Resource Conservation Commission will meet at the John H. Reagan Building, Room 106, 105 West 15th Street, Austin. According to the agenda summary, the commission will hold an adjudicative hearing for administrative action to be taken against Jose Martinez.

Contact: Heidi Jackson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 31, 1993, 4:39 p.m.

TRD-9328081

Friday, September 17, 1993, 9:30 a.m. The Office of Hearings Examiner of the Texas Natural Resource Conservation Commission will meet at the John H. Reagan Building, Room 106, 105 West 15th Street, Austin. According to the agenda summary, the commission will hold an adjudicative hearing for administrative action to be taken against Dickey Long.

Contact: Heidi Jackson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 31, 1993, 4:38 p.m.

TRD-9328080

Friday, September 17, 1993, 9:30 a.m. The Office of Hearings Examiner of the

Texas Natural Resource Conservation Commission will meet at the John H. Reagan Building, Room 106, 105 West 15th Street, Austin. According to the agenda summary, the commission will hold an adjudicative hearing for administrative action to be taken against David Hunziker.

Contact: Heidi Jackson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 31, 1993, 4:38 p.m.

TRD-9328079

Tuesday, September 21, 1993, 3:00 p.m. The Office of Hearings Examiner of the Texas Natural Resource Conservation Commission will meet at the West Central Texas Council of Governments Conference Room, 1025 East North Tenth Street, Abilene. According to the agenda summary, the commission will consider an application by Pine Street Salvage Company for Proposed Permit Number MSW2172 authorizing a Type I (Landfill) permit to receive municipal solid waste. The waste management facility is to be located approximately 1.2 miles northwest of U.S. Highway 83/277 and FM 2404 intersection in Taylor County.

Contact: Cynthia Hayes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: September 1, 1993, 10:48 a.m.

TRD-9328120

Friday, September 24, 1993, 10:00 a.m. The Office of Hearings Examiner of the Texas Natural Resource Conservation Commission will meet at the Stephen F. Austin Building, Room 1149A, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a public hearing on assessment of administrative penalties and requiring certain actions of TOMSA, Inc.

Contact: Kerry Sullivan, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: September 1, 1993, 3:25 p.m.

TRD-9328143

Thursday, September 30, 1993, 9:00 a.m. The Office of Hearings Examiners of the Texas Natural Resource Conservation Commission will meet at the Holiday Inn Building, Chestier Room, 1515 North Beckley, DeSoto. According to the agenda summary, the commission will hold a public hearing to consider an application made by Browning-Ferris, Inc., for an amendment to Permit Number 02907 to regulate intermittent flow variable discharges of stormwater runoff. The effluent is discharged into the Trinity River oxbow slough, thence to the Upper Trinity River in Segment Number 0805 of the Trinity River Basin.

Contact: Robert M. Rogam, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875.

Filed: August 31, 1993, 1:56 p.m.

TRD-9328041

Monday, October 4, 1993, 10:00 a.m. The Office of Hearings Examiner of the Texas Natural Resource Conservation Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing on El Camino Bay Property Owners Association's water rate increase effective August 1, 1993 for its service area in Sabine County. Docket Number 30074-G.

Contact: Linda Sorrells, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 31, 1993, 4:38 p.m.

TRD-9328078

Wednesday, October 6, 1993, 9:00 a.m. The Office of Hearings Examiner of the Texas Natural Resource Conservation Commission will meet at the Sulphur Springs City Hall, Municipal Room, 125 South Davis, Sulphur Springs. According to the agenda summary, the commission will hold a public hearing to consider an application by Billy Mack Chamness Dairy Inc. for new Permit Number 03525 for authorization to dispose of wastes and wastewater.

Contact: Heidi Jackson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: September 1, 1993, 10:48 a.m.

TRD-9328119

Thursday, October 7, 1993, 9:00 a.m. The Office of Hearings Examiner of the Texas Natural Resource Conservation Commission will meet at the Tyler City Hall, Council Chambers (Second Floor), 212 North Bonner Avenue, Tyler. According to the agenda summary, the commission will hold a public hearing to consider an application by Kenneth D. Reynolds for amendment of Permit Number 11737-01 for authorization to discharge treated domestic wastewater effluent.

Contact: Heidi Jackson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: September 1, 1993, 10:48 a.m.

TRD-9328118

Thursday, October 7, 1993, 9:00 a.m. The Office of Hearings Examiners of the Texas Natural Resource Conservation Commission will meet at the Eagle Pass City Hall, Council Chambers, 100 South Monroe Street, Eagle Pass. According to the agenda summary, the commission will hold a public hearing to consider an application made by Dos Republicas Resources Company, Inc., for proposed Permit Number 03511 to authorize an intermittent flow variable discharge of alkaline mine drainage from area retention ponds. The effluent is discharged into a series of unnamed ditches, thence to Elm Creek, thence to the Rio Grande River in Segment Number 2304 of the Rio Grande River Basin.

Contact: Bill Zukauckas, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875.

Filed: August 31, 1993, 1:56 p.m.

TRD-9328040

Friday, October 8, 1993, 10:00 a.m. The Office of Hearings Examiner of the Texas Natural Resource Conservation Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 618, Austin. According to the agenda summary, the commission will hold a hearing on River Oaks Ranch Water System, Inc.'s water rate increase effective July 24, 1993, for its service area in Hays County. Docket Number 30093-G.

Contact: Tom Boyles, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 31, 1993, 4:37 p.m.

TRD-9328077

Friday, October 8, 1993, 10:00 a.m. The Office of Hearings Examiner of the Texas Natural Resource Conservation Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing on Technology Hydraulics, Inc.'s sewer rate increase effective July 31, 1993, for its service area located in Travis County. Docket Number 30089-R.

Contact: Elizabeth Bourbon, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 31, 1993, 4:37 p.m.

TRD-9328074

Tuesday, October 12, 1993, 10:00 a.m. The Office of Hearings Examiner of the Texas Natural Resource Conservation Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing on Ernest H. Baumgart doing business as Baumgart Water Supply's water rate increase effective June 19, 1993 for its service area located in Aransas County. Docket Number 30049-R.

Contact: Leslie Craven, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 31, 1993, 4:37 p.m.

TRD-9328075

Thursday, October 14, 1993, 9:00 a.m. The Office of Hearings Examiners of the Texas Natural Resource Conservation Commission will meet at the Environmental Pollution Control Building-Auditorium, 7411 Park Place (One mile south of Loop 610 at the intersection of Telephone Road), Hous-

ton. According to the agenda summary, the commission will hold a public hearing to consider an application made by Astro Commercial Enterprises, Inc. for proposed Permit Number 13600-01 to authorize a discharge of treated domestic wastewater effluent via a pipe into Mustang Bayou; thence to Persimmon Bayou; thence to New Bayou; thence to Chocolate Bay in Segment Number 2432 of the Bays and Estuaries.

Contact: Carol Wood, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875.

Filed: August 31, 1993, 1:55 p.m.

TRD-9328039

Thursday, October 14, 1993, 10:00 a.m. The Office of Hearings Examiner of the Texas Natural Resource Conservation Commission will meet at the Stephen F. Austin Building, Room 119, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing on the City of Leander's City Ordinance Number 92-053-000 adopted on June 14, 1993, which increased Block House Municipal Utility District's wholesale water rates. Block House MUD has filed an appeal with the Texas Natural Resource Conservation Commission requesting a review of the City of Leander's wholesale water rates. Docket Number 30116-A.

Contact: Bill Zukauckas, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 31, 1993, 4:37 p.m.

TRD-9328076

Monday, October 18, 1993, 10:00 a.m. The Office of Hearings Examiner of the Texas Natural Resource Conservation Commission will meet at the Stephen F. Austin Building, Room 211, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing on B-F Utilities, Inc.'s water rate increase effective August 1, 1993 for its service area located in Cooke County. Docket Number 30106-G.

Contact: Joseph W. O'Neal, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 31, 1993, 4:36 p.m.

TRD-9328073

Thursday, October 21, 1993, 9:00 a.m. The Office of Hearings Examiner of the Texas Natural Resource Conservation Commission will meet at the Administration Building, Commissioner's Courtroom, 100 East Cano, Edinburg. According to the agenda summary, the commission will consider an application by Hidalgo County for Proposed Permit Number MSW1593-A expanding and upgrading the facility from a Type II to a Type I municipal solid waste management facility. The site is on a thirty-nine and two-thirds acre site located north of the intersection of Davis Road and Alamo Road in Hidalgo County.

Contact: Deborah Thomas, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: September 1, 1993, 3:26 p.m.

TRD-9328144

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Board of Nurse Examiners

Tuesday-Wednesday, September 21-22, 1993, 8:00 a.m. The Board of Nurse Examiners will meet at the University of Texas at El Paso, Auditorium, 1101 North Campbell, El Paso. According to the agenda summary, the board will receive the minutes from the July 18-19, 1993 planning meeting and the July 20, 1993 annual meeting; receive financial statements for June and July and consider Fiscal Year 1994 budget and fees; board will consider two ANP petitions; receive updates on the status of various projects; report from the executive director; consider education and examination matters; receive outside agency committee reports; hold an open forum on Tuesday to receive input from interested parties; consider adoption of three rule changes; proposed amendments to three rules; set board meeting dates for 1994; and board will also consider ratification of proposed board orders.

Contact: Erlene Fisher, P.O. Box 140466, Austin, Texas 78714, (512) 835-8675.

Filed: September 1, 1993, 2:20 p.m.

TRD-9328131

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Texas Board of Pardons and Paroles

Thursday, September 9, 1993, 9:00 a.m. The Parole Board of the Texas Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, the board will discuss and act on the following items: approval of minutes for meeting of July 13, 1993; consider, discuss and vote to proceed with the revision of administrative rules defining circumstances under which a board member is disqualified from voting; to proceed with the revision of administrative rules pertaining to parole revocation; consider, discuss and adopt a personnel policy for BPP; consider, discuss, and vote to proceed with revision of administrative rules for special conditions relating to the residence of administrative releasees; to proceed with the revision on guidelines for parole release and parole denial; discussion of research of parole revocation; revised fee affidavit forms; board training and hearing officers training; and specialized case loads.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5407.

Filed: September 1, 1993, 2:19 p.m.

TRD-9328129

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Texas Department of Protective and Regulatory Services

Thursday-Friday, September 9-10, 1993, 5:00 p.m. and 9:30 a.m. respectivley. The Texas Board of Protective and Regulatory Services of the Texas Department of Protective and Regulatory Services will meet at the Houston Council Chambers, City Hall, Second Floor, 910 Bagby, Houston. According to the complete agenda, the board will hear public testimony on agency-related issues and concluding at 7:00 p.m. An opportunity for pubic testimony will also be available Friday morning. On Friday, the board will discuss approval of minutes of August 13, 1993 board meeting; discuss excused absences of board members; continuation of public testimony; hear comments and announcements; executive director's report; overview of Region Six; discuss protective services for families and children related advisory committees; proposed rules on cost finding methodology for the 24-hour child care facility program; adoption of rules for family preservation services; reports on legislation affecting protective services for families and children and adult protective services; report on consultant for the PRS policy review and possible changes in process; legislation changing child care licensing policies and procedures; meet in executive session regarding pending litigation; reconvene in open session to take action, if necessary, resulting from discussion in executive session.

Contact: Michael Gee, P.O. Box 149030, Mail Code E-554, Austin, Texas 78714-9030, (512) 450-3645.

Filed: September 1, 1993, 3:13 p.m.

TRD-9328140

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Public Utility Commission of Texas

Tuesday, September 14, 1993, 10:00 a.m. (Rescheduled from Thursday, September 2, 1993, at 10:00 a.m.). The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the division will hold a second prehearing conference in Docket Number 12065-complaint of Kenneth D. Williams against Houston Lighting and Power Company.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 1, 1993, 3:50 p.m.

TRD-9328172

Thursday, September 16, 1993, 9:00 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the division will hold a joint prehearing conference in Docket Numbers 12126-application of Bluebonnet Electric Cooperative, Inc., for approval of new industrial time of use rate; and 12127-application of Central Texas Electric Cooperative, Inc., for approval of a large power time of use rate.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 31, 1993, 2:58 p.m.

TRD-9328051

Monday, October 4, 1993, 9:00 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 11926-application of Southwestern Bell Telephone Company to offer signaling system 7 ("SS7") signaling as a new common switching feature available with Group D ("FGD") switched access service.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 31, 1993, 10:54 a.m.

TRD-9328024

Wednesday, January 19, 1994, 10:00 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 10687-Consolidated application of Southwestern Bell Telephone Company for approval of Integrated Services Digital Network (ISDN); Digiline and Smarttrunk Services.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 31, 1993, 10:09 a.m.

TRD-9328021

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Board of Tax Professional Examiners

Thursday, September 9, 1993, 9:00 a.m. The Board of Tax Professional Examiners will meet at 4301 Westbank Drive, Austin. According to the agenda summary, the board will call the meeting to order; take roll call; notice and quorum; go into executive session pursuant to Chapter 551 of the Government Code, §551.074 to deliberate the appointment, employment and duties of a public officer, in particular the interviewing of candidates for executive director; board will go into session pursuant to Texas Government Code, §551.074 to interview candidates for executive director position; reconvene in open session to announce that interviews will continue on September 10.

Contact: Sam H. Smith, 4301 Westbank, Austin, Texas 78746-6565, (512) 329-7981.

Filed: September 1, 1993, 2:19 p.m.

TRD-9328126

Friday, September 10, 1993, 9:00 a.m. The Board of Tax Professional Examiners will meet at 4301 Westbank Drive, Austin. According to the agenda summary, the board will call the meeting to order; take roll call; notice and quorum; chair will call the meeting to order, then go into executive session (551.074) to deliberate the appointment, employment, and duties of a public officer or employee, in particular, the interviewing of candidates for the position of executive director; executive session pursuant to Texas Government Code, §551.074 to interview candidates for the position of executive director; reconvene in open meeting and board will select the candidates for the position of executive director or take some action to further consider the applicants.

Contact: Sam H. Smith, 4301 Westbank, Austin, Texas 78746-6565, (512) 329-7981.

Filed: September 1, 1993, 2:04 p.m.

TRD-9328125

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Teacher Retirement System of Texas

Thursday, September 9, 1993, 9:00 a.m. The Investment Advisory Committee of the Teacher Retirement System of Texas will meet at 1000 Red River Street, Fifth Floor Board Room, Austin. According to the agenda summary, the committee will discuss approval of the June 10, 1993 minutes; discuss investment outlook and market conditions; consider recommended allocation of cash flow for current quarter; review of investments; consider proposed changes to TRS Investment Policy; changes to approved common stock lists; discuss report on brokerage commissions; review of portfolio performance; real estate performance by Deloitte and Touche; and report of Real Estate Finance Committee. A quorum of the Board of Trustees may attend and enter into discussions, but no official board action will take place.

Contact: Mary Godzik, 1000 Red River Street, Austin, Texas 78701-2698, (512) 397-6400.

Filed: September 1, 1993, 3:51 p.m.

TRD-9328174

Tuesday, September 14, 1993, noon. The Medical Board of the Teacher Retirement System of Texas will meet at 1000 Red River Street, Room 420E, Austin. According to the complete agenda, the board will discuss the files of members who are currently applying for disability retirement; and disability retirees who are due a re-examination report.

Contact: Don Cadenhead, 1000 Red River Street, Austin, Texas 78701-2698, (512) 397-6400.

Filed: September 1, 1993, 3:50 p.m.

TRD-9328173

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The Texas A&M University System, Board of Regents

Thursday, September 2, 1993, 3:30 p.m. (Rescheduled from Thursday, September 2, 1993, at 10:00 a.m.). The Committee for Academic Campuses of the Texas A&M University System, Board of Regents met at the Sheraton Plaza Hotel, Santa Fe Room, 1721 Central Texas Expressway, Killeen. According to the complete agenda, the board postponed the meeting until 3:30 p.m., due to an unforeseen scheduling conflict with the representatives of the Killeen/Fort Hood area. No action will be taken at this meeting. The reason for the rescheduling does not justify making this an emergency rescheduled meeting. Signs will be posted at the meeting site announcing the postponement of the meeting.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: September 1, 1993, 9:26 a.m.

TRD-9328101

Friday, September 10, 1993, 4:00 p.m. The Board of Regents of the Texas A&M University System will hold a telephonic meeting in the Board of Regents Meeting Room, Memorial Student Center, Clark Street, Texas A&M University, College Station. According to the complete agenda, the board will consider and award bids for the library building, two academic buildings; the central services building; and Phase I of the campus infrastructure, for Texas A&M International University.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: September 1, 1993, 3:30 p.m.

TRD-9328149

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Texas Southern University

Thursday, September 9, 1993, 3:00 p.m. The Finance Committee of the Board of Regents of Texas Southern University will meet at Texas Southern University, 3715 Blodgett, TSU Warehouse, Houston. According to the complete agenda, the committee will consider matters relating to financial reporting systems, and budgets; fiscal reports from the administration; investments; and informational items.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: September 1, 1993, 3:27 p.m.

TRD-9328147

Thursday, September 9, 1993, 4:00 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 committee will consider report on progress of academic activities and programs; and discuss personnel actions.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: September 1, 1993, 3:27 p.m.

TRD-9328148

Friday, September 10, 1993, 8:30 a.m. The Board of Regents of Texas Southern University will meet at Texas Southern University Library, Fifth Floor, Houston. According to the complete agenda, the board will consider approval of the minutes; hear report of the president; reports from standing committees; and meet in executive session.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: September 1, 1993, 3:27 p.m.

TRD-9328146

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Texas Turnpike Authority

Thursday, September 9, 1993, 10:00 a.m. The Finance Committee of the Texas Turnpike Authority will meet at 3015 Raleigh Street, Dallas. According to the agenda summary, the committee will review and take action with respect to the refunding of the Authority's Dallas North Tollway Revenue Bonds, Series 1990 and the Application to the Texas Bond Review Board relating to such refunding and to consider and take other action relating thereto; and action with regard to the refu..ding of other outstanding bonds of the authority.

Contact: Jimmie G. Newton, P.O. Box 190369, Dallas, Texas 75219, (214) 522-6200.

Filed: September 1, 1993, 4:27 p.m.

TRD-9328178

Thursday, September 9, 1993, 11:00 a.m. The Board of Directors of the Texas Turnpike Authority will meet at 3015 Raleigh Street, Dallas. According to the agenda summary, the board will review and take action with respect to the refunding of the Authority's Dallas North Tollway Revenue Bonds, Series 1990 and the Application to the Texas Bond Review Board relating to such refunding and to consider and take other action relating thereto; and action with regard to the refunding of other outstanding bonds of the authority.

Contact: Jimmie G. Newton, P.O. Box 190369, Dallas, Texas 75219, (214) 522-6200.

Filed: September 1, 1993, 4:26 p.m

TRD-9328176

Thursday, September 9, 1993, 4:30 p.m. The Sound Committee of the Texas Turnpike Authority will meet at 3015 Raleigh Street, Dallas. According to the agenda summary, the committee will discuss retrofitting of the Dallas North Tollway with sound mitigation devices; receipt of public comment concerning same; meet in executive session to brief directors on related legal matters; and consider Supplemental Agreement Number One to Contract UNT-200.

Contact: James W. Griffin, P.O. Box 190369, Dallas, Texas 75219, (214) 522-6200.

Filed: September 1, 1993, 4:26 p.m.

TRD-9328175

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Regional Meetings

Meetings Filed August 31, 1993

The Brazos Valley Development Council Board of Directors will meet at the Council Board Room, 1706 East 29th Street, Bryan, September 8, 1993, at 1:30 p.m. Information may be obtained from Tom Wilkinson, Jr., P.O. Drawer 4128, Bryan, Texas 77805, (409) 775-4244. TRD-9328042

The Fisher County Appraisal District Board of Directors will meet at the Fisher County Appraisal/Tax Office, Roby, September 13, 1993, at 7: 30 p.m. Information may be obtained from Betty H. Mize, P.O. Box 516, Roby, Texas 79543, (915) 776-2733. TRD-9328037.

The Guadalupe-Blanco River Authority Board of Directors will meet at 933 East Court Street, Seguin, September 8, 1993, at 2:00 p.m. Information may be obtained from James E. Arnst, P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9328038.

The Henderson County Appraisal District Appraisal Review Board will meet at 1751 Enterprise Street, Athens, September 9, 1993, at 8:30 a.m. Information may be obtained from Donna Bailey, 1751 Enterprise Street, Athens, Texas 75751, (903) 675-9296. TRD-9328033.

The Permian Basin Regional Planning Commission Board of Directors will meet at the PBRPC Offices, 2910 La Force Boulevard, Midland, September 8, 1993, at 1:30 p.m. Information may be obtained from Terri Moore, P.O. Box 60660, Midland, Texas 79711, (915) 563-1061. TRD-9328053.

The Red River Boundary Commission will meet at the Wichita Falls Activity Center, 607 Tenth Street, Second Floor, Wichita Falls, September 13, 1993, at 7:00 p.m. Information may be obtained from M'Lou Bell, 1700 North Congress Avenue, Room 630, Austin, Texas 78701, (512) 463-5007. TRD-9328032.

The West Central Texas Council of Governments Private Industry Council held an emergency meeting at 1025 East North Tenth Street, Abilene, September 2, 1993, at 10:00 a.m. The emergency status was necessary as it did not meet the 72-hour filing requirement. Information may be obtained from Mary Ross, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544. TRD-9328022.

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Meetings Filed September 1, 1993

The Aqua Water Supply Corporation Board of Directors will meet at 305 Eskew, Aqua Office, Bastrop, September 7, 1993, at 7:30 p.m. Information may be obtained from Adlinie Rathman, P.O. Drawer P, Bastrop, Texas 78602, (512) 321-3943. TRD-9328130.

The Brazos Valley Development Council Regional Advisory Committee on Aging will meet at the Council Offices, 1706 East 29th Street, Suite B, Bryan, September 7, 1993, at 2:30 p.m. Information may be obtained from Roberta Lindquist, P O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9328145.

The Dallas Central Appraisal District Board of Directors will meet at 2949 North

Stemmons Freeway, Second Floor Community Room, Dallas, September 8, 1993, at 7:30 a.m. Information may be obtained from Rick L. Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9328117.

The Deep East Texas Private Industry Council, Inc. Planning Committee, Educational Advisory Subcommittee will meet at 300 Shepherd Avenue, Room 202, City Hall, Lufkin, September 14, 1993, at 9:00 a.m. Information may be obtained from Charlene Meadows, P.O. Box 1423, Lufkin, Texas 75901, (409) 634-4432. TRD-9328127.

The Deep East Texas Private Industry Council, Inc. will meet at 300 Shepherd Avenue, Room 102, City Hall, Lufkin, September 14, 1993, at 2:30 p.m. Information may be obtained from Charlene Meadows, P.O. Box 1423, Lufkin, Texas 75901, (409) 634-4432. TRD-9328128.

The Garza County Appraisal District Board of Directors will meet at the Appraisal District Office, 124 East Main, Post, September 9, 1993, at 8: 30 a.m. Information may be obtained from Billie Y. Windham, P.O. Drawer F, Post, Texas 79356, (806) 495-3518. TRD-9328116.

The Hays County Appraisal District Appraisal Review Board will meet at 632 A East Hopkins, Municipal Building, San Marcos, September 8-9, 1993, at 9:00 a.m. Information may be obtained from Lynnell Sedlar, 632 A. East Hopkins, San Marcos, Texas 78666, (512) 754-7400. TRD-9328121.

The Johnson County Rural Water Supply Corporation Insurance Committee will meet at the JCRWSC Office, Highway 171 South, Cleburne, September 7, 1993, at 9:00 a.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9328122.

The Tyler County Appraisal District Board of Directors will meet at 806 West Bluff, Woodville, September 7, 1993, at 4:00 p.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9328179.

The Wood County Appraisal District Board of Directors will meet at 217 North Main Street, Conference Room, Wood County Appraisal District, Quitman, September 9, 1993, at 7:00 p.m. Information may be obtained from W. Carson Wages or Lou Brooke, P.O. Box 518, Quitman, Texas 75783-0518, (903) 763-4891. TRD-9328115.

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Meetings Filed September 2, 1993

The Brown County Appraisal District Board of Directors will meet at 403 Fisk Avenue, Brownwood, September 7, 1993, at 7:00 p.m. Information may be obtained from Doran E. Lemke, 403 Fisk Avenue, Brownwood, Texas 76801, (915) 643-5676. TRD-9328193.

The Lavaca County Central Appraisal District Board of Directors will meet at 113 North Main Street, Hallettsville, September 15, 1993, at 6:00 p.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9328190.

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ORLANDO

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Bond Review Board

Bi-Weekly Report on the 1993 Allocation of the State Ceiling on Certain Private Activity Bonds

The information that follows is a report of the allocation activity for the period of August 14-27, 1993. Since Congress did not act by March 1, 1993, to extend the provisions of the tax code which allow Mortgage Bonds and Small Issue Bonds to qualify for tax-exempt financing, the amount of state ceiling remaining for those purposes has been proportionately redistributed to the other categories, pursuant to Texas Civil Statutes, Article 5190.9a, §2(e). Currently, there are three categories within the allocation program.

Total amount of state ceiling remaining unreserved for the $239,513,792 subceiling for state-voted issues under the Act as of August 27, 1993: $129, 513,792.

Total amount of state ceiling remaining unreserved for the $68,428,035 subceiling for residential rental project issues under the Act as of August 27, 1993: $253,035.

Total amount of state ceiling remaining unreserved for the $574,858,173 subceiling for all other bonds requiring an allocation under the Act as of August 27, 1993: $2,503,173.

Total amount of the $882,800,000 state ceiling remaining unreserved as of August 27, 1993: $132,275,000.

Following is a comprehensive listing of applications which have received a reservation date pursuant to the Act from August 14-27, 1993: Southeast Texas HFC, Bermuda Dunes Apartment, Residential Rental, $2,125,000; Southeast Texas HFC, Forest View Apartments, Residential Rental, $2,125,000; Southeast Texas HFC, First Line Apartments, Residential Rental, $2,000,000; San Antonio HFC, Atrium One Apartments, Residential Rental, $8,500,000; Donna HFC, MAGI, Inc., Residential Rental, $10,000,000; Tarrant County HFC, Cypress Club, Residential Rental, $4,500,000.

Following is a comprehensive listing of applications which have issued and delivered the bonds and received a Certificate of Allocation pursuant to the Act from August 14-27, 1993: El Paso HFC,, Viva Apartments, Residential Rental, $11,685,000; Southeast Texas HFC, The Ridge Apartments, Residential Rental, $5, 985,000.

Following is a comprehensive listing of applications which were either withdrawn or canceled pursuant to the Act from August 14-27, 1993: None.

Following is a comprehensive listing of applications which released a portion of their reservation pursuant to the Act from August 14-27, 1993: Southeast Texas HFC, The Ridge Apartments, Residential Rental, $15,000.

Issued in Austin, Texas, on August 30, 1993.

TRD-9328099 Jim Thomassen
Executive Director
Texas Bond Review Board

Filed: August 31, 1993

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Consultant Proposal Request

The Texas Bond Review Board (Board) is requesting proposals for financial advisor services. The deadline for submission of proposals is noon, October 8, 1993.

The financial advisor services will be for the Public School Finance Program (Program), Texas Civil Statutes, Article 717t, administered by the Board and for which the Texas State Treasury (Treasury) serves as issuer of the bonds. It is anticipated that the Treasury will also be party to the contract for services

The Board will make its selection based upon its perception of the need for a Financial Advisor, and the demonstrated competence, experience, knowledge and qualifications as well as the reasonableness of the proposed fee for the services rendered. All things being equal, the Board will give first consideration to firms whose principal place of business is located in Texas By this Request for Proposal, however, the Board has not committed itself to employ a Financial Advisor nor does the suggested scope of service or term of agreement therein require that the Financial Advisor be employed for any or all of those purposes. The Board reserves the right to make those decisions after receipt of Proposals, and the Board's decision on these matters is final. The Board reserves the right to negotiate individual elements of the Financial Advisor's proposal and to reject any and all proposals.

Pursuant to Texas Civil Statutes, Article 6252-11(c), all bidders are advised that the Board and Treasury intend to award this contract to First Southwest Company, unless a better offer is received. "Better offer" does not necessarily mean the lowest bid. First Southwest Company served as Financial Advisor to the Program for a one-year period through March 18, 1993, during which time no bonds were issued. However, bids are encouraged to be submitted.

Copies of the Request for Proposal may be obtained by calling or writing Sonja Suessenbach, Texas Bond Review Board, P.O. Box 13292, Austin, Texas 78711-3292, (512) 463-1741.

Issued in Austin, Texas, on August 31, 1993

TRD-9328100 Jim Thomassen
Executive Director
Texas Bond Review Board

Filed. August 31, 1993

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the market competitive rate ceilings by use of the formulas and methods described in Article 6.03(6), Title 79, Revised Civil Statutes of Texas, as amended (Article 5069-6.03(6), Vernon's Texas Civil Statutes). The market competitive rate ceiling for the period October 1, 1993, through September 30, 1994, is 21%.

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

TRD-9327965 Al Endsley
Consumer Credit Commissioner

Filed: August 30, 1993

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Texas Natural Resource Conservation Commission

Contract Award

This award for consulting services is being filed pursuant to Texas Civil Statutes, Article 6252-11c, §6(a). The publication date inviting response for the Request for Proposals resulting in this contract award was June 25, 1993, (18 TexReg 4216). The consultant will advise and assist the Texas Natural Resource Conservation Commission (TNRCC) in the development of appropriate siting and operational criteria for compost operations, and advise and assist TNRCC on the development of contaminant specifications and appropriate application rates for various uses for the compost end product. The consultant is R. W. Beck, 675 North First Street, Suite 701, San Jose, California 95112-6303. The total cost of the contract will not exceed $67,514, and the term of the contract is August 17, 1993-May 1, 1994. The following list outlines the due dates for documents that the private consultant is to present to TNRCC: issues paper (October 19, 1993); recommendations for facility siting criteria, quality assurance program plan, contaminant level parameters, and criteria for household hazardous waste programs (October 19, 1993); submit monthly status reports (October 14, 1993, November 15, 1993, December 15, 1993, January 15, 1994, February 15, 1994, and March 1, 1994); provide staff assistance at four public meetings (February 1, 1994 to February 28, 1994).

Questions concerning this award may be directed to Sally Lewis, Compost Specialist, Recycling/Waste Minimization Section, Pollution Prevention and Conservation, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087 or call (512) 908-6773.

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

TRD-9328104 Mary Ruth Holder
Director, Legal Services
Texas Natural Resource Conservation Commission

Filed: September 1, 1993

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Public Notice

Pursuant to Senate Bill 1243, which became effective September 1, 1993, the Texas Natural Resources Conservation Commission (Commission) received a temporary transfer of $120 million from the General Revenue Fund into the Petroleum Storage Tank Remediation Fund. The Commission is hereby suspending payments from the $120 million it received until such time as the Commission adopts rules to implement this legislation.

To obtain more information you may contact Dan Neal, Team Leader, Reimbursement Section, Petroleum Storage Tank Division, Texas Natural Resource Conservation Commission or call (512) 908-2258.

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

TRD-9328102 Mary Ruth Holder
Director, Legal Services
Texas Natural Resource Conservation Commission

Filed: September 1, 1993

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Request for Proposal

The Texas Natural Resource Conservation Commission (TNRCC) announces that it wishes to retain the services of a Professional Engineering Firm (herein referred to as "Engineer") to perform Remedial Design services for the North Cavalcade Street Superfund site. Contingent upon approval by the TNRCC, the Engineer's services may be extended into the Remedial Action (RA) Phase at the North Cavalcade site. This project will be 100% federally funded and will be conducted by the TNRCC through Cooperative Agreement V-006566 with the Environmental Protection Agency (EPA) and pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), and the Texas Water Code, Chapter 26, Subchapter H.

Objective. The intent of the soil remedial design is to provide a detailed engineering design for remediating the carcinogenic Polycyclic Aromatic Hydrocarbon (cPAH)-contaminated soil on-site to 30 parts per million (ppm) or lower using bioremediation. The design will meet the objectives of the June, 1988, Record of Decision (ROD) and any subsequent modifications thereof. Previously, some remedial design work was initiated. The Engineer will have access to all previously-generated design information to use if it so desires. However, if the Engineer uses any portion of the previously completed design work, the Engineer will remove any and all references to, and markings, seals, and any and all identifiers of, the previous engineering firm which prepared the portions used; and, accept full and complete responsibility and liability for the portions of the previous design used as if the Engineer had prepared the work itself.

At the completion of the engineering design, a bid document for on-site remedial action will be prepared.

Budget/Schedule. The maximum budget allowable will be consistent with the specific Scope of Work and the Cooperative Agreement as determined by the TNRCC. The budget for the biological treatment alternative as established in the ROD is $4.2 million dollars. The remedial design duration is expected to be six months.

RFP Package. A copy of the RFP may be obtained in one of three ways: by sending a regular or certified letter requesting a copy of the RFP to: Steve Chong, P.E., Superfund Engineering Section, Pollution Cleanup Division, Texas Natural Resource Conservation Commission,

P.O. Box 13087, Austin, Texas 78711-3087, whereupon the TNRCC will transmit the RFP to the potential offeror by certified mail; by sending an overnight or expedited delivery letter requesting a copy of the RFP to: Steve Chong, P.E., Superfund Engineering Section, Pollution Cleanup Division, Texas Natural Resource Conservation Commission, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78711, with a prepaid self-addressed overnight or expedited letter delivery return envelope to accommodate approximately 1-1/2 pounds of 8-1/2 by 11 inches material; or in person with a signed letter of receipt at Technical Park Center, Messenger Building B, 12118 IH-35 North, Suite 137, Austin.

Mr. Chong is the designated person to whom proposals may be made. Additional information may be obtained by calling (512) 908-2441. Six copies of each proposal must be received at 1700 North Congress Avenue, Austin, Texas 78711 address listed before 5:00 p.m., October 13, 1993, which is the closing date for proposals. All statements submitted in response to this request must address the items as described in the RFP. Any and all information submitted by an offeror in variance with the RFP instructions will not be reviewed or evaluated. All contracting procedures shall be conducted in accordance with all applicable state and federal laws.

Upon submittal, the proposals shall become the property of the TNRCC. Prior to selection, the proposals will be kept in closed files. After selection, the contents of the proposal shall be considered open records unless other exceptions within the Open Records Act apply. The submittal of information claimed to be confidential or proprietary should be made under separate cover on or before 5:00 p.m. on the closing date. Confidential submittals should be limited and must include an explanation of the basis for confidentiality. A claim of confidentiality will be subject to review by the Attorney General, and may be declined if the basis of the claim is determined to not be authorized by law. In such case, the information will be placed in open records.

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

TRD-9328103 Mary Ruth Holder
Director, Legal Services
Texas Natural Resource Conservation Commission

Filed: September 1, 1993

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Texas Department of Protective and Regulatory Services

Notice of Contract Awards

The Texas Department of Protective and Regulatory Services announces this contract award to provide Evaluation and Treatment Services to Children's Protective Services clients in some parts of Region 11 (Houston). The request for proposal was published in the May 20, 1993, issue of the *Texas Register* (18 TexReg 3481).

Description of Services: The evaluation and treatment services are for children who have been abused and/or neglected and their significant others in Brazoria County and in Fort Bend/Galveston/Liberty/Chambers counties.

Name of Contractors: The contracts for Brazoria County have been awarded to Psychological Associates of Lake Jackson, 115 North Dixie Drive, Suite 250, Lake Jackson, Texas 77566; and LifeSkills, Dr. James Hutchison, Ed.D., 2404 South Grand Blvd., Pearland, Texas 77581. The contract for Fort Bend/Galveston/Liberty/Chambers counties has been awarded to Martha J. Kennedy, Ph.D.

Term and Total Value: The scheduled term of the contract is from September 1, 1993, through August 31, 1994. A total amount of $379,000 has been awarded. Funding is limited to available federal and/or state appropriations.

Issued in Austin, Texas, on August 31, 1993.

TRD-9328025 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Protective and Regulatory Services

Filed: August 31, 1993

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The Texas Department of Protective and Regulatory Services announces this contract award to provide Family Preservation Services to Children's Protective Services clients in some parts of Region 11 (Houston). The request for proposal was published in the May 20, 1993, issue of the *Texas Register* (18 TexReg 3482).

Description of Services: The family preservation services are for families where abuse 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.

Name of Contractor: The contract has been awarded to the Institute for Child and Family Services, 100 Sandman, Houston, Texas 77007.

Term and Total Value: The scheduled term of the contract is from September 1, 1993, through August 31, 1994. A total amount of $400,000 has been awarded. Funding is limited to available federal and/or state appropriations.

Issued in Austin, Texas, on August 31, 1993.

TRD-9328026 Nancy Murphy
Section Manager, Policy and Document Support
Texas Department of Protective and Regulatory Services

Filed: August 31, 1993

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Railroad Commission of Texas

Dissenting Statement of Commissioner Barry Williamson

Regarding: Motor Transportation Regulations: Proposed new Subchapter CC, concerning the regulation and operation of tow trucks pursuant to Senate Bill 452.

With Senate Bill 452, the Legislature intended to simply move the Texas Department of Licensing and Regulation (TDLR) registration of tow trucks to the Railroad Commission as an efficiency measure. (The Commission already registers other commercial vehicles.) However, the Commission's proposed rules go significantly beyond a simple transfer of programs, and instead, create additional regulatory burdens for these small businesses. For that reason, I must dissent.

First, by intertwining the tow truck registration system with the Motor Carrier Act (and all its regulations and burdens), we have artificially increased the Commission's

enforcement power to permit investigations of tow truck registrants which it has no authority to perform under the Motor Carrier Act. For example, under the rules as proposed, the Commission may use its tow truck registration powers to discover non-certificated transporting violations of the Motor Carrier Act. I think this far exceeds the power granted by the Legislature in Senate Bill 452, and I proposed an amendment to §5.808 of these proposed regulations to simply restrict the inspection powers of the Commission to those "necessary to enforce this subchapter." I regret this proposal was not adopted.

Also, under the proposed rules, violations of the tow truck regulations would include violations of the Motor Carrier Act (and Motor Carrier Safety Act). This means that the Commission may suspend a tow truck owner's registration for unrelated violations of the Motor Carrier Act. I believe that this action would significantly surpass the authority granted to the Commission under Senate Bill 452. For that reason, I moved to eliminate the proposed regulations §5.810(a)(2) and (3). This proposal was not adopted.

On a matter of more direct economic consequence, the proposed regulations would require all tow truck registrants–regardless of size–to carry workers' compensation insurance coverage (or minimum accidental insurance coverage), unless it certifies it has no employees. I fear that such a requirement will force many tow truck operators to go out of business because coverage continues to be prohibitively expensive for many small businesses. For those tow truck operators who can afford coverage, this requirement will lead to increased rates for consumers. There is no statutory requirement to add this provision; in fact, operators of all other commercial vehicles who are required only to register with the Commission face no such requirement. In addition, the Legislature has rejected statewide, mandatory workers' compensation insurance in Texas. These proposed rules run contrary to Legislature's direction. In that regard, I moved to amend these proposed regulations by deleting §5.805(e) and (f). Again, I regret this proposal was not adopted.

The increased regulatory burdens imposed by these proposed regulations are not required under the statute and are not even suggested by Senate Bill 452. In fact, they run counter to the whole intent of regulatory streamlining. Absent clear legislative direction, I will continue to resist regulatory efforts to expand the size and reach of government. For these reasons I dissent from the issuance of these proposed regulations.

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

TRD-9328107 Mary Ross McDonald
Assistant Director, Legal Division-Gas Utilities/LP Gas
Railroad Commission of Texas

Filed: September 1, 1993

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The University of Texas System

Request for Proposal

The University of Texas Medical Branch in Galveston (UTMB), in accordance with provision of the Texas Civil Statutes, Article 622-11c, solicits to contract with a consultant to assist with the selection of, planning for, and implementation of a Teleconferencing Bridge in the UTMB Patient Physicians Services Department (PPS).

Project Description. The contractor selected will assist UTMB in evaluating vendor responses to a request for proposal, and in selecting the proposal best meeting UTMB's requirements. Following selection, the consultant will provide assistance to UTMB in finalizing the specific design to be implemented, developing installation plans in coordination with the Telecommunications Department and PPS, and in supervising the contractor during installation. Additionally, the consultant will assist with verifying that the equipment meets all RFP specifications and acceptance test requirements. This contract will be for approximately six months.

Contact. The complete consultant services request for proposal may be obtained from Jeffrey Bonnardel, Director of Purchasing, Room 3.02, Administration Annex Building, The University of Texas Medical Branch at Galveston, Texas 77550-0105, (409) 772-2567, Fax (409) 772-2286.

Due Date. Proposals will be opened in the offices of the Director of Purchasing, Room 3.202, Administration Annex Building, UTMB, Galveston, at the time and date specified in the request for proposal. It is the responsibility of the consultant to have proposals in the above stated offices at that time. Proposals received late for any reason will be returned unopened.

Procedure for Selection of Consultant. Proposals will be evaluated by UTMB, and selection will be based on experience, cost considerations, and other qualifications as further described in the complete consultant request for proposal. The entity selected must be thoroughly familiar with large teleconferencing bridge installations and telecommunications design and technology; must submit a resume which fully describes the type of business organization, provides a description of qualifying experience in teleconferencing bridge installation and planning, including project description, associated costs, and timeframes of projects successfully completed; provides a client list for implemented systems; provides names, titles, qualifications, and experience of specific personnel to be assigned to provide the services to UTMB; provides an outline of the proposed work plan for the project; and provides a fixed price schedule to the project including travel, lodging, and other related expenses.

Issued in Austin, Texas, on August 31, 1993.

TRD-9328047 Arthur H. Dilly
Certifying Official
The University of Texas System

Filed: August 31, 1993

♦ ♦ ♦

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 enforcement order was entered regarding Rallye, Inc. and Jimmy Etheridge (Solid Waste Registration Number 52177) on August 19, 1993, assessing $48,720 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Glen Grunberger, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 475-2267.

Issued in Austin, Texas, on August 30, 1993.

TRD-9328082 Gloria A. Vasquez
Chief Clerk
Texas Water Commission

Filed: August 31, 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 agreed enforcement order was entered regarding Rio Chemical Company, Inc. on August 19, 1993, assessing $35,200 in administrative penalties with $15, 200 deferred.

Information concerning any aspect of this order may be obtained by contacting Marianne Baker, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on August 30, 1993.

TRD-9328083 Gloria A. Vasquez
Chief Clerk
Texas Water Commission

Filed: August 31, 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 agreed enforcement order was entered regarding City of San Saba (Permit Number 10687-001) on August 19, 1993, assessing $9,400 in administrative penalties with $1,900 deferred. Stipulated penalties were also imposed.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 475-2261.

Issued in Austin, Texas, on August 30, 1993.

TRD-9328084 Gloria A. Vasquez
Chief Clerk
Texas Water Commission

Filed: August 31, 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 agreed enforcement order was entered regarding Tejas Resources, Inc. (Solid Waste Registration Number 39525) on August 19, 1993, assessing $101,600 in administrative penalties with $49,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Bob Sweeny, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on August 30, 1993.

TRD-9328085 Gloria A. Vasquez
Chief Clerk
Texas Water Commission

Filed: August 31, 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 agreed enforcement order was entered regarding Joseph Shau Cho Wong (Permit Number 13469-01) on August 25, 1993, assessing $11,938 in administrative penalties with $3,938 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Smith, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 908-2059.

Issued in Austin, Texas, on August 30, 1993.

TRD-9328086 Gloria A. Vasquez
Chief Clerk
Texas Water Commission

Filed: August 31, 1993

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Notice of Application for Waste Disposal Permit

Attached are Notices of Applications for waste disposal permits issued during the period of August 16-27, 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.

Artistech Chemical Corporation; a polypropylene manufacturing facility; the plant site is on the north side of Strang Road approximately 1,000 feet east of the intersection of Strang Road with State Highway 225, in Harris County; renewal; 02107.

Clint Independent School District; the wastewater treatment plant; is to be on the west side of the Clint Spur Drain in the vicinity of Williams Street, approximately 2,000 feet north of the FM Road 1110 and approximately 800 feet east of U.S. Highway 80 in El Paso County; 13667-01.

Harris County Municipal Utility District Number 202; the wastewater treatment facilities; are approximately 1,300 feet west of Bammel-North Houston Road, between Bourgeois Road and a Harris County Flood Control ditch in Harris County; renewal; 12631-01.

Ennis M. Cooley; the wastewater treatment facilities; are at 1910 Highway 6 South in the City of Houston in Harris County; renewal; 12427-01.

City of Kennard; the wastewater treatment facilities; are on the southeast of side of Kennard on a 27-acre tract, on Elm Creek between Pine Prairie Road and Farm-to-Market Road 357 in Houston County; renewal; 11474-01.

KMCO, Inc.; an industrial organic chemical plant that refines off-specification products from other chemical plants; the plant site is at 16503 Ramsey Road at the intersection with Crosby-Dayton Road, 1.2 miles northeast of the Town of Crosby, Harris County; amendment; 02712.

City of Lovelady; the wastewater treatment facilities; are approximately 0. 5 mile southwest of the intersection of State Highway 19 and FM Road 1280 in Houston County; amendment; 10734-01.

Lyondell-Citgo Refining Company, Limited; and integrated petroleum refinery; the plant site is at 12000 Lawndale Avenue in the City of Houston, Harris County, amendment; 00392.

City of Merkel; the wastewater treatment facility will serve the City of Merkel; the plant site is approximately 2,500 feet north and 3,800 east of the intersection of Interstate Highway 20 and FM Road 126 in Taylor County; new; 10786-02.

City of Morgan's Point; the wastewater treatment facilities; are at the southwest corner of the intersection of Barbours Cut Boulevard and North Wilson Street in Harris County; renewal; 10779-01.

Northwest Harris County Municipal Utility District Number 12; the wastewater treatment facilities; are approximately two miles south of Freeman Road (FM 529), one miles north of Clay Road and 1/4 mile west of Fry Road in Harris County; renewal; 11991-01.

Orbit Systems, Inc.; the Grasslands Wastewater Treatment Facilities; the plant site is approximately 0.50 miles south of FM Road 1462 and 1.5 miles west of State Highway 288 in Brazoria County; renewal; 12672-01.

Paul E. Orlando; Ed-Lou Mobile Home Park; the plant site is at 15110 Grant Road on the south bank of Faulkey Gully, approximately 800 feet northeast of the Grant Road and approximately 600 feet west of Shaw Road in Harris County; renewal; 12600-01.

United States Department of the Navy; a naval weapons industrial reserve plant which manufactures solid rocket motor propellant; the plant site is southwest of the City of McGregor just west of State Highway 317, bounded on the south by FM Road 2671 and on the north by the St. Louis Southwestern Railway in Coryell and McLennan Counties; amendment; 02335.

Wallace Company, Inc; the wastewater treatment facilities; are in northeast Houston on the northwest corner of the intersection of U.S. Highway 90 and the projection of Oates Road in Harris County; renewal; 11861-01.

Chemical Waste Management, Inc. a commercial hazardous waste storage, processing, and disposal facility for waste from off-site and on-site sources; hazardous waste authorized to be managed at this facility are classified as ignitable, toxic, corrosive, acute hazardous, toxicity characteristic, and reactive; the hazardous waste management facility is located on a 442-acre tract of land on the south side of Highway 73, approximately 3.2 miles west of the intersection of Highway 73 and Taylor Bayou in the City of Port Arthur Jefferson County; amendment; HW50212-01.

Safety-Kleen Corporation; a new hazardous waste management facility; the facility will collect and store Class I industrial solid waste generated off site which will be sent to a different Safety-Kleen facility for reprocessing and recycling; wastes materials are to be comprised of spent industrial solvents, degreasers, and antifreeze; the hazardous waste management facility is to be within the City limits of Corpus Christi at Santa Elena Street and Centaurus Drive in Nueces County; new; HW50338.

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

TRD-9327974 Gloria A. Vasquez
Chief Clerk
Texas Water Commission

Filed: August 30, 1993

Notice of Receipt of Application for Municipal Solid Waste Permits

Attached are Notices of Receipt of Applications and Declaration of Administrative Completeness for municipal solid waste permits issued during the period of August 16-27, 1993.

These applications have been determined to be administratively complete, and will now be subject to a technical evaluation by the staff of the Texas Water Commission. Persons should be advised that these applications are subject to change based on such evaluation.

These notices are issued pursuant to the Texas Health and Safety Code, §361.0665. Any person who may be affected by the facility is entitled to request a hearing from the Commission. The Commission will issue further notice of the application and the terms of any proposed draft permit once the technical evaluation is completed.

Information concerning these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

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.

Sanifill of Texas, Inc.; Houston; Type IV Municipal Solid Waste Facility; 350 feet south of Greenshadow Drive

along the north boundary, 100 feet west of the Pasadena/Deer Park City limits boundary on the east, 550 feet north of San Augustine along the south boundary, and 1,100 feet east of the Sam Houston tollway on the west boundary, at 1100 Jana Lane, Pasadena, Harris County; amendment; MSW1540-A.

Enviromed Services, Inc.; Abilene; Type VRE (Fluidized Bed Combustion); 2100 Cedar Street, Abilene, Taylor County; new; MSW2228.

Western Waste Industries, Inc.; Conroe; Type I, Type IX; approximately one mile southeast of the intersection of FM 1484 (Airport Road) and State Highway Loop 336, and adjacent to the northside of State Highway Loop 336, Conroe, Montgomery County; new; MSW2188.

Issued in Austin, Texas, on August 26, 1993.

TRD-9327973 Gloria A. Vasquez
Chief Clerk
Texas Water Commission

Filed: August 30, 1993

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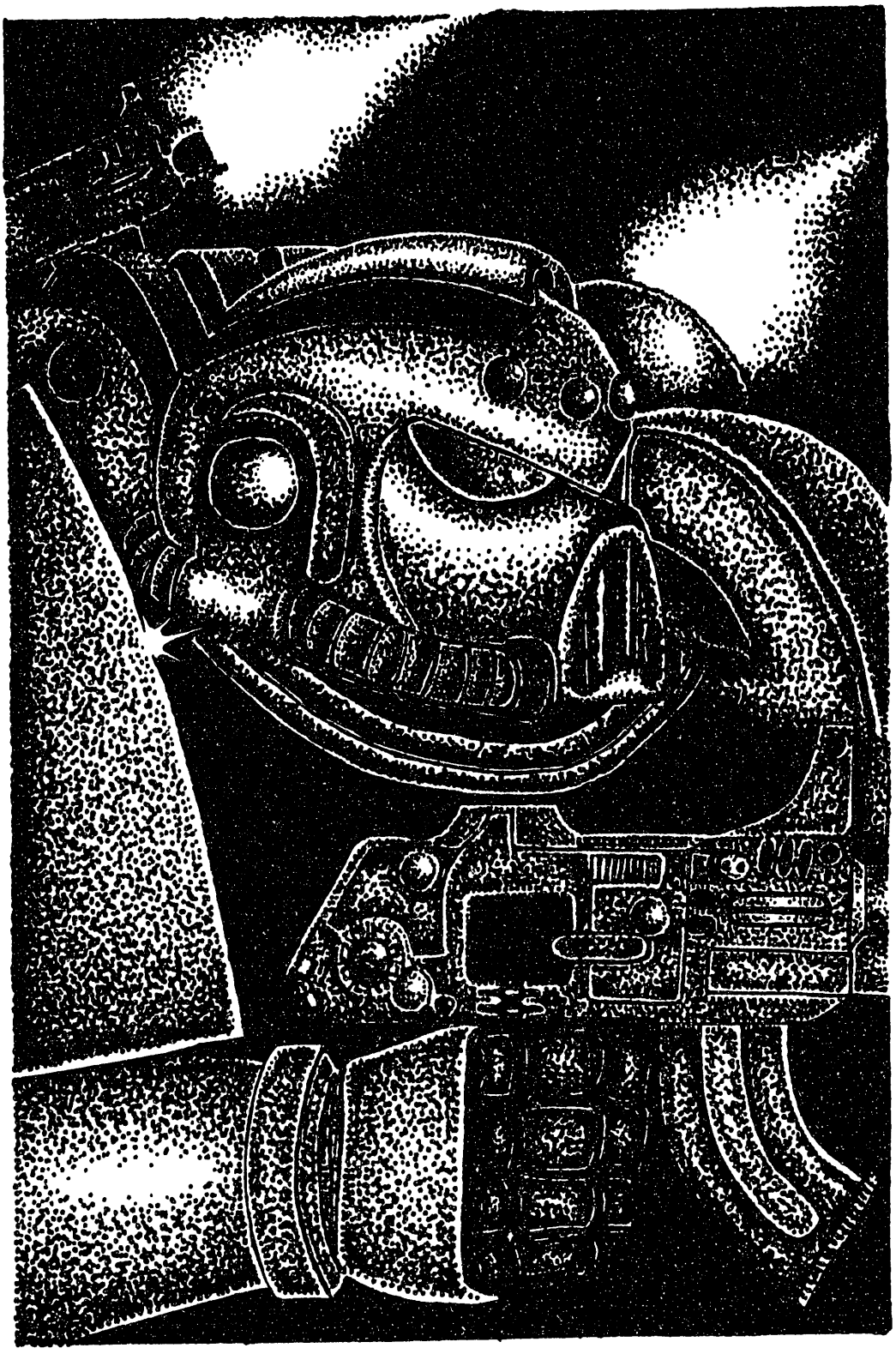

TAC Titles Affected

The following is a list of the administrative rules that were published in the August 1993 issues.

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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 r after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Regi* Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the v publication. No issues will be published on July 30, November 5, November 30, and December 28. A asterisk beside a publication date ir 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
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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
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48 Tuesday, June 22	Wednesday, June 16	Thursday, June 17
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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, Novmber 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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