

Texas Register

Volume 18, Number 96, December 24, 1993

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a section of the
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Texas Register, ISSN 0362-4781, is published semi-weekly 100 times a year except July 30, November 30, December 28, 1993 issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: one year - printed, \$95 and electronic, \$90; six-month printed, \$75 and electronic, \$70. Single copies of most issues are available at \$5 per copy.

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

How to Use the Texas Register

Information Available The 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Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date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
- 30 Environmental Quality
- 31 Natural Resources and Conservation
- 34 Public Finance
- 37 Public Safety and Corrections
- 40 Social Services and Assistance
- 43 Transportation

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

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

How to update To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 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
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The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

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

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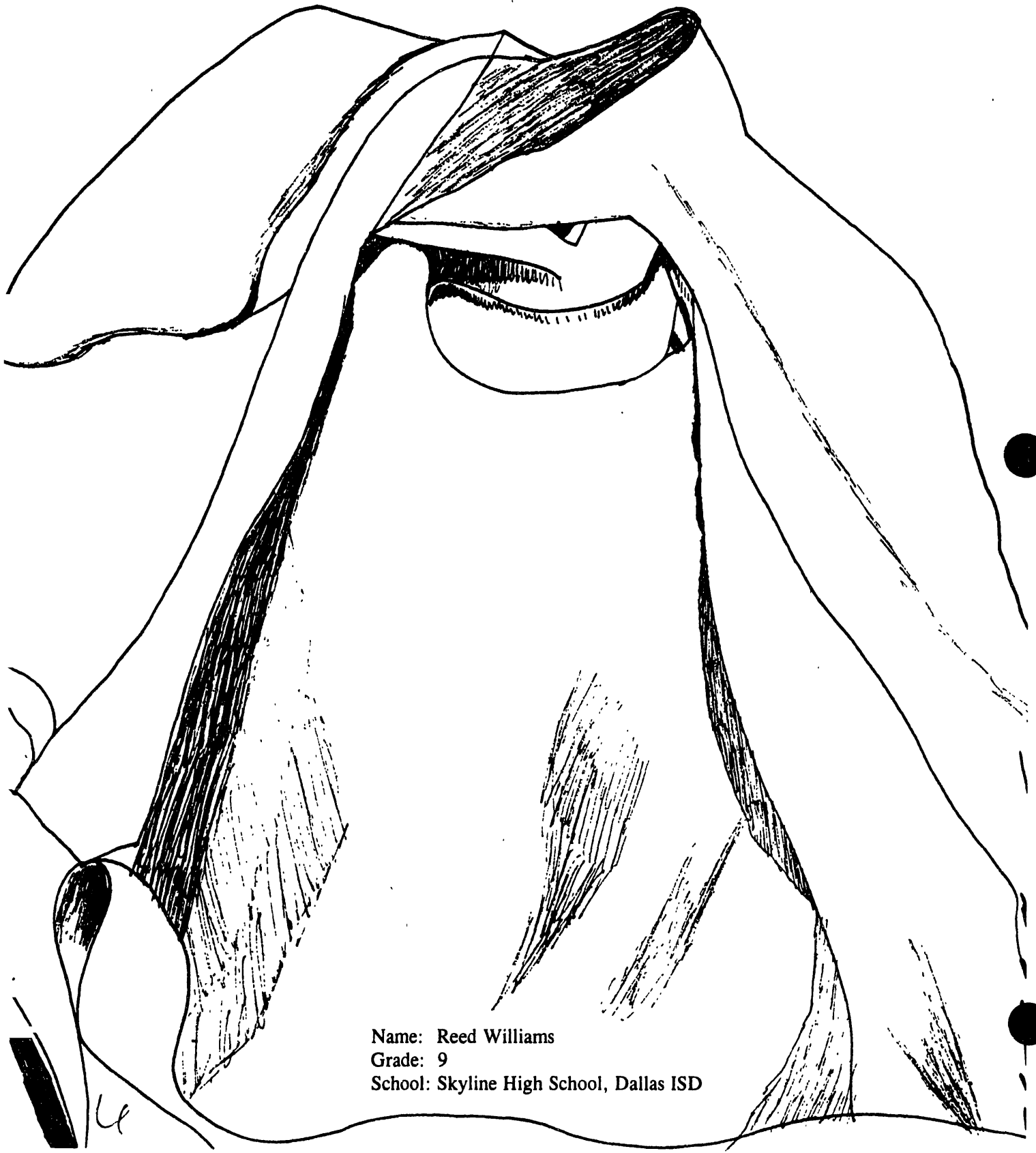
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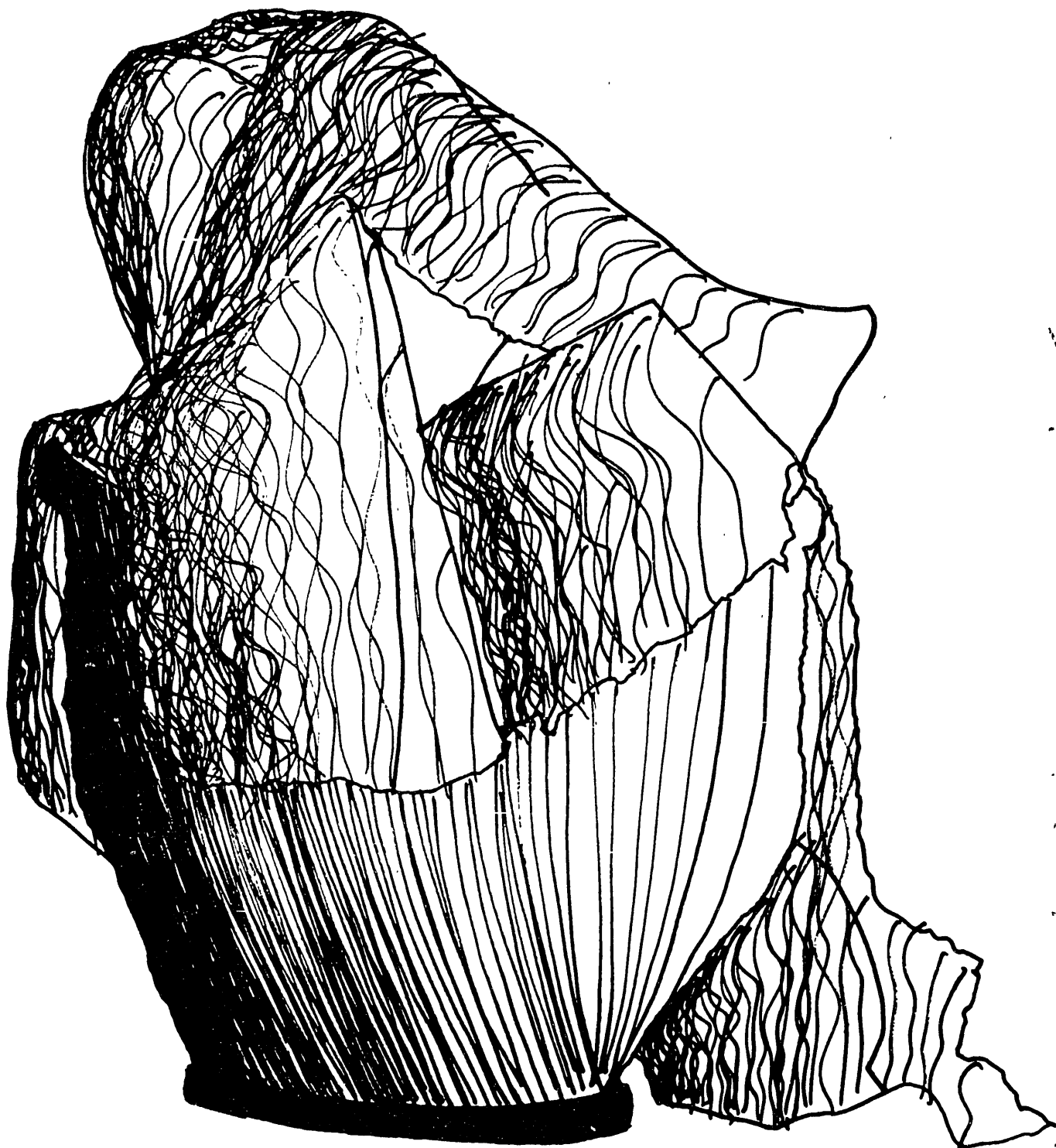
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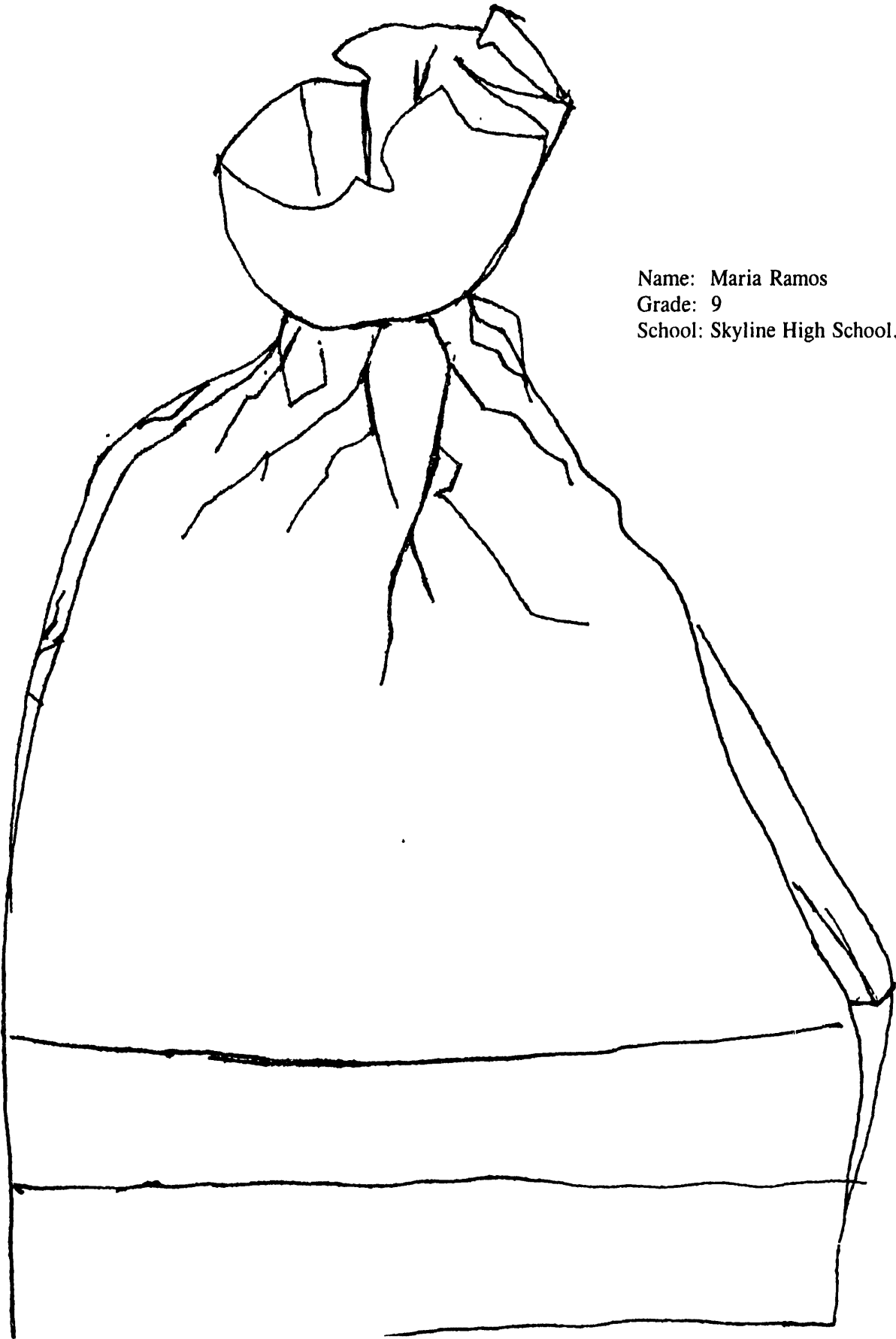
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Name: Reed Williams
Grade: 9
School: Skyline High School, Dallas ISD

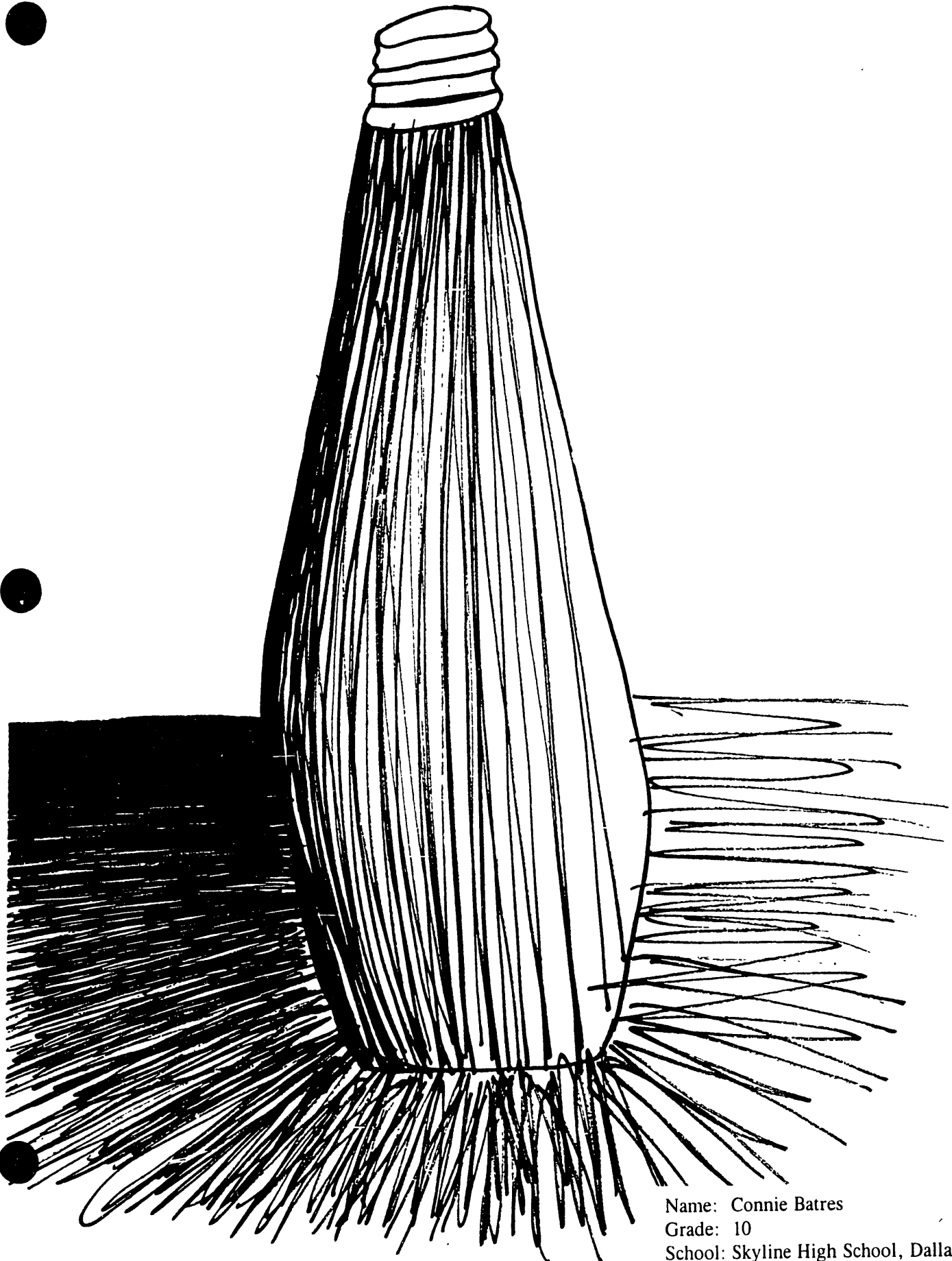
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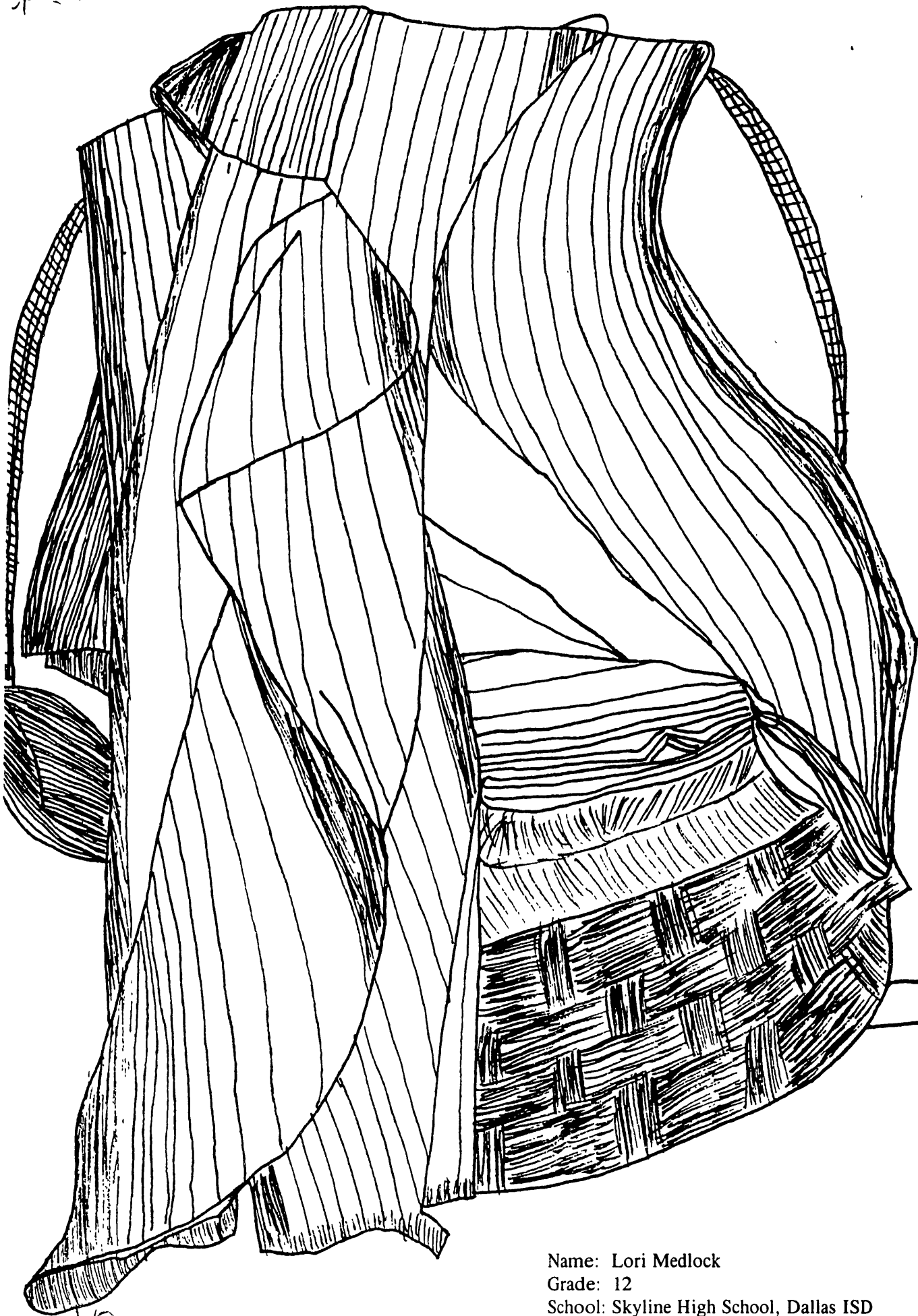
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Emergency Sections

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

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

TITLE 1. ADMINISTRATION

Part V. General Services Commission

Chapter 113. Central Purchasing Division

Purchasing

• 1 TAC §113.19

The General Services Commission is renewing the effectiveness of the emergency adoption of amended §113.19, for a 60-day period effective December 17, 1993. The text of amended §113.19 was originally published in the November 2, 1993, issue of the *Texas Register* (18 TexReg 7895).

Issued in Austin, Texas, on December 17, 1993.

TRD-9333762

Judith Monaco Porras
General Counsel
General Services
Commission

Effective date: December 17, 1993

Expiration date: February 16, 1994

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

TITLE 7. BANKING AND SECURITIES

Part II. Banking Department of Texas

Chapter 25. Prepaid Funeral Contracts

Subchapter B. Regulation of Licenses

• 7 TAC §25.23, §25.24

The Texas Department of Banking (the Department) adopts on an emergency basis new §25.23 and §25.24, based in large part §25.23 proposed on an emergency basis and as published in the September 7, 1993, issue of the *Texas Register* (18 TexReg 5931), which is being withdrawn in this issue of the *Texas Register*. The new §25.23 and §25.24 proposed on an emergency basis will expire on March 28, 1994, the 180th day after original emergency §25.23 was promulgated. The new emergency sections establish fees applicable to the regulated prepaid funeral ser-

vices 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 in the July 20, 1993, issue of the *Texas Register* (18 TexReg 4723), and written comments have been received as well as a public hearing held. Based on comments received, the new emergency §25.23 and §25.24 have been revised from both the original proposal and the emergency §25.23. The original proposed §25.23 is being withdrawn in this issue of the *Texas Register*, and proposed new §25.23 and §25.24 are being published for comment in this issue of the *Texas Register*. The emergency sections hereby adopted are substantially similar to the new proposed sections, with such changes as are necessary to provide a transition from the former emergency section to the new emergency sections. An explanation of the comments received and the reasons for the changes made can be found in the preamble to new proposed §25.23 and §25.24.

The Department adopts §25.23 and §25.24 on an emergency basis to define terms, set application fees, establish examination fees, and impose assessment fees to be assessed against and collected from each prepaid funeral benefits permittee based on the number of each licensee's total outstanding unmaturing contracts, for the purpose of recovering the cost of examination, the equitable or proportionate cost of maintenance and operation of the Department and the enforcement of the Act.

The new sections are 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 2499, 73rd Legislature, 1993, effective September 1, 1993. The Department finds that a requirement of state law requires adoption of these sections 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 appropriate regulations in place during the interim period between the effective date of amendments to the Act and final adoption of the sections 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, which empower the Department to set fees.

§25.23. Application Fees.

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

(1) Act—Texas Civil Statutes, Article 548b.

(2) Commissioner—The Banking Commissioner of Texas.

(3) Department—The Texas Department of Banking.

(4) Outstanding contracts—Unmatured, prepaid funeral benefit contracts. For purposes of determining fees that vary with the number of outstanding contracts, the number of outstanding contracts shall be the number reported by a seller in the most recent annual report on file with the Department, subject to adjustments for errors or mistakes in such annual report. If a seller has not filed an annual report for the fiscal year immediately preceding the relevant determination date, the Department shall determine, in its sole discretion based on reasonably obtainable and reliable information, the number of outstanding contracts.

(5) Permit holder—A person having a valid permit to sell prepaid funeral benefits.

(6) Prepaid funeral benefits—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.

(7) Seller—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, including a seller who has discontinued selling prepaid funeral benefits but still has outstanding contracts.

(b) Application Fees. The application fees set forth in this subsection have been set in accordance with the Act for the

purpose of defraying the cost of administering this Act. 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, other than an applicant seeking a permit for the sole purpose of administering previously sold and outstanding contracts, shall pay a \$500 fee. An applicant that administers previously sold and outstanding contracts and wishes to again sell prepaid funeral benefits shall pay the greater of a \$500 fee or the fee calculated pursuant to paragraph (2) of this subsection. 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 the Act, §3. Extraordinary costs shall be paid by the applicant within 20 days after written request by the Department.

(2) **Renewal Application Fee.** To renew an existing permit, or to acquire a new permit for the sole purpose of administering outstanding contracts, the applicant shall pay a fee of \$100 plus \$1.00 for every outstanding contract administered or held by the applicant in excess of 25 contracts, provided that the maximum fee shall not exceed \$1,500.

(3) **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.

(c) **Prior and Pending Applications** All applications received from September 1, 1993, to the date of adoption of this section shall be subject to the application fees set forth in this section. An applicant after September 1, 1993, that paid a different fee shall receive a rebate within a reasonable period of time to allow for processing if the paid fee exceeds the fee specified in this section, and shall be billed for the difference if the paid fee is less than the fee specified in this section. Any additional remittance shall be made within 15 days after receipt of the statement for additional fees or the application may be denied.

(d) **Severability.** If any fee in this section or the manner of its calculation, or other provision of this section, is determined to be unlawful or in excess of the authority of the Department to adopt and impose, the remainder of this section shall be unaffected, and other fees specified herein shall continue to be due and collected.

§25.24. Examination Costs and Assessment Fees.

(a) **Definitions.** The following words and terms, when used in this section, shall be defined according to Texas Civil Statutes (the Act), Article 548b, §1(b) and §25.23(a) of this title (relating to Application Fees), unless otherwise defined herein or unless the context clearly indicates otherwise.

(1) **Examination**—The process of evaluating the legal compliance and financial condition of a seller or permit holder's prepaid funeral benefit operation.

(2) **Fiscal biennium**—The 24-month period from September 1st of each odd-numbered calendar year to August 31st of the next succeeding odd-numbered calendar year.

(b) **Examination Costs.** Each seller shall be subject to annual examination by the Department, shall be examined at least once in each fiscal biennium, shall be subject to such additional examinations as the Department deems necessary, and shall pay for the cost of each examination, including the salary and travel expenses for Department employees and all other expenses necessarily incurred in the examination. Examination costs including expenses shall be calculated at the rate of \$200 per examiner per day, and shall be due at the time of billing; provided, however, that the seller may offset any examination fee due against and to the extent of prior assessment fees actually paid to the Department in the current fiscal biennium pursuant to subsection (c) of this section.

(c) **Assessment Fees.**

(1) In connection with the examination, during each fiscal biennium, each seller shall pay nonrefundable assessment fees in such periodically adjusted amounts as reasonably appear necessary, to defray the total unrecovered costs of administering this Act and to avoid the accumulation of unnecessary fund balances, as provided in this subsection.

(2) No more often than once each quarter of each fiscal biennium, the Department shall calculate, based on the number of each seller's total outstanding contracts, a proportionate charge covering the cost of examination, the seller's equitable or proportionate cost of maintenance and operation of the Department and the enforcement of the provisions of the Act, taking into account current fund balances and anticipated revenues from fees collected under §25.23 of this title. The aggregate sum of assessments during a fiscal biennium shall not exceed \$6.00 per outstanding contract, or \$14,700 per seller, whichever is less

(3) A seller shall remit payment for any assessment fee due within 15 days from the date of billing by the Department; provided, however, that the seller may offset any assessment fee due against and to the extent of examination costs actually paid to the Department in the current fiscal biennium pursuant to subsection (b) of this section. If examination costs actually paid and not previously offset against assessments in the current fiscal biennium exceed the current assessment fee due, the seller shall be permitted to carry forward such excess amounts as a credit against future assessments within the current fiscal biennium, but not into the next succeeding fiscal biennium. The offset provisions of this paragraph and subsection (b) of this section shall be construed together to require that a seller pay the greater of the sum of all assessments during the fiscal biennium or the sum of all examination costs incurred during the fiscal biennium.

(4) If the assessment for any seller as computed under paragraph (2) of this subsection is less than \$100 for the fiscal biennium, a minimum assessment fee of \$100 shall be levied and collected for the fiscal biennium, subject to offset as provided in paragraph (3) of this subsection.

(d) **Severability.** If any fee in this section or the manner of its calculation is determined to be unlawful or in excess of the authority of the Department to adopt and impose, the remainder of this section shall be unaffected, and other fees specified herein shall continue to be due and collected.

Issued in Austin, Texas, on December 15, 1993.

TRD-9333722

Everette D. Jobe
General Counsel
Texas Department of
Banking

Effective date: December 16, 1993

Expiration date: March 28, 1994

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



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 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 5. Quarantines

Citrus Seed, Citrus Budwood, and Citrus Nursery Stock Quarantine

• 4 TAC §5.152, §5.153

The Texas Department of Agriculture proposes amendments to §5.152 and §5.153, concerning restricted shipments of Citrus Seed, Citrus Budwood, and Citrus Nursery Stock. The department proposes amendments §5.152 and §5.153 to include the State of California. Currently, citrus seeds, citrus budded nursery stock or seedlings, citrus budwood, or any part of any citrus tree or seedling may not be shipped, carried, or in any way transported by any means into the State of Texas. Florida is the only state allowed to ship into this state under certain conditions. It is necessary to amend the restricted shipment section and the restrictions on citrus seed shipment section to include California as a state from which citrus products may be imported because California is a disease-free source of certified citrus budwood and citrus seed for Texas producers.

Dr. Shashank Nilakhe, director for agri-systems, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Dr. Nilakhe 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 Texas citrus growers needing citrus stock will have larger supplies from which to select. 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 Dr. Shashank Nilakhe, Texas Department of Agriculture, Director for Agri-Systems, P.O. Box 12847, Austin, Texas 78711, and must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Agriculture Code, §71.007, which

gives the department the authority to adopt rules necessary for the protection of agricultural and horticultural interests. The code chapter affected by this proposal is the Texas Agriculture Code, Chapter 71

§5.152. Restricted Shipments. Citrus budded nursery stock or seedlings, citrus budwood, or any part of any citrus tree or seedling may not be shipped, carried, or in any way transported by any means into the State of Texas from outside the State of Texas. Provided, however, that budwood or varieties of citrus not existing in the State of Texas may be shipped to the commissioner of agriculture from the State of Florida or the State of California under the following conditions

(1)-(4) (No change)

§5.153 Restrictions on Citrus Seed Shipments. No citrus seed can be shipped, brought, or in any manner transported into the State of Texas from any area outside the state other than from the State of Florida or the State of California. Citrus seed from the State of Florida or State of California may be imported into the State of Texas under the following conditions.

(1) A certified statement from the originating states' department of agriculture [Florida Plant Board] stating that the seed was harvested in territory that is free from the citrus canker, and that the plants have been treated in Florida or California according to a procedure approved by the Texas Commissioner of Agriculture, witnessed by the originating states' [Florida] department of agriculture officials.

(2) (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 December 16, 1993.

TRD-9333757

Dolores Alvarado Hibbs
Chief Administrative Law
Judge
Texas Department of
Agriculture

Earliest possible date of adoption January 24, 1994

For further information, please call (512)

463-7583

TITLE 7. BANKING AND SECURITIES

Part II. Banking Department of Texas

Chapter 25. Prepaid Funeral Contracts

Subchapter A. Applications for License

• 7 TAC §25.2

The Banking Department of Texas (the Department) proposes an amendment to §25.2, concerning requirements for approval of prepaid funeral benefits contracts. The proposed amendment is required to bring the existing rule into conformity with legislative amendments to Texas Civil Statutes, Article 548b, effective September 1, 1993. As proposed to be amended, §25.2 will provide that the seller furnish a copy of the contract to specified persons or entities, that the contract form contain certain specified provisions and explanations, and that the seller make certain filings in requesting departmental approval of prepaid funeral benefits contract forms. Other amendments are proposed for accuracy or clarity or to achieve consistency in organization or terminology.

Stephanie Newberg, director, Special Audits, 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. There is no adverse economic effect on small businesses.

Ms. Newberg also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the rules of this agency will accurately reflect the law regarding the withdrawal of prepaid-funeral trust funds and protection of such funds will be enhanced. The only anticipated economic cost resulting from the amendment of §25.2 will be the cost of printing or copying waiver forms. This cost, which will vary depending on the quantity ordered, will be borne by any permit holder that chooses to provide for an irrevocable assignment of ownership rights under an insurance policy or annuity contract funding prepaid-funeral benefits. The Department estimates that this cost will be between \$0.04 and \$0.08 per copy.

Comments on the proposed amendments to be considered by the Banking Commissioner of Texas must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to Sharon Gillespie, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

Amendment of this section is proposed pursuant to the Department's rulemaking authority under Texas Civil Statutes, Article 548b, §2. In addition to specific grants of rulemaking authority, §2 permits the Department to write rules regarding any matter "incidental to the enforcement and orderly administration" of the Act.

The following statutes are affected by or related to the proposed amendment: Texas Civil Statutes, Article 548b, §2 and §5; Texas Civil Statutes, Article 5069-6.01, et seq; and Texas Insurance Code, Article 3.42.

§25.2. Contract Approval and Distribution [Requirements].

(a) All Prepaid Funeral Contracts.

(1) **Requirements.** Each contract submitted to the Department of Banking (the Department) [department] for approval must contain the following.

(A)[(1)] a place for the contract number;

(B)[(2)] a place for the seller's name[,] and [place] for an authorized representative of the seller to sign;

(C)[(3)] a place for the purchaser's name[,] and [a place] for the purchaser's signature;

(D)[(4)] a place to set forth the particulars of the funeral merchandise, including a description of the casket and specification of the material used in the construction of the casket[,] and including the specifications of the grave vault used;

(E)[(5)] a place to set forth the particulars of the professional services to be performed[,] and the funeral home facilities to be provided;

(F)[(6)] the terms of payment;

(G)[(7)] a statement that the seller will deposit the funds collected within 30 days to a depository within this state that has been approved by the [Banking] Department [of Texas];

(H)[(8)] a statement that the

seller plans to retain one-half of the funds collected not exceeding 10% of the total amount of the contract, if the seller intends to retain such funds [do so];

(I)[(9)] a statement that no withdrawal of the deposits or earnings shall be made except in accordance with the provisions of Texas Civil Statutes, Article 548b, and applicable rules of the Department, if any [in a manner provided in the contract, or in accordance with rules and regulations of the Banking Department of Texas];

(J) [(10)] a statement that the seller agrees to furnish the described prepaid funeral benefits, [funeral merchandise and services] or their equivalent in quality, for the exact amounts stated in the contract at an undetermined future date dependent on the death of the purchaser, beneficiary, or other designated persons;

(K)[(11)] a provision setting out [for] the seller's rights if the contract is not paid in accordance with the terms of the contract;

[(12)] a statement that the date of death of the purchaser, beneficiary, or other designated person is the maturity date, and that soon after the maturity date, the Banking Department of Texas will receive a copy of the death certificate, a copy of the contract, and affidavits to release the funds from the depository to the seller in fulfillment of the contract;]

(L) [(13)] a statement that all sums paid under the contract, when delivered to the seller, shall be used exclusively for funeral benefits to be rendered by the seller to the purchaser or his appointee in accordance with the contract, except in the event the seller should be prevented from rendering such funeral benefits [service] solely by act of God, the public enemy, strikes, riots, or insurrection, then the amount paid by the purchaser shall be delivered to the purchaser or the purchaser's [his] heirs;

(M)[(14)] provisions [a provision] for cancellation with wording substantially the same as in Texas Civil Statutes, Article 548b, §5(b)(1)(2) and (3)et §5(4)];

(N)[(15)] a statement that the purchaser will notify the seller of any change of address, and that the seller will notify the purchaser of any change of address;

(O)[(16)] a statement that the

contract is binding when accepted by a duly authorized representative of the seller; [.] that [That] the contract contains the entire agreement[,] and cannot be modified except by written supplement; [.] and that the contract shall be binding upon the successors, beneficiaries, and heirs;

(P)[(17)] a statement that the seller will receive the original of the executed contract with copy to the purchaser [distribution of the executed copies of the contract will be as follows:

[(A) original-seller;

[(B) copy-purchaser;

[(C) copy-Banking Department of Texas (at maturity)];

(O)(18) a place for the name of the funeral home or other person [organization] primarily responsible for providing the prepaid funeral benefits specified [funeral service or merchandise] in the contract, if different from the seller; a statement that the funeral home or other person agrees and obligates itself to provide the prepaid funeral benefits specified in the contract; and a place for the signature of an authorized representative of the funeral home or other person as party to the contract;

[(19)] a statement, if the seller of the contract is not the funeral home designated to provide the funeral service or merchandise, as to who will provide the funeral services or merchandise specified in the contract.];

(R) a place for the seller's permit number;

(S) any provision under Texas Civil Statutes, Article 548b §5(c) for an irrevocable assignment to the seller, the funeral provider, the trustee or other person of the purchaser's ownership of and rights to benefits under the insurance policy or annuity contract, if such an assignment is made at the time the contract is entered;

(T) a reference to any provision for the purchaser's payment of a finance charge on any amount due and owing to the seller on the contract and a statement of the terms of such provision. A contract that establishes a finance charge must be made in accordance with Texas Civil Statutes, Article 5069-6.01, et seq, and adhere to requirements for retail installment contracts established

therein and in rules, if any, of the Office of Consumer Credit Commissioner or the Department;

(U) a statement that, prior to the execution of the contract, the purchaser has received a printed list of the retail prices of the funeral benefits offered; and

(V) a statement that the contract form has been approved by the Department.

(2) Prohibitions. A contract submitted to the Department for approval may provide only for the sale of prepaid funeral benefits as that term is defined in Texas Civil Statutes, Article 548b, §1(a) (9), and no other service or merchandise. No contract submitted to the Department for approval shall provide for more than one beneficiary.

(3) Type Size. Provisions required under subsections (a)(1)(S) and (a)(1)(T) of this section must appear in the contract in 12-point or larger font.

(b) Insurance-Funded Contracts.

(1) Content. In addition to the contents specified in subsection (a) of this section, each prepaid funeral contract submitted for approval by the Department [department] that is funded by a contract of insurance as provided in Texas Civil Statutes, Article 548b, §1(a) must:

(A) [(1)] contain the following statement: "This contract shall be funded with a policy of insurance, a copy of which shall be furnished to purchaser at the time the contract is signed [upon his or her request]; "[:]

[(2)] be submitted with a copy of the insurance policy showing the Board of Insurance Order Number or a certification that the policy is exempt pursuant to Texas Insurance Code, Article 3.42, §(e), and the regulations adopted thereunder;]

(B)[(3)] define which benefits the purchaser shall be entitled to in case of default or cancellation; and

(C)[(4)] disclose any benefits the purchaser is entitled to under [by] the insurance policy which [if they] are specifically mentioned in the prepaid funeral benefits [preneed] contract; and

(D) describe the purchaser's financial obligations, if any, and the terms thereof if the contract price is not paid in full on the death of the beneficiary.

(c) Filings.

(1) All Proposed Contracts. To request approval of any prepaid funeral contract, the seller must submit a copy of the proposed contract to the Department and request its approval. All proposed contracts, together with any required filings, must be submitted to the Department for approval prior to use.

(2) Insurance-Funded Contracts. If a contract will be funded by insurance, the seller must submit a copy of the insurance policy that will fund such contract to the Department together with a copy of the proposed contract and the seller's request for approval. The insurance policy must be designated by a certification number of the Texas Department of Insurance.

(3) Contracts Subject to Finance Charges. If the entire retail installment agreement is not included in or a part of the proposed prepaid funeral contract, a copy of the agreement and any addenda thereto must be submitted to the Department with the proposed contract and request for approval.

(d) Distribution. Upon execution of a prepaid funeral contract, the seller must immediately provide the purchaser with a copy thereof. The seller of an insurance-funded contract must also furnish a copy of the contract to the insurance company within 30 days of contract execution. Likewise, the seller must furnish a copy of the contract to a third-party funeral provider or administrator within 30 days of contract execution.

[(5)] provide a copy to be distributed to the insurance company.]

[(c)] Each contract submitted to the department for approval may only contain items that are approved in Texas Civil Statutes, Article 548b. No contract submitted to the department for approval shall provide for more than one purchaser.]

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 December 15, 1993.

TRD-9333725
Everette D Jobe
General Counsel
Department of Banking

Earliest possible date of adoption: January 24, 1994

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

◆ ◆ ◆
• 7 TAC §25.11

The Banking Department of Texas (the Department) proposes an amendment to

§25.11, concerning recordkeeping requirements for prepaid funeral benefits permittees. The proposed amendment is required to bring the existing rule into conformity with legislative amendments to Texas Civil Statutes, Article 548b, effective September 1, 1993. As proposed to be amended, §25.11 will provide that the permittee must maintain copies of affidavits that contract services have been performed as well as copies of death certificates under Texas Civil Statutes, Article 548b, §1A(c) and §5(a)(3); purchasers' notices of cancellation under Texas Civil Statutes, Article 548b, §5(b)(1); and investment plans and records under Texas Civil Statutes, Article 548b, §5A(b). In addition, the proposed amendment requires the permittee to keep copies of its financial statements, its approved depository letters, and its correspondence pertaining to each prepaid funeral benefits contract. The amendment also requires that an individual ledger for each contract purchaser and the control ledger for all purchasers reflect certain additional information, furthermore, the amendment provides that these ledgers and the records of the trustee/depository should be balanced quarterly. Finally, the amendment establishes where and how documents must be filed within the permittee's filing system. The amendment also makes changes in the interest of accuracy or clarification or to achieve consistency in organization or terminology.

Stephanie Newberg, director, Special Audits, 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.

Ms Newberg also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the enhancement of recordkeeping requirements for prepaid funeral benefits permittees, thereby improving the Department's ability to protect purchasers under prepaid funeral benefits contracts. 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 proposed amendment to be considered by the Banking Commissioner of Texas must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to Sharon Gillespie, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294

Amendment of this section is proposed pursuant to the Department's rulemaking authority under Texas Civil Statutes, Article 548b, §2. In addition to specific grants of rulemaking authority, §2 permits the Department to write rules regarding any matter "incidental to the enforcement and orderly administration" of the Act.

The following sections of Texas Civil Statutes, Article 548b, are directly affected by or related to the proposed amendments: §1A(c), 5(a)(3), 5(b)(1), and 5A(b)

§25.11 Recordkeeping Requirements

(a) General file. Each permit holder shall maintain at its principal office a complete file regarding its prepaid funeral benefits operations containing the following:

(1) a copy of its original and renewal applications [application];

(2) [a copy of] the original of its current permit issued by the Department of Banking (the Department) [department];

(3) the originals of [copies of] all contract forms approved by the Department [department];

(4) copies of all approved depository letters;

(5) [(4)] copies of all previous [preneed] examination reports,

(6) copies of all financial statements;

(7) copies of all Department-approved investment plans and investment reports;

(8) copies of all completed Department withdrawal forms and evidence of Department withdrawal approval where required; as well as computation of earnings withdrawals where applicable;

(9) copies of all affidavits of performance of contract services and death certificates;

(10) the originals of all purchasers' notices of cancellation;

(11)[(5)] copies of all correspondence with the Department [department]

(b) Individual files. Each permit holder shall maintain at its principal office a prepaid funeral benefits contract file on each purchaser. The files shall be maintained separately for outstanding contracts and matured or canceled contracts and may be maintained either chronologically or alphabetically. The outstanding contract files should contain copies of the prepaid funeral benefits contracts [preneed contract and may be filed alphabetically or numerically]. Each [The] matured or canceled contract file [files] should contain all documents previously contained in the outstanding contract file for the matured or canceled contract as well as [a copy of the contract,] a completed Department [approved department] withdrawal form [forms], and computation of earnings withdrawal if applicable [, and should be filed chronologically]. Each matured contract file should contain a copy of the affidavit of performance of contract services and the death certificate. Each canceled contract file should contain a copy of the purchaser's notice of cancellation. All correspondence pertaining to a given

contract should be filed in the outstanding contract file or in the matured or canceled contract file for that contract.

(c) Other records.

(1) Each permit holder shall maintain [currently] the following records regarding its prepaid funeral benefits operations:

(A) contract register indicating the contract number, the purchaser's name, the amount of the contract, and final disposition of the contract;

(B) cash receipts records reflecting [preneed] payments collected,

(C) deposit records reflecting [preneed] payments deposited,

(D) individual ledgers for each contract purchaser which reflect the contract purchaser's name, contract number, amount of contract, total finance charges, total amounts paid on the contract, any retentions, finance charges earned, deposits to trust, the total payments to trust, earnings on deposits (if applicable), and the total amount of the trust,

(E) a control ledger for all purchasers which reflects the cumulative total of contracts issued, matured and cancelled; deposits of [preneed] payments;[,] withdrawal of [preneed] payments;[,] net amount of payments on deposit;[,] earnings of deposit accounts;[,] earnings withdrawn on deposit accounts;[,] and net amount of earnings,

(F) records of the trustee/depository including but not limited to all savings account statements, certificate of deposit records (both principal and interest), and/or trust statements.

(2) The individual ledgers, control ledger, and records of the trustee/depository must [should] be balanced at least quarterly [periodically]

(d)[(3)] Exceptions. Any exceptions to the recordkeeping requirements requires Department approval [would need to be approved by the department].

(e)[(4)] Relocation of Records. Any change of business address where the records are maintained must be furnished to the department in writing at the time of any change of location.

(f) Maintenance of Files. Filing of documents pursuant to this section must be kept current.

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 December 15, 1993.

IND 9333727

Everette D Jobe
General Counsel
Department of Banking

Earliest possible date of adoption January 24, 1994

For further information, please call (512) 475 1300

◆ ◆ ◆
• 7 TAC §25.12

The Banking Department of Texas (the "Department") proposes an amendment to §25.12, concerning the withdrawal of prepaid funeral trust funds. In general, the proposed amendment is required to bring the existing rule into conformity with legislative amendments to Texas Civil Statutes, Article 548b, effective September 1, 1993. The proposed amendment provides that prepaid funeral trusts funds may be withdrawn on matured or cancelled contracts as provided by law without Department of Banking ("Department") approval, that withdrawn of abandoned funds under Texas Civil Statutes, Article 548b, §5B, requires Department approval, and that such approval may be requested by submitting an application to the Department on specified forms, and that withdrawal of earnings for the purpose of paying examination fees under Texas Civil Statutes, Article 548b, §5(a)(4)(B), or of earnings to pay assessments under Texas Civil Statutes, Article 548b, §8, does not require Department approval. The amendment is also proposed for accuracy and to achieve consistency in organization or terminology.

Stephanie Newberg, director, Special Audits, has determined that for the first five-year period the section as proposed will be in effect, there will be no fiscal implications for local government as or small businesses as a result of amending this section and a \$6,732 annual savings to state government resulting from a decrease in the Department's administrative duties.

Ms Newberg also has determined that for each year of the first-five year period the section as proposed will be in effect, the public benefit anticipated as a result of the amendment will be that the rules of this agency will accurately reflect the law regarding the withdrawal of prepaid funeral trust funds and protection of such funds will be enhanced. No economic cost will result to entities as a result of the amendment of §25.12.

Comments on the proposed amendment to be considered by the Banking Commissioner of Texas must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to Sharon Gillespie, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The amendment is proposed pursuant to the Department's rulemaking authority under Texas Civil Statutes, Article 548b, §2. In addition to specific grants of rulemaking authority, §2, permits the Department to write rules regarding any matter "incidental to the enforcement and orderly administration" of the Act.

The following sections of Texas Civil Statutes, Article 548b are directly affected by or related to the proposed amendment: §2; §5(a)(3); §5(a)(4) (A), (B) and (C); and §5(b)(1), (2) and (3). No other statute is directly by or related to the proposed amendment.

§25.12. *Withdrawal of Trust Funds.*

(a) **Death maturity.** The funds on deposit on a matured contract may be withdrawn as prescribed by Texas Civil Statutes, Article 548b, §5(a)(3) and §5(a)(4)(C) without approval of the Banking Department of Texas (the "Department") [after Banking Department of Texas approval is obtained by the seller. Approval may be obtained by submitting a certified copy of the death certificate, a copy of the contract, and three copies of an affidavit prescribed by the department].

(b) **Cancellation.** The funds on deposit on a canceled contract may be withdrawn as prescribed by Texas Civil Statutes, Article 548b, §5(b)(1), (2) and (3) without approval of the Department [after Banking Department of Texas approval is obtained by the seller. Approval may be obtained by submitting a signed copy of the contract and three copies of an affidavit prescribed by the department].

(c) **Payment of Charges.** Withdrawal of earnings for paying reasonable and necessary charges of a bank, savings bank, savings and loan association, trust department of a bank, or trust company does [do] not need [Banking] Department [of Texas] approval, but will be subject to examination.

(d) **Payment of Texas.** Withdrawal of earnings for the purpose of paying taxes caused or created by the existence of prepaid funeral [preneed] deposit or trust accounts requires prior [Banking] Department [of Texas] approval. Approval may requested [obtained] by submitting documentation to substantiate the additional tax liability from prepaid funeral benefits earnings [a statement showing the difference between the tax liability, including the preneed earnings and excluding the preneed earnings].

(e) **Payment of Assessments.** A permit holder is authorized, without additional Department approval, to withdraw earnings for the purpose of paying assessments levied pursuant to the authority of Texas Civil Statutes, Article 548b.

(f) **Payment of Examination Fees.** Withdrawal of earnings for the purpose of paying examination fees under Texas Civil Statutes, Article 548b, §5(a)(4)(B), does not require Department approval.

(g) **Abandoned Funds.** Withdrawal of abandoned funds under Texas Civil Statutes, Article 548b, §5B, requires written approval of the Commissioner of Banking. Approval may be requested by submitting to the Department a completed application for unclaimed property on a form prescribed by the Texas Treasury Department.

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 December 15, 1993.

TRD-9333728

Everette D Jobe
General Counsel
Department of Banking

Earliest possible date of adoption. January 24, 1994

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

◆ ◆ ◆ • 7 TAC §25.14

(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 Banking Department of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin)

The Banking Department of Texas (the "Department") proposes the repeal of §25 14, concerning the application procedure and the approval process for withdrawal of excess earnings of prepaid-funeral trust funds Pursuant to recent legislation, not applications for withdrawal of excess earnings are permitted after December 31, 1993 (Texas Civil Statutes, Article 548b, §5(a) (4)(D)(x)) Furthermore, that same legislation sets out a detailed application procedure and approval process for withdrawals which conflicts with and takes precedence over §25 14. As there is no longer an underlying statutory basis for §25.14, it must be repealed.

Stephanie Newberg, director, Special Audits, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Newberg also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that the rules of this agency will not inaccurately reflect the law regarding the withdrawal of excess funds No economic cost will result to entities as a result of the repeal of §25 14

Comments on the proposed repeal to be considered by the Banking Commissioner of Texas must be submitted in writing within 30

days after publication of the proposal in the *Texas Register* to Sharon Gillespie, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The repeal is proposed pursuant to the Department's rule-making authority under Texas Civil Statutes, Article 548b, §2. In addition to specific grants of rule-making authority, §2 permits the Department to promulgate rules regarding any matter "incidental to the enforcement and orderly administration" of the Act

Texas Civil Statutes, Article 548b, §5(a)(4)(D)(x) is the only existing statute related to the proposed repeal. No statute will be affected by the repeal

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 December 15, 1993

TRD-9333729

Everette D Jobe
General Counsel
Department of Banking

Earliest possible date of adoption January 24, 1994

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

◆ ◆ ◆ • 7 TAC §25.23, §25.24

The Texas Department of Banking (the Department) proposes new §25 23 and §25 24, based in large part on former proposed §25 23 as published in the July 20, 1993, issue of the *Texas Register* (18 TexReg 4723) The proposed new sections would establish 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) The former proposed §25 23 is being withdrawn in this issue of the *Texas Register*

During the comment period, an amended version of the original proposed section was published as an emergency rule in the September 7, 1993, issue of the *Texas Register* (18 TexReg 5931), in order to put a funding mechanism in place at the beginning of the fiscal biennium. While substantive changes are being made to the former proposal, an important, nonsubstantive difference between the new proposed sections and the original proposed section and related emergency rule is the transfer of examination and assessment fees to new proposed §25.24, while application fees remain in new proposed §25. 23 Emergency §25 23 is being withdrawn and new emergency §25.23 and §25 24, in form substantially the same as this proposal with modifications as appropriate to correct fees collected under the prior emergency rule, are being promulgated in this issue of the *Texas Register* The emergency adoption is necessary in order to keep a funding mechanism in place for regulation of the industry

during the comment period until adoption of the sections in final form.

A public hearing to receive comments regarding the prior proposed §25.23 was scheduled for, and convened, on Thursday, September 2, 1993, at 2:00 p.m. in the third floor hearing room of the Department at 2601 North Lamar Boulevard in Austin. The hearing was concluded on the same day. As a result of the many comments received during the comment period, at the public hearing, and after publication of the emergency rule, as well as ongoing, informal discussions with the trade association, the Texas Funeral Directors Association, Inc. (TFDA), the proposed new sections include several substantive changes utilizing some of the suggestions of the commenters, as discussed elsewhere in this preamble in response to specific comments. The Department very much appreciates the comments received from interested parties and the dialogue with TFDA.

Prior to and during the hearing on the proposed section, a total of 14 commenters submitted comments in connection with the publication of proposed and emergency §25.23. Of those who commented, all were generally against the proposed and emergency section as published, especially subsection (c) setting examination fees. Concerns regarding the effect of the annual permit fee on smaller permittees and on inactive sellers who are now required to obtain an annual permit were later raised by several of these same commenters and by TFDA, after the effect of the proposed fee became more generally understood. Most commenters had specific recommendations.

Those who submitted comments against the proposed section as published included TFDA; Stillbrooke Corporation of Texas; Central Security Life Insurance Company; Stringer Griffin Funeral Home, Darling Mouser Funeral Home; Funeral Agency, Inc.; Restland of Dallas; Service Corporation International; The Mission Plan; Southwest Guaranty Trust Company; Mount Olivet Cemetery Association; North American Death Care Alliance; and San Antonio Mission Park.

Comments relevant to the repropoed sections and the Department's responses follow.

Several commenters expressed the belief that the insurance industry was not paying its fair share of the fees for administrative costs under the Act. They argue that of the approximately one billion dollars in prepaid funeral contracts, 50% are insurance-funded and the other half are trust-funded, yet insurance-funded prepaid funeral contract sellers are not providing 50% of the costs of regulation.

Although the Department agrees that these statistics are essentially correct, the Department does not fully agree with the conclusion that the insurance industry would not pay its fair share. While insurance-funded contracts account for 50% of all contracts, they are held and administered by only 10% of active permit holders. All permit holders under the original proposal would have paid the same \$500 renewal fee on the same basis, an equitable allocation since the processing costs for permit renewal are roughly the same for every permit holder. The processing of permit re-

newals is not related to the volume of funds held by either insurance-funded or trust-funded establishments. However, the examination fee, as originally proposed, was to be calculated based on the number of contracts held up to a maximum fee of \$7,500 per year. Proposed examination fees were to be based on the same standard for both insurance-funded and trust-funded entities. The examination fee urged by the commenters, based on a straight time charge plus expenses, would disproportionately impact trust-funded establishments.

The trust-funded segment of the industry will pay more in fees simply because there are more trust-funded establishments. Smaller independent operators would pay less under the fee schedule as originally proposed than in prior years. For example, one funeral home complained that the fees and related charges were "exorbitant." That funeral home would likely have paid approximately \$730 for permit renewal fees and examination fees under the original proposed section. During the last calendar year, this business actually paid \$1,014 for permit and examination fees to the Department. Under the repropoed section, this same funeral home will likely pay approximately \$1,190 during the current fiscal biennium (or approximately \$595 annually) for permit renewal fees and examination fees to the Department.

Under the new proposal, the annual renewal or permit fee is revised to impose fees on a sliding scale for reasons discussed elsewhere in this preamble. Insurance-funded permittees will in general, because of sheer size, pay annual renewal fees on the upper end of the sliding scale.

Funeral Agency, Inc. and The Mission Plan were both opposed to the \$1,000 fee for applications to convert from a trust-funded plan to an insurance-funded plan. Funeral Agency, Inc. suggested a \$4,000 fee for an initial plan of conversion and a nominal fee of \$200 for repetitious conversions using the same plan. The Mission Plan proposed a maximum \$1,000 flat fee for each new conversion applicant, with a sliding scale, depending on the size of the trust, from \$200 to the \$1,000 maximum. A \$200 fee was proposed for subsequent conversions using the same plan.

The Department disagrees. The Department staff has previously calculated that it takes an average of 16 hours to review a conversion application, at an average cost of \$500 per eight-hour period. Recently, conversion applications have taken even more time due to problems uncovered by the Texas Department of Insurance. The Department has found, based on past experience, that each application must be fully reviewed prior to recommending action by the Banking Commissioner. The same amount of due diligence is required for each application regarding trust enhancements, conversion agreements and other financial and written documentation. In addition, each conversion must be coordinated with the Texas Department of Insurance to assure that this Department does not approve a conversion which may conflict with the insurance laws of the State of Texas. However, the Department is commit-

ted to lowering the fee by amendment at some future date if it can bring down the cost of processing through experience and developed expertise in insurance conversions. The Department is actively seeking the aid and cooperation of the Texas Department of Insurance in this regard.

Several of those who commented, including Southwest Guaranty Trust Company and North American Death Care Alliance, expressed the belief that the total fee structure as proposed in the rule would have the effect of driving the trust-funded product out of the prepaid market. Southwest Guaranty Trust Company also felt that the Department should be monitoring whether agents are actually sending the premiums collected to the insurance companies.

The Department has noticed a trend toward insurance-funded trusts over the past several years. This process had begun before the current fee structure was proposed and adopted on an emergency basis and can be expected to continue. Many reasons exist for this trend including a perceived reduction in recordkeeping requirements by prepaid funeral operations, especially for smaller entities, and the possibility of commissions in connection with insurance backed products. However, the Department recently has received a large number of calls from very small permittees regarding possible conversion, primarily as a result of the proposed \$500 annual renewal fee. The Department therefore agrees that the original proposal would have had the effect of forcing smaller permittees into conversions in greater numbers than general industry trends can explain, and has revised the annual renewal fee in the new proposed §25.23 to greatly reduce the impact on smaller permittees. The annual permit fee has been revised from the former proposal to impose a sliding scale that will reduce the formerly proposed fee on the smallest permittees and increase the formerly proposed fee on the largest permittees.

In response to the concern about whether insurance agents are being monitored by this Department, a portion of the examination procedure should and does include verification of premiums collected. Any discrepancies in premium reported by licensed insurance agents is forwarded to the Texas Department of Insurance, the agency with the statutory authority to regulate insurance agents. In fact, §1A(b) of the Act provides that the Department may "require evidence of payment of premiums on any life insurance policy." The same section of the Act states a seller (which includes anyone collecting premiums) must remit all premiums collected for insurance policies within "30 days after the date of collection." Both the Insurance Code and the Act provide severe criminal penalties for premium conversion by insurance agents or sellers.

One commenter questioned the definition of "examination" in the rule and stated that the Department had no authority to conduct examinations at any location other than a seller's place of business. Other commenters endorsed those remarks. The commenter also argued that the Department does not have the authority to review a seller's total financial condition, and stated that the Act did

not provide penalties for those who refused to provide records to the Department. Therefore, the commenter concludes, the Department is without enforcement authority if a seller refused to make financial records available to the Department.

The Department disagrees and believes these arguments are without merit. Section 8(b) of the Act allows an examination or audit of records pertaining to prepaid funeral benefits "at any place and in any manner necessary to protect the interests of purchasers and beneficiaries." Such examination power would include a review of a seller's total financial condition if it could affect the seller's ability to service existing contracts. By way of example only, a seller that is experiencing severe financial difficulties could be making timely deposits to its trust fund under the Act at the expense of payments due to creditors, including secured creditors or the Internal Revenue Service. Seizure of the seller's assets or bank accounts could occur as a result of these defaults, thereby injuring recent or installment purchasers of prepaid funeral benefits whose funds have not yet been deposited. The Department is entitled to be aware of such circumstances, among others.

The Department further notes that §8(c) of the Act deems confidential "all information obtained either directly or indirectly by the Department relative to the financial condition of any seller whether obtained through examination or otherwise." The Act expressly permits the Commissioner to seize the funds of a seller who has refused to submit to an examination by the Department, a powerful enforcement tool in the event a seller refuses to cooperate.

Notwithstanding the Department's general disagreement, the definition of "examination" has been altered in proposed new §25.24 to more clearly state the purpose of examination and to delete specific reference to location.

Mount Olivet Cemetery Association commented that the withdrawal fee should not be included in the section since the amount is specifically set out in the Act. The commenter further suggested that, if this fee remains in the section as finally adopted, it should be worded to follow the statute more closely and should reflect that this fee will be repealed effective December 31, 1993.

The Department agrees with this comment. The Department's original intent was to include the fee in the regulation for convenience, even though statutorily set. However, inasmuch as the fee will no longer be applicable by the time the proposal is finalized, the Department has omitted reference to this fee.

The commenters expressed almost unanimous condemnation of the examination fee structure. Only one commenter was amenable to the examination fee, but only in return for elimination of the conversion fee. Those who commented were generally opposed to the examination fee for the following reasons: the Department exceeded its authority in passing the emergency rule and the examination fees imposed obligations not contemplated by the Act; the examination fee of \$1.75 per unmaturing contract is unreasonable; examinations could be eliminated by

having company auditors perform compliance reviews; and examination fees should be based only on actual examination time and variable costs associated with each field examination at the seller's premises.

As previously noted, fees based only on examination time will discriminate against trust-funded permittees. The Department firmly believes that some type of assessment based examination fee was contemplated by the Legislature. Section 8 of the Act specifically authorizes a fee "based on the seller's total outstanding contracts, covering the cost of such examination, the equitable or proportionate cost of maintenance and operation of the Department, and the enforcement of the provisions of this Act." Further, the Legislature was specific in amending the Act to require that the Department not maintain excessive fund balances. Assessment based fees would allow the Department to control its income stream to better match its costs, in that assessments may be deferred if costs unexpectedly decrease or if revenues exceed expectations. The burden of regulatory cost would thus be fairly shared by all licensed entities. Examination fees based strictly on time and expenses cannot be so adjusted.

A further complication affecting the proposed fee structure exists because the Department started the current fiscal biennium with sufficient funds for approximately ten months of Department operations in this regulatory arena as a result of leftover funds from the prior fiscal biennium, a situation not expected to recur in future fiscal periods. If the Department must charge an examination fee based on actual salaries and expenses as urged by the commenters, an excess fund balance will result in the current biennium. An assessment based formula will permit the Department to bill permittees for the actual cost of regulation and waive all or a part of the assessment to reflect consumption of the current fund balance.

The Department also believes it important to communicate the actual cost of regulation to avoid the perception of increased fees in future bienniums when a carryover fund balance is no longer available. Hourly examination fees at reduced levels, as a means of absorbing the surplus fund balance, would create the artificial impression of greatly increased fees in the next biennium and would further be subject to estimation errors and be nonadjustable as described in the preceding paragraphs.

However, as a result of the numerous comments received opposing the examination fee portion of the rule and based on informal consultation with TFDA, the subsection has been substantially revised and is being re-proposed as §25.24. New proposed §25.24 defines terms and establishes the methodology for calculation, billing, and collection of examination costs on a biennial basis. The re-proposed section also would establish assessment fees to be periodically assessed against and collected from each prepaid funeral benefits seller based on the number of each seller's total outstanding contracts, for the purpose of recovering the cost of regulation without maintaining unnecessary fund balances. Examination costs actually paid

would constitute a credit that can be used against assessment fees imposed in the same fiscal biennium. Examination fees are set at a level that the Department considers insufficient to fund all aspects of administering the Act, thereby giving the Department flexibility to periodically adjust and/or eliminate the assessment fee if the Department has adequate funds on hand to complete its duties in the fiscal biennium.

Because the examination and assessment fees in proposed §25.24 are based on a biennial concept, the upper range or "cap" on the assessment fee, without other influences, could be expected to double from the original proposal to \$3.50 per contract or \$15,000 per seller, whichever is less, since it was originally based on an annual concept. Because new proposed §25.23 modifies the annual renewal fee, thereby reducing the anticipated collections from that source of revenue, and because the number of permit holders was previously overestimated, the biennial cap on the assessment fee is being increased to \$6.00 per contract or \$14,700 per permittee, whichever is less. Commenters must bear in mind that this cap is expressed as a maximum and is for a two-year period. Actual assessments could be considerably less and very well may be, depending on the number of examinations performed in which the cost of examination exceeds the assessments imposed on the examined permittees. Further, several assessments will be waived in order to absorb the current fund balance within the biennium. The Department has not determined whether to waive all of the last assessments, all of the beginning assessments, partially waive every assessment, or some combination of the foregoing, but reserves the discretion to choose a method for absorbing the existing fund balance through periodic waivers.

Finally, one comment sought clarification that assessment fees could be paid through withdrawal of earnings from the trust fund. Proposed amendments to §25.12 of this title, published for comment in this issue of the *Texas Register*, specifically provide for payment of assessment fees by withdrawal of earnings from the trust fund without the necessity of prior Departmental approval.

Stephanie Newberg, director, Special Audits Division, has determined that for the first five-year period the proposed new sections are in effect there will be fiscal implications for state government but not for local government, and there will be fiscal implications for small businesses as a result of enforcing or administering these sections. The proposed sections will result in an increase in revenue from the prepaid funeral benefits industry, although a portion of the increased revenue will decrease the amount of Departmental operational expenses that must be recouped from other industries regulated by the Department. Ms. Newberg estimates the amount of increased revenue to state government from the fees imposed by the proposed sections over revenue collected in the fiscal year ended August 31, 1993, to be \$450,000 in each year for the first five years the proposed sections are in effect, an increase estimated to result in the full recovery by the Department of the cost of regulating the prepaid

funeral benefits industry as mandated by the Act.

Prior to September 1, 1993, Department costs attributable to administrative overhead were not allocated proportionately among the industries regulated by the Department because appropriations for regulation of the prepaid funeral benefit and perpetual care cemetery industries were insufficient to fund the full cost of regulation. In effect, assessments imposed on the banking and trust industries indirectly subsidized approximately 36% of the cost of regulation of the prepaid funeral benefits industry. Consequently, approximately \$210,000 of the annual increase in revenue will decrease the base upon which assessment fees to other industries are calculated. The remainder of the revenue increase will fund increased appropriations to the Department, as authorized by the Legislature, to enable the Department to conduct more examinations. This level of appropriations, however, is estimated to be only 63% of the amount needed to perform an annual examination on every seller as contemplated by the Act.

The cost of compliance per \$100 of sales will be substantially greater for small businesses than for the largest businesses as a result of the cap on assessments and renewal fees. This disparity existed under the prior fee structure as well. However, "small businesses," as defined in Texas Government Code, §2006.001(1), hold about 96% of permits in this industry, i. e., those businesses that have less than \$1,000,000 in gross revenues from prepaid funeral benefit contracts, and it is therefore not feasible to reduce the adverse economic effect on small business considering the purpose of the Act.

The adverse economic effect is extraordinarily difficult to categorize under the measures mandated by Texas Government Code, §2006.002(c)(2). Based on the assumptions that a typical business keeps accurate records and complies with the law (so that excessive examination costs are not a factor), maintain a stable inventory by adding an additional 10% through sales of new contracts per year at an average price of \$3,500 and performing an equal number of funerals per year pursuant to prepaid contracts, and further assuming the Department has no surplus balance that would reduce assessments, the cost of compliance per \$100 of sales for a small business with 500 contracts will be \$1.19 compared to \$0.04 for the largest business in the industry with over 64,000 contracts. These assumptions, however, are highly arbitrary. Only about 5.0% of all sellers will realize any savings in the cost of compliance per \$100 of sales as a result of the cap on assessments, and only about 8.0% of all sellers will realize any savings in the cost of compliance per \$100 of sales as a result of the cap on renewal fees.

For the first fiscal biennium the sections are in effect, aggregate, actual collections should approximate the amounts collected in the previous fiscal biennium because of the existing fund balance that will be absorbed through waiver of otherwise payable assessments.

Ms. Newberg also has determined that for each year of the first five years the proposed

new sections are in effect, the public benefit anticipated as a result of enforcing this section is the full recovery of the Department's cost of regulating prepaid funeral services under its increased statutory responsibilities and enhancement of examination function. In prior years, the Department was underfunded and able to examine only about 62% of sellers at least once a year. With the increase in funding, the Department anticipates being able to examine 85% of sellers each year, and every seller at least once in each fiscal biennium, although the targeted percentage will not be immediately achievable due to the hiring and training process for new examiners.

Ms. Newberg estimates the increased economic costs to persons required to comply with the proposed section would be approximately \$450,000 for each year of the five-year period but for absorption of the currently existing surplus fund balance in the current biennium. Assuming a ratable absorption of the surplus fund balance, the increased economic costs to persons required to comply with the proposed section would approximate: \$200,000 in the first fiscal year (FY), \$200,000 in FY2, \$450,000 in FY3, \$450,000 in FY4, and \$450,000 in FY5.

Comments on the proposal to be considered by the Texas Department of Banking must be submitted in writing within 30 days after publication of the proposed sections in the *Texas Register* to Sammie Glasco, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705.

The new sections are proposed under Texas Civil Statutes, Article 548b, §§1A(d), 2, 3, and 8, which empower the Department to set fees.

The article affected by the proposal is Texas Revised Civil Statutes, Article 548b.

§25.23 Application Fees

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

(1) Act-Texas Civil Statutes, Article 548b.

(2) Commissioner-The Banking Commissioner of Texas

(3) Department-The Texas Department of Banking

(4) Outstanding contracts-Unmatured, prepaid funeral benefit contracts. For purposes of determining fees that vary with the number of outstanding contracts, the number of outstanding contracts shall be the number reported by a seller in the most recent annual report on file with the Department, subject to adjustments for errors or mistakes in such annual report. If a seller has not filed an annual report for the fiscal year immediately preceding the relevant determination date, the Department shall determine, in its sole dis-

cretion based on reasonably obtainable and reliable information, the number of outstanding contracts.

(5) Permit holder-A person having a valid permit to sell prepaid funeral benefits.

(6) Prepaid funeral benefits-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.

(7) Seller-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, including a seller who has discontinued selling prepaid funeral benefits but still has outstanding contracts.

(b) Application Fees. The application fees set forth in this subsection have been set in accordance with the Act for the purpose of defraying the cost of administering this Act. Except as otherwise provided in this subsection, all fees are due at the time the application is filed and are non-refundable. An application submitted without the appropriate filing fee will be deemed incomplete and will not be considered.

(1) New Permit Application Fee. An applicant for a new prepaid funeral benefits permit, other than an applicant seeking a permit for the sole purpose of administering previously sold and outstanding contracts, shall pay a \$500 fee. An applicant that administers previously sold and outstanding contracts and wishes to again sell prepaid funeral benefits shall pay the greater of a \$500 fee or the fee calculated pursuant to paragraph (2) of this subsection. 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 the Act, §3. Extraordinary costs shall be paid by the applicant within 20 days after written request by the Department.

(2) Renewal Application Fee. To renew an existing permit, or to acquire a new permit for the sole purpose of administering outstanding contracts, the applicant shall pay a fee of \$100 plus \$1.00 for every outstanding contract administered or held by the applicant in excess of 25 contracts, provided that the maximum fee shall not exceed \$1,500.

(3) 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.

(c) Severability. If any fee in this section or the manner of its calculation is determined to be unlawful or in excess of the authority of the Department to adopt and impose, the remainder of this section shall be unaffected, and other fees specified herein shall continue to be due and collected.

§25.24. Examination Costs and Assessment Fees.

(a) Definitions. The words and terms used in this section shall be defined according to Texas Civil Statutes, Article 548b, §1(b) and §25.23(a) of this title (relating to Application Fees), unless otherwise defined herein or unless the context clearly indicates otherwise.

(1) Examination—The process of evaluating the legal compliance and financial condition of a seller or permit holder's prepaid funeral benefit operation.

(2) Fiscal biennium—The 24-month period from September 1st of each odd-numbered calendar year to August 31st of the next succeeding odd-numbered calendar year.

(b) Examination Costs. Each seller shall be subject to annual examination by the Department, shall be examined at least once in each fiscal biennium, shall be subject to such additional examinations as the Department deems necessary, and shall pay for the cost of each examination, including the salary and travel expenses for Department employees and all other expenses necessarily incurred in the examination. Examination costs including expenses shall be calculated at the rate of \$200 per examiner per day, and shall be due at the time of billing; provided, however, that the seller may offset any examination fee due against and to the extent of prior assessment fees actually paid to the Department in the current fiscal biennium pursuant to subsection (c) of this section.

(c) Assessment Fees.

(1) In connection with the examination, during each fiscal biennium, each seller shall pay nonrefundable assessment fees in such periodically adjusted amounts as reasonably appear necessary to defray the total unrecovered costs of administering this Act and to avoid the accumulation of unnecessary fund balances, as provided in this subsection.

(2) No more often than once each quarter of each fiscal biennium, the Department shall calculate, based on the number of each seller's total outstanding

contracts, a proportionate charge covering the cost of examination, the seller's equitable or proportionate cost of maintenance and operation of the Department and the enforcement of the provisions of the Act, taking into account current fund balances and anticipated revenues from fees collected under §25.23 of this title. The aggregate sum of assessments during a fiscal biennium shall not exceed \$6.00 per outstanding contract, or \$14,700 per seller, whichever is less.

(3) A seller shall remit payment for any assessment fee due within 15 days from the date of billing by the Department, provided, however, that the seller may offset any assessment fee due against and to the extent of examination costs actually paid to the Department in the current fiscal biennium pursuant to subsection (b) of this section. If examination costs actually paid and not previously offset against assessments in the current fiscal biennium exceed the current assessment fee due, the seller shall be permitted to carry forward such excess amounts as a credit against future assessments within the current fiscal biennium, but not into the next succeeding fiscal biennium. The offset provisions of this paragraph and subsection (b) of this section shall be construed together to require that a seller pay the greater of the sum of all assessments during the fiscal biennium or the sum of all examination costs incurred during the fiscal biennium.

(4) If the assessment for any seller as computed under paragraph (2) of this subsection is less than \$100 for the fiscal biennium, a minimum assessment fee of \$100 shall be levied and collected for the fiscal biennium, subject to offset as provided in paragraph (3) of this subsection.

(d) Severability. If any fee in this section or the manner of its calculation is determined to be unlawful or in excess of the authority of the Department to adopt and impose, the remainder of this section shall be unaffected, and other fees; specified herein shall continue to be due and collected.

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 December 15, 1993.

TRD-9333724

Everette D. Jobe
General Counsel
Texas Department of
Banking

Earliest possible date of adoption January 24, 1994

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



Chapter 33. Procedure for Hearings

Evidence and Witnesses

• 7 TAC §33.32

The State Banking Board (the Board) proposes an amendment to §33.32, concerning recovery of the cost of preparing the agency record for purpose of judicial review of a decision of the Board. Adoption of the proposed section will result in recovery of costs incurred by the Department of Banking and the Board that are not currently being recovered, but are instead being funded by assessments on the banking industry.

Everette D. Jobe, general counsel, Texas Department of Banking (the "Department"), has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government or to small businesses as a result of enforcing or administering the amendment. While the proposed amendment will result in an increase in revenue from recovery of certain costs, the increased revenue will decrease the amount of Departmental operational expenses that must be recouped through fees imposed on the industries regulated by the Department. Mr. Jobe estimates that the amount of increased revenue from cost recovery (and the corresponding decrease in the base upon which industry fees are calculated) to be \$5,000 in each year for the first five years the proposed section is in effect.

Mr. Jobe also has determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing this section is the economic self-sufficiency of the Department and the Board with respect to providing the administrative record of a contested case for purposes of judicial review. The net economic cost that will result to individuals required to comply with the proposed amendment is estimated to range from \$500 to \$5,000, depending on the length and complexity of the agency record that is the subject of an appeal.

Comments on the proposed amendment to be considered by the Board 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 proposed amendment to §33.32 is proposed under Texas Government Code, §2001.177, which provides that a state agency may require an appealing party in a contested case to pay all or a part of the cost of preparing the agency record, and Texas Civil Statutes, Article 342-115(6), which provides the Board with the authority to adopt such rules and procedural regulations as may be necessary to facilitate the fair hearing and adjudication of charter applications.

The following articles are affected by the proposed amendment to §33.32: Texas Government Code, §§2001.171-2001.177.

§33.32. Record.

(a) The record in a contested case shall include:

- (1) all pleadings, motions, intermediate rulings;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections, and rulings thereon;
- (5) proposed findings and exceptions;
- (6) any decision, opinion, or report by the officer presiding at the hearing; and
- (7) all staff memoranda or data submitted to the hearing officer or commissioner in connection with the consideration of the case.

(b) A party who appeals a final decision in a contested case shall pay all of the cost of preparation of the original or a certified copy of the record of the proceeding before the agency that is required to be sent to the reviewing court.

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 December 13, 1993.

TRD-9333732 Everette D Jobe
General Counsel
Texas Department of
Banking

Earliest possible date of adoption: January 24, 1994

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

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**TITLE 22. EXAMINING
BOARDS**

**Part XIV. Texas
Optometry Board**

Chapter 273. General Rules

• 22 TAC §273.5, §273.6

The Texas Optometry Board proposes amendments to §273.5 and §273.6, concerning educational requirements for limited faculty license and candidates for provisional license, respectively. When these rules were originally adopted in August, the Board failed to address the educational criteria within the rules for both limited faculty licensure as well as provisional license. This rule will clarify that minimum educational requirement.

Lois Ewald, executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal

implications for state or local government as a result of enforcing or administering the sections.

Ms. Ewald 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 faculty members licensed under the Texas Optometry Act will have the same educational criteria as all licensees, thereby assuring that clinical instruction and care within the educational institution will be of the same quality as competent licensees, and further, that temporary or provisional licensure candidates will have current therapeutic education. 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 Lois Ewald, Executive Director, Texas Optometry Board, 9101 Burnet Road, Suite 214, Austin, Texas 78758.

The amendments are proposed under Texas Civil Statutes, Article 4552, §2 14, which provide the Texas Optometry Board with the authority to promulgate procedural and substantive rules.

§273.5 Limited License for Clinical Faculty.

(a) Issuance of Limited License. The board hereby designates the University of Houston College of Optometry in Houston, Texas, as approved by the board for the issuance of limited licenses (teaching permits) to those faculty members performing professional optometric services in programs of the school and who have graduated from a college of optometry which has been accredited by the Council on Optometric Education of the American Optometric Association.

(b)-(f) (No change)

§273.6 Provisional License

(a) Requirements for Provisional License. On application for examination, a candidate may apply for a provisional license under the following circumstances:

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

(3) the applicant must have satisfied the educational requirement of §280.2 of this title (relating to Required Education).

(4)[(3)] the applicant must not have failed an examination for a license conducted by the board.

(5)[(4)] the applicant's license to practice optometry must not have been revoked or suspended by any jurisdiction

(b)-(e) (No change)

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

adopt.

Issued in Austin, Texas, on December 17, 1993

TRD-9333796 Lois Ewald
Executive Director
Texas Optometry Board

Earliest possible date of adoption: January 21, 1994

For further information, please call: (512) 835-1938

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**TITLE 30. ENVIRONMENTAL
QUALITY**

**Part I. Texas Natural
Resource Conservation
Commission**

Chapter 101. General Rules

• 30 TAC §101.1

The Texas Natural Resource Conservation Commission (TNRCC) proposes an amendment to §101.1, concerning Definitions. The proposed changes to §101.1 have been developed in response to a requirement by the U.S. Environmental Protection Agency (EPA) and the 1990 Amendments to the Federal Clean Air Act (FCAA) for states to develop and adopt the Rate-of-Progress (ROP) State Implementation Plan (SIP). The ROP SIP is required to achieve and maintain a volatile organic compound (VOC) emissions level that is 15% below the 1990 base-year emissions by 1996 in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas. The affected ozone nonattainment counties are Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller.

The proposed changes to §101.1 add definitions for alcohol as used in offset lithographic printing, bakery ovens, lacquers, polyester resin materials, polyester resin operation, sanding sealers, shellac, and varnish. The proposed changes to §101.1 also revise the definition of surface coating processes to include wood products and parts coating, and delete the definition of marine terminal to avoid conflict with the definition of marine terminal included in §115.10 of this title (relating to Definitions).

The proposed amendments are part of the Phase II rules in a series of proposed revisions to Chapter 115 (concerning Control of Air Pollution From Volatile Organic Compounds) and the SIP to provide the required reductions in the ozone nonattainment areas as mandated by the 1990 FCAA Amendments. Since this is an interim step in attaining the ozone standard, only those controls needed to satisfy the requirement will be adopted. Additional controls are anticipated to be adopted by November 15, 1994, in conjunction with an attainment demonstration requirement in each ozone nonattainment area. By this time, Urban Airshed Modeling (UAM) will be available to facilitate more scientific

decision-making regarding the effect of control measure scenarios on ozone levels. The UAM is a quantitative state-of-the-art computer model that will enable the staff to evaluate the effects of various combinations of control measures on ozone.

Texas is submitting rules to meet the ROP reduction in two phases. Phase I rules comprised a significant portion of the required reductions and were submitted by the original deadline of November 15, 1993. Phase II consists of any remaining percentage toward the 15% net of growth reductions, as well as additional contingency measures to obtain an additional 3.0% of reductions. Phase II will be submitted by November 15, 1994.

Stephen Minick, budget and planning division, has determined that for each year of the first five-year period the proposed section is in effect, there would be no cost to state and local governments. There are also no fiscal implications for facilities and small businesses affected by the definitions.

Mr. Minick also has determined that for the first five-year period the proposed section is in effect, the public benefit anticipated as a result of implementing the sections will be satisfaction of FCAA Amendments and EPA requirements, and VOC emission reductions in ozone nonattainment areas which are necessary for the timely attainment of the ozone standard.

Public hearings on this proposal will be held at the following times and places: January 24, 1994, 7:00 p.m., City of Houston, Pollution Control Building Auditorium, 7411 Park Place Boulevard, Houston, Texas; January 26, 1994, 6:00 p.m., City of El Paso, Council Chambers, Second Floor, 2 Civic Center Plaza, El Paso, Texas; and January 27, 1994, 7:00 p.m., Irving Central Library, 801 West Irving Boulevard, Irving, Texas.

Staff members will be available to discuss the proposal 30 minutes prior to each hearing. Public comments, both oral and written, on the proposed changes are invited at the hearings. Interrogation or cross-examination is not permitted.

Written comments not presented at the hearings must be submitted to the TNRCC, Office of Air Quality, Regulation Development Section, P.O. Box 13087, Austin, Texas 78711-3087, no later than February 11, 1994. Material received by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposed revisions. Copies of the proposed revisions are available at the Regulation Development Section of the TNRCC Air Quality Planning Division located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, Texas 78753, and at all TNRCC Air Program regional offices. For further information, contact Eddie Mack at (512) 239-1488.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 475-2245. Requests should be made as far in advance as possible.

The amendments are proposed under the Texas Health and Safety Code, the Texas

Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§1011. Definitions Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Commission, the terms used by the Commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Alcohol (used in offset lithographic printing)—For the purposes of complying with §§115.442, 115.443, 115.445, 115.446, and 115.449, concerning Offset Lithographic Printing, an alcohol is any of the hydroxyl-containing organic compounds with a molecular weight equal to or less than 74.12, (which includes methanol, ethanol, propanol, and butanol).

Bakery oven—An oven for baking bread or any other yeast-leavened products.

Lacquers—Clear wood finishes, including clear lacquer sanding sealers, formulated with nitrocellulose or synthetic resins to dry by evaporation without chemical reaction.

Marine terminal—Any facility which receives volatile organic compounds (VOC) from a marine vessel or loads VOC into a marine vessel.

Polyester resin materials—Unsaturated polyester resins, such as isophthalic, orthophthalic, halogenated, bisphenol A, vinyl ester, or furan resins; cross-linking agents; catalysts; gel coats; inhibitors; accelerators; promoters; and any other material containing volatile organic compounds used in polyester resin operations.

Polyester resin operation—A facility which fabricates or reworks products by mixing, pouring, hand laying-up, impregnating, injecting, forming, winding, spraying, laminating, molding, curing, resin transfer, and/or pultrusion by using unsaturated polyester resin materials with fiberglass, fillers, or any other reinforcement materials.

Sanding sealers—Clear wood coatings formulated for and applied to bare wood for sanding and to seal the wood for subsequent application of varnish. To be considered a sanding sealer, a coating must be clearly labeled as such.

Shellacs—Clear or pigmented coatings formulated solely with the resinous secretions of the lac beetle (*Laccifer lacca*), thinned with alcohol, and formulated to dry by evaporation without a chemical reaction.

Surface coating processes—Operations which utilize a coating application system.

(A)-(L) (No change.)

(M) **Wood parts and products coating**—The coating of wood parts and products, excluding factory surface coating of flat wood paneling.

Varnishes—Clear wood finishes formulated with various resins to dry by chemical reaction on exposure to air.

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 December 17, 1993.

TRD-9333816

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

Proposed date of adoption, May 15, 1994

For further information, please call. (512) 463-9159

Chapter 114. Control of Air Pollution From Motor Vehicles

• 30 TAC §114.25

The Texas Natural Resource Conservation Commission (TNRCC) proposes new §114.25, concerning a Memorandum of Understanding (MOU) with the Texas Department of Transportation (TxDOT). The purpose of the new section is to enable the TNRCC to review TxDOT projects which may affect air quality in order to assist TxDOT in making environmentally sound decisions, and the development of a system by which information developed by TxDOT and the TNRCC may be exchanged to the mutual benefit of both agencies.

Texas Civil Statutes, Article 6673g, enacted by Senate Bill 352, 72nd Legislature, 1991, required TxDOT to adopt a MOU with each state agency that has responsibilities for the protection of the natural environment or for the preservation of historical or archeological resources. Article 6673g also requires TxDOT and each of the resource agencies to adopt the memoranda and all revisions by rule. In order to meet this legislative intent and to ensure that natural resources are given full consideration in accomplishing TxDOT's activities, this new section is being proposed for public comment.

Stephen Minick, budget and planning division, has determined that there will be fiscal implications for state government as a result of enforcing or administering the section. The TNRCC and TxDOT are unable to assign an exact cost to the state that will be associated with the increased coordination effort between the TNRCC and TxDOT. It is not possible to estimate the cost of additional environmental mitigation and/or enhancement

resulting from the proposed section since the type and extent of mitigation and/or enhancement is related to the scope and extent of specific activities or projects and the anticipated associated environmental impacts. Whatever the costs incurred, they are not expected to be significant and they will be satisfied within existing budget authority. However, it is the position of the TNRCC and TxDOT that the benefits to the natural environment and the benefits to the public will more than offset the increased coordination and environmental mitigation-enhancement costs associated with administering the proposed new section.

Mr. Minick has determined that there will be no effect on local government as a result of enforcing the proposed section.

Mr. Minick also has determined that the anticipated public benefit will be the increased coordination and communication between the TNRCC and TxDOT resulting from implementation of the MOU. This increased coordination and communication will ensure that the natural environment is preserved to the fullest

extent possible and enhanced when practicable. There will be no effect on small businesses or any individual as a result of enforcing the proposed section.

Copies of the MOU are available at the central office of the TNRCC located at 12118 North IH 35, Park 35 Technology Center, Building E, Austin. Material received by the TNRCC Mobile Source Section by 4:00 p.m. on January 24, 1994, will be considered by the Commission prior to any final action on the proposal. Comments and/or requests for a public hearing should be directed to Al Giles at the previous address. For further information contact Mr. Giles at (512) 908-1943.

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

§114.25. Memorandum of Understanding with the Texas Department of Transportation.

(a) The Texas Natural Resource Conservation Commission (TNRCC) adopts as Exhibit A a Memorandum of Understanding between the TNRCC and the Texas Department of Transportation (TxDOT) concerning:

(1) the review of TxDOT projects which may affect air quality, in order to assist TxDOT in making environmentally sound decisions; and

(2) the development of a system by which information developed by TxDOT and TNRCC may be exchanged to the mutual benefit of both agencies.

(b) The Memorandum of Understanding follows as Exhibit A.

(c) Copies of the Memorandum of Understanding are available at the TNRCC Air Quality Planning Division, Mobile Source Section, P.O. Box 13087, Austin, Texas 78711-3087.

MEMORANDUM OF UNDERSTANDING

BETWEEN THE TEXAS DEPARTMENT OF TRANSPORTATION AND THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

I. NEED FOR AGREEMENT

A. The policy of the Texas Department of Transportation (TxDOT) is to:

1. investigate fully the environmental impacts of TxDOT transportation projects, coordinate these projects with applicable state and federal agencies, and reflect these investigations and coordinations in the environmental documentation for each project;
2. base project decisions on a balanced consideration of the need for a safe, efficient, economical, and environmentally sound transportation system;
3. complete public involvement in a systematic interdisciplinary approach as essential parts of the development process for transportation projects;
4. provide environmentally sound transportation projects;
5. mitigate adverse impacts of projects when technically and economically practicable; and
6. enhance the environment when practicable.

B. In order to pursue this policy, TxDOT and the Texas Natural Resource Conservation Commission (TNRCC) have agreed to develop this Memorandum of Understanding (MOU) between these agencies, which will supersede the MOU which became effective on September 7, 1972.

C. Texas Civil Statutes, Article 6673g directs TxDOT to adopt memoranda of understanding with each agency that has responsibilities for protection of the natural environment.

D. The rules for coordination of state-assisted transportation projects developed by TxDOT, Title 43 Texas Administrative Code Sections 11.80 - 11.90, underline the need for and importance of comprehensive environmental coordination for all transportation projects.

E. It is the intent of this MOU to provide a formal mechanism by which TNRCC may review TxDOT projects which have the potential to affect resources within the jurisdiction of TNRCC, and to develop with TxDOT a system by which information developed by TxDOT and TNRCC may be exchanged to their mutual benefit.

II. DEFINITIONS

A. Clean Air Act (CAA): A federal act which establishes national ambient air quality standards and mandates procedures for reaching and maintaining these standards. This includes the act passed in 1970 and its subsequent amendments.

B. Construction: Activities which involve the building of transportation facilities on a new location, the expansion, or reconstruction of an existing facility, or other transportation related activity under TxDOT jurisdiction which may affect air quality.

C. Environmental Documents: Decision-making documents which incorporate the results of environmental studies, coordination and consultation efforts, and engineering. These types of documents include categorical exclusion assessments, environmental assessments, and environmental impact statements.

D. Environmental Protection Agency (EPA): The federal agency which is charged with monitoring and protecting air and water resources.

E. Hot-Cold Ratios: Computer input data detailing the percentages of vehicles without catalytic converters, with functioning catalytic converters, and with non-functioning catalytic converters.

F. Inspection and Maintenance Program (I/M): An emissions testing and inspection program implemented by states in non-attainment areas to ensure that the catalytic or other emissions control devices on in-use vehicles are properly maintained.

G. Maintenance: Activities which involve the repair, rehabilitation, or preservation of an existing facility to prevent that facility's degradation to an unsafe or irreparable state, or which involve the treatment of an existing facility or its environs to ensure an acceptable standard of function or aesthetic quality. Such activities generally do not require the acquisition of additional right-of-way or result in increased highway capacity.

H. Memorandum of Understanding: A formal document which outlines the relationship between agencies or parties, including the responsibilities and jurisdiction of each party, and which sets forth within its provisions agreements between the parties and a means of dispute resolution.

I. Metropolitan Planning Organization (MPO): An organization designated in certain urbanized areas to carry-out the transportation planning process as required by 23 United States Code, Section 134.

J. Metropolitan Transportation Plan: The official intermodal transportation plan that is developed through the metropolitan transportation planning process and adopted by the MPO.

K. Mitigation: A technique or means of reducing impacts to the natural environment. Mitigation measures include, but are not limited to avoidance of, minimization of, and compensation for environmental impacts.

L. National Ambient Air Quality Standards (NAAQS): Those standards established pursuant to 42 United States Code 7409 (Section 109 of the Clean Air Act).

M. National Environmental Policy Act of 1969 (NEPA): The basic national charter for protection of the environment. It establishes policy, sets goals, and provides means for carrying out the policy. NEPA is binding upon federal agencies, including the Federal Highway Administration (FHWA), and is used as an environmental guideline by state and local agencies. For the purposes of this MOU, NEPA is defined as the Act and all of its subsequent amendments and associated regulations.

N. Non-attainment Area: Any portion of an air quality control region for which any pollutant exceeds the national ambient air quality standard for the pollutant as designated pursuant to 42 United States Code 7407 (Section 107 of the Clean Air Act).

O. Project Development: The planning process of a transportation project which includes engineering design, as well as environmental studies and public

involvement procedures. Project development generally includes all studies of a project prior to actual construction.

P. Public Involvement: An important phase of the project development process which encourages and solicits public input and seeks to provide the public the opportunity to become fully informed regarding project development and fully considers and responds to public comment.

Q. Right-of-Way: The land provided for a highway, usually including the roadway itself, shoulders, and areas between the roadway and adjacent properties.

R. State Implementation Plan (SIP): The plan required by 42 United States Code Section 7410 (Section 110 of the Clean Air Act) to attain and maintain the national ambient air quality standards. An approved SIP is the implementation plan, or most recent revision of this plan, which has been approved or promulgated by the Environmental Protection Agency under Section 110 of the Clean Air Act.

S. Statewide Transportation Improvement Program (STIP): A staged, multiyear, statewide, intermodal program of transportation projects which is consistent with the statewide transportation plan and planning processes, and metropolitan plans, TIPs, and processes.

T. Transportation Improvement Program (TIP): A staged, multiyear, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan.

U. Transportation Projects: Aviation, transit, or roadway projects which are designed, developed, or funded by TxDOT.

V. Vehicle Miles Travelled (VMT): An estimate of the annual miles travelled by motor vehicles within a specified county.

III. RESPONSIBILITIES

A. Texas Department of Transportation

1. The responsibilities of TxDOT pertain primarily to its functions as a transportation agency and include the following:

- a. planning and designing safe, efficient, cost effective, and environmentally sound transportation facilities, while avoiding,

minimizing, or compensating for environmental impacts to the fullest extent practicable;

b. coordinating with Metropolitan Planning Organizations (MPO's) in developing and conforming the metropolitan transportation plan in compliance with the Intermodal Surface Transportation Efficiency Act and Clean Air Act and as approved by FHWA, the Federal Transit Authority and the Environmental Protection Agency.

c. developing a statewide transportation improvement program (STIP) which confirms each MPO's transportation improvement program (TIP) and specific projects included in the TIP.

d. timely and efficient construction of transportation facilities, executed in a manner consistent with the approved State Implementation Plan (SIP) and other environmental documents, plans or agreements which have been entered into by TxDOT for the protection of the environment;

e. ongoing maintenance necessary to provide safe, efficient, and environmentally sound transportation facilities for the travelling public;

f. preservation of the environment when possible and enhancement of the environment when practicable;

g. implement an enforceable and verifiable registration denial mechanism which requires emissions testing as a prerequisite to vehicle registration in appropriate areas; and

h. maintenance of vehicle registration data which will facilitate mobile source air quality planning and implementation as directed by the SIP and as agreed to by TxDOT.

2. Texas Civil Statutes, Article 6673g directs TxDOT to adopt an MOU with each state agency that has responsibilities for the protection of the natural environment or for the preservation of historical or archaeological resources.

B. Texas Natural Resource Conservation Commission

1. TNRCC is the state air pollution control agency and is the principal authority in the State of Texas on matters relating to the quality of the state's air resources.

2. TNRCC's primary responsibility, as designated by Chapter 381, Section 381.002 of the Texas Health and Safety Code, includes, but is not limited to, setting standards, criteria, levels, and emission limits for air content and air pollution control.

3. General powers and duties of the TNRCC:

a. regulate air quality through the development, implementation, and enforcement of strategies, and control programs as necessary to satisfy all federal and state requirements, including SIP requirements mandated by the federal CAA.

b. participate in the preparation and review of SIP conformity evaluations and other SIP documents for determination purposes of transportation programs, plans, and projects as required by the federal CAA.

c. participate in the development and implementation of transportation control measures through coordination with TxDOT which may require action by TxDOT.

d. implement an effective vehicle inspection and maintenance program incorporating an enforceable and verifiable registration denial mechanism.

4. TNRCC shall accomplish the purposes of Chapters 381 and 382 of the Texas Health and Safety Code through the control of air contaminants by all practical and economically feasible methods.

5. TNRCC has the powers necessary and convenient to carry out:

a. State Air Control Plan: TNRCC shall prepare and develop a general, comprehensive plan for the proper control of the state's air contents.

b. Air Quality Control Regions: TNRCC may designate air quality control regions based on jurisdictional boundaries, urban/industrial concentrations, and other factors, including atmospheric conditions, necessary to provide adequate implementation of air quality standards.

c. Emission Inventory: TNRCC may require any person whose activities cause emissions of air contaminants to submit information to enable TNRCC to develop an inventory of emissions of air contaminants in this state.

d. Additional responsibilities of TNRCC that may affect TxDOT activities may be found in Chapters 381 and 382 of the Texas Health and Safety Code.

IV. PROVISIONS

A. TxDOT Activities: For the purposes of this MOU, the activities of TxDOT are divided into three interrelated categories as defined above - project development, construction, and maintenance activities. The provisions of this memorandum for each of these categories are as follows.

1. Project Development

a. TxDOT shall furnish to TNRCC environmental documentation for all projects meeting any of the criteria for coordination as specified below:

- (1) projects involving construction on a new location,
- (2) projects involving increased highway capacity, or
- (3) other transportation projects or activities which may affect air quality.

b. The level of environmental documentation prepared and provided to TNRCC by TxDOT will be in compliance with NEPA, TxDOT environmental rules as outlined in the latest edition of TxDOT's "Highway Design Division Operations and Procedures Manual, Part II-B", other state laws, rules, and regulations as required by SIP commitments, and state and federal laws and regulations concerning air quality.

c. For projects requiring the preparation of an environmental impact statement, TxDOT shall furnish the preliminary environmental assessment to TNRCC upon approval of the document by the appropriate agency (the appropriate agency being FHWA for federal projects and TxDOT for state projects). Upon approval of the subsequent draft environmental impact statement, it too shall be furnished to TNRCC.

d. For projects not requiring the preparation of an environmental impact statement, the environmental documentation shall be furnished upon completion of preliminary review by TxDOT.

e. TNRCC shall have a period of 30 days, from date of receipt, to review environmental documents. An additional 30 day review and

comment period will be allowed when TNRCC submits a written request explaining the reasons for the extension. All comments submitted by TNRCC subsequent to review must be considered by TxDOT.

f. TxDOT shall provide TNRCC written notification of all public meetings and public hearings scheduled by TxDOT during the environmental study process. Through notices, public meetings, and public hearings, TxDOT and TNRCC are committed to encouraging public input, when appropriate, concerning plans and actions that may affect air quality.

2. Construction Activities

a. TxDOT and TNRCC will work cooperatively to address and, when feasible, to mitigate construction related air quality impacts.

b. During construction projects, TxDOT shall continue coordination with TNRCC regarding potential air quality impacts.

3. Maintenance Activities

a. These activities include, but are not limited to:

(1) resurfacing of an existing roadway;

(2) highway safety or traffic operation improvement projects including the installation of ramp metering control devices, signalization, or lighting;

(3) repair or painting of bridges or other structures;

(4) installation of fencing, signs, pavement markings, small passenger shelters, and railroad warning devices; and

(5) landscaping and related activities.

b. TxDOT and TNRCC shall work together in developing cooperative programs to address maintenance activities when such activities have a reasonable likelihood of affecting air quality.

B. TNRCC Activities

1. In consultation with TxDOT, suggest technically and economically appropriate air quality mitigation measures during development and/or implementation of TxDOT construction and maintenance projects.

2. Recommend procedures for the protection of natural resources under TNRCC jurisdiction, as established by Chapters 381 and 382 of the Texas Health and Safety Code.

3. TNRCC shall provide TxDOT written notification of all public meetings and public hearings scheduled by TNRCC that involve transportation related issues. Through notices, public meetings, and public hearings, TxDOT and TNRCC are committed to encouraging public input, when appropriate, concerning plans and actions that may affect air quality.

C. Special Provisions Relating to Information Exchange

1. TNRCC shall furnish to TxDOT information detailing the location and severity of non-attainment counties, and information affecting mobile sources to be included in the SIP. Such information would be helpful in the planning and location of future TxDOT projects, and in the coordination of such projects with TNRCC.

2. TxDOT and TNRCC shall mutually cooperate in the development and exchange of information as necessary to satisfy the requirements of state and federal statutes, regulations and federal guidelines. Activities include:

- a. exchange, on a statewide perspective, accurate and timely information which is readily available;
- b. develop additional data that is mutually agreed to as being necessary to administer the Inspection and Maintenance Program, conformity review, and other transportation planning requirements;
- c. provide (consistent with laws relating to open records, TxDOT security procedures, and state and federal statutes and regulations governing confidentiality and security of the registration information data base) direct on-line, read/copy-only access to TxDOT computer files containing registration information;
- d. establish for auditing and verification purposes, within a mutually agreed time frame, an effective, feasible, and practical method to communicate between TNRCC vehicle inspection data management system and TxDOT registration and title data management system with the least impact to the public, counties, and the State; and
- e. develop detailed agreements that are mutually agreed to as being necessary to accomplish the above activities.

3. TxDOT will be given an opportunity for input on the mobile source portion of the SIP as early in the process as possible. Also, TxDOT will participate in the preparation of the SIP, documents for tracking of motor vehicle emission changes, and other air quality documents required by state and federal statutes or regulations for transportation projects.

V. DISPUTE RESOLUTION

A. In such instances when TxDOT and TNRCC are unable to reach a mutually agreeable plan of action regarding impacts of transportation facilities to natural resources within the jurisdiction of TNRCC, each agency shall make a good-faith effort to address the major concerns of the other party. A period of 90 days shall be provided for the resolution of such disputes, after which TxDOT is charged with determining the disposition of transportation projects within its jurisdiction.

B. Comments received will be evaluated in conjunction with all other applicable factors, (i.e., other agency comments, project alternatives, cost, mitigation requirements, and safety considerations) in an attempt to arrive at a plan of action acceptable to the affected parties.

C. Should TxDOT determine to proceed with a proposed transportation project in conflict with TNRCC recommendations, a complete and detailed justification will be submitted to the TNRCC demonstrating full compliance with all federal and state rules, regulations, laws, and TNRCC adopted SIP revisions.

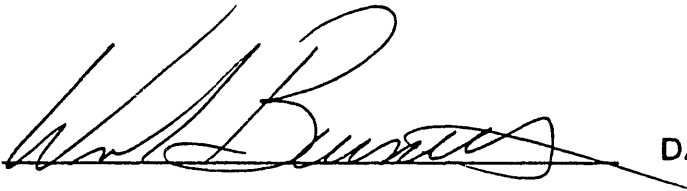
D. TxDOT reserves the right to determine the final disposition of proposed transportation projects based on a considered analysis of all relevant comments and practicable alternatives. TNRCC reserves the right to bring enforcement action against TxDOT for violation of any air quality related laws or rules of which TNRCC is charged with enforcing and which may be applicable to TxDOT operations. Both parties understand and agree that nothing in this MOU shall be construed as a waiver of any rights by either party. Further, both parties understand and agree that this MOU does not constitute an estoppel precluding either party from making any legal argument.

VI. REVIEW OF MEMORANDUM OF UNDERSTANDING

This MOU shall be reviewed and updated, at a minimum, every fifth year from the date of adoption. TxDOT and TNRCC by rule shall adopt the MOU and all revisions to the MOU.

SIGNATORIES

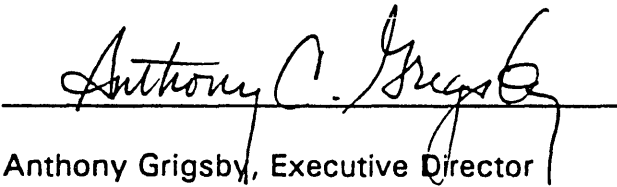
TEXAS DEPARTMENT OF TRANSPORTATION



DATE: 11/30/93

Wm. G. Burnett, P.E., Executive Director

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



DATE: 12/17/93

Anthony Grigsby, Executive Director

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 December 20, 1993.

TRD-9333815 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: January 24, 1994

For further information, please call: (512) 463-8159

Chapter 115. Control of Air Pollution from Volatile Organic Compounds

Subchapter A. Definitions

• 30 TAC §115.10

The Texas Natural Resource Conservation Commission (TNRCC) proposes an amendment to §115.10, concerning Definitions. The proposed changes have been developed in response to a requirement by the United States Environmental Protection Agency (EPA) and the 1990 Amendments to the Federal Clean Air Act (FCAA) for states to develop and adopt the Rate-of-Progress (ROP) State Implementation Plan (SIP). The ROP SIP is required to achieve and maintain a volatile organic compound (VOC) emissions level that is 15% below the 1990 base-year emissions by 1996 in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas. The affected ozone nonattainment counties are Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller.

The proposed changes to §115.10 add definitions for alcohol as used in offset lithographic printing, bakery oven, continuous monitors, lacquers, leak-free marine vessel, marine loading facility, marine loading operation, polyester resin materials, polyester resin operation, sanding sealers, shellac, and varnish. The proposed changes to §115.10 also revise the definition of surface coating processes to include wood products and parts coating, and revises the definition of marine terminal and deletes the definition of leakless valve to make the rules more enforceable.

The proposed amendments are part of the Phase II rules in a series of proposed revisions to Chapter 115 (concerning Control of Air Pollution From Volatile Organic Compounds) and the SIP to provide the required reductions in the ozone nonattainment areas as mandated by the 1990 FCAA Amendments. Since this is an interim step in attaining the ozone standard, only those controls needed to satisfy the requirement will be adopted. Additional controls are anticipated to be adopted by November 15, 1994, in conjunction with an attainment demonstration requirement in each ozone nonattainment area. By this time, Urban Airshed Modeling (UAM) will be available to facilitate more scientific decision-making regarding the effect of control measure scenarios on ozone levels. The UAM is a quantitative state-of-the-art computer model that will enable the staff to evalu-

ate the effects of various combinations of control measures on ozone.

Texas is submitting rules to meet the ROP reduction in two phases. Phase I rules comprised a significant portion of the required reductions and were submitted by the original deadline of November 15, 1993. Phase II consists of any remaining percentage toward the 15% net of growth reductions, as well as additional contingency measures to obtain an additional 3.0% of reductions. Phase II will be submitted by November 15, 1994.

Stephen Minick, budget and planning division, has determined that for each year of the first five-year period the proposed section is in effect, there would be no cost to state and local governments. There are also no fiscal implications for facilities and small businesses affected by the definitions.

Mr. Minick also has determined that for the first five-year period the proposed section is in effect, the public benefit anticipated as a result of implementing the section will be satisfaction of FCAA Amendments and EPA requirements, and VOC emission reductions in ozone nonattainment areas which are necessary for the timely attainment of the ozone standard.

Public hearings on this proposal will be held at the following times and places: January 24, 1994, 7:00 p.m., City of Houston, Pollution Control Building Auditorium, 7411 Park Place Boulevard, Houston, Texas; January 26, 1994, 6:00 p.m., City of El Paso, Council Chambers, Second Floor, 2 Civic Center Plaza, El Paso, Texas; and January 27, 1994, 7:00 p.m., Irving Central Library, 801 West Irving Boulevard, Irving, Texas.

Staff members will be available to discuss the proposal 30 minutes prior to each hearing. Public comments, both oral and written, on the proposed changes are invited at the hearings. Interrogation or cross-examination is not permitted.

Written comments not presented at the hearings must be submitted to the TNRCC, Office of Air Quality, Regulation Development Section, P.O. Box 13087, Austin, Texas 78711-3087, no later than February 11, 1994. Material received by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposed revisions. Copies of the proposed revisions are available at the Regulation Development Section of the TNRCC Air Quality Planning Division located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, Texas 78753, and at all TNRCC Air Program regional offices. For further information, contact Eddie Mack at (512) 239-1488.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 475-2245. Requests should be made as far in advance as possible.

The amendment is proposed for adoption under the Texas Health and Safety Code (Vernon 1990), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

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

Alcohol (used in offset lithographic printing)—For the purposes of complying with §§115.442, 115.443, 115.445, 115.446, and 115.449, of this title (relating to Offset Lithographic Printing), an alcohol is any of the hydroxyl containing organic compounds with a molecular weight equal to or less than 74.12 (which includes methanol, ethanol, propanol, and butanol).

Bakery oven—An oven for baking bread or any other yeast-leavened products.

Continuous Monitoring—Any monitoring device used to comply with a continuous monitoring requirement of this chapter will be considered continuous if it can be demonstrated that at least 95% of the required data is captured.

Lacquers—Clear wood finishes, including clear lacquer sanding sealers, formulated with nitrocellulose or synthetic resins to dry by evaporation without chemical reaction.

Leak-free marine vessel—A marine vessel whose cargo tank closures (hatch covers, expansion domes, ullage openings, butter-worth covers and gauging covers) were inspected prior to cargo transfer operations and all such closures were properly secured such that no leaks of liquid or vapors can be detected by sight, sound, or smell. Cargo tank closures shall meet the applicable rules or regula-

tions of the marine vessel's classification society or flag state. Cargo tank pressure/vacuum valves shall be operating within the range specified by the marine vessel's classification society or flag state and seated when tank pressure is less than 80% of set point pressure such that no vapor leaks can be detected by sight, sound, or smell. As an alternative, a marine vessel operated at negative pressure is assumed to be leak-free for the purpose of this standard.

[Leakless Valve]—Any valve which meets the conditions of either subparagraph (A) or (B) of this definition.

[(A) a valve which can be demonstrated by performance (including gas testing or hydraulic testing at no less than normal operating pressure adjustments made as necessary to obtain leak free performance) or design to prevent or contain a leak of VOC, as defined in §115.352 of this title (relating to Fugitive Control Requirements), from the valve stem packing (including, but not limited to, bellows and diaphragm valves);

[(B) a valve which can be demonstrated by performance or design to prevent a leak of VOC, as defined in §115.352 of this title, at the outlet of the valve (including, but not limited to, valves that stop the process flow through the use of nonrotating plug stems.)

Marine loading facility—The loading arm(s), pumps, meters, shutoff valves, relief valves, and other piping and valves that are part of a single system used to fill a marine vessel at a single geographic site. Loading equipment that is physically separate (i.e., does not share common piping, valves, and other loading equipment) is considered to be a separate marine loading facility.

Marine loading operation—The transfer of oil, gasoline, or other volatile organic liquids at any affected marine terminal, beginning with the connections made to a marine vessel and ending with the disconnection from the marine vessel.

Marine terminal—Any marine facility or structure constructed to load oil, gasoline, or other [which receives] volatile organic liquid bulk cargo [compounds (VOC) from a marine vessel or loads VOC] into a marine vessel. A marine vessel consists of one or more marine loading facilities.

Polyester resin materials—Unsaturated polyester resins, such as isophthalic, orthophthalic, halogenated, bisphenol A, vinyl ester, or furan resins; cross-linking agents; catalysts; gel coats; inhibitors; accelerators; promoters; and any other material containing volatile organic compounds used in polyester resin operations.

Polyester resin operation—A facility which fabricates or reworks products by mixing, pouring, hand laying-up, impregnating, injecting, forming, winding, spraying, laminating, molding, curing, resin transfer, and/or pultrusion by using unsaturated polyester resin materials with fiberglass, fillers, or any other reinforcement materials.

Sanding sealers—Clear wood coatings formulated for and applied to bare wood for sanding and to seal the wood for subsequent application of varnish. To be considered a sanding sealer, a coating must be clearly labeled as such.

Shellacs—Clear or pigmented coatings formulated solely with the resinous secretions of the lac beetle (laccifer lacca), thinned with alcohol, and formulated to dry by evaporation without a chemical reaction.

Surface coating processes—Operations which utilize a coating application system.

(A)-(L) (No change)

(M) **Wood parts and products coating**—The coating of wood parts and products, excluding factory surface coating of flat wood paneling.

Varnishes—Clear wood finishes formulated with various resins to dry by chemical reaction on exposure to air.

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 December 17, 1993.

TRD-9333817

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

Proposed date of adoption May 15, 1994

For further information, please call (512) 463-8159

Subchapter B. General Volatile Organic Compound Sources

Water Separation

• 30 TAC §115.132, §115.139

The Texas Natural Resource Conservation Commission (TNRCC) proposes an amendment to §115.132 and §115.139, concerning Water Separation. The proposed changes have been developed in response to concerns expressed by industry with regards to the timing of the requirements of the proposed §§115.140-115.149, concerning Industrial Wastewater

The proposed changes to §115.132(a)(4), concerning Control Requirements, have been

developed in response to industry's request to apply a recent revision to the federally mandated "once-in, always-in" concept to all applicable rules.

The proposed changes to §115.139, concerning Counties and Compliance Schedules, has extended the compliance date for the American Petroleum Institute (API) separator rules to May 31, 1995, to allow for more time to determine if a facility will be regulated by the proposed Industrial Wastewater rule or if it will have to comply with the API separator rule. This is the latest date a Control Techniques Guidelines (CTG) Reasonably Available Control Technology (RACT) rules, such as the API separator rule, may be complied with in accordance with the Federal Clean Air Act

Stephen Minick, budget and planning division, has determined that for each year of the first five-year period the proposed sections are in effect, there would be no fiscal implications for state and local governments, small businesses, persons, and businesses required to implement the proposed amendment.

Mr. Minick also has determined that for the first five-year period the proposed sections are in effect, the public benefit anticipated as a result of implementing the sections will be satisfaction of FCAA Amendments and EPA requirements, and VOC emission reductions in ozone nonattainment areas which are necessary for the timely attainment of the ozone standard

Public hearings on this proposal will be held at the following times and places: January 24, 1994, 7:00 p.m., City of Houston, Pollution Control Building Auditorium, 7411 Park Place Boulevard, Houston, Texas, January 26, 1994, 6:00 p.m., City of El Paso, Council Chambers, Second Floor, 2 Civic Center Plaza, El Paso, Texas, and January 27, 1994, 7:00 p.m., Irving Central Library, 801 West Irving Boulevard, Irving, Texas

Staff members will be available to discuss the proposal 30 minutes prior to each hearing. Public comments, both oral and written, on the proposed changes are invited at the hearings. Interrogation or cross-examination is not permitted

Written comments not presented at the hearings must be submitted to the TNRCC, Office of Air Quality, Regulation Development Section, P.O. Box 13087, Austin, Texas 78711-3087, no later than February 11, 1994. Material received by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposed revisions. Copies of the proposed revisions are available at the Regulation Development Section of the TNRCC Air Quality Planning Annex located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, Texas 78753, and at all TNRCC Air Program regional offices. For further information, contact Chuck Mueller at (512) 239-1916

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 475-2245. Requests should be made as far in

advance as possible.

The amendments are proposed under the Texas Health and Safety Code (Vernon 1990), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§115.132. Control Requirements.

(a) For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, no person shall use any single or multiple compartment volatile organic compound (VOC) water separator which separates materials containing VOC obtained from any equipment which is processing, refining, treating, storing, or handling VOC, unless each compartment is controlled in one of the following ways.

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

(4) Any water separator that becomes subject to the provisions of paragraphs (1), (2), or (3) of this subsection by exceeding provisions of §115.137(a) of this title (relating to Exemptions) will remain subject to the provisions of this subsection, even if throughput or emissions later fall below the exemption limits unless and until emissions are reduced to at or below the controlled emissions level existing prior to implementation of the project by which throughput or emission rate was reduced; and

(A) the project by which throughput or emission rate was reduced is authorized by any permit or permit amendment or standard permit or standard exemption required by Chapter 116 of this title (relating to Control of Air Pollution). If a standard exemption is available for the project, compliance with this subsection must be maintained for 30 days after the filing of documentation of compliance with that standard exemption; or

(B) if no permit or standard exemption is required for the project, the owner/operator has given the TNRCC 30 days' notice of the project in writing.

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

§115.139. Counties and Compliance Schedules.

(a) All affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas shall be in compliance with this undesignated head (relating to Water Separation) in accordance with the following schedules.

(1) All affected persons in Chambers, Collin, Denton, Fort Bend,

Hardin, Liberty, Montgomery, and Waller Counties shall be in compliance with §115.131(a) of this title (relating to Emission Specifications), §115.132(a) of this title (relating to Control Requirements), §115.133(a) of this title (relating to Alternate Control Requirements), §115.135(a) of this title (relating to Testing Requirements), §115.136(a) of this title (relating to Monitoring and Recordkeeping Requirements), and §115.137(a) of this title (relating to Exemptions) as soon as practicable, but no later than May 31, 1995 [July 31, 1994]. Sections 115.131(c) of this title, 115.132(c) of this title, 115.133(c) of this title, and 115.137(c) of this title shall no longer apply in Hardin and Montgomery Counties after May 31, 1995 [July 31, 1994].

(2) All persons in Brazoria, El Paso, Galveston, Harris, Jefferson, and Orange Counties affected by §115.131(a)(4) of this title and §115.137(a)(1)-(3) of this title shall be in compliance as soon as practicable, but no later than May 31, 1995 [July 31, 1994].

(b) (No change.)

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

Issued in Austin, Texas, on December 17, 1993.

TRD-9333818

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

Proposed date of adoption: May 15, 1994

For further information, please call: (512) 463-8159

Municipal Solid Waste Landfills

• 30 TAC §§115.152, 115.153, 115.156, 115.157, 115.159

The Texas Natural Resource Conservation Commission (TNRCC) proposes amendments to §§115.152, 115.153, 115.156, 115.157, and 115.159, concerning Municipal Solid Waste Landfill Facilities (MSWLF). The proposed changes have been developed in response to a requirement by the United States Environmental Protection Agency (EPA) and the 1990 Amendments to the Federal Clean Air Act (CAA) for states to develop and adopt the Rate-of-Progress (ROP) State Implementation Plan (SIP). The ROP SIP is required to achieve and maintain a volatile organic compound (VOC) emissions level that is 15% below the 1990 base year emissions by 1996 in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas. These rules regarding landfills extend existing rules to Brazoria, Chambers, El Paso, Fort Bend, Galveston, Harris, Liberty, Montgom-

ery, and Waller Counties.

The proposed amendment to §115.152, concerning Control Requirements, provides the criteria for the application of controls for landfills. Section 115.153, concerning Alternate Control Requirements, provides alternate methods of compliance that may be approved by the Executive Director. Section 115.156, concerning Monitoring and Recordkeeping Requirements, sets required procedures and schedules for continued monitoring of landfills and prescribes the periods for which certain records must be kept on the premises. Section 115.157, concerning Exemptions, lists conditions which exempt owners or operators of landfills from the provisions of this subchapter. Section 115.159, concerning Counties and Compliance Schedule, specifies the due date and affected persons that are required to comply with this subchapter.

The proposed amendments are part of the Phase II rules in a series of proposed revisions to Chapter 115 (concerning Control of Air Pollution From VOCs) and the SIP to provide the required reductions in the ozone nonattainment areas as mandated by the 1990 CAA Amendments. Since this is an interim step in attaining the ozone standard, only those controls needed to satisfy the requirement will be adopted. Additional controls are anticipated to be adopted by November 15, 1994, in conjunction with an attainment demonstration requirement in each ozone nonattainment area. By this time, Urban Airshed Modeling (UAM) will be available to facilitate more scientific decision-making regarding the effect of control measure scenarios on ozone levels. The UAM is a quantitative state-of-the-art computer model that will enable the staff to evaluate the effects of various combinations of control measures on ozone.

Texas is submitting rules to meet the ROP reduction in two phases. Phase I rules comprised a significant portion of the required reductions and were submitted by the original deadline of November 15, 1993. Phase II consists of any remaining percentage toward the 15% net of growth reductions, as well as additional contingency measures to obtain an additional 3.0% of reductions. Phase II will be submitted by November 15, 1994.

Stephen Minick, budget and planning division, has determined that for each year of the first five-year period the proposed sections are in effect, there will be fiscal cost implications for state and local governments of \$80,000 to \$100,000 to implement the program. Economic costs to businesses required to implement the proposed control measures are estimated to be \$306,000 for the initial installation of control equipment and \$75,000 per year for operating costs for each landfill with 32 wells, monitoring equipment, and a candle flare. Any costs beyond 1998 would be associated with the ongoing operating and statutory requirements. All estimates are stated in 1994 dollars with no adjustments for inflation and assume continuing costs equal to those incurred during 1994-1998.

Mr. Minick also has determined that for the first five-year period the proposed sections are in effect, the public benefit anticipated as

a result of implementing the sections will be satisfaction of FCAA Amendments and EPA requirements, and VOC emission reductions in ozone nonattainment areas which are necessary for the timely attainment of the ozone standard. There are no fiscal implications for persons or small businesses affected by the proposed amendments.

Public hearings on this proposal will be held at the following times and places: January 24, 1994, 7:00 p.m., City of Houston, Pollution Control Building Auditorium, 7411 Park Place Boulevard, Houston, Texas; and January 26, 1994, 6:00 p.m., City of El Paso, Council Chambers, 801 West Irving Boulevard, 2 Civic Center Plaza, El Paso, Texas.

Staff members will be available to discuss the proposal 30 minutes prior to each hearing. Public comments, both oral and written, on the proposed changes are invited at the hearings. Interrogation or cross-examination is not permitted.

Written comments not presented at the hearings must be submitted to the TNRCC, Office of Air Quality, Regulation Development Section, P.O. Box 13087, Austin, Texas 78711-3087, no later than February 11, 1994. Material received by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposed revisions. Copies of the proposed revisions are available at the Regulation Development Section of the TNRCC Air Quality Planning Annex located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, Texas 78753, and at all TNRCC Air Program regional offices. For further information, contact Jose T. Cavazos at (512) 908-1517.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 475-2245. Requests should be made as far in advance as possible.

The amendments are proposed under the Texas Health and Safety Code (Vernon 1990), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§115.152. Control Requirements.

(a) For the Houston/Galveston, El Paso, and Dallas/Fort Worth ozone nonattainment area as defined in §115.10 of this title (relating to Definitions), no person shall operate or allow the operation of a municipal solid waste landfill (MSWLF) unless each owner or operator of a MSWLF calculates the volatile organic compounds (VOC) emission rate for the landfill using the procedures provided in §60.753 of the proposed federal rules published in the May 30, 1991, *Federal Register* (58 FR 104). The VOC emission rate shall be recalculated annually. If at any time, the calculated VOC emission rate exceeds 150 Megagrams (Mg) per year, the owner or operator shall:

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

§115.153. *Alternate Control Requirements.* For all persons in the Houston/Galveston, El Paso, and Dallas/Fort Worth ozone nonattainment area, alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this section may be approved by the Executive Director in accordance with §115.910 of this title (relating to Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

§115.156. *Monitoring and Recordkeeping Requirements.* For the Houston/Galveston, El Paso, and Dallas/Fort Worth ozone nonattainment area, the following recordkeeping requirements shall apply

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

§115.157. *Exemptions.* For the Houston/Galveston, El Paso, and Dallas/Fort Worth ozone nonattainment area, the following facilities are exempt:

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

§115.159. *Counties and Compliance Schedule.* All affected MSWLFs in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Tarrant Counties shall be in compliance with this undesignated head as soon as practicable, but no later than May 31, 1995.

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

Issued in Austin, Texas, on December 17, 1993.

TRD-9333819

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

Proposed date of adoption: May 15, 1994

For further information, please call (512) 463-8159

◆ ◆ ◆ Subchapter C. Volatile Organic Compound Transfer Operations

Loading and Unloading of Volatile Organic Compounds

• 30 TAC §§115.211-115.217, 115.219

The Texas Natural Resource Conservation Commission (TNRCC) proposes amendments to §§115.211-115.217, and 115.219, concerning Loading and Unloading of Volatile

Organic Compounds. The proposed changes have been developed in response to a requirement by the U.S. Environmental Protection Agency (EPA) and the 1990 Amendments to the Federal Clean Air Act (FCAA) for states to develop and adopt the Rate-of-Progress (ROP) State Implementation Plan (SIP). The ROP SIP is required to achieve and maintain a volatile organic compound (VOC) emissions level that is 15% below the 1990 base year emissions by 1996 in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas. The affected ozone nonattainment counties are Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller.

The proposed amendment to §115.211, concerning Emission Specifications, establishes an emission limitation of 0.09 pound of VOC from the vapor recovery system vent per 1,000 gallons of gasoline transferred or 95% control efficiency to marine terminals in Houston/Galveston, and deletes obsolete language. The proposed amendment to §115.212, concerning Control Requirements, extends the applicability of control requirements to include marine vessels and marine terminals in Houston/Galveston, which specifies a minimum vapor recovery system control efficiency of 90% and requires marine vessels to be certified leak free before VOC transfer can occur. Provisions for vacuum assisted loading and automatic shutoff in the event of a control device malfunction at gasoline terminals in Dallas/Fort Worth, El Paso, and Houston/Galveston have also been added to §115.212, and obsolete language has been deleted.

The proposed amendment to §115.213, concerning Alternate Control Requirements, deletes obsolete language.

The proposed amendment to §115.214, concerning Inspection Requirements, adds inspection requirements for marine vessels in Houston/Galveston, adds fugitive monitoring requirements at gasoline terminals in Dallas/Fort Worth, El Paso, and Houston/Galveston, and deletes an obsolete paragraph. The proposed amendment to §115.215, concerning Approved Test Methods, updates the test methods for determining true vapor pressurization in cargo tanks.

The proposed amendment to §115.216, concerning Monitoring and Recordkeeping Requirements, adds inspection requirements for marine terminals and adds recordkeeping requirements for VOC loading operations at marine terminals and gasoline terminals.

The proposed amendment to §115.217, concerning Exemptions, establishes the exemptions for marine terminals, clarify current exemptions, and deletes obsolete language.

The proposed amendment to §115.219, concerning Counties and Compliance Schedules, specifies the applicable counties and the compliance dates for the new requirements, and deletes obsolete language.

The proposed amendments are part of the Phase II rules in a series of proposed revisions.

sions to Chapter 115 (concerning Control of Air Pollution From Volatile Organic Compounds) and the SIP to provide the required reductions in the ozone nonattainment areas as mandated by the 1990 FCAA Amendments. Since this is an interim step in attaining the ozone standard, only those controls needed to satisfy the requirement will be adopted. Additional controls are anticipated to be adopted by November 15, 1994, in conjunction with an attainment demonstration requirement in each ozone nonattainment area. By this time, Urban Airshed Modeling (UAM) will be available to facilitate more scientific decisionmaking regarding the effect of control measure scenarios on ozone levels. The UAM is a quantitative state-of-the-art computer model that will enable the staff to evaluate the effects of various combinations of control measures on ozone.

Texas is submitting rules to meet the ROP reduction in two phases. Phase I rules comprised a significant portion of the required reductions and were submitted by the original deadline of November 15, 1993. Phase II consists of any remaining percentage toward the 15% net of growth reductions, as well as additional contingency measures to obtain an additional 3.0% of reductions. Phase II will be submitted by November 15, 1994.

Stephen Minick, budget and planning division, has determined that for each year of the first five-year period the proposed sections are in effect, the annual cost to state and local governments are estimated at \$30,000 which would primarily be the result of hiring additional personnel to inspect and monitor these new requirements. Economic costs to small businesses, persons, and businesses required to implement the proposed measures may vary from no cost, if the facility already has add-on control equipment, to about \$890,000 plus the cost of fuel for a combustion device or \$1,435,000, minus the value of product recovered, for a carbon adsorption system. These costs estimates include monitoring equipment. Some of the marine terminals already meet the 10.8 milligrams/liter emission limitation recommended in this proposed revision. According to industry representatives, the cost may be as high as \$8 million. The anticipated economic cost for the gasoline terminals to comply with the new requirements as proposed is a one time capital cost for a vacuum assisted vapor recovery system (\$100,000-\$200,000). Fugitive monitoring and recordkeeping would be approximately \$10,000 per year. Any costs continuing beyond 1997 would be operating, maintenance, and recordkeeping requirements. All estimates are stated in 1993 dollars with no adjustments for inflation and assume continuing costs equal to those incurred during 1993-1997.

Mr. Minick also has determined that for each year of the first five-year period the proposed sections are in effect, the public benefit anticipated as a result of implementing the sections will be satisfaction of FCAA Amendments and EPA requirements, VOC emission reductions in ozone nonattainment areas which are necessary for the timely attainment of the ozone standard, and reduced public exposure to benzene and other air toxics.

Public hearings on this proposal are scheduled for the following times and places: January 24, 1994, 7:00 p.m., City of Houston, Pollution Control Building Auditorium, 7411 Park Place Boulevard, Houston, Texas; January 26, 1994, 6:00 p.m., City of El Paso, Council Chambers, Second Floor, 2 Civic Center Plaza, El Paso, Texas; and January 27, 1994, 7:00 p.m., Irving Central Library, 801 West Irving Boulevard, Irving, Texas.

Staff members will be available to discuss the proposal 30 minutes prior to each hearing. Public comments, both oral and written, on the proposed changes are invited at the hearings. Interrogation or cross-examination is not permitted.

Written comments not presented at the hearings must be submitted to the TNRCC, Office of Air Quality, Regulation Development Section, P.O. Box 13087, Austin, Texas 78711-3087, no later than February 11, 1994. Material received by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposed revisions. Copies of the proposed revisions are available at the Regulation Development Section of the TNRCC Air Quality Planning Annex located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, Texas 78753, and at all TNRCC Air Program regional offices. For further information, contact Eddie Mack at (512) 239-1488.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 475-2245. Requests should be made as far in advance as possible.

The amendments are proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§115.211. Emission Specifications

(a) For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas as defined in §115.10 of this title (relating to Definitions), the following emission specifications shall apply.

(1) Emission limitations for gasoline terminals, as defined in §115.10 of this title, are as follows.

[(A) Until January 31, 1994 in Brazoria, El Paso, Galveston, Jefferson, and Orange counties, volatile organic compound (VOC) emissions from gasoline terminals shall be reduced to a level not to exceed 0.67 pound of VOC from the vapor recovery system vent per 1,000 gallons (80 mg/liter) of gasoline transferred.]

(A)[(B)] In Dallas, Harris, and Tarrant counties, and after January 31, 1994, in ozone nonattainment counties other than Dallas, Harris, and Tarrant,] volatile

organic compounds emissions from gasoline terminals shall be reduced to a level not to exceed 0.33 pound of VOC from the vapor recovery system vent per 1,000 gallons (40 mg/liter) of gasoline transferred.

(B)[(C)] After November 15, 1996, VOC emissions from gasoline terminals shall be reduced to a level not to exceed 0.09 pound of VOC from the vapor recovery system vent per 1,000 gallons (10.8 mg/liter) of gasoline transferred.

(2) [In Harris County, and after January 31, 1994 in ozone nonattainment counties other than Harris, the] The maximum loss of VOC due to product transfer at a gasoline bulk plant, as defined in §115.10 of this title, is 1.2 pounds per 1,000 gallons (140 mg/liter) of gasoline transferred.

(3) After November 15, 1996, in the Beaumont/Port Arthur and Houston/Galveston areas, VOC vapors from marine terminals, as defined in §115.10 of this title, shall be reduced to a level not to exceed 0.09 pound of VOC from the vapor recovery system vent per 1,000 gallons (10 mg/liter) of product loaded into the marine vessel or maintain a overall process control efficiency of at least 95%.

(b) (No change.)

§115.212. Control Requirements.

(a) For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following control requirements shall apply.

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

(5) All land-based loading and unloading of VOC shall be conducted such that.

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

(6)-(7) (No change.)

(8) [In Dallas, El Paso, Harris, and Tarrant counties, and after January 31, 1994 in ozone nonattainment counties other than Dallas, El Paso, Harris and Tarrant, no] No person shall permit the transfer of gasoline from a transport vessel into a gasoline bulk plant storage tank, unless the following requirements are met:

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

(9) [In Dallas, El Paso, Harris, and Tarrant counties, and after January 31, 1994 in ozone nonattainment counties other than Dallas, El Paso, Harris, and Tarrant, no] No person shall permit the transfer of gasoline from a gasoline bulk plant into a transport vessel, unless the following requirements are met:

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

(10) For marine terminals in the Houston/Galveston area.

(A) Control device(s) shall reduce VOC emissions by at least 95% by weight from uncontrolled conditions or to 10 mg/liter of product loaded.

(B) Only certified leak-free marine vessels shall be used for loading operations.

(C) All gauging and sampling devices shall be vapor-tight except for necessary gauging and sampling.

(11) For gasoline terminals in the Dallas/Fort Worth, El Paso, and Houston/Galveston Areas.

(A) Each vapor recovery device serving a loading rack shall be upgraded to include a vacuum-assisted vapor collection system followed by a vapor combustion system, a regenerative carbon adsorption system, a pressure swing adsorption system, or a refrigeration system. For the purposes of this paragraph, a vacuum-assisted vapor collection system is defined as a blower system which produces a vacuum at the transport vessel to prevent fugitive emissions during loading operations.

(B) Each vapor control device shall be instrumented in such a way that the pump(s) transferring fuel to the transport vessels will not operate unless the vapor control device is properly connected and properly operating. No transport vessel loading shall take place at a loading rack when the vapor control device serving that loading rack is out of service or is not operating in accordance with the manufacturer's parameters.

(12)[(10)] Any loading or unloading operation that becomes subject to the provisions of this subsection by exceeding provisions of §115.217(a) of this title (relating to Exemptions) will remain subject to the provision of this subsection, even if throughput or emissions later fall below exemption limits unless and until emissions are reduced to at or below the controlled emissions level existing prior to implementation of the project by which throughput or emission rate was reduced; [the modification] and

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

(b) (No change.)

(c) For all persons in Aransas, Bexar, Calhoun, [Hardin,] Matagorda,

[Montgomery,] San Patricio, and Travis counties, the following requirements shall apply.

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

§115.213. Alternate Control Requirements.

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

(c) For all persons in Aransas, Bexar, Calhoun, [Hardin,] Matagorda, [Montgomery,] San Patricio, and Travis counties, alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this section may be approved by the Executive Director in accordance with §115.910 of this title (relating to Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

§115.214. Inspection Requirements.

(a) For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following inspection requirements shall apply.

(1) Inspection for visible liquid leaks, visible fumes, or significant odors resulting from land-based volatile organic compounds (VOCs) transfer operations shall be conducted during each transfer by the owner or operator of the VOC loading and unloading operation or the owner or operator of the transport vessel.

(2) Land-based VOC loading or unloading through the affected transfer lines shall be discontinued immediately when a leak is observed and shall not be resumed until the observed leak is repaired.

(3) In Dallas, El Paso, Harris, and Tarrant counties, gasoline tank-truck tanks being loaded must have been leak tested within one year, in accordance with the requirements of §§115.234-115.237 and 115.239 of this title (relating to Control of Volatile Organic Compound Leaks From Transport Vessels, as evidenced by prominently displayed certification, affixed near the Department of Transportation certification plate.)

(3)[(4)] After January 31, 1994, in ozone nonattainment counties other than Dallas, El Paso, Harris, and Tarrant, gasoline tank-truck tanks being loaded shall [must] have been leak tested within one year, in accordance with the requirements of §§115.234-115.237, and 115.239 of this title (relating to Control of Volatile Organic Compound Leaks From Transport Vessels, as evidenced by prominently displayed certification, affixed near the Texas Department of Transportation certification plate.

(4)[(5)] After November 15,

1996, all tank-truck tanks loading or unloading VOC having a true vapor pressure greater than or equal to 0.5 pounds per square inch absolute under actual storage conditions shall [must] have been leak tested within one year in accordance with the requirements of §§115.234-115.237 and 115.239 of this title (relating to Control of Volatile Organic Compound Leaks From Transport Vessels) as evidenced by prominently displayed certification affixed near the Texas Department of Transportation certification plate.

(5) For marine terminals in the Houston/Galveston area.

(A) Inspection for visible liquid leaks, visible fumes, or significant odors resulting from VOC transfer operations shall be conducted during each transfer by the owner or operator of the VOC loading and unloading operation or the owner or operator of the marine vessel.

(B) If a liquid leak is detected during the loading operations and can not be repaired immediately (for example, by tightening a bolt or packing gland), then the transfer operation shall cease until the leak is repaired.

(C) If a vapor leak is detected by sight, sound or smell, then a "first attempt" shall be made to repair the leak. Cargo loading operations need not be ceased if the first attempt to repair the leak, as defined by §115.10 of this title (relating to Definitions), to less than 10,000 parts per million by volume (ppmv) or 20% of the lower explosive limit (LEL) is not successful provided that the first attempt effort is documented by the owner or operator of the marine vessel and a copy of the repair log made available to a representative of the marine loading facility. No additional loadings shall be made into the cargo tank until a successful repair has been completed and certified by a 40 Code of Federal Regulations (CFR), §61.304(f) or equivalent inspection.

(D) The intentional bypassing of a vapor control device during marine loading operations is prohibited.

(E) All shore-based equipment is subject to the fugitive emissions monitoring requirements of §§115.352-115.359 of this title (relating to Fugitive Emission Control in Petroleum Refining and Petrochemical Processes).

(6) Each gasoline terminal, as defined in §115.10 of this title, in the Dallas/Fort Worth, El Paso, and Houston/Galveston Areas is subject to the fugitive emissions monitoring requirements of §§115.352-115.359 of this title.

(b) (No change.)

§115.215. *Approved Test Methods.*

(a) For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, compliance with §115.211(a) of this title (relating to Emission Specifications) and §115.212(a) of this title (relating to Control Requirements) shall be determined by applying the following test methods, as appropriate:

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

(7) determination of true vapor pressure using American Society for Testing and Materials (ASTM) Test Methods D32389, D2879, D4953, D5190, or D5191 for the measurement of Reid vapor pressure, adjusted for actual storage temperature in accordance with the American Petroleum Institute (API) Publication 2517, Third Edition, 1989; [or]

(8) 40 CFR, §61.304(f) for determination of cargo tank pressurization; or

(9)[(8)] minor modifications to these test methods approved by the Executive Director.

(b) (No change.)

§115.216. *Monitoring and Recordkeeping Requirements.*

(a) For volatile organic compound (VOC) loading or unloading operations in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas affected by §115.211(a) and §115.212(a) of this title (relating to Emission Specifications and Control Requirements), the owner or operator shall maintain the following information at the plant as defined by its Texas Natural Resource Conservation Commission (TNRCC) air quality account number for at least two years, and shall make such information available upon request to representatives of the TNRCC, U.S. Environmental Protection Agency (EPA), or any local air pollution control agency having jurisdiction in the area.

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

(4) For gasoline bulk plants [in Dallas, El Paso, Harris, and Tarrant counties, and after January 31, 1994, in ozone nonattainment counties other than Dallas, El Paso, Harris, and Tarrant]:

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

(5) For VOC loading or unloading operations other than gasoline terminals, gasoline bulk plants, and marine terminals, a daily record of each transport vessel loaded or unloaded, including:

(A) the certification number of each tank-truck loaded or unloaded and the date of the last leak testing required by §115.214(a) (4) [§115.214(a)(5)] of this title;

(B)-(C) (No change.)

(6) For marine terminals in the Houston/Galveston area:

(A) a daily record of all marine vessels loaded at the affected terminal, including:

(i) the name, registry of the marine vessel, and the legal owner or operator of the marine vessel;

(ii) the chemical name and amount of VOC cargo loaded; and

(iii) the conditions of the tanks prior to being loaded (i. e., cleaned, crude oil washed, gas freed, etc.) and the prior cargo carried by the marine vessel.

(B) all marine vessel loading operations conducted with a VOC which has a vapor pressure equal to or greater than 0.5 psia under actual storage conditions must certify on an annual basis that the marine vessel has passed a vapor tightness test as required by §115.215(a)(8) of this title (relating to Approved Test Methods). A copy of each marine vessel's certification shall be kept on file by the marine terminal for a minimum of two years.

(C) a copy of a marine vessel's first attempt repair log shall be maintained on file by the marine terminal for a minimum of two years.

(7) For gasoline terminals in the Dallas/Fort Worth, El Paso, and Houston/Galveston Areas.

(A) Records of the results of the required fugitive monitoring and maintenance program shall include appropriate dates, test methods, instrument readings, repair results, and corrective action taken. Records of flange inspections are not required unless a leak is detected.

(B) A monthly emissions record shall be maintained which describes calculated emissions of VOC from all storage tanks and loading operations.

The record shall include tank or loading point identification number, control method used, tank or vessel capacity in gallons, name of material stored or loaded, VOC molecular weight, VOC monthly average temperature in degrees Fahrenheit, VOC vapor pressure at the monthly average material temperature in psia, VOC throughput for the previous month and year-to-date in gallons, and total tons of emissions including all emission sources including control devices for the previous month and year-to-date.

(C) Records of transport vessel loadings, vapor control system performance testing, and tank truck leak testing shall be maintained on-site. The records shall include the date of tank truck loading, time of transport vessel loading, the cumulative gallons of gasoline loaded to date, dates of vapor control unit testing with test results, and dates of tank truck leak-tight testing with test results.

(D) All records shall be maintained at the plant site for at least two years and shall be made available upon request to representatives of the TNRCC, EPA, or any local air pollution control agency having jurisdiction.

(8) [(6)] Affected persons shall maintain the results of any testing conducted in accordance with the provisions specified in §115.215(a) of this title.

(b) (No change.)

§115.217. *Exemptions.*

(a) For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following exemptions apply.

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

(3) Until November 15, 1996, any plant, as defined by its Texas Natural Resource Conservation Commission (TNRCC) air quality account number, excluding gasoline bulk plants, having less than 20,000 gallons (75,708 liters) [throughput] of VOC loaded per day (averaged over any consecutive 30-day period) with a true vapor pressure greater than or equal to 1.5 psia under actual storage conditions is exempt from the requirements of §115.212(a) of this title. The owner or operator of any VOC loading operation for which the VOC loading operation was previously exempt under §115.217(a)(2) of this title (as in effect October 16, 1992) from the control requirements of this undesignated head, and which does not otherwise qualify for exemption under this paragraph, shall:

(A) (No change.)

(B) qualify for the exemption under paragraph (8)[(10)] of this section; or

(C) apply for the exemption under paragraph (9)[(11)] of this section no later than September 15, 1994.

(4) After November 15, 1996, any plant, as defined by its TNRCC air quality account number, excluding gasoline bulk plants, having less than 20,000 gallons (75.708 liters) [throughput] of VOC loaded per day (averaged over any consecutive 30-day period) with a true vapor pressure greater than or equal to 0.5 psia under actual storage conditions is exempt from the requirements of §115.212(a) of this title.

(5) Until January 31, 1994, gasoline terminals located in Harris County and having less than 500,000 gallons (1,892,706 liters) throughput per day (averaged over any consecutive 30-day period) are exempt from the requirements of §115.211(a)(1)(B) of this title (relating to Emission Specifications.)

(6) Until January 31, 1994, gasoline terminals located in Dallas and Tarrant counties and having less than 100,000 gallons (378,541 liters) throughput per day (averaged over any consecutive 30-day period) are exempt from the requirements of §115.211(a)(1)(B) of this title.]

(5)[(7)] All loading and unloading of [marine vessels and all loading and unloading of] liquefied petroleum gas only (regulated by the Safety Rules of the Liquefied Petroleum Gas Division of the Texas Railroad Commission) is exempt from the requirements of §115.212(a) of this title.

(6)[(8)] The following are exempt from the requirements of §115.212(a) of this title:

(A) All unloading of marine vessels; and

(B) Until November 15, 1996, all loading of marine vessels and all loading and unloading of crude oil and condensate [is exempt from the requirements of §115.212(a) of this title].

(7)[(9)] Gasoline bulk plants which have a gasoline throughput less than 4,000 gallons (15,142 liters) per day averaged over any consecutive 30-day period are exempt from the provisions of §§115.211(a)(2), 115.212(a)(9), and 115.216(a)(4) of this title (relating to Emission Specifications, Control Requirements, and Monitoring and Recordkeeping Requirements).

(8)[(10)] VOC loading operations other than gasoline terminals, gasoline bulk plants, and marine terminals are exempt from the control requirements of §115.212(a)(1) and (2) of this title if the overall control of emissions at the account from the loading of VOC (excluding VOC loading into marine vessels and VOC loading at gasoline terminals and gasoline bulk plants) with a true vapor pressure between 0.5 and 11 psia under actual storage conditions is at least 90%, and the following requirements are met.

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

(9)[(11)] The owner or operator of a VOC loading operation subject to the control requirements of §115.212(a)(1) or (2) of this title may request an exemption determination from the Executive Director if the overall control of emissions at the account from the loading of VOC (excluding VOC loading into marine vessels and VOC loading at gasoline terminals and gasoline bulk plants) with a true vapor pressure between 0.5 and 11 psia under actual storage conditions is at least 80%, and the following requirements are met.

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

(10) The following are exempt from the requirements of §115.211(a) and §115.212(a) of this title:

(A) marine terminals with uncontrolled VOC emissions less than 100 tons per year. Compliance with the exemption shall be demonstrated through the recordkeeping and reporting requirements of the annual emissions inventory submitted by the owner or operator of the marine terminal;

(B) all throughput of VOC with vapor pressure less than 0.5 psia loaded into marine vessels;

(C) marine loading operations which use a vapor balance system to control emissions from the marine vessel to fixed roof storage tank(s). For the purpose of this paragraph, vapor balance system is defined as a closed system that transfers vapor displaced by incoming cargo from the tank of a vessel receiving cargo into a tank of the vessel or facility delivering cargo via an arrangement of piping and hoses used to collect vapor emitted from a vessel's cargo tanks and transport the vapor to a vapor processing unit; and

(D) non-dedicated loading lines when commodities with a true vapor pressure less than 0.5 psia are trans-

ferred, provided that after transfer of VOC with a true vapor pressure greater than or equal to 0.5 psia these non-dedicated loading lines are cleaned, purged, and the residual vapors controlled of VOC with a true vapor pressure greater than or equal to 0.5 psia.

(11) Marine terminals are exempt from the control requirements of §115.211(a)(3) and §115.212(a)(A) of this title if the overall control of emissions at the marine terminal from the loading of VOC with a true vapor pressure between 0.5 and 11 psia under actual storage conditions into marine vessels is at least 90%, and the following requirements are met.

(A) The owner or operator of the marine terminal shall submit a control plan no later than March 31, 1995, to the TNRCC Austin Office (Office of Air Quality), the appropriate TNRCC Regional Office, and any local air pollution control program with jurisdiction which demonstrates that the overall control of emissions at the marine terminal from the loading of VOC with a true vapor pressure between 0.5 and 11 psia under actual storage conditions into marine vessels will be at least 90% by November 15, 1996. For each marine loading facility and any associated control device at the marine terminal, the control plan shall include the emission point number (EPN), the facility identification number (FIN), the calendar year 1994 throughput of VOC with a true vapor pressure between 0.5 and 11 psia under actual storage condition, a plot plan showing the location, EPN, and FIN of each marine loading facility and any associated control device, and the calendar year 1994 controlled and uncontrolled emission rates.

(B) In order to maintain exemption status under this paragraph, the owner or operator of the marine terminal shall submit an annual report no later than March 31 of each year, starting in 1997, to the TNRCC Austin Office (Office of Air Quality), the appropriate TNRCC Regional Office, and any local air pollution control program with jurisdiction which demonstrates that the overall control of emissions at the marine terminal from the loading of VOC with a true vapor pressure between 0.5 and 11 psia under actual storage conditions into marine vessels during the preceding calendar year is at least 90% after November 15, 1996. For each marine loading facility and any associated control device at the account, the report shall include the EPN, the FIN, the throughput of VOC with a true vapor pressure between

0.5 and 11 psia under actual storage conditions for the preceding calendar year, a plot plan showing the location, EPN, and FIN of each marine loading facility and any associated control device, and the controlled and uncontrolled emission rates for the preceding calendar year.

(C) The owner or operator of the marine terminal shall submit an updated report no later than 30 days after the installation of one or more additional marine loading facilities or any change in service of a marine loading facility from loading VOC with a true vapor pressure less than 0.5 psia to loading VOC with a true vapor pressure greater than or equal to 0.5 psia, or vice versa. The report shall be submitted to the TNRCC Austin Office (Office of Air Quality), the appropriate TNRCC Regional Office, and any local air pollution control program with jurisdiction and shall demonstrate that the overall control of emission at the marine terminal from the loading into marine vessels of VOC with a true vapor pressure between 0.5 and 11 psia under actual storage conditions continues to be at least 90%.

(b) For all persons in Gregg, Nueces, and Victoria counties, the following exemptions apply.

(1) (No change.)

(2) Any plant, as defined by its TNRCC air quality account number, having less than 20,000 gallons (75,708 liters) [throughput] of VOC loaded per day (averaged over any consecutive 30-day period) with a true vapor pressure greater than or equal to 1.5 psia under actual storage conditions is exempt from the requirements of §115.212(b) of this title. The owner or operator of any VOC loading operation for which the VOC loading operation was previously exempt under §115.217(b)(2) of this title (as in effect October 16, 1992) from the control requirements of this undesignated head, and which does not otherwise qualify for exemption under the paragraph, shall:

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

(3)-(5) (No change.)

(c) For all persons in Aransas, Bexar, Calhoun, [Hardin,] Matagorda, [Montgomery,] San Patricio, and Travis counties, the following exemptions apply.

(1) (No change.)

(2) Any plant, as defined by its TNRCC air quality account number, having less than 20,000 gallons (75,708 liters) [throughput] of VOC loaded per day (averaged over any consecutive 30-day period) with a true vapor pressure greater than or

equal to 1.5 psia under actual storage conditions is exempt from the requirements of §115.212(c) of this title. The owner or operator of any VOC loading operation for which the VOC loading operation was previously exempt under §115.217(c)(2) of this title (as in effect October 16, 1992) from the control requirement of this undesignated head, and which does not otherwise qualify for exemption under this paragraph, shall:

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

(3)-(5) (No change.)

§115.219. Counties and Compliance Schedules.

(a) All affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas shall be in compliance with this undesignated head (relating to Loading and Unloading of Volatile Organic Compounds) in accordance with the following schedules.

[(1) All affected persons in Chambers, Collin, Denton, Fort Bend, Hardin, Liberty, Montgomery, and Waller counties shall be in compliance with §115.211(a) of this title (relating to Emission Specifications), §115.212(a) of this title (relating to Control Requirements), §115.213(a) of this title (relating to Alternate Control Requirements), §115.214(a) of this title (relating to Inspection Requirements), §115.215(a) of this title (relating to Testing Requirements), §115.216(a) of this title (relating to Monitoring and Recordkeeping Requirements), and §115.217(a) of this title (relating to Exemptions), as soon as practicable, but no later than January 31, 1994. Section 115.212(c) of this title, §115.213(c) of this title, and §115.217(c) of this title shall no longer apply in Hardin and Montgomery counties after January 31, 1994.

[(2) All affected persons in Brazoria, El Paso, Galveston, Jefferson, and Orange counties shall be in compliance with §115.211(a)(1)(B) of this title as soon as practicable, but no later than January 31, 1994

[(3) All affected persons in Brazoria, Dallas, El Paso, Galveston, Jefferson, Orange, and Tarrant counties shall be in compliance with §115.211(a)(2) of this title as soon as practicable, but no later than January 31, 1994.

[(4) All affected persons in Brazoria, Galveston, Jefferson, and Orange counties shall be in compliance with §§115.212(a)(8) and (9), 115.214(a)>(4), and 115.216(a)(4) of this title as soon as practicable, but no later than January 31, 1994.

[(5) All affected persons in Har-

ris County shall be in compliance with §115.217(a)(5) of this title as soon as practicable, but no later than January 31, 1994.

[(6) All affected persons in Dallas and Tarrant counties shall be in compliance with §115.217(a)(6) of this title as soon as practicable, but no later than January 31, 1994.]

(1)[(7)] All affected persons shall be in compliance with §115.211(a)(1)(B) [§115.211(a)(1)(C)], §115.212(a)(2) and (4), §115.214(a)(4) [§115.214(a)(5)], and §115.217(a)(2) and (4) of this title (relating to Emission Specifications, Control Requirements, Inspection Requirements, Approved Test Methods, and Exemptions) as soon as practicable, but no later than November 15, 1996.

(2)[(8)] All loading and unloading of crude oil and condensate shall be in compliance with §§115.211(a), 115.212(a), 115.213(a), 115.214(a), 115.215(a), 115.216(a), and 115.217(a) of this title (relating to Emission Specifications, Control Requirements, Alternate Control Requirements, Inspection Requirements, Monitoring and Recordkeeping Requirements, Approved Test Methods, and Exemptions) as soon as practicable, but no later than November 15, 1996.

(3)[(9)] All persons affected by the deletion of the allowance for nonvapor-tight conditions during sampling and gauging shall be in compliance as soon as practicable, but no later than November 15, 1996

(4)[(10)] All affected persons shall be in compliance with §115.216(a)(5) of this title as soon as practicable, but no later than May 31, 1994.

(5) All affected marine terminals in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties shall be in compliance with §§115.211(a), 115.212(a), 115.213(a), 115.214(a), 115.215(a), 115.216(a), and 115.217(a) of this title as soon as practicable, but no later than November 15, 1996.

(6) All affected gasoline terminals in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Liberty, Montgomery, Tarrant, and Waller counties shall be in compliance with §§115.211(a)(11), 115.214(a) (6), and 115.216(a)(7) of this title as soon as practicable, but no later than November 15, 1996.

(b) (No change.)

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

Issued in Austin, Texas, on December 17, 1993

Proposed date of adoption: May 15, 1994

For further information, please call: (512)
463-8159

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Subchapter D. Petroleum Re- fining and Petrochemical Processes

Fugitive Emission Control in Petroleum Refining and Petrochemical Processes

• 30 TAC §§115.352-115.357, 115.359

The Texas Natural Resource Conservation Commission (TNRCC) proposes amendments to §§115.352-115.357, and 115.359, concerning Fugitive Emission Control in Petroleum Refining and Petrochemical Processes. The proposed amendments have been developed in response to a requirement by the United States Environmental Protection Agency (EPA) and the 1990 Amendments to the Federal Clean Air Act (CAA) for states to develop and adopt the Rate-of-Progress (ROP) State Implementation Plan (SIP).

The ROP SIP is required to achieve and maintain a volatile organic compound (VOC) emissions level that is 15% below the 1990 base-year emissions by 1996 in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas. The affected ozone nonattainment counties are Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller.

The proposed amendments will extend the fugitive control requirements, recently adopted at the November 10, 1993, TNRCC meeting for the Houston/Galveston, Beaumont/Port Arthur, and El Paso ozone nonattainment areas, to the Dallas/Fort Worth area.

The amendments also revise the recently adopted exemptions concerning leakless valves. The current rule potentially exempts leakless valves from all control requirements because there is no approved method for establishing what is leakless. This was clearly not the intent of the staff. However, there are situations when valves which are rated much higher than normal operating pressures are used at the end of a pipe or line and affected sources would be required to add a second valve, blind flange, or a plug. In these circumstances, this additional control would be extremely costly while achieving virtually no benefit. To address this situation, an exemption has been added for valves which are rated at greater than 10,000 pounds per square inch gauge (psig).

The proposed §115.352, concerning Control Requirements, §115.353, concerning Alter-

nate Control Requirements, §115.354, concerning Inspection Requirements, §115.355, concerning Testing Requirements, §115.356, concerning Recordkeeping Requirements, §115.357, concerning Exemptions, and §115.359, concerning Counties and Compliance Schedules, standardize the requirements for fugitive monitoring programs for petroleum refineries; synthetic organic chemical, polymer, resin, and methyl tert-butyl ether (MTBE) manufacturing processes; and natural gas/gasoline processing operations and apply a more stringent level of control to all of these industries.

The existing sections regarding fugitive emission controls will be repealed in the four nonattainment areas after the compliance date of these proposed sections. This will not affect the existing sections in Gregg, Nueces, or Victoria Counties. The existing sections scheduled for future repeal include §§115.322(a), 115.323(a), 115.324(a), 115.325(a), 115.326(a), and 115.327(a) concerning Fugitive Emissions Control in Petroleum Refineries, §§115.332-115.339, concerning Fugitive Emission Control in Synthetic Organic Chemical, Polymer, Resin, and Methyl Tert-Butyl Ether Manufacturing Processes, and §§115.342-115.349, concerning Fugitive Emission Control in Natural Gas/Gasoline Processing Operations.

The proposed amendments are part of a series of proposed revisions to Chapter 115 (concerning Control of Air Pollution From Volatile Organic Compounds) and the SIP to provide the required ROP reductions in the ozone nonattainment areas as mandated by the 1990 CAA Amendments. Since this is an interim step in attaining the ozone standard, only those controls needed to satisfy the requirement will be adopted. Additional controls are anticipated to be adopted by November 15, 1994, in conjunction with an attainment demonstration requirement in each ozone nonattainment area. By this time, Urban Airshed Modeling (UAM) will be available to facilitate more scientific decision-making regarding the effect of control measure scenarios on ozone levels. The UAM is a quantitative state-of-the-art computer model that will enable the staff to evaluate the effects of various combinations of control measures on ozone.

Texas is submitting rules to meet the ROP reduction in two phases. Phase I rules comprised a significant portion of the required reductions and were submitted by the original deadline of November 15, 1993. Phase II consists of any remaining percentage toward the 15% net of growth reductions, as well as additional contingency measures to obtain an additional 3.0% of reductions. Phase II will be submitted by November 15, 1994.

Steve Minick, budget and planning division, has determined that for each year of the first five-year period the proposed sections are in effect, there will be no fiscal implications for state and local governments. Economic costs to small businesses, individuals, and businesses required to implement the proposed measures are associated with the expanded monitoring, and recordkeeping requirements: Cost Per Affected Component for each Required Monitoring Action in 1994

will be -0- and \$1.00 for fiscal years 1995-1998.

Any costs continuing beyond 1998 would be operating, maintenance, and recordkeeping requirements. All estimates are stated in 1994 dollars with no adjustments for inflation and assume continuing costs equal to those incurred during 1994-1998.

Mr. Minick also has determined that for the first five-year period the proposed sections are in effect, the public benefit anticipated as a result of implementing the sections will be satisfaction of CAA Amendments and EPA requirements, and VOC emission reductions in ozone nonattainment areas which are necessary for the timely attainment of the ozone standard.

A public hearing on this proposal is scheduled for: January 27, 1994 at 7:00 p.m. at the Irving Central Library, 801 West Irving Boulevard, Irving, Texas.

Staff members will be available to discuss the proposal 30 minutes prior to each hearing. Public comments, both oral and written, on the proposed changes are invited at the hearing. Interrogation or cross-examination is not permitted.

Written comments not presented at the hearing must be submitted to the TNRCC, Office of Air Quality, Regulation Development Section, P.O. Box 13087, Austin, Texas 78711-3087, no later than February 11, 1994. Material received by the Regulation Development Section by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposed revisions. Copies of the proposed revisions are available at the Regulation Development Section of the TNRCC Air Quality Planning Division located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, Texas 78753, and at all TNRCC regional offices. For further information, contact Chuck Mueller at (512) 239-1916.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 475-2245. Requests should be made as far in advance as possible.

The amendments are proposed under the Texas Clean Air Act (TCAA), §382.017, Texas Health and Safety Code (Vernon 1990), which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§115.352. Control Requirements. For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas as defined in §115.10 of this title (relating to Definitions), no person shall operate a petroleum refinery; a synthetic organic chemical, polymer, resin, or methyl tert-butyl ether manufacturing process; or a natural gas/gasoline processing operation as defined in §115.10 of this title, without complying with the following requirements.

(1)-(9) (No change.)

§115.353. Alternate Control Requirements. For all affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, any alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this section, may be approved by the Executive Director in accordance with §115.910 of this title (relating to Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

§115.354. Inspection Requirements. All affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas shall conduct a monitoring program consistent with the following provisions.

(1)-(9) (No change.)

§115.355. Approved Test Methods. For all affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, compliance with this undesignated head (relating to Fugitive Emission Control in Petroleum Refining and Petrochemical Processes) shall be determined by applying the following test methods, as appropriate:

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

§115.356. Monitoring and Recordkeeping Requirements. All affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, shall have the following recordkeeping requirements:

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

§115.357. Exemptions. For all affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following exemptions shall apply.

(1) (No change.)

(2) [Sealless/leakless valves (including, but not limited to, bellows and diaphragm valves), storage] Storage tank valves, pressure relief valves equipped with a rupture disc or venting to a control device, components in continuous vacuum service, and valves that are not externally regulated (such as in-line check valves) are exempt from the requirements of this undesignated head.

(3)-(8) (No change.)

(9) Valves rated greater than 10,000 pounds per square inch gauge (psig) are exempt from the requirements of §115.352(a)(4) of this title (relating to

Control Requirements).

§115.359. Counties and Compliance Schedules. All affected persons in Brazoria, Chambers, Collin, El Paso, Dallas, Denton, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties shall be in compliance with §115.352 of this title (relating to Control Requirements), §115.353 of this title (relating to Alternate Control Requirements), §115.354 of this title (relating to Inspection Requirements), §115.355 of this title (relating to Testing Requirements), §115.356 of this title (relating to Monitoring and Recordkeeping Requirements), and §115.357 of this title (relating to Exemptions) as soon as practicable, but no later than November 15, 1996.

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 December 17, 1993.

TRD-9333821

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

Proposed date of adoption: May 15, 1994

For further information, please call: (512) 463-8159

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Subchapter E. Solvent-Using Processes
Degreasing and Clean-up Using Processes

• **30 TAC §§115.412, 115.415-115.417, 115.419**

The Texas Natural Resource Conservation Commission (TNRCC) proposes amendments to §§115.412, 115.415-115.417, and 115.419, concerning Degreasing Processes. The proposed changes have been developed in response to a requirement by the United States Environmental Protection Agency (EPA) and the 1990 Amendments to the Federal Clean Air Act (FCAA) for states to develop and adopt the Rate-of-Progress (ROP) State Implementation Plan (SIP). The ROP SIP is required to achieve and maintain a volatile organic compound (VOC) emissions level that is 15% below the 1990 base-year emissions by 1996 in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas. The ozone nonattainment counties affected by this proposal are Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Liberty, Montgomery, Tarrant, and Waller.

The proposed changes to §115.412, concerning Control Requirements, add a limitation on acetone usage at cultured (synthetic) marble and fiber reinforced plastic (FRP) operations

and specify acceptable acetone substitutes. The proposed changes to §115.415, concerning Testing Requirements, update the test methods for determining true vapor pressure. The proposed changes to §115.416, concerning Recordkeeping Requirements, add recordkeeping requirements for cultured marble and FRP facilities affected by §115.412(a)(4) and §115.417(a)(3). The proposed changes to §115.417, concerning Exemptions, specify an exemption for small users of polyester resin and delete an obsolete paragraph. The proposed changes to §115.419, concerning Counties and Compliance Schedules, specify the applicable counties and the compliance date for the new requirements, and remove obsolete paragraphs. The TNRCC also proposes to change the title of the undesignated head from Degreasing Processes to Degreasing and Clean-up Processes to reflect the content of the proposed amendments.

The proposed amendments are part of the Phase II rules in a series of proposed revisions to Chapter 115 (concerning Control of Air Pollution From VOC) and the SIP to provide the required reductions in the ozone nonattainment areas as mandated by the 1990 FCAA Amendments. Since this is an interim step in attaining the ozone standard, only those controls needed to satisfy the requirement will be adopted. Additional controls are anticipated to be adopted by November 15, 1994, in conjunction with an attainment demonstration requirement in each ozone nonattainment area. By this time, Urban Airshed Modeling (UAM) will be available to facilitate more scientific decision-making regarding the effect of control measure scenarios on ozone levels. The UAM is a quantitative state-of-the-art computer model that will enable the staff to evaluate the effects of various combinations of control measures on ozone.

Texas is submitting rules to meet the ROP reduction in two phases. Phase I rules comprised a significant portion of the required reductions and were submitted by the original deadline of November 15, 1993. Phase II consists of any remaining percentage toward the 15% net of growth reductions, as well as additional contingency measures to obtain an additional 3.0% of reductions. Phase II will be submitted by November 15, 1994.

Stephen Minick, budget and planning division, has determined that for each year of the first five-year period the proposed sections are in effect, there would be no fiscal implications for state and local governments. There are also no fiscal implications for small businesses, individuals, and businesses required to implement the proposed measures.

Mr. Minick also has determined that for the first five-year period the proposed sections are in effect, the public benefit anticipated as a result of implementing the sections will be satisfaction of FCAA Amendments and EPA requirements, and VOC emission reductions in ozone nonattainment areas which are necessary for the timely attainment of the ozone standard.

Public hearings on this proposal will be held at the following times and places: January 24, 1994, 7:00 p.m., City of Houston, Pollution

Control Building Auditorium, 7411 Park Place Boulevard, Houston, Texas; January 26, 1994, 6:00 p.m., City of El Paso, Council Chambers, Second Floor, 2 Civic Center Plaza, El Paso, Texas; and January 27, 1994, 7:00 p.m., Irving Central Library, 801 West Irving Boulevard, Irving, Texas.

Staff members will be available to discuss the proposal 30 minutes prior to each hearing. Public comments, both oral and written, on the proposed changes are invited at the hearings. Interrogation or cross-examination is not permitted.

Written comments not presented at the hearings must be submitted to the TNRCC, Office of Air Quality, Regulation Development Section, P.O. Box 13087, Austin, Texas 78711-3087, no later than February 11, 1994. Material received by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposed revisions. Copies of the proposed revisions are available at the Regulation Development Section of the TNRCC Air Quality Planning Annex located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, Texas 78753, and at all TNRCC Air Program regional offices. For further information, contact Eddie Mack at (512) 239-1488

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 475-2245. Requests should be made as far in advance as possible.

The amendments are proposed under the Texas Health and Safety Code (Vernon 1990), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§115.412. Control Requirements.

(a) For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas as defined in §115.10 of this title (relating to Definitions), the following control requirements shall apply.

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

(4) In the Dallas/Fort Worth, El Paso, and Houston/Galveston areas acetone usage at polyester resin operations, as defined in §115.10 of this title (relating to Definitions), is limited as follows (with usage defined as gross purchased minus inventory minus waste disposed).

(A) Monthly acetone usage at cultured (synthetic) marble operations is limited to no more than 2.0% by weight of the total monthly polyester resin usage, including gelcoat.

(B) Monthly acetone usage at fiber reinforced plastic manufacturing operations is limited to no more than 1.0% by weight of the total monthly polyester resin usage, including gelcoat.

(C) Any cleanup solvent used as a replacement for acetone must have a true vapor pressure not greater than two millimeters of Mercury at 68 degrees Fahrenheit, or must contain no more than 5.0% by weight volatile organic compounds.

(b) (No change.)

§115.415. Testing Requirements.

(a) For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following testing requirements shall apply.

(1) Compliance with §115.412(a)(1) of this title (relating to Control Requirements) shall be determined by applying the following test methods, as applicable:

(A) determination of true vapor pressure using American Society for Testing Materials (ASTM) Test Method [D323-82] D323-89, ASTM Test Method D2879, ASTM Test Method D4953, ASTM Test Method D5190, or ASTM Test Method D5191 for the measurement of Reid vapor pressure (RVP), adjusted for actual storage temperature in accordance with American Petroleum Institute (API) Publication 2517, Third Edition, 1989; or

(B) (No change.)

(2) (No change.)

(b) For Gregg, Nueces, and Victoria Counties, the following testing requirements shall apply.

(1) Compliance with §115.412(b)(1) of this title shall be determined by applying the following test methods, as applicable.

(A) determination of true vapor pressure using ASTM Test Method D323-89, [D323-82] ASTM Test Method D2879, ASTM Test Method D4953, ASTM Test Method D5190, or ASTM Test Method D5191 for the measurement of RVP, adjusted for actual storage temperature in accordance with API Publication 2517, Third Edition, 1989; or

(B) (No change.)

(2) (No change.)

§115.416. Recordkeeping Requirements.

(a) For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the owner or operator of any polyester resin operation, or open

top vapor or conveyORIZED degreasing operation shall maintain the following records at the facility for at least two years and shall make such records available upon request to representatives of the Texas Natural Resource Conservation Commission (TNRCC) [Texas Air Control Board], United States Environmental Protection Agency (EPA), or the local air pollution control agency having jurisdiction in the area:

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

(3) a record of monthly resin and acetone usage sufficient to document compliance with the requirements described in §115.412(a)(4) of this title (relating to Control Requirements);

(4) a record of monthly resin and acetone usage sufficient to document the applicability of the conditions for exemption referenced in §115.417(a)(3) of this title (relating to Exemptions).

(b) (No change.)

§115.417. Exemptions.

(a) For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following exemptions shall apply.

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

(3) A polyester resin operation with a monthly resin usage, including gelcoat, of less than one ton is exempt from §115.412(a)(4) of this title (relating to Control Requirements).

[(3) Until July 31, 1993, degreasing operations located on any property in Brazoria, Galveston, Jefferson, and Orange Counties which can emit, when uncontrolled, a combined weight of VOCs less than 550 pounds (249.5 kg) in any consecutive 24-hour period are exempt from the provisions of §115.412(a) of this title (relating to Control Requirements).]

(4)-(6) (No change.)

(b) (No change.)

§115.419. Counties and Compliance Schedules. All affected polyester resin operations in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Liberty, Montgomery, Tarrant, and Waller Counties shall be in compliance with §§115.412(a)(4), 115.416(a)(3)-(4), and 115.417(a)(3) of this title (relating to Control Requirements, Recordkeeping Requirements, and Exemptions) as soon as practicable, but no later than July 31, 1994.

[(a) All affected persons in Chambers, Collin, Denton, Fort Bend, Hardin, Liberty, Montgomery, and Waller Counties

shall be in compliance with §115.412(a) of this title (relating to Control Requirements); §115.413(a) of this title (relating to Alternate Control Requirements); §115.415(a) of this title (relating to Testing Requirements); §115.416(a) of this title (relating to Recordkeeping Requirements); and §115.417(a) of this title (relating to Exemptions) as soon as practicable, but no later than July 31, 1993.

[(b) All persons in Brazoria, Galveston, Jefferson, and Orange Counties affected by the provisions of §115.417(a)(3) of this title shall be in compliance with this section as soon as practicable, but no later than July 31, 1993.]

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 December 17, 1993.

TRD-9333822

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

Proposed date of adoption: May 15, 1994

For further information, please call: (512) 463-8159

◆ ◆ ◆
Graphic Arts (Printing) by Rotogravure and Flexographic Processes

• 30 TAC §115.432

The Texas Natural Resource Conservation Commission (TNRCC) proposes an amendment to §115.432(a)(2), concerning Control Requirements. The proposed changes have been developed in response to industry's request to apply a recent revision to the federally mandated "once-in, always-in" concept to all applicable rules.

Stephen Minick, budget and planning division, has determined that for each year of the first five-year period the proposed section is in effect, there would be no cost to state and local governments. There are also no fiscal implications for facilities and small businesses affected by the definitions.

Mr. Minick also has determined that for the first five-year period the proposed section is in effect, the public benefit anticipated as a result of implementing the section will be satisfaction of Federal Clean Air Act (FCAA) Amendments and United States Environmental Protection Agency (EPA) requirements, and volatile organic compounds (VOC) emission reductions in ozone nonattainment areas which are necessary for the timely attainment of the ozone standard.

Public hearings on this proposal will be held at the following times and places: January 24, 1994, 7:00 p.m., City of Houston, Pollution Control Building Auditorium, 7411 Park Place Boulevard, Houston, Texas; January 26,

1994, 6:00 p.m., City of El Paso, Council Chambers, Second Floor, 2 Civic Center Plaza, El Paso, Texas; and January 27, 1994, 7:00 p.m., Irving Central Library, 801 West Irving Boulevard, Irving, Texas.

Staff members will be available to discuss the proposal 30 minutes prior to each hearing. Public comments, both oral and written, on the proposed changes are invited at the hearings. Interrogation or cross-examination is not permitted.

Written comments not presented at the hearings must be submitted to the TNRCC, Office of Air Quality, Regulation Development Section, P.O. Box 13087, Austin, Texas 78711-3087, no later than February 11, 1994. Material received by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposed revisions. Copies of the proposed revisions are available at the Regulation Development Section of the TNRCC Air Quality Planning Division located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, Texas 78753, and at all TNRCC Air Program regional offices. For further information, contact Eddie Mack at (512) 239-1488.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 475-2245. Requests should be made as far in advance as possible.

The amendments are proposed under the Texas Health and Safety Code (Vernon 1990), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§115.432. *Control Requirements.*

(a) For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas as defined in §115.10 of this title (relating to Definitions) the following control requirements shall apply.

(1) (No change.)

(2) Any graphic arts facility that becomes subject to the provisions of paragraph (1)(A), (B), or (C) of this subsection by exceeding provisions of §115.437(a) of this title (relating to Exemptions) will remain subject to the provisions of this subsection, even if throughput or emissions later fall below exemption limits unless and until emissions are reduced to at or below the controlled emissions level existing prior to implementation of the project by which throughput or emission rate was reduced and:

(A) the project by which throughput or emission rate was reduced is authorized by any permit or permit amendment or standard permit or standard exemption required by Chapter 116 of this title (relating to Control of Air Pollution). If a standard exemption is

available for the project, compliance with this subsection must be maintained for 30 days after the filing of documentation of compliance with that standard exemption; or

(B) if no permit or standard exemption is required for the project, the owner/operator has given the Texas Natural Resource Conservation Commission 30 days' notice of the project in writing.

(3) (No change.)

(b) (No change.)

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

Issued in Austin, Texas, on December 17, 1993.

TRD-9333823

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

Proposed date of adoption: May 15, 1994

For further information, please call: (512) 463-8159

◆ ◆ ◆
**Subchapter F. Miscellaneous Industrial Sources
Pharmaceutical Manufacturing Facilities**

• 30 TAC §115.532

The Texas Natural Resource Conservation Commission (TNRCC) proposes an amendment to §115.532(a)(5), concerning Control Requirements. The proposed changes have been developed in response to industry's request to apply a recent revision to the federally mandated "once-in, always-in" concept to all applicable rules.

Stephen Minick, budget and planning division, has determined that for each year of the first five-year period the proposed section is in effect, there would be no cost to state and local governments. There are also no fiscal implications for facilities and small businesses affected by the definitions.

Mr. Minick also has determined that for the first five-year period the proposed section is in effect, the public benefit anticipated as a result of implementing the section will be satisfaction of Federal Clean Air Act (FCAA) Amendments and United States Environmental Protection Agency (EPA) requirements, and volatile organic compounds (VOC) emission reductions in ozone nonattainment areas which are necessary for the timely attainment of the ozone standard.

Public hearings on this proposal will be held at the following times and places: January 24, 1994, 7:00 p.m., City of Houston, Pollution Control Building Auditorium, 7411 Park Place

Boulevard, Houston, Texas; January 26, 1994, 6:00 p.m., City of El Paso, Council Chambers, Second Floor, 2 Civic Center Plaza, El Paso, Texas; and January 27, 1994, 7:00 p.m., Irving Central Library, 801 West Irving Boulevard, Irving, Texas.

Staff members will be available to discuss the proposal 30 minutes prior to each hearing. Public comments, both oral and written, on the proposed changes are invited at the hearings. Interrogation or cross-examination is not permitted.

Written comments not presented at the hearings must be submitted to the TNRCC, Office of Air Quality, Regulation Development Section, P.O. Box 13087, Austin, Texas 78711-3087, no later than February 11, 1994. Material received by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposed revisions. Copies of the proposed revisions are available at the Regulation Development Section of the TNRCC Air Quality Planning Division located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, Texas 78753, and at all TNRCC Air Program regional offices. For further information, contact Eddie Mack at (512) 239-1488.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 475-2245. Requests should be made as far in advance as possible.

The amendment is proposed under the Texas Health and Safety Code (Vernon 1990), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§115.532. Control Requirements.

(a) For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the owner or operator of a synthesized pharmaceutical manufacturing facility shall provide the following specified controls.

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

(5) **Pharmaceutical manufacturing facility.** Any pharmaceutical manufacturing facility that becomes subject to the provisions of paragraphs (1) -(4) of this subsection by exceeding provisions of §115.537(a) of this title (relating to Exemptions) will remain subject to the provisions of this subsection, even if throughput or emissions later fall below exemption limits unless and until emissions are reduced to at or below the controlled emissions level existing prior to implementation of the project by which throughput or emission rate was reduced and:

(A) the project by which throughput or emission rate was reduced is authorized by any permit or permit amendment or standard permit or stan-

dard exemption required by Chapter 116 of this title (relating to Control of Air Pollution). If a standard exemption is available for the project, compliance with this subsection must be maintained for 30 days after the filing of documentation of compliance with that standard exemption; or

(B) if no permit or standard exemption is required for the project, the owner/operator has given the Texas Natural Resource Conservation Commission (TNRCC) 30 days' notice of the project in writing.

(b) (No change.)

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

Issued in Austin, Texas, on December 17, 1993

TRD-9333824

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

Proposed date of adoption May 15, 1994

For further information, please call (512) 463-8159

Degassing or Cleaning of Stationary and Transport Vessels

• 30 TAC §§115.541-115.547, 115.549

The Texas Natural Resource Conservation Commission (TNRCC) proposes amendments to §§115.541-115.547 and §115.549, concerning Degassing or Cleaning of Stationary and Transport Vessels to the El Paso and Dallas/Fort Worth ozone nonattainment areas. The proposed changes have been developed in response to a requirement by the United States Environmental Protection Agency (EPA) and the 1990 Amendments to the Federal Clean Air Act (CAA) for states to develop and adopt the Rate-of-Progress (ROP) State Implementation Plan (SIP). The ROP SIP is required to achieve and maintain a volatile organic compound (VOC) emissions level that is 15% below the 1990 base-year emissions by 1996 in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas. These proposed amendments expand coverage of Phase I rules adopted by the TNRCC on November 10, 1993, to the remaining ozone nonattainment areas. The counties affected by these amendments are Collin, Dallas, Denton, El Paso, and Tarrant.

The proposed amendment to §115.541, concerning Emission Specifications, applies the same emission limits proposed for the transfer of VOC, §115.211 of this title (concerning Loading and Unloading of VOC) to degassing

or cleaning of vessels. The proposed amendment to §115.542, concerning Control Requirements, requires vapors from degassing or cleaning of vessels to be controlled through vapor-tight fittings and piping to a vapor recovery system. The proposed amendment to §115.543, concerning Alternate Control Requirements, provides for facilities to apply to the Executive Director for alternate control requirements which are substantially equivalent to those required by §115.542. The proposed amendment to §115.544, concerning Inspection Requirements, requires leak inspections for vapor recovery systems and during degassing or cleaning operations. The proposed amendment to §115.545, concerning Testing Requirements, lists the authorized test methods to be used in determining compliance with §115.541 and §115.542. The proposed amendment to §115.546, concerning Monitoring and Recordkeeping Requirements, details monitoring and recordkeeping requirements which are necessary to verify proper compliance with requirements of this undesignated head. The proposed amendment to §115.547, concerning Exemptions, exempts certain vessels which store or transport low vapor pressure VOC which is below preset volume limits, or short-term maintenance operations conducted on stationary storage tanks. The proposed new §115.549, concerning Counties and Compliance Schedules, specifies the applicable counties and a November 15, 1996, compliance date for the new requirements.

The proposed amendments are part of the Phase II rules in a series of proposed revisions to Chapter 115 (concerning Control of Air Pollution From VOC) and the SIP to provide the required ROP reductions in the ozone nonattainment areas as mandated by the 1990 CAA amendments. Since this is an interim step in attaining the ozone standard, only those controls needed to satisfy the requirement will be adopted. Additional controls are anticipated to be adopted by November 15, 1994, in conjunction with an attainment demonstration requirement in each ozone nonattainment area. By this time, Urban Airshed Modeling (UAM) will be available to facilitate more scientific decision-making regarding the effect of control measure scenarios on ozone levels. The UAM is a quantitative state-of-the-art computer model that will enable the staff to evaluate the effects of various combinations of control measures on ozone.

Texas is submitting rules to meet the ROP reduction in two phases. Phase I rules comprised a significant portion of the required reductions and were submitted by the original deadline of November 15, 1993. Phase II consists of any remaining percentage toward the 15% net of growth reductions, as well as contingency measures to obtain an additional 3.0% of reductions. Phase II will be submitted by November 15, 1994.

Stephen Minick, budget and planning division, has determined that for the first five-year period the proposed changes are in effect, the annual cost to state and local governments are estimated at \$30,000, which would primarily be the result of hiring additional personnel to inspect and monitor these

new requirements. Economic costs to small businesses, persons, and businesses required to implement the proposed control measures may vary from no cost if the facility already has add-on control equipment, to about \$890,000 plus the cost of fuel for a combustion device or \$1,435,000 minus product recovered for a carbon regeneration system. These costs estimates include monitoring equipment. Costs associated with vessel degassing and/or cleaning vary greatly with the maximum cost associated with large stationary storage tanks, being between \$10,000 to \$20,000. Many facilities will be required to install add-on equipment for proposed rules for loading and unloading of VOCs so that these costs would be shared by the facility for compliance with several proposed rules.

Any costs continuing beyond 1997 would be operating, maintenance, and recordkeeping requirements. All estimates are stated in 1993 dollars with no adjustments for inflation and assume continuing costs equal to those incurred during 1993-1997.

Mr. Minick also has determined that for the first five-year period the proposed changes are in effect, the public benefit anticipated as a result of enforcing the proposed changes will be satisfaction of the FCAA Amendments and the EPA requirements, VOC emission reductions in ozone nonattainment areas which are necessary for the timely attainment of the ozone standard, and reduced public exposure to benzene and other air toxics.

Public hearings on this proposal are scheduled for the following times and places: January 26, 1994, 6:00 p.m., City of El Paso, Second Floor, 2 Civic Center Plaza, El Paso, Texas; and January 27, 1994, 7:00 p.m., Irving Central Library, 801 West Irving Boulevard, Irving, Texas.

Staff members will be available to discuss the proposal 30 minutes prior to each hearing. Public comments, both oral and written, on the proposed changes are invited at the hearings. Interrogation or cross-examination is not permitted.

Written comments not presented at the hearings must be submitted to the TNRCC, Office of Air Quality, Regulation Development Section, P.O. Box 13087, Austin, Texas 78711-3087, no later than February 11, 1994. Material received by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposed revisions. Copies of the proposed revisions are available at the Regulation Development Section of the TNRCC Air Quality Planning Annex located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, Texas 78753, and at all TNRCC Air Program regional offices. For further information, contact Eddie Mack at (512) 239-1488.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 475-2245. Requests should be made as far in advance as possible.

The amendments are proposed under the Texas Health and Safety Code (Vernon

1990), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§115.541. Emission Specifications

(a) For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso and Houston/Galveston areas as defined in §115.10 of this title (relating to Definitions), the following emission specifications shall apply to degassing during or in preparation of cleaning.

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

(b) For all persons in the Beaumont/Port Arthur and Houston/Galveston areas as defined in §115.10 of this title (relating to Definitions), the following emission specifications shall apply to degassing during or in preparation of cleaning for all VOC marine vessels, as defined in §115.10 of this title, with a nominal storage capacity of 10,000 barrels (420,000 gallons) or more.

[(3) For all VOC marine vessels, as defined in §115.10 of this title, with a nominal storage capacity of 10,000 barrels (420,000 gallons) or more.]

(1)[(A)] No person shall permit VOC emissions with a vapor space partial pressure greater than or equal to 0.5 psia (3.4 Kpa) under actual storage conditions unless the vapors are processed by a vapor control system.

(2)[(B)] The vapor control system shall maintain a control efficiency of at least 90%.

(3)[(C)] When conducting degassing or cleaning operations, no avoidable liquid or gaseous leaks, as detected by sight or sound, shall originate from the degassing or cleaning operations.

(4)[(D)] The intentional bypassing of a vapor control device used during degassing or cleaning is prohibited. Any visible VOC leak originating from the vapor control device or other associated product recovery device shall be repaired as soon as practical.

(5)[(E)] All VOC marine vessels, as defined in §115.10 of this title, shall have all cargo tank closures properly secured, or maintain a negative pressure within the tank when a closure is opened, and shall have all pressure/vacuum relief valves operating within certified limits as specified by classification society or flag state until the vapors are discharged to a vapor control system if the vessel is degassed or cleaned.

§115.542. Control Requirements

(a) For all persons in the Beau-

mont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following control requirements shall apply to stationary storage tanks and transport vessels

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

(b) (No change.)

§115.543. Alternate Control Requirements. For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this redesignated head may be approved by the Executive Director in accordance with §115.910 of this title (relating to Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

§115.544. Inspection Requirements. For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following inspection requirements shall apply.

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

§115.545. Approved Test Methods. For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, compliance with §115.541 and §115.542 of this title (relating to Emission Specifications) shall be determined by applying the following test methods, as appropriate.

(1)-(10) (No change.)

§115.546. Monitoring and Recordkeeping Requirements. For facilities in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston Areas affected by §115.541 and §115.542 of this title (relating to Emission Specifications and Control Requirements), the owner or operator of any volatile organic compound (VOC) degassing or cleaning facility shall maintain the following information at the facility for at least two years and shall make such information available upon request to representatives of the Texas Natural Resource Conservation Commission, United States Environmental Protection Agency, or any local air pollution control agency having jurisdiction in the area:

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

§115.547. Exemptions. For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following exemptions apply.

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

§115.549. Counties and Compliance Schedules. All affected persons in the Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties shall be in compliance with this undesignated head, as soon as practicable, but no later than November 15, 1996.

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 December 17, 1993.

TRD-9333825

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

Proposed date of adoption: May 15, 1994

For further information, please call: (512) 463-8159

Petroleum Dry Cleaning Systems

- 30 TAC §§115.552, 115.553, 115.555-115.557, 115.559

The Texas Natural Resource Conservation Commission (TNRCC) proposes new §§115.552, 115.553, 115.555-115.557, and 115.559, concerning Petroleum Dry Cleaning Systems. This new undesignated head will be included in Subchapter F, concerning Miscellaneous Industrial Sources. The proposed changes have been developed in response to a requirement by the United States Environmental Protection Agency (EPA) and the 1990 Amendments to the Federal Clean Air Act (FCAA) for states to develop and adopt the Rate-of-Progress (ROP) State Implementation Plan (SIP). The ROP SIP is required to achieve and maintain a volatile organic compound (VOC) emissions level that is 15% below the 1990 base-year emissions by 1996 in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas. The ozone nonattainment counties affected by this proposal are Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Liberty, Montgomery, Tarrant, and Waller.

The proposed new §115.552, concerning Control Requirements, identifies several control options that a petroleum-based dry cleaning facility may use to reduce VOC emissions. Control requirements are categorized to include replacement of the standard dryer with a recovery dryer or any other control device capable of reducing solvent consumption or emissions by 85% by weight, replacement of the washer filter system with a cartridge filter system or enhanced maintenance and handling of the existing filter, and reducing fugitive emissions by conducting frequent inspection and maintenance of all components of a facility. The proposed new §115.553, concerning Alternate Control Re-

quirements, provide facilities the option of using alternate methods of control if emission reductions are demonstrated to be equivalent as approved by the Executive Director.

The proposed new §115.555, concerning Testing Methods and Procedures, identifies required test methods and procedures needed for demonstrating initial compliance. The proposed new §115.556, concerning Recordkeeping Requirements, requires dry cleaning facilities to record their solvent consumption and results of any performed tests or documentation used for initial demonstration of compliance. The proposed new §115.557, concerning Exemptions, specify an exemption from some of the control requirements for small dry cleaning facilities which consumes less than 2,000 gallons per year of petroleum solvent. The proposed changes to §115.559, concerning Counties and Compliance Schedules, specify the applicable counties and the compliance date.

The proposed amendments are part of the Phase II rules in a series of proposed revisions to Chapter 115 (concerning Control of Air Pollution From Volatile Organic Compounds) and the SIP to provide the required reductions in the ozone nonattainment areas as mandated by the 1990 FCAA Amendments. Since this is an interim step in attaining the ozone standard, only those controls needed to satisfy the requirement will be adopted. Additional controls are anticipated to be adopted by November 15, 1994, in conjunction with an attainment demonstration requirement in each ozone nonattainment area. By this time, Urban Airshed Modeling (UAM) will be available to facilitate more scientific decision-making regarding the effect of control measure scenarios on ozone levels. The UAM is a quantitative state-of-the-art computer model that will enable the staff to evaluate the effects of various combinations of control measures on ozone.

Texas is submitting rules to meet the ROP reduction in two phases. Phase I rules comprised a significant portion of the required reductions and were submitted by the original deadline of November 15, 1993. Phase II consists of any remaining percentage toward the 15% net of growth reductions, as well as additional contingency measures to obtain an additional 3.0% of reductions. Phase II will be submitted by November 15, 1994.

Stephen Minick, budget and planning division, has determined that for each year of the first five-year period the proposed sections are in effect, there would be no fiscal implications for state and local governments. Economic costs to small businesses, persons, and businesses required to implement the proposed control measures are estimated to range between \$25,000 to \$35,000 for the initial installation of control equipment. Significant savings, however, are expected to result from the installation of the control equipment. The operating cost of the facility will be reduced due to the recovery dryer's lower demand for steam and electricity. Cost savings will be gained from the value of the recovered solvent. It is estimated that a small size facility would be able to pay back the capital cost of its control equipment in seven years using the generated savings only. The cost effec-

tiveness is estimated at \$300 saved per ton of VOC reduced. All estimates are stated in 1994 dollars with no adjustments for inflation and assume continuing costs equal to those incurred during 1994-1998.

Mr. Minick also has determined that for the first five-year period the proposed sections are in effect, the public benefit anticipated as a result of implementing the sections will be satisfaction of FCAA Amendments and EPA requirements, and VOC emission reductions in ozone nonattainment areas which are necessary for the timely attainment of the ozone standard.

Public hearings on this proposal will be held at the following times and places: January 24, 1994, City of Houston, Pollution Control Building Auditorium, 7411 Park Place Boulevard, Houston, Texas; January 26, 1994, 6:00 p.m., City of El Paso, Council Chambers, Second Floor, 2 Civic Center Plaza, El Paso, Texas; and January 27, 1994, 7:00 p.m., Irving Central Library, 801 West Irving Boulevard, Irving, Texas.

Staff members will be available to discuss the proposal 30 minutes prior to each hearing. Public comments, both oral and written, on the proposed changes are invited at the hearings. Interrogation or cross-examination is not permitted.

Written comments not presented at the hearings must be submitted to the TNRCC, Office of Air Quality, Regulation Development Section, P.O. Box 13087, Austin, Texas 78711-3087, no later than February 11, 1994. Material received by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposed revisions. Copies of the proposed revisions are available at the Regulation Development Section of the TNRCC Air Quality Planning Annex located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, Texas 78753, and at all TNRCC Air Program regional offices. For further information, contact Gus Eghneim at (512) 239-1965.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-2245. Requests should be made as far in advance as possible.

The amendments are proposed under the Texas Health and Safety Code (Vernon 1990), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§115.552 Control Requirements.

(a) For the Dallas/Fort Worth, El Paso, and Houston/Galveston areas as defined in §115.10 of this title (relating to Definitions), the owner or operator of any dry cleaning facility which uses petroleum-based solvent shall not operate the facility unless the following requirements are satisfied:

(1) Dryers. The owner or operator of a dryer shall either:

(A) install, maintain, and operate a solvent recovery dryer that recovers at least 85% by weight of the used petroleum solvent,

(B) install, maintain, and operate a petroleum dry-to-dry dryer that recovers at least 85% by weight of the used petroleum solvent, or

(C) route the exhaust air stream from the standard dryer to any other properly functioning control device which reduces the total emissions of volatile organic compounds (VOC) to the atmosphere by at least 85% by weight

(2) Filtration Systems The owner or operator of a petroleum solvent filtration system shall either

(A) install, maintain, and operate a cartridge filtration system according to the manufacturer's recommendations. The owner or operator shall drain all filter cartridges in their closed housings for at least eight hours before their removal, or

(B) maintain and operate a regenerative filter or any other filtration medium according to the manufacturers' recommendations. The owner or operator shall drain the filter medium in its closed housing for at least eight hours before its removal. Upon removal, the owner or operator shall directly place the filter medium in disposable vapor tight containers or bags and shall keep these containers or bags vapor tight at all times until they are properly landfilled

(3) Fugitive Emissions The owner or operator shall ensure that

(A) there are no perceptible leaks detected by visual, audible, or olfactory means from any portion of the dry cleaning equipment. Visual inspection of all equipment and system components shall be conducted at least weekly,

(B) all washer and dryer traps, access doors, and other parts of the equipment where solvent may be exposed to the atmosphere are kept closed at all times except when required for proper operation or maintenance,

(C) all solvent-contaminated waste materials are stored in closed containers prior to proper disposal,

(D) repair of any perceptible leak in any portion of the equipment be

completed within three working days from the time the leak is detected. If necessary repair parts are not on hand, the owner or operator shall order the necessary parts within three working days and shall repair the leak no later than three working days after the parts arrive

(b) Any petroleum solvent dry cleaning facility that becomes or is currently subject to the control requirements of §115.552 of this title (relating to Control Requirements) by exceeding the exemption threshold will remain subject to these provisions even if its consumption of petroleum solvent later falls below the exemption level

§115.553 Alternate Control Requirements For all affected persons in the Dallas/Fort Worth, El Paso, and Houston/Galveston areas as defined in §115.10 of this title (relating to Definitions), alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this section may be approved by the Executive Director in accordance with §115.910 of this title (relating to Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent

§115.555 Testing Methods and Procedures.

(a) To demonstrate initial compliance with the provisions of §115.552(a)(1)(A) of this title (relating to Control Requirements), the owner or operator of an affected facility shall perform an initial test to verify that the flow rate of recovered solvent from the recovery dryer is no greater than 1.7 fluid ounces per minute (50 milliliters per minute) at the termination of the recovery cycle. The test shall be conducted for a duration of two weeks during which no less than 50% of the dryer loads shall be monitored for their final recovered solvent flow rate. The location point for measuring the flow rate of recovered solvent shall be the outlet of the solvent-water separator. Near the end of the recovery cycle, the entire flow of recovered solvent should be diverted to a graduated cylinder. As the recovered solvent collects in the graduated cylinder, the elapsed time is monitored and recorded in periods of greater than or equal to one minute. At the same time, the volume of solvent in the graduated cylinder is monitored and recorded to determine the volume of recovered solvent that is collected during each time period. The recovered solvent flow rate is calculated by dividing the volume of solvent collected per period by the length of time elapsed during the period and converting the results with appropriate factors into units of ounces or milliliters per minute. The recovery cycle and the monitoring pro-

cedure should continue until the flow rate of solvent is less than or equal to 1.7 fluid ounces per minute (50 milliliters per minute).

(b) To demonstrate initial compliance with the provisions of §115.552(a)(1)(C) of this title (relating to Control Requirements), the owner or operator of an affected facility shall apply the following test methods, as appropriate:

(1) Test Methods 1-4 (40 Code of Federal Regulations (CFR) 60, Appendix A) for determining flow rate, as necessary;

(2) Test Method 18 (40 CFR 60, Appendix A) for determining gaseous organic compound emissions by gas chromatography;

(3) Test Method 25 (40 CFR 60, Appendix A) for determining total gaseous non-methane organic emissions as carbon;

(4) Test Methods 25A (40 CFR 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis; or

(5) minor modifications to these test methods approved by the Executive Director.

§115.556. Recordkeeping Requirements.

(a) For the Dallas/Fort Worth, El Paso, and Houston/Galveston areas as defined in §115.10 of this title (relating to Definitions), the owner or operator of any dry cleaning facility which uses petroleum-based solvent shall maintain records of monthly solvent consumption for at least two rolling years in a readily accessible location at the plant site. Solvent consumption of the previous consecutive 12 months shall be calculated monthly and used for determining if the exemption threshold in §115.557 of this title (relating to Exemptions) has been exceeded.

(b) For the Dallas/Fort Worth, El Paso, and Houston/Galveston areas as defined in §115.10 of this title, the owner or operator of a dry cleaning facility subject to the requirements of §115.552 of this title (relating to Control Requirements) shall maintain:

(1) records of the performance test required under the provisions of §115.555(a) of this title (relating to Test Methods and Procedures) if the facility elects to comply with the control requirements of §115.552(a)(1)(A);

(2) documentation which demonstrates compliance with the provisions of §115.555(b) if the facility elects to comply with the control requirements of §115.552(a)(1)(C).

§115.557. Exemptions. For the Dallas/Fort Worth, El Paso, and Houston/Galveston areas as defined in §115.10 of this title (relating to Definitions), any petroleum solvent dry cleaning facility that consumes less than 2,000 gallons of petroleum solvent per year is exempted from the requirements of §115.552(a)(1).

§115.559. Counties and Compliance Schedules.

(a) For all counties in the Dallas/Fort Worth, El Paso, and Houston/Galveston areas as defined in §115.10 of this title (relating to Definitions), affected petroleum solvent dry cleaning facilities shall be in compliance with this undesignated head as soon as practicable, but no later than November 15, 1996.

(b) Any petroleum solvent dry cleaning facility that becomes subject to the control requirements of §115.552(a)(1) of this title (relating to Control Requirements) by exceeding the exemption threshold as identified in §115.557 of this title (relating to Exemptions) shall be in compliance as soon as practicable, but no later than two years from the time the exemption level was exceeded.

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 December 17, 1993.

TRD-9333826

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

Proposed date of adoption: May 15, 1994

For further information, please call: (512) 463-8159

Chapter 261. Introductory Provisions

Subchapter A. General Provisions

• 30 TAC §261.13

The Texas Natural Resource Conservation Commission (Commission) proposes new §261.13, concerning inscriptions on state-owned vehicles.

This section will provide the Special Investigations Unit of the TNRCC the ability to conduct criminal investigations without alerting the possible target.

Stephen Minick, division of budget and planning, 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. Minick 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 enforcement of and compliance with the section are increased improvements in the commissions efforts to enforce state environmental laws and regulations, more effective enforcement and administrative procedures, and enhancements in the quality of the land, water, and air resources of the state. 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.

The new section is proposed under the Texas Water Code, §5.102 and §5.105, which provides the Commission with the authority to adopt any rules necessary to carry out its powers and duties. The new section implements the Texas Civil Statutes, Article 6701m-1, as mentioned in the section

§261.13. Inscriptions on TNRCC Vehicles. Vehicles assigned to or used by the Special Investigations Unit of the Enforcement Policy Division of the Texas Natural Resource Conservation Commission are exempt from bearing the inscription required in Texas Civil Statutes, Article 6701m-1. These vehicles are to be used primarily in the detection and investigation of criminal violations of state and federal environmental laws. The purpose of exempting these vehicles from the inscription requirements of Article 6701m-1 is to increase the effectiveness of commission investigators in detecting and investigating criminal violations of state and federal environmental laws, thereby allowing investigative personnel to accomplish their tasks undetected and to provide a greater degree of safety for these investigators, the state property being used in the investigation, and a greater degree of case integrity.

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 December 17, 1993.

TRD-9333772

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

Earliest possible date of adoption: January 24, 1994

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 13. Title IV-A Emergency Assistance Program

Program Requirements

• 40 TAC §§13.101, 13.105, and 13.110

The Texas Department of Human Services (DHS) proposes new §§13.101, 13.105, and 13.110, concerning overview, eligibility, and service provision, in its new Chapter 13, Title IV-A Emergency Assistance Program. The purpose of the new sections is to establish the Title IV-A Emergency Assistance Program. This program serves child protective services clients with a documented risk of child abuse or neglect or are at risk of having a child removed from the home as determined by Texas Department of Protective and Regulatory Services caseworkers. DHS proposes the new sections on the basis that an interagency cooperative agreement between DHS and TDPRS will delineate each agency's responsibilities in providing services.

Burton F. Raiford, commissioner, has determined that for the first five-year period the new sections will be in effect there will be no negative fiscal impact for state or local government as a result of enforcing or administering the sections. Implementation is planned to increase the federal funds available for programs to serve families with children at risk of abuse or neglect; however, the amount of the increase is not currently known and statistical and expenditure information to form projections will not be available until after implementation.

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the availability of additional services to help stabilize families with children at risk of abuse or neglect. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the new sections.

Questions about the content of the proposal may be directed to Rita King at (512) 450-4148 in DHS's Client Self-Support Services. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-300, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 34, which provides the department with the authority to administer public assistance and emergency relief programs. The new sections implement the Human Resources Code, §22.002 and §34.001.

§13.101. Overview. The Texas Department of Human Services operates the Title IV-A Emergency Assistance Program through an interagency agreement with the

Texas Department of Protective and Regulatory Services (TDPRS). The program is effective January 1, 1994. It was established by, is funded under, and is operated in compliance with the following federal requirements:

- (1) Chapter 42, United States Code, §606(e)(1); and
- (2) Chapter 45, Code of Federal Regulations, §233.120.

§13.105. Eligibility.

(a) A Texas Department of Protective and Regulatory Services (TDPRS) caseworker determines presumptive eligibility of a child and/or his family for Title IV-A Emergency Services if all of the following criteria are met:

(1) An emergency exists, as defined in subsection (b) of this section.

(2) The family applies for care and services available in emergency situations, or a TDPRS caseworker applies on behalf of a child whose parents are unavailable or unwilling to apply.

(3) The child has lived with a relative at some time within the six-month period prior to application.

(4) The emergency arose for a reason other than an adult family member's refusal to accept employment without good cause.

(5) The family has not received authorization for emergency assistance service during the 12-month period prior to application.

(b) An emergency exists when TDPRS:

(1) determines that a child is at risk of abuse or neglect; or

(2) has removed a child from his home and placed the child in its care; or

(3) determines that a child formerly in its care is at risk of being returned to that care.

(c) TDPRS collects family-income information. This information may be used to determine the level of federal funding for the case but is not a factor in determining the family's eligibility for emergency services nor the type of care or services TDPRS provides.

§13.110. Service Provision. The Texas Department of Protective and Regulatory Services (TDPRS) provides services to an eligible child and/or his family under the Title IV-A Emergency Assistance Program as determined necessary and appropriate and as authorized by TDPRS. Service provision is limited to a period not exceeding

six months in any 12-month period for each family.

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 December 17, 1993.

TRD-9333764

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

Proposed date of adoption: February 1, 1994

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

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Part IV. Texas Commission for the Blind

Chapter 171. Cooperative Activities

• 40 TAC §171.3

The Texas Commission for the Blind proposes an amendment to §171.3, concerning a memorandum of understanding for services to multiproblem children and youth. The proposed text of the revised memorandum is identical to that published by the Texas Department of Protective and Regulatory Services (TDPRS) in the April 20, 1993, issue of the *Texas Register* (18 TexReg 2551). The proposed memorandum includes three substantive changes to §173.3. First, in compliance with House Bill 7, the memorandum revises the list of participating agencies by substituting the TDPRS for the Texas Department of Human Services. Second, it incorporates references to the Health and Human Services Commission established under House Bill 7. And third, by agreement of all the participating agencies, as specified in §41.0011 of the Human Resources Code, the memorandum incorporates the Model of Community Resource Coordination Groups approved by the Commission on Children, Youth, and Family Services in April 1990. The memorandum also contains editorial changes to improve clarity and directness.

Michael T. Phillips, deputy director, Administration and Finance, 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.

Pat D. Westbrook, executive director, 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 increased coordination of services to children and sharing of data related to service delivery. 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 Pat D. Westbrook, P.O. Box 12866, Austin,

Texas 78711, within 30 days from the date notice is made in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 5, Chapter 91, which provides the agency with the authority to negotiate interagency agreements with other state agencies to provide services for individuals who have both a visual disability and another disabling condition so that those multiply disabled individuals may be provided the most beneficial services with the greatest possible economy. The amendment also is required to comply with House Bill 7, Article 1, §1.06, as passed by the 72nd Texas Legislature and to comply with the Human Resources Code, §41.001, as passed by the 71st Texas Legislature.

§171.3. Memorandum of Understanding Between Agencies. In the spirit of cooperation and coordination, and to facilitate the delivery of statewide services to disabled persons in Texas, the commission has entered into various memoranda of agreements which delineate the responsibilities and agreements between the various parties. A copy of each memorandum of understanding enumerated in this section is available for review at the commission's central office located at 4800 North Lamar Boulevard, Austin, Texas, or a copy can be obtained by writing to the commission at P.O. Box 12866, Austin, Texas 78711, or by calling (512) 459-2600.

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

(3) Coordinated services for multiproblem children and youth. The commission adopts by reference a memorandum of agreement between the Texas Department of Mental Health and Mental Retardation, the Texas Commission for the Blind, the Texas Department of Protective and Regulatory Services [Department of Human Services], the Texas Education Agency, the Texas Juvenile Probation Commission, the Texas Rehabilitation Commission, and the Texas Youth Commission. The memorandum provides for the implementation of a system of community resource coordination groups to coordinate services for all multiproblem children and youth and was published in the April 20, 1993, [November 15, 1988] issue of the *Texas Register* (18 TexReg 2551) [(13 TexReg 5227)] by the Texas Department of Protective and Regulatory Services [Texas Department of Human Services] under 40 TAC §736.701 [§72.701] of this title (relating to Memorandum of Understanding [Coordinated Services] for Services to Multiproblem Children and Youth.

(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 December 15, 1993.

TRD-9333721

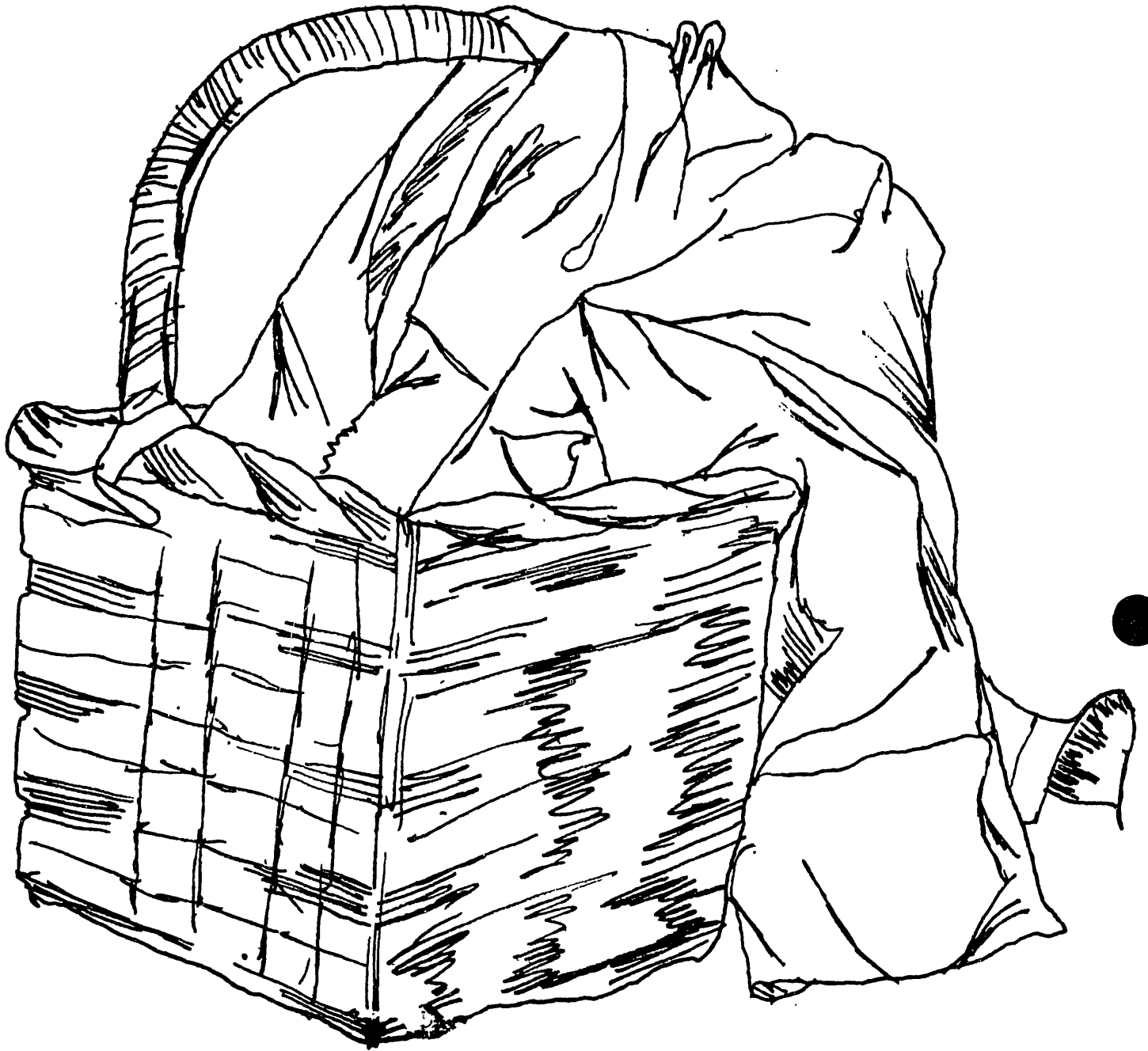
Pat D. Westbrook
Executive Director
Texas Commission for the
Blind

Earliest possible date of adoption: January
24, 1994

For further information, please call: (512)
459-2600



Contour: Basket + Cloth



Name: Jeremy Bryant
Grade: 9
School: Skyline High School, Dallas ISD

Handwritten notes:
1/24/10
1/24/10

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 II. Banking Department of Texas

Chapter 25. Prepaid Funeral Contracts

Subchapter C. Fees.

• 7 TAC §25.23

The Banking Department of Texas has withdrawn from consideration for permanent adoption an emergency new §25.23, which appeared in the September 7, 1993, issue of the *Texas Register* (18 TexReg 5931). The effective date of this withdrawal is December 24, 1993.

Issued in Austin, Texas, on December 16, 1993.

TRD-9333723
Everette D. Jobe
General Counsel
Banking Department of
Texas

Effective date: December 24, 1993

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

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The Banking Department of Texas has withdrawn from consideration for permanent adoption a proposed new §25.23, which appeared in the July 20, 1993, issue of the *Texas Register* (18 TexReg 4723). The effective date of this withdrawal is December 24, 1993.

Issued in Austin, Texas, on December 15, 1993.

TRD-9333726
Everette D. Jobe
General Counsel
Banking Department of
Texas

Effective date: December 24, 1993

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

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 334. Aboveground and Underground Storage Tanks

Subchapter A. General Provi- sions

• 30 TAC §334.2

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption a proposed amendment to §334.2, which appeared in the December 3, 1993, issue of the *Texas Register* (18 TexReg 8865). The effective date of this withdrawal is December 20, 1993.

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

TRD-9333829
Mary Ruth Holder
Director, Legal Division
Texas Natural Resource
Conservation
Commission

Effective date: December 20, 1993

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

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Subchapter L. Overpayment Prevention

• 30 TAC §§334.501-334.506

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption a proposed new §§334.501-334.506, which appeared in the December 3, 1993, issue of the *Texas Register* (18 TexReg 8867). The effective date of this withdrawal is December 20, 1993.

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

TRD-9333828
Mary Ruth Holder
Director, Legal Division
Texas Natural Resource
Conservation
Commission

Effective date: December 20, 1993

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

◆ ◆ ◆



Name: Jeremy Bryant
Grade: 9
School: Skyline High School, Dallas ISD

Adopted Sections

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

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

TITLE I. ADMINISTRATION

Part IV. Office of the Secretary of State

Chapter 71. Office of the Secretary of State

Practice and Procedure

• 1 TAC §71.12

The Office of the Secretary of State adopts an amendment to §71.12, concerning faxed filings and credit card payment option for documents filed with the secretary of state, without changes to the proposed text as published in the November 19, 1993, issue of the *Texas Register* (18 TexReg 8489).

Adoption of this amendment will explain how the Office of the Secretary of State recovers its processing cost when it accepts payment by credit card.

No comments regarding the adoption of the amendment were received.

The amendment is adopted under the Texas Business Corporation Act, Article 9.03, the Texas Nonprofit Corporation Act, Article 1396-9.04; and the Texas Limited Liability Company Act, Article 8.03, which give the secretary of state the authority to administer these acts.

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

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

TRD-9333810

Audrey Selden
Assistant Secretary of
State
Office of the Secretary of
State

Effective date January 10, 1993 For further information, please call: (512) 463-5586

Part XIII. Texas Incentive and Productivity Commission

Chapter 275. Productivity Bonus Program

• 1 TAC §275.3, §275.5

The Texas Incentive and Productivity Commission adopts amendments to §275.3 and §275.5, without changes to the proposed text

as published in the October 5, 1993, issue of the *Texas Register* (18 TexReg 6781). The adopted text will not be republished.

The amendments are adopted so that a deadline is added to submissions of Productivity Plans.

Adopting these amendments will facilitate participation in the commission's programs by having the submission date of a Plan be distinct and different from the application for employee bonuses deadline.

No comments were received regarding adoption of the rules.

The amendments are adopted under the Government Code, Chapter 2108, Subchapter A, §2108.004(b), which provides the Texas Incentive and Productivity Commission with the authority to promulgate rules for the Productivity Bonus Program.

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

Issued in Austin, Texas, on December 17, 1993.

TRD-9333813

M. Elaine Powell
Executive Director
Texas Incentive and
Productivity
Commission

Effective date: January 24, 1994

Proposal publication date: October 5, 1993

For further information, please call: (512) 475-2393

TITLE 7. BANKING AND SECURITIES

Part III. State Banking Board

Chapter 31. Miscellaneous

• 7 TAC §31.5

The State Banking Board adopts an amendment to §31.5, without changes to the proposed text as published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6995).

While a deputy of the State Treasurer of Banking Commissioner can be empowered to attend an official meeting of the State Banking Board in place of the State Treasurer or Banking Commissioner, as the case may be, that power cannot be exercised pursuant to

Texas Civil Statutes, Article 342-115 unless the State Banking Board by rule prescribes the respective deputy by name and title.

When either the State Treasurer or Banking Commissioner is unable to personally attend an official meeting of the Board, a deputy of the Board member, whose name and title is designated in 7 TAC §31.5, may appear and vote in her stead.

No comments were received regarding adoption of the section.

The amendment is adopted pursuant to Texas Civil Statutes, Article 342-115, §6(d).

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 December 14, 1993.

TRD-9333730

Everette D. Jobe
General Counsel
State Banking Board

Effective date: January 14, 1994

Proposal publication date: October 8, 1993

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

Chapter 35. Rulemaking

• 7 TAC §35.6

The State Banking Board adopts new §35.6, without changes to the proposed text as published in the October 8, 1993, issue of the *Texas Register* (18 TexReg 6886).

The section constitutes a nonexclusive delegation of Board authority to the Banking Commissioner to initiate rulemaking proceedings by proposing rules for publication and public comment on behalf of the Board. Because the State Banking Board is a part-time body that meets sporadically, the process of proposal and adoption of regulations consumes an inordinate amount of time. The new section will allow the Banking Commissioner to propose but not adopt rules on behalf of the Board to enable the Board to function more efficiently and effectively in this regard.

If the Commissioner chooses to initiate rulemaking proceedings on behalf of the Board by proposing sections for publication and comments, the Commissioner, on or before publication, must notify the members of the Board in writing of the proposed rulemaking action and the justification for the proposed action. Consideration of adoption of

any section so proposed must be made in a properly noticed, open meeting of the Board.

No comments were received regarding adoption of the rule.

The amendment is adopted under Texas Government Code, §2001.004, and Texas Civil Statutes, Article 342-115(6), which provide the State Banking Board with the authority to prescribe such rules of practice as may be necessary to facilitate the business to come before it.

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 December 13, 1993.

TRD-9333731

Everette D. Jobe
General Counsel
Texas Department of
Banking

Effective date: January 14, 1993

Proposal publication date: October 8, 1993

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

TITLE 16. ECONOMIC REGULATION

Part IV. Texas Department of Licensing and Regulation

Chapter 66. Registration of Property Tax Consultants

- 16 TAC §§66.61-66.63, 66.65, 66.72

The Texas Department of Licensing and Regulation adopts new §§66.63, 66.65, and 66.72 and amendments to §66.61 and §66.62, concerning the registration of property tax consultants. Section 66.65 is adopted with changes to the proposed text as published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8089). Sections 66.61-66.63, and 66.72 are adopted without changes and will not be republished. The changes to §66.65 are made for clarification.

The sections define the purpose, method of reporting, procedure for calling meetings, and reimbursement of expenses of the Property Tax Consultants Advisory Council and provides the means for the department to approve and recognize private providers of property tax consulting continuing education.

The sections will function by assuring more effective and efficient functioning of the board and increased efficiency of the process of approval for recognized private providers of property tax consultant education offerings.

No comments were received regarding adoption of the sections.

The new sections and amendments are adopted under Texas Civil Statutes, Article 8888, which provide the Texas Department of

Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Act.

§66.65. Advisory Council.

(a) The purpose of the Property Tax Consultants Advisory Council is to advise the commissioner on standards of practice, conduct, and ethics for registrants, fees, examination contents and standards of performance for senior property tax consultant examinations, recognition of continuing educational programs and courses, and establishing educational requirements for initial applicants.

(b) Recommendations of the Council will be transmitted to the commissioner through the director of policies and standards.

(c) Council meetings are called by the chair or at the call of a majority of its members. Meetings in excess of two per year shall be authorized by the commissioner or the commissioner's designee.

(d) Expenses reimbursed to council members shall be limited to authorized expenses incurred while on council business and travelling to and from council meetings. The least expensive method of travel should be used.

(e) Expenses related to subcommittee meetings will be reimbursed only if authorized by the commissioner or the commissioner's designee. These expenses will be reimbursed only to the council members appointed to the subcommittee or requested by the chair to assist or appear before the subcommittee.

(f) Expenses paid to council members shall be limited to those allowed by the State of Texas Travel Allowance Guide and Texas Department of Licensing and Regulation policies governing travel allowances for employees.

(g) The council shall consist of three property tax consultant members as specified in the Act and three consumers of services of property tax consultants. The commission may appoint not more than one member who is qualified for exemption under the Act, §2(d)(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 December 17, 1993.

TRD-9333788

Jack W. Garrison
Executive Director
Texas Department of
Licensing and
Regulation

Effective date: January 7, 1994

Proposal publication date: November 9, 1993

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

Chapter 67. Auctioneers

- 16 TAC §§67.10, 67.41, 67.42, 67.65, 67.100

The Texas Department of Licensing and Regulation adopts new §§67.41, 67.42, and 67.65, and amendments to §67.10 and §67.100, concerning licensing of Auctioneers. Section 67.65 is adopted with changes to the proposed text as published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8090). Sections 67.10, 67.41, and 67.42 are adopted without changes and will not be republished. The change to §67.65 is made for clarification of the section.

New §67.41 defines terms in connection with the Education and Recovery Fund, §67.42 describes procedures and responsibilities in relation to payment of claims to aggrieved parties and reimbursement by the auctioneer, and §67.65 defines the purpose, method of reporting, procedure for calling meetings, and makeup of the Auctioneer Education Advisory Board. Amended §67.10 defines clearly actions with and without reserve and §67.100 changes the notice the auctioneer is required to give the public from a statement that they are bonded to a statement that a Recovery Fund administered by the department is available to pay claims against an auctioneer.

The justification for new rules 67.41 and 67.42 is that they will clarify administration of the Recovery Fund, and for new rule 67.65 is that it will make responsibilities and procedures of the board clear. The justification for the amendment to rule 67.10 is that the definition of types of auctions will be clearer, and the justification for the amendment to rule 67.100 is that it will correct the statement auctioneers must make to consignors and the public.

New rules 67.41 and 67.42 will function by making administration of the Recovery Fund more efficient, and new rule 67.65 will function by increasing understanding of board functions. The amendments to rules 67.10 and 67.100 will function by increasing consumer protection.

One comment was received from an auctioneer against §§67.10, 67.42, and 67.65. The department disagrees with the comment against §67.10 because the definition adopted follows definitions in use in the industry, and disagrees with the comment against §67.42 because the comment suggests changes not authorized by the Act, and disagrees with the comment against §67.65 because the section is mandated by Senate Bill 383.

The new sections and amendments are adopted under Texas Civil Statutes, Article 8700, which authorize the department to license and regulate auctioneers.

§67.65. Advisory Board.

(a) The purpose of the Auctioneer Education Advisory Board is to advise the commissioner on educational matters relating to use of the educational trust fund established with fees collected for the Auctioneer Recovery Fund.

(b) Recommendations of the Board will be transmitted to the commissioner through the director of policies and standards.

(c) Board meetings are called by the chair. Meetings in excess of one each calendar quarter shall be authorized by the commissioner or the commissioner's designee.

(d) The Board shall consist of the auctioneer members specified in the Act, the commissioner of the Texas Department of Commerce and the commissioner of education or their designees, and three consumers of services provided by licensed auctioneers.

(e) The consumers of services should include at least one person who consigns property to auctioneers for sale and at least one person who regularly buys at auction. Consumer members serve for terms of two years and expire September 1 of the year of expiration.

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 December 17, 1993.

TRD-9333789

Jack W. Garrison
Executive Director
Texas Department of
Licensing and
Regulation

Effective date: January 7, 1994

Proposal publication date: November 9, 1993

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

Chapter 74. Elevators

- 16 TAC §§74.1, 74.10, 74.20, 74.30, 74.50, 74.70, 74.80, 74.90, 74.100

The Texas Department of Licensing and Regulation adopts new §§74.1, 74.10, 74.20, 74.30, 74.50, 74.70, 74.80, 74.90, and 74.100, concerning elevators, escalators and related equipment. Section 75.80 and §75.100 are adopted with changes to the text as proposed as published in the November 16, 1993, issue of the *Texas Register* (18 TexReg 8442). Sections 74.1, 74.10, 74.20, 74.30, 74.50, 74.70, and 74.90 are adopted without changes and will not be republished. The changes to §74.80 and §74.100 are made for clarification of the sections.

Health and Safety Code, Chapter 754 and Texas Civil Statutes, Article 9100, provide the

department with the authority to regulate and certificate elevators, escalators and related equipment.

These rules function by allowing the department to regulate and certificate elevators, escalators and related equipment.

One comment was received requesting clarification to §74.80 regarding exemption from fees for institutions of higher education. The department agrees and has modified to clarify.

The new sections are adopted under the Health and Safety Code, Chapter 754 and Article 9100, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Act.

§74.80. Fees.

- (a) Inspector registration fees:
 - (1) original—\$10; and
 - (2) renewal—\$10.
- (b) Certificate of inspection filing fees:
 - (1) within 30 days of inspection date—\$15; and
 - (2) Late filing fee—\$115.
- (c) Test tags, wire rope, and lead seals:
 - (1) \$160 for a kit of 100; and
 - (2) \$125 for seal crimping tool.
- (d) Waiver/delay application fee. A \$100 fee shall be charged for applying for a waiver or delay.
- (e) A fee may not be charged or collected by the department for a certificate of inspection for an institution of higher education as defined in Education Code, §61.003. The fees charged by the QEI-1 inspector or inspection agency for performing the inspection shall be paid by the institution of higher education.

§74.100. Technical Requirements.

- (a) The department adopts the latest edition of the ASM A17.1 and A17.3, Safety Code for Elevators and Escalators.
- (b) All inspections must be performed in accordance with the latest edition of the ASME A17.2, Safety Code for Elevators and Escalators.
- (c) Test tags must be attached to equipment in accordance with the latest edition of the ASME A17.1 and A17.3, Safety Code for Elevator and Escalators.
 - (1) Only test tags obtained from the department shall be used on the regulated equipment.

(2) Test tags shall be attached to equipment with wire rope and lead seal which shall be purchased from the department.

(3) The lead seal shall be crimped onto the wire rope using a crimping tool purchased from the department bearing the department's seal.

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 December 17, 1993.

TRD-9333786

Jack W. Garrison
Executive Director
Texas Department of
Licensing and
Regulation

Effective date: January 7, 1994

Proposal publication date: November 16, 1993

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

Chapter 75. Air Conditioning and Refrigeration Contractor License Law

- 16 TAC §§75.40, 75.65, 75.100

The Texas Department of Licensing and Regulation adopts amendments to §75.40, and §75.100 and new §75.65, concerning licensing for air conditioning and refrigeration contractors. Section 75.40 and §75.65 are adopted with changes to the proposed text as published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8091). Section 75.100 is adopted without changes and will not be republished. The changes are made for clarification of the sections.

Section 75.40 requires that the contractor obtain the required insurance from an admitted carrier, and §75.100 conforms the rule on installation of drain piping associated with air conditioning, refrigeration, and process cooling and heating systems to the rule recently adopted by the Texas State Board of Plumbing Examiners, and makes a clearer statement that air conditioning and refrigeration contractors are subject to the boiler law for work subject to that law. Section 75.65 defines the purpose, method of reporting, procedure for calling meetings, and reimbursement of expenses of the Air Conditioning and Refrigeration Contractors Advisory Board.

The justification for the new section is that it will make responsibilities, procedures, and limits on expenses of the board clear. The justification for the amendments is that the required insurance will be more reliable when purchased from admitted companies, and technical requirements and limits for air conditioning and refrigeration contractors will be clearer.

The new rule will function by increasing understanding of board function, and the

amendments will function by increasing consumer protection and increasing compliance by contractors.

No comments were received during the comment period.

The new section and amendments are adopted under Texas Civil Statutes, Article 8861, which authorize the department to license and regulate air conditioning and refrigeration contractors.

§75.40. Insurance Requirement.

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

(c) Insurance must be obtained from an admitted company.

(d) The certificate of insurance shall list all deductibles. Deductibles shall be limited to \$500 for Class B licenses and to \$1,000 for Class A licenses. Any contractor whose business affiliation is self-insured must provide an affidavit of responsibility and a certified financial statement.

(e) A license applicant or holder shall furnish to the department a certificate of insurance. The license holder's name, business name, and address must be shown as it appears on the license. The certificate form to be submitted shall be the form furnished by the department. Each certificate of insurance will reflect all assumed names used by the license holder and registered with this agency. Binders and interim certificates of less than 60 days will not be accepted. The certificates of insurance shall be issued to each municipality where air conditioning and refrigeration contracting is performed.

(f) The certificate of insurance shall state that the insurance carrier shall notify the department at least 45 days prior to cancellation or nonrenewal by the insurance carrier and at least ten days after nonrenewal or cancellation by the insured.

(g) License holders whose proof of insurance expires shall be notified by the department that they have an insurance violation. Failure to furnish the required proof shall be grounds for revocation of the license in accordance with Texas Civil Statutes, Article 9100.

(h) All requests to waive the insurance requirements because the license holder does not contract with the public shall be submitted in writing to the department. The request shall contain a detailed explanation of the conditions on which the waiver is being requested and confirmation by employer when applicable.

§75.65. Advisory Boards.

(a) The purpose of the Air Conditioning and Refrigeration Contractors Advisory Board is to advise the commissioner in adopting rules, enforcing and administering

the Act, and in setting fees.

(b) Recommendations of the Board will be transmitted to the commissioner through the director of policies and standards.

(c) Board meetings are called by the chair. Meetings in excess of one every six months shall be authorized by the commissioner or the commissioner's designee.

(d) Expenses reimbursed to board members shall be limited to authorized expenses incurred while on board business and travelling to and from board meetings. The least expensive method of travel should be used.

(e) Expenses related to subcommittee meetings will be reimbursed only if authorized by the commissioner or the commissioner's designee. These expenses will be reimbursed only to the board members appointed to the subcommittee or requested by the chair to assist or appear before the subcommittee.

(f) Expenses paid to board members shall be limited to those allowed by the State of Texas Travel Allowance Guide and Texas Department of Licensing and Regulation policies governing travel allowances for employees.

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 December 17, 1993.

TRD-9333787

Jack W. Garrison
Executive Director
Texas Department of
Licensing and
Regulation

Effective date: January 7, 1994

Proposal publication date: November 9, 1993

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

TITLE 22. EXAMINING BOARDS

Part VIII. Texas Appraiser Licensing and Certification Board

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

• 22 TAC §153.13

The Texas Appraiser Licensing and Certification Board adopts an amendment to §513.13, concerning the educational requirements for becoming a state-certified residential real estate appraiser, without changes to the proposed text as published in the October 29,

1993, issue of the *Texas Register* (18 TexReg 7511).

The amendment is adopted to conform the rules to the criteria of the Appraiser Qualifications Board (AQB) of the Appraisal Foundation and guidelines of the Appraisal Subcommittee of the Federal Financial Institutional Examination Council (FFIEC), which mandate 120 classroom hours of acceptable real estate appraiser education for the state-certified residential real estate appraiser classification after January 1, 1994.

The amendment will keep the Texas Appraiser Licensing and Certification Board in compliance with federal mandates under Title XI, Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC, §3331, et seq), and permit real estate appraisers certified in Texas to appraise real property for federally-related transactions.

No comments were received regarding adoption of the rule.

The Texas Appraiser Licensing and Certification Act (Texas Civil Statutes, Article 6573(a)(2)) provides the Texas Licensing and Certification Board with authority to adopt rules for the certification and licensing of real estate appraisers which are consistent with federal regulations and requirements adopted by the Appraiser Qualifications Board or the Appraisal Subcommittee.

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 December 17, 1993.

TRD-9333795

Renil C. Liner
Commissioner
Texas Appraiser Licensing
and Certification Board

Effective date: January 1, 1994

Proposal publication date: October 29, 1993

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

Part XIV. Texas Optometry Board Chapter 273. General Rules.

• 22 TAC §273.10, §273.11

The Texas Optometry Board adopts new §273.10 and §273.11, without changes to the proposed text as published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8092).

Section 273.10 is required by §57.491 of the Education Code. This section will inform students in default on loans to the Guaranteed Student Loan Corporation of procedures to follow for repayment agreements in order to renew their professional licenses.

Section 273.11 is necessary because of the passage of House Bill 1479 by the 73rd Legislative Regular Session. This section will enable members of the public to address the

Board on matters under the Board's jurisdiction.

No comments were received regarding adoption of the rules.

The new sections are adopted under the provisions of Texas Civil Statutes, Article 4552, §2.14, which provide the Texas Optometry Board with the authority to promulgate procedural and substantive rules.

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

Issued in Austin, Texas, on December 14, 1993.

TRD-9333797 Lois Ewald
Executive Director
Texas Optometry Board

Effective date: January 7, 1994

Proposal publication date: November 9, 1993

For further information, please call: (512) 835-1938

Chapter 277. Practice and Procedure

• 22 TAC §§277.1, 277.2, 277.3, 277.4, 277.5

The Texas Optometry Board adopts amendments to §277.1 with changes and amendments to §§277.2, 277.3, 277.4, and 277.5 without changes to the proposed text as published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8092-8097).

The amendments to §§277.1-277.5 are required because of amendments to the Texas Optometry Act enacted by the 73rd Legislature.

The amendment to §277.1 functions by providing a complaint form for the standardization of information concerning complaints; describing the minimum information required

for the processing of complaints; prioritizing complaints according to their seriousness; and informing optometrists and therapeutic optometrists regarding the seriousness of Basic Competence violations.

The amendment to §277.2 assures licensees that their due process rights are protected with respect to disciplinary proceedings.

The amendment to §277.3 also protects licensees' due process rights and provides a mechanism by which the executive director can monitor licensees who have had their licenses canceled, suspended, or revoked.

The amendment to §277.4 recognizes that licensees who have had their licenses revoked may, under certain circumstances, seek reinstatement of their licenses. The amendment further provides for a formal hearing before the State Office of Administrative Hearings and a formal decision by the Board.

The amendment to §277.5 will allow the Board to institute disciplinary proceedings against licensees following a jury verdict or a plea of guilty.

Comments were received from LensCrafters. Generally the comments cannot be characterized as being either for or against the rules. Rather, in most instances the comments sought clarification. The following is a summary of comments: §277.1(c)(1) should contain a definition of the word "supervise"; In §277.1(c)(2), the references to the executive director's authority to issue subpoenas, to issue commissions to take depositions, and to administer oaths should be deleted because the executive director does not have the requisite statutory authority. The comment was against the adoption of this proposal. Section 277.1(c)(4) should be rewritten to be less confusing; and in §277.2(c)(1), the notice requirement should be for more than ten days, preferably 20-30 days.

The Board disagrees with the comment on §277.1(c)(1) because the meaning of the word "supervise" is easily understood. The executive director is the administrative head of the agency, works on a full-time basis, and is the only person who should properly supervise the development of all investigations.

The Board agrees with the comments on §277.1(c)(2). The order finally adopting this section deletes the reference to the executive director.

The Board agrees with the comments regarding §277.1(c)(4) and has amended the language in the final order to make the section more user friendly.

The Board disagrees with the comments regarding §277.2(c)(1). The ten-day notice period is the minimum notice that can be given under the APA. No disciplinary proceeding will be conducted without giving the respondent a reasonable time to prepare a defense.

The amendments are adopted under the provisions of Texas Civil Statutes, Article 4552, §2.14, which provide the Texas Optometry Board with the authority to promulgate procedural and substantive rules.

§277.1. Complaint Procedures.

(a) **Filing Complaints.** Complaints may be filed with the agency in person at the board's office, or in any written form, including submission of a completed complaint form. The board shall adopt the following form as its official complaint form which shall be maintained at the board's office for use at the request of any complainant. At a minimum, all complaints shall contain information necessary for the proper processing of the complaint by the board, including, but not limited to:

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

(2) name, address and phone number of the optometrist, therapeutic optometrist, or other person, firm or corporation, if known;

(3) date, time, and place of occurrence of alleged violation; and

(4) complete description of incident giving rise to the complaint.



For Office Use Only:

Assigned to: _____

Date: _____

TEXAS OPTOMETRY BOARD
9101 BURNET ROAD, SUITE 214, AUSTIN, TX 78758-5260
(512) 835-1938

CONSUMER COMPLAINT FORM TO THE TEXAS OPTOMETRY BOARD

1. Information about optometrist or person(s) being reported:

NAME _____ LIC. # _____

OFFICE LOCATION _____

TELEPHONE NUMBER _____

City _____ State _____ ZIP _____

2. Complainant information:

NAME _____ TELEPHONE NUMBER _____

MAILING ADDRESS _____

TELEPHONE NUMBER _____

City _____ State _____ ZIP _____

3. Incident being reported: [Clearly indicate the nature of your complaint. If more space is needed, attach additional sheet(s). Enclose photocopies of supporting documentation available (records, prescriptions, advertising, etc.)]

DATE(S) _____

INCIDENT _____

RESULTS: [Explain briefly what your desired results would be, providing such is within the purview of the Texas Optometry Act.]

The above statements are true and accurate to the best of my knowledge.

Signature _____ Date _____

(b) Complaint Investigation and Disposition.

(1) All complaints received shall be sent to the executive director. The board shall distinguish between categories of complaints as follows:

(A) consumer and patient complaints against optometrists and therapeutic optometrists regarding alleged violations of the Texas Optometry Act or duly promulgated rules or orders;

(B) alleged unauthorized practice of optometry or therapeutic optometry by unlicensed individuals, or by a licensee while a suspension order or restrictive sanction by the board is in effect;

(C) licensure or reinstatement applications;

(D) alleged advertising violations by optometrists, therapeutic optometrists, persons, firms, or corporations; and

(E) licensee complaints regarding violations of the Act resulting in economic harm.

(2) A complaint shall not be dismissed without appropriate consideration. The board and complainant shall be advised of complaint dismissals.

(c) Investigation-Enforcement Committee

(1) The chair shall appoint a committee to consider all complaints filed with board. The committee shall be known as the Investigation-Enforcement Committee and shall be composed of board members who are licensed optometrists or therapeutic optometrists. The executive director shall divide the state into geographic areas, with each member of the Investigation-Enforcement Committee being assigned areas of responsibility within such geographic areas. Each member shall be charged with the responsibility of enforcing the provisions of the Act within the assigned area and is authorized to initiate investigations. The executive director shall supervise all investigations. If, as a result of an investigation within a geographic area, a formal charge is filed against a licensed optometrist, therapeutic optometrist, or other person, firm, or corporation by the investigator, the member from whose area the formal charge originated shall be the member designated to assist in the handling of the prosecution of such formal charge and disciplinary proceeding, if any.

(2) The executive director shall forward the complaint to the member in

charge of enforcement in the area of the complaint unless in the judgment of the executive director, unusual circumstances exist such that it is more appropriate that the complaint be under province of another member. The Investigation-Enforcement Committee, or any member thereof, shall have the power to issue subpoenas and subpoenas deuces tecum to compel the attendance of witnesses and the production of books, records, and documents, to issue commissions to take depositions, to administer oaths and to take testimony concerning all matters within the assigned jurisdiction. In addition to subpoena power, each member of the committee may authorize the executive director to investigate an alleged violation.

(3) On receipt of a complaint, the member in charge shall determine:

(A) whether to drop the matter and take no further action;

(B) whether to send a letter to the person charged reciting that a complaint has been received and that while the investigating member cannot determine or pass upon the merits of the complaint without conducting further investigation that the subject of the complaint be asked to review the complaint to ensure that the Act is being complied with, and that if the allegations are true, to cease and desist from the alleged violations or words to that effect;

(C) whether to conduct further investigations, including conducting investigational hearings or informal conferences;

(D) whether to forward to the board the member's determination that a violation of the Act may have occurred together with a recommendation that proceedings be instituted with the State Office of Administrative Hearings to consider cancellation, revocation, or suspension of a license or refusal to issue a license;

(E) whether to forward to the board the member's determination that some person, firm, or corporation may be practicing optometry without a license or otherwise violating the provisions of the Act, along with the member's recommendation that the board notify the attorney general or appropriate district attorney with accompanying request that appropriate action be taken in accordance with law; and

(F) whether to forward to the executive director the members determination of findings applicable to subparagraphs (D) and (E) of this paragraph

for assessment of administrative penalties.

(4) Basic Competence Violations.

(A) The omission of a single, essential finding shall be reason for an investigational hearing or informal conference. The following findings are essential in the initial examination of a patient:

(i) biomicroscopy examination (iids, cornea, sclera, etc.);

(ii) internal ophthalmoscopic examination (media, fundus, etc.);

(iii) subjective findings, far point and near point; and

(iv) tonometry.

(B) The omission of a total of four significant findings in the initial examination of a patient shall be reason for an investigational hearing or informal conference. The following findings are significant in the initial examination of a patient:

(i) case history (ocular, physical, occupational and other pertinent information);

(ii) visual acuity;

(iii) static retinoscopy, O.D., O. S., or autorefractor;

(iv) assessment of binocular function;

(v) amplitude or range of accommodation;

(vi) angle of vision, to right and to left.

(C) All other omissions or combination of omissions of findings shall be reason to send noncompliance letters. The absence of the optometrist's or therapeutic optometrist's signature on the prescription shall be considered an omission.

(D) An investigational hearing or informal conference is required when a second alleged violation has occurred. Likewise, if a licensee has had a previous investigational hearing or informal conference, a subsequent complaint will result in a formal disciplinary hearing.

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 December 14, 1993.

TRD-9333798

Lois Ewald
Executive Director
Texas Optometry Board

Effective date: January 7, 1994

Proposal publication date: November 9, 1993
For further information, please call. (512)
835-1938

◆ ◆ ◆
• 22 TAC §277.6

The Texas Optometry Board adopts new §277.6, without changes to the proposed text as published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8096).

Section 277.6 is necessary to inform licensees and others of the penalty process when violations of the Texas Optometry Act are committed

LensCrafters commented against the rule as being redundant of the statute, as giving the impression that the Board by rule could change a statute, and that the Board lacked authority to enact subsection (d) of the section

The Board disagrees with these comments. The Board has no authority to change a statute by a rule. The APA now requires that hearings be conducted by the State Office of Administrative Hearings. Administrative law judges from that office are to consider applicable Board rules and policies in holding hearings and drafting proposals for decisions. The Board must furnish its rules to the administrative law judges, if the Board wishes for its rules to be considered. The Board's rules provide the mechanism by which the judges will be aware of the standards upon which administrative penalties are to be based

In §277.6(d) the Board uses the phrase, "other appropriate civil or criminal action." The Board would take other action only if it is expressly authorized to do so by other law. Thus, LensCrafters objection appears unfounded.

The new section is adopted under the provisions of Texas Civil Statutes, Article 4552, §2.14, which provide the Texas Optometry Board with the authority to promulgate procedural and substantive rules.

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

Issued in Austin, Texas, on December 14, 1993.

TRD-9333799 Lois Ewald
Executive Director
Texas Optometry Board

Effective date: January 7, 1994

Proposal publication date: November 9, 1993
For further information, please call (512)
835-1938

◆ ◆ ◆
Chapter 279. Interpretations

• 22 TAC §279.14

The Texas Optometry Board adopts new §279.14, with changes to the proposed text as published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8097).

Section 279.14 is necessary to clarify the definition of patients optometric records, to notify licensees of prescription requirements, and to notify affected persons or entities that dispensing without an appropriate prescription constitutes the unlawful practice of optometry. The new section should reduce unknowing violations of the Texas Optometry Act and Board rules

A comment was received from LensCrafters pointing out that a conflict exists between subsections (b) and (c); (b) states that a prescription for medications may be verbal or written, while (c) as proposed indicates that the dispensing of medications must be from a document

The Board agrees with this comment, and the section as adopted removes the discrepancy.

The new section is adopted under the provisions of Texas Civil Statutes, Article 4552, §2.14, which provides the Texas Optometry Board with the authority to promulgate procedural and substantive rules.

§279.14. *Board Interpretation Number Fourteen.*

(a) Patient's optometric records are defined as the patient chart, historical record, or working document during the course of examination and patient care between the doctor and patient. The patient's records may contain information regarding spectacle prescription findings and contact lens prescription findings but do not include a prescription for spectacles or contact lenses.

(b) A prescription for spectacles, contact lenses, or ophthalmic devices is defined as a written order signed by the examining optometrist, therapeutic optometrist or physician. A prescription for medications may be verbal or written.

(c) The dispensing of medications, spectacles, contact lenses, or ophthalmic devices without a valid prescription constitutes the unlawful practice of optometry, subject to penalties under the Texas Optometry Act, §5.04 and §5.18.

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 December 14, 1993.

TRD-9333800 Lois Ewald
Executive Director
Texas Optometry Board

Effective date: January 7, 1994

Proposal publication date: November 9, 1993

For further information, please call. (512)
835-1938

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 290. Water Hygiene

Certification of Waterworks Personnel

◆ ◆ ◆
• 30 TAC §§290.28-290.36

The Texas Natural Resource Conservation Commission (Commission) adopts amendments to §§290.28-290.36, concerning the certification of waterworks personnel, without changes to the proposed text as published in the October 15, 1993, issue of the *Texas Register* (18 TexReg 7124) and will not be republished.

All references to the Texas Department of Health, Board of Health, and department have been replaced with appropriate references to the Commission. Senate Bill 2, First Called Session, 72nd Legislature, transferred all the powers, duties, rights, and obligations of the Texas Department of Health pertaining to the setting of sanitary standards for drinking water and the protection of public water supplies and bodies of water to the Texas Water Commission effective, March 1, 1992.

The Commission received one comment during the comment period in support of the amendments from the Texas Water Utilities Association.

The amendments are adopted under the Texas Water Code, §5.103, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of the state; and the Health and Safety Code, §341.034.

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 December 17, 1993.

TRD-9333773 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation Commission

Effective date: January 7, 1994

Proposal publication date: October 15, 1993

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

◆ ◆ ◆
Rules and Regulations for Public Water Systems

• 30 TAC §290.47

The Texas Natural Resource Conservation Commission (Commission) adopts an amendment to §290.47, creating a second

recognition category for public water systems and related criteria, without changes to the proposed text as published in the October 26, 1993, issue of the *Texas Register* (18 TexReg 7458).

Senate Bill 2, First Called Session, 72nd Legislature, transferred all the powers, duties, rights, and obligations of the Texas Department of Health (TDH) pertaining to the setting of sanitary standards for drinking water and the protection of public water supplies and bodies of water to the Texas Natural Resource Conservation Commission.

The Commission received one comment from the City of Bastrop during the comment period. The commenter stated that the "Approved" category has merit and will serve a useful purpose. However, systems which exceed the secondary chemical standards for iron and/or manganese only should be allowed to seek and attain the higher "Superior" status. The Commission carefully considered this comment and determined that the rules as adopted provide such systems with a recognition which was not previously available. This new category was established specifically to provide recognition to such systems.

The amendment is adopted under the Texas Water Code, §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties; and the Texas Health and Safety Code, §341.035, which governs sanitary standards of drinking water, protection of public water supplies and bodies of water.

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 December 17, 1993.

TRD-9333767

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

Effective date: January 7, 1994

Proposal publication date: October 26, 1993

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

Water Saving Performance Standards

- 30 TAC §§290.251, 290.253-290.256, 290.260, 290.265, 290.266

The Texas Natural Resource Conservation Commission (Commission) adopts amendments to §§290.251, 290.253-290.256, 290.260, 290.265 and 290.266, concerning the water saving performance standards for plumbing fixtures. Section 290.260 is adopted with changes to the proposed text as published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8150).

The amendments to §§290.251, 290.253-290.256, 290.265 and 290.266 are

adopted without changes will not be republished.

The Commission received one comment during the comment period from American Standards, Inc. The commenter requested that the deadline for satisfying the labeling requirements set forth in §290.260 be changed from March 1, 1994, to October 25, 1994, to coincide with a similar federal deadline. The Commission considered this request and revised the section to reflect the later deadline.

The amendments are adopted under the Health and Safety Code, Chapter 372, and the Texas Water Code, §5.103, which authorize the Commission to adopt and enforce rules necessary to carry out its powers and duties. Former Health and Safety Code, Chapter 421 was renumbered as Chapter 372 pursuant to Senate Bill 587, First Called Session, 72nd Legislature, effective August 12, 1991.

§290.260. Labeling.

(a) Labeling requirements. A person may not sell, offer for sale, distribute or import into this state a plumbing fixture unless the plumbing fixture, including each component of a toilet, flush valve toilet or urinal and the associated packaging are marked and labeled in accordance with these sections. The labeling requirements in these sections shall take effect on October 25, 1994.

(1) Each water closet, urinal and flush valve shall be marked or labeled in accordance with the National Energy Policy Act of 1992 (42 United States Code, §6294 et seq) and as amended.

(2) Each water closet, urinal and flush valve package shall be marked or labeled in accordance with the National Energy Policy Act of 1992 (42 United States Code, §6294 et seq) and as amended.

(3) Each faucet, aerator and showerhead shall be marked in accordance with the National Energy Policy Act of 1992 (42 United States Code, §6294 et seq) and as amended, except that each showerhead, flow restricting or controlling spout end device and aerator shall bear a permanent legible mark indicating the flow rate, expressed in gallons per minute (gpm). The flow rate shall be the actual flow rate or the maximum flow rate specified in §290.252 of this title (relating to Design Standards).

(4) Each faucet, aerator and showerhead package shall have the flow rate expressed in gallons per minute (gpm) clearly marked on the front.

(b) Prohibitions. A person may not sell, offer for sale, distribute or import into this state a new commercial or residential clothes washing machine, dish washing machine or lawn sprinkler unless the clothes washing machine, dish washing machine or

lawn sprinkler is marked or labeled in accordance with these sections.

(1) Each clothes washing machine and dish washing machine shall have an attached label that shows the amount of water used per cycle.

(2) Each lawn sprinkler shall be marked with the water usage expressed in gallons per minute (gpm) by either a permanent mark on each sprinkler, or a label or tag attached to each sprinkler.

(c) Exemptions. This section does not apply to those clothes washing machines and dish washing machines that are subject to and are in compliance with the labeling requirements of the National Appliance Energy Conservation Act of 1987, Public Law 100-12 (42 United States Code, §6294) and as amended.

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 December 17, 1993.

TRD-9333768

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

Effective date: January 7, 1994

Proposal publication date: November 9, 1993

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

Chapter 295. Water Rights, Procedural

Subchapter B. Water Use Permit Fees

- 30 TAC §§295.132-295.134, 295.138, 295.139

The Texas Natural Resource Conservation Commission (TNRCC) adopts amendments to §§295.132-295.134, 295.138 and 295.139, concerning the assessment of fees associated with applications for new and amended water rights, without changes to the proposed text as published in the October 5, 1993, issue of the *Texas Register* (18 TexReg 6801), and will not be republished. The purpose of the amendments is to reflect recent changes in the law regarding the maximum fees which may be assessed for such applications.

The previous fee structure established by statute did not cover the administrative costs associated with processing permit applications. Miscellaneous applications and petitions are subject to a filing fee authorized under the Texas Water Code, §5.235. The amount of the fee can be adjusted in the General Appropriations Act under the provisions of Government Code, Chapter 316, Subchapter E. Under the current appropria-

tions bill for the 1992-1993 biennium, House Bill 1, Acts of the 72nd Legislature, First Called Session, 1991, the application fees authorized under the Texas Water Code, §5.235(b)-(c) are to be set in an amount to recover costs, but not to exceed \$2,000. The same maximum rate is authorized for the 1994-1995 biennium under the provisions of Senate Bill 5, Acts of the 73rd Legislature, 1993.

Additionally, House Bill 2605, acts of the 73rd Legislature, 1993 amended the Texas Water Code, §5.235, to authorize increases in one-time use fees which may be assessed for an application for a new or amended water right. Specifically, it raises the maximum amount which may be levied from \$25,000 to \$50,000 for one use of water and allows an increase in the maximum fee for any additional use of water from \$5,000 to \$10,000. The bill also provides that if the application fee is more than \$1,000, the applicant may pay one-half of the fee when the application is filed and the remaining half within 180 days of notification that the application has been granted.

Pursuant to House Bill 1, the adopted change to §295.132 would replace the current \$100 application filing fee with a variable filing fee based upon the total amount of water requested for appropriation. The minimum filing fee is proposed to be \$100 and the maximum to be \$2,000.

Additionally, the TNRC is establishing a separate variable application fee for temporary permits which will be either \$100 for the appropriation of water amounting to less than ten acre-feet or \$250 when the total amount of water is equal to or greater than ten acre-feet.

The newly adopted application filing fee to amend a water right is \$100 for each recorded and separately numbered water right. The TNRC is also clarifying the recording fee of \$1.25 per page of the application. Finally, the amendments would clarify that the applicant must pay the entire cost of mailing notice to affected persons in the applicable river basin.

In accordance with House Bill 2605, §295.133 and §295.134 of the Commission rules are amended to authorize increases in one-time use fees which may be assessed for an application for a new or amended water right. Specifically, the maximum amount which may be levied would be increased from \$25,000 to \$50,000 for one use of water. Additionally, the amendment also increases the maximum fee for any additional use of water from \$5,000 to \$10,000. Finally, the changes provide that if the application fee is more than \$1,000, the applicant shall pay at least one-half of the fee when the application is filed and the remainder within 180 days from notification that the application has been granted.

Also pursuant to House Bill 1, the amendments to §295.134 and §295.138 set the maximum fee for extensions of time to commence or complete construction at \$1,000.

Finally the amendment to §295.139 provides for the assessment of a \$100 recording fee for a change in ownership of a water right. A

companion proposed rule amending §297.83 would require the submission of a specific water right ownership transfer form and filing fee in addition to the certified copies of the recorded instruments evidencing a water right ownership transfer.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under the Texas Water Code, §§5.103, 5.105, and 5.120, which provides the 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.

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 December 17, 1993.

TRD-9333771

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

Effective date: January 7, 1994

Proposal publication date: October 5, 1993

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

Chapter 297. Water Rights, Substantive

Subchapter H. Conveyances of Land and Water Rights

• 30 TAC §297.83

The Texas Natural Resource Conservation Commission (TNRC) adopts an amendment to §297.83, concerning the requirement to submit evidence about conveyance of water rights, without changes to the proposed text as published in the October 5, 1993, issue of the *Texas Register* (18 TexReg 6802), and will not be republished. The rule requires that a water right holder submit a change of ownership form and an ownership recording fee when submitting written instruments evidencing a water right ownership transfer. This rule is a companion to changes made in Chapter 295 relating to application fees (18 TexReg 6801).

Previously, the Commission did not charge a fee to record the transfer of water right ownerships. The legislature has recently authorized the Commission to recover the cost, or at least some of the cost, of permitting programs by imposing application fees as provided by House Bill 2605 (1993). This rule establishes a modest fee to recover some of the costs associated with maintaining an accurate account of water rights in the State of Texas. Miscellaneous applications and petitions are subject to a filing fee authorized under the Texas Water Code, §5.235. The amount of the fee can be adjusted in the General Appropriations Act under the provisions of Government Code, Chapter 316,

Subchapter E. Under the current appropriations bill for the 1992-1993 biennium, House Bill 1, Acts of the 72nd Legislature, First Called Session, 1991, the application fees authorized under the Texas Water Code, §5.235(b)-(c) are to be set in an amount to recover costs, but not to exceed \$2,000. The same maximum rate is authorized for the 1994-1995 biennium under the provisions of Senate Bill 5, Acts of the 73rd Legislature, 1993.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Water Code, §§5.103, 5.105, and 5.120, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Code and all other laws of the State of Texas; and to establish and approve all general policy of the Commission.

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

Issued in Austin, Texas, on December 17, 1993.

TRD-9333769

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

Effective date: January 7, 1994

Proposal publication date: October 5, 1993

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

Chapter 305. Consolidated Permits

Subchapter C. Application for a Permit

• 30 TAC §305.48

The Texas Natural Resource Conservation Commission (TNRC) adopts an amendment to §305.48, relating to additional content requirements for an application for a wastewater discharge permit in accordance with recent legislation, without changes to the proposed text as published in the September 28, 1993, issue of the *Texas Register* (18 TexReg 6624), and will not be republished.

Specifically, House Bill 1021 (1993) amended §26.027(c) of the Texas Water Code to require that an application for a waste discharge permit contain the applicant's full legal name and date of birth, residence street address; driver's license number or state or national identification number; sex; and any assumed business or professional name. The bill took effect September 1, 1993. The adopted amendment to §305.48 reflects these statutory changes.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas

Water Code, §§5.103, 5.105, and 5.120, which provides the 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.

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 December 17, 1993.

TRD-9333770

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

Effective date: January 7, 1994

Proposal publication date: September 28, 1993

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

TITLE 31. NATURAL RESOURCE AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 57. Fisheries

Issuance of Marl, Sand Gravel, and Mudshell Permit Applications

• 31 TAC §57.77

The Texas Parks and Wildlife Commission in a regularly scheduled public hearing held November 4, 1993, adopted new §57.77, with no changes to the proposed text as published in the October 1, 1993, issue of the *Texas Register* (18 TexReg 6728), and will not be republished. New §57.77 establishes a fee to cover costs associated with the review of an application for a permit to take or disturb marl, sand, and gravel located within state-owned waterways.

The amendment is needed to offset part of the costs associated with the processing and review of permit applications for marl, sand, and gravel permits. The rule will allow the collection of fees for the review of an application to take or disturb marl, sand, and gravel located within state-owned waterways

Section 57.77 will provide for a nonrefundable application fee of \$500 for applications to take a disturb marl, sand, gravel, and mudshell for purposes of sales and \$200 for all other applications. Applicant seeking to take or disturb materials from more than one location are subject to an additional nonrefundable fee of \$100 for each additional location after the first. Applicants who are exempted under Chapter 86 from the requirement of purchasing marl, sand, shell, or mudshell are exempted from the application fee otherwise required under this section.

No comments were received concerning adoption of the rule

New §57 77 is proposed under the authority of the Texas Parks and Wildlife Code, §11.027(b), which authorizes the department to establish and provide for the collection of a fee to cover costs associate with the review of an application for a permit required by the Code.

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

Issued in Austin, Texas, on December 15, 1993.

TRD-9333704

Paul M Shinkawa
Director, Legal Services
Texas Parks and Wildlife
Department

Effective date: January 5, 1994

Proposal publication date October 1, 1993

For further information, please call 1 (800) 792-1112, Ext 4433 or (512) 389-4433

Scientific and Zoological Permits

• 31 TAC §57.283, §57.278

The Texas Parks and Wildlife Commission in a regularly scheduled public hearing held November 4, 1993, adopted new §57 283 and amendments to §57 278, concerning application processing fees for scientific, zoological and aquarium permits, without changes to the proposed text as published in the October 1, 1993 issue of the *Texas Register* (18 TexReg 6728). Due to a typographical error, the proposed amendment to §57 283 was inadvertently published as a proposed amendment to §53 283. The error is corrected here

New 57 283 establishes a fee to cover costs associated with the processing of an application for a scientific, zoological, or aquarium permit. The amendment to §57 278 allows issuance of these permits for any period of time not exceeding three years

New §57 283 is needed to offset part of the costs associated with the processing and review of permit applications for scientific, zoological, and aquarium permits. The rule will allow the collection of fees for the processing of an application for certain scientific, zoological, or aquarium permits

The amendment to §57 278 is needed to increase the permit term for scientific, zoological, and aquarium permits to any period of time not exceeding three years. The amendment will reduce agency workload and reduce paperwork burdens for permittees

New §57 283 will provide for a nonrefundable application fee of \$50 for scientific permits and \$150 for zoological and aquarium permits. Applicants representing only educational institutions or working only on behalf of state or federal regulatory agencies are exempt from the fees. Amended §57 278 provides an increased permit term for scientific, zoological, and aquarium permits for any

period of time not exceeding three years

No comments were received concerning adoption of the rules

Section §57 283 is proposed under the authority of the Texas Parks and Wildlife Code, §43 0281, which authorizes the Department to make regulations for assessment and collection of an application processing fee for each permit, renewal, or amendment sought under Chapter 43. The amendment to §57 2/8 is proposed under the authority of §43 027, which authorizes the department to make regulations governing the taking and possession of protected wildlife indigenous to the state for scientific and zoological purposes

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 December 16, 1993

TRD 9333742

Paul M Shinkawa
Director, Legal Services
Texas Parks and Wildlife
Department

Effective date: January 6, 1994

Proposal publication date: October 1, 1993

For further information, please call 1 (800) 792 1112. Ext 4433 or (512) 389 4433

Chapter 61. Design and Construction

Guidelines for Administration of Local and Water Conservation Fund Project

• 31 TAC §61.121

Director's note: In the December 1, 1993 issue of the Texas Register, the Texas Parks and Wildlife Department published notice of final adoption of 31 TAC §61.131 (18 TexReg 9271) with changes to the proposed text as published in the July 23, 1993 issue of the Texas Register (18 TexReg 4817). The proposed amendment was inadvertently combined with an amendment to 31 TAC §61.121 in the July 23, 1993 issue of the Texas Register, and the two were supposed to be separately adopted in the December 17, 1993 issue. Due to an oversight, the final adoption of 31 TAC §61.121 was omitted from that issue. Section 61.121 is published in this issue with an effective date of December 31, 1993.

The Texas Parks and Wildlife Commission adopts amendments to 31 TAC §61 121 concerning Guidelines for Administration of Local Land and Water Conservation Fund Projects, and 31 TAC 61 131 concerning Guidelines for Administration of Local Land and Water Conservation Fund Projects, with changes in the text as published in the July 23, 1993, issue of the *Texas Register*. Amendments to §61 121 were inadvertently submitted combined with amendments to 31 TAC §61 131 in the Proposed Action Stage. These two amendments are now being submitted separately as required

The rule is necessary to allow for the efficient administration of the grant programs noted and to take into account the creation of the Texas Recreation and Parks account established by acts of the Texas Legislature, Seventy-Third Regular Session.

Section 61.121 will allow the Department to recover administrative and related costs for administration of local grant projects.

The new rules as proposed were presented to the Texas Parks and Wildlife Commission in its August 26, 1993, public hearing.

No comments were received from the public resulting from the publication of the proposed rules in the July 23, 1993, issue of the *Texas Register*. No comments were received from the public about the proposed rules at the August 26, 1993, Texas Parks and Wildlife Commission public hearing.

No public comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Texas Parks and Wildlife Code, §24.005 (as amended by Acts of the Texas Legislature, Seventy-Third Regular Session), which provides that in establishing the program of grants under this section, the department shall adopt rules and regulations for grant assistance.

§61.121. Policy. It is the commission's policy that the state liaison officer shall administer local projects in accord with the following guidelines, with interpretation of intent to be made to provide the greatest number of outdoor recreational opportunities for Texas in accord with priorities of the Texas Outdoor Recreation Plan

(1) Local administrative costs shall not be considered as eligible local matching funds unless circumstances dictate that high priority public needs will not be met without the full or partial benefit of such in-kind contribution.

(2) A staged project, when requested by the department with concurrence of the sponsor, will be funded in sequential states when sufficient federal funds are available and the sponsor requests activation of a subsequent stage.

(3) When sponsors request a project be staged due to lack of local committed funds, only that part of the project which the sponsor certifies funds available will be supported. Subsequent stages will be submitted for funding as a new project

(4) Approved projects shall be pursued in a timely manner by the sponsor, unless due to extraordinary circumstances beyond the sponsor's control. Failure to meet the following time-frames shall be grounds for the state liaison officer to initiate cancellation of the affected project in order to recommend relocation of available funds to other projects.

(A) Acquisition projects. Acquisition projects shall conform with the following:

(i) appraisals shall be forwarded to the department no later than nine months after receipt of official notice of project approval; and

(ii) after the sponsor has been notified that the appraisal has been approved, the acquisition shall be completed and reimbursement(s) shall be filed with the department no later than 12 months.

(B) Development projects. Development projects shall conform with the following:

(i) construction plans and specifications shall be forwarded to the department no later than nine months after official notification of project approval; and

(ii) on-the-ground construction shall begin no later than six months after the department by official notification has approved project plans and specifications.

(5) Sponsors will provide the state liaison officer with a report no less frequently than 90 days, setting forth the physical and monetary progress of a project as correlated to the sponsor's approved application.

(6) The state liaison officer may make a fiscal adjustment to an approved project not to exceed 5.0% or \$20,000. In those instances where the amount of monetary adjustment is large enough to significantly reduce the funds which could be utilized to support a higher priority project, the state liaison officer shall consider the priority of the adjustment as compared to other pending products.

(7) Any official notification to project sponsors shall be made by certified mail.

(8) Any provision of this policy shall be automatically amended should the federal government issue a regulation in conflict with this policy, provided that the state liaison officer shall submit to the commission for consideration any federal action in conflict with this policy/

(9) The department is authorized to recover from project sponsors of projects funded through the program, administrative costs sufficient to support operation, administration, and related costs of the grant program

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

Issued in Austin, Texas, on December 10, 1993.

TRD-9333476

Paul M Shinkawa
Director, Legal Services
Texas Parks and Wildlife
Department

Effective date: December 31, 1993

Proposal publication date: July 23, 1993

For further information, please call: 1 (800) 792-1112, Ext. 4433 or (512) 389-4433.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 19. Long-Term Care Nursing Facility Requirements for Licensure and Medicaid Certification

Subchapter Q. Medical Review and Re-evaluation

• 40 TAC §19.1608, §19.1613

The Texas Department of Human Services (DHS) adopts amendments to §19.1608 and §19.1613, concerning retroactive medical necessity determinations and reconsideration of medical necessity (MN) determinations and effective dates, in its Long-Term Care Nursing Facility Requirements chapter. The amendments are adopted without changes to the proposed text published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8171).

The justification for the amendments is to combine the functions of Purpose Codes E and 6 which are entered on the patient's CARE form.

The amendments will function by reducing paperwork and increasing time for providing patient care

No comments were received regarding adoption of the amendments

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds. The amendments implement the Human Resources Code, §22.002 and §32.024.

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 December 16, 1993

Effective date: February 1, 1994

Proposal publication date: November 11, 1993

For further information, please call: (512) 452-3765

Part II. Texas Rehabilitation Commission

Chapter 116. Advisory Committees/Councils

• 40 TAC §§116.1-116.9

The Texas Rehabilitation Commission adopts new §§116.1-116.9, without changes to the proposed text as published in the October 22, 1993, issue of the *Texas Register* (18 TexReg 7331).

The new rules have been adopted in order to comply with the provisions of Senate Bill 383 (73rd Legislature).

The new rules function by requiring that the Commission outline in rule form the Committees/Councils which advise the Commission. The public will be notified of the existence, purpose, and tasks of these Committees/Councils.

No comments were received regarding adoption of the rules.

The new sections are adopted under the Texas Human Resources Code, §111.018, which provides the Texas Rehabilitation Commission with the authority to make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for rehabilitation and other services, procedures for hearings, and other regulations subject to this section, as necessary to carry out the purposes of this chapter.

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 December 17, 1993.

TRD-9333780

Charles W. Schiesser
Associate Commissioner
for Legal Services
Division
Texas Rehabilitation
Commission

Effective date: January 7, 1994

Proposal publication date: October 22, 1993

For further information, please call: (512) 483-4051

Part III. Texas Commission on Alcohol and Drug Abuse

Chapter 150. Licensure of Chemical Dependency Counselors

Counselor Licensure Rules

• 40 TAC §§150.1-150.3, 150.9, 150.10, 150.13, 150.16

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §§150.1-150.3, 150.9, 150.10, 150.13, 150.16. Sections 150.1-150.3, 150.10 and 150.16 are adopted with changes to the proposed text published in the October 29, 1993 issue of the *Texas Register* (16 TexReg 5819). Section 150.9 and §150.13 are adopted without changes and will not be republished.

The rules are adopted to define terms commonly used in the profession, set standards and procedures for licensure and renewal as a licensed chemical dependency counselor, and provide grounds for disciplinary action. These amendments are adopted to clarify requirements for internship and licensure, to provide for a new internship designation under the criminal justice setting, implement the mandate of Senate Bill 205 regarding assessment and intervention, and to define requirements for applicants with criminal history. Changes occur in the definitions sections to add the definition of actual and active chemical dependency counseling to define qualified counseling experience for the purposes of transition licensure and clarification of exceptions to counselor intern designation requirements prior to participation in a practicum under the definition of counselor intern. The proposed change to reduce the number of hours of approved curricula required to be designated a counselor intern from 270 hours to 135 hours was deleted. Additionally, certified social worker was changed to licensed master social worker to comply with recent changes in state statute in the definitions section as well as in the exemptions section. Criminal justice counselor intern was changed to criminal justice peer intern to appropriately define counselors in the therapeutic community model and to avoid confusion between the two intern designations. The provision for persons exempt under this act was added to clarify licensure requirements of persons performing chemical dependency assessment or intervention. Persons requiring screening by the Commissioner Offender Credentialing Committee was clarified by adding misdemeanor or felony to criteria contained in record. Sexual exploitation was added to define the intent of Penal Code, §21.14. Changes were made for clarity in areas such as §150.10 where (as applicable) was added.

The sections define terms commonly used in the profession, set standards and procedures for licensure and renewal as a licensed chemical dependency counselor, and provide grounds for disciplinary action. These sections also clarify requirements for internship and licensure, provide for a new internship designation under the criminal justice setting, and define requirements for applicants with criminal history.

The proposal to reduce the hours required for internship from 270 to 135 generated more comments than any other area, and opposition was unanimous. Seventy-seven people submitted testimony or written comments protesting the reduction, and most felt very strongly about the issue. It was felt that 270 hours was the absolute minimum, and it was suggested that the requirement should be raised. Allowing inadequately prepared students to assume counseling duties would reduce the quality of treatment provided. Furthermore, supervisors would be less willing to accept responsibility for the work of students with so little preparation, particularly in rural areas when supervisors do not work on site with the intern. In the long run, it could jeopardize the professional status of the entire field, placing it at an even greater disadvantage in an increasingly competitive environment.

Two people opposed the practicum guidelines under the counselor intern definition section; it was felt it creates barriers to many people whose experience gives them sufficient knowledge to begin field work. Two other comments supported the rules, stressing the importance of a knowledge base so that students can benefit fully from the practicum experience.

The criminal justice counselor intern section also generated numerous comments. Although six individuals voiced general support for the proposal, 61 people commented against it. There was widespread feeling that creating a separate criminal justice category was unnecessary and potentially dangerous for the graduates, for future clients, for the profession, and for the state's overall criminal justice initiative.

Numerous comments indicated that it was inappropriate to award professional status to students with less than 270 hours, which they felt to be an absolute minimum. If a lower category of intern was to be created, it should carry a title such as chemical dependency technician, peer intern, peer assistant, or peer facilitator. The duties should also be restricted.

Comments made expressed objections on clinical grounds. It was noted that clients in criminal justice programs have problems and needs that are more complex than those of most clients and their counselors must, therefore, be at least as qualified as counselors treating other clients. If the standards are altered at all, additional training should be required to prepare them adequately for this challenging population. Comments were also made that it is demeaning to imply that the graduates were unable to meet the current standards, and that creating a separate criminal justice intern category would create a second-class intern.

The strongest objections came from counselors who had criminal histories or who worked with criminal justice clients. Concern was expressed about the well-being of graduates entering the counseling profession. Because these individuals have more serious problems and needs, they typically need a longer period of time to integrate into the community and establish a stable recovery. Experienced counselors stated that many personal issues

surface while ex-inmates are on annual report, and they need time to deal with these issues before they try to help others. Giving them responsibility for counseling others too early would be highly stressful and would jeopardize their sobriety. This would lead to a high relapse rate, which would in turn impact the effectiveness of the services provided. The increasing relapse rate and dropping program success rate could, in the long run, threaten the success of the criminal justice initiative. Although the need was recognized for additional counselors to meet the growing demand, this was a short-sighted plan that would backfire.

Nineteen people opposed increasing fees. Seven people voiced concern regarding the addition of persons providing incidental counseling under the exemptions section. It was felt that it is subject to misinterpretation and that it creates a large loophole. Instead of clarifying current policy, the language seems to create greater confusion.

Nine people spoke in favor of the new section on criminal background investigations, ten spoke against it. Those in favor stressed the importance of the process in maintaining the integrity of the field. Those voicing opposition were concerned about the lack of definitive guidelines.

Two people opposed the licensure requirement of persons conducting assessment or intervention, stating that individuals trained to use a structured assessment tool should not be excluded from performing these activities. Two people spoke in favor of the proposal.

Two people voiced concerns about the addition of sexual exploitation definition, one individual stated that it was a worthy addition to the rules. Another individual suggested the prohibition be in effect permanently instead of for only two years after a client's discharge.

Numerous comments were received from individuals for and against the proposed changes. There were no groups or associations represented.

Although there was opposition to various amendments, the commission adopts these changes as follows. The practicum guideline under the counselor intern definition section emphasizes the importance of knowledge base to benefit students in the practicum. The commission added exceptions to students in attending an institute of higher education for the 270 education hours.

Although the renewal fee is only increasing from \$40 to \$50, the fact that the new figure includes the application fee caused many commentators against the increase to think that the fee was almost doubling.

The requirement for counselor intern status within a two year period or expiration of the criminal justice counselor intern status would eliminate any concerns regarding early exposure to the community and stable recovery of inmates. Additionally, the criminal justice counselor intern designation is limited to individuals working in the criminal justice initiative only.

Incidental counseling under the exemption section provides clarification as it applies to

transition counseling. Many individuals applying for transition licensing interpret actual and active counseling as any counseling experience when in fact is considered as incidental as described in this section.

There was confusion about the process for review of criminal background checks. Suggestions were made that the review should be done at the time of application rather than at the time of licensure.

The licensure requirement of persons conducting assessment or intervention was mandated in the Texas Health and Safety Code, § 462.

The amendments are adopted under the Texas Civil Statutes, Article 4512, which provide the Texas Commission on Alcohol and Drug Abuse with the authority to establish a procedure by which the commission is to license chemical dependency counselors.

The statute affected by these amendments is Texas Civil Statutes, Article 4512c.

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

Actual and active chemical dependency counseling—Counseling performed specifically in the areas of alcohol, drug and inhalant addictions. The primary focus of counseling must be in the chemical dependency field and may be for compensation or voluntary work. Chemical dependency counseling performed as co-lateral or incidental to a person's primary job description is not considered as meeting the "active" segment of the "actual and active" standard for purposes of transition licensure.

Counselor intern—A student, intern, or trainee pursuing a course of study in chemical dependency counseling (or a closely related field) at a regionally accredited institution of higher education or training institution approved by the commission.

(A) A Counselor intern:

(i) performs chemical dependency counseling activities and services as a part of his or her supervised course of study.

(ii) has completed 270 classroom hours of approved curricula, including no less than 135 classroom hours of chemical dependency specific education, and 135 classroom hours of chemical dependency related education.

(iii) has been designated a counselor intern by the regionally accredited institution of higher education or training institution at which he or she is enrolled.

(iv) does not act as a "counselor intern" for more than four years;

(v) has made application to the commission, and been approved for counselor intern status, and has paid the counselor intern fee;

(vi) submits two letters of reference from QCP to initiate their internship and two letters of reference from licensed chemical dependency counselors (LCDCs) prior to taking the licensing examination.

(B) A practicum may not be performed for purposes of meeting established Counselor Intern requirements until a person has met the educational requirements and has been designated as a Counselor Intern. The practicum must be performed under the supervision of an approved, current, practicum provider.

(i) An exception to the counselor intern designation requirement before participation in a practicum is extended to students in an accredited university, college, junior college or community college provided that all of the following conditions are met:

(I) the student must be officially enrolled, and

(II) the practicum is part of the curriculum for which enrolled, and

(III) the practicum is performed under the auspices of the educational institution, and

(IV) the practicum is performed only on a voluntary basis, and

(V) the practicum is performed under the supervision of an approved practicum provider.

(ii) Termination of enrollment for any reason shall terminate an incomplete practicum. For the practicum to be accepted by the Texas Commission on Alcohol and Drug Abuse it must be successfully (passing grade) completed to include all 300 hours with corresponding documentation. Private educational program are not eligible for the exception.

(C) A person designated as a counselor intern must work under the direct supervision of a qualified credentialed professional (QCP) and may work for compensation or voluntarily.

Criminal justice peer intern—A student, intern, or trainee pursuing a course of study in chemical dependency counseling and working in the Texas Criminal Justice Chemical Dependency Treatment Initiative.

(A) Approval as a criminal justice counselor intern requires an individual to:

(i) make application to the commission;

(ii) pay the application fee;

(iii) complete 135 approved classroom hours in chemical dependency treatment;

(iv) complete a chemical dependency treatment program that utilizes the therapeutic community model and complete immersion training (which shall not be considered part of the 135 hours of required classroom training);

(v) be on annual report, if a parolee or Level 4 status, if a probationer.

(B) A criminal justice counselor intern must initiate and pursue a course of study which leads to counselor intern status within two years. The criminal justice counselor intern approval and the related exemption expire after two years if the criminal justice intern has not achieved counselor intern status.

(C) All criminal justice counselor interns must receive direct clinical supervision from a licensed chemical dependency counselor. An LCDC may not supervise more than five criminal justice counselor interns.

(D) The criminal justice counselor intern designation will be revoked immediately upon termination of the voluntary work/employment relationship with the State Criminal Justice System. The designation of criminal justice counselor intern does not authorize the holder to practice in other than a specific element of the Texas Criminal Justice Chemical Dependency Treatment Initiative, specifically; Substance Abuse Felony Punishment (SAFP), In-Prison Therapeutic Community (ITC), Transitional Treatment Center (TTC), Treatment Alternatives to Incarceration Program (TAIP) programs.

(E) The designee may not advertise nor represent the credential to the general public by any means, including business cards.

Qualified credentialed professional (QCP)—An individual who is either a licensed chemical dependency counselor or who is certified, licensed, approved, or registered by the State of Texas as a licensed master social worker (LMSW), licensed professional counselor (LPC), psychologist, psychological associate, or physician, phy-

sician assistant, or registered nurse. Individuals who are not LCDCs must demonstrate two years of chemical dependency counseling experience.

Sexual Exploitation—A pattern, practice, or scheme of conduct by a person regulated under this act that may include sexual contact, that can reasonably be construed as being for the purpose of sexual arousal or gratification or sexual abuse of any person. It is not a defense to sexual exploitation of a patient or former patient if it occurs:

(A) with consent of the patient or former patient;

(B) outside of therapy or treatment;

(C) off the premises used for therapy or treatment;

(D) within a two-year period following termination of treatment;

§150.2. License Required.

(a) (No change.)

(b) A person performing chemical dependency assessment or intervention must be licensed or exempt under this act.

(c) A person may not use any name, title, or designation indicating that the person is licensed under this chapter, unless that person holds a current, valid license obtained from the commission pursuant to the requirements of this chapter and Texas Civil Statutes, Article 4512o

(d) This section does not apply to those persons listed in §150.3(b) (4) of this chapter (relating to Exemptions).

§150.3. Exemptions.

(a) (No change.)

(b) This chapter does not apply to the activities and services of:

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

(4) a licensed physician or psychologist; licensed professional counselor, licensed master social worker; religious leader of a congregation providing pastoral chemical dependency counseling within the scope of his or her duties; or school counselor certified by the Central Education Agency.

(c) (No change.)

§150.10. Licensure: Application; License Requirements; Issuance of License.

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

(d) Background investigation.

(1) All applicants for licensure will be subject to a background check before an application is processed for licensing, counselor intern or exam applicant. The background will include a Texas Department of Public Safety Criminal History Report.

(2) Persons having any record of a misdemeanor or felony conviction will be screened by the Commissioners Offender Credentialing Committee. The commission may:

(A) deny an application;

(B) approve processing an application without conditions;

(C) approve processing an application with conditions; or

(D) revoke an application.

(3) An applicant who does not accept the commission's decision may request a formal hearing before the full commission under the procedures established in the Administrative Procedures Act.

(4) Information required upon application, by a person previously convicted, in addition to the standard application form includes:

(A) narrative statement of conditions/events leading to arrest and conviction;

(B) probation/parole starting and discharge dates;

(C) probation/parole officers recommendation;

(D) two letters of reference from qualified credentialed professionals;

(E) age at time of offense; and

(F) if crime was alcohol/drug related:

(i) what rehabilitation has taken place.

(ii) a description of (as applicable):

(I) facility;

(II) counselor's name;

(III) dates; and

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

(IV) indication if the treatment program was satisfactorily completed.

(G) any other written information that may assist in the evaluation of an application. Failure to make full and accurate disclosure will be grounds for immediate denial or revocation.

(e) Exemptions.

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

(f) Disabled applicants. The commission recognizes that disabled applicants may encounter unusual problems in applying for licensure and will make an effort to accommodate these applicants. The commission, on a case-by-case basis, will consider requests for special arrangements for disabled applicants provided that such requests are reasonable and do not violate the law or the rules of the commission.

(g) Issuance of licenses. Upon successful completion of all requirements to obtain a license under this chapter, the commission will issue a license to the applicant as follows:

§150.16. Disciplinary Action; Grounds. The commission may refuse to issue or renew a license, place on probation a license-holder whose license has been suspended, reprimand a license-holder, or revoke or suspend a license issued under this chapter for:

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

(7) having a license to practice chemical dependency counseling in another jurisdiction refused, suspended, or revoked for a reason that the commission finds would constitute a violation of this chapter, Texas Civil Statutes, Article 4512o, or a rule of the commission adopted pursuant thereto;

(8) refusing to perform an act or service for which the person is licensed to perform under this chapter on the basis of the client's or recipient's sex, race, religion, age, national origin, or handicaps; or

(9) committing an act of sexual exploitation in violation of Penal Code, § 21.14, or for which liability exists under Civil Practice and Remedies Code, Chapter 81.

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 December 15, 1993.

TRD-9333783

David Tatum
Interim Executive Director
Texas Commission on
Alcohol and Drug
Abuse

Effective date: January 7, 1994

Proposal publication date: October 29, 1993

For further information, please call: (512) 867-8720



Texas Department of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's Note: As required by the Insurance Code, Article 5.96 and 5.97, the Texas Register publishes notices of actions taken by the Department of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure Act.

These actions become effective 15 days after the date of publication or on a later specified date

The text of the material being adopted will not be published, but may be examined in the offices of the Department of Insurance, 333 Guadalupe, Austin.)

The State Board of Insurance of the Texas Department of Insurance, at a public meeting held at for 9:00 a.m., December 15, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street, Austin, Texas has adopted a filing by the Texas Parks and Wildlife Department consisting of a new surety bond form required by the Acts of the 73rd Legislature.

The "Public Official Bond" for Boat Agent is required by the provisions of Acts 1993, 73rd Legislature, under Senate Bill 901 which went into effect September 1, 1993. The "Public Official Bond" for Boat Agent is conditioned on the principal faithfully performing the duties in accordance with the previously mentioned Act and that the principal shall return to the Texas Parks and Wildlife Department or make payment for, all receipt and tax sup-

plies as may be furnished him/her. The amount of the bond will be based on the average "unit" sales price of a boat, outboard motor, or boat and motor times the number of receipts requested by the agent times the sales tax. Each dealer will determine the number of receipts needed.

The Board has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.13, 5.15 and 5.97

The full text of the form filing entitled "Public Official Bond" for Boat Agent as adopted by the Board are filed with the Chief Clerk under Reference Number O-1093-27 and are incorporated by reference by Board Order Number 60586

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts the Board's action on this filing from the requirements of the Government Code, Chapter 2001.

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 December 17, 1993.

TRD-9333805

Linda K von Quintus-Dom
Chief Clerk
Texas Department of
Insurance

Effective date: January 8, 1994

Proposal publication date: November 26,

1993

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



The State Board of Insurance of the Texas Department of Insurance, at a public meeting held at 9:00 a.m., December 15, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street, Austin, Texas has adopted a filing by the Texas Department of Banking consisting of a new surety bond form required by Texas Civil Statutes, Article 350.

The "Currency Exchange Bond" is required by Texas Civil Statutes, Article 350. The "Currency Exchange Bond" is conditioned on the principal faithfully conforming to and abiding by the provisions of the Article and the rules adopted pursuant to it and will honestly and faithfully apply all funds received and perform all obligations and undertakings in connection with any currency exchange or transmission under the Article and will pay to the Department and to any person all money that becomes due and owing to the Department or to such person under the provisions of the Article because of any currency exchange or transmission by the aforesaid principal as licensee under the provisions of the Article. The amount of the bond will be determined by the Banking

Commissioner and will be based on the dollar volume of the licensee's currency exchange or transmission business. The minimum amount of the bond will be \$25,000.

The Board has jurisdiction over this matter pursuant to the Insurance Code, Article 5.13, 5.15 and 5.97.

The full text of the form filing entitled "Currency Exchange Bond" as adopted by the Board are filed with the Chief Clerk under Reference Number O-1093-28 and is incorporated by reference by Board Order Number 60585.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts the Board's action on this filing from the requirements of the Government Code, Chapter 2001.

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 December 17, 1993.

TRD-9333806

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

Effective date: January 8, 1994

Proposal publication date: November 26, 1993

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

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The State Board of Insurance of the Texas Department of Insurance, at a public meeting held at 9:00 a.m. on December 15, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe

Street, Austin, Texas, adopted a filing by the Texas Department of Transportation consisting of a revised surety bond form entitled "Motor Vehicle Dealer's Surety Bond," Form Number VTRD-150 (Revised 11-93), which revision is required by Acts of the 73rd Legislature.

The revised Motor Vehicle Dealer's Surety Bond will enable a motor vehicle dealer or a wholesale motor vehicle auction (collectively the Principal) to comply with bond requirements stipulated by the 73rd Legislature under House Bill 1932, which went into effect June 19, 1993. Comparable to the initial Motor Vehicle Dealer's Surety Bond which became effective on December 28, 1991, the revised bond is conditioned on the Principal paying all valid bank drafts, including checks, drawn by the Principal for the purchase of motor vehicles and transfer of good title to each motor vehicle that the Principal purports to sell. However, under the revised Motor Vehicle Dealer's Surety Bond, the liability of the surety is limited to the face amount of the Motor Vehicle Dealer's Surety Bond, which is \$25,000. In addition, the surety is not liable for successive claims in excess of the bond amount, regardless of the number of claims made against the bond or the number of years the bond remains in force

The Texas Department of Transportation's form filing (Reference Number O-1093-29) was published in the November 26, 1993, issue of the *Texas Register* (18 TexReg 8779).

The Board has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.13, 5.15 and 5.97.

The full text of the form filing for the revised Motor Vehicle Dealer's Surety Bond as adopted by the Board is filed with the Chief Clerk under Reference Number O-1093-29 and is incorporated by reference by Board Order No. 60587.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts the Board's action on this filing from the requirements of the Government Code, Chapter 2001.

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 December 17, 1993.

TRD-9333807

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

Effective date: January 8, 1994

Proposal publication date: November 26, 1993

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

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Contour Drawing 8-30-93



Name: Jeremy Bryant
Grade: 9
School: Skyline High School, Dallas ISD

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, 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 Council on Workforce and Economic Competitiveness

Wednesday, January 5, 1994, 8:30 a.m.

Texas Higher Education Coordinating Board, 7700 Chevy Chase Drive, Building 1, Room 1.100

Austin

According to the complete agenda, the Apprenticeship and Career Pathways Programs Design Committee items on the agenda include: approval of the minutes of the Committee's November 8, 1993, meeting; public comment/testimony; an update on the School-to-Work Grant; action on the Committee's report to the Governor and Legislature; a briefing on Tech Prep by the Texas Education Agency, Texas Higher Education Coordinating Board, and the Texas Department of Commerce, subcommittee meetings to discuss roles, responsibilities, timelines, schedule-of-work, decision making grid, and a review of Request for Proposal Objectives for the School-to-Work Grant; a briefing on the Integration of Academic and Vocational Education by the Center for Occupational Research and Development; subcommittee reports; and other business including future meeting dates. Persons with disabilities who plan to attend who may need auxiliary aids or services, or assistance in having English translated into Spanish, should contact Val Blaschke, (512) 305-7008, at least two days before this meeting so arrangements can be made

Contact: Val Blaschke, P.O. Box 2241, Austin, Texas 78758, (512) 305-7008.

Filed: December 21, 1993, 9:19 a.m.

TRD-9333852

Texas Office for Prevention of Developmental Disabilities

Wednesday, January 5, 1994, 1:00 p.m.

401 West 15th Street, Tenth Floor

Austin

According to the complete agenda, the Executive Committee will call the meeting to order; introductions; status of appointments, task force report, other reports as requested, project director's report, election of officers, 1994 schedule for quarterly meetings, and adjournment.

Contact: Jerry Ann Robinson, 4900 North Lamar Boulevard, Austin, Texas 78756, (512) 483-5042

Filed: December 17, 1993, 1:53 p.m.

TRD-9333782

Wednesday, January 5, 1994, 2:30 p.m.

401 West 15th Street, Tenth Floor

Austin

According to the complete agenda, the Head/Spinal Cord Injury Task Force will call the meeting to order; introductions; reports subcommittee for results monitoring, bicycle education program; bicycle helmet grant; bicycle helmet coalition; bicycle helmet education grant; Texas Pediatric Society Auxiliary Bicycle Safety Program, head/spinal cord injury reporting; traumatic brain injury reporting, other reports; new issues and discussion; meeting schedule, and adjournment

Contact: Jerry Ann Robinson, 4900 North Lamar Boulevard, Austin, Texas 78756, (512) 483-5042.

Filed: December 17, 1993, 1:53 p.m.

TRD-9333781

Texas State Board of Registration for Professional Engineers

Tuesday, December 28, 1993, 9:30 a.m.

1917 IH-35 South, Board Room

Austin

According to the complete agenda, the Ad Hoc Committee on Continuing Education will meet, convened by Chairman Gloyna; take roll call; review the status of continuing education for engineers, and adjourn

Contact: Charles E. Nemir, P.E., 1917 IH-35 South, Austin, Texas 78741, (512) 440-7723.

Filed: December 17, 1993, 1:49 p.m.

TRD-9333779

Texas Department of Health

Tuesday, January 4, 1994, 10:00 a.m.

Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

According to the complete agenda, the Hospital Licensing Advisory Council will discuss approval of the minutes of previous meeting; discuss and possibly act on: draft rules for Women's Service Center; amendments to 25 TAC §133.54 requiring a memorandum of understanding on inservice training (relating to standards providing comprehensive medical rehabilitation ser-

vices, mental health services, and chemical dependency services); comments to proposed rules in 25 TAC §133 and §134 as published in the November 2, 1993 issue of the *Texas Register*; method for recording meetings of the council; and announcements and discussion not requiring council action.

Contact: Maurice Shaw, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6645. For ADA assistance, call Richard Butler at (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: December 20, 1993, 2:11 p.m.

TRD-9333838

Health and Human Services Commission

Wednesday, January 5, 1994, 11:00 a.m.

Texas Department of Health, 1100 West 49th Street

Austin

According to the complete agenda, the Advisory Committee to Develop a Tool to Assess Decision-Making Capacity for Persons with Mental Retardation and Developmental Disability, and Elderly Persons will call the meeting to order; approval of minutes of October meeting; public testimony about the development of a tool to assess decision-making capacity for persons with mental retardation and developmental disability, and elderly person; workgroup progress report and presentation; discussion and direction to workgroup; set date and plan for next meeting; and adjourn. If you require auxiliary aids or services or materials in alternate format, please contact Sherry McCulley at the Health and Human Services Commission at least four working days prior to the meeting.

Contact: Sherry McCulley, 4807 Spicewood Springs Road, Building 4, Austin, Texas 78759, (512) 502-3200.

Filed: December 20, 1993, 8:49 a.m.

TRD-9333811

Texas Department of Insurance

Tuesday, December 28, 1993, 9:00 a.m.

300 West 15th Street, Fourth Floor, Suite 408

Austin

According to the complete agenda, the Department will consider a request by Sidney P. Childress for a appeal hearing regarding surcharges for traffic violations listed under Rule 42b of the Texas Automobile Rules

and Rating Manual.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: December 17, 1993, 1:11 p.m.

TRD-9333778

Wednesday, December 29, 1993, 9:00 a.m.

333 Guadalupe Street, Tower II, Fourth Floor

Austin

According to the complete agenda, the Department will consider an application of Alberto Aguilar, Irving, for a Group I, Legal Reserve Life Insurance Agent's license.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: December 17, 1993, 1:11 p.m.

TRD-9333777

Wednesday, December 29, 1993, 9:00 a.m.

333 Guadalupe Street, Tower II, Fourth Floor

Austin

According to the complete agenda, the Department will consider whether disciplinary action should be taken against Nationwide Insurance Companies, Columbus, Ohio, which holds a Certificate of Authority.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: December 17, 1993, 1:11 p.m.

TRD-9333775

Wednesday, December 29, 1993, 9:00 a.m.

333 Guadalupe Street, Tower II, Fourth Floor

Austin

According to the complete agenda, the Department will consider a request by Conveyance Contractors, Inc. for a hearing on additional premiums owed applicable to the Workers' Compensation assigned risk pool.

Contact: Melissa Slusher, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: December 17, 1993, 1:11 p.m.

TRD-9333776

Texas Council on Offenders with Mental Impairments

Wednesday, January 5, 1994, 9:30 a.m.

8610 Shoal Creek Boulevard, Texas Department of Criminal Justice, Pardons and Paroles Building, Hearing Conference Room
Austin

According to the complete agenda, the Program Committee of the Texas Council on Offenders with Mental Impairments will meet to hear introductions; approve minutes; discuss juvenile justice issues; hear the council's staff report on program related issues; discuss the agenda and schedule for the next meeting; and adjourn.

Contact: Dee Kifowit, 8610 Shoal Creek Boulevard, Austin, Texas 78757, (512) 406-5406.

Filed: December 20, 1993, 4:25 p.m.

TRD-9333845

Wednesday, January 5, 1994, 1:15 p.m.

8610 Shoal Creek Boulevard, Texas Department of Criminal Justice, Pardons and Paroles Building, Hearing Conference Room

Austin

According to the complete agenda, the Finance Committee will call the meeting to order; hear introductions; discuss a review and action on the El Paso proposal; discuss the next meeting and agenda; and adjourn.

Contact: Dee Kifowit, 8610 Shoal Creek Boulevard, Austin, Texas 78757, (512) 406-5406.

Filed: December 20, 1993, 4:24 p.m.

TRD-9333843

Wednesday, January 5, 1994, 1:30 p.m.

8610 Shoal Creek Boulevard, Texas Department of Criminal Justice, Pardons and Paroles Building, Hearing Conference Room

Austin

According to the complete agenda, the Executive Committee will call the meeting to order; hear introductions; hear public comments; approve minutes; hear committee reports; hear an update on the continuity of care work-session; discuss issues/strategies; hear the nominating committee report; discuss ADA resolution; hear the executive director's report; and adjourn.

Contact: Dee Kifowit, 8610 Shoal Creek Boulevard, Austin, Texas 78757, (512) 406-5406.

Filed: December 20, 1993, 4:24 p.m.

TRD-9333844

Texas Natural Resource Conservation Commission

Wednesday, January 5, 1993, 9:00 a.m.

1700 North Congress, Stephen F. Austin

State Building, Room 118

Austin

According to the agenda summary, the Texas Natural Resource Conservation Commission will consider approving the following matters on the attached uncontested agenda: hazardous waste class three modification; temporary variance; proposed water quality permit; renewal of water quality permit; district matters; water utility matters; examiner's settled hearings; in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13047, Austin, Texas 78711-3087, (512) 463-7905.

Filed: December 16, 1993, 5:07 p.m.

TRD-9333751

Wednesday, January 5, 1994, 9:00 a.m.

1700 North Congress, Stephen F. Austin State Building, Room 118

Austin

According to the agenda summary, the Texas Natural Resource Conservation Commission will consider approving the following matters on the attached contested agenda: water quality enforcement, petroleum storage tank enforcement; solid waste enforcement; rules; examiner's proposal for decision; executive session; in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various action, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7905.

Filed: December 16, 1993, 5:07 p.m.

TRD-9333752

Tuesday, January 18, 1994, 10:00 a.m.

1700 North Congress Avenue, Stephen F. Austin State Office Building, Room 118

Austin

According to the agenda summary, the Natural Resource Conservation Commission, Office of Hearings Examiners will hold a hearing before a hearings examiner or Hill Country N.W. Water Supply, Incorporated's water rate increase effective November 1, 1993 for its service area located in Travis County, Texas. Docket Number 30210-R

Contact: Jim Bateman, P.O. Box 13087,

Austin, Texas 78711-3087, (512) 463-7875.

Filed: December 17, 1993, 9:07 a.m.

TRD-9333754

Tuesday, January 18, 1994, 10:00 a.m.

1700 North Congress Avenue, Stephen F. Austin State Office Building, Room 118

Austin

According to the agenda summary, the Natural Resource Conservation Commission, Office of Hearings Examiners for a hearing before a hearing's examiner on Lloyd Lenz doing business as QV Utility's application for Certificates of Convenience and Necessity (CCN) to provide water and sewer utility service in Hidalgo County, Texas. Applicant also proposes decertification of a portion of Alamo Water Supply Corporation's water service area authorized under water CCN number 10553. Proposed service area is located approximately two miles west of downtown Donna, Texas. Docket Numbers 30193-C and 30194-C.

Contact: Jim Bateman, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7875.

Filed: December 17, 1993, 9:09 a.m.

TRD-9333755

Texas Board of Pardons and Paroles

Monday-Friday, December 27-31, 1993, 1:30 p.m.

2503 Lake Road, Suite two

Huntsville

According to the agenda summary, the parole Board panel(s) of the Texas Board of Pardons and Paroles composed of three Board member(s) will hold a meeting to receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the Board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: December 17, 1993, 9:48 a.m.

TRD-9333760

Monday-Wednesday, December 27-29, 1993, 1:30 p.m.

1550 East Palestine, Suite 100

Palestine

According to the agenda summary, the parole Board panel(s) of the Texas Board of

Pardons and Paroles composed of three Board member(s) will hold a meeting to receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the Board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: December 17, 1993, 9:48 a.m.

TRD-9333759

Thursday, December 30, 1993, 9:30 p.m.

1550 East Palestine, Suite 100

Palestine

According to the agenda summary, the parole Board panel(s) of the Texas Board of Pardons and Paroles composed of three Board member(s) will hold a meeting to receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the Board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: December 17, 1993, 9:48 a.m.

TRD-9333758

Thursday-Friday, December 30-31, 1993, 9:30 a.m.

1550 East Palestine, Suite 100

Palestine

According to the agenda summary, the parole Board panel(s) of the Texas Board of Pardons and Paroles composed of three Board member(s) will hold a meeting to receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the Board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: December 17, 1993, 12:47 p.m.

TRD-9333774

Public Utility Commission of Texas

Wednesday, December 29, 1994, 9:05 a.m.

7800 Shoal Creek Boulevard

Austin

According to the agenda summary, the Administrative Division will discuss: reports, discussion and action on Gulf States Utilities Company/Entergy Services, Inc. merger at FERC; Entergy Services, Inc., Docket Number EL94-13-000; adjournment for executive session to consider litigation matters; reconvene for discussion and decisions on matters considered in executive session; set time and place for next meeting; and final adjournment.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 20, 1993, 4:10 p.m.

TRD-9333842

Tuesday, January 4, 1994, 10:00 a.m. (Rescheduled from Tuesday, January 4, 1994, 10:00 a.m.)

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a prehearing conference in Docket Number 12504-application of Alltel Texas, Inc. for authority to locate and maintain records outside the State of Texas.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 20, 1993, 2:26 p.m.

TRD-9333839

Thursday, March 10, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a hearing on the merits in Docket Number 12535-application of Caprock Electric Cooperative, Inc., for authority to change rates.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 21, 1993, 9:39 a.m.

TRD-9333853

Tuesday, May 24, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division of the Public Utility Commission of Texas will hold a hearing on the merits which has been scheduled on Docket Number 12461, petition of the Lower Colorado River Authority to Reconcile Fuel Revenues and Expenses.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 20, 1993, 3:00 p.m.

TRD-9333840

Texas Savings and Loan Department

Tuesday, January 18, 1994, 9:00 a.m.

300 West 15th Street, Room 408

Austin

According to the agenda summary, the Department will hold a hearing to accumulate a record of evidence in regard to the application of AmWest Savings Association, Bryan, to operate a loan office at 4001 East 29th Street, #120, Bryan, from which record the Commissioner will determine whether to grant or deny the application.

Contact: Teresa Scarborough, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 475-1350.

Filed: December 20, 1993, 9:51 a.m.

TRD-9333831

Texas Senate

Monday, January 24, 1994, 9:00 a.m.

300 West 15th Street

Austin

According to the agenda summary, the Senate Committee on Health and Human Services will call to order; roll call and opening remarks; invited testimony; problems and solutions; public testimony; committee discussion and deliberation, proposed solutions and course of action; schedule; other business; and recess.

Contact: Camille Miller, One Capitol Square, Room 204, Austin, Texas 78701, (512) 463-0380.

Filed: December 20, 1993, 4:45 p.m.

TRD-9333846

Texas Department of Transportation

Wednesday, January 12, 1994, 9:00 a.m.

Dewitt C. Greer Building, 125 East 11th Street, First Floor

Austin

According to the agenda summary, the Interagency Abandoned Rail Corridor Committee will discuss with railroad representatives concerning Texas rail abandonment and future role of committee; discussion concerning response to requests for attendance of members at local meetings; report on Interstate Commerce Commission policies and procedures; and discussion on status of various abandonment proceedings.

Contact: Curtis Toews, 125 East 11th Street, Austin, Texas 78701, (512) 305-9506.

Filed: December 20, 1993, 11:07 a.m.

TRD-9333837

Wednesday, December 22, 1993, 10:00 a.m.

Emergency Revised Agenda

Dewitt C. Greer Building, 125 East 11th Street, First Floor

Austin

According to the agenda summary, the Texas Transportation Commission will add a supplement to the agenda. contracts (additional project added to itemized lists); routine minute orders; disposition of existing Right-of-Way and Property; Dallas County-IH-635 at intersection with MacArthur Boulevard in the City of Irving, and authorize sale of surplus access rights.

Reason for Emergency: The emergency status was necessary as immediate action was required to prevent an undue immediate economic hardship and to protect the safety of the traveling public.

Contact: Diane L. Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463-8630

Filed: December 17, 1993, 2:59 p.m.

TRD-9333790

Regional Meetings

Meetings Filed December 16, 1993

The Johnson County Rural Water Supply Corporation Regular Board met at the JCRWSC Office, Highway 171 South, Cleburne, December 21, 1993, at 6:00 p.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646 TRD-9333745.

The Lubbock Regional MHRM Center Board of Trustees met at 1602 Tenth Street, Board Room, Lubbock, December 20,

1993, at noon. Information may be obtained from Gene Menefee, 1602 Tenth Street, Lubbock, Texas 79401, (806) 766-0202. TRD-9333744.

The Riceland Regional Mental Health Authority Board of Trustees met at 3007 North Richmond Road, Wharton, December 23, 1993, at 9:00 a.m. Information may be obtained from Marjorie Dornak, P.O. Box 869, Wharton, Texas 77488, (409) 532-3098. TRD-9333738.

The Sharon Water Supply Corporation Board of Directors met at the Office of Sharon Water Supply Corporation, Winnsboro, December 20, 1993, at 7:00 p.m. Information may be obtained from Gerald Brewer, Route 5, B0x 50361, Winnsboro, Texas 75494, (903) 342-3525. TRD-9333750.

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**Meetings Filed December 17,
1993**

The Bandera County Appraisal District Board of Directors met at 1116 Main Street, Former Bandera Building Bulletin Building, Bandera, December 21, 1993, at 8:15 a.m. Information may be obtained from P. H. Coates, P.O. Box 1119, Bandera, Texas 78003, (210) 796-3039, FAX (210) 796-3672. TRD-9333784.

The Gray County Appraisal District Appraisal Review Board met at 815 North Sumner, Pampa, December 22, 1993, at 4:00 p.m. Information may be obtained from Sherri Schaible, P.O. Box 836, Pampa, Texas 79066-0836. TRD-9333751.

The Kendall Appraisal District Board of Directors will meet at 121 South Main Street, Boerne, December 29, 1993, at 5:00 p.m. Information may be obtained from J. P. Davis, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012. TRD-9333756.

The Lampasas County Appraisal District Board of Directors will meet at 109 East Fifth Street, Lampasas, December 28, 1993, at 7:00 p.m. Information may be obtained from Janice Henry, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9333766.

The Middle Rio Grande Development Council Texas Review and Comment System will meet at the City Council Chambers, Corner of Main and Getty, Uvalde, December 21, 1993, at 1:00 p.m. Information may be obtained from Dora T. Flores, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9333791.

The Middle Rio Grande Development Council Board of Directors met at the Holiday Inn, Sage Room, Uvalde, December 22, 1993, at 1:00 p.m. (Revised agenda). Information may be obtained from Paul Edwards, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9333792.

The Middle Rio Grande Development Council Search Committee met at the Holiday Inn, Sage Room, 920 East Main, Uvalde, December 22, 1993, at 11:45 a.m. Information may be obtained from Paul Edwards, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9333793.

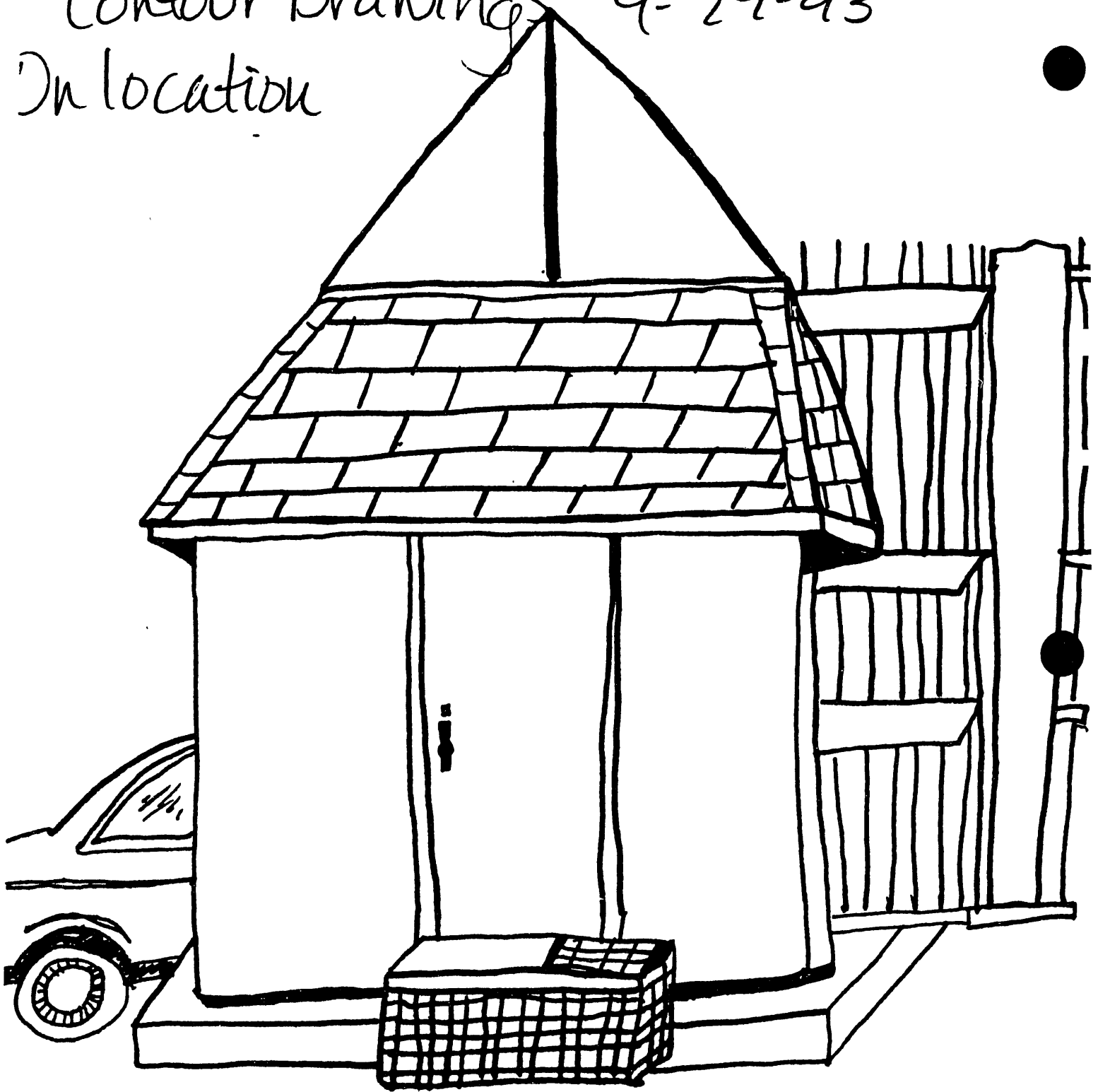
The Region III Education Service Center Board of Directors met at 1905 Leary Lane, Victoria, December 20, 1993, at 4:00 p.m. (Revised agenda). Information may be obtained from Julius D. Cano, 1905 Leary Lane, Victoria, Texas 77901, (512) 573-0731. TRD-9333765.

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**Meetings Filed December 20,
1993**

The Wood County Appraisal District Board of Directors will meet at 217 North Main, Conference Room, Quitman, December 27, 1993, at 1:30 p.m. Information may be obtained from W. Carson Wages or Lou Brooke, P.O. Box 518, Quitman, Texas 75783-0518. TRD-9333830.

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Contour Drawings 9-29-93
In location



Name: Jetonda Green
Grade: 9
School: Skyline High School, Dallas ISD

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Commission on Alcohol and Drug Abuse

Correction of Error

The Texas Commission on Alcohol and Drug Abuse submitted a notice of open meeting for the Board of Commissioners to meet on Tuesday, December 14, 1993, 8:30 a.m. The notice was published in the December 3, 1993, *Texas Register* (18 TexReg 8982).

An agenda item was published as "action on adoption of Committee activities". It should read "action on adoption of agency policies; report on Offender Credentialing Committee activities; report on Grant and Contract Review Committee activities".

Ark-Tex Council of Governments

Request for Proposal

The Ark-Tex Council of Governments (ARCOG) is soliciting proposals for the provision of training under Titles IIB, IIA, IIC, III, and IIA-8% of the Job Training Partnership Act (JTPA).

For the Title IIB Request for Proposal (RFP), allowable training activities may include, but are not limited to: Texas Academic Skills Program (TASP) and Texas Assessment of Academic Skills (TAAS) preparation; computer assisted instruction, basic education skills remediation; and/or English as a Second Language. The period of performance is June 1, 1994-September 30, 1994. The deadline for proposal submission is 5:00 p.m., February 14, 1994.

For the Title IIA, IIC and III RFP, allowable training activities may include: 1) assessment, classroom/skills training, and employer outreach (under Titles IIA, IIC and III); 2) job search assistance (under Title III); and out-of-school youth programs (under Title IIC). ATCOG reserves the right to exercise the option to extend services and/or extend the period of the contracts up to one year for activities funded by Titles IIA, IIC, and III. The period of performance is July, 1994-June 30, 1996. The deadline for proposal submission is 5:00 p.m., February 28, 1994.

Training must be provided by Texas Education Agency/Texas Higher Education Coordinating Board approved institutions that are either accredited independent school districts, community colleges or post-secondary institutions, of higher education; private businesses, trade, technical or vocational schools certified by TEA; the Texas State Technical College; or education service centers.

The service area includes the following counties in Texas: Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Morris, Red River, Titus.

In order to ensure that all respondents conference will be held at the Ark-Tex Council of Governments Conference Room, Building A, Centre West, 911 North Bishop Road, Texarkana, Texas on Tuesday, January 18, 1994.

Potential respondents may obtain a copy of the RFP, Scoring Guidelines and Procedures, and Project Scoring Criteria by contacting Genevieve Burtchell or Cindy Wright, Ark-Tex Council of Governments, P.O. Box 5307, Texarkana, Texas 75505, or call (903) 832-8636.

Issued in Texarkana, Texas, on December 14, 1993.

TRD-9333827

Margaret Haak-Muse
Director of Finance and Administration
Ark-Tex Council of Governments

Filed: December 20, 1993

Office of the Texas Attorney General

Texas Clean Air Act Enforcement

Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Clean Air Act. Section 382.096 of the Texas Health and Safety Code provides that before the state may settle a judicial enforcement action under the Clean Air Act, the state shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Clean Air Act.

Case Title and Court State of Texas v. Exhaust and Accessories Manufacturing Company, Incorporated and Robert Hapiuk, Cause Number 93-209 in the 235th District Court of Cooke County.

Nature of Defendant's Operations Exhaust and Accessories Manufacturing Company, Incorporated and Robert Hapiuk operated a chrome-plating company at a location North of U.S. 82 FM 1201 on the east side of FM 1201 in Gainesville, Texas approximately five miles from the Texas-Oklahoma border. This company is currently under bankruptcy.

Proposed Agreed Judgment The proposed agreed final judgment contains provisions for permanent injunctive relief prohibiting both defendants from violation Texas Natural Resource Conservation Commission Rule (TNRCC) §116.1 or any other TNRCC rule or the Texas Clean Air Act. For a complete description of the proposed settlement, the complete proposed agreed final judgment should be directed to Mehron Azarmehr, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, fac-

simile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

Issued in Austin, Texas, on December 16, 1989.

TRD-9333733 John Benedict
Assistant Attorney General
Office of the Texas Attorney General

Filed: December 16, 1993

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Comptroller of Public Accounts
Notice of Consultant Contract Award

Notice of Request for Proposals Pursuant to Chapter 2254, Subchapter B of the Government Code, the Comptroller of Public Accounts (Comptroller) announces its Request for Proposals (RFP) for consultant services to assist the Comptroller in the development of a system architecture plan for the proposed Consolidated Tax System of Texas (CONTACT). The purpose of the RFP is to obtain proposals regarding the review and development of findings, alternatives, and final recommendations to the Comptroller relating to a proposed system architecture design. The successful proposer will be required to review existing Comptroller system hardware and software, CONTACT system requirements, and other computer system applications which will remain upon implementation of CONTACT. The successful proposer will be expected to begin performance of the contract on or about March 7, 1994.

Contact Parties interested in submitting a proposal should contact the Comptroller of Public Accounts, Senior Legal Counsel's Office, 111 East 17th Street, Room G26, Austin, Texas 78774, (512) 475-0866, to obtain a complete copy of the RFP. The RFP will be available for pick-up at the above referenced address on Monday, December 27, 1993, between 2:00 p.m. and 5:00 p. m. Central Zone Time (CZT), and during normal business hours thereafter.

Closing Date Proposals must be received in the Senior Legal Counsel's Office no later than 4:00 p.m. (CZT), on Friday, February 4, 1994. Proposals received after this time and date will not be considered.

Award Procedure All proposals will be subject to evaluation by a committee based on the evaluation by a committee based on the evaluation criteria set forth in the RFP. The committee will determine which proposal best meets these criteria and will make a recommendation to the deputy comptroller, who will make a recommendation to the comptroller. The Comptroller of Public Accounts will make the final decision. A proposer may be asked to clarify its proposal, which may include an oral presentation prior to final selection.

The Comptroller of Public Accounts reserves the right to accept or reject any or all proposals submitted. The comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits the comptroller to pay for any costs incurred prior to the execution of a contract.

The anticipated schedule of events is as follows: Issuance of RFP - December 27, 1993, 2 p.m. (CZT); Mandatory Letter of Intent and Questions Due - January 7, 1994, 3:00 p.m. (CZT); Proposals Due - February 4, 1994, 4:00 p.m. (CZT); and Contract Execution - February 28, 1994, or as soon thereafter as possible.

Issued in Austin, Texas on December 20, 1993.

TRD-9333812 Tres Lorton, Senior Legal Counsel
Senior Legal Counsel
Comptroller of Public Accounts

Filed: December 20, 1993

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Office of Consumer Credit
Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04 as amended (Texas Civil Statutes, Articles 5069-1.04).

<u>Types of Rate Ceilings</u>	<u>Effective Period</u> (Dates are Inclusive)	<u>Consumer (1)/Agricultural/ Commercial (2) thru \$250,000</u>	<u>Commercial(2) over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	12/20/93-12/26/93	18.00%	18.00%

(1) Credit for personal, family or household use. (2) Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on December 13, 1993.

TRD-9333705 Al Endsley
Consumer Credit Commissioner

Filed: December 15, 1993

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Texas Education Agency
Correction of Error

The Texas Education Agency (TEA) submitted a notice of public hearing concerning regional public hearings to be conducted by the TEA and the Texas Higher Education Coordinating Board concerning the proposed State Plan for Federal Vocational Career and Technical Education Fiscal Year 1995-1996.

The date and time for the hearing to be held in the Board Room of the North Harris/Montgomery Community College District will *not* be on Wednesday, January 12, 1994, 1:00-3:00 p.m. as printed. The correct date and time for the hearing is Thursday, January 13, 1994, 10:00 a.m. to 12:00 Noon.

For additional information about the hearings contact Lorraine R. Merrick at (512) 463-9311.

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**Fire Fighters' Pension Commission
Custodianship, Consulting Services and
"Wrapped Fee" Request**

Notice of Invitation for Proposal. The Fire Fighters' Pension Commission (FPC) invites securities firms to submit proposals to provide the following services for the FPC Statewide Volunteer Fire Fighters' Retirement Fund:

	Type of Account	Investment Manager	Amount
A.	Fixed Income	Cisneros Asset Mgmt.	\$7.500 Million
B.	Equity - Growth	NWQ Investment Mgmt.	\$3.750 Million
C.	Equity - Value	Jurika & Voyles, Inc.	\$3.750 Million

Continuation of Services Previously Performed. The FPC custodian services are presently being provided by Bank One, Austin, Texas with consulting services provided by Performance Evaluation Services of Dallas, Texas. The FPC may or may not award a contract for services as described in this invitation.

Period of Performance. The period of performance is anticipated to begin April 1, 1994, and continue through March 31, 1997 (three-year contract).

Qualifications Desired by FPC. To qualify to provide services under Senate Bill 191, your firm must be a member or participant at Depository Trust Company. The firm must provide custodianship and consulting services for public pension funds of at least \$15 million. The firm must also provide a Wrap Fee proposal which includes consulting, custodianship and investment management fees.

Deadline for Submission. The response for this invitation for proposal must be received no later than February 11, 1994, at 5:00 p.m.

General Information. The FPC Board of Trustees reserves the right to reject for any reason any and/or all bids received as a result of this RFP. The bid shall be in the specific format prescribed herein and shall be sealed. This request does not commit the FPC to pay any costs incurred prior to the execution of a contract. Issuance of this invitation for proposal in no way obligates the FPC to award a contract or to pay any costs incurred in the preparation of a response.

Form and Format. Proposals are to be mailed or hand delivered with signature of receipt acknowledgement to: Helen L. Campbell, Commissioner, Fire Fighters' Pension

custodianship of a \$15 million fund, consulting services, and pricing for a "Wrapped Fee" account. Assets are presently allocated to 50% being with equity investment managers and 50% with fixed income investment managers. The FPC Board of Trustees requires at least two equity investment managers for the management of its funds. The Board also requires full consulting services including development of investment, objectives, investment policy review on an annual basis, evaluation and recommendation of investment managers on an ongoing basis, attendance at all meetings, and development of training workshops for Board members. For purposes of this request, securities firms are to quote on the following assets and asset allocations:

Commission, 3910 South IH-35, Suite 235, Austin, Texas 78704, (512) 462-0222.

Issued in Austin, Texas, on December 16, 1993.

TRD-9333785

Helen L. Campbell
Commissioner
Fire Fighters' Pension Commission

Filed: December 17, 1993

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**Texas Department of Health
Notice of Emergency Cease and Desist
Order**

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Transamerican Diagnostic Services, Inc. (registrant-R16019) of Midland to cease and desist from operating any source of radiation in Texas. The order will remain in effect until the bureau determines that all x-ray films taken by the registrant are being read by a physician licensed to practice the healing arts in Texas. Failure by the registrant to have the mammographic x-ray films read by a licensed physician results in unnecessary radiation applied to members of the public without any diagnostic benefit, and is an immediate threat to public health and safety. The registrant is further required to provide all records necessary to any bureau representative to ensure compliance with Texas radiation regulations, and to maintain those records for the bureau until disposal is authorized.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except

holidays).

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

TRD-9333834 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: December 20, 1993

Notice of Rescission of Order

Notice is hereby given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following order: Emergency Cease and Desist Order and Notice of Violation issued August 17, 1993, to Outer Limits Light and Sound, P.O. Box 1971, Waco, Texas 76703, holder of Certificate of Registration Number Z00868.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

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

TRD-9333835 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: December 20, 1993

Notice of Revocation of Certificates of Registration

The Texas Department of Health, having duly filed complaints pursuant to Texas Regulations for Control of Radiation, Part 13 (25 Texas Administrative Code §289.112), has revoked the following certificates of registration: Lake Cliff Hospital, Dallas, R00831, December 14, 1993; Frank Velez, Jr., D.D.S., De Soto, Texas R08086, December 14, 1993; Charles C. Bennett, D.D.S., Houston, Texas R08617, December 14, 1993; Anthony P. Sertich, D.D.S., San Antonio, Texas R08731, December 14, 1993; Woodson M. Tottenham, Jr., D.D.S., Houston, Texas R10936, December 14, 1993; Las Palmas Veterinary Hospital, Falfurrias, Texas R11696, December 14, 1993; Ernest L. Drake, D.D.S., Houston, Texas R15235, December 14, 1993; Garza County Medical Clinic, Inc., Post, Texas R15655, December 14, 1993; R. Larry Kauffman, D.D.S., Garland, Texas R17175, December 14, 1993; Canton Family Practice Clinic, Canton, Texas R17886, December 14, 1993; Rathjen Clinic, Garland, Texas R18091, December 14, 1993; Gainesville Family Chiropractic, Gainesville, Texas R18680, December 14, 1993; Fred Blythe, D.D.S., Dallas, Texas R19297, December 14, 1993.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

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

TRD-9333832 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: December 20, 1993

Notice of Revocation of Radioactive Material Licenses

The Texas Department of Health, having duly filed complaints pursuant to Texas Regulations for Control of Radiation, Part 13 (25 Texas Administrative Code §289.112), has revoked the following radioactive material licenses: Medical and Pathology Laboratory Services, Longview, Texas G01546, December 14, 1993; Welco, Inc., Albany, Texas L02077, December 14, 1993; Mesquite Wireline Service, Inc., Andrews, Texas L03911, December 14, 1993; Diagnostic Medicine, Inc., San Antonio, Texas L03993, December 14, 1993; Bandas Industries, Inc., Temple, Texas L04191, December 14, 1993.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

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

TRD-9333833 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: December 20, 1993

Texas Health and Human Services Commission

Public Notice

Description of Service. In accordance with the provisions of the Texas Government Code, Chapter 2252, Subchapter B, the Health and Human Services Commission (HHSC) announces its intent to procure consulting services. HHSC will manage and coordinate the consulting services for HHSC and the participating agencies who include the Texas Department of Health, Texas Department of Mental Health and Mental Retardation, Texas Early Childhood Intervention Council, Texas Commission for the Blind, Texas Employment Commission, and the Texas Education Agency. HHSC and the participating agencies are requesting advise and assistance in developing and implementing Medicaid claims for administrative activities performed by state and local staff in HHSC and participating agencies.

Closing Date. The Closing time and date for receiving proposals is 4:00 p.m. on January 17, 1994.

Terms and Amount. The contract will begin on February 1, 1994 and end on August 31, 1995 and will be for an amount to exceed \$300,000.

Selection and Evaluation. An evaluation committee selected by HHSC that will include representatives of HHSC and the participating agencies will review and score the proposals based on the criteria included in the Request for Proposals (RFP).

Reports Due A final report will be required at the end of Phase I of the project on March 31, 1994, and a final report will be required at the end of Phase II of the project on August 31, 1995.

Contact Person. A copy of the RFP will be provided if requested in writing to the attention of Debby Gardner, General Counsel, Health and Human Services Commis-

sion, P.O. Box 13247, Austin, Texas 78711. Written requests may be faxed to the attention of Debby Gardner, General Counsel, Health and Human Services Commission at FAX number (512) 502-3289.

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

TRD-9333836 Bryan P. Sperry
Deputy Commissioner
Texas Health and Human Services
Commission

Filed: December 20, 1993

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Texas Department of Insurance Company License

The following applications have been filed with the Texas Department of Insurance and are under consideration:

1. Application for name change in Texas for Dreyfus Life Insurance Company, a foreign life, accident, and health company. The proposed new name is AUSA Life Insurance Company, Inc. The home office is in New York, New York.
2. Application for name change in Texas for Sanus/New York Life Health Plan, Inc., a domestic health maintenance organization. The proposed new name is Sanus Health Plan, Inc. The home office is in Houston, Texas.
3. Application for name change in Texas for VASA Life Insurance Company, a foreign life, accident, and health company. The proposed new name is Seaboard Life Insurance Company (USA). The home office is in Indianapolis, Indiana.
4. Application for name change in Texas for The Central National Life Insurance Company of Omaha, a foreign life, accident, and health company. The proposed new name is The Central National Life Insurance Company. The home office is in Lincoln, Nebraska.

Issued in Austin, Texas, on December 17, 1993.

TRD-9333804 Linda K. von Quintus-Dorn
Chief Clerk

Texas Department of Insurance

Filed: December 17, 1993

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Notice

28 TAC §5.4002, concerning the Building Code Advisory Committee and 28 TAC §5.11000, concerning the definition of the term "small and medium-sized insurers", were considered by the State Board of Insurance and approved for publication on November 17, 1993. The Commissioner of Insurance has ratified the Board's approval of these rules and will consider the rules for adoption as noticed at a later date.

Issued in Austin, Texas, on December 17, 1993.

TRD-9333809 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Filed: December 17, 1993

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Notice of Hearing

In the December 7, 1993 issue of the *Texas Register* pages 9084-9087 the following four rules were published: Docket Number 2077, 28 TAC §1.414, concerning Maintenance Taxes, Docket Number 2078, 28 TAC §1.415, concerning Maintenance Taxes, Docket Number 2075, 28 TAC §7.1012, concerning Examination Expenses and Assessments, and Docket Number 2076, 28 TAC §25.718, concerning Annual Reports, Examinations and Assessments. These rules were scheduled to be heard January 4, 1994, at a public hearing. Please be advised that the date of the hearing is in error and that the actual hearing will be held January 10, 1993 at 8:30 a.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas.

Issued in Austin, Texas, December 17, 1993.

TRD-9333808 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Filed: December 17, 1993

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Texas Natural Resource Conservation Commission Correction of Error

The Texas Natural Resource Conservation Commission proposed an amendment to 30 TAC §114.21, concerning Employer Trip Reduction (ETR) Program. The rule was published in the December 10, 1993, *Texas Register* (18 TexReg 9167).

Due to a proofreading error by the *Texas Register* the fiscal statement in the preamble omits the word "no". The sentence should read as follows. "There will be *no* fiscal implications for state or local government as a result of enforcing or administering this rule." (Missing word in italics.)

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Enforcement Orders

An Agreed Enforcement Order was entered regarding Cody and Anita Lewis, Docket Number 9821-E, on December 13, 1993, assessing \$5,000 in administrative penalties with \$1,500 deferred. Stipulated penalties were also imposed.

Information concerning any aspect of this order may be obtained by contacting Maria Sanchez, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-2264.

Issued in Austin, Texas, on September 14, 1993.

TRD-9333711 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: December 15, 1993

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An Agreed Enforcement Order was entered regarding Moffitt Oil Company (TNRCC Facility I.D. 58332) on December 9, 1993, assessing \$540 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Raymond Winter, Staff Attorney, Texas Natural Resource Conservation Commission, P.O.

Box 13087, Austin, Texas 78711-3087, (512) 239-2053.

Issued in Austin, Texas, on December 17, 1993.

TRD-9333802

Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: December 17, 1993

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**Notice of Application For Waste
Disposal Permits**

Attached are Notices of Applications for waste disposal permits issued during the period of December 10-December 17, 1993.

These applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within 30 days of the date of newspaper publication of notice concerning the application(s).

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address and daytime phone number; the application number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or requests for hearing are filed, the Executive Director will sign the permit 30 days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing on this application should be submitted in writing to Kerry Sullivan, Assistant Chief Hearings Examiner, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7908.

Ashland Chemical, Inc.; a facility which blends and/or repackages bulk industrial chemicals for wholesale distribution; the plant site is at 3101 Wood Drive in the City of Garland, Dallas County, Texas; new; 03630.

City of Bells; the wastewater treatment facilities; are approximately 480 feet northwest of the intersection of U.S. Highway 69 and FM Road 1897, north of Bells in Grayson County, Texas; renewal; 10126-01.

Norman and Charlie Bentley; a cattle trailer cleaning facility; the plant site is North of the City of Merkel, two miles east of FM 126 on Taylor County Road 408 in Jones County, Texas; renewal; 02996.

Bruce Foods Corporation; a food processing facility; the food processing plant is at 8000 Ashley Road between

Dyer Street (Highway 54) and Railroad Drive Extension in the City of El Paso, El Paso County, Texas; renewal; 02518.

City of Colorado City; the primary treatment facility; is at 700 East Central Avenue, two blocks east of State Highway 163 at the intersection of East Central Avenue and Washington Street in Mitchell County, Texas; amendment; 10077-01.

E. I. Du Pont de Nemours and Company; the Victoria Plant, a facility manufacturing chemicals and plastics; the facility is one mile west of the intersection of FM Road 1686 with FM Road 404, approximately eight miles south of the City of Victoria, Victoria County, Texas; amendment; 00476.

City of Frisco; the Stewart Creek Wastewater Treatment Facilities; the facilities are approximately 2,500 feet south of FM Road 720, immediately southwest of the St. Louis-San Francisco Railroad crossing of Stewart Creek in Collin County, Texas; renewal; 10172-01.

City of Granger; a wastewater treatment facility; is approximately 1,300 feet south of FM Road 971 and one mile east of State Highway 95 in Williamson County, Texas; renewal; 10891-01.

Great Western Utilities Company; the Decker Hills Wastewater Treatment Facilities; the plant site is approximately 1.3 miles west of the intersection of Huffsmith-Dobbin Road and Hardin-Store Road in Montgomery County, Texas; renewal; 12587-01.

Kohler Company; a ceramic ware (bathroom fixtures) and fiberglass tubs manufacturing facility; the facility is in the northeast corner of the intersection of Highway 377 and FM 45 in the southwest corner of the City of Brownwood, Brown County, Texas; renewal; 02995.

James Traweck doing business as James Traweck #2 Dairy; a dairy operation; the dairy is on the east side of an unnamed County Road approximately one and three quarter miles west of FM Road 219 and one and three quarter miles south of FM Road 8 in Erath County, Texas; new; 03587.

Valley Municipal Utility District Number Two; the wastewater treatment facility and irrigation site; are on the west side of U.S. Highway 77-83 approximately two miles northwest of Olmito, Texas in Cameron County; Texas; renewal; 11348-01.

Viola Jones; the Seven Oaks Motel Complex Wastewater Treatment Facilities; the facilities are approximately 400 feet east of U.S. Highway 59 and 1,500 feet south of the U.S. Highway 59 bridge over Wills Creek within the City of Seven Oaks in Polk County, Texas; renewal; 12839-01.

J. C. Viramontes, Inc., doing business as Economy Laundries; a laundering facility which washes blue jean garments; the plant site is at 12651 Montana Avenue, approximately one mile east of the intersection of State Highway Loop 375 and Montana Avenue (U.S. Highway 62/180) east of the City of El Paso, El Paso County, Texas; amendment; 03165.

Crossroads Environmental Corporation; operation of two waste disposal wells and associated surface facility; the disposal wells are to be used for the disposal of commercial non-hazardous Class I wastes generated both on-site and from other sources; the proposed waste disposal wells and surface facility are to be approximately four miles east

of Conroe, on the northern flank of Conroe Field in Montgomery County, Texas; new; WDW-310 and WDW-315.

Kim Thomas Disposal Company; operation of a waste disposal well and associated surface facility, the disposal well is to be used for the disposal of commercial non-hazardous Class I wastes generated off-site and from a variety of manufacturing processes; the proposed waste disposal well and surface facility are to be located approximately four miles east of Perryton, in Ochiltree County, Texas; new; WDW-311.

Pride Refining, Incorporated; for two closed surface impoundments and a closed hazardous waste landfill; the closed hazardous waste landfill is identified in the permit application as Cells 1B, 2B, 3B, 4B, and 5B, with a surface area of 6.96 acres; the facility managed hazardous industrial solid wastes generated on-site from petroleum refining operations, the facility is located north of the City of Abilene, on the east side of U.S. Highway 277 in Jones County, Texas; new; HW-50125; 45 days.

Standard Industries, Inc., a closed landfill cell (Cell A) and two closed surface impoundments (Ponds A and H); the facility stores, processes, and disposes of industrial and hazardous wastes associated with on-site lead-acid battery manufacturing and reclamation; the hazardous waste management facility is located approximately one mile northwest of the intersection of Nelson Road and Pearsall Road, southwest of the City of San Antonio, Bexar County, Texas; amendment; HW-50118; 45 days.

Issued in Austin, Texas, on December 17, 1993.

TRD-9333801 Gloria A Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed December 17, 1993

Notice of Application For Waste Disposal Permits

Attached are Notices of Applications for waste disposal permits issued during the period of December 16, 1993.

These applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within 30 days of the date of newspaper publication of notice concerning the application(s).

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address and daytime phone number; the application number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application, a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or

requests for hearing are filed, the Executive Director will sign the permit 30 days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing on this application should be submitted in writing to Kerry Sullivan, Assistant Chief Hearings Examiner, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7908.

Mobil Oil U.S. Supply and Logistics; Application Number TA-7204 for a temporary permit to divert and use 40 acre-feet of water for a three-year period from the Red River, Red River Basin, for industrial purposes in Montague County. The proposed point of diversion is approximately 19 miles northwest of Montague, Montague, Texas.

Issued in Austin, Texas, on December 17, 1993.

TRD-9333753 Gloria A Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed December 17, 1993

Notice of Opportunity to Comment on Permitting Action-Application for Permits to Appropriate Public Waters of the State

Notices of Application for Permits to Appropriate Public Waters of the State of Texas for the Period December 13, 1993-December 17, 1993.

These applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within 30 days of the date of newspaper publication of notice concerning the application(s).

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address and daytime phone number; the application number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application which would satisfy your concerns and cause you to withdraw your request for hearing.

If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or requests for hearing are filed, the Executive Director will sign the permit 30 days after newspaper publication of this notice, or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing or questions concerning procedures should be submitted in writing to Bill Ehret, Assistant Chief Hearings Examiner, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Jerry Solomon; Application Number 12-3555B to amend Certificate of Adjudication Number 12-3555; Brazos River Basin; Eastland County.

JFB Farms, A Partnership; Application Number 12-3519A to amend Certificate of Adjudication Number 12-3619; Brazos River Basin; Comanche County.

Issued in Austin, Texas, on December 17, 1993.

TRD-9333803

Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: December 17, 1993

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Notice of Public Hearings on Proposed Revisions to Regulation V and the State Implementation Plan

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; 30 TAC §103.11(4); and 40 Code of Federal Regulations, §51.102 of the U.S. Environmental Protection Agency (EPA) regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission (TNRCC) will conduct public hearings to receive testimony concerning revisions to its rules and the Texas SIP.

The TNRCC proposes revisions to 30 TAC Chapter 115, concerning Control of Air Pollution from Volatile Organic Compounds (VOC); 30 TAC Chapter 101, concerning the General Rules; and the SIP in response to a requirement by EPA and the 1990 Federal Clean Air Act (FCAA) Amendments for states to develop and adopt the Rate of Progress (ROP) SIP. The Phase II ROP rules and SIP are the remaining reductions required to achieve and maintain a VOC emissions level that is 15% below the 1990 base-year emissions by 1996 in the Beaumont/Port Arthur (B/PA), Dallas/Fort Worth (D/FW), El Paso, and Houston/Galveston (H/G) ozone nonattainment areas. The rules affect some or all of the ozone nonattainment counties of Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller.

The TNRCC proposes revisions to §§115.10 and §101.1, concerning Definitions. The proposed changes add definitions for terms used in bakeries, offset printing, and wood coating, and revise the definition for continuous monitoring to add an allowance for data capture.

New rules and revisions to existing rules have been proposed in order to obtain the balance of the 15% reduction in VOC emissions required by the FCAA: §§115.121-115.129, Commercial Bakeries in D/FW, El Paso, and H/G; §§115.141-115.149, Industrial Wastewater (new) in D/FW, El Paso, and H/G; §§115.152-115.159, Municipal Landfills in El Paso and H/G; §§115.211-115.219, Marine Vessel Loading in H/G and Gasoline Terminals in D/FW, El Paso, and H/G; §§115.252-115.259, Reid Vapor Pressure in El Paso; §§115.352-115.359, Fugitive Monitoring in

D/FW; §§115.412-115.419, Acetone Replacement in D/FW, El Paso, and H/G; §§115.421-115.429, Wood Coatings in D/FW, El Paso, and H/G; §§115.541-115.549, Vessel Cleaning in D/FW and El Paso; and §§115.552-115.559, Dry Cleaners (new) in D/FW, El Paso, and H/G. Revisions are being proposed in response to a petition by the Texas Paper Industry Environmental Council to §115.127 to add an exemption for vent gas streams in the pulp and paper industry.

Sections 115.442-115.449, concerning Offset Printing, are proposed for the D/FW and H/G areas and for Ellis, Johnson, Kaufman, Parker, and Rockwall counties to minimize unfair competition in the D/FW Consolidated Metropolitan Area. New §§115.600-115.617, concerning Consumer Products, are proposed as statewide rules to obtain maximum rule effectiveness.

Revisions are proposed to §§115.132-115.139, concerning Water Separators, to extend the compliance date to May 31, 1995, to allow for coordination with the wastewater rules. Revisions are proposed to add new "once-in, always-in" language to allow the removal of control equipment under certain conditions in the following sections: §115.132, concerning Water Separators; §115.422, concerning Wood Coatings; §115.432, concerning Rotogravure and Flexigraphic Printing; and §115.532, concerning Pharmaceuticals.

Public hearings on the proposal will be held at the following times and locations: January 24, 1994, 7:00 p.m., City of Houston Pollution Control Building Auditorium, 7411 Park Place Boulevard, Houston, Texas; January 26, 1994, 6:00 p.m., City of El Paso Council Chambers, 2 Civic Center Plaza, El Paso; and January 27, 1994, 7:00 p.m., Irving Central Library, 801 West Irving Boulevard, Irving, Texas.

The hearings are structured for the receipt of oral or written comments by interested persons. Interrogation or cross-examination is not permitted; however, a TNRCC staff member will discuss the proposal 30 minutes prior to each hearing and will be available to answer questions informally.

Written comments not presented at the hearings may be submitted to the TNRCC central office in Austin through February 11, 1994. Material received by the TNRCC Regulation Development Section by 4:00 p.m. on February 11, 1994 will be considered by the Commission prior to any final action on the proposal. Copies of the proposal are available at the central office of the TNRCC located at 12118 North IH 35, Park 35 Technology Center, Building E, Austin. Please mail written comments to Amba Mann, Regulation Development Section, Office of Air Quality, P.O. Box 13087, Austin, Texas 78711-3087. For further information contact Amba Mann at (512) 239-1930.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 475-2245. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on December 17, 1993.

TRD-9333814

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

Filed: December 20, 1993

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Texas State Board of Examiners of Psychologists

Correction of Error

The Texas State Board of Examiners of Psychologists proposed amendments to 22 TAC §463.8, concerning Subdoctoral Certification/Licensure Requirements, and the adoption of an amendment to 22 TAC §463.5, concerning Applications. The rules appeared in the November 26, 1993, issue of the *Texas Register* (18 TexReg 8746 and 8788).

In the first sentence of the preamble the word "Education" was omitted. The sentence should read as follows. "The Texas State Board of Examiners of Psychologists proposes an amendment to §463.8, concerning Subdoctoral Certification/Licensure *Education* Requirements." (Missing word is italicized.)

In §463.8, first sentence, the word "semester" was omitted. The sentence should read as follows. "The Board requires a master's degree which is primarily psychological in nature of at least 42 *semester* credit hours for...."

In the first paragraph of the preamble to §463.5 the reference to §463.5(1) was omitted. The sentence should read as follows. "The following paragraphs are being adopted with changes (I), (1)(D), (4)(C), and (4) (H)."

Public Utility Commission of Texas

Notice of Intent to File Pursuant to Public Utility Commission, Substantive Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer specific PLEXAR-custom service for the City of Harlingen, Texas.

Docket Title and Number. Application of Southwestern Bell Telephone Company for approval of Plexar-Custom Service for the City of Harlingen pursuant to Public Utility Commission Substantive Rule 23.27(k) Docket Number 12564.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for the City of Harlingen. The geographic service market for this specific service is the Rio Grande Valley area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on December 16, 1993.

TRD-9333747 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: December 16, 1993

Notice of Proposed Revisions to Annual and Semi-Annual Earnings Reports

The staff of the Public Utility Commission of Texas (PUC) is proposing several revisions to the annual and semi-annual Earnings Reports required under §23.11(o) and §23.12(b)(2). Pursuant to §22.80, notice of this proposed change is being published for purposes of inviting public comment on the proposed revisions. After public comment has been received, the PUC staff will make a recommendation for consideration by the Commission in open meeting. If approved by the Commission, the changes would become effective beginning with the Earnings Reports for calendar year 1993 which are due to be filed in April 1994.

A detailed written description of the proposed revisions is available for review in the Central Records office of the Commission. The file reference is Project Number 9418 (Earnings Monitoring). Persons wishing to comment on the proposed revisions should submit five copies of any written comments by Friday, January 14. Written comments should make clear reference to Project Number 9418 and should be addressed to James Galloway, Commission Filing Clerk, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757.

After all written comments have been received the PUC staff will prepare a written summary of the comments and will prepare a recommendation for consideration by the Commission. A copy of the staff summary and recommendation will be available for review in the PUC Central Records office prior to final consideration by the Commission in open meeting.

The PUC staff believes that most of the proposed revisions to the Earnings Reports are relatively minor. However, there are several proposed revisions that may be considered significant. In the opinion of the PUC staff, the significant changes proposed are as follows:

1. Schedules detailing the beginning and average balances for invested capital would be eliminated. Invested capital accounts would be reported on an end-of-period basis only, and the calculation of earned rates of return would likewise be based on an ending balance of invested capital. This change would apply to the Earnings Reports for telephone utilities and electric investor-owned utilities.
2. The tax rates used in the calculation of federal income tax expense would change. The tax rate would change to 35% in the Earnings Report for electric investor-owned utilities and to "the applicable tax rate" in the Earnings Report for telephone utilities.

3. The general question pertaining to expenses for post-retirement benefits other than pensions (OPEB expenses) would be revised. The disclosure of actual cash payments related to OPEB costs would be required for all companies reporting OPEB expenses on an accrual basis in the Earnings Report. This change would affect the Earnings Reports for telephone utilities and electric investor-owned utilities.

4. The general question pertaining to OPEB expenses, as proposed for the Telephone Utility Earnings Report and the Electric Investor-Owned Utility Earnings Report, would be added to the Earnings Report for Electric Cooperatives and River Authorities.

5. A general questions would be added to the Electric Investor-Owned Utility Earnings Report seeking the following data for the reporting period:

- (a) reconcilable fuel revenues;
- (b) reconcilable off-system sales revenues;
- (c) reconcilable purchase power expense;
- (d) reconcilable fuel expense;
- (e) reconcilable off-system sales expense; and
- (f) over/under recovery for the reporting period.

6. A second column of data would be added to Schedule IVa of the Earnings Report for electric investor-owned utilities which would require the disclosure of alternative minimum taxable income (AMTI), where applicable, for each member of an affiliated group that files a consolidated federal tax return.

Issued in Austin, Texas, on December 17, 1993.

TRD-9333794

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

Filed: December 17, 1993



State Board of Examiners for Speech- Language Pathology and Audiology Correction of Errors

The State Board of Examiners for Speech-Language Pathology and Audiology adopted on an emergency basis new 22 TAC §§741.2, 741.61, 741.62, 741.65, 741.66, 741.81, 741.82, 741.85-741.87, 741.103, 741.143, and 741.181, concerning Speech Language Pathologists and Audiologists. The rules appeared in the November 16, 1993, *Texas Register* (18 TexReg 8421).

In §741.2 under the definition for "Practice of speech-language pathology" the last word "rehabilitation" should be "habilitation."

In §741.64(o), language was inadvertently deleted. The subsection should read as follows. "(o) An intern ... as described in §741.143 of this title (relating to Issuance of a License) and may be renewed as described in §741.162 of this title (relating to General)."

In §741.81(9)(G) the word "and" is missing. For clarity the subsection should read as follows. "(G) Degrees and/or course work received at foreign universities shall be acceptable only if such course work *and* clinical practicum...."

In §741.82(h), the word "if" is missing. For clarity the subsection should read as follows. "(h) An applicant ... by the American Speech-Language-Hearing Association Educational Standards Board will receive automatic approval *if* the program director verifies that all...".

In §741.103(b)(1)(D), the subsection should read as follows. "(D) a statement that the applicant understands that fees submitted in the licensure process are nonrefundable; and".

In §741.103(e), the reference to "\$741.85 of this title" is incorrect. The reference should be "\$741.84 of this title (relating to Requirements for a Licensed Associate in Audiology)".



itour Drawing 10-7-93

Cloth (Hatches)



Name: Jetonda Green
Grade: 9
School: Skyline High School, Dallas ISD

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1994 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1994 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on March 11, July 22, November 11, and November 29. A asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
1 Tuesday, January 4	Wednesday, December 29	Thursday, December 30
2 Friday, January 7	Monday, January 3	Tuesday, January 4
3 Tuesday, January 11	Wednesday, January 5	Thursday, January 6
4 Friday, January 14	Monday, January 10	Tuesday, January 11
5 Tuesday, January 18	Wednesday, January 12	Thursday, January 13
Friday, January 21	1993 ANNUAL INDEX	
6 Tuesday, January 25	Wednesday, January 19	Thursday, January 20
7 Friday, January 28	Monday, January 24	Tuesday, January 25
8 Tuesday, February 1	Wednesday, January 26	Thursday, January 27
9 Friday, February 4	Monday, January 31	Tuesday, February 1
10 Tuesday, February 8	Wednesday, February 2	Thursday, February 3
11 Friday, February 11	Monday, February 7	Tuesday, February 8
12 Tuesday, February 15	Wednesday, February 9	Thursday, February 10
13 Friday, February 18	Monday, February 14	Tuesday, February 15
14 Tuesday, February 22	Wednesday, February 16	Thursday, February 17
15 *Friday, February 25	Friday, February 18	Tuesday, February 22
16 Tuesday, March 1	Wednesday, February 23	Thursday, February 24
17 Friday, March 4	Monday, February 28	Tuesday, March 1
18 Tuesday, March 8	Wednesday, March 2	Thursday, March 3
Friday, March 11	NO ISSUE PUBLISHED	
19 Tuesday, March 15	Wednesday, March 9	Thursday, March 10
20 Friday, March 18	Monday, March 14	Tuesday, March 15
21 Tuesday, March 22	Wednesday, March 16	Thursday, March 17
22 Friday, March 25	Monday, March 21	Tuesday, March 22
23 Tuesday, March 29	Wednesday, March 23	Thursday, March 24
24 Friday, April 1	Monday, March 28	Tuesday, March 29
25 Tuesday, April 5	Wednesday, March 30	Thursday, March 31
26 Friday, April 8	Monday, April 4	Tuesday, April 5
27 Tuesday, April 12	Wednesday, April 6	Thursday, April 7
Friday, April 15	FIRST QUARTERLY INDEX	
28 Tuesday, April 19	Wednesday, April 13	Thursday, April 14
29 Friday, April 22	Monday, April 18	Tuesday, April 19

30 Tuesday, April 26	Wednesday, April 20	Thursday, April 21
31 Friday, April 29	Monday, April 25	Tuesday, April 26
32 Tuesday, May 3	Wednesday, April 27	Thursday, April 28
33 Friday, May 6	Monday, May 2	Tuesday, May 3
34 Tuesday, May 10	Wednesday, May 4	Thursday, May 5
35 Friday, May 13	Monday, May 9	Tuesday, May 10
36 Tuesday, May 17	Wednesday, May 11	Thursday, May 12
37 Friday, May 20	Monday, May 16	Tuesday, May 17
38 Tuesday, May 24	Wednesday, May 18	Thursday, May 29
39 Friday, May 27	Monday, May 23	Tuesday, May 24
40 Tuesday, May 31	Wednesday, May 25	Thursday, May 26
41 *Friday, June 3	Friday, May 27	Tuesday, May 31
42 Tuesday, June 7	Wednesday, June 1	Thursday, June 2
43 Friday, June 10	Monday, June 6	Tuesday, June 7
44 Tuesday, June 14	Wednesday, June 8	Thursday, June 9
45 Friday, June 17	Monday, June 13	Tuesday, June 14
46 Tuesday, June 21	Wednesday, June 15	Thursday, June 16
47 Friday, June 24	Monday, June 20	Tuesday, June 21
48 Tuesday, June 28	Wednesday, June 22	Thursday, June 23
49 Friday, July 1	Monday, June 27	Tuesday, June 28
50 Tuesday, July 5	Wednesday, June 29	Thursday, June 30
51 *Friday, July 8	Friday, July 1	Tuesday, July 5
Tuesday, July 12	SECOND QUARTERLY INDEX	
52 Friday, July 15	Monday, July 11	Tuesday, July 12
53 Tuesday, July 19	Wednesday, July 13	Thursday, July 14
Friday, July 22	NO ISSUE PUBLISHED	
54 Tuesday, July 26	Wednesday, July 20	Thursday, July 21
55 Friday, July 29	Monday, July 25	Tuesday, July 26
56 Tuesday, August 2	Wednesday, July 27	Thursday, July 28
57 Friday, August 5	Monday, August 1	Tuesday, August 2
58 Tuesday, August 9	Wednesday, August 3	Thursday, August 4
59 Friday, August 12	Monday, August 8	Tuesday, August 9
60 Tuesday, August 16	Wednesday, August 10	Thursday, August 11
61 Friday, August 19	Monday, August 15	Tuesday, August 16
62 Tuesday, August 23	Wednesday, August 17	Thursday, August 18
63 Friday, August 26	Monday, August 22	Tuesday, August 23
64 Tuesday, August 30	Wednesday, August 24	Thursday, August 25
65 Friday, September 2	Monday, August 29	Tuesday, August 30
66 Tuesday, September 6	Wednesday, August 31	Thursday, September 1
67 *Friday, September 9	Friday, September 2	Tuesday, September 6
68 Tuesday, September 13	Wednesday, September 7	Thursday, September 8

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