Texas Register

Volume 17, Number 50, July 3, 1992 Page 4709-4832

In This Issue...

CONTENTS CONTINUED INSIDE

Texas Register, ISSN 0362-4781, is published semi-weekly 100 times a year except February 28, November 6, December 1, December 29, 1992. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78711. Subscriptions 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.

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

Information Available: The ten 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Withdrawn Sections - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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 accumulative 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 a 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 17 (1992) is cited as follows: 17 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: "17 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 17 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, Austin. Material can be found using *Texas Register* indexes, the *Texas Administration Code*, section numbers, or TRD number.

Texas Administrative Code

The *Texas Administrative Code* (TAC) is the approved, collected volumes of Texas administrative rules.

How to Cite: Under the TAC scheme, each agency 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 rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

Texas Register Art Project

This program is sponsored by the *Texas Register* to promote the artistic abilities of Texas students, grades K-12, and to help students gain an insight into Texas government. The artwork is used to fill otherwise blank pages in the *Texas Register.* The blank pages are a result of the production process used to create the *Texas Register.* The artwork does not add additional pages and does not increase the cost of the *Texas Register.*

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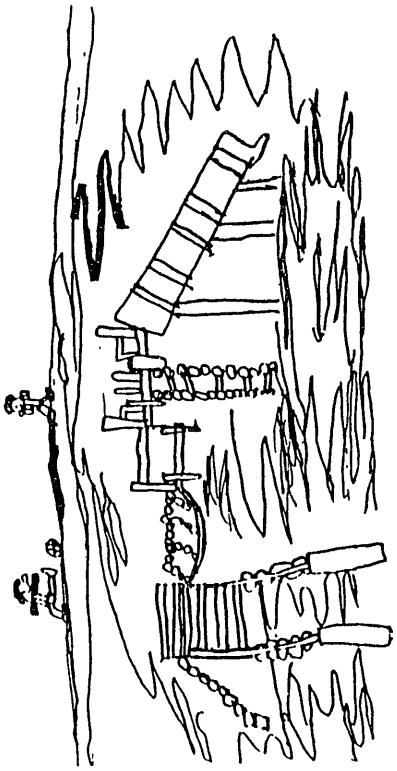

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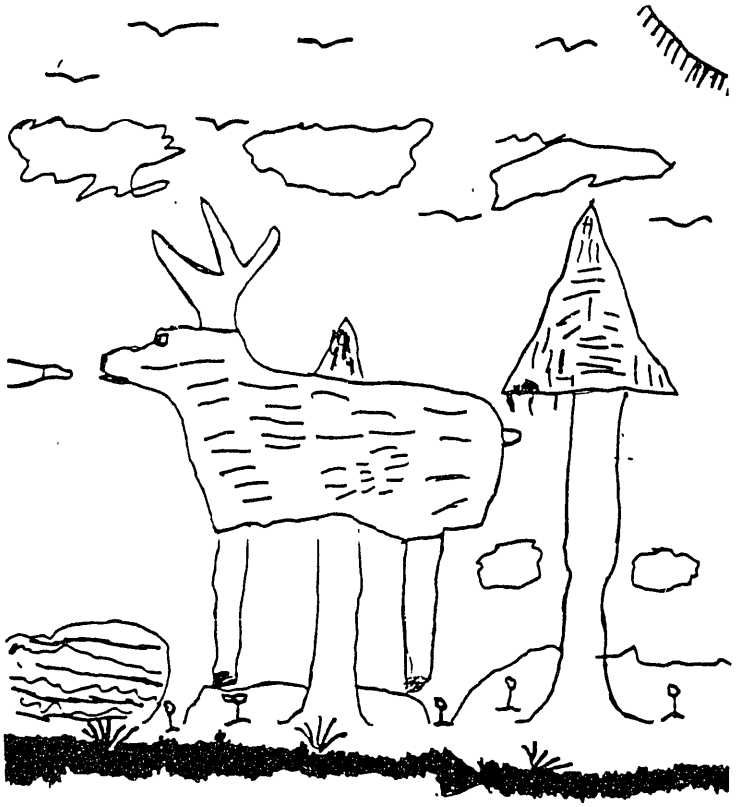

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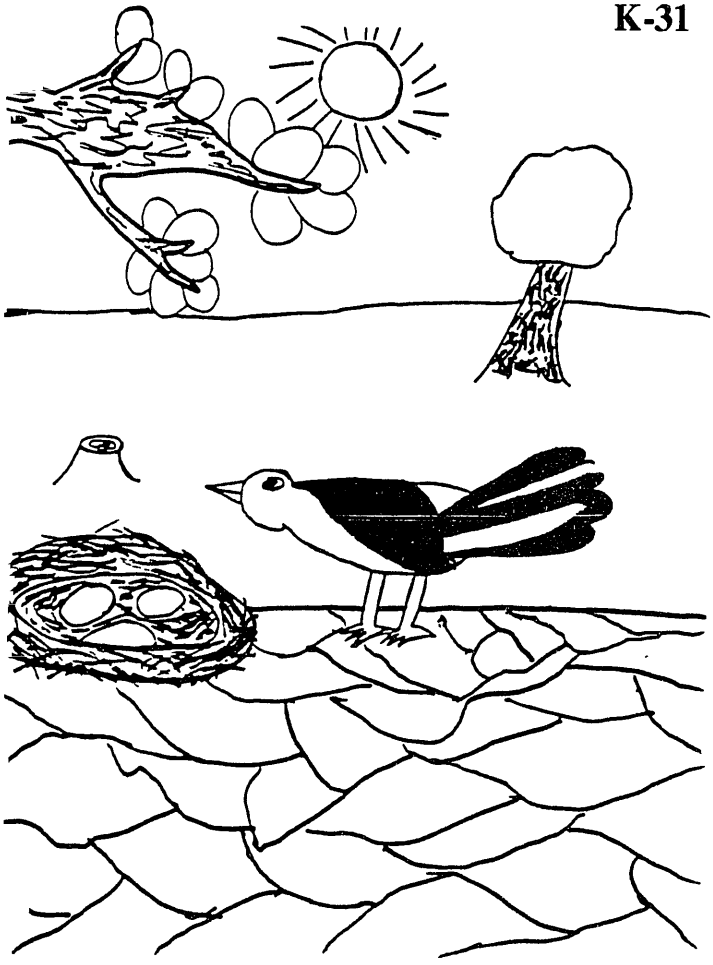

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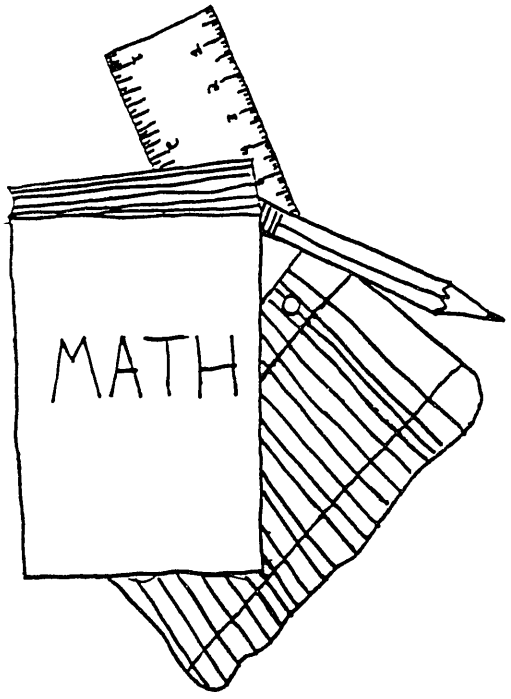

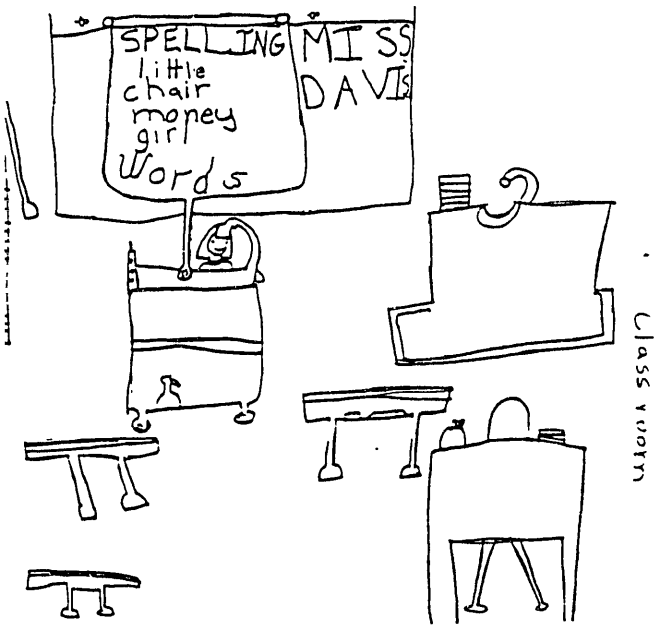

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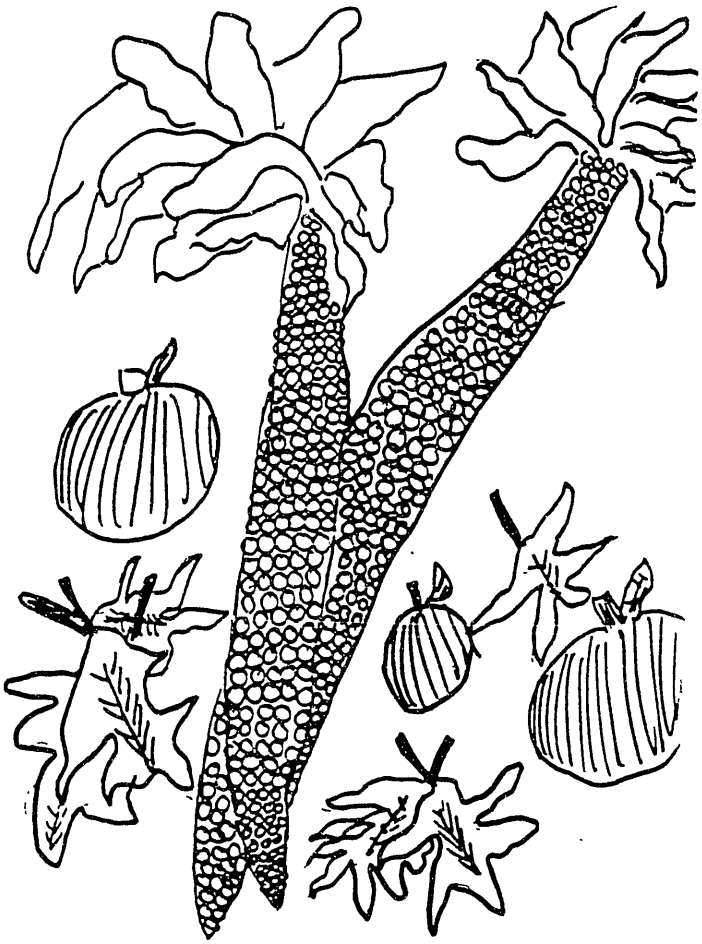

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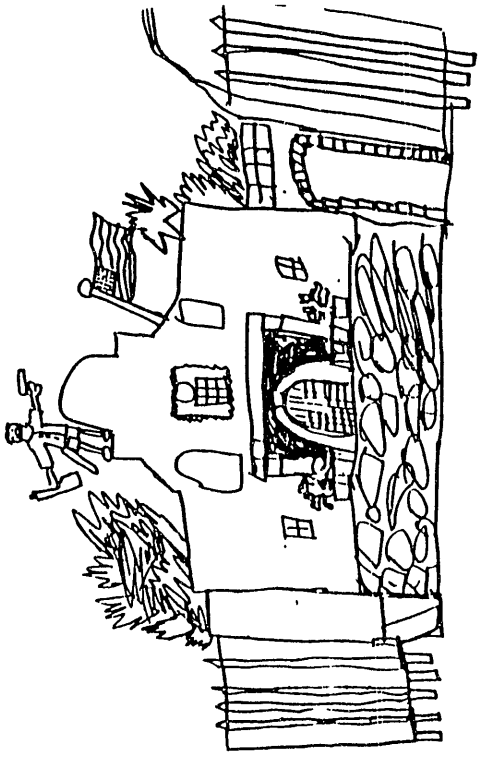

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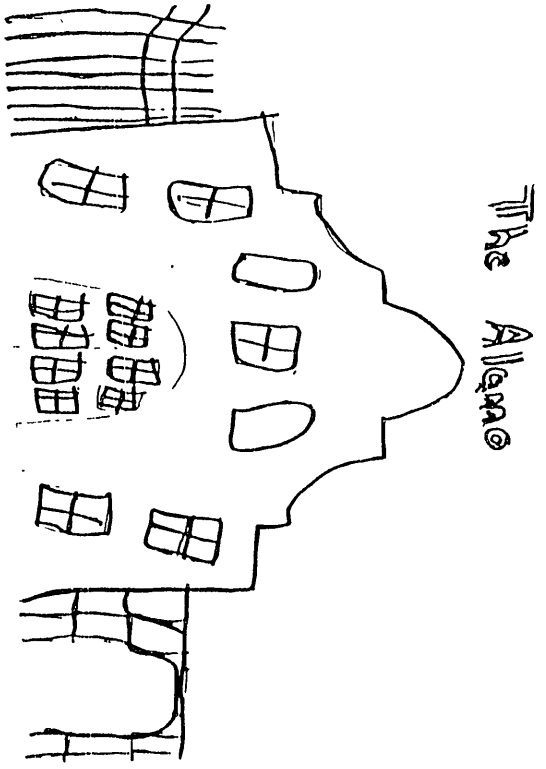

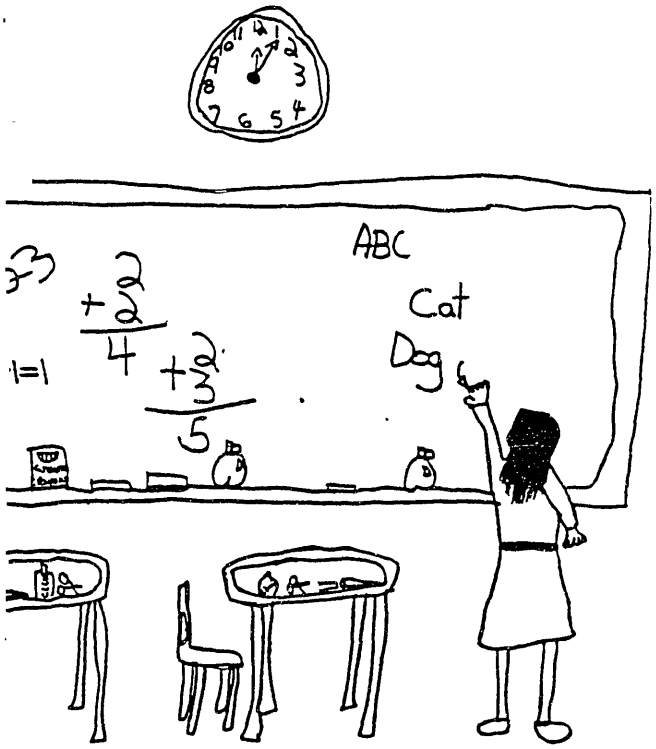

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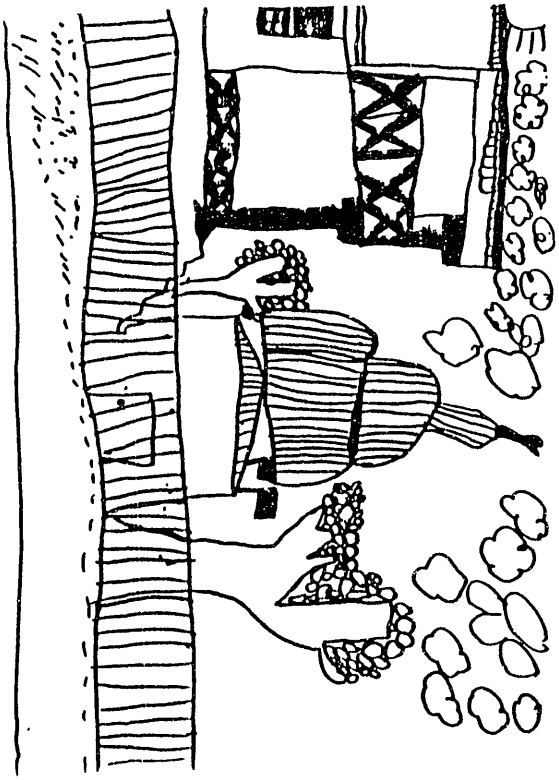

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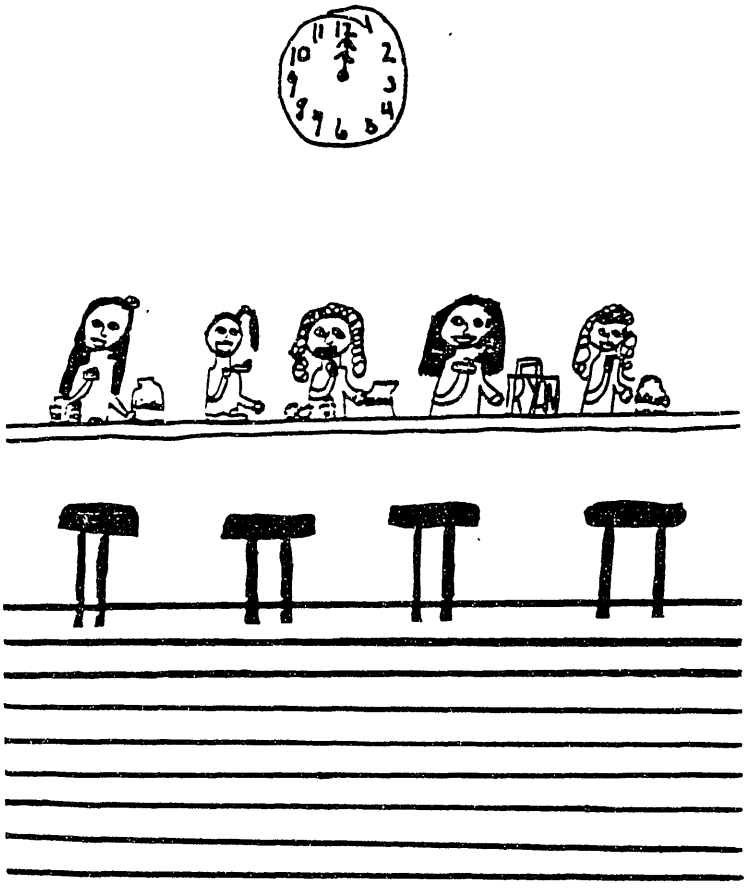


The Texas Register Readers Choice Award starts TODAY!

Beginning in this issue you will be able to VOTE for what you think is the best of the 1991-1992 school art project submissions. The first category to be published will be kindergarten through third grade. You will have over 100 pictures in this category to choose from. The pictures are labeled first by the category, and then by a number reflecting the individual piece. For example "K-1" will indicate that the picture was drawn by a student in grades K-3. The one indicates the first picture in the group. You will be able to vote as often as you would like. Simply fill out the attached form, and mail it to the Texas Register, Roberta Knight, P.O. Box 13824, Austin, Texas 78711-3824.

The Secretary of State, Texas Register staff will then tabulate the votes and announce the winners in the fall of 1992.

The artwork does not add additional pages and does not increase the cost of the Texas Register.

1991 - 1992 Texas Register Readers Choice Award.
Category K-3

Please enter my vote for the "best of the best" in the K-3 Category.

Picture #K-_____.
Picture #K-_____.
Picture #K-_____.

Optional Information:

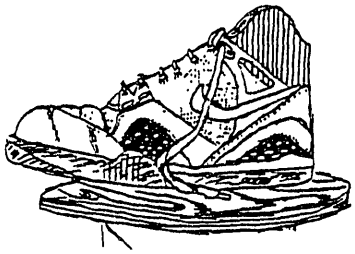
Subscription #:_____

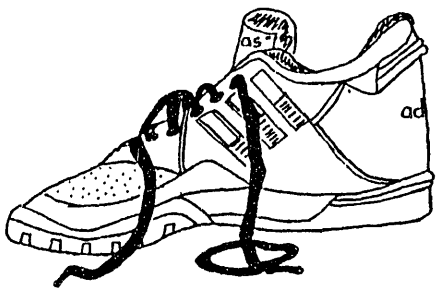
Name:_____

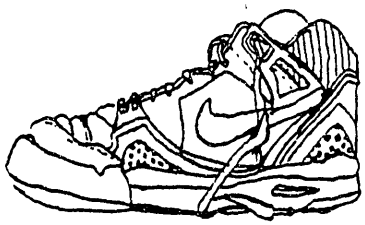
Organization:_____

Please return this form to: Texas Register, P.O. Box 13824, Austin, TX 78711-3824.
For more information contact Roberta Knight (512) 463-5561.

Lets get started on the right foot!







The Governor

As required by Texas Civil Statutes, Article 6252-13a, §6, the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1814.

Appointments Made June 22, 1992

To be a member of the **Veterans Land Board** for a term to expire December 29, 1996: Jesse D. Martin of Lubbock. Mr. Martin is filling the unexpired term of Jonathan Rogers of El Paso who resigned; therefore, his term will expire December 29, 1992:

Appointments Made June 25, 1992

To be a member of the **Texas Advisory Board of Occupational Therapy** for a term to expire February 1, 1997: Stacy Dinkowitz-Beyer, 10024 Oakwood Drive, El Paso, Texas 79924. Ms. Dinkowitz-Beyer will be replacing Peggy Pickens of Houston, whose term expired.

To be a member of the **Texas Advisory Board of Occupational Therapy** for a term to expire February 1, 1997: Esperanza Juarez Brattin, 604 Heron, McAllen, Texas 78504. Ms. Brattin will be replacing Marianne Punchard of Waco, whose term expired.

To be a member of the **Texas Board on Aging** for a term to expire February 1, 1993: Elena Bastida Gonzalez, 707 West Sam Houston, Pharr, Texas 78577. Dr. Gonzalez will be filling the unexpired term of Nadine Francis of Austin, whose term expired.

To be a member of the **Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids** for a term to expire December 31, 1997: Diane Cecile Shaffer, P.O. Box 7590, Beaumont, Texas 77726. Ms. Shaffer will be replacing George Holland, Jr. of Lubbock, whose term expired.

To be a member of the **State Committee of Examiners For Speech-Language Pathology and Audiology** for a term to expire August 31, 1993: Teri Mata-Pistokache, P.O. Box 720256, McAllen, Texas 78504. Ms. Mata-Pistokache will be filling the unexpired term of Marilyn Duncan of Dallas, who resigned.

To be a member of the **Texas Commission For the Deaf and Hearing Impaired** for a term to expire January 31, 1997: Valerie Newell Johnson, 1204 Guthrie Drive, Waco, Texas 76710. Mrs. Johnson will be replacing Ann M. Phillips of Dallas, whose term expired.

To be a member of the **Texas Commission For the Deaf and Hearing Impaired** for a term to expire January 31, 1993: Delores Elaine Erlandson, 803 West 15th Street, Big Spring, Texas 79720. Ms. Erlandson will be filling the unexpired term of Melinda McKee of Waco, who resigned.

To be a member of the **Environmental Advisory Committee** to the Texas Transportation Commission for a term at the pleasure of the Governor: Mary O'Boyle English, P.O. Box 103, Stonewall, Texas 78671. Ms. English is being appointed to a new position pursuant to Texas Civil Statutes, Article §6673g.

To be a member of the **Environmental Advisory Committee** to the Texas Transportation Commission for a term at the pleasure of the Governor: Hector J. Gonzalez, 615 Willow, San Antonio, Texas 78202. Mr. Gonzalez is being appointed to a new position pursuant to Texas Civil Statutes, Article §6673g.

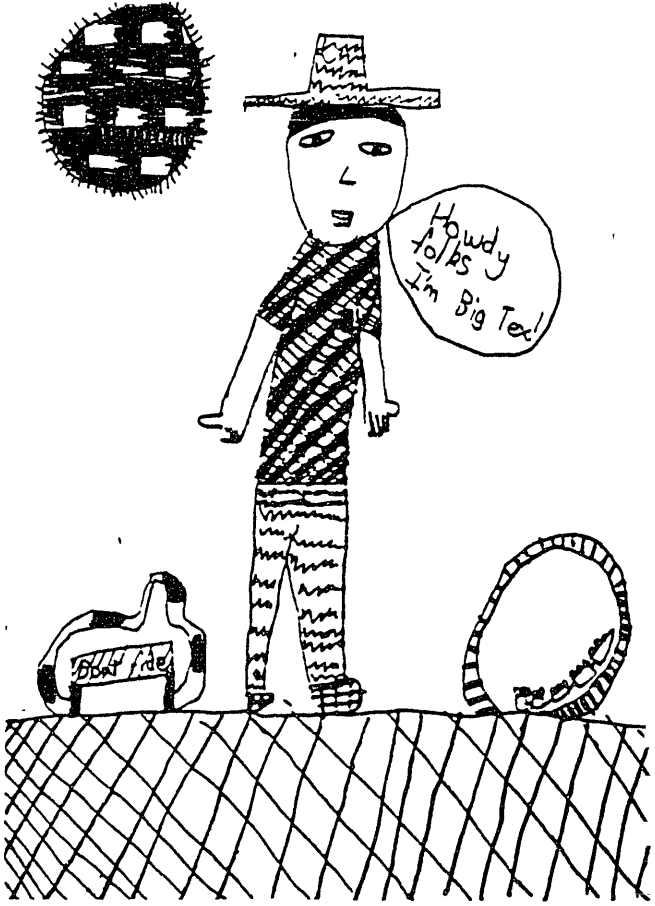
Issued in Austin, Texas, on June 26, 1992.

TRD-9208855 Ann W. Richards
Governor of Texas

♦ ♦ ♦


State
Fair Of
Texas
Taffy

K-1


Howdy
folks
I'm Big Tex!
Ferris Wheel

K-2

K-3

K-4

Texas Ethics Commission

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

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

Opinion Requests

AOR-56. The Texas Ethics Commission has been asked to consider whether a general-purpose committee may make a contribution to an out-of-state employee group for the purpose of providing the minimum funds required by the other state for the employee group to register as a political action committee in such other state. The contribution would be made prior to the formation of the out-of-state political action committee, but will be held on deposit for the benefit of the political action committee when it becomes registered with the other state.

If the contribution is permissible, the requestor asks, does the out-of-state employee group come within the definition of a "general-purpose committee."

AOR-57. The Texas Ethics Commission has received a request for an advisory opinion from a state agency that has received promotional discount coupons for distribution to its employees for use at amusement parks. The agency does not regulate the donors. The agency has asked whether it may distribute such coupons to its employees.

AOR-58. A nonprofit organization has asked the Texas Ethics Commission a number of questions about the Government Code, Chapter 305.

The organization and a number of its employees are registered under Chapter 305. If an employee-registrant makes expenditures that are reimbursed by the organization, are those expenditures attributable to the organization, the employee, or both?

If two registrants work together but neither "employs or retains" the other, must the registrants list each other under §305.005(f)(5)?

Is a member of the nonprofit organization who communicates with members of the executive or legislative branch on the organization's behalf required to register if he receives no compensation for such communication?

Is a person described in the preceding question required to register if the organization's interest coincides with an interest of his employer?

Are members of a nonprofit organization "clients" for purposes of §305. 005(j)?

AOR-59. The Texas Ethics has been asked 10 questions, all of which relate to activities in connection with a sporting event. The organization hosts a reception-with food, beverages, and entertainment-to which all legislators and various numbers of the executive branch are invited. Those officials (and their companions) are admitted free, but the organization charges others to attend the reception. The organization provides two tickets to the sporting event to each legislator and member of the executive branch. The organization may provide transportation between a hotel and the sporting event. The organization funds the event through corporate underwriting. Members of the organization generally make contributions earmarked for the event.

Would all of the expenditures for the reception, food, beverages, entertainment, tickets, and transportation be reported under §305.0062(d)? If not, how?

Would any of the expenditures be reported by type, under §305.006?

Are expenditures for the reception to be allocated between food and beverages and entertainment?

Are tickets to a sporting event to be reported as "gifts" or "entertainment? "

Are corporate underwriters required to register and report any activity?

If so, are expenditures reported by corporate underwriters also to be reported by the nonprofit organization?

Do the allocation requirements of §305.0061(f) and §305.0062(a)-(d) apply to the expenditures in question? If so, in what manner should these allocations be made?

If other registrants are present at the activities in question or if other registrants "underwrite" any of these activities, should any of the expenditures be allocated to these other registrants?

Do §305.024(a)(3) and §305.025(3) and (4) prohibit the nonprofit organization from providing transportation to and from the city where the sporting event takes place?

Is bus transportation from a hotel to a sporting event "of incidental value? "

AOR-60. The Texas Ethics Commission has been asked whether the presence of any member of a nonprofit organization satisfy the requirements of §305.006(f) and §305.024(a)(7), or is a registrant required to be in attendance?

AOR-61. The Texas Ethics Commission has been asked three questions, all of which relate to luncheons sponsored by the nonprofit organization in various Texas cities. The organization invites a member of the executive or legislative branch to a luncheon. The organization provides lunch, parking expenses, and a memento. The organization may pay the cost of transportation between Austin and the site of the luncheon as well as the cost of transportation between the airport to the luncheon site. The official would provide a "substantive address" or answer questions.

Would expenditures for transportation be permissible under §305.025(3) or (4)?

Is the entire cost of the luncheon event, or only the expenditures attributable to the official, reportable? Does the answer change if more than one official attends the luncheon?

If registrants other than those employed by the nonprofit organization present at the luncheon, are any expenses attributable to them?

AOR-62. The Texas Ethics Commission has been asked to consider several questions about the application of the Government Code, §305.026. The requestor first asks about the time period covered by the $50 cap set out in subsection (a). The second question is whether the exception set out in subsection (c) can apply to a person hired by a statewide association. The third question is about the definition of the term "eligible political subdivision" in subsection (d).

AOR-63. The Texas Ethics Commission has been asked to consider the following questions.

Hypothetical #1. A registrant provides lodging to the wife and children of a legislator who is not present. The registrant is present. The lodging is in a resort area in another state. The legislator's family provides their own transportation but the registrant provides the lodging (owned by the registrant), which is not related to a conference or fact finding mission.

Question #1. Is there any prohibition in Senate Bill 1, particularly §305. 024, that bars expenditures by a registrant for lodging for a family member of a legislator?

Question #2. Is the expenditure for lodging required by law to be reported? The Penal Code, §36.10 (Gift to a Public Servant) contains certain exclusions referring to whether the donor or donee is required by law to report an item. For the purpose of this question, assume the registrant is present and the family members are there as guests. Is the lodging expenditure required to be reported under law and does it meet the exclusions under §36. 10(b)(c)?

Question #3. Is the member of the legislature required to report the lodging expenditure for his family under Article 6252-9b and, if so, under what category? Specifically, is the expenditure reported as a gift or under some other category or description?

Hypothetical #2. A registrant spends money for food and beverages for the family of a member of the legislature. The registrant and the family members are present but the legislator is not.

Question #1. Is the expenditure for food and beverage for the legislator's family members required to be reported under §305.0061, which refers to expenditures for entertainment for the immediate family but makes no reference to food or beverages? Are these food and beverage expenditures reportable by the registrant and/or legislator?

The requestor also asks about the proper method to determine the value of the lodging.

AOR-64. The Texas Ethics Commission has been asked to consider the following matter. A registrant performs campaign volunteer services for a member of the legislature. The registrant assists with correspondence, works at the phone bank, and performs other campaign related volunteer functions. Are the volunteer services a gift that is required to be reported under the lobby registration act or are the volunteer services a campaign contribution as defined by the Election Code, §251.001? If the campaign volunteer services of a registrant are required to be reported in any other fashion, please state what form or fashion. Are the services not required to be reported by anyone?

The requestor asks the same questions in regard to services performed by a registrant's spouse.

AOR-65. The Texas Ethics Commission has been asked to consider a situation in which employees of a corporation spend a great deal of time researching and analyzing proposals in regard to a matter to be considered by the legislature. The employees then make contact with various members of the executive and legislative branches. In regard to this situation, the requestor asks the following questions. The specific question raised in this request concerns the scope of the definition of lobby activities. Are the internal activities described previously included within the definition of lobby activities under the Texas Government Code, §305 and §10.11 of the emergency rules promulgated by the Texas Ethics Commission? Are they included in the definition even if they do not ultimately result in a direct communication to influence the action of a state administrative agency or the legislature?

AOR-66. The Texas Ethics Commission has been asked several questions about the following situation. A registrant produces and publishes a pocket-sized booklet designed to be a layman's guide to the legislative process. The booklet is not published as a for-profit enterprise but rather as a courtesy to members of the legislature. Copies of the booklet are distributed by the registrant without charge to members of the legislature or are sold for the exact unit cost of development and publication. At no time are booklets sold for a profit. The legislators give the booklet to their constituents or office visitors. The requestor asks whether this practice is permissible. The requestor also asks how the booklets should be valued.

AOR-67. The Texas Ethics Commission has received the following request in regard to the acceptance of gifts by the governor.

The Penal Code, §36.08(f) prohibits the governor from accepting a benefit. A benefit is "anything reasonably regarded as pecuniary gain or pecuniary advantage." The governor frequently receives various gifts in connection with the performance of the duties of her office as well as numerous unsolicited gifts at her office. Examples include flowers, caps, tee shirts, arts and crafts, books, and perishables. Are items in any of those categories excepted from the definition of a "benefit?" Generally, such items have an estimated value of less than $50. Must a gift have any particular minimum value to qualify as a benefit?

Visiting dignitaries occasionally present valuable gifts to the governor. Does the governor have authority to accept such gifts on behalf of the state?

Members of the governor's staff sometimes attend seminars related to their jobs. May a staff member accept a waiver of tuition or fees if the cost would otherwise be paid by the state? May a staff member accept food, transportation, and lodging expenses from the sponsoring organization?

AOR-68. The Texas Ethics Commission has been asked to consider whether a judge may use political contributions to purchase a classic or antique car to be used in parades. The requestor also asks whether political contributions may be used to maintain and insure such a vehicle.

Issued in Austin, Texas, on June 24, 1992.

TRD-9208854 Sara Woelk
Director, Advisory Opinions
Texas Ethics Commission

Filed: June 26, 1992

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

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 II. Texas Animal Health Commission
Chapter 35. Brucellosis
Subchapter A. Eradication of Brucellosis in Cattle

• **4 TAC §35.4**

The Texas Animal Health Commission proposes an amendment to §35.4, concerning entry and change of ownership of cattle.

The amendment will provide that an owner of test-eligible cattle entering Texas from a Class "A" state or area will no longer be required to have an "E" permit accompany the cattle.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director or program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to lessen the restrictions for cattle entering the state from Class "A" states or areas. 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 Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 163, which provides the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

§35.4. Entry and Change of Ownership.

(a) (No change.)

(b) Requirements for cattle entering Texas from other states.

(1) (No change.)

(2) Testing. All test-eligible cattle entering Texas:

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

(E) shall be tested negative one or more times as described in this subparagraph.

(i) Cattle from a Class "A" state or area shall:

(I) be tested negative within 30 days prior to entry [and accompanied with an "E" permit]; or

(II) (No change.)

(ii)-(iii) (No change.)

(c) (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 24, 1992.

TRD-9208800 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Earliest possible date of adoption: August 3, 1992

For further information, please call: (512) 479-6697

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Chapter 49. Equine

• **4 TAC §49.2**

The Texas Animal Health Commission proposes an amendment to §49.2, concerning interstate movement requirements.

This amendment is necessary to provide that all equidae entering the state must be tested within 12 months, rather than six months, prior to entry in the state with an AGID or CELISA test for equine infectious anemia. This amendment is strongly supported by the equine industry.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director or program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to extend the time that the EIA test is good, thus reducing costs to the producer moving horses into the state. There will be no effect on small businesses.

Comments on the proposal may be submitted to Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

§49.2. Interstate Movement Requirements.

(a) Equine infectious anemia (EIA) requirements. All horses, mules, asses, ponies, zebras, and any other equidae must have a negative agar gel immunodiffusion (AGID) test or a negative competitive enzyme-linked immunosorbent assay (CELISA) test for EIA within 12 [six] months prior to entering Texas. The negative test results together with the date of the test and name of the laboratory conducting the test must be shown on the certificate of veterinary inspection. Only test results from USDA-approved laboratories are acceptable. Exceptions to these requirements are:

(1)-(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 June 24, 1992.

TRD-9208801 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Earliest possible date of adoption: August 3, 1992

For further information, please call: (512) 479-6697

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Chapter 51. Interstate Shows and Fairs

• **4 TAC §51.2**

The Texas Animal Health Commission proposes an amendment to §51.2, concerning general requirements.

This amendment is necessary to require that horses entering a paramutual track must have a negative EIA test within the past 12

months and a certificate of veterinary inspection.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director or program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is to advise race horse owners that their horses must have a negative EIA test within the past 12 months rather than six months when their animals are entered in intra-state races. 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 Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

§51.2. General Requirements.

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

(d) Entering shows, fairs, and exhibitions.

(1) (No change.)

(2) In-state origin.

(A) Equine. Must have had a negative EIA test within the past 12 months if entering an interstate show, fair, or exhibition where equine remain on the grounds for 48 hours or longer. Equine entered in all other events other than race tracks where paramutual wagering has been authorized by the Texas Racing Commission may enter without restriction. Horses entering a paramutual track must have a negtative EIA test within the past 12 [six] months and a certificate of veterinary inspection.

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

(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 June 24, 1992.

TRD-9208802 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Earliest possible date of adoption: August 3, 1992

For further information, please call: (512) 479-6697

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Chapter 55. Swine

• 4 TAC §55.6

The Texas Animal Health Commission proposes an amendment to §55.6, concerning entry requirements.

The amendment is necessary to allow nonvaccinated swine from vaccinated herd to enter the state provided they are tested negative prior to entry and meet other entry requirements; a 30-day post entry pseudorabies test for feeder swine imported for the stated purpose of later showing in shows, fairs, and exhibitions is required; breeding swine will be allowed to enter Texas from a validated brucellosis free state without a brucellosis test; the requirement for a leptospirosis test has been removed; the requirement for an entry permit for swine consigned direct to slaughter and from a premises of origin to a specifically approved market has been removed. The breeding swine are required to be vaccinated within the previous 30 days with Leptospirosis vaccine which contains the following strains: Bratislava, Canicola, Hardjo, Icterohaemorrhagiae, Grippotyphosa, and Pomona.

Bill Hayden, director of administration, 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.

Robert L. Daniel, director or program records, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide the general public with more freedom for entering Texas with swine from other states while placing added post-entry tests on swine brought in for later show purposes. 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 Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 165, which provides the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

§55.6. Entry Requirements.

(a) Swine imported into Texas for feeding, breeding, or exhibition purposes shall be accompanied by a certificate of veterinary inspection certifying that:

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

(3) swine [originate from herds that] have not been vaccinated for pseudorabies;

(4) (No change.)

(b) The certificate of veterinary inspection will also certify that swine have met the following pseudorabies entry requirements.

(1) All breeding swine entering the state **and those feeder swine entering for the stated purpose of feeding them for show, fair, or exhibition purposes** shall be held in isolation and under quarantine on the premise where first unloaded and tested **or retested** for PRV in not less than 30 nor more than 60 days after arrival. **Such** [Breeding] swine not known to be infected with or exposed to pseudorabies may enter provided they:

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

(2) (No change.)

(c) Additionally, breeding swine shall have a negative brucellosis test within the previous 30 days or originate from a validated brucellosis free herd **or state** and shall be [tested negative for leptospirosis within the previous six months or] vaccinated within the previous **30 days with** [six months with the strain or strains approved by the Texas Animal Health Commission] **Leptospirosis vaccine containing the following strains: Bratislava, Canicola, Hardjo, Icterohaemorrhaaiae, Grippotyphosa, Pomona.**

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

(f) Entry permits are not required for swine consigned from out-of-state direct to slaughter or from an out-of-state premise of origin to a Texas livestock market specifically approved under the Code of Federal Regulations, Part 76.

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

Issued in Austin, Texas, on June 24, 1992.

TRD-9208805 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Earliest possible date of adoption: August 3, 1992

For further information, please call: (512) 479-6697

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TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Customer Service and Protection

• 16 TAC §23.57

The Public Utility Commission of Texas proposes an amendment to §23.57, concerning telecommunications privacy. The amendment establishes a requirement for local exchange carriers that provide caller identification services to offer free per-call and per-line blocking options to all customers unless otherwise ordered by the commission.

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

Mr. Wilson also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to control the outflow of information about telecommunications customers by maintaining current expectations of privacy until the commission has had an opportunity to fully analyze caller identification services through hearings and public comment. The United States Senate is currently considering S. 652, "The Telephone Privacy Act of 1991," which would preempt the states from enacting a per-line blocking regulation different from that which is included in the bill. However, the bill also contains language that would permit a state per-line blocking requirement if such a requirement is in place prior to the date of enactment of the law. Therefore, this amendment to §23.57 is proposed as necessary in order to preserve the commission's options at a later date. Because no local exchange carrier has brought an application to offer caller identifications services to the commission for consideration, the cost to local exchange companies is unknown at this time. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Wilson has determined that for each year of the first five years the proposed amendment is in effect there will be no impact on employment in the geographical areas affected by implementing the requirements of the amendment.

Comments on the proposed amendment (13 copies) may be submitted in writing to John M. Renfrow, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757. Comments will be received for 30 days after the date of publication and should refer to Project Number 9547.

The amendment is proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§23.57. Telecommunications Privacy.

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

(g) Caller identification services.

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

(A) Caller identification service (caller ID service)-A telecommunications service provided by a local exchange carrier that transmits calling party identification to a subscriber to the service.

(B) Calling party identification-The calling telephone number, name, address, and/or other information that may be transmitted by a local exchange carrier to a called party.

(C) Per-call Blocking-A telecommunications service provided by a local exchang. carrier that prevents the transmission of calling party identification to a called party on a call-by-call basis.

(D) Per-line blocking-A telecommunications service provided by a local exchange carrier that prevents the transmission of calling party identification to a called party on every call, unless the calling party acts affirmatively to release calling party identification.

(2) Unless otherwise ordered by the commission pursuant to the provisions of subsections (b) and (c) of this section, local exchange carriers that provide caller ID service must:

(A) provide all customers with a free per-call blocking option; and

(B) provide all customers with a free per-line blocking option.

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

Issued in Austin, Texas, on June 25, 1992.

TRD-9208820 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Earliest possible date of adoption: August 3, 1992

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

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 5. Property and Casualty Insurance

Subchapter A. Automobile Insurance

• 28 TAC §5.401

The State Board of Insurance of the Texas Department of Insurance proposes an amendment to 28 TAC §5.401, which provides protection to applicants for private passenger automobile liability insurance who have not had such insurance prior to application. The amendments are necessary to continue the underwriting measures set forth in original subsections (a) and (b) of this section through December 31, 1992, while the department continues to gather data to test insurers' contention that applicants lacking prior insurance ("no priors") pose a greater risk of loss than applicants having prior insurance ("priors"). The amendments also add a proposed new subsection (c) to this section to permanently forbid insurers from using an applicant's lack of prior insurance in determining the appropriate rate to charge such applicant for liability insurance if such "no prior" has not driven an uninsured motor vehicle in Texas for more than 30 days in the 12 months preceding his or her application for insurance. Proposed subsection (c) would remain in effect after the proposed expiration of subsections (a) and (b) on December 31, 1992. Because the amendments propose the insertion of a new subsection (c) in this section, the amendments also redesignate current subsections (c), (d), and (e) as proposed subsections (d), (e), and (f), respectively. The amendments propose no other changes to current subsections (c), (d), and (e). The amendments are necessary to continue to redress arbitrary and unfair practices used against applicants for private passenger automobile liability insurance who lack prior insurance and to support greater compliance with the Texas Motor Vehicle Safety-Responsibility Act (Article 6701h, Texas Revised Civil Statutes). Certain arbitrary and unfair practices were identified and highlighted by amendments, effective September 1, 1991, strengthening the Texas Motor Vehicle Safety-Responsibility Act, as the board noted in originally approving the current section. The board found that many uninsured motorists seeking liability insurance were being denied coverage or charged high rates for liability insurance because they lacked such insurance at the time of application. Some of the applicants had not needed or had not been legally required to have liability insurance, because, for example, they had been overseas either in the armed services or for other employment, had driven company cars or had not used a motor vehicle for transportation for some period prior to their applications. These "no priors" would be permanently protected under proposed subsection (c). Other "no prior" applicants lacked prior insurance because they could not afford it, having been out of work or otherwise im-

poverished. These "no priors" would continue to have the opportunity through December 31, 1992, to purchase private passenger automobile liability insurance at rates which do not reflect their lack of prior insurance under proposed subsection (a). In originally adopting this section making current subsections (a) and (b) temporary, the board intended to gather data to evaluate and determine whether applicants lacking prior insurance present a greater claims risk than applicants possessing prior insurance. The Department of Insurance thereafter developed a "Special Call For Texas Private Passenger Automobile Experience" (special call) for this purpose. The special call and accompanying instructions were approved for use by the State Board of Insurance on March 18, 1992 after incorporating a number of changes suggested by the Office of Public Insurance Counsel and the auto insurance industry. The special call was developed to obtain experience comparing applicants with no prior insurance to applicants having prior insurance between August 1, 1991 through January 19, 1992. The special call was sent to 34 insurance companies and the completed responses were due May 1, 1992. The staff of the department reported that few insurers had fully complied with the special call and determined that the data which was submitted pursuant to the special call did not conclusively demonstrate that applicants with no prior insurance present a greater claims risk. The board has directed the department to design a revised data call or other method to secure credible data on this issue. Because insurers have failed to provide credible data to support their contention that "no priors" present a greater risk of loss than "priors," the board is proposing to extend the provisions under current subsection (a) through December 31, 1992 which prohibit an insurer from using an applicant's lack of prior insurance as the basis for declining coverage or charging higher rates to the applicant. During this extension period the department intends to continue to seek credible data to test insurers' contention that "no priors" pose a greater risk of loss than "priors." The amended section extends three specific protections to "no-prior" applicants for private passenger automobile liability insurance. The amendment to §5.401(a) extends its provisions through December 31, 1992, which prohibit all insurers from using underwriting or other criteria that make an applicant's lack of prior insurance the basis for declining coverage or charging higher rates to such applicant. This provision allows all applicants to be underwritten on the same basis, that is, on their driving records and other underwriting criteria, and to receive such liability coverage at the lowest applicable rates of the insurance companies or group of companies to which they apply. The amendment to §5.401(b) extends through December 31, 1992 its provisions which permit those individuals whose lack of insurance at the time of application was used by the insurer as an underwriting factor to receive the benefit of the provisions of subsection (a). Essentially, such individuals will continue to be entitled to be re-underwritten without regard to the "no prior insurance" criteria prohibited under subsection (a) and to receive the lowest applicable rates of the insurance companies or group of insurance companies to which they apply. The proposed new subsection (c) would be a permanent subsection continuing in effect after subsections (a) and (b) terminate. Proposed subsection (c) would prohibit all insurers from using an applicant's lack of prior insurance in determining the appropriate rate for private passenger automobile liability insurance where such applicant has not been operating an uninsured vehicle in the State of Texas for more than 30 days during the 12 months immediately preceding the date of the applicantion.

A.W. Pogue, associate commissioner for regulated lines of the Texas Department of Insurance, has determined that for the first five-year period the amendments to the section are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. During the additional period of less than three months that subsection (b) will continue to be in effect under the amendments to this section, small businesses may face some increased cost, which Mr. Pogue cannot quantify, to comply with that subsection in order to identify current insureds who were underwritten previously for liability insurance using discontinued "no-prior insurance" criteria. The cost of compliance with this subsection for small businesses should be no different than the cost of compliance for big businesses on a cost per hour basis. Otherwise there should be no fiscal implications to small businesses as a result of enforcing or administering the section, as amended. Mr. Pogue also has determined that there will be no other implications for the local economy and no impact on local employment as a result of administering the section as amended.

Mr. Pogue also has determined that for each year of the first five years the amendments to the section are in effect the public benefit anticipated as a result of enforcing the section will be greater fairness in the private passenger automobile liability insurance marketplace. The amended section will result in more affordable rates to many individuals. A larger proportion of the driving public will be covered by automobile liability insurance and, as a consequence, a larger proportion of damages from automobile accidents should be covered by liability insurance. This serves the public policies expressed by the Texas Legislature in the Texas Motor Vehicle Safety-Responsibility Act which mandates that all Texas drivers carry a minimum level of automobile liability insurance. Mr. Pogue has determined that for each of the first five years the amendments to the section are in effect, the anticipated economic cost to persons who are required to comply with the proposed amendments to the section includes the following. During the first year, which is the only year subsections (a) and (b) will be in effect, and during each of the first five years with regard to proposed subsection (c), one anticipated cost is the difference, if any, in the amount of premiums which insurers would have charged using the "no prior insurance" underwriting criteria compared to the premiums which they charge without using this criteria calculated for the period of duration of subsections (a) and (b). Similarly, the agents' portion of this difference in premium amount would constitute an economic cost to them during the same period. Another anticipated cost in the first year is the cost to certain insurers to hire additional staff to handle the volume of new insurance business. All of these costs should decline after the expiration of proposed subsections (a) and (b). There should be some offsets to these anticipated costs, however. It was estimated prior to original passage of this section that some three million Texas drivers were not covered by automobile liability insurance. The statutory changes effective September 1991 to the Texas Motor Vehicle Safety-Responsibility Act, which now requires all drivers to present proof of minimum liability insurance to receive a driver's license, inspection stickers and license tags for their cars, should continue to cause many of that large pool of uninsured motorists to buy liability insurance. The additional premium volume generated by these new applicants may offset to some degree some of the above costs.

Comments on the proposal must be submitted in writing, within 30 days after publication of the proposed rule in the Texas Register, to Linda K. von Quintus-Dorn, Chief Clerk, P.O. Box 149104, MC #113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to A. W. Pogue, 333 Guadalupe, P.O. Box 149104, MC# 107-2A, Austin, Texas 78714-9104. Request for a public hearing should be submitted separately to the Chief Clerk's Office on this proposal.

The amendment is proposed under the Insurance Code, Article 5.10, which authorizes the State Board of Insurance to make and enforce rules and regulations not inconsistent with the provisions of Subchapter A (Motor Vehicle or Automobile Insurance) of Chapter 5 of the Insurance Code; the Insurance Code, Article 5.01, which gives the Board sole and exclusive authority to determine and prescribe just, reasonable, and adequate rates and rating plans and classification of risks for motor vehicle insurers; the Insurance Code, Article 5.09, which prohibits discrimination or distinctions in favor of an insured having a like hazard, in the charge of premiums for insurance; the Insurance Code, Article 1.04, which provides the Board with the authority to determine policy and rules in accordance with the laws of this State; the Insurance Code, Article 21.49-2B, §12, which authorizes the Board to adopt rules relating to the cancellation and nonrenewal of personal automobile insurance policies; and the Insurance Code, Article 21.49-2, which authorizes the Board to prescribe, adopt, promulgate, and enforce reasonable rules and regulations as to the cancellation, nonrenewal, and in certain cases, declination, of certain policies of insurance, including those issued through the Texas Automobile Insurance Plan. The new section affects Subchapter A of Chapter 5 of the Insurance Code, including Articles 5.10, 5.01 and 5.09, Chapter 1 of the Insurance Code, including Article 1.04, and Subchapter E of Chapter 21 of the Insurance Code, including Articles 21.49-2B, §12, and 21. 49-2, all as heretofore specified and discussed. The amendments to the section, if adopted, shall amend Title 28 of the Texas

Administrative Code, Chapter 5, Property and Casualty Insurance, Subchapter A, Automobile Insurance, §5.401 by amending subsections (a) and (b) to extend their expiration to December 31, 1992, by adding new subsection (c), and by amending subsections (c), (d) and (e) to redesignate them as subsections (d), (e) and (f), respectively.

§5.401. Temporary and Permanent Requirements Regarding Underwriting Treatment of and Disclosure to Applicants for Private Passenger Automobile Liability Insurance.

(a) **Effective until December 31, 1992,** [For 120 days from the effective date of this rule,] each insurer writing private passenger automobile insurance in Texas shall make available automobile liability insurance coverage to applicants with no prior insurance subject to each insurer's underwriting criteria without consideration of the applicants' lack of prior insurance at each company's lowest applicable rate.

(b) **Effective until December 31, 1992,** [For 180 days from the effective date of this rule,] each previous "no-prior insurance" applicant who was written in a higher-rated insurance company will be reunderwritten on the applicant's renewal date subject to the underwriting criteria of each company to which the applicant applies at each company's or group of companies' lowest applicable rate.

(c) Insurers may not use an applicant's lack of prior insurance in determining the appropriate rate for private passenger automobile liability insurance where such applicant has not been operating an uninsured motor vehicle in the State for more than thirty days during the 12 months immediately preceding the date of the application.

(d)[(c)] Applicants for automobile liability insurance currently or previously insured in a higher-rated insurance company or through the Texas Automobile Insurance Plan (the Assigned Risk Plan) will be underwritten without consideration of the applicant's prior insurance carrier.

(e)[(d)] Insurers or agents who make a quote to an applicant with no prior insurance having no more than one accident and one violation within the past three years which quote equals or exceeds the premium available through the Assigned Risk Plan must inform the applicant of the approximate cost of coverage available through the Assigned Risk Plan.

(f)[(e)] If any provision of this §5.401 or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of said provisions which can be given effect without the invalid provision or application. To this end all provisions of this §5.401 are declared to be severable.

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

Issued in Austin, Texas, on June 26, 1992.

TRD-9208890 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: August 3, 1992

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

Chapter 113. Control of Air Pollution From Toxic Materials

Subchapter C. Benzene

Gasoline Terminals in East Austin, Travis County

• 31 TAC §§113.201-113.206

The Texas Air Control Board (TACB) propose new Subchapter C, §§113. 201-113.206, concerning Benzene, and an undesignated head, concerning gasoline terminals in East Austin, Travis County, to Regulation III, concerning control of air emissions from toxic materials. The purpose of this new undesignated head is to limit emissions from bulk gasoline terminals located in proximity to residences in East Austin bounded by Springdale Road, Jain Street, Airport Boulevard, and Alf Street.

The new §113.201, concerning definitions, defines control device and vacuum assisted control system applicable to gasoline terminals. The new §113.202, concerning applicability, explains that these rules only affect gasoline terminals in East Austin. The new §113.203, concerning fugitive monitoring, applies an intensive directive maintenance (28-MID) fugitive monitoring program to gasoline terminals. This program requires at least quarterly monitoring of valves, pumps, and compressors, for leaks with an approved gas analyzer. All leaks over 500 parts per million by volume as well as components found to be visually leaking, shall be tagged and repaired or replaced. The new §113.204, concerning control equipment or testing requirements, adds a requirement that either a vacuum-assisted vapor collection system or a semi-annual tank truck leak-tight test shall be accomplished. Additionally, the loading racks shall be equipped with an automatic shut-off feature to prevent transfer of gasoline unless the vapor control device is properly connected and properly operating. No truck loading shall take place when the vapor control device servicing the loading rack is out of service or not operating in accordance with the manufacturer's parameters. The new §113.205, concerning recordkeeping, adds requirements to keep at least two years of records on site which are available for TACB and local air pollution control agency review. These records include fugitive monitoring results; total volatile organic compound (VOC) emissions from storage tanks and loading operations; tank truck loading, performance and leak testing; and benzene content results for all gasoline handled at the facility. The new §113.206, concerning compliance date, establishes compliance dates for the various provisions of this undesignated head.

Lane Hartsock, deputy director of air quality planning, has determined that for the first five-year period the proposed sections are in effect, there will be minimal fiscal implications for state and local units of government as a result of enforcing and administering the rules. These fiscal implications would entail increased record review and more frequent facilities inspections.

The anticipated economic cost for the gasoline terminals to comply with the new sections as proposed is a one time capital cost for a vacuum-assisted vapor recovery system ($100,000-$200,000), or alternatively, semi-annual tank truck leak-tight inspections ($1,000 per inspection per truck). Fugitive monitoring and recordkeeping would be approximately $10,000 per year. Costs for modifying current loading racks with automatic shutoff devices is estimated to average approximately $50,000 per terminal.

Mr. Hartsock also has determined that for the first five-year period the proposed sections are in effect, the public benefit anticipated as a result of enforcing the new sections would be an improvement in air quality by reducing benzene and other toxic emissions in the vicinity of residences in East Austin. There will be no effect on small businesses.

Public hearings on this proposal will be held on July 29, 1992, at 7 p.m. and on July 30, 1992, at 2 p.m. in the Auditorium (Room 201S) of the TACB central office Air Quality Planning Annex, located at 12118 North IH-35, Park 35 Technology Center, Building A, Austin, Texas 78753. The hearings are structured for the receipt of oral or written comments by interested persons.

Interrogation or cross-examination is not permitted; however, a TACB staff member will discuss the proposal 30 minutes prior to each hearing and will be available to answer questions. Public comment, both oral and written, on the proposed new sections is invited at the hearings.

Written comments not presented at the hearings may be submitted to the TACB central office in Austin through July 31, 1992. Material received by the Regulation Development Division by 4 p.m. on that date will be considered by the Board prior to any final action on the proposed new sections. Copies of the proposal are available at the central office of the TACB Air Quality Planning Annex located at 12118 North IH-35, Park 35 Technology Center, Building A, Austin, Texas 78753, and

at all TACB regional offices. For further information, contact Dwayne Meckler at (512) 908-1487.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 908-1815. 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 TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

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

Control device–Equipment (such as a vapor combustion system, a regenerative carbon adsorption system, a pressure swing absorption system, or a refrigeration system) used to reduce, by destruction or removal, the amount of air pollutant(s) in an air stream prior to discharge to the ambient air.

Vacuum assisted control system–Any system which produces a vacuum at the tank truck to prevent fugitive emissions from the truck and its connections during loading operations.

§113.202. Applicability. This undesignated head applies to bulk gasoline terminals located in East Austin, Travis County, bounded by Springdale Road, Jain Street, Airport Boulevard, and Alf Street.

§113.203. Fugitive Monitoring. No person referenced in §113.202 of this title (relating to Applicability) shall operate a gasoline terminal without complying with the following intensive directed maintenance (28-MID) fugitive monitoring program requirements.

(1) Construction of new and reworked piping, valves, and pump and compressor systems shall conform to applicable American National Standards Institute, American Petroleum Institute, American Society of Mechanical Engineers, or equivalent codes.

(2) New and reworked underground process pipelines shall contain no buried valves such that fugitive emission monitoring is rendered impractical.

(3) To the extent that good engineering practice will permit, new and reworked valves and piping connections shall be so located to be reasonably accessible for leak-checking during plant operation. Nonaccessible valves shall be identified in a list to be made available upon request.

(4) New and reworked piping connections shall be welded or flanged. Screwed connections are permissible only on piping smaller than two-inches in diameter. No later than the next scheduled quarterly monitoring after initial installation or replacement, all new or reworked connections shall be gas tested or hydraulically tested at no less than normal operating pressure and adjustments made as necessary to obtain leak-free performance. Flanges shall be inspected by visual, audible, and/or olfactory means at least weekly by operating personnel walk-through.

(5) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve.

(6) Accessible valves shall be monitored by leak-checking for fugitive emissions at least quarterly using an approved gas analyzer with a directed maintenance program. Sealless/leakless valves including, but not limited to, bellows and diaphragm valves and relief valves equipped with a rupture disc or venting to a control device are not required to be monitored. For valves equipped with rupture discs, a pressure gauge shall be installed between the relief valve and rupture disc to monitor disc integrity. All leaking discs shall be replaced at the earliest opportunity, but no later than the next process shutdown. A directed maintenance program shall consist of the repair and maintenance of components assisted simultaneously by the use of an approved gas analyzer such that a minimum concentration of leaking volatile organic compounds (VOC) is obtained for each component being maintained.

(7) New and replacement pumps and compressors seals may be equipped with a shaft sealing system that prevents or detects emissions of VOC from the seal. These seal systems need not be monitored and may include, but are not limited to, dual pump seals with barrier fluid at higher pressure than process pressure, seals degassing to vent control systems kept in good working order, or seals equipped with an automatic seal failure detection and alarm system. Submerged pumps or sealless pumps including, but not limited to diaphragm, canned, or magnetic driven pumps, may be used to satisfy the requirements of this provision and need not be monitored. All other pump and compressor seals emitting VOC shall be monitored with an approved gas analyzer at least quarterly.

(8) Damaged or leaking valves, compressor seals, and pump seals found to be emitting VOC in excess of 500 parts per million by volume or found by visual inspection to be leaking (e.g. dripping liquids) shall be tagged and replaced or repaired. Every reasonable effort shall be made to repair a leaking component, as specified in this paragraph, within 15 days after the leak is found.

§113.204. Control Equipment or Testing Requirements. No person referenced in §113.202 of this title (relating to Applicability) shall operate a gasoline terminal without complying with the following requirements.

(1) Each vapor recovery device serving a loading rack shall be equipped with a vacuum assisted vapor collection system or each tank truck shall pass leak-tight testing every six months using the methods described in 40 Code of Federal 60, Subpart XX. The following control devices shall be used to control the collected emissions to a minimum control (recovery or disposal) efficiency of 98%:

(A) a vapor combustion system; or

(B) a regenerative carbon adsorption system; or

(C) a pressure swing absorption system; or

(D) a refrigeration system.

(2) Each vapor control device shall be instrumented in such a way that the pumps transferring fuel to the trucks will not operate unless the vapor control device is properly connected and properly operating.

(3) No truck 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.

§113.205. Recordkeeping Requirements. No person referenced in §113.202 of this title (relating to Applicability) shall operate a gasoline terminal without complying with the following requirements.

(1) 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.

(2) A monthly emissions record shall be maintained which describes calculated emissions of volatile organic com-

pounds (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 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 pounds per square inch absolute, 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.

(A) Emissions for tanks and loading operations shall be calculated using the September 1985 edition of *AP-42, Compilation of Air Pollutant Emission Factors*, for annual emissions from fixed roof tanks with internal floating covers; American Petroleum Institute Publication 2517 entitled "Evaporative Loss From External Floating Roof Tanks," dated February 1989 for annual emissions from open-top tanks with external floating roofs; and Texas Air Control Board (TACB) memo dated March 5, 1992, entitled "Annual and Short-Term Emissions from Storage Tanks" for short-term emission rates from fixed roof tanks with internal floating covers or for open-top tanks with external floating roofs.

(B) Controlled and uncontrolled emissions of VOC shall be calculated for storage tanks using the following meteorological data as monthly average values:

daily temperature change (degrees Fahrenheit)-21.4;

wind speed (miles per hour)-9.4;

station pressure (pounds per square inch absolute)-14.4.

(3) Records of tank truck 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 tank truck 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.

(4) Records for benzene content in all grades of gasoline handled at the facility shall be maintained on-site.

(5) All records shall be maintained at the plant site for at least two years and be made available to representatives of the TACB and the local air pollution control programs upon request.

§113.206. Compliance Dates. All affected persons referenced in §113.202 of this title (relating to Applicability) shall be in compliance with the following schedules.

(1) Compliance with the provisions of §113.204(3) of this title (relating to Control Equipment or Testing Requirements) shall be effective immediately.

(2) Compliance with provisions of §113.203 of this title (relating to Fugitive Monitoring), §113.204(2) of this title and §113.205(1) of this title (relating to Recordkeeping Requirements), shall be as soon as possible, but no later than July 1, 1993.

(3) Compliance with all other provisions of this undesignated head (relating to Gasoline Terminals in East Austin), shall be as soon as possible, but no later than January 1, 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 June 23, 1992.

TRD-9208975 Lane Hartsock
Deputy Director, Air Quality Planning
Texas Air Control Board

Earliest possible date of adoption: August 3, 1992

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

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Chapter 116. Control of Air Pollution by Permits for New Construction or Modification

• 31 TAC §§116.1, 116.3, 116.12, 116.14

The Texas Air Control Board (TACB) proposes amendments to §116.1, concerning permit requirements, §116.3, concerning consideration for granting permits to construct and operate, and §116.12, concerning review and continuance of operating permits. Also, TACB proposes new §116.14, concerning compliance history requirements. The changes have been developed in response to the requirements of the Federal Clean Air Act (FCAA) amendments of 1990 and the Health and Safety Code, §382.0518(c) and (f) (72nd Legislature, 1991).

The FCAA, §173(a)(5) requires an alternative site analysis for new major sources or modifications in nonattainment areas. This requirement is proposed for incorporation into §116.3(a)(7) and (10).

The Texas Health and Safety Code, §382.0518(f) authorizes TACB to require a sworn certification that the holder of a permit has complied with all aspects of the permit application in its construction phase prior to commencing operations. A new §116.3(b) is proposed to replace the previous requirement for an operating permit with a requirement for operations certification. The new subsection specifies the information that the permit operations certification must include and prescribes the responsibilities of the applicant in producing the certification. The subsection specifies applicability, describes permit operations certification and its contents, establishes a due date, and provides for formal enforcement. References to operating permit have also been changed in §116.1.

A new paragraph (3) has been added to §116.3(c) to allow a source or a rocket motor or engine test facility to offset emission increases by alternative or innovative means.

Section 116.12 has been revised to remove the references to an operating permit, replace the references to continuance with renewal, change the renewal period to five years beginning December 1, 1991, and clarify the renewal fee schedule to eliminate alternative methods of determining fees. Chapter 691, House Bill 1393 (72nd Legislature) provides for a military exemption. A sentence has been added to §116.12(a) to exempt a permit holder from increased fees or other penalties resulting from failure to submit a renewal application by the due date when the tardiness can be attributed to military service outside the State of Texas.

The Texas Clean Air Act (TCAA), §382.0518(c) authorizes TACB to consider any adjudicated decision on air quality compliance occurring within five years of the date of which an application is filed. Specifically, proceedings that addressed the applicant's past performance and compliance with laws of this state, another state, or the state or federal laws governing air contaminants, or with the terms of any permit or order issued by the board shall be considered. The purpose of this legislation is to ensure that these additional factors that could affect the health and welfare of the citizens of Texas are considered before TACB makes a decision to issue, amend, or renew a permit.

New §116.14 specifies what must be included in the compliance history and prescribes the responsibilities of the applicant and the staff of TACB in compiling the compliance history. The new section includes subsections which define relevant terms, specify applicability, provide for exemptions, describe compliance history contents, establish effective dates, require a public notice statement, identify rights and procedures, and provide for formal enforcement.

Lane Hartsock, deputy director of air quality planning, has determined that for the first five-year period the sections are in effect the cost to state government for enforcing and administering these sections will be $540,000 per year. This cost is based on an anticipated 1,200 applications received per year and an estimated average of 10 hours per application for compiling and reviewing the compliance history. There are no anticipated fiscal implications for local units of government.

Mr. Hartsock 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 implementing the sections will be improved information to consider relative to permitting decisions. The cost to small businesses will be the cost to prepare a compliance history which will vary approximately between $50 to $1,000 depending on the compliance history of the applicant. There is no anticipated cost to persons.

A public hearing on this proposal will be held on July 28, 1992, at 2 p.m. in the auditorium (Room 201S) of the TACB central office Air Quality Planning Annex, located at 12118 North IH-35, Park 35 Technology Center, Building A, Austin, Texas 78753. The hearing is structured for the receipt of oral or written comments by interested persons. Interrogation or cross-examination is not permitted, however, a TACB staff member will discuss the proposal at 1:30 p.m. before the hearing and will be available to answer questions.

Written comments not presented at the hearing may be submitted to the TACB Air Quality Planning Annex located at 12118 North IH-35, Park 35 Technology Center, Building A, Austin, Texas 78753 through July 30, 1992. Material received by the Regulation Development Division by 4 p.m. on that date will be considered by the board prior to any final action on the proposed sections. Copies of the proposal are available at the TACB Air Quality Planning Annex located at 12118 North IH-35, Park 35 Technology Center, Building A, Austin, Texas 78753, and at all TACB 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 hearing should contact the agency at (512) 908-1815. Requests should be made as far in advance as possible.

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

§116.1. Permit Requirements.

(a) Any person who plans to construct any new facility or to engage in the modification of any existing facility which may emit air contaminants into the air of this state must obtain a permit to construct pursuant to §116.3(a) of this title (relating to Consideration for Granting Permits [To Construct and Operate]) or satisfy the conditions for exempt facilities pursuant to §116.6 of this title (relating to Exempted Facilities) before any actual work is begun on the facility. If a permit to construct is issued by the board, the person in charge of the facility must **submit an operations certification** [apply for an operating permit] pursuant to §116.3(b) of this title (relating to Consideration for Granting Permits [To Construct and Operate) within 60 days after the facility has begun operation, unless this 60-day period has been extended by the executive director].

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

§116.3. Consideration for Granting Permits [Consideration for Granting Permits To Construct and Operate].

(a) Permit to construct. In order to be granted a permit to construct, the owner or operator of the proposed facility shall submit information to the Texas Air Control Board (TACB) which will demonstrate that all of the following are met:

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

(7) The owner or operator of a proposed new facility which is a major stationary source of volatile organic compound (VOC) emissions or emissions of oxides of nitrogen (NO_x), or which is a facility that will undergo a major modification with respect to VOC or NO_x emissions, and which is to be located in any area designated as nonattainment for ozone in accordance with the Federal Clean Air Act (FCAA), §107, shall meet the additional requirements of subparagraphs (A)-(D) [(C)] of this paragraph. Table I of §101.1 of this title (relating to Definitions) specifies the various classifications of nonattainment along with the associated emission levels which designate a major stationary source or major modification for those classifications. The de minimis threshold test must be applied to any proposed VOC or NO_x emissions increase in moderate, serious, and severe ozone nonattainment areas. The de minimis thresholds are the same as the major modification levels stated in Table I, but aggregated over the previous five-year period, including the calendar year of the proposed change. The past net increase must be evaluated even when the proposed increase alone is below the major modification level. Permit applications filed on or after November 15, 1992, shall comply with this paragraph.

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

(D) In accordance with the FCAA, the permit application must contain an analysis of alternative sites, sizes, production processes, and control techniques for the proposed source has been completed and that benefits of the proposed location and source configuration significantly outweigh the environmental and social costs of that location.

(8)-(9) (No change.)

(10) The owner or operator of a proposed new facility in a designated nonattainment area for an air contaminant other than ozone, which will be a major stationary source or a major modification of an existing facility for that nonattainment air contaminant must meet the additional requirements of subparagraphs (A)-(E) [(D)] of this paragraph regardless of the degree of impact of its emissions on ambient air quality. Table I of §101.1 specifies the various classifications of nonattainment along with the associated emission levels which designate a major stationary source or major modification for those classifications. Permit applications filed on or after November 15, 1992, shall comply with this paragraph.

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

(E) In accordance with the FCAA, the public record must contain an analysis of alternative sites, sizes, production processes, and control techniques for the proposed source has been completed and that benefits of the proposed location and source configuration significantly outweigh the environmental and social costs of that location.

(11)-(13) (No change.)

(b) Operations certification.

(1) In order to ensure that operations addressed in the applicant's permit are in conformance with the representations of the permit, any person that has applied for and received a permit from TACB must complete the following:

(A) submit a sworn certification that:

***(i)* the facilities or changes authorized by the permit have been constructed as represented in the application for the permit and comply with all applicable terms of the permit; and**

***(ii)* operation of the facilities or changes will not violate the intent of the Texas Clean Air Act (TCAA) or the rules of TACB;**

(B) submit the permit compliance certification two weeks before the commencement of operations.

(2) Any permit holder subject to this subsection that is not in compliance with this subsection will be in violation of TCAA, §382.0518(c) and this chapter. Operations shall not be initiated until the permit holder is in full compliance.

(3) All permits issued after the effective date of this subsection are subject to provisions of this subsection.

[(b) Permit to operate. In order to be granted a permit to operate, the owner of the facility shall demonstrate that:

[(1) the facility is complying with the rules and regulations of TACB and the intent of the TCAA;

[(2) the facility has been constructed and is being operated in accordance with the requirements for and conditions contained in the permit to construct;

[(3) the facility is being operated in accordance with any applicable new source performance standards promulgated by the United States Environmental Protection Agency (EPA) pursuant to authority granted under the FCAA, §111 as amended;

[(4) the facility is being operated in accordance with any applicable National Emission Standard for Hazardous Air Pollutants promulgated by EPA pursuant to authority granted under the FCAA, §112 as amended.]

(c) Emission reductions: offset. At the time of application for a construction permit in accordance with this chapter, any applicant who has effected air contaminant emission reductions may also apply to the executive director to use such emission reductions to offset emissions expected from the facility for which the permit is sought, provided that the following conditions are met:

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

(3) emissions increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source shall be allowed to be offset by alternative or innovative means provided the following conditions are met.

(A) Any modification proposed is solely for the purpose of expanding the testing of rocket engines or motors at an existing source permitted to test such engines as of November 15, 1990.

(B) The source demonstrates to the satisfaction of TACB that it has used all reasonable means to obtain and utilize offsets, as determined on an annual basis, for the emissions increases beyond allowable levels, that all available offsets are being used, and that sufficient offsets are not available to the source.

(C) The source has obtained a written finding from the Department of Defense, Department of Transportation, National Aeronautics and Space Administration, or other appropriate federal agency, that the testing of rocket motors or engines at the facility is required for a program essential to the national security.

(D) The source will comply with an alternative measure, imposed by TACB, designed to offset any emission increases beyond permitted levels not directly offset by the source. In lieu of imposing any alternative offset measures, TACB may impose an emissions fee to be paid which shall be an amount no greater that 1.5 times the average cost of stationary source control measures adopted in that area during the previous three years.

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

§116.12. Review and ***Renewal*** *[Continuance]* **of** *[Operating]* **Permits.**

(a) Application for review and **renewal** [continuance] of [operating] permit. The Texas Air Control Board (TACB) shall provide written notice to the holder of a permit that the permit is scheduled for review. Such notice will be provided by certified or registered United States Mail no less than 180 days prior to the expiration of the [15th year following issuance or continuation of the operating] permit. The notice shall specify the procedure for filing an application for review and the information to be included in the application. The application shall be completed by the holder of the permit and returned to TACB within 90 days of receipt of the notice. **Pursuant to Chapter 691, House Bill 1393 (72nd Legislature), TACB shall exempt a holder of a permit from any increased fee or other penalty for failure to renew the permit if the individual establishes to the satisfaction of TACB that the failure to renew in a timely manner occurred because the individual was on active duty in the United States Armed Forces serving outside the State of Texas.**

(b) Permit **renewal** [continuance] requirements.

(1) In order to be granted a permit **renewal** [continuance], the owner or operator of the facility shall submit information in support of the application which demonstrates that:

(A) (No change.)

(B) the facility is being operated in accordance with all requirements and conditions of the existing permit, including representations in the application for the permit [to construct] and subsequent amendments, and any previously granted **renewal** [continuance];

(C)-(F) (No change.)

(2) TACB shall review the compliance history of the facility in consideration of granting a permit **renewal** [continuance]. Upon request of the executive director, the application shall include additional information which demonstrates the extent to which specified notices of violation (NOVs) relate to the facility. In order for the permit to be **renewed** [continued], the application shall include information demonstrating that, notwithstanding such NOVs, the facility is or has been in substantial compliance with the provisions of the Texas Clean Air Act (TCAA) and the terms of the existing permit. If the facility has a history which demonstrates failure to maintain substantial compliance with the provisions of the TCAA or the terms of the existing permit, the **renewal** [continuance] shall not be granted. If the facility has any unresolved nonclerical violations of the TACB rules, the **renewal** [continuance] shall not be granted, unless the facility is brought into compliance or is complying with the terms of an applicable board order or court order prior to the **expiration** [end of the 15-year term] of the permit as **identified in subsection (h) of this section.**

(c) Public notification and comment procedures. The executive director shall mail a written notification to the permit holder within 30 days of receipt of a completed application for permit review and **renewal** [continuance], as determined by the executive director of TACB. The notification will acknowledge receipt of the application and require the applicant to provide public notice of the application for permit **renewal** [continuance] according to §116.10(a)(3)-(5) of this title (relating to Public Notification and Comment Procedure). All requirements pertaining to signs and public notification in §116.10(a)(3)-(5) of this title and to public comments in §116.10(b) which apply to proposed construction, proposed facilities, and permit applications shall apply likewise to proposed **renewals** [continuances], existing facilities, and **renewal** [continuance] applications. The sign heading required under §116.10(a)(5)(A) (ii) shall read "PROPOSED **RENEWAL** [CONTINUANCE] OF AIR QUALITY PERMIT. " When newspaper notices are published in accordance with §116.10(a)(3) and (4), the applicant for permit **renewal** [continuance] shall furnish a copy of such notices and dates of publication to TACB in Austin and all local air pollution control agencies with jurisdiction in the county in which the facility is located. Along with such notices furnished to TACB, the applicant shall certify that the signs required by §116.10(a)(5) have been posted in accordance with the provisions of that paragraph.

(d) **Renewal** [continuance] of permit. Subsequent to review, the executive director shall **renew** [continue] a permit if he determines that the facility meets the requirements of subsections (b) and (c) of this section. The executive director shall notify the permit holder in writing of the decision regarding **renewal** [continuance]. If the permit can not be **renewed** [continued], the executive director shall forward

with the notice a report which describes the basis for the determination. If denial is based on failure to meet the requirements of subsection (b)(1) of this section, the executive director's report shall establish a schedule for compliance with the **renewal** [continuance] requirements. The report shall be forwarded to the permit holder no later than 180 days after TACB receives a completed application. The permit shall be **renewed** [continued] if the requirements are met according to the schedule specified in the report and the executive director shall notify the permit holder in writing of the permit **renewal** [continuance]. However, if denial is based on failure to maintain substantial compliance with the provisions of the TCAA or the terms of the existing permit pursuant to subsection (b)(2) of this section, the **renewal** [continuance] denial shall be final and the executive director shall notify the permit holder in writing of the denial.

(e) (No change.)

(f) Effective date of existing permit. An existing [operating] permit shall remain effective until it is **renewed** [continued], or until the deadline specified in the executive director's report to the permit holder, or until a date specified in any board order entered following a contested case hearing held pursuant to subsection (e) of this section. An existing permit shall remain effective during the course of a contested case hearing if the hearing proceeds beyond the **expiration** [end of the 15th year] of the permit **as identified in subsection (h) of this section.**

(g) Fee for review of [operating] permit. The holder of a [an operating] **permit to be reviewed for renewal** [continuance] by TACB shall remit a fee with each **renewal** [continuance] application, pursuant to the TCAA, §3.29(a), based on the total annual allowable emissions from the permitted facility for which the **renewal** [continuance] is being sought, as applied to the following table:

RENEWAL [CONTINUANCE] FEE TABLE*

X = TOTAL ALLOWABLE (TONS/YEAR)	BASE FEE	INCREMENTAL FEE
X ≤ 5 [0-5]	$ 300	-
5 < X ≤ 24 [6-24]	$ 300	$35/ton
24< X ≤ 99 [25-99]	$ 965	$25/ton
99< X ≤ 994 [100-999]	$ 2,840	$ 8/ton
X > 994 [1000+]	$10,000	-

Minimum fee: $300

Maximum fee: $10,000

* To calculate the fee, multiply the number of tons in excess of the **lower limit of the appropriate** [initial tonnage in that] category by the incremental fee, then add this **amount** [figure] to the base fee. For example, if total emissions of all air contaminants are 50 tons per year, the total fee would be **$1,615** [$1,590] (base fee of $965, plus incremental fee of $25 x **26** [25] tons or **$650** [$625]).

This fee shall be due and payable at the time application for review and **renewal** [continuance] is filed with TACB in response to written notice from TACB consistent with subsection (a) of this section. No fee will be accepted before the permit holder has been notified by TACB that the permit is scheduled for review. The basis of the fee is that fee schedule which is in effect at the time the application is filed. All permit review fees shall be remitted in the form of a check or money order made payable to the Texas Air Control Board, located at 12124 Park 35 Circle, Austin, Texas 78753. Required fees must be received before the agency will consider an application to be complete.

(h) Failure to apply for review and **renewal** [continuance]. **A permit holder that fails to submit a completed application for review and renewal or request an extension for filing of the application within 90 days after receiving notification from TACB pursuant to subsection (a) of this section, will cause the subject permit to expire. The permit shall expire, unless extended by the executive director of TACB. Permits shall expire unless renewed on the following schedule.**

(1) **Any permit issued before**

December 1, 1991, shall be renewed for a period of 15 years.

(2) Any permit scheduled for renewal before December 1, 1991, shall be renewed for a period of 15 years.

(3) Any permit issued on or after December 1, 1991, shall be renewed for five years.

(4) Any permit scheduled for renewal on or after December 1, 1991, shall be renewed for five years. [An operating permit shall expire at the end of 15 years following the date of original issue or subsequent continuance if the permit holder fails to submit a completed application for review and continuance within 90 days after receiving notification from TACB pursuant to subsection (a) of this section, unless extended for good cause by the executive director of TACB.]

§116.14. Compliance History Requirements.

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

(1) Adjudicated decision–Any conviction, final order, judgement, or decree as follows:

(A) a criminal conviction of the applicant in any court for violation of any law of this state, another state, or of the United States governing air contaminants;

(B) a final order, judgment, or decree of any court or administrative agency, or agreement entered into settlement of any legal or administrative action brought in a court or administrative agency, addressing:

(i) the applicant's past performance or compliance with the laws and rules of this state, another state, or of the United States governing air contaminants; or

(ii) the terms of any permit or order issued by the board; or

(C) an order of any court or administrative agency, whether final or not, respecting air contaminants for the facility that is the subject of the permit application.

(2) Compliance event-An adjudicated decision or compliance proceeding as defined in this subsection.

(3) Compliance history-The record of an applicant's observance of air pollution control laws and rules of the State of Texas, other states, and of the United States Except as provided in subsection (e) of this section, the history shall be for the five-year period prior to the date on which the application for issuance, amendment, or renewal is filed. The compliance history shall include all compliance events, as defined in this subsection.

(4) Compliance proceeding-A notice of violation for which the Texas Air Control Board has recommended formal enforcement action and has notified the applicant of such recommendation.

(5) Existing site-A plant property that is not a new site.

(6) New site-A plant property having an operating history less than five years in length as of the date of application.

(7) Public notice-The public notice of application for a permit as required by §116.10(a) of this title (relating to Public Notification and Comment Procedure).

(b) Applicability of compliance history requirements.

(1) Except as provided in subsection (c) of this section, as part of its construction permit review, or the review of an amendment, or renewal of an existing permit, the Texas Air Control Board (TACB) shall compile the following information:

(A) for a new facility at an existing site or for an amendment or renewal of an existing permit, the compliance history for the existing site;

(B) for a new facility at a new site, compliance history on similar facilities, if any, owned or operated by the applicant in Texas. TACB may require the applicant to indicate which facilities the applicant considers to be similar.

(2) For a facility at a new site, if the applicant does not own or operate a similar facility in Texas, the applicant shall provide TACB with a compliance history for similar facilities owned or operated by the applicant in other states.

(c) Compliance history exemptions. TACB shall not be required to compile a compliance history where the total increased emissions of any specific contaminant (specific substance, e.g. benzene, arsenic) from the facility or site will be accompanied by a greater than 1.1 to 1 reduction of the same specific air contaminant (specific substance, e.g. benzene, arsenic) from the facility or site.

(d) Contents of compliance history.

(1) The compliance history shall include a listing of all adjudicated decisions and compliance proceedings, as defined in this section, involving the facility that is the subject of the permit application.

(2) If the applicant has no compliance history in the United States, then the applicant shall provide TACB with a compliance history for any similar facilities owned or operated by:

(A) a person who is presently an officer, director, or agent of the applicant;

(B) a parent corporation, subsidiary, or predecessor in interest of the applicant;

(C) one who owns 20% or more of the applicant, whether directly, as a shareholder, partner, beneficiary, or otherwise; or

(D) one who controls the applicant or has the ability to direct the conduct of the applicant.

(3) The compliance history shall include the following compliance events and associated information:

(A) for Texas facilities:

(i) criminal convictions known to TACB and civil orders, judgments, and decrees, identified by stating:

(I) the style of the case;

(II) the tribunal issuing the conviction or judgment;

(III) the docket number and the date of action; and

(IV) the general nature of the alleged violation;

(ii) administrative enforcement orders, identified by stating:

(I) the name or style of action;

(II) the agency issuing the order;

(III) the docket number and the date of the order; and

(IV) the general nature of the alleged violation;

(iii) compliance proceedings, identified by stating:

(I) the name or style of action; and

(II) the general nature of the alleged violation;

(B) for facilities in the United States outside Texas:

(i) criminal convictions and civil judgments, identified by stating:

(I) the style of the case;

(II) the tribunal issuing the conviction or judgment;

(III) the docket number and date of action; and

(IV) the general nature of the alleged violation;

(ii) administrative enforcement orders, identified by stating:

(I) the name or style of action;

(II) the agency issuing the order;

(III) the docket number and the date of the order; and

(IV) the general nature of the alleged violation;

(iii) for notices of violation issued by the United States Environmental Protection Agency (EPA):

(I) the name of the action;

(II) the EPA identification number and date of notice; and

(III) the general nature of the alleged violation.

(4) TACB may request an analysis of the significance of any of the compliance events identified in the compliance history and their relevance to the facility that is the subject of the application. The TACB request shall list specific compliance events requiring such an analysis.

(e) Effective dates. The requirements of this section apply only to applications filed on or after the effective date of this section. For applications filed before June 1, 1993, neither TACB nor the applicant is required to include compliance events occurring before June 1, 1988. For applications filed on or after June 1, 1993, neither TACB nor the applicant is required to include compliance events occurring more than five years prior to the date on which the application is filed.

(f) Public notice of existence of compliance history. When public notice is required pursuant to §116.10(a) of this title, the applicant shall include the following statement in the notice: "The facility's compliance file, if any exists, is available for public review in the regional office of TACB."

(g) No derogation of existing rights and procedures. Nothing in this subsection shall diminish the rights of any party in a contested case hearing to raise any issue authorized by the Texas Health and Safety Code, §382.0518(c), nor diminish the rights of any person to request and obtain compliance history information from TACB. Nothing in this subsection shall limit the authority of the board to request and consider any other information that is relevant to the application under the law. Nothing in this subsection shall create any right in third parties which did not exist before the effective date of this subsection.

(h) Enforcement. Applicants that do not comply with this regulation and do not submit data as requested will delay the TACB's permit process and after 180 days cause TACB to forfeit an applicant's permit request and those fees associated with it. TACB will consider a new permit application from the applicant.

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

Issued in Austin, Texas, on June 29, 1992.

TRD-9208977 Lane Hartsock
Deputy Director, Air Quality Planning
Texas Air Control Board

Proposed date of adoption: September 15, 1992

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

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Part IX. Texas Water Commission

Chapter 305. Consolidated Permits

Subchapter N. Memorandum of Understanding

• 31 TAC §305.521

The Texas Water Commission proposes an amendment to §305.521, concerning adoption by reference of a memorandum of understanding between the Texas Department of Transportation and the Texas Water Commission. The memorandum concerns the assessment and regulation of water quality impacts resulting from certain transportation projects initiated by the Texas Department of Transportation.

Norman J. Nance, director of budget, planning, and evaluation division, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. Increased costs of the Texas Water Commission are offset by interagency contract payments from the Texas Department of Transportation. There are no net impacts to state government as a whole. There are no anticipated effects on local units of government.

Ms. Nance 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 improved protection of the quality of the water resources of the state and enforcement of the provisions of the Water Code. 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 Sharon J. Smith, Senior Attorney, Legal Division, P.O. Box 13087, Austin, Texas 78711. The deadline for submission of written comments will be 30 days after the date of publication of this proposal in the *Texas Register*. To facilitate public comment on the proposed amendments, the commission will schedule a public hearing for the receipt of comments in conjunction with the Texas Department of Transportation. A public hearing notice will be published at a later date.

The amendment is proposed under the Texas Water Code, §5.102 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Code and other laws of the State of Texas, to establish and approve all general policy of the commission, and to protect water quality in the state.

§305.521. Adoption of Memoranda of Understanding by Reference. The following memoranda of understanding between the commission and other state agencies, required to be adopted by rule as set forth in the Texas Water Code, §5.104, are adopted by reference. Copies of these documents are available upon request from the Texas Water Commission, Legal Division, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069 [(512) 463-8087].

(1) the memorandum of understanding (effective April 1, 1989) between the Texas Department of Health, the Texas Air Control Board, and the Texas Water Commission, which concerns the regulation and management of municipal sewage sludge; [and]

(2) the memorandum of understanding between the Texas Department of

Health and the Texas Water Commission, which concerns the regulation and management of non-hazardous wastewater that contains radioactive constituents; and [.]

(3) the memorandum of understanding (effective February 1992) between the Texas Department of Transportation and the Texas Water Commission, which concerns primarily the assessment of water quality impacts resulting from certain transportation projects.

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

Issued in Austin, Texas, on June 29, 1992.

TRD-9208949 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: August 3, 1992

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

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter V. Franchise Tax

- **34 TAC §3.548**

The Comptroller of Public Accounts proposes new §3.548, concerning taxable capital: close and S corporations. This new section replaces 34 TAC §3.417, concerning the same subject matter, which is being repealed in order that it can be adopted under 34 TAC Part I, Chapter 3, Subchapter V. This new section addresses close and S corporations for taxable capital purposes.

Tom Plaut, chief revenue estimator, has determined that for the first five-year period the section is in effect there will be no significant revenue impact on state or local government as a result of enforcing or administering the section. This section has no fiscal impact beyond the effects specified in the fiscal note for House Bill 11. This section is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses.

Dr. Plaut 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 from clarification of comptroller rules related to House Bill 11. There is no significant anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the new section may be submitted to Lucy Glover, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.548. Taxable Capital: Close and S Corporations.

(a) The provisions of this section apply to franchise tax reports originally due on or after January 1, 1990.

(b) The provisions of the Texas Close Corporation Law (or the close corporation law of the state of incorporation of a foreign corporation) will determine if a corporation with no more than 35 shareholders is eligible to file under the Tax Code, §171.113, as a close corporation. Shares held by an association, estate, trust, partnership, corporation, or any other legal entity will be treated as being held by one shareholder unless it is determined that the entity was organized for the primary purpose of holding stock in the close corporation.

(c) The provisions of the Internal Revenue Code (26 United States Code, §§1361 et seq) will determine if a corporation is eligible to file under the Tax Code, §171.113, as an S corporation. An S corporation must otherwise calculate the taxable capital component of its franchise tax in the same manner as any other corporation. For example, accumulated and other adjustment accounts are included in surplus, as are previously taxed income, accumulated earnings and profits, and all other amounts included in surplus under the Tax Code, §171. 109.

(d) A corporation will be eligible to file an annual report under the Tax Code, §171.113, if it is a close corporation or has elected to be an S corporation prior to January 1 of the reporting year. A corporation will be eligible to file an initial report under the Tax Code, §171.113, if it is a close corporation or has elected to be an S corporation prior to the original due date (without extensions) of the initial report.

(e) A subsidiary corporation cannot report its franchise tax under the Tax Code, §171.113, if its parent corporation is not eligible to report under the Tax Code, §171.113. For purposes of the Tax Code, §171.113, a corporation is considered a parent corporation if it ultimately controls the subsidiary even though the control may arise through any series or group of other subsidiaries or entities.

(1) Control is presumed if a corporation directly or indirectly owns, controls, or holds a majority of the outstanding voting stock of the subsidiary.

(A) No presumption, either of control or of absence of control, arises if such ownership, control, or holding of voting stock is less than a majority but more than 20%.

(B) Absence of control is presumed if such ownership, control, or holding of voting stock is 20% or less.

(2) In determining if a corporation is a parent, the comptroller will take into account ownership through a related corporation, corporate group, or other noncorporate entity. If the corporation has control, as defined in paragraph (1) of this subsection, of a related corporation, corporate group, or other noncorporate entity that owns a close corporation, the entire stock of the close corporation owned by the related corporation, corporate group, or other noncorporate entity will be considered controlled by the corporation owning the related corporation, corporate group, or other noncorporate entity. Examples are as follows.

(A) Corporation A owns 10% of a close corporation and 60% of Corporation B, which owns 41% of the same close corporation. Corporation A would be considered a parent of the close corporation with 51% stock ownership because it has control of the stock owned by Corporation B;

(B) Corporation A owns 10% of a close corporation and 15% of Corporation B, which owns 90% of the same close corporation. Corporation A would not be considered a parent of the close corporation because it does not have control of the stock owned by Corporation B;

(C) Corporation A owns 100% of 10 corporations, each of which owns 10% of the stock of a close corporation. Corporation A would be considered a parent of the close corporation because it has control of all of the stock of the corporations owning the close corporation;

(D) Corporation A holds a 70% interest in a partnership that owns 60% of a close corporation. Corporation A owns the remaining 40% of the same close corporation. Corporation A would be considered a parent of the close corporation because it controls 100% of the stock of the close corporation.

(f) Effective with reports originally due on or after January 1, 1992, an eligible corporation under the Tax Code, §171.113, must provide written notice to the comptroller of its election to use the federal income tax method of reporting the taxable capital component of its franchise tax.

(1) Notification must be postmarked on or before the original due date (not the extended due date) of the report in which the election applies.

(2) The election may be made on the extension request form provided by the comptroller or on the franchise tax report if an extension is not requested.

(3) The election to use the federal income tax method will constitute an irrevocable election of such method for the reporting period.

(g) For more information on the federal income tax method of reporting the taxable capital component of the franchise tax, see §3.547 of this title (relating to Taxable Capital: Accounting Methods).

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

Issued in Austin, Texas, on June 26, 1992.

TRD-9208859 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: August 3, 1992

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

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Part IV. Employees Retirement System of Texas

Chapter 63. Board of Trustees

- **34 TAC §63.3, §63.4**

The Employees Retirement System of Texas proposes amendments to §63.3, and §63.4, concerning election of trustees. The proposed amendments will make improvements in the nomination and election of Trustees by improving the distribution and return of ballots, furnishing additional information on candidates, and allowing the trustees to contract with an election administrator.

William S. Nail, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Nail, 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 proposed amendments will help insure the integrity of the nomination and election process, provide for improved ballot distribution, and better inform the electorate on the qualifications of the nominees. 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 William S. Nail, General Counsel, P.O. Box 13207, Austin, Texas 78711-3207.

The amendments are proposed under the Texas Government Code, §815.003 and §815.102, which provides the Employees Retirement System of Texas with the authority to promulgate rules necessary to nominate and elect trustees and to carry out other business of the board.

§63.3. Election of Trustees (Nomination Process). Names may be placed in nomination for the office of Trustee of the Employees Retirement System of Texas (system) in the following manner:

(1) (No change.)

(2) The signature of each person on a petition must be accompanied by that person's printed name and social security number [and employing department]. No person may sign a petition for more than one candidate. To do so, will cause the signatures of the person [member] to be disqualified.

(3) (No change.)

(4) Petitions must be received in the System offices on or before the close of business (5 p.m.) of a specific workday set by the trustees. Signatures on petitions [Petitions] received after that time will not be counted.

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

(7) The board shall adopt a calendar governing the conduct of each trustee election. Blank petitions [and ballots] shall be distributed by the System to state agencies at least 25 calendar days in advance of the return due date established by the trustees. Blank petitions will also be available to any requesting person.

§63.4. Election of Trustees (Ballot).

(a) (No change.)

(b) Qualified candidates must submit within the time frame established by the System the following information for printing on the ballot:

(1) name as it is to appear on the ballot;

(2) number of years and months state employment;

(3) current classification/exempt [job] title and position as a state employee;

(4) name of current employing state agency.

(c) In addition to the information required in subsection (b) of this section, the candidate shall provide, within the time frame provided by the System, his or her state agency mailing address and a statement of qualifications [job description] consisting of 100 [15] words or less. This information, in addition to that which will appear on an election ballot, will be made available to the electorate through a special ERS newsletter devoted to the trustee election process. This special edition of the newsletter will be made available to the electorate [membership immediately] prior to the ballot distribution and will describe restrictions on the use of state funds to influence the outcome of any election.

(d) The System may contract with an election administrator to implement and monitor the election process.

(e) The System/election administrator will, at least 25 calendar days in advance of the return due date established by the trustees, mail ballots to eligible voters in the manner currently used for annual individual ERS statements. Each such ballot will contain the printed name of the eligible voter for whose use it is intended.

(f) The System/election administrator will provide a toll-free telephone line which eligible voters may use to request their individual ballots if they did not receive their ballots pursuant to subsection (e) of this section.

(g) All ballots will be returned through the United States Postal Service (postage prepaid by the System) to the System/election administrator. The System/election administrator will not accept ballots delivered in any other manner. All ballots will remain sealed and in a secure location through the return due date established by the trustees.

(h) Each candidate may designate one person to observe the ballot counting process. No observer will be permitted to see complete ballots which indicate the identity of a voter and voter's candidate selection. No observer will be permitted to challenge the validity of ballots or disrupt the counting process in any way.

(i) The System/election administrator will disqualify all ballots which:

(1) are from ineligible voters;

(2) do not contain the signature of the eligible voter;

(3) fail to accurately reflect the eligible voter's social security number;

(4) are reproduced;

(5) are from eligible voters from whom more than one ballot is received;

(6) fail to clearly indicate the eligible voter's candidate selection; and

(7) are postmarked after the return due date established by the trustees, provided however, a ballot that is postmarked on or before the return due date and received within five working days of the due date will be counted.

[(d) Each ballot submitted must bear the voter's signature, printed name, social security number, and name of employing agency to be valid.

[(e) No more than one ballot may be cast by the voting member. To do so will disqualify the voter's ballots.

[(f) Blank ballots may be reproduced and utilized provided the reproduction is an exact replica of the original ballot.

[(g) Reproduced or fax copies of signed ballots will be disqualified.

[(h) Ballots must be received in the System offices on or before the close of business (5 p.m.) of a specific workday set by the trustees. Ballots received after that time will not be counted.

[(i) The election ballots can be returned to the ERS either in person, by interagency mail, or by regular mail with the postage being paid by the ERS.]

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

Issued in Austin, Texas, on June 29, 1992.

TRD-9208916 Charles D. Travis
Executive Director
Employees Retirement System of Texas

Earliest possible date of adoption: August 3, 1992

For further information, please call: (512) 867-3336

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 15. Drivers License Rules

Examination Requirements

• **37 TAC §15.54**

The Texas Department of Public Safety proposes an amendment to §15.54, concerning vehicle inspection. Paragraph (2)(F) is rewritten to clarify vehicle registration and display of registration plates. Language is added in paragraph (3)(B)(i)-(xi) for clarification, inspection items deleted, and clauses renumbered. Paragraph (4) is added, which provides that a seat be available for the examiner to ride on, the door next to the examiner's seat must open and close safely, and authorizes who may ride in a vehicle while a driving test is being conducted.

Melvin C. Peeples, assistant chief of fiscal affairs, 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.

George C. King, chief of traffic law enforcement, also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure the public is aware of the vehicle inspection items to be inspected prior to a road test for a driver's license and the rejection standards of a road test to promote vehicle safety and to improve driver skills. There will be no effect on small businesses. The department is unable to estimate the cost for persons for having a vehicle in compliance with the requirements for a road test due to the many variables which would vary in cost.

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

The amendment is proposed under Texas Civil Statutes, Article 6687b, §1A, and the Texas Government Code, §411.004(3), which provide the Texas Department of Public Safety with the authority to adopt rules that it determines are necessary to effectively administer this Act.

§15.54. Vehicle Inspection. The department inspects vehicles prior to road testing to determine if such vehicle meets the requirements of law and is safe to operate on a public street or highway.

(1) (No change.)

(2) Registration plates.

(A)-(E) (No change.)

(F) **Registration. A vehicle must have current registration or valid metal dealer plates or buyer tags (dealer intransit tags are not acceptable). State law only requires that the plates be displayed to the front and rear; there is no requirement for the plates to be attached.** [Current registration. Texas registration must be current registration or valid dealer plates. If two plates are required by statute, both plates must be properly displayed.]

(3) Vehicle inspection.

(A) (No change.)

(B) Vehicle inspection for road [roads] tests in Class C vehicles and Class A and B vehicles under 80 inches wide. The following will be inspected:

(i) two headlights[;]-**inspect when use of headlights is required;**

(ii) two tail lamps-one for 1959 model or earlier passenger car or truck[;]-**inspect when use of tail lamps is required;**

[(iii) two rear red reflectors;]

(iii) [(iv)] two stop lamps-one for 1959 model or earlier passenger car;

(iv)[(v)] horn;

[(vi) exhaust system;]

(v)[(vii)] rearview mirror;

(vi)[(viii)] turn signal lamps-1960 or later models;

(vii)[(ix)] windshield wiper[;]-**inspect when use of windshield wiper is required;**

(viii)[(x)] seat belts-required for front seat in passenger cars and light trucks to 1,500 pounds GVW where the vehicle was originally equipped with seat belt anchors;

[(xi) one way glass or glass coating material;]

(ix) [(xii)] vehicle inspection certificates;

(x)[(xiii)] registration;

(xi)[(xiv)] registration receipts if used for commercial driver's license (CDL) test.

(C)-(H) (No change.)

(4) General.

(A) No driving test will be performed in any vehicle where there is no seat for the examiner to ride on.

(B) No driving test will be performed in any vehicle in which the door next to the examiner's seat cannot be safely opened from the inside and the outside.

(C) Only the applicant and DPS personnel are allowed to be in the vehicle during the driving test. Exceptions may be made when an interpreter is actually needed by the applicant and the examiner, or in the case of a motorcycle examination when the applicant is required to furnish a vehicle and accompanying driver.

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

Issued in Austin, Texas, on June 17, 1992.

TRD-9208745 James R. Wilson
Director
Texas Department of Public Safety

Earliest possible date of adoption: August 3, 1992

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

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Driver Improvement

• 37 TAC §15.83

The Texas Department of Public Safety proposes an amendment to §15.83, concerning driver license denials. The amendment to this section adds and deletes language to clarify driver license denials. An applicant for a Texas license convicted in any state on a charge which carries an automatic suspension of license will be denied a license for the remaining period of suspension.

Melvin C. Peeples, assistant chief of fiscal affairs, 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.

George C. King, chief of traffic law enforcement, 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 denial of a Texas driver's license to a person who has been convicted in any state on a charge which carries an automatic suspension in order to enhance traffic safety. 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 John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2000.

The amendment is proposed under Texas Civil Statutes, Article 6687b, §1A, which provide the Texas Department of Public Safety with the authority to adopt rules that it determines are necessary to effectively administer this Act.

§15.83. Driver License Denials. **If an** [Any] applicant for a Texas license **is** found to have been convicted **in any state** on a charge which carriers an automatic suspension of license, **he/she** will be denied a license for the remaining period of the suspension that would have been effective had the applicant been properly licensed at the time of **such** conviction.

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

Issued in Austin, Texas, on June 17, 1992.

TRD-9208744 James R. Wilson
Director
Texas Department of Public Safety

Earliest possible date of adoption: August 3, 1992

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

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Part III. Texas Youth Commission

Chapter 91. Discipline and Control

Due Process Hearings Procedures

• 37 TAC §91.31

The Texas Youth Commission (TYC) proposes an amendment to §91.31, concerning Level I hearing procedure. The amendment states that a delay of more than seven days in scheduling a Level I hearing for a youth in TYC custody must be justified by documentation of circumstances which made it unavoidable to schedule the hearing earlier.

John Franks, director of fiscal affairs, 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. Franks 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 more timely hearings procedure. 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 Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

§91.31. Level I Hearing Procedure.

(a) (No change.)

(b) Rules.

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

(5) The primary service worker shall call the legal services department to schedule the hearing as soon as practicable but no later than seven days, excluding weekends and holidays, after the alleged violation. **A delay of more than seven days in scheduling the hearing must be justified by documentation of circumstances which made it impossible, impractical, or inappropriate to schedule the hearing earlier.**

(6)-(48) (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 June 24, 1992.

TRD-9208830 Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: August 3, 1992

For further information, please call: (512) 483-5244

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 49. Child Protective Services

Subchapter E. Intake and Investigation Services

• 40 TAC §49.519

The Texas Department of Human Services (DHS) proposes new §49.519 concerning voluntary standards for investigators of child abuse, in its Child Protective Services chapter. The purpose of the new section is to comply with House Bill (H.B.) 2252 as passed by the 72nd Texas Legislature. H.B. 2252 amended the Texas Family Code (TFC) by adding TFC, §34.054, which requires DHS to adopt voluntary standards for investigators of child abuse. The provisions of the proposed section meet all the requirements specified in TFC, §34.054.

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

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to "encourage professionalism and consistency in the investigation of suspected child abuse" as specified in TFC, §34.054. There will be no effect on small businesses There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Ray Worsham at (512) 450-3362 in DHS's Protective Services for Families and Children Department. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-154, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

The new section is proposed under the Human Resources Code, Title 2, Chapter 41, which authorizes the department to enforce laws for the protection of children. The new section is also proposed under the Texas Family Code, Title 2, Chapter 34, which authorizes the department to provide services to alleviate the effects of child abuse and neglect, and under §34.054 in particular, which authorizes the department to develop and

adopt voluntary standards for individuals who investigate suspected child abuse at the state or local level.

§49.519. Voluntary Standards for Investigators of Child Abuse. To encourage professionalism and consistency in the investigation of reports of child abuse as specified in the Texas Family Code (TFC), §34.054, the Texas Department of Human Services (DHS) recommends the voluntary standards set forth in this section to individuals who investigate reports of child abuse.

(1) As specified in TFC, §34.054, and in Item 2300(1) of DHS's *Minimum Standards for Child-Placing Agencies*, each individual responsible for investigating reports of child abuse, or for conducting interviews during investigations of child abuse, must receive at least 15 hours of professional training every year.

(2) The professional training curriculum for individuals who conduct investigations or investigation interviews must include information about:

(A) physical abuse as defined in TFC, §34.012(1)(C)-(D), including the distinction between:

(i) physical injuries resulting from abuse; and

(ii) ordinary childhood injuries;

(B) psychological abuse as defined in the Texas Federal Code, §34.012(1)(A)-(B);

(C) available treatment resources; and

(D) the types of abuse reported to the investigating agency for whom the investigator works, including information about:

(i) the incidence of each type of abuse reported, and

(ii) the receipt of false reports.

(3) Individuals who conduct videotaped or audiotaped interviews with suspected victims of child abuse must ensure that the interviews meet the requirements for recorded interviews specified in TFC, §11.21(b), including the requirement in §11.21(b)(3) that the recording be accurate and unaltered.

(4) Children often disclose information about the occurrence of abuse progressively over the course of several interviews. Accordingly, individuals who investigate reports of child abuse must:

(A) conduct enough interviews and examinations of suspected victims of child abuse to give them sufficient opportunity to disclose what they know; but

(B) refrain from conducting additional interviews or examinations after a child has disclosed enough information to confirm or rule out the occurrence or risk of abuse, unless there is a good reason for conducting additional interviews or examinations. When there is a good reason for conducting additional interviews or examinations, the individual responsible for conducting the interviews or examinations may consult with a supervisor or another individual with appropriate expertise to confirm the need for additional interviews or examinations. All decisions about conducting additional interviews or examinations as specified in this subparagraph must be based on the best interest of the child.

(5) Investigating agencies must keep all documents generated during investigations in the child's case record for the life of the record.

(6) Investigators must make reasonable efforts to locate and notify each parent of a suspected victim of child abuse regarding the disposition of the investigation, except for absent parents who are abusive, dangerous, or otherwise unlikely to protect the child, as specified in §49.514 of this title (relating to Notification About Results).

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

Issued in Austin, Texas, on June 29, 1992.

TRD-9208921

Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Proposed date of adoption: August 31, 1992

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

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Texas Department of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's Note: As required by the Insurance Code, Article 5.96 and 5. 97, the Texas Register

publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the Texas Register not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the Texas Register not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure and Texas Register Act, Article 6252-13a, Texas Civil Statutes, does not apply to board action under Articles 5 96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104)

The State Board of Insurance, at a Board meeting scheduled for 9 a.m. August 5, 1992, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, will consider a proposal filed by the staff of the Workers' Compensation Division of the Texas Department of Insurance. The "staff" proposed an amendment to the Texas Basic Manual of Rules, Classifications and Rates for Workers' Compensation and Employers' Liability Insurance pertaining to Rule VI J-Texas Maintenance Tax Surcharge Recoupment and a corresponding endorsement.

According to the "staff's" petition, this amendment corresponds with the provisions set forth in 28 TAC §1.411 and sets forth the ways in which insurance companies may recoup the maintenance tax surcharge from policyholders. Insurance companies must elect the method of recoupment and notify the Texas Department of Insurance by June 1 of each year the method of recoupment elected. The endorsement being proposed is to be attached to each workers' compensation policy written by an insurance company electing to charge and collect the surcharges as a separate charge.

A copy of the petition containing the full text of this proposed amendment to the Texas Basic Manual of Rules, Classifications and Rates for Workers' Compensation and Employer's Liability Insurance and the corresponding endorsement is available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714- 9104. For further information or to request copies of the petition, please contact Lynette Brown at (512) 322-4147 (refer to Reference Number W-0692-33-I).

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedures and Texas Register Act.

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

Issued in Austin, Texas, on June 26, 1992.

TRD-9208895 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

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

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The State Board of Insurance, at a board meeting scheduled for 9 a.m. July 15, 1992, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, will consider revisions to the standard and uniform Employers Comprehensive Notary Public Errors and Omissions Policy of the Western Surety Company of Sioux Falls, South Dakota.

The proposed policy revisions incorporate previously board approved amendatory language into the policy. The revision also adds policy wording required by the Insurance Code, Articles 21.56 (notice of settlement of liability claims) and 21.49-2D (cancellation and nonrenewal of certain policies).

There are no rate consequences for the proposed form revisions.

Copies of the full text of the proposed policy revisions are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the petition, please contact Lynette Brown at (512) 322-4147 (refer to Reference Number O-0692-36-I).

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts Board action on this filing from the requirements of the Administrative Procedure and Texas Register Act.

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

Issued in Austin, Texas, on June 26, 1992.

TRD-9208896 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

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

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The State Board of Insurance, at a board meeting scheduled for 9 a.m. July 15, 1992, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, will consider proposed revisions to the standard and uniform Credit Union Errors and Omissions Policy of Cumis Insurance Society, Madison, Wisconsin.

The proposed revisions add policy wording required by the Insurance Code, Article 21.56 (Notice of Settlement of Liability Claims) and Article 21.49-2D (Cancellation and Nonrenewal of Certain Policies).

There are no rate consequences for the proposed form revisions.

Copies of the full text of the proposed policy revisions are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the petition, please contact Lynette Brown at (512) 322-4147 (refer to Reference Number O-0692-35-I).

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts board action on this filing from the requirements of the Administrative Procedure and Texas Register Act.

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

Issued in Austin, Texas, on June 26, 1992.

TRD-9208897 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

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

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The State Board of Insurance, at a board meeting scheduled for 9 a.m. July 15, 1992, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, will consider proposed revisions to the standard and uniform Insurance Agents and Brokers Errors and Omissions Policy of International Insurance Company, Basking Ridge, New Jersey, The North River Insurance Company, Basking Ridge, New Jersey, United State Fire Insurance Company, Basking Ridge, New Jersey, and the Westchester Fire Insurance Company, Basking Ridge, New Jersey.

The proposed revisions add policy wording required by the Insurance Code, Articles 21.56 (Notice of Settlement of Liability Claims) and 21.49-2D (Cancellation and Nonrenewal of Certain Policies).

There are no rate consequences for the proposed form revisions.

Copies of the full text of the proposed policy revisions are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the petition, please contact Lynette Brown at (512) 322-4147 (refer to Reference Number O-0692-34-I).

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts board action on this filing from the requirements of the Administrative Procedure and Texas Register Act.

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

Issued in Austin, Texas, on June 26, 1992.

TRD-9208898 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

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

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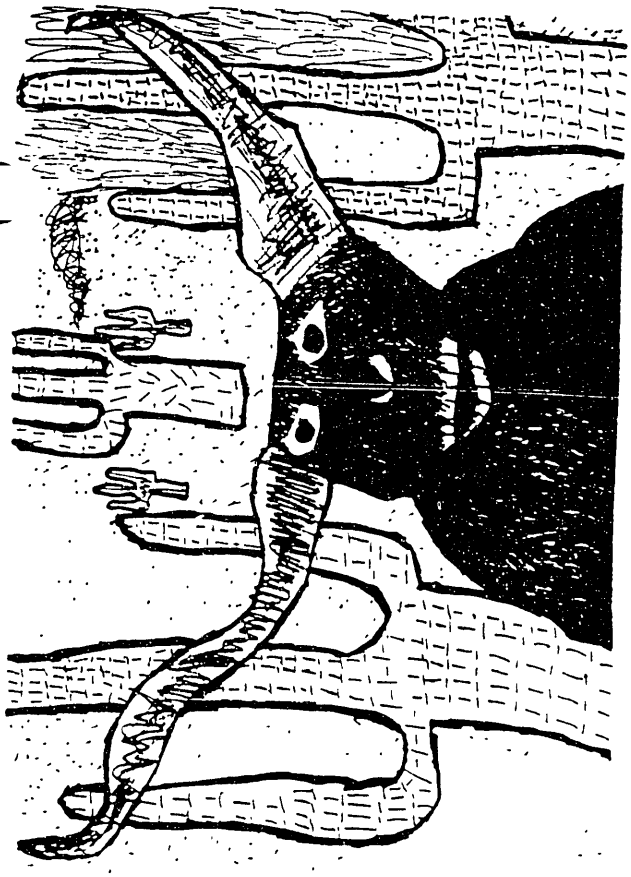

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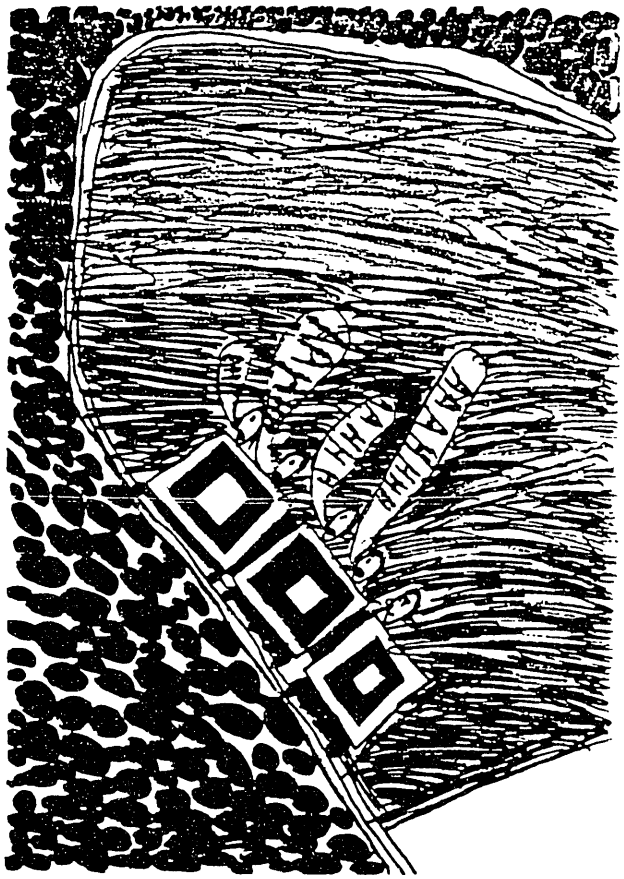

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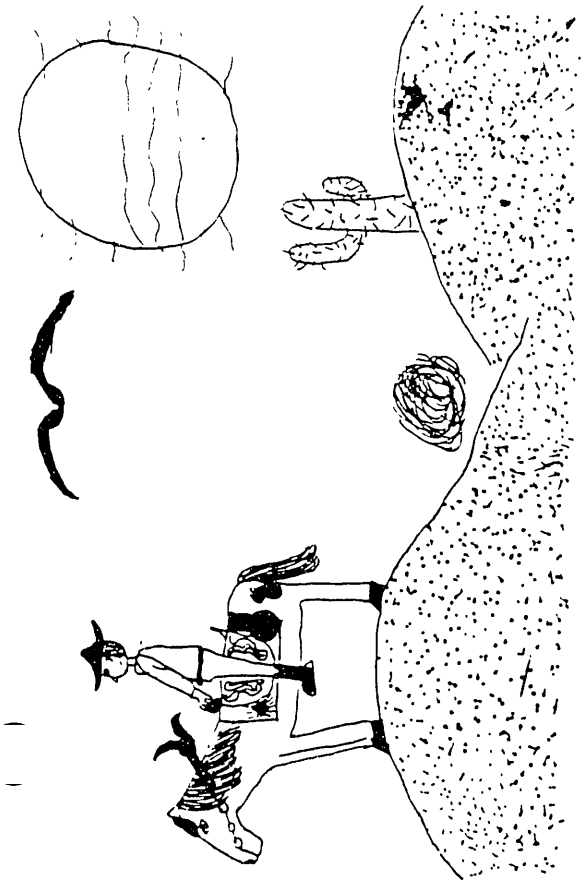

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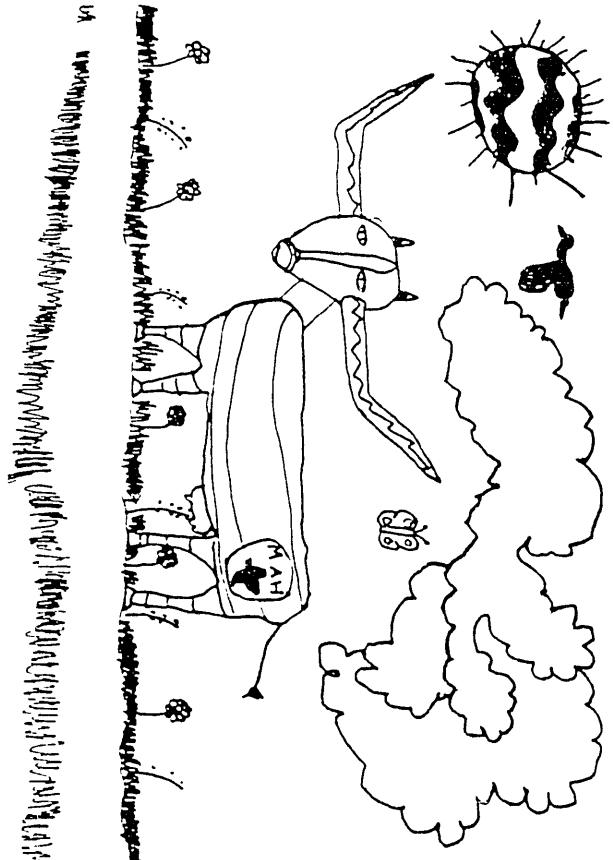

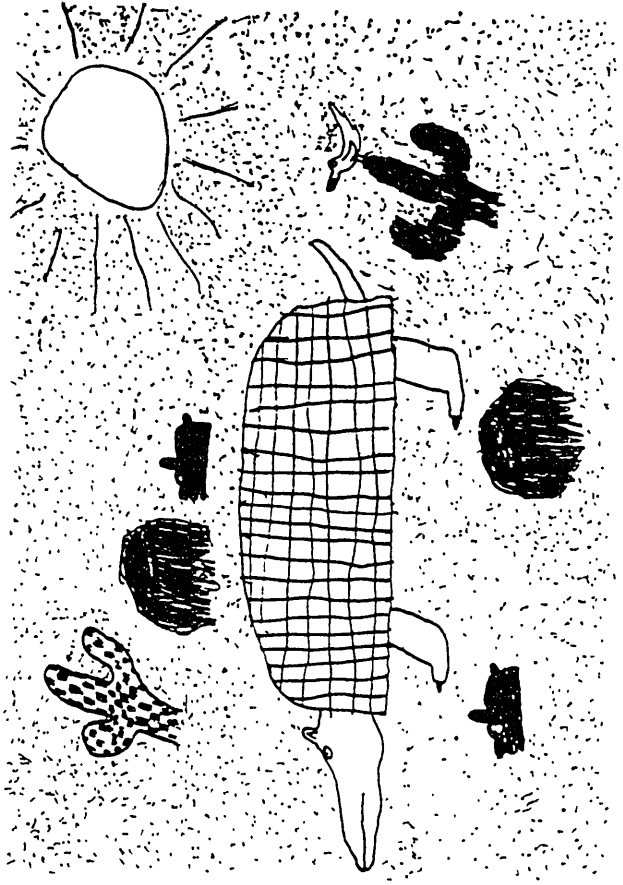

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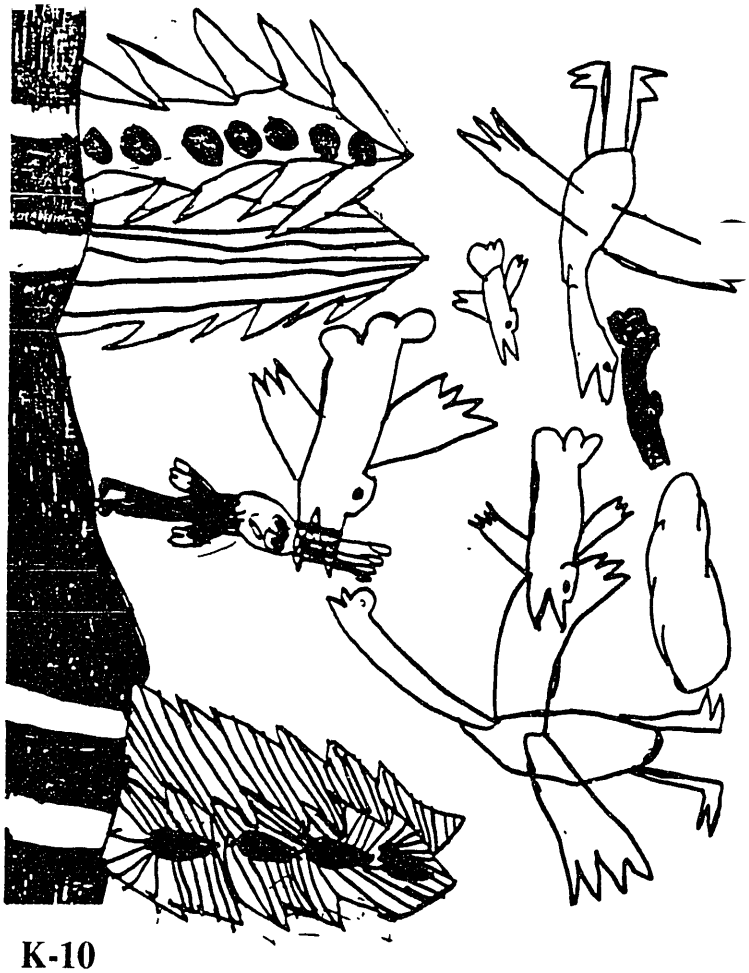

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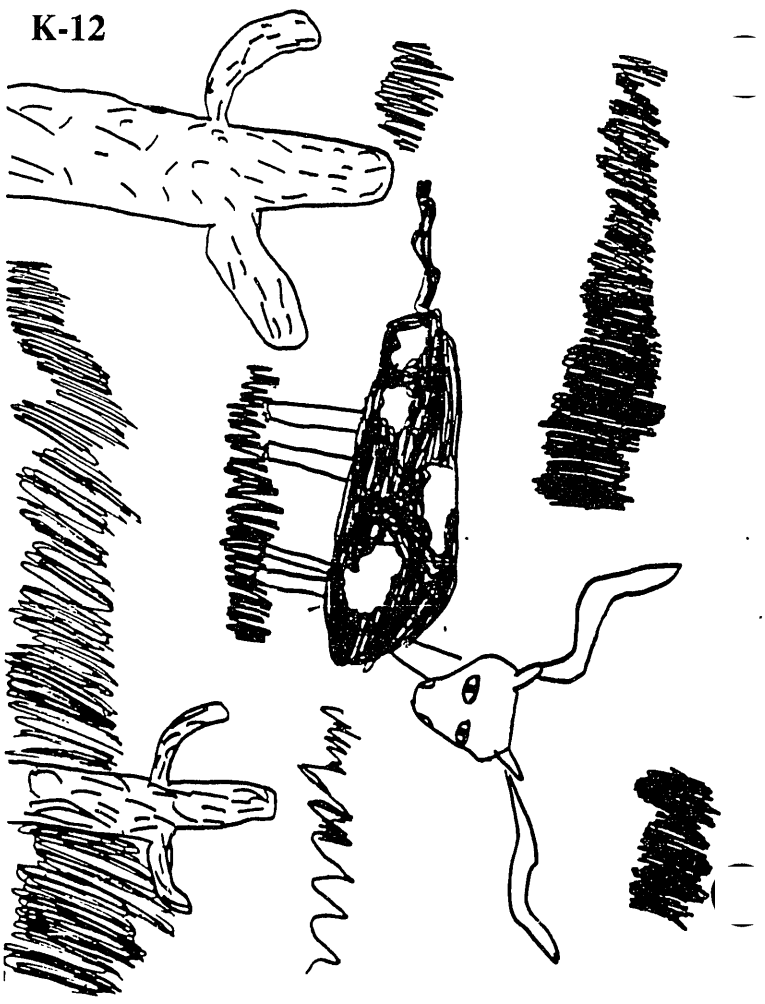

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Withdrawn Sections

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 filling 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 4. AGRICULTURE

Part II. Animal Health Commission

Chapter 55. Swine

• 4 TAC §55.6

The Animal Health Commission has withdrawn from consideration for permanent adoption a proposed amendment to §55.6 which appeared in the April 17, 1992, issue of the *Texas Register* (17 TexReg 2659). The effective date of this withdrawal is July 16, 1992.

Issued in Austin, Texas, on June 26, 1992.

TRD-9208804 Jo Anne Conner
Executive Secretary
Animal Health Commission

Effective date: June 26, 1992

For further information, please call: (512) 479-6697

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TITLE 22. EXAMINING BOARDS

Part IX. State Board of Medical Examiners

Chapter 163. Examinations Required by the Board for Licensure

• 22 TAC §163.3

The State Board of Medical Examiners has withdrawn from consideration for permanent adoption a proposed amendment to §163.3 which appeared in the December 27, 1991, issue of the *Texas Register* (16 TexReg 7697). The effective date of this withdrawal is June 24, 1992.

Issued in Austin, Texas, on June 24, 1992.

TRD-9208743 Pat Wood
Secretary to Executive Director
State Board of Medical Examiners

Effective date: June 24, 1992

For further information, please call: (512) 834-4502

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Chapter 165. Administration of Examinations

• 22 TAC §165.1

The State Board of Medical Examiners has withdrawn from consideration for permanent adoption a proposed amendment to §165.1 which appeared in the December 27, 1991, issue of the *Texas Register* (16 TexReg 7698). The effective date of this withdrawal is June 24, 1992.

Issued in Austin, Texas, on June 24, 1992.

TRD-9208742 Pat Wood
Secretary to Executive Director
State Board of Medical Examiners

Effective date: June 24, 1992

For further information, please call: (512) 834-4502

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Part XXIV. Texas Board of Veterinary Medical Examiners

Chapter 571. Licensing

Examinations

• 22 TAC §571.3

The Texas Board of Veterinary Medical Examiners has withdrawn from consideration for permanent adoption a proposed amendment to §571.3 which appeared in the May 8, 1992, issue of the *Texas Register* (17 TexReg 3332). The effective date of this withdrawal is June 29, 1992.

Issued in Austin, Texas, on June 29, 1992.

TRD-9208925 Judy C. Smith
Administrative Assistant
Texas Board of Veterinary Medical Examiners

Effective date: June 29, 1992

For further information, please call: (512) 447-1183

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Chapter 573. Rules of Professional Conduct

General Professional Ethics

• 22 TAC §573.6

The Texas Board of Veterinary Medical Examiners has withdrawn from consideration for permanent adoption a proposed amendment to §573.6 which appeared in the March 10, 1992, issue of the *Texas Register* (17 TexReg 1800). The effective date of this withdrawal is June 29, 1992.

Issued in Austin, Texas, on June 29, 1992.

TRD-9208926 Judy C. Smith
Administrative Assistant
Texas Board of Veterinary Medical Examiners

Effective date: June 29, 1992

For further information, please call: (512) 447-1183

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Prescribing and/or Dispensing Medications

• 22 TAC §573.40

The Texas Board of Veterinary Medical Examiners has withdrawn from consideration for permanent adoption a proposed amendment to §573.40 which appeared in the March 20, 1992, issue of the *Texas Register* (17 TexReg 2090). The effective date of this withdrawal is June 29, 1992.

Issued in Austin, Texas, on June 29, 1992.

TRD-9208924 Judy C. Smith
Administrative Assistant
Texas Board of Veterinary Medical Examiners

Effective date: June 29, 1992

For further information, please call: (512) 447-1183

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part XIV. Texas Board of Irrigators

Chapter 421. Introductory Provisions

General Provisions

• 31 TAC §421.1

The Texas Board of Irrigators has withdrawn the emergency effectiveness of amendment §421.1, concerning the general provisions. The text of the emergency §421.1 appeared in the January 31, 1992, issue of the *Texas Register* (17 TexReg 3945). The effective date of this withdrawal is July 20, 1992.

Issued in Austin, Texas, on June 29, 1992.

TRD-9208962 Joyce Watson
Executive Secretary
Texas Board of Irrigators

Effective date: July 20, 1992

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

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General Provisions Affecting Board

• 31 TAC §421.36, §421.39

The Texas Board of Irrigators has withdrawn the emergency effectiveness of amendments §421.36, and §421.39, concerning the general provisions affecting board. The text of the emergency §421.36, amd §421.39 appeared in the January 31, 1992, issue of the *Texas Register* (17 TexReg 3945) . The effective date of this withdrawal is July 20, 1992.

Issued in Austin, Texas, on June 29, 1992.

TRD-9208963 Joyce Watson
Executive Secretary
Texas Board of Irrigators

Effective date: July 20, 1992

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

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Chapter 423. Registration of Irrigators and Installers

Application for Registration

• 31 TAC §§423.1, 423.4, 423.7, 423.10, 423.13, 423.19, 423. 22

The Texas Board of Irrigators has withdrawn the emergency effectiveness of amendments §§423.1, 423.4, 423.7, 423.10, 423.13, 423.19, and 423.22, concerning the application for registration. The text of the emergency §§423. 1, 423.4, 423.7, 423.10, 423.13, 423.19, and 423.22, appeared in the January 31, 1992, issue of the *Texas Register* (17 TexReg 3945). The effective date of this withdrawal is July 20, 1992.

Issued in Austin, Texas, on June 29, 1992.

TRD-9208961 Joyce Watson
Executive Secretary
Texas Board of Irrigators

Effective date: July 20, 1992

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

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Examinations

• 31 TAC §§423.41, 423.50, 423.56

The Texas Board of Irrigators has withdrawn the emergency effectiveness of amendments §§423.41, 423.50, and 423.56, concerning the examinations. The text of the emergency §§423.41, 423.50, and 423.56 appeared in the January 31, 1992, issue of the *Texas Register* (17 TexReg 3946). The effective date of this withdrawal is July 20, 1992.

Issued in Austin, Texas, on June 29, 1992.

TRD-9208964 Joyce Watson
Executive Secretary
Texas Board of Irrigators

Effective date: July 20, 1992

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

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Chapter 425. Certificate of Registration and Seal

• 31 TAC §§425.16, 425.19, 425.22, 425.25

The Texas Board of Irrigators has withdrawn the emergency effectiveness of amendments §§425.16, 425.19, 425.22, and 425.25, concerning the certificate of registration and seal. The text of the emergency §§425.16, 425.19, 425.22, and 425.25 appeared in the January 31, 1992, issue of the *Texas Register* (17 TexReg 3946). The effective date of this withdrawal is July 20, 1992.

Issued in Austin, Texas, on June 29, 1992.

TRD-9208965 Joyce Watson
Executive Secretary
Texas Board of Irrigators

Effective date: July 20, 1992

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

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Seal

• 31 TAC §425.41

The Texas Board of Irrigators has withdrawn the emergency effectiveness of amendment §425.41, concerning the seal. The text of the emergency §425. 41 appeared in the January 31, 1992, issue of the *Texas Register* (17 TexReg 3946). The effective date of this withdrawal is July 20, 1992.

Issued in Austin, Texas, on June 29, 1992.

TRD-9208952 Joyce Watson
Executive Secretary
Texas Board of Irrigators

Effective date: July 20, 1992

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

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• 31 TAC §427.10

The Texas Board of Irrigators has withdrawn the emergency effectiveness of repeal §427.10, concerning the standards for connections to potable water supplies. The text of the emergency §427.10 appeared in the January 31, 1992, issue of the *Texas Register* (17 TexReg 3946). The effective date of this withdrawal is July 20, 1992.

Issued in Austin, Texas, on June 29, 1992.

TRD-9208954 Joyce Watson
Executive Secretary
Texas Board of Irrigators

Effective date: July 20, 1992

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

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Chapter 427. Water Supply Connections

Standards for Connections to Potable Water Supplies

• 31 TAC §§427.2, 427.4, 427.6, 427.8, 427.10

The Texas Board of Irrigators has withdrawn the emergency effectiveness of new and amended §§427.2, 427.4, 427.6, 427.8, and 427.10, concerning the standards for connections to potable water supplies. The text of the emergency §§427.2, 427.4, 427.6, 427.8, and 427.10 appeared in the January 31, 1992, issue of the *Texas Register* (17 TexReg 3946). The effective date of this withdrawal is July 20, 1992.

Issued in Austin, Texas, on June 29, 1992.

TRD-9208953 Joyce Watson
Executive Secretary
Texas Board of Irrigators

Effective date: July 20, 1992

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

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Chapter 429. Violation of Statute or Board Rules

Complaint Process

• 31 TAC §§429.1, 429.13, 429.16, 429.19, 429.22

The Texas Board of Irrigators has withdrawn the emergency effectiveness of repeals §§429.1, 429.13, 429.16, 429.19, and 429.22, concerning the complaint process. The text of the emergency §§429.1, 429.13, 429.16, 429.19, and 429.22 appeared in the January 31, 1992, issue of the *Texas Register* (17 TexReg 3946). The effective date of this withdrawal is July 20, 1992.

Issued in Austin, Texas, on June 29, 1992.

TRD-9208955 Joyce Watson
Executive Secretary
Texas Board of Irrigators

Effective date: July 20, 1992

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

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• 31 TAC §§429.1-429.5, 429.7, 429.10, 429.11, 429.13-429.19

The Texas Board of Irrigators has withdrawn the emergency effectiveness of new and amended §§429.1-429.5, 429.7, 429.10, 429.11, and 429.13-429.19, concerning the complaint process. The text of the emergency §§429.1-429.5, 429.7, 429.10, 429.11, and 429.13-429.19 appeared in the January 31, 1992, issue of the *Texas Register* (17 TexReg

3946). The effective date of this withdrawal is July 20, 1992.

Issued in Austin, Texas, on June 29, 1992.

TRD-9208956 Joyce Watson
Executive Secretary
Texas Board of Irrigators

Effective date: July 20, 1992

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

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Revocation of Registration

• 31 TAC §429.41

The Texas Board of Irrigators has withdrawn the emergency effectiveness of repeal §429.41, concerning the revocation of registration. The text of the emergency §429.41 appeared in the January 31, 1992, issue of the *Texas Register* (17 TexReg 3946). The effective date of this withdrawal is July 20, 1992.

Issued in Austin, Texas, on June 29, 1992.

TRD-9208957 Joyce Watson
Executive Secretary
Texas Board of Irrigators

Effective date: July 20, 1992

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

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• 31 TAC §429.44.

The Texas Board of Irrigators has withdrawn the emergency effectiveness of amendment §429.44, concerning the revocation of registration. The text of the emergency §429.44 appeared in the January 31, 1992, issue of the *Texas Register* (17 TexReg 3946). The effective date of this withdrawal is July 20, 1992.

Issued in Austin, Texas, on June 29, 1992.

TRD-9208958 Joyce Watson
Executive Secretary
Texas Board of Irrigators

Effective date: July 20, 1992

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

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Penalty

• 31 TAC §§429.51, 429.53, 429.55

The Texas Board of Irrigators has withdrawn the emergency effectiveness of repeals §§429.51, 429.53, and 429.55, concerning the penalty. The text of the emergency §§429.51, 429.53, and 429.55 appeared in the January 31, 1992, issue of the *Texas Register* (17 TexReg 3946). The effective date of this withdrawal is July 20, 1992.

Issued in Austin, Texas, on June 29, 1992.

TRD-9208959 Joyce Watson
Executive Secretary
Texas Board of Irrigators

Effective date: July 20, 1992

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

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Chapter 431. Standards of Conduct

Subchapter A. Licensed Irrigator and Installer Standards

• 31 TAC §§431.1-431.6

The Texas Board of Irrigators has withdrawn the emergency effectiveness of amendments §§431.1-431.6, concerning the standards of conduct. The text of the emergency §§431.1-431.6 appeared in the January 31, 1992, issue of the *Texas Register* (17 TexReg 3946). The effective date of this withdrawal is July 20, 1992.

Issued in Austin, Texas, on June 29, 1992.

TRD-9208960 Joyce Watson
Executive Secretary
Texas Board of Irrigators

Effective date: July 20, 1992

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

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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 4. AGRICULTURE

Part II. Texas Animal Health Commission

Chapter 34. Veterinary Biologics

• 4 TAC §34.2

The Texas Animal Health Commission adopts an amendment to §34.2, concerning general requirements, without changes to the proposed text as published in the April 17, 1992, issue of the *Texas Register* (17 TexReg 2649).

The amendment was needed as it was necessary to provide that Arkansas Type Infectious Bronchitis Vaccine (AIB) may be used without restriction in Texas.

Poultry raisers in the state may use Arkansas Type Infectious Bronchitis Vaccine (AIB) in their poultry flocks without restriction.

One individual commenter did not believe in prudent to allow unrestricted use of the vaccine in the state as he thinks it will speed up the spread of infectious bronchitis in poultry.

Members of the commission do not agree with the comment and believe the poultry industry should be allowed to have unrestricted use of the Arkansas 99 strain of infectious bronchitis vaccine.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with the authority to adopt rules and sets forth duties of this commission to protect livestock in the state from disease.

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 June 24, 1992.

TRD-9208782 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: July 20, 1992

Proposal publication date: April 17, 1992

For further information, please call: (512) 479-6697

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Chapter 35. Brucellosis

Subchapter A. Eradication of Brucellosis in Cattle

• 4 TAC §35.2

The Texas Animal Health Commission adopts an amendment to §35.2, concerning general requirements, without changes to the proposed text as published in the April 17, 1992, issue of the *Texas Register* (17 TexReg 2649).

This amendment was necessary to provide consistency in language insofar as postquarantine release testing time-frames for herds released from quarantine; and for dealers to maintain records of cattle transactions for a definite period of time.

Herd owners whose herds have been released from quarantine are required to retest all test-eligible cattle in the herd in not less than six months nor more than twelve months from the date of the releasing test; dealers are required to maintain records of each cattle transaction for a period of two years.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161 and 163, which provides the commission with the authority to adopt rules and set forth the duties of this commission to protect livestock in the state from disease.

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 June 24, 1992.

TRD-9208783 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: July 20, 1992

Proposal publication date: April 17, 1992

For further information, please call: (512) 479-6697

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Subchapter B. Eradication of Brucellosis in Swine

• 4 TAC §35.41

The Texas Animal Health Commission adopts an amendment to §35.41, concerning definitions, without changes to the proposed text as published in the April 17, 1992, issue of the *Texas Register* (17 TexReg 2650).

The amendment is necessary to add new definitions for an adjacent herd; a high-risk herd; infected herd retest; waste food feeding operation and waste food feeding complex; and amend definitions for brucellosis exposed swine; herd; herd test; identification of reactor; and swine classification.

These definitions clearly define the intent of certain words and terms used throughout the swine brucellosis regulations.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 165, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

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 June 24, 1992.

TRD-9208784 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: July 20, 1992

Proposal publication date: April 17, 1992

For further information, please call: (512) 479-6697

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• 4 TAC §35.42

The Texas Animal Health Commission adopts the repeal of §35.42, concerning classification of swine by testing blood and semen, without changes to the proposed text as published in the April 17, 1992, issue of the *Texas Register* (17 TexReg 2649).

This section is proposed for repeal because the procedures and tests do not conform to tests and interpretations currently used.

A new rules will replace this rule and will provide the general public with the correct information for classifying swine which are tested for brucellosis.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161 and 165, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

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

cy's legal authority.

Issued in Austin, Texas, on June 24, 1992.

TRD-9208786 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: July 20, 1992

Proposal publication date: April 17, 1992

For further information, please call: (512) 479-6697

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The Texas Animal Health Commission adopts new §35.42, concerning classification of swine by blood and semen tests, without changes to the proposed text as published in the April 24, 1992, issue of the *Texas Register* (17 TexReg 2919).

This rule is necessary to provide the general public with information concerning classification of swine when they are tested for brucellosis.

Swine will be classified using the card, automated complement fixation, and rivanol tests; also the semen plasma test can be used as a supplemental test of boars used for artificial insemination; a designated epidemiologist may reclassify an animal when consideration and evaluation of relevant bacteriologic, serologic, or epidemiologic evidence justifies the reclassification.

No comments were received regarding adoption of the new section.

The new section is adopted under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 165, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

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 June 24, 1992.

TRD-9208785 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: July 20, 1992

Proposal publication date: April 24, 1992

For further information, please call: (512) 479-6697

♦ ♦ ♦

• 4 TAC §35.43

The Texas Animal Health Commission adopts an amendment to §35.43, concerning persons authorized to conduct official test, without changes to the proposed text as published in the April 17, 1992, issue of the *Texas Register* (17 TexReg 2653).

The amendment is necessary to clarify that the amendment to this section refers to accredited veterinarians by the United States Department of Agriculture (USDA) rather than being accredited by the commission.

When blood samples are collected from swine for the purpose of conducting tests for brucellosis, only veterinarians who are accredited by the United States Department of Agriculture, or their employees, or regularly employed representatives of this agency, or the USDA are authorized to collect blood the samples.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 165, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

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 June 24, 1992.

TRD-9208787 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: July 20, 1992

Proposal publication date: April 17, 1992

For further information, please call: (512) 479-6697

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• 4 TAC §35.44

The Texas Animal Health Commission adopts an amendment to §35.44, concerning identification and movement of brucellosis infected and exposed swine, without changes to the proposed text as published in the April 17, 1992, issue of the *Texas Register* (17 TexReg 2653).

The amendment is necessary to provide that swine which have been identified as reactors must be held separate and apart from other swine being held for sale to a recognized slaughter establishment.

Reactor swine must be held separate and apart from other swine when moving through a state or federally approved market for sale to a recognized slaughter establishment.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 165, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

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 June 24, 1992.

TRD-9208788 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: July 20, 1992

Proposal publication date: April 17, 1992

For further information, please call: (512) 479-6697

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• 4 TAC §35.45

The Texas Animal Health Commission adopts an amendment to §35.45, concerning procedures for handling brucellosis infected adjacent and high risk herds of swine, with changes to the proposed text as published in the April 17, 1992, issue of the *Texas Register* (17 TexReg 2653). The change was made to clarify depopulation of a herd and when indemnity may be paid.

The amendment is necessary to require one additional herd test before a herd can be released from a quarantine as presently required by the brucellosis eradication, uniform methods and rules. Those herd tests will include younger swine as well. These added features for infected herd testing will help assure the public that infection has been identified and removed before quarantines are released. A provision is added to allow quarantine of adjacent and high-risk herds to prevent possible spread of infection and provide a guideline for depopulation, if that was chosen.

In infected herd tests all sexually intact swine above weaning age, rather than above six months of age, must be tested; infected swine herds must have three negative herd tests for release of quarantine rather than two. The first test must be 30 days from the date of the removal of the reactors; the second test must be 60 days to 90 days after the first test and the third must be 60 days to 90 days following the second test. The provision for an adjacent and high risk herd will require a quarantine on these herds pending determination of whether the animals are infected; an infected, adjacent or high risk herd is eligible for depopulation provided a recommendation is made and funds are available and the owner concurs.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 165, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

§34.45. Procedures for Handling Brucellosis Infected, Adjacent, and High Risk Herds of Swine.

(a) Infected herds. All swine in infected herds must be confined to the premises under quarantine until the herd has been freed of brucellosis or sold for slaughter under permit. Three negative infected herd retests are required for release of quarantine, with the first retest occurring 30 days or more after all reactors have been removed for slaughter. The second retest must be conducted 60 to 90 days after the first negative retest. A third negative in-

fected herd retest is required 60 to 90 days following the second retest. Herds of origin of Market Swine Test (MST) reactors that fail to reveal additional reactors on a herd test would not be required to be held under quarantine for additional testing unless there is evidence of brucella infection or exposure to brucellosis.

(b) Adjacent and high risk herds. All swine in adjacent and high risk herds may be quarantined until an epidemiologist through testing or other epidemiological evidence determines the herd is not infected or not at risk of becoming infected.

(c) Depopulation. Any infected, adjacent, or high risk herd may be depopulated. Indemnity may be paid to the herd owner, if funds are made available for indemnity purposes and a recommendation is made by the epidemiologist to depopulate the herd and the owner concurs.

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 June 24, 1992.

TRD-9208789 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

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Proposal publication date: April 17, 1992

For further information, please call: (512) 479-6697

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• 4 TAC §35.46

The Texas Animal Health Commission adopts an amendment to §35.46, concerning plans for eradicating brucellosis from infected swine herds, without changes to the proposed text as published in the April 17, 1992, issue of the *Texas Register* (17 TexReg 2654).

The amendment is necessary to bring each of three plans into compliance with the United States Department of Agriculture (USDA) swine brucellosis eradication uniform methods and rules. One of these plans may be used for eradicating brucellosis from infected swine herds.

Three tests rather than two tests are required for release of a swine quarantine in Plans Two and Three; gilt pigs must be removed from the sows at 28 days of age rather than 42 days of age as stated in Plan Two.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 165, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

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 June 24, 1992.

TRD-9208790 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: July 20, 1992

Proposal publication date: April 17, 1992

For further information, please call: (512) 479-6697

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• 4 TAC §35.48

The Texas Animal Health Commission adopts an amendment to §35.48, concerning initial validation and revalidation of individual swine herd, without changes to the proposed text as published in the April 17, 1992, issue of the *Texas Register* (17 TexReg 2654).

The amendment is necessary to provide that requirements for swine herd validation can be more easily understood and also to have the rules comply with the United States Department of Agriculture, swine brucellosis uniform methods and rules.

Increment testing for initial validation of a herd is now provided for; swine which are added to a herd must be retested in 30 days to 60 days rather than 60 day to 90 days. Use of swine semen in validated herds must be obtained from boars in validated brucellosis free herds. The requirement for market swine testing as a means of herd revalidation has been removed; and the 60-day grace period for revalidation of a herd is no longer allowed.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 165, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

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 June 24, 1992.

TRD-9208791 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: July 20, 1992

Proposal publication date: April 17, 1992

For further information, please call: (512) 479-6697

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Chapter 39. Scabies

• 4 TAC §39.1

The Texas Animal Health Commission adopts an amendment to §39.1, concerning cattle, sheep, and goat scabies, without changes to the proposed text as published in the April 17, 1992, issue of the *Texas Register* (17 TexReg 2656).

The amendment is necessary to provide that cattle treated with Invermectin must be withheld from slaughter as prescribed by the product label.

When Ivermectin is the selected treatment for psoroptic or sarcoptic scabies, Invomec injectable can be used to treat cattle provided product labeling is closely observed to assure that the Invermectin has had ample time to be eliminated from the body tissue before the animal is slaughtered and the meat used for human consumption. Invermectin cannot be used to treat female dairy cattle of breeding age.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 164, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

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 June 24, 1992.

TRD-9208792 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: July 20, 1992

Proposal publication date: April 17, 1992

For further information, please call: (512) 479-6697

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Chapter 43. Tuberculosis

Subchapter A. Cattle

• 4 TAC §43.1

The Texas Animal Health Commission adopts an amendment to §43.1, concerning cattle, without changes to the proposed text as published in the April 17, 1992, issue of the *Texas Register* (17 TexReg 2656).

The amendment is necessary to state the correct amount of tuberculin to be injected into an animal being tested for tuberculosis when the single cervical test is used. The dosage has been changed from .2cc to .1cc.

When cattle are tested for tuberculosis using the single cervical test, the veterinarian will inject .1cc of tuberculin intradermally into a pre-clipped site on the animal's neck.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 162, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

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 June 24, 1992.

TRD-9208793 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: July 20, 1992

Proposal publication date: April 17, 1992

For further information, please call: (512) 479-6697

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Chapter 51. Interstate Shows and Fairs

• 4 TAC §51.1

The Texas Animal Health. Commission adopts an amendment to §51.1, concerning definitions, without changes to the proposed text as published in the April 17, 1992, issue of the *Texas Register* (17 TexReg 2657).

The amendment is necessary to define an "S" permit. An "S" permit is any document designated by the executive director for restricted movement of cattle.

The definition advises herd owners they have the option of using an "S" permit, a VS 1-27, or a New Mexico Form 1A, provided this form is clearly identified as an "S" permit and lists the market of origin of the animals and is accompanied by the purchase sheet.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

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 June 24, 1992.

TRD-9208794 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: July 20, 1992

Proposal publication date: April 17, 1992

For further information, please call: (512) 479-6697

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• 4 TAC §51.2

The Texas Animal Health Commission adopts an amendment to §51.2, concerning general requirements, without changes to the proposed text as published in the April 17, 1992, issue of the *Texas Register* (17 TexReg 2657).

The amendment is necessary to provide for the movement of restricted cattle and accompanied by an "S" permit rather than limit the document to only the VS 1-27.

An "S" permit, or a VS 1-27 permit, or a New Mexico Form 1A may be completed and used so long as the New Mexico Form 1A is clearly identified as an "S" permit and lists the animal's market of origin and is accompanied by the purchase sheet.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

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 June 24, 1992.

TRD-9208795 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: July 20, 1992

Proposal publication date: April 17, 1992

For further information, please call: (512) 479-6697

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Chapter 55. Swine

• 4 TAC §55.5

The Texas Animal Health Commission adopts an amendment to §55.5, concerning pseudorabies, without changes to the proposed text as published in the April 17, 1992, issue of the *Texas Register* (17 TexReg 2657).

The amendment is necessary to provide that herd plans are more clearly written and testing requirements are included in the herd plan; the monitoring of swine within one and one-half miles of the infected herd is required; to provide requirements for testing some younger swine to assure infection is not in that age group in the qualified herd selection.

A random sampling test procedure is provided to detect pseudorabies in some herds; swine which are determined to be infected are required to be identified with a red reactor tag and disposed of in seven days and accompanied by a VS 1-27 permit; a herd plan must be developed for an infected herd and must include provisions for release of the quarantine; all swine herds located within 1.5 miles of an infected swine herd are required to be monitored by either testing all breeding swine or having a random sample test; the initial qualifying and re-qualifying test requirements for pseudorabies free status requires testing a certain number of progeny under six months of age representing 20% of the breeding herd, and is included in the herd plan for testing an infected herd. The progeny are selected from the older part of those pigs under six months of age.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 165, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

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 June 24, 1992.

TRD-9208796 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: July 20, 1992

Proposal publication date: April 17, 1992

For further information, please call: (512) 479-6697

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• 4 TAC §55.8

The Texas Animal Health Commission adopts an amendment to §55.8, concerning dealer recordkeeping, without changes to the proposed text as published in the April 17, 1992, issue of the *Texas Register* (17 TexReg 2659).

The amendment is necessary to provide the livestock producer with information that a dealer is required to maintain records of each transaction for a definite period of time.

A livestock dealer is required to maintain records on swine sales for a minimum of two years after the completion of a transaction.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 165, which provides the commission with the authority to adopt rules and sets forth the duties of this commission to control disease.

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 June 24, 1992.

TRD-9208797 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: July 20, 1992

Proposal publication date: April 17, 1992

For further information, please call: (512) 479-6697

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• 4 TAC §55.9

The Texas Animal Health Commission adopts new §55.9, concerning feral swine, without changes to the proposed text as published in the April 17, 1992, issue of the *Texas Register* (17 TexReg 2660).

The new section is necessary to provide

movement requirements for feral swine in order to prevent exposing domestic swine to diseases carried by feral swine.

Feral swine are required to be tested for brucellosis and pseudorabies for movement to a game preserve; the animals can move direct to slaughter without restrictions and they may move to markets for sale to slaughter provided they are held in isolation at the market and moved directly to slaughter with a VS 1-27 permit.

No comments were received regarding adoption of the new section.

The new section is adopted under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 165, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

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 June 24, 1992.

TRD-9208798 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: July 20, 1992

Proposal publication date: April 17, 1992

For further information, please call: (512) 479-6697

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Chapter 57. Poultry

General

• 4 TAC §57.10

The Texas Animal Health Commission adopts an amendment to §57.10, concerning definitions, without changes to the proposed text as published in the April 17, 1992, issue of the *Texas Register* (17 TexReg 2660).

The amendment is necessary to provide that the definition of Arkansas infectious bronchitis vaccine (AIB) be amended to allow this vaccine to be used without restriction in this state. The Texas Poultry Federation recommends and support this amendment and has worked very closely with this agency.

The definition provides information to poultry raisers that they may vaccinate their poultry using AIB vaccine without restrictions.

One commenter did not believe it prudent to allow unrestricted use of the vaccine in the state as he believed it will speed up the spread of infectious bronchitis in poultry.

A poultry producer commented against the adoption of the amendment.

Members of the commission do not agree with the comment and believe that the poultry industry should be allowed to have unrestricted use of the Arkansas 99 strain of infectious bronchitis vaccine.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the commission with the authority to adopt rules and set forth the duties of this commission to control disease.

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 June 24, 1992.

TRD-9208799 Terry Beals, DVM
Executive Director
Texas Animal Health Commission

Effective date: July 20, 1992

Proposal publication date: April 17, 1992

For further information, please call: (512) 479-6697

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TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Rates

• 16 TAC §23.21

The Public Utility Commission of Texas adopts an amendment to §23.21, concerning rates, without changes to the proposed text as published in the February 14, 1992, issue of the *Texas Register* (17 TexReg 1271).

The amendment changes the label that is required to be placed on the customer's utility bill to identify any billing adjustment made to reflect the effect of House Bill 11, 72nd Legislature, First Called Special Session. Section 16.072 of that bill amends the Public Utility Regulatory Act, §43, to require that the commission provide for adjustments to utility billings to account for the effect on state taxes upon the motion of any utility or the commission's own motion.

Some of the comments received during the comment period opposed the adoption of the proposed amendment. Each of the comments is discussed below.

Comments were received from Central and South West Services, Inc., (CSW), Texas Telephone Association (TTA), El Paso Electric Company (EPEC), and Southwestern Public Service Company (SPS).

All of the comments were reviewed by the commission staff.

The published proposal calls for the label to be changed to "cost of service surcharge" if the adjustment increases the change to the customer or "cost of service credit" if the adjustment decreases the charge to the customer.

CSW and TTA supported the amendment. TTa commented that the proposed language "more clearly defines the nature of the pass-through." CSW stated on behalf of their three operating companies that they would prefer that the adjustment not be separately itemized or labeled on the bill, but the proposed language was acceptable and would adequately describe the nature of the charge. CSW noted that the difficulty in devising a label that accurately described the charge.

EPEC opposed the amendment and commented that the label was misleading, confusing, and not informative. The company commented that because the adjustment is not based on the taxes that a utility already had in its rates, the adjustment is not cost based as the label suggests. EPEC suggested that the label should be, "state franchise tax adjustment" and noted that the length of any description and the ease with which it can be placed on a bill are additional considerations.

SPS commented that the proposed label was confusing and inappropriate because a customer after reading the label "will not have a clue as to what the adjustment relates to." SPS suggested that the label be, "House Bill 11 Adjustment."

The commission disagrees with the comments of SPS and EPEC. State taxes are an item in the utility's cost of service. The adjustment to the billing from the effect of House Bill 11 on state taxes is an adjustment to reflect a change in one item of the utility's cost of service. Thus, the proposed label is accurate.

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

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

Issued in Austin, Texas, on June 26, 1992.

TRD-9208870 John M. Renfrow
Secretary
Public Utility Commission

Effective date: July 17, 1992

Proposal publication date: February 14, 1992

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

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TITLE 22. EXAMINING BOARDS

Part XXIII. Texas Real Estate Commission

Chapter 535. Provisions of the Real Estate License Act

Definitions

• 22 TAC §535.19, §535.21

The Texas Real Estate Commission adopts amendments to §535.19, concerning property locators and to §535.21, concerning lot sales and publication, with changes to the proposed text as published in the April 24, 1992, issue of the *Texas Register* (17 TexReg 2920). The

amendments define activities which may be performed by a person who is not licensed as a real estate broker or salesman. The amendments permit unlicensed persons to compile and distribute publications containing advertisements or information about real estate if any fee received by the person is not contingent upon the sale, purchase, rent, or lease of the property.

One commenter recommended that the proposed amendments not be adopted because they were overly broad and did not clarify whether the person responsible for a publication could provide specific information in response to general requests without being licensed. The commission determined that the amendments permitted only compilation and distribution of publications containing real estate advertisements or information by unlicensed persons and that the amendments did not authorize other activities, such as procuring prospective tenants or making referrals in response to a prospect's specific real estate needs.

The Texas Association of Realtors did not support or oppose adoption of the amendments, but suggested changes to the §535.19 and to §535.21 to clarify that the amendments concerned property for sale, purchase, rent or lease and to retain language in §535.21 which specifically described apartment or home-finding services as an example of the activity requiring a real estate license. The commission concurred and made the suggested changes, although the final version of the text was modified to avoid using language which might have been interpreted as a reference to a specific locator service. The Texas Association of Realtors also suggested that language be added to §535.21 to stress that the section was meant to be narrowly construed. The commission concurred and made the suggested change.

The amendments are adopted under Texas Civil Statutes, Article 6573a, §5(e), which provide the Texas Real Estate Commission with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§535.19. Locating Property.

(a) Except as provided by this section a real estate license is required for a person to receive a fee or other consideration for assisting another person to locate real property for sale, purchase, rent, or lease, such as the operation of a service which finds apartments or homes.

(b) The compilation and distribution of information relating to rental vacancies or property for sale, purchase, rent, or lease is activity for which a real estate license is required if payment of any fee or other consideration received by the person who compiles and distributes the information is contingent upon the sale, purchase, rental, or lease of the property. An advance fee is a contingent fee if the fee must be returned if the property is not sold, purchased, rental, or leased.

§535.21. Unimproved Lot Sales; Listing Publications.

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

(c) A person may contract to advertise real estate for purchase, sale, lease, or rental in a publication without being licensed under Texas Civil Statutes, Article 6573a, (the Act), unless payment of any fee or consideration the person receives is contingent upon the purchase, sale, lease, or rental of the property advertised in the publication. For the purposes of this section an advance fee is a contingent fee if the person is obligated to return the fee if the property is not purchased, sold, leased, or rented. The section shall be narrowly construed to effectuate the purposes for which this section was adopted.

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 June 24, 1992.

TRD-9208828 Mark A. Moseley
General Counsel
Texas Real Estate Commission

Effective date: July 17, 1992

Proposal publication date: April 24, 1992

For further information, please call: (512) 465-3900

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Part XXIV. Texas Board of Veterinary Medical Examiners

Chapter 573. Rules of Professional Conduct

Responsibilities to Clients

• 22 TAC §573.24

The Texas Board of Veterinary Medical Examiners adopts an amendment §573.24, concerning responsibilities to clients, without changes to the proposed text as published in the March 10, 1992, issue of the *Texas Register* (17 TexReg 1800).

The previous rule required examination of the animal prior to writing health certificates. The amendment requires examination of the animal before any certificate is issued which attests to the animal's physical condition.

The amendment will require examination of animals prior to the issuance of certificates stating the health of the animal.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 8890, §7(a), which provide the Texas Board of Veterinary Medical Examiners with the authority to make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act.

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 June 26, 1992.

TRD-9208930 Buddy Matthijetz
Executive Director
Texas Board of Veterinary Medical Examiners

Effective date: July 20, 1992

Proposal publication date: March 10, 1992

For further information, please call: (512) 447-1183

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Responsibilities to Clients

• 22 TAC §573.28

The Texas Board of Veterinary Medical Examiners adopts an amendment to §573.28, concerning maintenance of sanitary premises, without changes to the proposed text as published in the March 10, 1992, issue of the *Texas Register* (17 TexReg 1801).

The previous rule stated veterinarians are required to maintain their facilities in compliance with local health requirements. In many cities there are no city and/or county public health laws.

The amendment will require veterinary facilities to be maintained in a clean and sanitary condition, without any accumulation of trash or debris.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 8890, §7(a), which provide the Texas Board of Veterinary Medical Examiners with the authority to make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act.

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 June 26, 1992.

TRD-9208931 Buddy Matthijetz
Executive Director
Texas Board of Veterinary Medical Examiners

Effective date: July 20, 1992

Proposal publication date: March 10, 1992

For further information, please call: (512) 447-1183

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Advertising, Endorsements and Certificates

• 22 TAC §573.30

The Texas Board of Veterinary Medical Examiners adopts an amendment §573.30, concerning advertising, without changes to the

proposed text as published in the March 10, 1992, issue of the *Texas Register* (17 TexReg 1801).

The amendment is needed because in order to determine the correct licensee placing advertisements, the full name is required.

The amendment will require licensees to include their full name on all advertising instead of the previous "surname only" requirement.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 8890, §7(a), which provide the Texas Board of Veterinary Medical Examiners with the authority to make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act.

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 June 26, 1992.

TRD-9208933 Buddy Matthijetz
Executive Director
Texas Board of Veterinary
Medical Examiners

Effective date: July 20, 1992

Proposal publication date: March 10, 1992

For further information, please call: (512) 447-1183

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• 22 TAC §573.41

The Texas Board of Veterinary Medical Examiners adopts an amendment to §573.41, concerning use of prescription drugs, with changes to the proposed text as published in the March 20, 1992, issue of the *Texas Register* (17 TexReg 2090).

The amendment further defines "therapeutically indicated" to include the health and well being of animals.

The amendment requires that veterinarians examine animals to determine that the prescription drug is required for the health and/or well being of the animal, prior to prescribing, dispensing, ordering, delivering, or ordering delivered, the drug.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 8890, §7(a), which provide the Texas Board of Veterinary Medical Examiners with the authority to make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act.

§573.41. Use of Prescription Drugs.

(a) It is unprofessional conduct for a licensed veterinarian to prescribe or dispense, deliver, or order delivered any prescription drug without first having established a veterinarian/client/patient relationship and determined that such prescription drug is therapeutically indicated for the health and/or well being of the animal(s). Prescription drugs include all controlled substances in Schedules I thru V and Legend Drugs which bear the federal legends, recognized as such by any law of the State of Texas or of the United States.

(b) It shall be unprofessional and a violation of the Rules of Professional Conduct for a licensed veterinarian to prescribe, provide, obtain, order, administer, possess, dispense, give, or deliver to or for any person prescription drugs, that are not necessary or required for the medical care of animals, or where the use or possession of such drugs would promote addiction thereto. Prescription drugs are defined in subsection (a) of this section.

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

Issued in Austin, Texas, on June 26, 1992.

TRD-9208928 Buddy Matthijetz
Executive Director
Texas Board of Veterinary
Medical Examiners

Effective date: July 20, 1992

Proposal publication date: March 20, 1992

For further information, please call: (512) 447-1183

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Prescribing and/or Dispensing Medications

• 22 TAC §573.43

The Texas Board of Veterinary Medical Examiners adopts an amendment to §573.43, concerning misuse of DEA narcotics registration, without changes to the proposed text as published in the March 20, 1992, issue of the *Texas Register* (17 TexReg 2092).

The amendment brings the rule into compliance with federal and state regulations.

The amendment will require licensees to comply with federal and state laws concerning the use of DEA and DPS controlled substances certificates, and clarifies when DEA and DPS controlled substances certificates are required.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 8890, §7(a), which provide the Texas Board of Veterinary Medical Examiners with the authority to make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act.

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 June 26, 1992.

TRD-9208929 Buddy Matthijetz
Executive Director
Texas Board of Veterinary
Medical Examiners

Effective date: July 20, 1992

Proposal publication date: March 20, 1992

For further information, please call: (512) 447-1183

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Other Provisions

• 22 TAC §573.61

The Texas Board of Veterinary Medical Examiners adopts an amendment §573.61, concerning other provisions, without changes to the proposed text as published in the March 20, 1992, issue of the *Texas Register* (17 TexReg 2091).

The new section provides the profession with easy access to DPS requirements for the security of controlled substances. It does not place any additional requirements for security as it is a quote from the current DPS laws and regulations.

The new section will require licensees to secure their controlled substances in accordance with DPS requirements.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 8890, §7(a) , which provide the Texas Board of Veterinary Medical Examiners with the authority to make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act.

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 June 26, 1992.

TRD-9208934 Buddy Matthijetz
Executive Director
Texas Board of Veterinary
Medical Examiners

Effective date: July 20, 1992

Proposal publication date: March 20, 1992

For further information, please call: (512) 447-1183

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• 22 TAC §573.62

The Texas Board of Veterinary Medical Examiners adopts new §573.62, concerning other provisions, without changes to the proposed text as published in the March 20, 1992, issue of the *Texas Register* (17 TexReg 2092).

The new section will give the board a specific rule to address when violations of board orders and negotiated settlement occur.

The new section will provide the board with specific authority to take action in accordance with the Administrative Procedure and Texas Register Act, if a licensee violates the condi-

tions set forth in their board order or negotiated settlement.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 8890, §7(a) , which provide the Texas Board of Veterinary Medical Examiners with the authority to make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act.

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 June 26, 1992.

TRD-9208932 Buddy Matthijetz
Executive Director
Texas Board of Veterinary Medical Examiners

Effective date: July 20, 1992

Proposal publication date: March 20, 1992

For further information, please call: (512) 447-1183

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Other Provisions

• 22 TAC §573.63

The Texas Board of Veterinary Medical Examiners adopts new §573.63 concerning other provisions, without changes to the proposed text as published in the March 20, 1992, issue of the *Texas Register* (17 TexReg 2092).

The new section further defines the board's existing authority to inspect veterinary facilities and records.

The new section will require veterinarians to allow representatives of the Board, during regular business hours, to inspect and/or copy client and patient records and associated documents, i.e. invoices, receipts, transfer documents, etc.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 8890, §7(a) , which provide the Texas Board of Veterinary Medical Examiners with the authority to make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act.

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 June 26, 1992.

TRD-9208927 Buddy Matthijetz
Executive Director
Texas Board of Veterinary Medical Examiners

Effective date: July 20, 1992

Proposal publication date: March 20, 1992

For further information, please call: (512) 447-1183

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TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 401. System Administration

Subchapter B. Interagency Agreements

• 25 TAC §401.56

The Texas Department of Mental Health and Mental Retardation adopts new §401.56 concerning biennial revision and updating of the Texas long-term care plan for the elderly, without changes to the text as published in the May 1, 1992, issue of *Texas Register* (17 TexReg 3148).

The new section adopts by reference a memorandum of understanding (MOU) that clearly defines the responsibilities of the following state agencies in biennially revising and updating of the Texas Long-Term Care Plan for the Elderly: Texas Department of Aging, Texas Department of Human Services, Texas Department of Health, and Texas Department of Mental Health and Mental Retardation. Senate Bill 377 of the 72nd Texas Legislature requires the agencies to adopt the MOU by rule.

No comments were received regarding adoption of the new section.

The new section is adopted under the Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

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 June 26, 1992.

TRD-9208918 Ann Utley
Chairman
Texas Board of Mental Health and Mental Retardation

Effective date: July 20, 1992

Proposal publication date: May 1, 1992

For further information, please call: (512) 465-4670

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Chapter 403. Other Agencies and the Public

Subchapter P. Public Responsibility Committees

• 25 TAC §§403.441-403.454

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts the repeal of §§403.441-403.454, concerning public responsibility committees, without changes to the proposed text as published in the May 8, 1992, issue fo the *Texas Register* (17 TexReg 3333). The repeal of the subchapter is adopted contemporaneously with the adoption of the new subchapter which replaces it, Chapter 410, Subchapter A (relating to Public Responsibility Committees), also in this issue of the *Texas Register.*

The purpose of the new subchapter is to update policies and procedures guiding the functions of public responsibility committees at TXMHMR facilities and community mental health and mental retardation centers. The new subchapter would take effect September 1, 1992, which is the beginning of the reporting year for PRCs.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 5547-202, §2. 11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

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

Issued in Austin, Texas, on June 26, 1992.

TRD-9208905 Ann K. Utley
Chairman
Texas Board of Mental Health and Mental Retardation

Proposed date of adoption: September 1, 1992

For further information, please call: (512) 465-4516

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Chapter 404. Protection of Clients and Staff

Subchapter A. Abuse and Neglect of Persons Served by TXMHMR Facilities

• 25 TAC §§404.1-404.20

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts the repeal of §§404.1-404.20, concerning abuse and neglect of persons served by TXMHMR facilities, without changes to the proposed text as published in the March 24, 1992, issue of the *Texas Register* (17 TexReg 2177). The repeals are adopted contemporaneously with the adoption of the new sections which replace them, also in this issue of the *Texas Register.*

The new sections establish policies and procedures for abuse and neglect investigations which prepare for the transfer of the abuse and neglect investigation function to the Texas Protective and Regulatory Services agency, expected to occur September 1, 1992. It is anticipated that these rules will convey to the new agency upon its creation.

No comments were received regarding adoption of the repeals.

The repeal of the sections is adopted under

Texas Civil Statutes, Article 5547-202, §2.11, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

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 June 26, 1992.

TRD-9208904 Anne K. Utley
Chairman
Texas Board of Mental Health and Mental Retardation

Effective date: August 1, 1992

Proposal publication date: March 24, 1992

For further information, please call: 465-4616

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• 25 TAC §§404.1-404.20

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts new §§404.1-404.20. Sections 404.2-404.13, 404.15-404.17, and 404. 19 are adopted with changes to the proposed text as published in the March 24, 1992, issue of the *Texas Register* (17 TexReg 2177). Sections 404.1, 404. 14, 404.18, and 404.20 are adopted without changes and will not be republished. Exhibit A, Procedures and Techniques for Investigation of Abuse," Exhibit D, "Procedures in Abuse and Neglect Investigations and Thurston Rebuttal Proceedings," and Exhibit G, "Client Abuse/Neglect Report" (AN-1-A Form) are also adopted with changes. The new sections are adopted contemporaneously with the adoption of the repeal of existing Chapter 404, Subchapter A, also governing abuse and neglect of persons served by TXMHMR facilities.

The purpose of the new subchapter is to establish policies and procedures for abuse and neglect investigations which prepare for the transfer of the abuse and neglect investigation function to the Texas Protective and Regulatory Services agency, expected to occur September 1, 1992. It is anticipated that these rules will convey to the new agency upon its creation.

The name of the AN-1-A form ("Report of Client Abuse/Neglect") is added throughout the document for the purpose of clarification. Section 404.02 is changed on adoption to clarify application of the provisions to community-based services of TXMHMR facilities. In addition, application to contractors and community-based services is clarified throughout the document.

In §404.3, the definitions of complainant and incitement are clarified. In addition, definitions for the terms "inconclusive" and "preponderance of evidence" are added. The definition of "Office of Consumer Services and Rights Protection" is expanded to clarify the transfer of its responsibilities to the Office of MHMR Protective Services, DPRS, upon its creation, and a definition for the Office of MHMR Protective Services, DPRS, is added.

The term "excessive" is deleted as a descriptor of "force" in §404.4(a)(2) (B). Section 404.5 is revised to clarify its application to contractors and to clarify procedures to be followed relating to the theft of property belonging to a person served.

Section 404.6(b) is revised to require submission of a written report within two hours of the verbal report of an allegation of suspected sexual assault or sexual exploitation. It is clarified in §404.6(d)(2) that facilities may establish their own arrangements with local law enforcement agencies regarding the reporting of abuse- related allegations. Section 404. 6(g) is revised to require that the abuse and neglect investigator submit a copy of the written report of an allegation to the head of the facility.

Section 404.7(2) is changed to allow an individual's treatment team to be informed of an allegation of sexual assault against the individual on the next working day if the allegation is made on a weekend or holiday. In addition, it is clarified that the actions outlined in response to an allegation against a person served apply only to incidents of sexual assault; other aggressive actions by persons served are reported and responded to in accordance with provisions outlined in Chapter 405, Subchapter G (relating to Unusual Incidents Involving Persons Served by TXMHMR Facilities). The requirement that a copy of any restrictions on individuals' access to an alleged victim be included in the investigator's final report is revised in §404.7(3) to require that the restriction simply be noted in the report. Actions required by the head of the facility when the accused is a private citizen or an Independent School District employee are added in §404.7(4) and (5). Section 404.7(6) is revised to clarify that a certified letter should be sent if the head of the facility is unable to contact the parent, guardian, spouse, or other appropriate relative by telephone to inform the person of an allegation of abuse or neglect.

Verbal abuse is added to the types of abuse which would require immediate follow-up action by the head of the facility in §404.7(7). Guidelines regarding the review of allegations for possible peer review are clarified in §404.7(8).

In §404.8(b), training requirements are added for abuse and neglect investigators. Section 404.8(c) has been revised to ensure that facilities assist investigators by taking steps to ensure that staff who are relevant to an investigation are available in an expeditious manner. Section 404.8(e)(1) is revised to clarify that the investigator shall begin the investigation of an allegation of abuse/neglect immediately with the interview of the complainant.

Section 404.8(e)(1)(B) is revised to require that the rights officer report back to the abuse and neglect investigator regarding the disposition of any rights allegations turned over by the investigator. Section 404.8(e)(1)(D) is revised to required that the head of the facility sign any report of an unfounded allegation.

Procedures investigators should follow when an allegation is determined to be unfounded are added to §404.8(e)(2). Section 404.8(f) is deleted and can now be found in §404.10(c).

Section 404.9(a) is revised to allow the abuse and neglect investigator up to ten working days to complete the investigation. It is clarified in the same section that the abuse and neglect investigator is to complete the "Client Abuse/Neglect Report" (AN-1-A) form up to the point at which the head of the facility makes the final determination when submitting the form with the completed report of the investigation.

Section 404.10 is revised to permit the head of the facility to utilize an authority of one or more persons to review the investigative report prior to the head of the facility's decision on a final determination. Section 404.10(b)(3)(A) is revised to outline the procedure to be followed when the head of the facility and/or the review authority disagree with the recommendation of the abuse and neglect investigator. Instructions for returning the completed AN-1-A form to the abuse and neglect investigator for data entry are added to §404.10(b)(3)(C). Section 404.10(b)(4) is revised to ensure that the alleged victim is informed of the outcome of the abuse/neglect investigation. A description of the rights of employees when interviewed by the review authority or the head of the facility is included as §404.10(c).

Section 404.11(a)(2)(C) is revised to reference the maximum suspension for an employee determined to have committed Class III abuse or neglect. It is clarified that the head of the facility's designee may notify the disciplined employee of the disciplinary action.

Reporting requirements for allegations involving private citizens and Independent School District employees are added to §404.12. The title of the AN-1-A form is clarified in §404.13. It is clarified that employees found guilty of retaliatory action will be subject to disciplinary action. Section 404.14(b)(3) is revised to clarify that the alleged victim, etc., shall also be informed of the outcome of an appeal. In §404.16(a)(3), the requirement for refresher training within six months of adoption of this subchapter is deleted, although both a briefing and annual training are still required. In §404.17(b), requirements regarding provision of the investigative report to interested parties are clarified.

The names of several documents referenced in §404.19 have been revised to reflect current working titles.

Exhibit A is revised to reference new Exhibit D, a memo from Cathy Campbell. Information regarding procedures for documenting unfounded allegations are included. Information regarding photographs is revised to correspond with information in the new subchapter, as is information regarding the number of copies of the final report the abuse and neglect investigator is to submit. Language is added clarifying that responsibilities assigned to the Office of Consumer Services and Rights Protection shall transfer to the Office of MHMR Protective Services, DPRS, upon its creation.

Exhibit D is revised to outline the rights of employees interviewed by the review authority or the head of the facility.

The space for the signature of the abuse and

neglect committee chair is deleted from Exhibit G and replaced with a space for the signature of the abuse and neglect investigator.

Comments on the proposed subchapter were received from four organizations or individuals, including the ARC/Texas; the Mental Health Association in Texas; the Life Management Center, San Antonio; Permian Basin Community Centers for MHMR, Midland; Advocacy, Inc., Austin; and David Pharis, Austin. All commenters expressed support for the proposed sections, although all offered recommendations for changes.

A commenter asked for clarification regarding action if an employee fails to report abuse or neglect or is proven to have lied during an abuse investigation. The department responds that employees who fail to report or fail to cooperate in an abuse investigation are disciplined according to guidelines established in the department's Personnel Operating Instruction (406–3).

With regard to the department's use of the terms "serious" and "nonserious" to describe the range of injuries that might be sustained by persons served in facilities, a commenter noted that any injury that results in harm to a resident of a state facility represents a serious problem, and should not be demeaned by use of the term "nonserious." The department responds that the terms are not intended to demean the seriousness of any injury to a person served; rather, the terms are used in reference to "physical injuries." In this context, the classification of an injury as "serious" or "nonserious" is used for the sole purpose of determining the level of physical injury sustained by a person served for purposes of ensuring appropriate medical attention. The provision that the head of the facility seek appropriate additional attention for a person served who has been the victim of abuse or neglect, including psychological attention, indicates that the department in no way intends to consider any incident of abuse or neglect as "nonserious."

A commenter noted that the definition of "complainant" in §404.3 was unclear. The department responds that the definition has been clarified to include examples of individuals who may be complainants. Another commenter asked that the definition of "preponderance of evidence" be added. The department responds that the definition has been added.

A commenter asked for clarification of the phrase "may have caused" in §404.4(a). The same commenter asked whether or not Class I abuse needed to be expanded to reflect the expansion of Class II abuse. The department responds that "may have caused" refers to a situation in which the individual's action, under normal circumstances, could potentially have led to the injury of an individual served, although no injury resulted in this particular incident. Class I abuse does not need to be expanded to reflect the expansion of Class II abuse.

With regard to §404.5(c), a commenter asked what the procedure would be if an individual were injured as a result of the use of restraint, seclusion, or the application of approved behavior modifications and believed he or she had been abused. Another commenter asked that language be included specifying that inappropriate use of restraint, seclusion, or behavior modifications would be investigated as abuse or neglect. The department responds that it is intended that any such allegation would be investigated to determine whether or not use of the technique was appropriate and whether or not abuse had occurred. Appropriate training of investigators ensures that such investigations take place.

A commenter noted that theft of property is a criminal offense and should be reported to appropriate law enforcement officials. The department agrees, and language has been added to §404.5(d) to reflect this.

Two commenters asked that §404.6(a) and (a)(2) be revised to reflect penalties for failing to report suspicions or knowledge of abuse to the abuse and neglect investigator. The department responds that the determination of the disciplinary action must be left to the head of the facility to allow consideration of the circumstances of the situation. The disciplinary action for an employee who fails to report abuse because they were not certain it was abuse may not be the same as the disciplinary action taken against an employee who refuses to report a clear case of abuse.

With regard to §404.7, a commenter suggested that the Office of Consumer Services and Rights Protection and the appropriate investigative office at DHS (or its successor agency) should be notified by the head of the facility as soon as the head of the facility is made aware of an alleged incident of abuse. The commenter noted that this would offer DHS an opportunity to initiate an objective, third-party investigation concurrent with the in-house investigation, thus increasing the integrity of the investigative process. The department responds that this is not necessary since the creation of TDPRS will create a situation in which all investigations of abuse will be conducted by an objective party.

Also concerning §404.7, a commenter recommended that the investigator have authority to determine whether an allegation will be investigated as abuse or neglect or whether it will be deferred to peer review, and that the investigator have the authority to investigate any allegation involving abuse and neglect, including those with clinical issues. The department responds that proposed processes have been problem-free since implemented in September 1991. The shared expertise of the investigator, the medical or nursing director, and the head of the facility has resulted in appropriate decisions concerning the process of investigation. The involvement of the Board of Nurse Examiners and Board of Medical Examiners provides additional external oversight.

Another commenter asked whether abuse investigations at community centers would also be conducted by an investigator from the TDPRS. The department responds that at this time, it is believed that TDPRS will only conduct investigations at department facilities. As the agency is established, however, this may change.

A commenter requested that language be added specifying guidelines for making decisions regarding what action should be taken regarding the employee. The department responds that the head of the facility must take into consideration the circumstances of the situation and make an informed decision of the type of action to be taken to protect the individuals served.

A commenter noted that in order to discharge their duties adequately, abuse and neglect investigators will need to be trained in investigative techniques. The department agrees, and a training requirement has been added in §404. 8(b).

Concerning §404.8(e)(1)(B), a commenter suggested that there needs to be communication between the rights officer and the abuse and neglect investigator regarding the disposition of any allegations turned over to the rights officer. The same commenter asked that language be added to §404.9(a)(1) and §404.10(b)(3)(D) which states that the abuse and neglect investigator may also make recommendations to the head of the facility regarding rights issues. The department responds that the requested language has been added to §404.8(e)(1)(B). However, the abuse and neglect investigator is free to make recommendations regarding any aspect of the facility's operations in which he or she feels a change or improvement is necessary; therefore, there is no need to specify what issues those recommendations may address.

Regarding §404.8(e)(1)(C)(i), a commenter requested that the phrase "obtained as a direct result of an interview" be added after the phrase "witness statements." The department responds that Exhibit A, "Procedures and Techniques for Investigation of Abuse and Neglect" specifies that the investigator is to interview all witnesses or persons who may provide collateral information and obtain written statements following the interview.

With reference to §404.8(e)(1)(D), a commenter recommended that the head of the facility sign off on all allegations that the investigator deems unfounded and closes. Language has been changed to respond to the commenter's suggestion.

Concerning §404.9(a), a commenter requested that the phrase "commencement of the investigation" be revised to read "receipt of the allegation." The department responds that §404.8(e) requires the investigator to begin the investigation immediately upon receipt of the allegation; the two phrases therefore carry the same meaning, and the change is not necessary.

The same commenter suggested that at a minimum, the Office of CSRP should keep track of the frequency with which an investigator requests additional time to complete the investigative report. The department responds that this is an internal statistic which will necessarily be monitored and does not need to be specified.

A commenter expressed concern that provisions in §404.10(b)(3)(A) and (B) permitted the superintendent to refute and then disregard the findings of the abuse and neglect investigator. The commenter suggested that

the findings of the investigator need to have the authority of a final determination. The commenter noted that the superintendent (and others) may need the opportunity to challenge the findings of the investigator's report and suggested that the superintendent be permitted some type of administrative appeal. The department responds that language has been added which provides the investigator access to the same appeals process as the complainant for cases in which the head of the facility does not concur with the investigator's recommendations.

Concerning §404.10(b)(4)-(5), a commenter asked that specific timelines be given regarding the occurrence of notifications. The department responds that "promptly" and "timely" imply rapid action; specific timeframes are not necessary.

With regard to §404.11(a)(1), a commenter asked if confirmed cases are the only ones which are weighed when considering repeat offenses in determining appropriate disciplinary action. The department responds that a pattern of previous unconfirmed cases is examined in consideration of disciplinary action.

A commenter suggested that disciplinary action in response to confirmed Class II abuse, outlined in §404.11(a)(2)(B), should be limited to dismissal from employment. The commenter noted that the definition of Class II abuse indicates that the action was performed knowingly, recklessly, or intentionally, or that it involved excessive force/corporal punishment or resulted in exploitation. The department disagrees with requiring dismissal from employment in every case of Class II abuse; it is an option, but there is also a need for a range of remedies based on the nature and seriousness of the incident.

A commenter asked what options were available to the head of the facility or the Office of Consumer Services and Rights Protection in the event that a contractor overturned a recommendation that abuse be confirmed. The department responds that the head of the facility would need to consider the safety of persons served; were the head of the facility concerned for the life, health, or safety of the persons served, a decision would need to be made regarding the continuation of the contract.

Regarding §404.14(a), a commenter suggested that employees who are complainants not be permitted to appeal the outcome of an investigation. The commenter noted that allowing an employee to appeal may invite some employees to create unjustified turmoil within the facility. The department responds that the Texas Family Code mandates that any individual who makes a complaint be permitted to appeal the outcome of the investigation.

Another commenter suggested that it be further clarified that an employee who is a complainant is permitted to appeal the outcome of the investigation. The department responds that the definition of complainant has been revised to give examples of complainants, and employees are included in that expanded definition.

Regarding §404.14(b)(3), a commenter suggested that language be added requiring that the alleged victim and the parents, guardian, spouse, or other appropriate relatives who were notified of the allegation of abuse be notified of the outcome of an appeal. The department responds that language has been added.

A commenter asked that disciplinary action be specified for persons who engage in retaliatory action. The department responds that the action must be left to the determination of the head of the facility based upon the circumstances of the situation.

The new sections are adopted under the Texas Health and Safety Code, §532. 015 (Texas Civil Statutes, Article 5547-202, §2.11), which provide the Texas Department of Mental Health and Mental Retardation with broad rulemaking powers.

§404.2. Application. The provisions of this subchapter shall apply to all facilities of the Texas Department of Mental Health and Mental Retardation, including their community-based services, and their contractors and agents.

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

Absent–A term in the Client Assignment and Registration system used to describe when a person is physically away from a campus-based location, formerly known as "furlough."

Abuse and neglect investigator–An employee or independent contractor (consultant) with expertise in conducting investigations, training, experience, and demonstrated competence in the area of investigation. The investigators will be employed or retained by the Office of Consumer Services and Rights Protection of the Texas Department of Mental Health and Mental Retardation until such time that the Texas Protective and Regulatory Services agency is created.

Adult–A person 18 years of age or older.

Agent–Any individual not employed by the facility but working under the auspices of the facility, such as a volunteer, a student, etc.

Allegation–A report by a person believing or having knowledge that a person receiving services has been or is in a state of abuse, exploitation, or neglect as defined in this subchapter.

Child–A person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

Client Abuse and Neglect Reporting System (CANRS)–A subsystem of CARE developed to record incidents involving abuse or neglect of persons served by facilities.

Client Assignment and Registration System (CARE)–The on-line data entry system developed to provide demographic and other data about persons served by the department.

Clinical issues–Issues related to unsafe nursing or medical practice or violations of the Nursing Practice Act or Medical Practice Act.

Complainant–The person filing a complaint, whether the victim of alleged abuse and neglect, a third party filing a complaint on behalf of the alleged victim, or both.

Confirmed–Term used to describe an allegation of abuse or neglect which is supported by the preponderance of the evidence.

Contractor–Any organization, entity, or individual associated by contract in a working alliance with a facility.

Department–The Texas Department of Mental Health and Mental Retardation.

Designee–A staff member immediately available who is temporarily appointed to assume designated responsibilities of the head of the facility.

Exploitation–The illegal or improper act or process of using the resources of a person served for monetary or personal benefit, profit, or gain.

Facility–Any institution, program, or service operated by the department.

Head of the facility–The superintendent or director of a facility.

Incitement–To spur to action or instigate into activity; implies responsibility for initiating another's actions.

Inconclusive–Term used to describe an allegation leading to no conclusion or definite result due to lack of witnesses or other relevant evidence.

Negligence–An action that a person of ordinary prudence would not have taken under the same or similar circumstances, or the failure to take an action that a person of ordinary prudence would have taken under the same or similar circumstances.

Nonserious physical injury–Any injury determined not to be serious by the examining physician. Examples of nonserious injury may include the following: superficial laceration, contusion, abrasion.

Office of Consumer Services and Rights Protection–The office located at the Texas Department of Mental Health and Mental Retardation until such time as the Office of MHMR Protective Services, DPRS, is created. Office of MHMR Protective Services,

DPRS–The office located at the Texas Department of Protective and Regulatory Services which, upon its creation, will assume the responsibilities of the Office of Consumer Services and Rights Protection as outlined in this subchapter.

Peer review–A review of clinical and/or medical practice(s) by peer physicians or nurses.

Perpetrator unknown–Term used to

describe instances in which abuse or neglect is confirmed but positive identification of the responsible person cannot be made, and in which self-injury has been eliminated as the cause.

Person served–Any person receiving services from the department, including those persons who are absent who are still carried on the rolls of the facility.

Preponderance of evidence–The greater weight of evidence, or evidence which is more credible and convincing to the mind.

Prevention and Management of Aggressive Behavior (PMAB) –The department's proprietary risk management program which uses the least intrusive, most effective options to reduce the risk of injury for persons receiving services and for staff from acts or potential acts of aggression.

Retaliatory action–Any action intended to inflict emotional or physical harm or inconvenience on an employee or person served that is taken because he or she has reported abuse or neglect. This includes, but is not limited to, harassment, disciplinary measures, discrimination, reprimand, threat, and criticism.

Serious physical injury–An injury determined to be serious by the examining physician. Examples of serious injury may include the following: fracture; dislocation of any joint; internal injury; any contusion larger than two and one half inches in diameter; concussion; second or third degree burn.

Sexual assault–A criminal act as defined in the Texas Penal Code, §22.011, a copy of which is included as an attachment in Exhibit A.

Sexual exploitation–Any act in which a less able individual is coerced, manipulated, or otherwise used sexually, or is threatened with the same by a more physically and intellectually advanced or more socially able individual.

Sexually transmitted disease–Any infection of a person served, with or without symptoms or clinical manifestations, that is or may be transmitted from one person to another during or as a result of sexual contact between persons.

Unconfirmed–Term used to describe an allegation of abuse or neglect which is not supported by the preponderance of the evidence.

§404.4. Classification of Abuse and Neglect. When the perpetrator is an employee, contractor, or agent, or the perpetrator is unknown, confirmed abuse or neglect shall be classified in accordance with the "Procedures and Techniques for Investigation of Abuse and Neglect," which is herein adopted by reference in §404.18 of this title (relating to Exhibits) as Exhibit A.

(1) Class I abuse means:

(A) any act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, which caused or may have caused serious physical injury to a person served; or

(B) any sexual assault or sexual exploitation involving an employee, agent, or contractor and a person served, without regard to injury.

(2) Class II abuse means:

(A) any act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, which caused or may have caused nonserious physical injury to a person served,

(B) any act of force or corporal punishment, including striking or pushing a person served, regardless of whether the act results in nonserious injury to a person served; or

(C) exploitation.

(3) Class III abuse means any use of verbal or other communication to curse, vilify, or degrade a person served, or to threaten a person served with physical or emotional harm, or any act which vilifies, degrades, or threatens a person served with physical or emotional harm.

(4) Neglect means negligence which causes or could predictably lead to any physical or emotional injury to a person served.

§404.5. Prohibition Against Abuse and Neglect of Persons Served by Facilities, Facility Contractors, and Agents.

(a) Abuse or neglect of persons served by facilities, facility contractors, and agents is prohibited and shall be grounds for appropriate action, including reporting to law enforcement authorities; reporting to governing boards for professional practice; and, additionally for employees, disciplinary action up to and including termination.

(b) Any pregnancy of a person served, provided there is medical verification that the conception could have occurred while the person was a resident of the facility or contractor, or any diagnosis of a sexually transmitted disease in a person served which could have occurred while the person was a resident of the facility shall be reported in keeping with the provisions of this subchapter as possible Class I abuse or neglect. Additional reporting requirements for the head of the facility or designee are described in Chapter 404, Subchapter G of this title (relating to Unusual Incidents Involving Persons Served by TXMHMR Facilities).

(c) Abuse does not include:

(1) the proper use of restraints or seclusion, including PMAB, and the approved application of behavior modification techniques as described in Chapter 405, Subchapter F of this title (relating to Restraint and Seclusion–Mental Health Facilities) and Chapter 405, Subchapter HH of this title (relating to Restraint and Seclusion Mtal Retardation Facilities);

(2) other actions taken in accordance with the rules of the department; or

(3) such actions as an employee may reasonably believe to be immediately necessary to avoid imminent harm to self, persons served, or other individuals if such actions are limited only to those actions reasonably believed to be necessary under the existing circumstances.

(d) All theft of property belonging to a person served shall be handled administratively and reported to local or state law enforcement agencies as appropriate.

§404.6. Reporting Responsibilities of All TXMHMR Employees.

(a) Each employee who suspects or has knowledge of, or who is involved in an allegation of, abuse or neglect shall make a verbal report to the abuse and neglect investigator immediately, if possible, but in no case more than one hour after the incident. The employee shall submit a written incident report to the abuse and neglect investigator within two hours. Employees who become aware of a situation at any time after the fact shall make a verbal report to the abuse and neglect investigator immediately, if possible, but in no case more than one hour after learning of the incident. The employee shall submit a written incident report to the abuse and neglect investigator within two hours.

(1) The "Report of Suspected Abuse/Neglect" form, which is attached as Exhibit B, should be made available to all staff to expedite the process of submitting written reports. However, lack of availability of this form should not impede the reporting of abuse and neglect.

(2) Failure to make such reports within the allotted time period without sufficient justification shall be considered a violation of this subsection and make the employee subject to disciplinary action and possible criminal prosecution.

(b) Without regard to the identity of the perpetrator, suspected sexual assault, or sexual exploitation shall be reported to the abuse and neglect investigator immediately, if possible, but in no case more than one

hour later by the person making the allegation. If the person making the allegation is not an employee, e.g., a person receiving services, a guest, etc., staff shall assist the individual in making the report, if necessary. The employee shall submit a written incident report (such as the "Report of Suspected Abuse/Neglect) to the abuse and neglect investigator within two hours.

(c) If there is reason to suspect that a person served was abused, neglected, or exploited during an absence from the facility with a family member or guardian, the employee shall immediately, if possible, but in no case more than one hour later contact the Department of Human Services (1-800-252-5400) and the head of the facility or designee.

(d) Upon receiving a report of an allegation of abuse or neglect, the investigator will:

(1) immediately notify the head of the facility or designee;

(2) immediately, if possible, but in no case more than one hour later report abuse-related allegations of a criminal nature to the appropriate local or state law enforcement agencies unless other reporting requirements have been agreed to with local or state law enforcement agencies. Such agreements shall be in writing and signed by both the head of the facility and a representative of the law enforcement agency.

(e) Anonymous allegations will be received and investigated following the same procedures that are used when the complainant is known.

(f) An allegation that sexual assault has been committed by a person receiving services shall be reported and investigated following the procedures outlined in this subchapter with the understanding that negligence on the part of staff may have made it possible for the assault to have occurred. Other aggressive behaviors by persons receiving services shall be reported and investigated according to §404.244 of this title (relating to Reporting Injuries and Incidents Involving Persons Served) and §404.245 of this title (relating to Reporting a Criminal Act).

(g) Upon receipt of the "Report of Suspected Abuse/Neglect" form, the abuse and neglect investigator shall submit a copy to the head of the facility or designee.

§404.7. Responsibilities of the Head of the Facility or Designee: Immediate Actions Required. Immediately upon notification of an allegation of abuse or neglect, if possible, but in no case more than one hour later, the head of the facility or designee shall ensure that adequate medical care has been provided to the victim, and shall take measures to ensure the safety of the individual, including the following actions.

(1) If the accused is an employee, the head of the facility or designee will determine whether action should be taken regarding the employee, which may include immediately granting the employee emergency leave, reassigning the employee to a non-direct care area, allowing the employee to continue in a non-direct care post pending investigation, or allowing the employee to remain in his or her current position pending investigation.

(2) If the accused is a person receiving services (in cases of sexual assault), the head of the facility or designee will take immediate appropriate action to protect the victim, e.g., one-on-one observation of the accused and/or the victim, separation, etc. For cases in which a person served is accused of sexual assault, the head of the facility or designee shall refer the allegation to that person's treatment team or interdisciplinary team within 24 hours, unless the allegation is made on a weekend or holiday, in which case the allegation may be referred to the treatment team or interdisciplinary team on the next working day. Additional appropriate actions in response to sexual assault and other aggressive behaviors by persons receiving services shall be taken according to §404.244 of this title (relating to Reporting Injuries and Incidents Involving Persons Served) and §404.245 of this title (relating to Reporting a Criminal Act).

(3) If the accused is another person who is known but who is neither a staff member nor a person receiving services, e.g., family member, friend, etc., the head of the facility or designee will effect a restriction on that person's access to the victim pending investigation. The restriction should be documented in the record of the person served, and should be noted in the final report.

(4) If the accused is a private citizen, the head of the facility or designee will immediately, if possible, but in no case more than one hour later notify TDHS for their investigation.

(5) If the accused is an Independent School District (ISD) employee, the head of the facility or designee will immediately, if possible, but in no case more than one hour later contact the superintendent of the ISD, and the appropriate local or state law enforcement agency (if appropriate) for their investigation.

(6) The head of the facility or designee shall immediately, if possible, but in no case later than 24 hours after notification of an allegation of abuse/neglect, notify the parents, guardian, spouse, or other appropriate relative of the alleged victim, unless specifically prohibited by Chapter 403, Subchapter K of this title (relating to Client-Identifying Information), Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services), or Chapter 405, Subchapter Y of this title (relating to Client Rights–Mental Retardation Services). If contact cannot be made by telephone, the head of the facility or designee will notify the parents, guardian, spouse, or other appropriate relative of the alleged victim by certified mail, return receipt requested.

(7) If the allegation involves verbal abuse, physical abuse, sexual assault, or sexual exploitation, the head of the facility or designee will ensure necessary immediate and ongoing medical and/or psychological attention is obtained for the victim, and, as needed, for the perpetrator, if a person receiving services. Such attention may include screening and treatment for sexually transmitted diseases, psychological counseling and support, etc., consistent with the procedures described in "Procedures and Techniques for Investigation of Abuse and Neglect," which is referenced in §404.18 of this title (relating to Exhibits) as Exhibit A.

(8) If the allegation involves the actions of a physician or registered nurse, the head of the facility or designee, in coordination with abuse and neglect investigator and the facility medical or nursing director, as appropriate, will determine whether the allegation involves the clinical practice of a physician or registered nurse. If the abuse or neglect allegation does not involve clinical issues the abuse and neglect investigator will pursue an investigation. If a determination is made that the allegation involves the clinical practice of a physician or registered nurse, the abuse and neglect investigator shall turn the allegation over to the head of the facility or designee, who shall:

(A) immediately refer the allegation to the medical director or nursing director, as appropriate, for review for possible peer review as outlined in Operating Instruction 408-2, governing Investigative Medical Peer Review, and Operating Instruction 408-1, governing Professional Nursing Quality Assurance, which are referenced in §404.18 of this title (relating to Exhibits) as Exhibit E and Exhibit F, respectively. If the allegation is against the medical director or nursing director, it shall be referred to the TXMHMR medical director or the TXMHMR nursing director, as appropriate.

(9) The head of the facility shall ensure that reports of allegations of abuse or neglect are made as required by law to the licensing authority for the discipline under review, e.g., to the Board of Medical Examiners for physicians, and to the Board of Nurse Examiners for registered nurses.

§404.8. Abuse and Neglect Investigator.

(a) Abuse and neglect investigator. An abuse and neglect investigator will conduct all abuse and neglect investigations.

(b) Training. Abuse and neglect investigators will receive appropriate training in issues related to the efficient and effective investigation of all allegations, including, but not limited to, how to conduct investigations and patient rights.

(c) Investigations. Facilities shall ensure that abuse and neglect investigators are afforded immediate access to all records and provided keys as are necessary to carry out the investigation. Facilities will assist in whatever way possible to make staff who are relevant to the investigation available in an expeditious manner.

(d) Consultants. The abuse and neglect investigator may retain a consultant for the purpose of assisting with investigations.

(e) Responsibilities.

(1) The abuse and neglect investigator shall fully investigate alleged incidents of abuse or neglect.

(A) The abuse and neglect investigator shall begin the investigation immediately, i.e., interview the complainant, and assure the safety and medical examination/treatment for the person served as needed.

(B) Allegations determined by the investigator to involve rights violations shall be turned over to the facility's rights officer as appropriate. The facility rights officer shall report back to the abuse and neglect investigator regarding the disposition of any such allegation.

(C) Investigative procedures outlined in "Procedures and Techniques for Investigation of Abuse and Neglect," which is referenced in §404.18 of this title (relating to Exhibits) as Exhibit A, are to be followed in all investigations.

(i) Written statements shall be obtained from all witnesses and any other persons who may provide collateral information.

(ii) The abuse and neglect investigator shall ensure that all photographs relevant to the investigation, including photographs depicting the existence or nonexistence of injuries, are taken as soon as possible, but in no case more than 24 hours after the report of the allegation. Copies of all such photographs shall be submitted with the investigative report sent to the head of the facility and the Office of Consumer Services and Rights Protection, Central Office.

(iii) The physician's exam and treatment of abuse-related injuries shall be documented on the Client Injury/Incident Report form, which is referenced in §404.18 of this title (relating to Exhibits) as Exhibit C, and attached to the investigative report submitted to the Office of Consumer Services and Rights Protection, Central Office. The physician's remarks during or following the examination should address the injury's cause, age, and treatment, to the extent that can be determined, as well as the timing of the medical exam with regard to the date the injury was received. All clinical issues will be referred to the medical/clinical director or designee for consultation.

(D) If at any point during the course of the investigation it becomes apparent (via written witness statements and other evidence gathered) that the allegation is obviously spurious, the investigation may be closed as unfounded after being signed by the head of the facility. The reason for the determination, based on specific evidence, will be included in the report. A copy of all such investigations shall be sent to the Office of Consumer Services and Rights Protection and to the head of the facility.

(2) The abuse and neglect investigator shall indicate "perpetrator unknown" in those instances where the preponderance of evidence exists to confirm abuse or neglect, but positive identification of the person(s) responsible cannot be determined and self-injury has been eliminated as the cause. Evidence must exist that abuse or neglect has been committed for the term "perpetrator unknown" to be used. When there is a lack of evidence that abuse or neglect has occurred, the recommendation should be that the investigation was inconclusive or unconfirmed.

§404.9. Responsibilities of Abuse and Neglect Investigator; Completion of Investigation.

(a) Within 10 working days of the commencement of the investigation, the abuse and neglect investigator shall complete the investigation and submit to both the director of the Office of Consumer Services and Rights Protection and the head of the facility a copy of:

(1) the investigative report, including a statement of the allegation(s), a summary of the investigation, an analysis of the evidence, the abuse and neglect investigator's recommendations concerning whether or not abuse or neglect occurred, the "Client Abuse/Neglect Report" (AN-1-A) form, which is referenced in §404.18 of this title (relating to Exhibits) as Exhibit G, completed up to the point at which the head of the facility makes the final determination, and concerns resulting from the investigation;

(2) the Client Injury/Incident Report, which is referenced in §404. 18 of this title (relating to Exhibits) as Exhibit C; and

(3) all witness statements and supporting documents.

(b) If additional time is required to complete the investigative report, written justification must be received by the Office of Consumer Services and Rights Protection for approval or disapproval and this will be noted in the final report.

(c) In cases of abuse or neglect previously reported to a law enforcement agency, the investigator will submit a copy of the investigative report to the appropriate law enforcement agency.

(d) When abuse of a child is alleged, the head of the facility shall submit a "Final Report of Suspected Abuse and Neglect in a Child Care Facility," which is referenced in §404.18 of this title (relating to Exhibits) as Exhibit H, to the Office of Consumer Services and Rights Protection.

§404.10. Responsibilities of the Head of the Facility or Designee; Completion of the Investigation.

(a) Upon receiving the written investigative report from the investigator, the head of the facility may submit the report and concerns articulated by the investigator to a review authority of one or more persons who shall review the investigation. The review authority may include a member of the facility's public responsibility committee. The authority may call witnesses in the course of the review. All interviews with witnesses shall be tape recorded.

(b) Upon completion of the investigation of any allegation, the head of the facility or designee shall take the following actions:

(1) review the abuse and neglect investigator's report;

(2) review the authority's report, if applicable; and

(3) interview witnesses, if necessary, prior to making a final determination (if a review authority was not utilized for this purpose).

(A) Recommendations by the abuse and neglect investigator and the review authority, if applicable, concerning whether abuse or neglect occurred are not binding on the head of the facility; however, the head of the facility or designee shall document the specific reasons for his

or her determination as to whether or not abuse occurred.

(1) Such documentation shall be included with the final investigative report and be forwarded by the head of the facility or designee to the Office of Consumer Services and Rights Protection.

(2) In the event that the head of the facility and/or the review authority disagree with the recommendation of the investigator, the investigator may appeal the determination of the head of the facility following the procedures described in §404.14 of this subtitle (relating to Appeals Process).

(B) The head of the facility or designee shall submit to the Director of the Office of Consumer Services and Rights Protection a copy of the report of the review panel, if applicable.

(C) The head of the facility or designee shall submit the completed "Client Abuse/Neglect Report" (AN-1-A) to the abuse and neglect investigator within thirty calendar days after receipt of the investigative report. The abuse and neglect investigator shall be responsible for entering the information into the CANRS system.

(D) The head of the facility or designee shall establish a mechanism for evaluating the concerns of the abuse and neglect investigator and the review authority, if applicable, which result from the investigation.

(4) Unless specifically prohibited by Chapter 403, Subchapter K of this title (relating to Client- Identifying Information), Chapter 405, Subchapter L of this title (relating to Client Rights--Mental Health Services), or Chapter 405, Subchapter Y of this title (relating to Client Rights-Mental Retardation Services), the head of the facility or designee shall ensure that the alleged victim and the parents, guardian, spouse, or other appropriate relatives who were notified of the allegation are promptly notified of the final results of the investigation.

(5) The head of the facility or designee shall ensure that, if requested, the parents, guardian, spouse, or other appropriate relatives are notified in a timely manner if a grievance is filed by the employee regarding the findings.

(c) The rights of employees summoned to appear before the abuse and neglect review authority or the superintendent/director are outlined in the memo titled "Procedures in Abuse and Neglect Investigations and Thurston Rebuttal Proceedings," which is herein adopted by reference as Exhibit D and which is referenced in §404.18 of this title (relating to Exhibits) as Exhibit D.

§404.11. Responsibilities of Head of the Facility or Designee: Disciplinary Action. The head of the facility or designee shall be responsible for taking prompt and proper disciplinary action when a charge of abuse or neglect is confirmed.

(1) Disciplinary action shall be based on criteria including, but not limited to:

(A) the seriousness of the abuse and/or neglect;

(B) the circumstances surrounding the event;

(C) the employee's record;

(D) repeat offenses; and

(E) if a second violation, the length of time between violations.

(2) When the head of the facility or designee determines that abuse or neglect has occurred, the following disciplinary action shall be taken:

(A) Class I abuse. The employee shall be dismissed from employment.

(B) Class II abuse. The employee shall be placed on suspension for up to 10 days, demoted, or dismissed. If the employee is exempt under the provisions of the Fair Labor Standards Act (FLSA), the suspension shall be in compliance with relevant provisions of the FLSA and current TXMHMR personnel policies.

(C) Class III abuse, neglect. The employee may receive a written reprimand which shall become a part of the employee's personnel file, or may be placed on suspension for up to 10 days, demoted, or dismissed. If the employee is exempt under the provisions of the Fair Labor Standards Act (FLSA) the suspension shall be in compliance with relevant provisions of the FLSA and current TXMHMR personnel policies.

(3) When disciplinary action is taken against an employee based on abuse or neglect, the head of a facility or designee shall notify the disciplined employee in writing of the disciplinary action and any right to a grievance hearing the employee may have under the department's internal policies and procedures relating to employee grievances.

§404.12. Abuse and Neglect Investigative Procedures for Facility Contractors, Private Citizens, and Independent School District (ISD) Employees. For purposes of reporting, investigating, and preventing abuse and neglect by contractors of state facilities, the procedures described in this subchapter for employees of facilities shall be followed.

(1) An allegation that an employee of a contractor has committed abuse or neglect shall be reported to the abuse and neglect investigator immediately, if possible, but in no case more than one hour later. The abuse and neglect investigator will immediately notify the administrator of the contract provider and the head of the facility or designee.

(2) The investigation of an allegation that an employee of a contractor has committed abuse or neglect shall be handled in accordance with the procedures outlined in §404.8 of this subchapter (relating to Abuse and Neglect Investigator).

(3) The abuse and neglect investigator shall submit a written report to the administrator of the contract provider and the head of the facility or designee regarding whether there is cause to believe that abuse or neglect has occurred in the incident investigated. If there is any disagreement in the findings, the administrator of the contract provider shall document the specific reasons and notify the Office of CSRP and the head of the facility or designee.

(4) The administrator of the contract facility shall notify the head of the facility or designee of any action taken against the accused contract employee.

(5) The head of the facility or designee will complete the "Client Abuse/Neglect Report" (AN-1-A) and forward to the Office of CSRP.

(6) Any abuse or neglect allegation where the accused is a private citizen shall be reported to TDHS for investigation.

(7) Any abuse or neglect allegation where the accused is an employee of an Independent School District shall be reported to the superintendent of the ISD, and local or state law enforcement agencies (if appropriate) for investigation.

§404.13. Responsibilities of the Office of Consumer Services and Rights Protection. The Office of Consumer Services and Rights Protection shall:

(1) monitor statistical trends in abuse and neglect;

(2) review all abuse and neglect investigations and make recommendations to facilities concerning corrective and pre-

ventive actions (including rights violations which may require further action);

(3) determine closure on all investigations within 30 days of when the "Client Abuse/Neglect Report" (AN-1-A) is received;

(4) report all allegations of abuse involving a child to the Office of Youth Care Investigations;

(5) report all allegations of abuse involving adults served by the Department to the Adult Protective Services division of the Texas Department of Human Services (DHS) until such time as the Texas Protective and Regulatory Services agency is created; and

(6) ensure that appropriate reports of abuse regarding registered nurses or physicians are made to the respective boards of examiners.

§404.15. Prohibition Against Retaliatory Action.

(a) Any employee or person served who in good faith reports abuse, exploitation, or neglect shall not be subjected to retaliatory action by any employee of the department or any person affiliated with an employee of the department.

(b) Any person who believes he or she is being subjected to retaliatory action upon making a report of abuse or neglect, or who believes a report has been ignored without cause, shall immediately, contact the head of the facility or designee. Such person may also contact:

(1) the Office of Consumer Services and Rights Protection, Central Office, at the toll free number 1 (800) 252-8154;

(2) the Office of the Attorney General at (512) 463-2120 which, under the Whistleblower Act, Texas Civil Statutes, Article 6252-16a, may prosecute a supervisor who suspends or terminates a public employee for reporting a violation of law to law enforcement authorities.

(c) Any employee found guilty of retaliatory action will be subject to disciplinary action.

§404.16. Staff Training in Identifying and Reporting Abuse and Neglect.

(a) This subchapter shall be thoroughly and periodically explained to all employees, contractors, and agents of each facility as follows.

(1) All new employees, contractors, and agents shall receive the instruction on the content of this subchapter during their orientation training and prior to beginning work that involves direct contact with any person served. Acknowledgment of this instruction shall be certified by the employee, contractor, or agent using the Orientation to Chapter 404, Subchapter A form, which is referenced in §404.18 of this title (relating to Exhibits) as Exhibit I, and filed.

(2) Orientation shall include a thorough explanation of the definitions contained in these rules, including the categories or classes of abuse or neglect, the disciplinary consequences of abuse or neglect, and the procedures for reporting incidents of abuse or neglect.

(3) Within 60 days after the effective date of this subchapter, all current employees, contractors, and agents shall be briefed on the contents of this subchapter by the head of the facility or designee. Acknowledgment of this instruction shall be certified by each employee using the Orientation to Chapter 404, Subchapter A form, which is referenced in §404.18 of this title (relating to Exhibits) as Exhibit I and filed in the employee's record.

(b) Those employees, contractors, and agents in frequent contact with persons served shall receive additional instruction on the prevention and therapeutic management of aggressive, combative behavior or similar volatile situations as a unit of training within the employee's six months probationary period of employment. Training shall comply with training standards promulgated by the department.

(c) All supervisory personnel shall have a continuing responsibility to keep employees, contractors, and agents currently informed on rules governing abuse or neglect and shall ensure that each employee receives training on identifying and reporting abuse and neglect not less than once each calendar year. Such training shall be reported to the facility office for staff development.

(d) Instructional materials, audiovisual, and/or other training aids concerning this subchapter shall be approved by the deputy commissioner of Human Resources, Central Office, in concurrence with the Office of Legal Services and the Office of Consumer Services and Rights Protection.

(e) A record shall be kept by the facility office for staff development on each employee receiving orientation, annual training, or additional instruction in compliance with this section, including the date training was provided and the name of the individual conducting the training.

§404.17. Confidentiality of Investigative Process and Report.

(a) The reports, records, and working papers used by or developed in the investigative process and the resulting final report regarding abuse and neglect are confidential and may be disclosed only as provided under law. Information discussed during deliberations of abuse and neglect investigations may not be discussed outside the purview of those deliberations with the exception of the concerns and recommendations which are to be addressed by the appropriate person(s) or as otherwise allowed in §404.7 of this title (relating to Responsibilities of the Head of the Facility or Designee: Immediate Actions Required) and in §404.8 of this title (relating to Abuse and Neglect Investigator.)

(b) Some information may be released as follows:

(1) Parents/guardians shall be told that an abuse or neglect allegation has been made, with a description of the nature of the allegation and any action taken such as medical treatment provided or remedial measures.

(2) Upon request, copies of the investigative report shall be released to the person served, legal guardian, or parent (if the person served is a minor) in accordance with Open Records Decision 90-562, a copy of which is attached as Exhibit J. The names of other persons served shall be blocked out throughout the report.

(3) The complainant shall be notified of the findings, but neither the perpetrator's name nor the disciplinary action taken shall be released to the complainant. The name of the person served may be used in informing the complainant of the findings.

(4) The accused shall be informed of the investigative findings. If disciplinary action is taken and the employee files a grievance, the employee may read the investigative report and listen to the tape recordings of witness interviews conducted by the review authority or the superintendent/director. The employee may obtain a copy of the investigative report, but may not receive a copy of the recordings.

§404.19. References. Reference is made to the following statutes, rules of the department, and attorney general opinions:

(1) Texas Family Code, §34.01 et seq.;

(2) Title 7, Chapter 576, §576.005, Health and Safety Code (formerly Texas Civil Statutes, Article 5547-87);

(3) Title 7, Chapter 532, §532.011, Health and Safety Code (formerly Texas Civil Statutes, Article 5547-202, §2.12);

(4) Title 7, Subtitle D, Health and Safety Code (formerly Texas Civil Statutes, Article 5547-300);

(5) Whistleblower Act, Texas Civil Statutes, Article 6252-16a;

(6) Texas Penal Code, Chapters 19 and 21, §§22. 01, 22.02, 22.04, 22.05, 22.07, 22.08, 22.10;

(7) Texas Family Code, §§11.01, 34.01, 34.02, 34.03;

(8) Human Resources Code, Chapter 48;

(9) Chapter 403, Subchapter P (relating to Public Responsibility Committees);

(10) Chapter 404, Subchapter G (relating to Unusual Incidents at TXMHMR Facilities);

(11) Chapter 405, Subchapter F (relating to Restraint and Seclusion Mental Health);

(12) Chapter 405, Subchapter G (relating to Restraint and Seclusion Mental Retardation);

(13) Chapter 404, Subchapter E (relating to Rights of Persons Receiving Mental Health Services);

(14) Chapter 405, Subchapter Y (relating to Client Rights Mental Retardation Services);

(15) TXMHMR Personnel OI, 406 3, sections relating to:

(A) emergency leave;

(B) suspension, demotion, and reduction in salary; and

(C) dismissal for cause;

(16) TXMHMR policy and procedures relating to employee grievances; and (17) Attorney General Opinions H-237 (1974), H-986 (1977), and H-494 (1975).

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 June 26, 1992.

TRD-9208903 Anne K. Utley
Chairman
Texas Board of Mental Health and Mental Retardation

Effective date: August 1, 1992

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For further information, please call: 465-4670

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Chapter 410. Volunteer Services and Public Information

Subchapter A. Public Responsibility Committees

• 25 TAC §§410.1-410.14

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts new §§410.1-410.14, concerning pubic responsibility committees. Sections 410.3-410.9 and 410.14 are adopted with changes to the proposed text as published in the May 8, 1992, issue of the *Texas Register* (17 TexReg 3333). In addition, Exhibit E, "Notice of Any Action Taken," is adopted with changes. Sections 410.1, 410.2, and 410.10-410.13 are adopted without changes and will not be republished. The new sections are adopted contemporaneously with the adoption of the repeal of existing Chapter 403, Subchapter P, also governing public responsibility committees.

The purpose of the new subchapter is to update policies and procedures guiding the functions of public responsibility committees at TXMHMR facilities and community mental health and mental retardation centers. The new subchapter would take effect September 1, 1992, which is the beginning of the reporting year for PRCs.

Throughout the document, the term "other" has been added to the phrase "denial of rights" to reflect the fact that abuse is a denial of rights.

In §410.3, definitions for "complaint" and "rights protection officer" are added. In addition, the definition of "volunteer services council (VSC)" is revised to reflect current trends. Section 410.4 has been revised to reflect that, in abuse investigations, the PRC will work in coordination with the entity charged with conducting an abuse/neglect investigation.

Section 410.5(b)(3) has been revised to clarify that an individual receiving services may be a member of a PRC provided the individual is not currently receiving inpatient services from the facility or community center. Section 410.5(c)(3) is revised to reflect that open meetings requirements must be met when informing interested parties of the time and place of meetings to select members of PRCs.

In §410.5(d)(2), it is clarified that any interested party may receive a copy of the PRC roster upon request. Section 410.5(f) is revised to clarify that reimbursement for travel will be in accordance with facility or community center policy. A requirement that training be documented is added in §410. 5(f). In addition, it is clarified that training will be provided at times that are convenient to participants.

Section 410.5(g) is revised to clarify that only the PRC chair or a member designated by the PRC chair may collect complaints from the PRC's post office box and enter those complaints on the PRC log. Language has been added clarifying that the rights protection officer will coordinate and, as appropriate, provide training to PRC members. It is also clarified that the RPO will provide administrative assistance to the PRC.

Criteria for removal of PRC members from the committee are revised in §410.5(h) to reflect that the PRC chair may remove a member for failing to attend two consecutive PRC meetings, failure to participate in training, or failure to comply with the provisions of this subchapter. Language is added requiring the PRC chair to notify the facility's volunteer services council or the community MHMR center's local authorizing agencies, as appropriate, of the reason for the removal and the need for replacement. In addition, it is clarified that a member may be removed by the volunteer services council or local authorizing agencies, as appropriate, on the recommendation of a majority of the PRC members.

Section 410.6(f) is revised to require the PRC secretary to maintain the PRC minutes, with a copy maintained by the RPO in a permanent file. Section 410.7 is revised to require the facility or community center to submit copies of all publicity to the Office of Consumer Services and Rights Protection, Central Office, on an annual basis.

Language is added to §410.8(a)(1) requiring the PRC chair or a member designated by the PRC chair to check the PRC's post office box for complaints at least every seven days. In §410.8(a)(2)(A), it is clarified that PRC members may only interview family members of persons served with the consent of the person served or the parent/guardian of the person served.

In §410.8(a)(2)(F), language has been added outlining PRC participation in facility abuse investigation review authorities. Section 410.9(b)(1) is revised to reflect the Office of Consumer Services and Rights Protection's role as the commissioner's designee. The dates to be covered in the PRC's annual report are clarified in §410.9(c)(1), and §410.9(c)(2) is revised to reflect the need to submit the annual report to the facility's or community center's rights protection officer.

In §410.14, language is revised to add the TXMHMR medical director, abuse and neglect investigators employed by the Office of MHMR Protective Services, DPRS, upon its creation, and rights protection officer to the list of people to whom the subchapter should be distributed.

Exhibit E, "Notice of Any Action Taken," is revised to include information about steps which may be taken if the complainant is dissatisfied with the recommendation of the PRC.

Comments on the proposed subchapter were received from 12 individuals or organizations, including Advocacy, Inc.; TEXAMI; Collin County AMI; Pecan Valley MHMR Region, Stephenville; Central Counties MHMR, Temple; Life Resource Center, Beaumont; Northeast Texas MHMR Center, Texarkana; Harris County Mental Health and Mental Retardation Authority, Houston; Life Management Center for MHMR Services, El Paso; Denton County MHMR Center, Denton; Lynda C. Baldwin, Galveston; and Clyde M. Herrington, Lufkin. All commenters offered recommendations for changes.

A commenter recommended that recruitment of PRC members be conducted through entities that appoint Boards of Trustees, and suggested that the Volunteer Services Council be relieved of this responsibility. The department responds that assigning the task to the facili-

ty's volunteer services council, which is the entity generally responsible for the recruitment of volunteers, does not preclude involvement by the entities that appoint Boards of Trustees.

A commenter asked where the PRC might turn should it find itself in need of legal advice. The department responds that PRCs at facilities may consult with the department attorney assigned to the particular facility. Community centers employ private attorneys, and PRCs may be able to consult with them.

A commenter suggested adding a definition of "complaint" to §410.3. The same commenter suggested adding the term "other" before the phrase "denial of rights" (both in the definition of "complaint" and throughout the document) to clarify that abuse is a denial of rights. The department responds that both recommendations have been followed.

With regard to §410.5(a)(1), a commenter requested that the minimum number of members of a PRC be changed from five to seven in recognition of recruitment difficulties. Another commenter asked what the PRC should do if it had fewer than the minimum number of members. The department responds that the statutory language creating PRCs requires seven members. The department suggests broadening recruitment efforts to involve local corporations, advocacy organizations, students in related studies, and other areas as a means of increasing membership.

A commenter recommended that §410.5(a)(1) be revised to require that representation on PRCs include parents, guardians, consumer groups, and advocacy groups, noting that these groups have a better understanding of the issues associated with mental illness and mental retardation. The department responds "shall include" is strong enough to imply that the above listed groups be represented in membership.

Concerning §410.5(a)(4), a commenter expressed concern that the provision prohibiting the PRC to comprise a majority of relatives of individuals receiving services held the possibility of shutting out the individuals most likely to take their responsibilities seriously. The department responds that membership must be limited to permit other interested parties, such as members of consumer groups and members of the general public, to participate to provide a well-balanced, objective mechanism for reviewing issues.

With regard to §410.5(b)(3), a commenter suggested that the provision prohibiting an individual receiving services from PRC membership be revised to prohibit "individuals currently receiving inpatient services from a facility or community center." The commenter noted that it is conceivable that an individual living in the community and receiving outpatient services could serve a valuable role as a PRC member. The department agrees, and language has been revised as recommended.

A commenter expressed opposition to allowing the executive director, volunteer services council, or any other agent of the community center to appoint PRC members, as outlined in §410.5(c)(1). The commenter noted that it would be preferable to have an agent independent of the community center such as the local chapter of an advocacy organization responsible for appointments. Another commenter expressed opposition to assigning the facility volunteer services council the responsibility of appointing PRC members. The department responds that according to statute, the local establishing agencies of community centers and the executive committee of each facility's volunteer services council must be responsible for PRC appointments.

Concerning §410.5(c)(1)(A), two commenters suggested adding timelines regarding notification of parents and advocates of the time and place of meetings to select PRC members. One commenter suggested requiring a minimum of three weeks' notice. The department responds that language has been added requiring that such notices be made in keeping with the open meetings requirements outlined in Texas Civil Statutes, Article 6252-17.

A commenter suggested that a limit to the number of terms a member may serve be reinstated in the subchapter, noting that member "burn-out" can reduce the effectiveness of the committee. The commenter suggested that members be permitted to serve no more than three consecutive terms before having to sit out for one year. The department responds that the term limits were removed in response to a number of concerns expressed regarding recruitment, with several commenters noting that qualified, dedicated members were often lost as a result of term limitations. The department also notes that a member who is "burnt-out" is free to refuse re-appointment to the PRC.

A commenter suggested revising §410.5(d)(2) to require that the roster be forwarded to advocacy organizations. The department responds that language has been revised to state that the roster may be forwarded to any interested party upon request.

With regard to §410.5(f)(2), a commenter noted that there are no sources identified for "additional specialized training" for PRC members. The commenter requested that a list be written into the rules which included advocacy organizations. The department responds that the determination of the type and source of specialized training necessary should be left with the PRC, the facility or community center, and/or the rights protection officer. Language has been revised in §410.5(g)(2)(A) to reflect that the RPO may not be capable of providing all types of training necessary. It is clarified that the RPO is responsible for coordinating training (i.e., locating sources) and, as appropriate, providing training to PRC members.

With regard to §410.5(g), a number of commenters expressed opinions about the proposed assignment of the rights protection officer as PRC liaison. Several commenters praised the appropriateness of the assignment; however, several others expressed concern that the PRC would lose its credibility as an independent body as a result of being affiliated with the RPO, and would come to be seen simply as an extension of the facility and the RPO. Commenters expressed concern about the RPO maintaining the PRC log, suggesting that such responsibility was better placed with the PRC itself. The department responds that the intent of the assignment of the RPO as liaison to the PRC was to provide the PRC with accurate, timely answers to information regarding patients' rights. Language has been revised throughout the section to ensure that the PRC maintains its independence i.e., the addition of language clarifying that the RPO coordinates training required by the PRC (and provides it as appropriate).

It was never the department's intent that the RPO should "take over" the PRC log, which would give the impression of the RPO assuming the PRC's functions. Language has been added clarifying that only the PRC chair or a member designated by the PRC chair may collect complaints from the PRC post office box and enter those complaints on the PRC log. The PRC will continue to function as an independent body.

The assignment of the RPO as liaison to the PRC ensures that all facility staff are fulfilling the assignments they are best equipped to accomplish. The volunteer services department is responsible for recruiting, acknowledging, and providing basic orientation to PRC members just as the volunteer services department does for all volunteers. The RPO is responsible for providing accurate, timely information to the PRC upon its request and for ensuring that the PRC is able to fulfill its responsibility which, although independent of the department, is an important part of the department's rights program, for which the RPO is responsible.

A commenter suggested that executive directors of community centers and superintendents/directors of facilities be permitted to determine the staff responsible for the PRC effort (i.e., rights protection officer, volunteer services office, etc.). The department responds that there needs to be some consistency throughout the system and that the responsibility rightfully rests with the RPO, who is capable of providing the PRC information regarding rights issues upon request.

A commenter recommended that PRC members receive initial training regarding their role as it pertains to the protection of consumer rights from the Office of Consumer Services and Rights Protection. The commenter noted that differences in interpretations of rules, policies, or implementation efforts occur between staff in the facilities and CO, and suggested that having CO staff provide training would ensure that the PRC understands the philosophy and spirit behind a rule. The department responds that such efforts have been made in the past and will be attempted in the future; to reflect the possibility of provision of such training, §410.5(a)(2)(A) has been revised to note that the RPO is responsible for coordinating training as well as providing it when appropriate.

With regard to §410.5(a)(2)(C), the same commenter recommended that the PRC be responsible for maintaining its own log. The commenter noted that this would provide an additional element of confidentiality and serve to advance the PRCs credibility as an independent mechanism. The department re-

sponds that it was never the intent that the rights protection officer should document complaints in the log; rather, the RPO is responsible for "maintaining" the log in the sense of storing it and keeping track of it. Language has been revised to clarify this point, and additional language has been added in §410.5(g)(2) which affirms that only the PRC chair or a member designated by the PRC chair may collect complaints from the PRC post office box and enter those complaints on the PRC log.

Concerning §410.5(h)(1), a commenter noted that it was unclear whether the list of reasons for removal from the PRC was all-inconclusive. The commenter also expressed opposition to having members dismissed by agents of the facility or community center. Another commenter expressed concern about the provision permitting a PRC member to be removed at the request of a majority of the PRC. The commenter suggested the provision gave the appearance of the ability to stack the committee by unscrupulous members. The department responds that the provisions for removal from the PRC have been revised to take these comments into consideration. The PRC chair is now permitted to remove a member from the PRC for failure to attend two consecutive meetings, failure to attend training, or failure to comply with the provisions of this subchapter. The chair must notify the volunteer services council or local establishing agencies, as appropriate, of the reason for the removal and the need for replacement. In addition, members may be removed by the volunteer services council or local establishing agencies, as appropriate, at the request of the majority of the PRC members. This provision serves to create an additional "check and balance" prior to removal of a member by the majority of the PRC.

Also with regard to the same section, a commenter expressed opposition to the inclusion of failure to participate in training as a reason for removal from the PRC. The department responds that a PRC member who does not understand his or her role is of little use to the PRC; therefore, this is a legitimate reason for removal.

With regard to §410.6(c), a commenter suggested that a provision be added requiring that the total membership be an uneven number so that a decision is always achievable since votes are decided by a simple majority. The department responds that according to Robert's Rules of Order, the chair only votes in order to break a tie. Therefore, such a provision is unnecessary.

A commenter suggested that a provision be added to §410.6(d) stating that if the person making the complaint objects to the presence of additional individuals, the objection must be honored. The department responds that specific complaints are discussed at PRC meetings only within the context of analysis of trends. The meetings are much more general; complaints are resolved between meetings.

Several commenters questioned the requirement in §410.6(f) that the PRC chair maintain the minutes in a permanent file. One commenter asked where the file would be located; several others suggested the rights protection officer or volunteer services director should maintain the minutes. The department responds that the requirement for maintaining the minutes has been transferred to the secretary, and a provision has been added requiring that a copy be maintained by the rights protection officer in a permanent file. In language added to §410.5(g)(2)(C), the rights protection officer is required to provide space for storage of PRC minutes and PRC logs.

Concerning §410.7(a), a commenter suggested that the responsibility for providing individuals, their families, and the general public with information about the existence, purpose, and composition of the PRC should rest with the facility or community center. The commenter also suggested that the rule detail consequences for failing to provide this information. The department responds that according to language in §410.7(a), this responsibility does lie with the facility or community center. Language has been added requiring that copies of the publicity be sent to the Office of Consumer Services and Rights Protection on an annual basis as a means of ensuring that the information is provided.

With regard to §410.8(a)(1), a commenter emphasized the importance of the PRC having its own post office box which is not accessible to facility or center staff. The department responds that language added in §410.5(g)(2) clarifies that only the PRC chair or a member designated by the PRC chair may collect complaints from the PRC post office box.

Regarding §410.8(a)(1)(B), a commenter questioned how often the PRC was required to check its post office box. The department responds that language has been added requiring that the post office box be checked for complaints at least every seven days.

Concerning §410.8(a)(1)(D), a commenter emphasized the importance of all complaints being documented. The department agrees, and new language added to §410.5(g)(2) clarifies that only the PRC chair or a member designated by the PRC chair may collect complaints and enter them on the PRC log. This eliminates the possibility of any other individual collecting complaints without documenting them.

Several commenters suggested that the reporting requirements outlined in §410.9 are too extensive. A commenter suggested the requirements made the PRC appear to be a subdivision of MHMR rather than an independent body. Another commenter suggested that the report be required annually or as necessary. Another commenter asked what entities receiving the reports are supposed to do with them. The department responds that both quarterly and annual reports are necessary. The quarterly report includes the actual log, which details each complaint investigated information which is important to facility and community center administrators. The annual report, on the other hand, provides an overview of the PRCs work for the previous year it provides a summary of the types of complaints handled without including all the details. This report is required by statute to be provided to the advocacy system. Upon receipt of these reports, entities should review the reports and consider trends and/or action necessary.

A commenter suggested that community center boards of trustees serve only as policy-making entities, and therefore do not require quarterly reports. The commenter suggested an annual report would be sufficient. The department responds that policy-making requires awareness, and therefore a quarterly report keeping the board aware throughout the year is essential.

Regarding the submission of quarterly and annual reports to the Office of Consumer Services and Rights Protection, a commenter asked whether the role of commissioner's designee would transfer to the new Texas Department of Protective and Regulatory Services upon its creation. The department responds that as of this time, there is no plan to transfer this responsibility.

Concerning §404.11, a commenter noted the importance of the PRC having the ability to resolve complaints in a satisfactory manner. The commenter noted that a lack of empowerment to resolve complaints will erode the credibility of the PRC and the service system. Another commenter asked why the director or superintendent was noted as the party responsible for taking appropriate corrective action. The department agrees that the PRC needs to pursue an issue until an appropriate resolution is achieved. The superintendent/director of a facility or executive director of a community center is the appropriate body to take corrective action as the chief administrator of the facility. However, if dissatisfied with the corrective action, the PRC may appeal the action (or lack of action). And if PRC members are still dissatisfied, they can request a review by the Office of Youth Care Investigation, Attorney General's office, or the Office of Adult Protection Services, Department of Human Services, as appropriate. In fulfilling its responsibility, the PRC must be aware of all avenues available, and should actively pursue these avenues until the situation is appropriately resolved.

A commenter suggested that appeals outlined in §404.11(a)(2)(B) should also be filed with the commissioner and the Office of CSRP. The department responds that submission of a copy of the appeal to these entities technically equates to filing a complaint; all are reviewed and, if necessary, actions are taken.

Another commenter suggested that the Board of Trustees is not the appropriate body for handling PRC appeals. The commenter suggested this involved the board in responsibilities other than policy making, and suggested the Office of Consumer Services and Rights Protection or Advocacy, Inc., might be a more appropriate source. The department responds that as the entity to which the executive director must answer, the board of trustees is an appropriate body to consider appeals of corrective action taken.

These sections are adopted under the Texas Health and Safety Code, §532. 015 (Texas Civil Statutes, Article 5547-202, §2.11), which provide the Texas Department of Mental Health and Mental Retardation with broad rulemaking powers.

§410.3. Definitions. The following words

and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Advocacy, Inc.–The system of advocacy in Texas for individuals with developmental disabilities and mental illness, created pursuant to Public Law 94-103, §113.

Board–The board of trustees appointed to govern a community mental health and mental retardation center.

Commissioner–The commissioner of the Texas Department of Mental Health and Mental Retardation.

Community MHMR center–A community center for mental health and mental retardation established pursuant to Texas Health and Safety Code, §§534.001 et seq, (Texas Civil Statutes, Article 5547-203).

Complaint–An allegation of abuse or other denial of rights of a person served by a facility or community MHMR center which is submitted to the public responsibility committee for investigation.

Department or TXMHMR–The Texas Department of Mental Health and Mental Retardation.

Facility–Any hospital, state school for individuals with mental retardation, state center, or other facility of the Texas Department of Mental Health and Mental Retardation and its respective outreach programs, or any organizational entity that may be hereafter made a part of the department.

Fiscal year–The period of time between the first day of September and the last day of the next August, inclusive.

Individual–Any person who seeks or receives services from a TXMHMR facility or community MHMR center.

Interdisciplinary team–A group of professionals and paraprofessionals who assess the individual's treatment, training, and habilitation needs and make recommendations for services.

Legally adequate consent–Consent given by a person or the person's legally authorized representative when each of the following conditions has been met.

(1) Legal capacity. The person giving the consent is 18 years of age or older and has not been adjudicated incompetent to manage personal affairs by an appropriate court of law; is at least 16 years of age but under 18 years of age receiving voluntary mental health services and has not been adjudicated incompetent to manage personal affairs by an appropriate court of law; is the parent of a person served under 18 years of age who is not and has not been married or has not had disabilities of minority removed for general purposes; or is the guardian who, under court order, has been appointed guardian of the person of the individual.

(2) Comprehension of information. The person giving the consent has been informed of and comprehends the nature, purpose, consequences, risks, and benefits of and alternatives to the procedures, and the fact that withholding or withdrawal of consent shall not prejudice any future provision of care and services to the individual.

(3) Voluntariness. The consent has been given voluntarily and free from coercion and undue influence.

Local authorizing agencies–Those agencies which have authorized community mental health and mental retardation centers as defined in Texas Health and Safety Code, §§534.001 et seq (Texas Civil Statutes, Article 5547-203).

PRC–Public responsibility committee.

PRC log–The summary of investigations of correspondence received directly by the PRC. A sample PRC log is attached as Exhibit A.

Rights protection officer (RPO)–An individual at a facility or community center who is responsible for implementing the rights program for persons served by the facility or center. Also known as the consumer rights officer.

Volunteer services council (VSC)–A non-profit corporation of volunteers who work on behalf of TXMHMR.

§410.4. Functions of the PRC.

(a) The public responsibility committee (PRC) is an independent, impartial third-party mechanism whose functions shall include, but are not limited to, the following:

(1) protecting, preserving, promoting, and advocating for the health, safety, welfare, and legal and human rights of individuals;

(2) inquiring into or investigating and responding to comment, suggestions, or complaints made with regard to individuals;

(3) ensuring that individuals and, when appropriate, their families, are informed of their rights and the means of protecting those rights;

(4) participating in the individual's interdisciplinary team as the PRC deems appropriate (for individual's receiving mental health services, PRC participation in the interdisciplinary team shall be with the individual's permission only); and

(5) submitting instances of abuse or other denial of rights to the appropriate authorities for action. The public responsibility committee, the Office of Consumer Services and Rights Protection, and/or the entity conducting an abuse/neglect investigation shall work together to ensure efficient and thorough investigation of allegations.

(b) Members of the PRC should be especially familiar with the facility or community MHMR center, its policies, the rights handbooks for persons receiving services, Chapter 404 of this title (relating to Protection of Clients and Staff), and Chapter 405 of this title (relating to Client (Patient) Care).

§410.5. Membership.

(a) Composition.

(1) Each facility or community MHMR center's PRC shall have a minimum of seven members. The membership shall include, but not be limited to, representation by parents, guardians, consumer groups, and advocacy organizations.

(2) Facilities may appoint a PRC representative in the locale of its community services or outreach programs.

(3) At the beginning of each fiscal year, the PRC shall elect one of its members as chairperson and another member as secretary.

(4) At no time shall a majority of any PRC membership be composed of relatives of individuals receiving services.

(b) Eligibility. Members of the PRC must:

(1) reside in the area served by the facility or community MHMR center;

(2) be capable of mature, objective judgment of medical, legal, social, and ethical considerations pertaining to the committee's work;

(3) not be an individual currently receiving inpatient services from the facility or community center; and

(4) not be affiliated with the facility or community MHMR center. This includes employment, financial, or other relationship between a person and TXMHMR central office, a facility, community MHMR center, i.e., full-or part-time employee, former employee, member of a governing or advisory board or panel, paid consultant, contractor, or supplier, or a person related to any such person, such as spouse, parent, grandparent, sibling, child, or grandchild. Any such relation to the spouse of an employee, former employee, member of a governing or advisory board or panel, consultant, contractor, or supplier is also considered an affiliation.

(A) After a one-year separation from employment, former employees may serve on public responsibility committees through the regular channels of becoming a member and with the approval of the

facility superintendent/director or the executive director of the community MHMR center.

(B) After a one-year separation from affiliation, all other parties considered affiliated shall be permitted to serve on public responsibility committees through the regular channels of becoming a member.

(c) Selection of membership.

(1) The executive committee of each facility's volunteer services council shall ensure representation and consultation and select persons to serve voluntarily as members of the PRC. At community MHMR centers, the community MHMR center's local authorizing agencies will serve in this function. The selection process shall include:

(A) informing local parents' associations, consumer groups, and advocacy organizations of the selection process and time and place of meeting in keeping with open meetings requirements established in Texas Civil Statutes, Article 6252-17;

(B) inviting such groups to submit nominations for membership;

(C) giving public notice of the members selected.

(2) Members shall be chosen without regard to sex, race, color, creed, national origin, age, or handicap.

(d) Terms of appointment.

(1) Members shall be appointed to serve a two-year term. There is no limit on the number of terms served.

(A) Membership terms shall be staggered.

(B) Expiring terms shall extend until another member is appointed.

(2) A roster of all current PRC members will be maintained by the Office of Volunteer Services, Central Office, and may be forwarded to interested parties upon request.

(e) Reimbursement. Members of a PRC shall serve without compensation other than reimbursement (by the facility or community MHMR center) for actual expenses, including travel expenses necessarily incurred in the performance of their duties in accordance with facility or community center policy.

(f) Training requirements. To obtain essential general knowledge of the facility or community MHMR center, members shall participate in training prior to assuming duties. Training shall be provided at times which are convenient to participants, shall be documented through sign-in sheets, and shall include, but not be limited to:

(1) at least one general orientation to the facility or community MHMR center and its volunteer policies; and

(2) additional specialized training related to their specific assignment as members of the PRC.

(g) Relationship to facility and community MHMR center staff.

(1) PRC members and staff should cooperate with each other to develop good working relationships, mutual acceptance, and cooperation.

(2) The PRC chair or a member of the PRC designated by the chair shall be the only individual permitted to collect complaints from the PRC's post office box and shall be responsible for entering complaints received on the PRC log.

(3) The facility or community MHMR center's rights protection officer shall serve as staff liaison to the public responsibility committee and shall:

(A) coordinate and, as appropriate, provide training in issues relevant to the PRC's operation, including, but not limited to, legal issues and issues relating to the rights of persons receiving services;

(B) coordinate PRC meetings;

(C) provide administrative assistance and space for storage of PRC logs and minutes of PRC meetings. The rights protection officer shall maintain confidentiality in all matters relating to receipt, investigation, and reporting of complaints by the PRC.

(4) The facility or community MHMR center's volunteer services department shall recruit and provide general training and orientation for PRC members, provide appropriate recognition, and maintain the PRC membership roster and submit changes. At community centers where there is no volunteer services department, the executive director of the community center shall appoint an individual to perform these tasks.

(5) The superintendent/director of a facility or the executive director of a community MHMR center may designate either the volunteer services department or the facility or center's rights protection officer to provide assistance to the PRC chair in ordering supplies from central office including PRC letterhead and log report forms. A sample sheet of PRC letterhead is attached as Exhibit B.

(6) The staff liaison shall maintain confidentiality in all matters relating to receipt, investigation, and reporting of complaints by the PRC.

(h) Removal from PRC.

(1) Removal by PRC chair.

(A) The PRC chair shall remove a PRC member from the committee for:

(i) failure to attend two consecutive meetings of the PRC in the absence of an acceptable reason;

(ii) failure to participate in training; and

(iii) failure to comply with the provisions of this subchapter.

(B) Upon such removal, the PRC chair shall notify the executive committee of the facility's volunteer services council or the community MHMR center's local authorizing agencies, as appropriate, of the reason for removal and the need for replacement.

(2) Removal on recommendation of PRC. On the recommendation of a majority of the PRC, a member may be removed by the executive committee of the facility's volunteer services council or the community MHMR center's local authorizing agencies, as appropriate.

(3) Replacement of member. Replacement of the member shall be in accordance with this section.

§410.6. Meetings.

(a) The PRC shall meet as often as necessary to fulfill its duties, but not less than quarterly.

(b) The PRC shall determine the times and locations of its meetings. Meetings may be held via teleconference.

(c) A quorum of the committee (the majority of its total membership) must be present to conduct business. Votes shall be decided by a simple majority of members present.

(d) Facility or community MHMR center staff may attend a PRC meeting with the permission of the PRC.

(e) The PRC may invite other appropriate individuals to attend a meeting.

(f) The minutes of each PRC meeting shall be maintained by the PRC secretary and a copy maintained by the RPO in a

permanent file.

§410.7. Information Responsibilities.

(a) Facility and community MHMR center responsibilities.

(1) Each facility and community MHMR center shall be responsible for informing individuals, their families, and the general public of the existence, purpose, and composition of the PRC. Each facility or community MHMR center shall accomplish this task by:

(A) distributing news releases to news media at least once a year, stressing the fact that the PRC is an independent, impartial body and that none of its members are affiliated with TXMHMR Central Office, the facility, or the community MHMR center, as applicable;

(B) publishing brief statements of PRC purpose and accessibility in periodic publications;

(C) posting printed notices conspicuously in all appropriate buildings; and

(D) including PRC information in handout materials routinely given to newly admitted individuals, their families, and new employees. A sample document which can be used to accomplish this task is attached as Exhibit C.

(2) Copies of all publicity shall be submitted to the Office of Consumer Services and Rights Protection, Central Office, on an annual basis.

(b) PRC responsibilities.

(1) Each PRC shall publish and distribute information related to its purpose and accessibility.

(2) Each PRC will respond to questions, comments, and suggestions related to its purpose.

(3) When appropriate, the PRC may assist an individual in securing legal counsel but may not offer any legal advice.

§410.8. Investigatory Responsibilities. Each facility or community MHMR center public responsibility committee (PRC) shall receive, investigate, and report complaints made to it by, or on behalf of, individuals and shall make recommendations to appropriate line authorities.

(1) Receipt of complaints. In order to facilitate the receipt of complaints, the PRC must have its own post office box, which must be checked for complaints at least every seven days. Rental fees must be paid by the facility's volunteer services council. Community MHMR centers may pay the rental fees if volunteer donations are not available.

(A) Complaints must be in writing and should be signed.

(i) If a complainant is unable to sign or write, the complaint may be dictated and the complainant's mark confirmed by a witness.

(ii) A PRC member must reduce an oral complaint to writing and present it to the PRC.

(iii) A PRC member must reduce an anonymous complaint to writing and present it to the PRC.

(B) Complaints must be sent directly to the PRC and must be opened by a member of the PRC.

(C) Each PRC shall maintain confidential records of complaints received, acknowledge receipt of complaints, and inform the individuals and/or complainants of any action taken. A sample form which may be used to acknowledge receipt of complaints is attached as Exhibit D. A sample form which may be used to inform complainants of any action taken is attached as Exhibit E.

(D) The PRC shall record all complaints received in the PRC log, a copy of which is attached as Exhibit A and made a part of this subchapter.

(2) Investigation of complaints. In investigating an allegation of denial of individual rights, the PRC shall initiate an investigation or inquiry within 10 calendar days of receipt of a complaint. In investigating a report of alleged abuse or neglect, the PRC shall immediately contact the abuse investigator for the facility or the executive director of the community MHMR center, as appropriate, who shall ensure that an abuse investigation is initiated. At facilities, the superintendent or director is responsible for reporting results of abuse investigations to the PRC in accordance with Chapter 404, Subchapter A of this title (relating to Abuse and Neglect in TXMHMR Facilities).

(A) Authority to interview. During an investigation, PRC members may interview the following persons, when appropriate:

(i) the complainant;

(ii) the individual, if other than the complainant;

(iii) any other individual involved in the complaint as participant or observer;

(iv) family members, guardians, and/or other representatives of the individual with the consent of the person served or the parent/guardian of the person served, as appropriate;

(v) staff members; and

(vi) nonstaff members (volunteers).

(B) Authority to inspect site. When investigating complaints of abuse or other denial of rights, the PRC shall have the authority, with or without notice, to inspect the facility or community MHMR center which offers services to the individual.

(C) Authority to inspect records–mental retardation. When investigating complaints of abuse or other denial of rights involving an individual with a primary or secondary diagnosis of mental retardation, the PRC shall have the authority, with or without notice, to inspect records relating to the diagnosis, evaluation, or treatment of the individual, as those records relate to the complaint.

(D) Authority to inspect records–mental health. PRC investigations of complaints of abuse or other denial of rights of persons with a diagnosis of mental illness are considered evaluations of the abuse protection system of facility and community MHMR center programs. The PRC shall have access to the facility or community MHMR center records relating to the treatment of the individual who has filed a complaint with the committee as those records relate to the complaint.

(E) Considerations during investigation. PRC members should observe the facility's or community MHMR center's established schedules and procedures during the investigation of any complaint.

(F) PRC participation in facility abuse investigation review authorities. At facilities, the superintendent/director may ask a PRC member to participate as a member of an authority reviewing an abuse investigation as outlined in Chapter 404, Subchapter A of this title (relating to Abuse and Neglect of Persons Served by TXMHMR Facilities).

§410.9. Routine Reporting Responsibilities.

(a) Membership changes. Within two weeks of the addition of any new member to the committee, the PRC shall submit to the Office of Volunteer Services, central office, the new member's name, address,

date of appointment, and term expiration date.

(b) Quarterly report. The chairperson of the PRC shall maintain a PRC log. On a quarterly basis, the PRC chair shall submit a report which includes the PRC log, sign-in sheets from meetings, and proof of training conducted in the previous quarter.

(1) The quarterly report shall be submitted to:

(A) the commissioner's designee (Office of Consumer Services and Rights Protection, central office);

(B) the facility superintendent/director or the community MHMR center's executive director;

(C) the community MHMR center's board of trustees; and

(D) the facility or community MHMR center's rights protection officer (RPO), who shall meet with the PRC at least quarterly to discuss trends evidenced in the logs.

(2) For any authorized recipient of the log other than qualified auditing personnel within TXMHMR and the parties named in this paragraph and paragraphs (1) and (3) of this subsection, individuals' and employees' names shall be obliterated.

(c) Annual report.

(1) The PRC shall make an annual report summarizing its work for the previous twelve months (September 1 through August 31), including:

(A) a complete membership roster, including names, addresses, dates of appointments, term expiration dates, and the PRC mailing address;

(B) dates of meetings and training (including sign-in sheets and proof of training); and

(C) a completed annual report form. A sample copy of the annual report form is attached as Exhibit F.

(2) The report shall be submitted no later than October 31 of each year to:

(A) the facility's superintendent/director or the community MHMR center's executive director;

(B) the facility's or community MHMR center's RPO;

(C) the commissioner and the commissioner's designee (Office of Consumer Services and Rights Protection); and

(D) Advocacy, Inc., 7800 Shoal Creek Boulevard, Suite 171 E, Austin, Texas 78757.

§410.14. Distribution.

(a) The provisions of this subchapter shall be distributed to members of the Texas Board of Mental Health and Mental Retardation; deputy commissioners; the TXMHMR medical director; associate and assistant deputy commissioners; and directors of central office; superintendents and directors of all TXMHMR facilities and community MHMR centers; chairpersons of boards of trustees of community MHMR centers; directors of volunteer services; chairpersons of all facility and community MHMR center public responsibility committees; and abuse and neglect investigators employed by the Office of MHMR Protective Services, DPRS, upon its creation.

(b) The superintendent or director of each facility and community MHMR center shall disseminate the information contained in this subchapter to all appropriate staff members, including rights protection officers, and volunteers:

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 June 26, 1992.

TRD-9208906 Anne K. Utley
Chairman
Texas Board of Mental Health and Mental Retardation

Effective date: September 1, 1992

Proposal publication date: May 8, 1992

For further information, please call: 465-4670

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 1. General Administration

Subchapter I. Disclosure of Guaranty Fund Nonparticipation

• 28 TAC §1.1001

The State Board of Insurance of the Texas Department of Insurance adopts an amendment to 28 TAC §1.1001, concerning disclosure of guaranty fund nonparticipation. The amendment adds subsection (g) to 28 TAC §1.1001, to specify that the disclosure notice is not applicable to fidelity, surety, or guaranty bonds, without changes to the proposed text as published in the December 27, 1991, issue of the *Texas Register* (16 TexReg 7702).

Section 1.1001 provides specific directions for disclosure of guaranty fund nonparticipation on each certificate or evidence of coverage and on each insurance policy, contract, or application that is delivered or issued for delivery in this state, that is not covered by an insurance guaranty fund or other solvency protection arrangement.

The amendment to §1.1001 is necessary to comply with Section 11.08, Chapter 242, Acts of the 72nd Legislature, Regular Session, 1991, which amends the Insurance Code, Article 21.28-E, to specifically exempt fidelity, surety and guaranty bonds from the guaranty fund disclosure requirement.

The amendment provides a specific exception with respect to fidelity, guaranty and surety bonds from the compliance requirements implemented by the current 28 TAC §1.1001.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Insurance Code, Articles 21.28-E and 1. 04, and Texas Civil Statutes, Article 6252-13a, §4 and §5. The Insurance Code, Article 21.28-E(b) authorizes and requires the State Board of Insurance to administer statutory provisions and promulgate statements that must be used by insurers to comply with Article 21.28-E, relating to the disclosure of guaranty fund nonparticipation. Article 1.04 authorizes the Board to determine policy and rules in accordance with the laws of this state for uniform application. Texas Civil Statutes, Article 6252-13a §4 and §5 authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and prescribe the procedures for adoption of rules by a state administrative agency. The adopted amendment affects regulation of disclosures by insurers under the Insurance Code, Article 21.28-E.

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 June 26, 1992.

TRD-9208891 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Effective date: July 17, 1992

Proposal publication date: December 27, 1991

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

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Chapter 3. Life, Accident and Health Insurance and Annuities

Subchapter Y. Minimum Standards for Benefits for Long-Term Care Coverage Under Individual and Group Policies

The State Board of Insurance of the Texas Department of Insurance, adopts amendments to §§3.3801-3.3805, 3.3807, 3.3809-3.3812, 3.3819, 3.3821-3. 3826, and 3.3828-3.3832, and new §§3.3813-3.3815, 3.3818, 3.3820, 3.3837-3. 3839, and 3.3849-3.3850, concerning minimum standards for benefits for long-term care coverage under individual and group policies, following passage of Article 13 of House Bill 62, Second Called Session of the 72nd Texas Legislature, creating Article 3.70-12 of the Insurance Code. Sections 3.3803, 3.3804, 3.3813, 3.3814, 3.3818, 3.3821, 3.3830, 3.3837, 3.3840, 3.3849 are from the proposed as published in the February 25, 1992, and March 3, 1992, issues of the *Texas Register* (17 TexReg 1507 and 1591). Sections 3.3801, 3.3802, 3.3805, 3.3807, 3.3809-3.3812, 3.3815, 3.3819, 3.3820, 3.3822-3.3826, 3.3828-3.3832, 3.3838, 3.3839, 3.3850 are adopted without changes and will not be republished. During the period for public comment for the proposed amendments and new sections a public hearing was requested and convened May 28, 1992, as Docket Number R-1898. As a result of many comments received during the respective comment periods, and the hearing pursuant to Docket Number R-1898.

The amendments and new sections will assure orderly implementation and effective disclosure of long-term insurance benefits and premiums by companies licensed to provide such coverages, pursuant to the Insurance Code, Article 3. 70-12. Article 3.70-12, §3(a) directs the State Board of Insurance to establish specific standards for provisions of long-term care insurance policies and standards for full and fair disclosure setting forth the manner, content and required disclosures for the marketing and sale of long-term care insurance policies, in addition to and in accordance with provisions of the Insurance Code in Chapter 3 applicable to all accident and health coverages. Article 3.70-12, §7 provides that in addition to other rules required or authorized by Article 3.70-12 the board may adopt reasonable rules necessary to carry out the article. The adopted sections contain a number of changes to the amendments and new sections as proposed and published. The change to §3. 3803 (relating to Applicability and Scope) clarifies that the sections do apply to policies which are designed as long-term care products, even if those policies do not otherwise meet the definition of a long-term care coverage. The change to the definition of "long-term care insurance" in §3.3804 (relating to Definitions) clarifies that the term also includes a policy or rider, other than a group or individual annuity or life insurance policy, that provides for payment of benefits based on cognitive impairment or the loss of functional capacity.

The change to §3.3813 (relating to Policy Definition of Personal Care) adds the elements of "continence" and "mobility" to the minimum standard list of activities of daily living, which are instrumental in triggering eligibility for benefits for long-term care.

The change to §3.3814 (relating to Policy Definition of Adult Day Care) makes it clear that programs and settings for "adult day care" are subject to the provisions of the Human Resources Code, Chapter 103, relating to licensing and quality of care requirements.

Two changes are made to §3.3818 (relating to Eligibility for Benefits). The change to §3.3818(1) accommodates the addition of activities of daily living by insurers to trigger eligibility for benefits, provided that presence of an inability to perform any two of the activities of daily living in §3. 3813 (relating to Policy Definition of Personal Care) will automatically trigger eligibility for benefits. The change to §3.3818(2) provides a minimum standard for the definition of the term "impairment of cognitive ability."

The change to §3.3821 (relating to Limits on Group Long-Term Care Insurance) makes it clear that the reference to the Insurance Code, Article 3. 51-6, §1(a) is specifically directed to paragraph (6) of that Insurance Code section, relating to discretionary groups.

The change to §3.3830(f) provides that notice of proposed replacement of a long-term care coverage is to be made by a replacing insurer within five working days from the date the application is received by the replacing insurer at its home office.

Three changes are made to §3.3837 (relating to Reporting Requirements). The first change clarifies that the records maintenance and reporting for replacement and lapse events apply to both the number and dollar amounts of annual sales attributable to long-term care products. The second change to the section sets a minimum threshold of sales, below which an agent which otherwise would be included in a report of agents with the greatest percentage of lapse or replacement will in fact be excluded. A final change to the section clarifies that the maintenance and reporting requirements required by the section relate to the sale and lapse of long-term care products only. The change to §3.3840 (relating to Requirements to Deliver Shopper's Guide) adds a paragraph providing for use of the most recent revision of the shopper's guide developed by the National Association of Insurance Commissioners until approval of the shopper's guide developed by the Texas Department of Insurance.

Two changes are made to §3.3849 (relating to Effective Date). The first change provides that any policy permitted to be delivered or issued in the state in conformity with the Insurance Code, Article 3.70-12, may be delivered or issued only until September 1, 1992. After that date, all new issues and deliveries are subject to the provisions of these sections as amended or added. The second change to the section details that the first reporting period for requirements set out in §3.3837 (relating to Reporting Requirements) shall be calendar year 1992, with the first report due to the department no later than June 30, 1993.

The amendment to §3.3801 references the authority vested in the board under the Insurance Code, Article 3.70-12. The amendment to §3.3802 provides that the purpose of this subchapter as amended is to implement the Insurance Code, Article 3.70-12, to provide uniform standards for benefits and disclosures, thereby facilitating the availability of long-term care coverage that is in the best interest of the insurance consumers of this state. The amendment to §3.3803 provides that the sections apply to contracts and evidences of coverage issued by health maintenance organizations. The amendment to §3.3804 changes definition of essential terms to include health maintenance organizations and contracts or evidences of coverages issued by them. The amendment to §3.3805 extends the limitations applicable to §§3. 3806-3.3812 to §§3.3813-3.3815 as well. The amendment to §3.3807 clarifies when the term "guaranteed renewable" may be used. The amendment to §3.3809 is editorial in nature only, and makes no substantive change to this section. The amendment to §3.3810 clarifies when the term "noncancellable" may be used. The amendment to §3.3811 makes reference to the Insurance Code, Article 3.70-12, §3(c), which sets out the restrictions on the definition of pre-existing conditions limitations. The amendment to §3.3812 removes the term "home health agency" from the policy definition of "provider." The amendment to §3.3819 sets standards for reserves and specifies the characteristics which must be present if the method of reserving is to be acceptable. The amendment to §3.3821 is editorial in nature and references the "department" rather than the "board." The amendment to §3.3822 revises the minimum standard for renewability to include group coverage. The amendment to §3.3823 sets out disclosures to be made to applicants for long-term care coverage at the time of application for long-term care benefits or services. The amendment to §3.3824 sets out limitations on pre-existing conditions provisions generally, and sets out restrictions on pre-existing condition waiting periods and other probationary periods in circumstances where long-term care coverage is replaced. The amendment to §3.3825 clarifies that prior hospitalization or institutionalization limitations apply to group coverage, sets out further limitations on conditions for eligibility, and provides for required disclosures. The amendment to §3.3828 provides, in the event of conversion from a group policy having managed-care provisions, elucidation about substantially equivalent benefits. Such amendment also provides that upon discontinuance and replacement, the replacement coverage shall be offered to all persons covered under the previous group policy on a nondiscriminatory basis. The amendment to §3.3829 provides for a required disclosure of the 30-day free look period available to all long-term care coverage applicants. Such amendment also provides that any permitted limitation or condition of eligibility must be clearly labeled and described in a separate paragraph of the policy or contract. The amendment to §3.3830 changes the requirements for replacement of long-term care coverages and includes questions to be included

upon the taking of an application for long-term care coverage, as well as new disclosures which are required. The amendment to §3.3831 is nonsubstantive and made for purposes of clarification only. The amendment to §3.3832 requires that outlines of coverage provided in connection with long-term care coverage be standard in format and content, and sets out the essential requirements for such outlines of coverage. New §3.3813 provides a policy definition for the term "personal care." New §3.3814 provides a policy definition for the term "adult day care. " New §3.3815 provides a policy definition for the term "home health agency" and the standards for home health and adult day care benefits. New §3.3818 provides for the occurrence of events which will result in the eligibility for benefits or services under long-term care coverages. New §3.3820 requires that any company offering long-term care coverage in this state also offer prospective covered persons the opportunity to purchase coverage providing for benefit levels to increase throughout the interval of coverage to mitigate the effects of economic inflation and increases to medical costs. New §3.3837 replaces the prior section addressing effective date with requirements for reporting agent activity with respect to lapses of long-term care coverages and replacement sales. New §3.3838 replaces the prior section addressing severability with filing requirements for advertising for long-term care coverages. New §3.3839 sets out standards for marketing long-term care coverages to assure that comparison of policies by agents will be fair and accurate, that excessive insurance is not sold or issued, and to help alleviate the practices of twisting, high pressure tactics, and cold lead advertising. New §3.3849 sets out the effective date of this subchapter as amended. New §3.3850 sets out the severability provisions which previously had comprised §3.3838.

Written comments from 11 sources were received during the combined period for comment running from February 26, 1992, to April 3, 1992. No comments were received against the sections, although all commenters submitting written comments in favor of the amendments and new sections included recommendations and suggestions for additions to and deletions from the proposed amendments and proposed new sections as published. Names of those making comments included Aetna Life Insurance Company, AMEX Life Assurance Company, Christian Fidelity Life Insurance Company, CIGNA Companies, CNA Insurance Companies, Consumers Union, Health Insurance Association of America, Office of Public Insurance Counsel, The Prudential, Teachers Insurance and Annuity Association, Transport Life Insurance Company, and UNUM Life Insurance Company of America.

Comments addressing a number of subject areas were received with respect to matters not directly addressed in this adoption, both during the period for written comment, and at the public hearing under Docket Number R-1898. Major topics of comment included the following: proposals focusing on inclusion of nonforfeiture benefits, reduced paid up benefits, or other equity features in long-term care coverages; proposals for uniform benefits packages and uniform definitions for long-term care coverages; proposals relating to rating practices and rate caps for long-term care coverages; and required disclosure about future premium rate increases for long-term care coverages.

With respect to proposals focusing on nonforfeiture benefits, reduced paid up benefits and other equity features, a number of commenters primarily emphasized that long-term care coverages should be required to include such types of benefits as a minimum standard. Other comments raised questions about the extent to which such a requirement would confer a true economic benefit to those policyholders to whom such provisions would be directed. Still other comments urged that at a minimum a nonforfeiture benefit be permitted to be included in long-term care coverages at the option of the insurer. The department responds that the issue of nonforfeiture benefits is one which needs to be addressed by regulation in the near future. The department notes that it is aware of the lack of unanimity, both among insurers and among other groups who advocate nonforfeiture benefits in long-term care products, about which provisions for nonforfeiture benefits are optimal in the long-term care arena at present. The department also notes that long-term care coverages incorporating nonforfeiture benefits have not been approved in the past because of unresolved actuarial questions regarding reserving methodology and requirements associated with such a benefit, as well as the absence of a clear departmental policy established by the board with respect to such matters. The department intends to scrutinize the work of the NAIC task force in this area, as well as to examine positions and proposals of other groups in determining recommendations to the board for its consideration of required nonforfeiture benefits for long-term care coverages. In addition, the department intends to closely examine and recommend to the board for its consideration provisions relating to options for inclusion of a nonforfeiture benefit during the interim over which mandated nonforfeiture benefits are being considered. With respect to uniform benefits packages and uniform definitions, comments in favor of such uniformity stressed how essential standardization in these areas is to: reduce uncertainty about whether the same term might have a different meaning between and among issuers of long-term care coverages; to prevent or diminish marketplace confusion that can result if too wide a variety of products or features are available within and among issuers of long-term care coverages; and provide for a meaningful comparison of essential features, and costs associated with such features, of long-term care benefits packages available. The department agrees that uniformity in a product line such as long-term care coverage is desirable, and intends to focus resources on the development of uniform definitions and standardized benefits packages, with input from sources outside the department. The department also notes that development of uniform benefits packages is a matter requiring great care and attention so that the consumer service goals noted previously may be attained while still retaining those features most frequently sought by covered persons, thereby offering flexibility and choice to insureds across benefits packages

With respect to rating practices and upper level constraints on premium rate increases, the comments focused on a recommendation to include a limit on how much rates for long-term care coverage can increase, as well as a filing and approval procedure for premium increases. The department responds that the adoption contains provisions which relate to premium rates and are designed to assist in determining whether rates are appropriately set. In addition, the department notes that resources currently are being utilized to scrutinize rating practices in the long-term care area, in order to develop recommendations for board consideration regarding rating practices of long-term care coverage issuers. Finally, the department notes that it currently does not directly regulate premium rates for health coverages, including long-term care coverages, as part of the review and approval process, because of the current statutory framework for such regulation.

With respect to required disclosure about future premium rate increases for long-term care coverages, comments emphasized that the sections as proposed contain a required disclosure relative to future premium rate increases only in §3.3820, relating to mandatory offers for inflation protection, and that additional disclosure about future rate increases should be required. The department responds that it agrees that required disclosure of future premium rate increases is very important. For that reason, §3.3820(c)(2) as adopted requires disclosure of any expected premium increases or additional premiums required to pay for automatic or optional benefits increases. In addition, §3.3820(f) provides that offers of inflation protection providing for automatic benefit increases in a package where the insurer expects the premium to remain constant must prominently disclose that the premium may change in the future unless the premium is guaranteed to remain constant. Moreover, §3. 3832, relating to the outline of coverage which must be provided with each coverage issued for long-term care, contains a requirement that issues clearly disclose the terms under which the coverage may be continued in force, including a statement of whether the company has the right to change the premium, and if so, a clear and concise description of each circumstance under which the premium could change. Finally, though the department considers current premium rate disclosure requirements sufficient for the present time, it emphasizes its intention to remain vigilant about all disclosure issues, including disclosure about future increases to premium for long-term care coverage, and to immediately recommend to the board for approval disclosure proposals as necessary. Comments related to § 3.3804. One commenter recommended that the definition of long-term care insurance be changed to be the same as the definition in the NAIC Model Act. Department response: Because the department believes a slight change to the proposed definition of long-term care insurance is in order, the adoption includes a change so that the definition of long-term care insurance will

include those policies that provide payment for benefits based on cognitive impairment or the loss of functional capacity. With this modification, the definition specifically corresponds to the statutory definition in Article 3.70-12, §2, paragraph (4). The statutory definition of long-term care insurance, differs from the NAIC Model definition, however, and must be followed in the amendments to these sections. Comments related to § 3.3813. Commenters suggested that the proposed definition of "personal care" which was based on assistance in the activities of daily living, such as bathing, eating, dressing, transferring and toileting, permits insurers no latitude and suggested that the department change the definition to correspond to the NAIC Model. Commenters differed on what to include as activities of daily living, but recommended greater flexibility. Commenters also expressed the need for clarification in the definition of "personal care" in terms of the activities of daily living. Department response: Upon departmental consideration of comments and rationale for inclusion of elements other than the five proposed in §3.3813 (relating to Policy Definition of Personal Care) as activities of daily living, the adoption includes a clarification to the definition "personal care" and requirements concerning the activities of daily living. The change adds "continence" and "mobility" to the activities of daily living used to define "personal care" and permits insurers to utilize additional ADLs besides those listed. Comments related to §3.3814. Two commenters expressed concern regarding the proposed definition of "adult day care" and recommended that it be changed so that the program and setting be required to be licensed in the state. Department response: The department concurs with the concerns expressed, and for that reason the adoption includes changes which would require any adult day care program or facility be operated according to licensing and quality of care requirements in the Human Resources Code, Chapter 103. Comments related to §3.3818. Four commenters asked for greater flexibility in the application of activities of daily living. The request made was twofold: first, that two additional generally recognized ADLs be added to the five set forth in §3.3813, and second, that insurers be able to utilize ADLs in addition to the seven required to be utilized by each insurer to trigger eligibility for benefits. Other commenters requested that the term "impairment of cognitive ability" be addressed in terms of a minimum standard for definition of the term. Department response: The department agrees that the two ADLs as set forth in earlier discussion should be included in §3. 3813, and that §3.3818 should be revised to accommodate the use of other ADLs as set forth by insurers, so long as the presence of any two ADLs triggers eligibility for benefits, and so long as the presence of conditions with respect to any two of the seven set out in §3.3813 as adopted will result in eligibility for benefits. The final adoption accordingly includes such changes. The department also agrees that the final adoption should include a minimum standard for definition of "impairment of cognitive ability, " and such a minimum standard for definition of the term is included as part of this final adoption. Comments related to §3.3820. A commenter indicated that the proposed rule is not clear regarding whether other additional inflation protection options could be offered by insurers. Commenters suggested that the proposed requirements for inflation protection were too limiting and that insurers should be allowed to offer other inflation protection options besides those set forth in the proposed rule. Other commenters voiced support of the inflation protection provisions, but emphasized other value protection issues, as summarized in the introductory sentences of this section. Department response: The department recognizes the need for inflation protection, as well as the need to simplify the benefits and options available for purposes of comparison across products offered. For this reason, the final adoption retains inflation protection requirements as proposed and published. Such inflation protections provisions, although not absolutely mandatory, are nonetheless mandatory unless the insurer obtains an informed, written rejection from the insured. The written rejection requires reference to specific policies or plans which have been reviewed in connection with the rejection. Such provisions offer to the insured flexibility in making a choice, while at the same time providing both the availability of such protection and a meaningful opportunity for the insured to actually compare benefit elements between or among policies and plans. For insurers, the adoption provides flexibility insofar as the insurer has a choice among three different possible inflation protection packages to offer, and within the package calling for an incremental increase to benefits annually, the choice of percentage rate equal to or in excess of 5.0% annually is a matter over which the insurer has discretion and control. Comments related to §3.3824. One commenter urged the board not to delete §3.3824(c), as proposed, apparently reading the deletion of that subsection as an outright prohibition against the pre-existing condition exclusion. Department response: The department responds that §3.3824(c) in the current regulation was written prior to the time that the Insurance Code, Article 3.70-12 was enacted. Article 3.70-12 explicitly addresses the matter of pre-existing condition exclusions in §3(c), and sets forth an upper level constraint of six months from effective date of coverage for denial of benefits based on an pre-existing condition. For this reason, the adoption does not make a change to the proposed deletion of existing §3.3824(c). Comments related to §3. 3826. Two commenters recommended the board withdraw §3.3826(a)(2)(B), which requires that biologically-based brain diseases be a covered condition. The reasons stated for such recommendation were as follows: such a requirement far exceeds any set thus far by the NAIC in its models; such a requirement will result in increased cost of coverage for all covered persons since it greatly expands the class of individuals who will qualify for coverage; such a requirement does not provide a clear indication of what is meant by biologically-based serious mental illness; and such a requirement purports to take away what is permitted in §3.3809 (relating to the Policy Definition of Mental or Nervous Disorder) and what is permitted in the first clause of §3. 3826(a). One commenter emphasized that long-term care insurance coverage should be available in the event of biologically-based brain disease other than Alzheimer's Disease, since the occurrence of such a condition amounts to a biological disability. Department response: The department emphasizes that the Insurance Code, Article 3.70-12, sets out both what is to be considered to be long-term care insurance, and also areas within which the board is to address minimum standards that are necessary and essential in long-term care coverage. Because long-term care insurance coverage should be available in the event of biologically-based brain disease, the adoption makes no change to §3.3826(a)(2)(B) as originally proposed and published. Comments related to §3.3830. Three commenters recommended deletion of §3.3830(c) from the adopted section, on the alternative bases that it is unnecessary because of provisions in §21.113 (relating to rules pertaining specifically to accident and health insurance advertising and health maintenance organization advertising), or that it is unnecessary because it requires the provision of information that is irrelevant to the marketing and sale of long-term care coverage. One commenter further suggested that if §3.3830(c) is retained in the final adoption, it be modified to require only information pertinent to the appropriateness of replacement of long-term care coverage. One commenter suggested additional language to §3.3830(f) to clarify that the five-day time limit with respect to notification on replacement applies to actual receipt by the replacing insurer of an application "at its home office" rather than constructive receipt through its agent at some location other than the home office. Department response: With respect to §3.3830(c), the department is not persuaded that provision of such information is unnecessary or irrelevant to the marketing and sale of long-term care insurance, because such a requirement assists in the identification of areas where the sale of a long-term care coverage might result in duplication of coverage. For this reason the final adoption retains §3.3830(c) as proposed and published. With respect to §3.3830(f), the department agrees that the addition of the words "at its home office" provides clarification about when the receipt of an application by the replacing insurer triggers the five-day time period for notifying the existing insurer. The final adoption therefore incorporates such language. Comments related to §3.3837. One commenter objected to the section in its entirety on the following grounds: the report implies wrongdoing on the part of the agent regardless of the §3.3837(a)(2) provision; the department has not been able to specify how the report is to be used; the manner in which agents are reported is arbitrary and malicious; the cost to companies and ultimately to consumers of generating such reports exceeds any benefit to justify the expense; and the report is required of companies and agents regardless of the volume of business to be reported. The commenter recommended elimination of the proposed section from the regulation. Two other commenters expressed similar concerns on this matter. They each suggested some minimum threshold number of policies sold and lapsed or replaced, below which an agent who otherwise would be included in the

report would instead be excluded. The commenters pointed out that lapse rates and replacement rates alone, especially when very small numbers of policies are the means by which such rates are determined, do not portray an accurate picture of whether the agent is generally doing a good job or doing a bad job. One of the two other commenters also suggested that such reports should apply only to individual coverages, since replacement in the group market has not been targeted as a problem area. Department response: After careful consideration of the comments submitted, the department agrees that some changes to §3.3837 are necessary, but disagrees with the argument that the section should be deleted entirely. For that reason, the final adoption includes provisions that any agent who otherwise would be included in the annual report because of lapse or replacement rates for long-term care business, but who sold 20 or fewer policies for the period covered by the report, shall not be included in the report. In addition, the final adoption clarifies that the maintenance of records is to apply to both the number of policies sold and to the dollar amount of policies sold, and further that such maintenance and reporting applies only to long-term care coverages. With respect to a threshold for companies similar to that set out for agents for exception reporting purposes, the department is does not see the need for such a minimum threshold for companies, since it believes that requiring even those companies with proportionally small numbers of long-term care sales to report will result in the receipt of information that is helpful in determining both how involved and how effective a particular company is in the long-term care market. For that reason, the final adoption contains no such minimum threshold for companies. Comments related to §3.3838. Three commenters addressed the filing requirements for advertising, suggesting that the 60-day filing requirement prior to first use be reduced to 30 days prior to first use. Department response: The department disagrees. The 60-day-prior-to-first-use filing requirement in §3.3838 facilitates attainment of the purpose set out in §3.3802 (relating to Purpose) of these sections. It also permits an appropriate time period for comparison of benefits, definitions, limitations, and other features of the policy with representations that are set forth in the advertising. The time period is not unreasonable because it coincides with the 60-day time period set out in statute for the review and approval of the policies to which the advertising would apply. Comments related to §3.3840. One commenter suggested that §3.3840 as published has words omitted and requires clarification. Two other commenters suggested that the department should use the shopper's guide developed by the NAIC, rather than its own. One of these commenters pointed out that the NAIC guide is what it is permitted to use in the other states in which it markets, and stated that its use would help control the costs associated with providing a Texas-specific shopper's guide. The other of the two commenters suggested use of the NAIC guide on the grounds that uniformity is desirable in the matter of a shopper's guide, and further requested that in lieu requiring insurers to use a guide developed by the department, the board consider allowing insurers the option of choosing to use the department shopper's guide or the NAIC shopper's guide. Department response: With respect to the first commenter, the department notes that §3. 3840 as published in the *Texas Register* is different from the format and language authorized by the board for publication and transmitted to the Register by the chief clerk. With respect to the second commenters, the department position is that uniformity is an important aspect of consideration for a shopper's guide; therefore, an election by insurers to use different guides is not as desirable as having one single guide. For this reason, the final adoption requires each insurer to use the guide developed by the department. But, because a current revision of the shopper's guide might not be available on the effective date of these sections, the adoption permits insurers to use the NAIC shopper's guide until the revision of the shopper's guide developed by the department is approved. Comments related to §3.3849. One commenter stated that the effective date as set out in the published proposal does not permit sufficient transition time and requested an extension of time to fully comply so that insurers will have a period during which to prepare and file advertising material, prepare computer systems for reporting requirements, refile policies, and get them approved and printed. Department response: The department agrees that some provision for transition is needed in the effective date requirements for these sections. For that reason, the final adoption includes provisions providing for transition with respect to the effective date for certain policy issues. Policies, certificates, or evidences of coverage which were filed or approved prior to the effective date of the sections but after the effective date of Article 3.70-12 and in compliance with the statute, may be issued or delivered only until September 1, 1992. In addition, the final adoption includes a provision that the first reporting year for purposes of §3.3837 (relating to reporting requirements for replacement and lapse rates) is calendar year 1992, with the first report being due not later than June 30, 1993.

- **28 TAC §§3.3801-3.3805, 3.3807, 3.3809-3.3815, 3.3818-3. 3826, 3.3828, 3.3829, 3.3831, 3.3832, 3.3839, 3.3840, 3.3849, 3.3850**

The amendments and new sections are proposed under the Insurance Code, Article 3.70-12, §§3(a), 3(b), 4(c), and 7; Article 1.04(b); and Texas Civil Statutes, Article 6252-13a, §§4 and 5. The Insurance Code, Article 3. 70-12, §3(a) provides the board shall by rule establish specific standards for provisions of long-term care coverage, and standards for full and fair disclosure setting forth the manner, content and required disclosures for the marketing and sale of long-term care coverages. Article 3.70-12, §3(b) provides that such rules are to include requirements no less favorable than the minimum standards adopted in any model laws or regulations relating to minimum standards for long term care insurance. Article 3.70-12, §4(c) provides that the board adopt reasonable rules providing loss ratio standards applicable to rates charged for long-term care coverages, in a manner no less favorable to the holders of such policies than any model laws, rules and regulations adopted in connection with minimum standards for benefits for long-term care coverage. Article 3.70-12, §7 provides that in addition to other rules required or authorized, the board may adopt reasonable rules necessary and proper to carry out the article and that such rules shall include requirements no less favorable than minimum standards for long-term care coverage adopted in any model laws or regulations relating to minimum standards for benefits for long-term care insurance. The Insurance Code, Article 1.04(b) provides the board to determine rules in accordance with the laws of this state for uniform application. Texas Civil Statutes, Article 6252-13a, §4 authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures; §5 prescribes the procedures for adoption of rules by a state administrative agency. Adoption of these amendments and new sections affects regulation of minimum standards for long-term care coverage pursuant to the Insurance Code, Article 3.70-12.

§3.3803. Applicability and Scope. The sections in this subchapter apply to all long-term care insurance policies and group long-term insurance certificates, other than those certificates issued or delivered pursuant to out-of-state single employer or labor union group policies, delivered or issued for delivery in this state on or after the effective date of this subchapter by insurers; by fraternal benefit societies, to the extent they are subject to provisions of Article 3.70-12; and by nonprofit health, hospital, and medical service corporations, including a company subject to the Insurance Code, Chapter 20; except that they do not apply to a policy which is not designed, advertised, marketed, nor offered as long-term care insurance or nursing home insurance. The provisions of these sections also apply to evidences of coverage delivered or issued for delivery in this state by health maintenance organizations under the Texas Health Maintenance Organization Act (Texas Insurance Code, Chapter 20A).

§3.3804. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Applicant–The person who seeks to contract for benefits or services, in the instance of an individual long-term care insurance policy; or the proposed certificate holder or enrollee, in the instance of a group long-term care insurance policy.

Certificate–Any certificate issued under a group long-term care insurance policy, which certificate has been delivered or issued for delivery in this state. For purposes of these sections, the term also includes any evidence of coverage issued pursuant to a group health maintenance or-

ganization contract for long-term care health coverage.

Long-term care insurance–Any insurance policy, group certificate, rider to such policy or certificate, or evidence of coverage issued by a health maintenance organization subject to the Texas Health Maintenance Organization Act (Texas Insurance Code, Chapter 20A) which is advertised, marketed, offered, or designed to provide coverage for not less than 12 consecutive months for each covered person on an expense-incurred, indemnity, prepaid, or other basis; for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. The term "long-term care insurance" shall not include any insurance policy, group certificate, subscriber contract or evidence of coverage which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage. The term also includes a policy or rider, other than a group or individual annuity or life insurance policy, that provides for payment of benefits based on cognitive impairment or the loss of functional capacity.

Policy–Any policy, contract, subscriber agreement, rider, or endorsement, delivered or issued for delivery in this state by an insurer, fraternal benefit society, nonprofit group hospital service corporation, or health maintenance organization subject to the Texas Health Maintenance Organization Act (Texas Insurance Code, Chapter 20A,).

§3.3813. Policy Definition of Personal Care. The term "personal care" shall mean the provision of practical and essential services to assist an individual with the activities of daily living, which include, but are not limited to: bathing, continence, dressing, eating, mobility, toileting, and transferring.

§3.3814. Policy Definition of Adult Day Care. The term "adult day care" shall mean a program for six or more individuals, of social and health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly, or other disabled adults who can benefit from care in a group setting outside the home. Such program and setting shall be one operated pursuant to the provisions of the Human Resources Code, Chapter 103, relating to licensing and quality of care requirements in the provision of adult day care.

§3.3818. Eligibility for Benefits. A long-term care insurance policy or certificate shall contain provisions conditioning eligibility for benefits or services upon the occurrence of either of the following events:

(1) the inability to perform, without assistance, any two activities of daily living, as set forth by the insurer; provided, however, that such activities of daily living must include at a minimum those which are set forth in §3.3813 of this title (relating to the Policy Definition of Personal Care); or

(2) the impairment of cognitive ability. For purposes of this subchapter, the term "impairment of cognitive ability" shall not be defined more restrictively than the deterioration or loss in intellectual capacity requiring continual supervision for protection of self and others, as established by the clinical diagnosis of any licensed practitioner in this state authorized to make such a diagnosis. Such diagnosis shall include the patient's history and physical, neurological, psychological and/or psychiatric evaluations, and laboratory findings.

§3.3821. Limits on Group Long-Term Care Insurance. No group long-term care insurance coverage may be offered to a resident of this state under a group policy issued in another state to a group described in the Insurance Code, Article 3.51-6, §1(a)(6), unless the Texas Department of Insurance has made a determination that the group long-term care insurance requirements adopted by the State of Texas have been met, and the certificate for group long-term insurance coverage has been properly filed and approved by the department.

§3.3840. Requirements to Deliver Shopper's Guide. A long-term care insurance shopper's guide in the format developed by the Texas Department of Insurance shall be provided to all prospective applicants of a long-term care insurance policy or certificate, as provided in this section.

(1) In the case of agent solicitation, an agent must deliver the shopper's guide prior to the presentation of an application or enrollment form.

(2) In the case of direct response solicitations, the shopper's guide must be presented in conjunction with any application or enrollment form.

(3) Until final approval of the shopper's guide developed by the department, agents may use the most recent revision of the shopper's guide developed for long-term care insurance products by the National Association of Insurance Commissioners.

§3.3849. Effective Date. Except as otherwise provided, the sections of this subchapter, as amended and adopted by the board, shall become effective 20 days from the date they are filed, as adopted by the board, with the Office of the Secretary of State and shall be applicable to all long-term care insurance policies and subscriber contracts of hospital and medical service associations filed for approval on and after that date. These sections as amended or added apply to all policies, certificates, and evidences of coverage delivered or issued for delivery on or after September 1, 1992, which were filed or approved on or after March 1, 1992, but prior to the effective date of these sections. The first reporting period for the requirements set out in §3.3837 of this title (relating to Reporting Requirements) shall be calendar year 1992, with the first report due to the department not later than June 30, 1993.

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 June 29, 1992.

TRD-9208919

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

Effective date: July 20, 1992

Proposal publication date: February 25, 1992

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

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• 28 TAC §§3.3830, 3.3837, 3.3838

The amendment and new sections are proposed under the Insurance Code, Article 3.70-12, §§3(a), 3(b), 4(c), and 7; Article 1.04(b); and Texas Civil Statutes, Article 6252-13a, §§4 and 5. The Insurance Code, Article 3. 70-12, §3(a) provides the board shall by rule establish specific standards for provisions of long-term care coverage, and standards for full and fair disclosure setting forth the manner, content and required disclosures for the marketing and sale of long-term care coverages. Article 3.70-12, §3(b) provides that such rules are to include requirements no less favorable than the minimum standards adopted in any model laws or regulations relating to minimum standards for long term care insurance. Article 3.70-12, §4(c) provides that the board adopt reasonable rules providing loss ratio standards applicable to rates charged for long-term care coverages, in a manner no less favorable to the holders of such policies than any model laws, rules and regulations adopted in connection with minimum standards for benefits for long-term care coverage. Article 3.70-12, §7 provides that in addition to other rules required or authorized, the board may adopt reasonable rules necessary and proper to carry out the article and that such rules shall include requirements no less favorable than minimum standards for long-term care coverage adopted in any model laws or regulations

relating to minimum standards for benefits for long-term care insurance. The Insurance Code, Article 1.04(b) provides the board to determine rules in accordance with the laws of this state for uniform application. Texas Civil Statutes, Article 6252-13a, §4 authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures; §5 prescribes the procedures for adoption of rules by a state administrative agency. Adoption of the amendment and new sections affects regulation of minimum standards for long-term care coverage pursuant to the Insurance Code, Article 3.70-12.

§3.3837. Reporting Requirements.

(a) Every insurer shall maintain records, for each agent, of that agent's number and dollar amount of replacement sales as a percentage of the agent's total number and amount of annual sales attributable to long-term care products, as well as the number and dollar amount of lapses of long-term care insurance policies sold by the agent and expressed as a percentage of the agent's total annual sales attributable to long-term care products.

(1) Each insurer shall report by June 30 of every year the 10% of its agents with the greatest percentages of lapses and replacements as measured by this subsection; provided, however, that any agent with 20 or fewer sales of long-term care policies for any reporting period shall not be included in such report, even if such agent's replacement-and-lapse percentage rates would otherwise result in inclusion in such report.

(2) Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance.

(3) Every insurer shall report by June 30 of every year the number of lapsed long-term care policies as a percentage of its total annual sales of such policies and as a percentage of its total number of long-term care policies in force as of the end of the preceding calendar year.

(4) Every insurer shall report by June 30 of every year the number of replacement long-term care policies sold as a percentage of its total annual sales of such products, and as a percentage of its total number of such policies in force as of the preceding calendar year.

(b) For purposes of this section, reporting requirements relate only to long-term care insurance and coverages that are delivered or issued for delivery in this state.

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

Issued in Austin, Texas, on June 29, 1992.

TRD-9208920 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Effective date: July 20, 1992

Proposal publication date: March 3, 1992

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

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• 28 TAC §3.3837, §3.3838

The State Board of Insurance of the Texas Department of Insurance adopts the repeal of §3.3837 and §3.3838, concerning the effective date and severability of sections in this subchapter, without changes to the proposed text as published in the March 3, 1992, issue of the *Texas Register* (17 TexReg 1596).

Repeal of §3.3837 and §3.3838 enables the board simultaneously to adopt new sections which replace these repealed sections with provisions which are part of a larger rulemaking effort to implement new legislation, House Bill 62, Second Called Session of the 72nd Legislature, Article 13, which created Article 3.70-12 of the Insurance Code. Notice of final adoption of the new sections which replace these repealed sections appears elsewhere in this issue of the *Texas Register.*

Repeal of §3.3837 (relating to Effective Date) results in the deletion of certain obsolete language and permits the provisions relating to effective date to be transferred to a new more appropriate section location within the subchapter. Repeal of §3.3838 (relating to Severability) permits replacement at that section heading with provisions to implement new legislation, and transfer of provisions relating to severability to a new and more appropriate section location within the subchapter.

No comments were received regarding adoption of the repeal.

The repeals are adopted under the Insurance Code, Articles 3.70-12 and 1.04, and Texas Civil Statutes, Article 6252-13a, §4 and §5. The Insurance Code, Article 3.70-12, §7 authorizes the board to promulgate rules to carry out the provisions of the article. Article 1.04(b) provides the State Board of Insurance with the authority to determine policy and rules in accordance with the laws of this state for uniform application. Texas Civil Statutes, Article 6252-13a, §4 and §5 authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and prescribe the procedures for the adoption of rules by a state administrative agency. The adopted repeals affect regulation of minimum standards for benefits for long-term care coverages pursuant to the Insurance Code Article 3.70-12.

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 June 29, 1992.

TRD-9209023 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

Chapter 101. General Rules

• 31 TAC §101.1

The Texas Air Control Board (TACB) adopts an amendment to §101.1, concerning definitions and the State Implementation Plan (SIP), with changes to the proposed text as published in the January 28, 1992, issue of the *Texas Register* (17 TexReg 720). The adopted revisions respond to requirements of Title I of the Federal Clean Air Act (FCAA), concerning New Source Review for nonattainment areas. The amendments add or modify various definitions for consistency with new source review requirements of the FCAA.

Public hearings were held in Houston on February 25, 1992, and in Austin on February 27, 1992, to consider the proposed revisions. Testimony was received from 44 commenters during the comment period which ended February 28, 1992. The following discussion initially addresses the more general comments and addresses the comments which deal with specific provisions of the proposal.

Southern Union Gas (Southern) suggested that emissions offsets and trading criteria should be established so that natural gas fueled stationary engines and heat recovery (cogeneration) units can provide marketable credits so as to affect a net reduction of emissions. Mobil Oil Corporation (Mobil) did not want TACB to implement the nitrogen oxides (NO_x) provisions of the new source review (NSR) rules i.e., definitions of major source/modification and offsets, because there is, as yet, no established mechanism for banking, buying, or otherwise acquiring NO_x offsets, and there is very limited technology for controlling NO_x emissions. Global Octanes Corporation (Global) stated that TACB should consider establishing an emissions offset "bank" for growth. There may be a marketplace established for emission offsets, but TACB will need to establish the mechanism, rules, and accounting procedures for the "bank." Texas Mid-Continent Oil and Gas Association (TMOGA) and El Paso Natural Gas Company (EPNGC) asked TACB to confirm that the term "creditable source emission increases and decreases" in the definition of de minimis threshold includes those decreases creditable to the source through the use of "banked" emissions credits.

TACB has assigned the task of establishing an emissions trading program to a special task force. This task force is exploring methodologies by which offsets may be banked, bought, or traded. While reductions in volatile organic compounds (VOC) emissions will continue to play an important role in the overall ozone control strategy, NO_x reductions appear to be an important step toward attainment of the ozone standard. Analysis of ambient monitoring data in Texas, supported by results of dispersion modeling for other areas, confirms that reduction of NO_x emissions is imperative for the timely attainment of the ozone standard in Texas. The NSR rules will only serve to limit the growth of NO_x. Further reductions are anticipated if a variety of NO_x control technologies are currently available. The limitation of NO_x growth in the nonattainment areas is required by the 1990 FCAA Amendments and TACB cannot wait for completion of an emissions trading program before implementing these rules.

The Texas Chemical Council (TCC), Baker & Botts (Baker), Mobil, and Exxon Chemical Americas (Exxon) stated that the TACB did not establish an effective date for these provisions. They felt that November 15, 1992 is the SIP submission date, and the rules should be effective only when the United States Environmental Protection Agency (EPA) approves the SIP revision. Houston Lighting and Power (HL&P), Global, and the Greater Houston Partnership (GHP) requested that the TACB postpone the effective date of proposed regulations until such time as EPA approves the SIP. Texas Utilities (TU) requested that the TACB defer the effective date for any NO_x requirements until the date on which EPA approves the SIP. Southern felt that TACB should not implement NO_x controls because NO_x levels in Texas are well below National Ambient Air Quality Standards (NAAQS), and the NO_x effect on ozone is unclear at this time.

It is true that November 15, 1992, is the federally required NSR SIP submission date for ozone and carbon monoxide nonattainment areas. However, May 15, 1992, is the required NSR SIP submission date for sulfur oxides, NO_x, and lead nonattainment areas; and June 30, 1992, is the required NSR SIP submission date for inhalable particulate matter (PM10) nonattainment areas. The Federal timetable also specifies SIP submission dates for each nonattainment area. While the EPA approval of any SIP is supposed to be accomplished within six months, the actual timetable is frequently many times longer. The staff believes that waiting until EPA approves the NSR SIP before implementing the proposed regulations could lessen the chances of nonattainment areas achieving compliance in accordance with the federal timetables. Furthermore, the staff does not recognize a meaningful advantage accruing to anyone as a result of a delay. EPA has taken the position that permits in process at the time of SIP approval will be affected by the new requirements. TACB, however, would intend to continue processing applications received before November 15, 1992, under the preexisting requirements. The adopted regulation will become effective on November 15, 1992.

ENRON Power Corporation (ENRON) thought that TACB should delay the proposed NO_x regulation implementation, such that it coincides with the federal timetable for revising the NO_x emissions requirements. This delay would not result in a delay in the attainment of the ozone standard. HL&P, Baker, and EPNGC suggested that TACB delay implementation of the offset requirements for major new or modified NOx sources until after the Urban Airshed Modeling (UAM) has demonstrated that NO_x reductions will actually improve ambient ozone levels. EPNGC also suggested that, at the very least, the TACB should incorporate flexibility for NO_x regulations into its final rule.

The regulation of NO_x emissions is necessary to attain the ozone standard within the time frames mandated by the FCAA. The roles of NO_x and VOC in ozone formation have been well documented. Traditional ozone control strategy in the SIP has focused on reduction of VOC emissions in areas failing to attain the NAAQS for ozone. More recently, attention has been shifting to the significance of NO_x as a precursor to ozone and, in particular, the effect of the VOC/NO_x ratio on ambient ozone concentrations. Studies using results of both atmospheric dispersion modeling and ambient monitoring clearly suggest the effectiveness of NO_x control in reducing ozone.

While reductions in VOC emissions will continue to play an important role in the overall ozone control strategy, NO_x reductions have emerged as the next technically justifiable step toward attainment of the ozone standard. Section 185(b) of the 1990 FCAA amendments requires EPA, in conjunction with the National Academy of Science, to conduct a study on the roles of NO_x and VOC in ozone formation. The 1991 study by the National Research Council concluded that ozone control is much more sensitive to NO_x reductions than previously recognized. Dispersion modeling for the Baton Rouge, Louisiana area, using the UAM, predicted that a 60% reduction in NO_x from stationary sources would result in a 93.8% reduction in the total area exceeding the ozone standard, relative to a base case with no additional controls of VOC or NO_x. In contrast, a 60% reduction in reactive VOC from stationary sources decreased ozone levels by only 12.1%. Similarities to the Baton Rouge area with respect to meteorology and source types and emissions predict comparable ozone reductions in the Texas Gulf Coast area as a result of NO_x control. The maximum ozone that can form from given amounts of VOC and N_x is dependent on the ratio of VOC to NO_x concentrations ("VOC/NO_x ratio") in the ambient air. Dispersion modeling has shown that for VOC/NO_x ratios of 20 or above, NO_x control is generally more effective than VOC control in reducing ozone. At these high VOC/NO_x ratios, the system is said to be "NO_x-limited." Under these conditions, the photochemical reactions that form ozone are limited by the amount of available NO_x. Thus, decreasing available NO_x leads directly to a decrease in ozone.

A study of NO_x, VOC, and ozone monitoring data for 1984-1989 in the four Texas nonattainment areas examined variables affecting maximum ozone concentrations and

performed statistical analyses of variations by site and by year. Measured ambient VOC/NO_x ratios are 14.0 in El Paso, 20.3 in Dallas, 21.5 in Houston, 24.4 in Fort Worth, and 54.6 in Beaumont, suggesting that NO_x control would be highly effective in reducing ozone in Texas. The study concluded that ozone control in Texas is expected to be more sensitive to NO_x reductions than to VOC reductions. Documentation of the role of NO_x in ozone formation and control is extensive. While dispersion models such as UAM are extremely helpful analytical tools, other strong technical evidence must be considered as well. Analysis of ambient monitoring data in Texas, together with the results of dispersion modeling for other areas, clearly indicates that NO_x reductions will be necessary for timely attainment of the ozone standard in Texas.

HL&P, ENRON, and Global felt that TACB should only apply NSR regulations (in the NO_x source case) to prospective new and modified major sources for which complete applications are submitted after the date the regulations are finalized. TCC, Baker, Mobil, and Exxon suggested that if TACB designates November 15, 1992, as the effective date, then all complete permit applications received prior to that date should be grandfathered. TCC, Mobil, and Exxon also stated that if TACB does not grandfather complete permit applications, industry would be held at the mercy of the TACB staff as to what requirements will apply to each project. They felt that TACB staff could institute a work slowdown and thereby hold up authorizing permits until after the deadline. The Sierra Club (Sierra) felt that the TACB should make the definition of "new major source" effective immediately instead of waiting until the November 1992 federal deadline.

Any permit application received before the November 15, 1992, effective date will be processed under the existing guidelines. Any permit application received on or after November 15, 1992, will be processed under the new guidelines and would be required to comply with the new rules. A November 15, 1992, effective date would allow the TACB permitting staff and the regulated community time to incorporate the NSR rules into their permitting methodology. TCC, Mobil, and Exxon suggested that in order to incorporate the federal program, two critical terms, "potential to emit" and "stationary source," need to be added to the general rules. An individual suggested that the term "expected emissions" in §116.3(a)(8) should be defined to minimize subjective judgement and to treat each permit consistently. The individual also suggested that the term "areal expansion" in §116.3(a)(14)(A), (B), and (C) should be defined so that the situation is not limited to waste facilities that actually expand their land base.

The terms "stationary source" and "potential to emit" are included in the current version of the general rules. Definitions which were not proposed for the hearing can not be added at this time. The staff will consider the remaining suggested additions for future rulemaking.

An individual requested that TACB hold the hearings at night so that most people can attend.

The staff already conducts the majority of hearings at night, but is willing to increase this effort. Public hearings are currently scheduled in locations and at times that will hopefully provide the greatest public access, while maintaining reasonable cost considerations.

HL&P suggested that the fundamental differences in the federal and the Texas NSR programs make a consolidation of definitions ill-advised at this time. HL&P, TCC, Baker, GHP, Mobil, TU, and Exxon suggested that TACB should adopt the federal definitions verbatim. HL&P, TCC, Mobil, and Exxon requested that TACB make every reasonable effort to combine federal requirements pertaining to the scope and schedule of the NSR program with existing state programs so Texas will have a single integrated program for addressing air quality issues.

The intent of this regulation change is not to combine the federal and state NSR programs into a single integrated program, but rather to implement the amended FCAA NSR requirements. The staff agrees that the fundamental differences in the federal and state programs make a consolidation of definitions ill-advised at this time. Each of the definition additions or changes included in the proposal was made either to address discrepancies identified by EPA in the previous NSR SIP or to address the NSR requirements of the 1990 FCAA amendments. For that reason, the caveat "applies only to nonattainment area, new source review rules pursuant to FCAA provisions" was included with each of the appropriate definitions. In the proposal, many of the definitions were summarized, but not copied verbatim, from the federal rules.

The staff has adopted revised definitions that match the federal language in the CFR as closely as possible. Each of the adopted definitions that have been reworded will be identified in the following paragraphs which describe changes to the definitions.

EPA stated that the proposed regulations affect new major sources and major modifications for VOC and NO_x in areas that are nonattainment for ozone. This will include Victoria County which is nonattainment, but with incomplete data. This is appropriate for sources of VOC, but not for sources of NO_x, because the NO_x requirements of the 1990 FCAA amendments in §182(f) apply only to classifiable areas. The staff has adopted clarification of the inclusion of Victoria County, until it is reclassified as attainment, by adding an explanation to footnote 1 in Table I of the general rules.

EPA and Fina Oil and Chemical Company (Fina) stated that the minimum offset rule for serious ozone nonattainment areas was proposed to be 1.30 to 1. This is more stringent than the 1.20 to 1 offset ratio specified in §182(c)(10) of the FCAA. EPA and Fina were unsure of how the proposed regulation addresses the serious ozone nonattainment area provisions of the FCAA which provide for less stringent requirements whenever a source obtains an internal offset ratio greater than 1.30 to 1. EPA also stated that TACB has chosen to require the general offset ratio of 1.30 to 1 and Best Available Control Technology (BACT) for areas designated severe nonattainment for ozone. EPA suggested that the public record should clearly address whether TACB intends to adopt requirements that are more strict than required by the FCAA.

The current TACB regulations for permitting major sources or major modifications in nonattainment areas require the use of the Lowest Achievable Emissions Rate (LAER). In serious nonattainment areas, the FCAA, §182(c)(7) and (8) allows a modification to sources if they use a greater offset of 1.30 to 1 and alternative controls. For serious nonattainment areas, the staff has adopted a minimum offset ratio of 1.20 to 1 and LAER, or BACT in lieu of LAER if the source chooses to use an offset ratio of 1.30 to 1. With regard to EPA comments on severe nonattainment areas, §182(d)(2) of the FCAA allows the minimum offset ratio to be 1.20 to 1 if the state chooses to require existing major sources of VOC or NO_x in the area to use BACT. At the present, the state can not make the demonstration that all existing major sources comply with BACT; therefore, the adopted rule includes an offset ratio of 1.30 to 1 for severe areas.

Sierra stated that an offset ratio of greater than 1 to 1 was required, but not specified. They also suggested that netting down to a minimum level of significance should not be allowed by a new facility. Contemporaneous reduction should only be used for inclusion in the "offset" process. Global stated that the new definition of de minimis and Table I will mean that virtually any new source or modification will require offsets in order to build, construct, and/or expand. These offsets are not currently obtainable, thereby stifling new growth.

Footnote number 3 of the adopted Table I specifies an offset ratio of greater than 1.00 to 1 for carbon monoxide (CO), sulfur dioxide (SO_2) , PM_{10}, and lead nonattainment areas. Offset ratios are greater in ozone nonattainment areas. The TACB staff anticipates that the lower major source/major modification emission thresholds will make it more difficult to "net out" of nonattainment review.

Vinson & Elkins wanted TACB to verify that offsets at major sources or major modifications be only required for those increases in total allowable NO_x emissions which occur after the effective date of the proposed regulation; e.g., if a source was permitted for 1,000 tons per year (TPY) and proposes a modification of 30 TPY, then the offset would only apply to the 30 TPY. The staff agrees that the offset requirements only apply to the proposed increase over the permitted emissions.

EPA was uncertain whether the revised regulation addresses the provisions of the FCAA, §173(e). This FCAA paragraph specifies alternative offsetting requirements for the permitting of emissions from rocket engines or motors. This should be addressed for the public record. The staff will add this proposed revision to the next Regulation VI changes so that it can be considered by the November 15, 1992, deadline.

TCC, Mobil, TU, and Exxon stated that the FCAA amendments included a de minimis threshold test for serious and severe ozone nonattainment areas only, and TACB is attempting to create a similar, but not mandated, five-year test for marginal and moderate ozone nonattainment areas. TCC, Mobil, and Exxon also stated that TACB improperly extended the de minimis threshold test to nonattainment areas for other criteria pollutants. They propose to limit the de minimis threshold test only to serious or severe ozone nonattainment areas. EPA stated that the FCAA amendments, §182(c)(6) and §182(d), only specify such five-year cumulated increases and decreases of emissions in areas designated as serious or severe for ozone. EPA expressed no objection to TACB being more stringent than the FCAA; however, they recommended that TACB clearly address in the public record its intention to adopt a more stringent requirement.

The FCAA requires the de minimis threshold for ozone nonattainment areas classified as serious and severe. The staff has adopted a de minimis threshold test for moderate ozone nonattainment areas which is more stringent than the FCAA requirements to prevent a series of non-major increases to accumulate into a significant increase in ambient ozone levels, and which will be necessary for those areas to come into compliance with the NAAQS. TACB has not adopted a de minimis threshold test, as proposed, for all non-ozone nonattainment areas because the threshold would be a significant disincentive for growth in the state.

Sierra favored the de minimis threshold level as a means to eventually trigger the designation of a major source. Global, TMOGA, and EPNGC were concerned that the de minimis threshold would cause even very small increases in VOC or NO_x emissions for existing sources, when netted with other increases over the past five years, to trigger the full NSR process. This could cause retrofitting of emissions controls which would be a major burden, not logically justified by the incremental increases, and is a disincentive for growth without some help from TACB. The de minimis threshold is a requirement of the FCAA amendments; however, the staff also believes that the de minimis threshold is a very important tool for ozone nonattainment areas to come into compliance with the NAAQS.

Global requested that TACB clarify that offsets will only apply to the emissions increase and all subsequent increases which trigger the threshold, rather than to apply retroactively to previously permitted sources. Any permit application with a proposed emissions increase received before the November 15, 1992, effective date will be processed with the existing guidelines. Any permit application with a proposed emissions increase received on or after November 15, 1992, will be processed with the new guidelines and would not apply retroactively to previously permitted sources.

Sierra cautioned TACB that in the definition of "actual emissions," the wording, "The reviewing authority may presume that the source specific allowable emissions for the unit are equivalent to the actual emissions," may allow companies to make modification increases which on paper are shown to be decreases. TACB should use actual emissions as a baseline for presentday operations as described and not a grandfathered historic allowable. TCC, Mobil, and Exxon stated that TACB has removed wording which should be reinstated to assure consistency between federal and state programs. EPA stated that the definition indicates the reviewing authority may presume the source specific allowable emissions from an emissions unit are equivalent to the actual emissions. The presumption needs to include the phrase "upon a determination that it is more representative of normal source operation." An individual felt that actual emissions should be required to have monitoring measurements to demonstrate actual emissions.

TACB proposed wording, referenced by Sierra, was copied verbatim from 40 Code of Federal Regulations, §51.165(a)(1)(xii)(C). The wording referenced by the TCC, Exxon, and Mobil was summarized by the staff in the proposal. The requirement to have monitoring measurements to demonstrate actual emissions is not stated in the Code of Federal Regulations; however, requirements to expand the use of continuous emissions monitoring will be proposed in future rulemaking. The adopted definition has been changed to reflect the Code of Federal Regulations wording as closely as possible.

TCC, Mobil, and Exxon stated that the TACB proposed definition "allowable emissions" eliminated one federal provision, which requires that a more stringent SIP emission limit should be considered when calculating allowable emissions. They recommended the provision be reinstated and the last part of the definition be broken out into component parts to improve clarity. EPA requested the definition be made consistent with 40 Code of Federal Regulations, §51.165(a)(1)(xi). A portion of the wording in the Code of Federal Regulations was summarized by the staff in the proposal. The adopted definition has been changed to reflect the Code of Federal Regulations wording as closely as possible.

TCC, Mobil, and Exxon requested adoption of the proposed definition "begin actual construction" as drafted. An individual stated that land clearing and surveying should be part of this definition since construction can not occur without them. The proposed definition is verbatim from 40 Code of Federal Regulations, §51.165(a)(1)(xv). TACB has adopted the definition as proposed.

TCC, Mobil, and Exxon stated that the language describing industry grouping in the proposed definition "building, structure, facility, or installation" is not precise in referencing the two digit standard industrial classification (SIC) code as the major group code. Industrial facilities actually have a four digit SIC code. The staff summarized the reference to major group code as defined in 40 Code of Federal Regulations, §51.165(a)(1)(ii). The adopted definition has been changed to reflect the CFR wording as closely as possible.

TCC, Mobil, and Exxon stated that TACB reworded and removed certain phrases from the federal definition "commence," and requested adoption of the federal definition verbatim. TMOGA and EPNGC stated that the concept of making "binding agreements or contractual obligations to undertake a program of actual construction of the source" equivalent to physically commencing construction or modification is applicable to new electric utility units in Title IV of the FCAA Amendments, but it is not necessary nor appropriate to extend that applicability to all major source construction or modification in nonattainment areas. They recommended this part of the definition be deleted. Union Carbide Chemical and Plastics Company (Union Carbide) requested removal of the wording "or has entered into binding agreements or contractual obligations to undertake a program of actual construction of the source to be completed within a reasonable time," because contractual obligations for the construction also includes, in many cases, the design of the source. In these cases, a permit would be required prior to the engineering design, thus making the writing of a permit difficult or resulting in very generalized permits. One individual stated that the phrase "continuous program" needs to be defined so no subjective, case-by-case definition can be applied to subvert the meaning.

The staff summarized portions of the wording in the Code of Federal Regulations. The phrase "binding agreements or contractual obligations to undertake a program of actual construction of the source" is stated in the proposal verbatim from the Code of Federal Regulations. A definition for a "continuous program" can not be added at this time because it was not proposed originally. The adopted definition has been changed to reflect the Code of Federal Regulations wording as closely as possible.

TCC, Mobil, and Exxon suggested adoption of the definition of "construction" as proposed. Universal Foods (Universal) suggested that the definition be changed from "Any physical change or change in the method of operation which would result in a change in actual emissions" to one which would result in an increase of actual emissions. Maryland currently has similar wording which has caused some slowing of the permit approval process and include in their scope many projects which are beneficial to the environment and should be subject to much less stringent review. One individual suggested that surveying and land clearing should be part of the definition.

The TACB proposed definition is essentially verbatim from 40 Code of Federal Regulations, §51.165(a)(1)(xviii). TACB has adopted the definition as proposed.

Universal felt that the TACB "de minimis threshold" definition is much better than that currently under consideration at EPA; however, since many records are typically retained for only three years, it would be better if three years was the period for aggregating emissions. An individual stated that the major modification level should be in "tons per year" and not just "tons."

The FCAA amendments, §182(c)(6), specified that the time period of interest was to be five years, including the calendar year of the

increase. The staff has not changed the intent of Congress by shortening the time period to three years. The word "tons" after "major modification level" was incorrectly stated and the adopted language has been changed to "tons per year. "

TCC, Mobil, and Exxon requested that TACB adopt the definition of "federally enforceable" as proposed, but clarify why the "executive director" was added to this definition It appears that any limitation or condition enforceable by the TACB executive director will be considered federally enforceable. The EPA believes that the definition, as proposed, states that the executive director of TACB can enforce certain state limitations and conditions which have not been approved by the EPA. Such limitations and conditions are not enforceable by the EPA and do not fit within the concept of being federally enforceable. The EPA recommends that the words "or executive director" be deleted from the proposed definition.

The staff agrees that the addition of "executive director" to the definition does not fit within the concept of being federally enforceable, and TACB has adopted the definition without the words "or executive director."

TCC, Mobil, and Exxon stated that although the definition "fugitive emissions" is a rewording of the federal definition, it should be adopted as drafted since it appears to be functionally equivalent and is not critical to emission calculations under the NSR Program. One individual felt the word "reasonably" needed to be omitted from the definition. The individual argued that it served no useful purpose, except to act as a "weasel" word to provide case-by-case subjective interpretations that would change with the wind or political pressure or persuasion.

The definition exists in the current version of the general rules and applies to the state program. The proposal added some wording which essentially incorporated the elements of 40 Code of Federal Regulations, §51. 165(a)(1)(ix) in the existing definition. The TACB has adopted the definition as proposed.

Sierra stated that LAER was referenced in this section, but not defined. LAER is defined in §101.1 of the current version of the general rules.

TCC, Mobil, and Exxon stated that the TACB has not included the entire federal list of sources in the definition "major facilities/stationary source" and should adopt the definition of major stationary source as contained in the Code of Federal Regulations. The proposal modified the existing definition in §101.1 to incorporate the different thresholds of a major source depending upon its nonattainment area classification, but a portion of the wording in the Code of Federal Regulations was summarized by the staff in the proposal. The adopted definition has been changed to reflect the Code of Federal Regulations wording as closely as possible.

EPA recommended that TACB fashion its definition of "major modification" to conform to the federal definitions, or demonstrate in the public record that its definition is more stringent than, or at least as stringent as, the federal definition. TCC stated that the TACB definition does not include the exemptions that are listed in the EPA definitions such as routine maintenance and changes in operating hours A portion of the wording in the Code of Federal Regulations was summarized by the staff in the proposal. The adopted definition has been changed to reflect the Code of Federal Regulations wording as closely as possible.

TCC, Mobil, and Exxon suggested that there was a discrepancy in the federal Prevention of Significant Deterioration (PSD) and NSR definitions for the definition of "necessary preconstruction approvals or permits" which appears to be an error. They propose that the phrase "permits or approvals required under" be added before the word "federal" in the TACB proposed definition to be consistent with 40 Code of Federal Regulations, §52.21(b)(10) The PSD definition in 40 Code of Federal Regulations, §52.21(b)(10) contains the words "permits or approvals required under" while the NSR definition in 40 Code of Federal Regulations, §51.165(1)(xvii) does not. The staff agrees that the missing words are most likely an error and should be included in both places. TACB has adopted the proposal with the words "permits or approvals required under" added to this definition.

TCC, Mobil, and Exxon stated that the TACB definition "net emissions increase" is to be applauded for its simplicity, but can not be adopted as proposed because this is a very complex and controversial portion of the federal NSR program. EPA stated that the definition, as proposed, only considers the increase from the project, but does not consider contemporaneous increases and decreases.

A portion of the wording in the Code of Federal Regulations was summarized by the staff in the proposal The staff suggests that the definition of "net emissions increase" should be clarified by including the requirements of 40 Code of Federal Regulations, §51.165(a)(1)(vi) and the definition of the "de minimis rule" in the FCAA, §182(c)(6) where applicable. The net emissions increase should include the increase in emissions from the project, and all contemporaneous and creditable increases and decreases. The adopted definition has been changed to reflect the Code of Federal Regulations wording as closely as possible.

TCC, Mobil, and Exxon stated that the TACB paraphrased language in defining "reconstruction" from the federal New Source Performance Standard program, and to avoid confusion, TACB should restate the federal definition as given in 40 Code of Federal Regulations, §60.15. EPA suggested that the definition should provide that reconstruction will be deemed to have occurred if the fixed capital cost of new components (as accumulated from December 21, 1976) exceeds 50% of the fixed capital cost of a comparable entirely new source.

The definition is essentially the same definition in 40 Code of Federal Regulations, §60.15. The phrase "as accumulated from December 21, 1976" has been added to the adopted definition.

One individual felt that the words "component" and "new source" needed to be defined so that subjective judgement would not play a role in redefining these terms with every new permit. Definitions which were not proposed for the hearing can not be added at this time. The staff will consider the remaining suggested additions in subsequent rulemaking.

TCC, Mobil, and Exxon stated that he TACB has removed portions of the federal definition "secondary emissions" which resulted in some confusion. They argued for incorporation of the full federal definition The staff summarized portions of the Code of Federal Regulations definition in its proposal, however, the adopted definition has been changed to reflect the Code of Federal Regulations wording as closely as possible.

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The amendment is adopted under the Texas Cean Air Act (TCAA), §382.017, Texas Health and Safety Code (Vernon 1990), which provides TACB with the authority to adopt rules consistent with the policy and purpose of the TCAA.

§101.1. Definitions Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Board, the terms used by the board 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.

Actual emissions (applies only to nonattainment area, new source review rules pursuant to Federal Clean Air Act provisions)–Actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The reviewing authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period. The reviewing authority may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions. For any emissions unit

which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

Allowable emissions (applies only to nonattainment area, new source review rules pursuant to Federal Clean Air Act provisions)–The emissions rate of a stationary source, calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both), and the most stringent of the applicable standards set forth in 40 Code of Federal Regulations Part 60 or 61, any applicable State Implementation Plan emissions limitation including those with a future compliance date, or the emissions rate specified as a federally enforceable permit condition including those with a future compliance date.

Begin actual construction (applies only to nonattainment area, new source review rules pursuant to Federal Clean Air Act provisions) –In general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

Building, structure, facility, or installation (applies only to nonattainment area, new source review rules pursuant to Federal Clean Air Act provisions)–All of the pollutant-emitting activities which belong to the same industrial grouping, are located in one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control), except the activities of any vessel. Pollutant-emit- ting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 supplement.

Commence (applies only to nonattainment area, new source review rules pursuant to Federal Clean Air Act provisions)–As applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or has entered into binding agreements or contractual obligations, which can not be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

Construction (applies only to nonattainment area, new source review rules pursuant to Federal Clean Air Act provisions)–Any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

De minimis threshold–(In regard to any proposed emissions increase in a specific nonattainment area), an emissions level, as determined by aggregating the proposed increase with all other creditable source emission increases and decreases during the previous five calendar years, including the calendar year of the proposed change, which equals the major modification level (in tons per year) for that specific nonattainment area. Table I, this section, specifies the various classifications of nonattainment along with the associated emission levels which designate a major modification for those classifications.

Emissions unit–Any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Federal Clean Air Act.

Federally enforceable–All limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 Code of Federal Regulations Parts 60 and 61, requirements within any applicable State Implementation Plan (SIP), any permit requirements established pursuant to 40 Code of Federal Regulations, §52.21 or under regulations approved pursuant to 40 Code of Federal Regulations Part 51, Subpart I, including operating permits issued under the United States Environmental Protection Agency-approved program that is incorporated into the SIP and that expressly requires adherence to any permit issued under such program.

Fugitive emission–Any gaseous or particulate contaminant entering the atmosphere which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening designed to direct or control its flow.

Major facility/stationary source (applies only to nonattainment area, new source review rules pursuant to Federal Clean Air Act provisions)–Any facility/stationary source which emits, or has the potential to emit, the amount specified in the MAJOR SOURCE column of Table I of this section or more of any air contaminant (including volatile organic compounds) for which a National Ambient Air Quality Standard has been issued. Any physical change that would occur at a stationary source not qualifying as a major stationary source in Table I of this section, if the change would constitute a major stationary source by itself. A major stationary source that is major for volatile organic compounds shall be considered major for ozone. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this definition whether it is a major stationary source, unless the source belongs to one of the categories of stationary sources listed in 40 Code of Federal Regulations, §51.165(a)(1) (iv)(C).

Major modification (applies only to new source review rules pursuant to Federal Clean Air Act provisions)–Any physical change in, or change in the method of operation of a facility/stationary source that causes a net increase of its potential to emit volatile organic compounds (VOC) or any air contaminant for which a National Ambient Air Quality Standard (NAAQS) has been issued by the amount listed in the MAJOR SOURCE column of Table I of this section or a major facility/stationary source that would result in a net increase in its potential to emit VOC or any air contaminant for which a NAAQS has been issued by an amount equal to or greater than that specified in the MAJOR MODIFICATION column of Table I. Any net emissions increase that is considered significant for VOCs shall be considered significant for ozone. A physical change or change in the method of operation shall not include routine maintenance, repair, and replacement; use of an alternative fuel or raw material by reason of an order under the Energy Supply and Environmental Coordination Act of 1974, §2(a) and (b) (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act; use of an alternative fuel by reason of an order or rule of section 125 of the FCAA; use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste; use of an alternative fuel or raw material by a stationary source which the source was capable of accommodating before December 21, 1976 (unless such change would be prohibited under any federally enforceable permit condition established after December 21, 1976) or the source is approved to use under any permit issued under regulations approved pursuant to this section; an increase in the hours of operation or in the production rate (unless the change is prohibited under any federally enforceable permit condition which was established after December 21, 1976); or any change in ownership at a stationary source.

TABLE I

MAJOR SOURCE/MAJOR MODIFICATION EMISSION THRESHOLDS

POLLUTANT	MAJOR SOURCE tpy	MAJOR MODIFICATION net increase in tpy	OFFSET RATIO minimum
VOC/NO_x [1]			
I marginal	100	40	1.10 to 1
II moderate	100	40	1.15 to 1
III serious	50	25	1.20 to 1 [2]
IV severe	25	25	1.30 to 1
CO			
I moderate	100	100	1.00 to 1 [3]
II serious	50	50	1.00 to 1 [3]
SO_2	100	40	1.00 to 1 [3]
PM_{10}			
I moderate	100	15	1.00 to 1 [3]
II serious	70	15	1.00 to 1 [3]
Lead	100	0.6	1.00 to 1 [3]

[1] VOC and NO_x are to be considered separately for purposes of determining whether a source is subject to permit requirements. For those counties which are designated nonattainment for ozone, but are not classified because of incomplete data (Victoria County), the new source review rules for a marginal classification apply to sources of VOC, but not to sources of NO_x.

[2] BACT may be used as an alternative to LAER if a 1.30 to 1 offset is met.

[3] The offset ratio is specified to be greater than 1.00 to 1.

VOC = volatile organic compound
NO_x = oxides of nitrogen
CO = carbon monoxide
SO_2 = sulfur dioxide
PM_{10} = particulate matter of less than 10 microns in diameter
TPY = tons per year

Necessary preconstruction approvals or permits (applies only to nonattainment area, new source review rules pursuant to Federal Clean Air Act provisions)–Those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable State Implementation Plan.

Net emissions increase (applies only to nonattainment area, new source review rules pursuant to Federal Clean Air Act provisions)–Any emissions changes at the building, structure, facility, or installation in which the sum of any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source, and any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable, exceeds zero. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs. An increase or decrease in actual emissions is creditable only if it occurs within a reasonable period to be specified by the reviewing authority, and the reviewing authority has not relied on it in issuing a permit for the source (under regulations approved during which the permit is in effect) when the increase in actual emissions from the particular change occurs. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level. A decrease in actual emissions is creditable only to the extent that the old level of actual emission or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions; it is federally enforceable at and after the time that actual construction on the particular change begins, the reviewing authority has not relied on it in issuing any permit, or the state has not relied on it in demonstrating attainment or reasonable further progress; it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

Nonattainment area–An area which is designated "nonattainment" with respect to any air pollutant within the meaning of the Federal Clean Air Act, §107(d).

Reconstruction (applies only to nonattainment area, new source review rules pursuant to Federal Clean Air Act provisions)–Will be presumed to have taken place where the fixed capital costs of the new component (as cumulated from December 21, 1976) exceeds 50% of the fixed capital cost of a comparable entirely new source.

Secondary emissions (applies only to nonattainment area, new source review rules pursuant to Federal Clean Air Act provisions) –Emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the source or modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions, except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tail pipe of a motor vehicle, from a train, or from a vessel.

Synthetic organic chemical manufacturing process–A process that produces, as intermediates or final products, one or more of the chemicals listed in Table II of this section.

TABLE II.

SYNTHETIC ORGANIC CHEMICALS

OCPDB No.*	Chemical	OCPDB No.*	Chemical
20	Acetal	350	Anthraquinone
30	Acetaldehyde	360	Benzaldehyde
40	Acetaldol	370	Benzamide
50	Acetamide	380	Benzene
65	Acetanilide	390	Benzenedisulfonic acid
70	Acetic acid	400	Benzenesulfonic acid
80	Acetic anhydride	410	Benzil
90	Acetone	420	Benzilic acid
100	Acetone cyanohydrin	430	Benzoic acid
110	Acetonitrile	440	Benzoin
120	Acetophenone	450	Benzonitrile
125	Acetyl chloride	460	Benzophenone
130	Acetylene	480	Benzotrichloride
140	Acrolein	490	Benzoyl chloride
150	Acrylamide	500	Benzyl alcohol
160	Acrylic acid and esters	510	Benzyl amine
170	Acrylonitrile	520	Benzyl benzoate
180	Adipic acid	530	Benzyl chloride
185	Adiponitrile	540	Benzyl dichloride
190	Alkyl naphthalenes	550	Biphenyl
200	Allyl alcohol	560	Bisphenol A
210	Allyl chloride	570	Bromobenzene
220	Aminobenzoic acid	580	Bromonaphthalene
230	Aminoethylethanolamine	590	Butadiene
235	p-Aminophenol	592	1-butene
240	Amyl acetates	600	n-butyl acetate
250	Amyl alcohols	630	n-butyl acrylate
260	Amyl amine	640	n-butyl alcohol
270	Amyl chloride	650	s-butyl alcohol
280	Amyl mercaptans	660	t-butyl alcohol
290	Amyl phenol	670	n-butylamine
300	Aniline	680	s-butylamine
310	Aniline hydrochloride	690	t-butylamine
320	Anisidine	700	p-tert-butyl benzoic acid
330	Anisole	710	1,3-butylene glycol
340	Anthranilic acid	750	n-butyraldehyde

TABLE II.
SYNTHETIC ORGANIC CHEMICALS

OCPDB No.*	Chemical
760	Butyric acid
770	Butyric anhydride
780	Butyronitrile
785	Caprolactam
790	Carbon disulfide
800	Carbon tetrabromide
810	Carbon tetrachloride
820	Cellulose acetate
840	Chloroacetic acid
850	m-chloroaniline
860	o-chloroaniline
870	p-chloroaniline
880	Chlorobenzaldehyde
890	Chlorobenzene
900	Chlorobenzoic acid
905	Chlorobenzotrichloride
910	Chlorobenzoyl chloride
920	Chlorodifluoroethane
921	Chlorodifluoromethane
930	Chloroform
940	Chloronapthalene
950	o-chloronitrobenzene
951	p-chloronitrobenzene
960	Chlorophenols
964	Chloroprene
965	Chlorosulfonic acid
970	m-chlorotoluene
980	o-chlorotoluene
990	p-chlorotoluene
992	Chlorotrifluoromethane
1000	m-cresol
1010	o-cresol
1020	p-cresol
1021	Mixed cresols
1030	Cresylic acid
1040	Crotonaldehyde
1050	Crotonic acid
1060	Cumene
1070	Cumene hydroperoxide
1080	Cyanoacetic acid
1090	Cyanogen chloride
1100	Cyanuric acid
1110	Cyanuric chloride
1120	Cyclohexane
1130	Cyclohexanol
1140	Cyclohexanone
1150	Cyclohexene
1160	Cyclohexylamine
1170	Cyclooctadiene
1180	Decanol
1190	Diacetone alcohol
1200	Diaminobenzoic acid
1210	Dichloroaniline
1215	m-dichlorobenzene
1216	o-dichlorobenzene
1220	p-dichlorobenzene
1221	Dichlorodifluoromethane
1240	Dichloroethyl ether
1244	1,2-dichloroethane (EDC)
1250	Dichlorohydrin
1270	Dichloropropene
1280	Dicyclohexylamine
1290	Diethylamine
1300	Diethylene glycol
1304	Diethylene glycol diethyl ether
1305	Diethylene glycol dimethyl ether
1310	Diethylene glycol monobutyl ether
1320	Diethylene glycol monobutyl ether acetate
1330	Diethylene glycol monoethyl ether

TABLE II.
SYNTHETIC ORGANIC CHEMICALS

OCPDB No.*	Chemical
1340	Diethylene glycol monoethyl ether acetate
1360	Diethylene glycol monomethyl ether
1420	Diethyl sulfate
1430	Difluoroethane
1440	Diisobutylene
1442	Diisodecyl phthalate
1444	Diisooctyl phthalate
1450	Dikethene
1460	Dimethylamine
1470	N,N-dimethylaniline
1480	N,N-dimethyl ether
1490	N,N-dimethylformamide
1495	Dimethylhydrazine
1500	Dimethyl sulfate
1510	Dimethyl sulfide
1520	Dimethyl sulfoxide
1530	Dimethyl terephthalate
1540	3,5-dinitrobenzoic acid
1545	Dinitrophenol
1550	Dinitrotoluene
1560	Dioxane
1570	Dioxolane
1580	Diphenylamine
1590	Diphenyl oxide
1600	Diphenyl thiourea
1610	Dipropylene glycol
1620	Dodecene
1630	Dodecylaniline
1640	Dodecylphenol
1650	Epichlorohydrin
1660	Ethanol
1661	Ethanolamines
1670	Ethyl acetate
1680	Ethyl acetoacetate
1690	Ethyl acrylate
1700	Ethylamine
1710	Ethylbenzene
1720	Ethyl bromide
1730	Ethylcellulose
1740	Ethyl chloride
1750	Ethyl chloroacetate
1760	Ethylcyanoacetate
1770	Ethylene
1780	Ethylene carbonate
1790	Ethylene chlorohydrin
1800	Ethylenediamine
1810	Ethylene dibromide
1830	Ethylene glycol
1840	Ethylene glycol diacetate
1870	Ethylene glycol dimethyl ether
1890	Ethylene glycol monobutyl ether
1900	Ethylene glycol monobutyl ether acetate
1910	Ethylene glycol monoethyl ether
1920	Ethylene glycol monoethyl ether acetate
1930	Ethylene glycol monomethyl ether
1940	Ethylene glycol monomethyl ether acetate
1960	Ethylene glycol monophenyl ether
1970	Ethylene glycol monopropyl ether
1980	Ethylene oxide
1990	Ethyl ether
2000	2-ethylhexanol
2010	Ethyl orthoformate
2020	Ethyl oxalate
2030	Ethyl sodium oxalacetate
2040	Formaldehyde
2050	Formamide
2060	Formic acid

TABLE II.
SYNTHETIC ORGANIC CHEMICALS

OCPDB No.*	Chemical
2070	Fumaric acid
2073	Furfural
2090	Glycerol (Synthetic)
2091	Glycerol dichlorohydrin
2100	Glycerol triether
2110	Glycine
2120	Glyoxal
2145	Hexachlorobenzene
2150	Hexachloroethane
2160	Hexadecyl alcohol
2165	Hexamethylenediamine
2170	Hexamethylene glycol
2180	Hexamethylenetetramine
2190	Hydrogen cyanide
2200	Hydroquinone
2210	p-hydroxybenzoic acid
2240	Isoamylene
2250	Isobutanol
2260	Isobutyl acetate
2261	Isobutylene
2270	Isobutyraldehyde
2280	Isobutyric acid
2300	Isodecanol
2320	Isooctyl alcohol
2321	Isopentane
2330	Isophorone
2340	Isophthalic acid
2350	Isoprene
2360	Isopropanol
2370	Isopropyl acetate
2380	Isopropylamine
2390	Isopropyl chloride
2400	Isopropylphenol
2410	Ketene
2414	Linear alkyl sulfonate
2417	Linear alkylbenzene
2420	Maleic acid
2430	Maleic anhydride
2440	Malic acid
2450	Mesityl oxide
2455	Metanilic acid
2460	Methacrylic acid
2490	Methallyl chloride
2500	Methanol
2510	Methyl acetate
2520	Methyl acetoacetate
2530	Methylamine
2540	n-methylaniline
2545	Methyl bromide
2550	Methyl butynol
2560	Methyl chloride
2570	Methyl cyclohexane
2590	Methyl cyclohexanone
2620	Methylene chloride
2630	Methylene dianiline
2635	Methylene diphenyl diisocyanate
2640	Methyl ethyl ketone
2645	Methyl formate
2650	Methyl isobutyl carbinol
2660	Methyl isobutyl ketone
2665	Methyl methacrylate
2670	Methyl pentynol
2690	a-methylstyrene
2700	Morpholine
2710	a-naphthalene sulfonic acid
2720	B-naphthalene sulfonic acid
2730	a-naphthol
2740	B-naphthol
2750	Neopentanoic acid
2756	o-nitroaniline
2757	p-nitroaniline
2760	o-nitroanisole
2762	p-nitroanisole
2770	Nitrobenzene
2780	Nitrobenzoic acid (o, m, and p)

TABLE II.
SYNTHETIC ORGANIC CHEMICALS

OCPDB No.*	Chemical	OCPDB No.*	Chemical
2790	Nitroethane	3130	Pyridine
2791	Nitromethane	3140	Quinone
2792	Nitrophenol	3150	Resorcinol
2795	Nitropropane	3160	Resorcylic acid
2800	Nitrotoluene	3170	Salicylic acid
2810	Nonene	3180	Sodium acetate
2820	Nonyl phenol	3181	Sodium benzoate
2830	Octyl phenol	3190	Sodium carboxymethyl cellulose
2840	Paraldehyde		
2850	Pentaerythritol	3191	Sodium chloracetate
2851	n-pentane	3200	Sodium formate
2855	1-pentene	3210	Sodium phenate
2860	Perchloroethylene	3220	Sorbic acid
2882	Perchloromethyl mer captan	3230	Styrene
		3240	Succinic acid
2890	o-phenetidine	3250	Succinonitrile
2900	p-phenetidine	3251	Sulfanilic acid
2910	Phenol	3260	Sulfolane
2920	Phenolsulfonic acids	3270	Tannic acid
2930	Phenyl anthranilic acid	3280	Terephthalic acid
2940	Phenylenediamine	3280	Terephthalic acid
2950	Phosgene	3290	
2960	Phthalic anhydride	and	
2970	Phthalimide	3291	Tetrachloroethanes
2973	B-picoline	3300	Tetrachlorophthalic anhydride
2976	Piperazine		
3000	Polybutenes	3310	Tetraethyllead
3010	Polyethylene glycol	3320	Tetrahydronaphthalene
3025	Polypropylene glycol	3330	Tetrahydrophthalic anhydride
3063	Propionaldehyde		
3066	Propionic acid	3335	Tetramethyllead
3070	n-propyl alcohol	3340	Tetramethylenediamine
3075	Propylamine	3341	Tetramethylethylene diamine
3080	Propyl chloride		
3090	Propylene	3349	Toluene
3100	Propylene chlorohydrin	3350	Toluene-2,4-diamine
3110	Propylene dichloride	3354	Toluene-2,4- diisocya nate
3111	Propylene glycol		
3120	Propylene oxide	3355	Toluene diisocyanates (mixture)

TABLE II.
SYNTHETIC ORGANIC CHEMICALS

OCPDB No.*	Chemical	OCPDB No.*	Chemical
3360	Toluene sulfonamide	3450	Triethylamine
3370	Toluene sulfonic acids	3460	Triethylene glycol
3380	Toluene sulfonyl chloride	3470	Triethylene glycol dimethyl ether
3381	Toluidines	3480	Triisobutylene
3390,		3490	Trimethylamine
3391,		3500	Urea
and		3510	Vinyl acetate
3393	Trichlorobenzenes	3520	Vinyl chloride
3395	1,1,1-trichloroethane	3530	Vinylidene chloride
3400	1,1,2-trichloroethane	3540	Vinyl toluene
3410	Trichloroethylene	3541	Xylenes (mixed)
3411	Trichlorofluoromethane	3560	o-xylene
3420	1,2,3-trichloropropane	3570	p-xylene
3430	1,1,2-trichloro-1,2,2-trifluoroethane	3580	Xylenol
		3590	Xylidine

*The OCPDB Numbers are reference indices assigned to the various chemicals in the Organic Chemical Producers Data Base developed by EPA.

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

Issued in Austin, Texas, on June 29, 1992.

TRD-9208972 Lane Hartsock
Deputy Director, Air Quality Planning
Texas Air Control Board

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Proposal publication date: January 31, 1992

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

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Chapter 116. Control of Air Pollution by Permits for New Construction or Modification

• 31 TAC §116.3

The Texas Air Control Board (TACB) adopts an amendment to §116.3 of Regulation VI and the state implementation plan (SIP), with changes to the proposed text as published in the January 31, 1992, issue of the *Texas Register* (17 TexReg 834).

The revisions respond to requirements of Title I of the Federal Clean Air Act (FCAA), concerning new source review for nonattainment areas. The revisions to §116.3, concerning consideration for granting permits to construct and operate, incorporate provisions in the amended FCAA which changed new source review requirements for new and modified sources in nonattainment areas.

Public hearings were held in Houston on February 25, 1992, and in Austin on February 27, 1992, to consider the proposed revisions. Testimony was received from 62 commenters during the comment period which ended February 28, 1992. Commenters generally supported the proposal with changes. The following discussion addresses the comments which deal with specific provisions of the proposal.

The United States Environmental Protection Agency was uncertain whether the proposed regulation addressed the requirement of the FCAA, §173(a)(5). EPA stated that this concern needs to be addressed for the public record.

The FCAA paragraph provides that as a condition for issuing a permit to construct a major stationary source or major modification in a nonattainment area, the public record must contain an analysis of alternate sites, sizes, production processes, and environmental control techniques and demonstrate that the benefits of locating the source in a nonattainment area significantly outweigh the environmental and social costs imposed. Since this requirement was not in the proposal, it cannot be added for adoption at this time. The TACB will include this suggested revision in the next Regulation VI changes so that it can be considered by the November 15, 1992, deadline.

EPA stated that §116.3(a)(9) seems to indicate that where the SIP for ozone nonattainment areas has not been approved by EPA, the major source or major modification may construct if there is a total net decrease in VOC emissions in the area. It is unclear where the FCAA would allow such construction to commence in the absence of an approved SIP. This paragraph is a holdover from previous FCAA requirements which have been superseded by the 1990 FCAA amendments and is, therefore, no longer relevant. This paragraph has been deleted.

EPA stated that subparagraph (A) in each of §§116.3(a)(7), (10), and (11) should further specify that lowest achieveable emission rate (LAER) must be applied to each new emissions unit and to each existing emissions unit at which a net emissions increase will occur as the result of a physical change or change in the method of operation of the emissions unit. Fina stated that the proposed change would incorrectly require that all major modifications in serious ozone nonattainment areas comply with LAER.

The current TACB regulations for permitting major sources or major modifications in nonattainment areas require the use of LAER. In serious nonattainment areas, the FCAA, §182(c)(7) and (8) allow modifications to sources which use a greater offset of 1.30

to sources which use a greater offset of 1.30 to 1 and alternative controls. For serious nonattainment areas, the staff recommends a minimum offset ratio of 1. 20 to 1 and LAER, or BACT in lieu of LAER if the source chooses to use an offset ratio of 1.30 to 1. In severe nonattainment areas, the FCAA, §182(d) (2), allows the minimum offset ratio to be 1.20 to 1 if the state chooses to require existing major sources of VOC or NO[sub]x[sub] in the area to use BACT. At the present, the state cannot make the demonstration that all existing major sources comply with BACT; therefore, the rule proposal included an offset ratio of 1.30 to 1 for severe areas.

One individual stated that the phrase which begins "at any distance beyond the facility's property boundaries, unless the applicant demonstrates that the facility will be operated so as to safeguard public health and welfare and protect physical property and the environment" in §116.3(a)(14)(D) contains no criteria or definition so that a certain test will be applied to prove to TACB that this condition can be met. This subparagraph is unchanged, except for renumbering, from the existing regulation and is adopted as proposed.

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

§116.3. Consideration for Granting Permits to Construct and Operate.

(a) Permit to construct. In order to be granted a permit to construct, the owner or operator of the proposed facility shall submit information to the Texas Air Control Board (TACB) which will demonstrate that all of the following are met.

(1) The emissions from the proposed facility will comply with all rules and regulations of TACB and with the intent of the Texas Clean Air Act (TCAA), including protection of the health and physical property of the people.

(A) In considering the issuance of a permit for construction or modification of any facility within 3,000 feet or less of an elementary, junior high/middle, or senior high school, TACB shall consider any possible adverse short-term or longterm side effects that an air contaminant or nuisance odor from the facility may have on the individuals attending these school facilities.

(B) Pursuant to the TCAA, §382.053, a permit to construct shall not be issued for a new lead smelting plant at a site located within 3,000 feet of the residence of any individual and at which lead smelting operations have not been conducted before August 31, 1987. This subparagraph does not apply to a modification of a lead smelting plant in operation on or before August 31, 1987, to a new lead smelting plant or modification of a plant with the capacity to produce not more than 200 pounds of lead per hour, or to a lead smelting plant that was located more than 3,000 feet from the nearest residence when the plant began operations. In this subparagraph, "lead smelting plant" means a facility operated as a smeltery for the processing of lead.

(2) (No change.)

(3) The proposed facility will utilize the best available control technology, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions from the facility.

(4) The emissions from the proposed facility will meet at least the requirements of any applicable new source performance standards promulgated by the United States Environmental Protection Agency (EPA) pursuant to authority granted under the Federal Clean Air Act (FCAA), §111, as amended.

(5) The emissions from the proposed facility will meet at least the requirements of any applicable emission standard for hazardous air pollutants promulgated by EPA pursuant to authority granted under the FCAA, §112, as amended.

(6) (No change.)

(7) The owner or operator of a proposed new facility which is a major stationary source of volatile organic compound (VOC) emissions or emissions of oxides of nitrogen (NO_x), or which is a facility that will undergo a major modification with respect to VOC or NO_x emissions, and which is to be located in any area designated as nonattainment for ozone in accordance with the FCAA, §107, shall meet the additional requirements of subparagraphs (A)-(C) of this paragraph. Table I of §101.1 of this title (relating to Definitions) specifies the various classifications of nonattainment along with the associated emission levels which designate a major stationary source or major modification for those classifications. The de minimis threshold test must be applied to any proposed VOC or NO_x emissions increase in moderate, serious, and severe ozone nonattainment areas. The de minimis thresholds are the same as the major modification levels stated in Table I, but aggregated over the previous five-year period, including the calendar year of the proposed change. The past net increase must be evaluated even when the proposed increase alone is below the major modification level. Permit applications filed on or after November 15, 1992, shall comply with this paragraph.

(A) The proposed facility will comply with the lowest achievable emissions rate (LAER) as defined in §101.1 of this title. LAER must be applied to each new emissions unit and to each existing emissions unit at which a net emissions increase will occur as a result of a physical change or change in the method of operation of the emissions unit.

(B) (No change)

(C) The proposed facility will use the offset ratio for the appropriate nonattainment classification as shown in Table I of §101.1 of this title. For the purpose of satisfying the emissions offset reduction requirements of the FCAA, §173(a)(1)(A), the emissions offset ratio is the ratio of total actual reductions of VOC or NO_x emissions to total allowable emissions increases of such pollutants from the new source.

(8) The owner or operator of a proposed new facility which is a major stationary source of VOC or NO_x or which is a facility that will undergo a major modification with respect to VOC or NO_x emissions, and which is located in a nonattainment county for ozone shall provide information concerning the expected emissions to enable the executive director to determine that by the time the facility is to commence operation, total allowable emissions from existing facilities, from the proposed facility, and from new or modified facilities which are not major sources in the area will be sufficiently less than the total emissions from existing sources allowed in the area under the applicable state implementation plan (SIP) as promulgated by EPA in the Code of Federal Regulations (CFR) at 40 CFR, Part 52, Subpart SS, prior to the application for the construction permit so as to represent reasonable further progress as defined in §101.1 of this title Permit applications filed on or after November 15, 1992, shall comply with this paragraph.

(9) The owner or operator of a proposed new facility to be located anywhere within the state that is a major stationary source of emissions of any air contaminant (other than VOC) for which a

national ambient air quality standard has been issued, or is a facility that will undergo a major modification with respect to emissions of any air contaminant (other than VOC), must meet the following additional requirements if the ambient air quality impact of the source's emissions would exceed a de minimis impact level as defined in §101.1 of this title in any area where the standard is exceeded or predicted to be exceeded.

(A) The proposed facility will comply with LAER as defined in §101.1 of this title. LAER must be applied to each new emissions unit and to each existing emissions unit at which a net emissions increase will occur as a result of a physical change or change in the method of operation of the emissions unit.

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

(10) The owner or operator of a proposed new facility in a designated nonattainment area for an air contaminant other than ozone, which will be a major stationary source or a major modification of an existing facility for that nonattainment air contaminant must meet the additional requirements of subparagraphs (A)-(D) of this paragraph regardless of the degree of impact of its emissions on ambient air quality. Table I of §101.1 of this title specifies the various classifications of nonattainment along with the associated emission levels which designate a major stationary source or major modification for those classifications. Permit applications filed on or after November 15, 1992, shall comply with this paragraph.

(A) The proposed facility will comply with LAER as defined in §101.1 of this title for the nonattaining pollutants. LAER must be applied to each new emissions unit and to each existing emissions unit at which a net emissions increase will occur as a result of a physical change or change in the method of operation of the emissions unit.

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

(D) The proposed facility will use the offset ratio for the appropriate nonattainment classification as shown in Table I. For the purpose of satisfying the emissions offset reduction requirements of the FCAA, §173(a)(1)(A), the emissions offset ratio is the ratio of total actual reductions of pollutant emissions to total allowable emissions increases of such pollutants from the new source.

(11) The proposed facility shall comply with the Prevention of Significant Deterioration (PSD) of Air Quality regulations promulgated by the EPA in the CFR at 40 CFR, §52 21 as amended October 17, 1988, and the Definitions for Protection of Visibility promulgated at 40 CFR, §51.301, hereby incorporated by reference, except for the following paragraphs: 40 CFR, §52.21(j), concerning control technology review; 40 CFR, §52.21(l), concerning air quality models; 40 CFR, §52.21(q), concerning public notification (provided, however, that a determination to issue or not issue a permit shall be made within one year after receipt of a complete permit application so long as a contested case hearing has not been called on the application); 40 CFR, §52.21(r)(2), concerning source obligation; 40 CFR, §52.21(s), concerning environmental impact statements; 40 CFR, §52.21(u), concerning delegation of authority; and 40 CFR, §52.21(w), concerning permit rescission. The term "Executive Director" shall replace the word "Administrator," except in 40 CFR, §52.21(b)(17), (f)(1)(v), (f)(3), (f)(4) (i), (g), and (t). "Administrator or Executive Director" shall replace "Administrator" in 40 CFR, §52.21(b)(3)(iii), and "Administrator and Executive Director" shall replace "Administrator" in 40 CFR, §52.21(p)(2). All estimates of ambient concentrations required under this paragraph shall be based on the applicable air quality models and modeling procedures specified in the *EPA Guideline on Air Quality Models*, as amended, or models and modeling procedures currently approved by EPA for use in the state program, and other specific provisions made in the state PSD SIP. If the air quality impact model approved by EPA or specified in the guideline is inappropriate, the model may be modified or another model substituted on a case-by-case basis, or a generic basis for the state program, where appropriate. Such a change shall be subject to notice and opportunity for public hearing and written approval of the administrator of the EPA. Copies of 40 CFR, §52.21 and 40 CFR, §51.301 are available upon request from TACB, 12118 North IH-35, Park 35 Technology Center, Austin, Texas 78753.

(12) In evaluating air quality impacts under paragraphs (9) or (11) of this subsection, the owner or operator of a proposed new facility or modification of an existing facility shall not take credit for reductions in impact due to dispersion techniques as defined in the CFR. The relevant federal regulations are incorporated herein by reference, as follows: 40 CFR, §51.100(hh)-(kk) promulgated November 7, 1986; the definitions of "owner or operator," "emission limitation and emission standards," "stack," "a stack in existence," and "reconstruction," as given under 40 CFR, §51.100(f), (z), (ff), (gg), and 40 CFR 60, respectively; 40 CFR, §51.118(a), (b), and (c); and 40 CFR, §51.164. Copies of these sections of the CFR are available upon request from TACB, 12118 North IH-35, Park 35 Technology Center, Austin, Texas 78753.

(13) Permits for hazardous waste management facilities shall not be issued if the facility is to be located in the vicinity of specified public access areas under the following circumstances.

(A)-(F)

(b) (No change.)

(c) Emission reductions: offset. At the time of application for a construction permit in accordance with this chapter, any applicant who has effected air contaminant emission reductions may also apply to the executive director to use such emission reductions to offset emissions expected from the facility for which the permit is sought, provided that the following conditions are met:

(1) the emission reductions are not required by any provision of the Texas SIP as promulgated by EPA in 40 CFR, Part 52, Subpart SS, nor by any other federal regulation under the FCAA, as amended, such as new source performance standards. Minimum offset ratios as specified in Table I of §101.1 of this title will be used in areas designated as nonattainment areas. Permit applications filed on or after November 15, 1992, shall comply with this paragraph.

(2) (No change.)

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

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

Issued in Austin, Texas, on June 29, 1992.

TRD-9208974 Lane Hartsock
Deputy Director, Air Quality Planning
Texas Air Control Board

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

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Chapter 116. Control of Air Pollution by Permits for New Construction or Modification

• 31 TAC §§116.4, 116.6, 116.11

The Texas Air Control Board (TACB) adopts amendments to §§116.4, 116.6, and 116.11. Section 116.4 and §116.6 are adopted with changes to the proposed text as published in the January 28, 1992, issue of the *Texas Register* (17 TexReg 720). Section 116.11 is adopted without changes and will not be re-

published. Amendments to §116.4 clarify that a condition in a permit may restrict the use of standard exemptions at a facility. The revisions to §116.6 change statutory references to reflect legislative revisions to the Texas Clean Air Act (TCAA), change the reference date of the Standard Exemption List (SEL) to reflect revisions to several exemptions and the addition of a new exemption, alter wording to reflect the 1990 amendments to the Federal Clean Air Act (FCAA), include as a new paragraph restrictions on use of exemptions at a facility, and reorder the subparts of the section as a result of the new requirements. The revision to §116.11, concerning permit fees, increases the permit fee to be remitted to $75,000 if no estimate of project capital cost is included with the permit application.

Public hearings were held in Houston on February 25, 1992, and in Austin on February 27, 1992, to consider proposed revisions to TACB Regulation VI and the General Rules. Testimony was received from 63 commenters during the comment period which ended February 28, 1992. The more general comments are addressed initially, followed by the comments which address specific provisions of each exemption.

The City of Dallas Department of Health and Human Services (Dallas) suggested revisions to Standard Exemptions 17, 25, 75, 87, and 106 Dallas noted that its staff had witnessed situations where an operator of an insignificant source could not meet a standard exemption and either had to modify the process, apply for a permit, or discontinue operation. These standard exemptions were not proposed for change and, therefore, could not be acted upon at this time. However, the commenter's suggestions have been forwarded to the Permits Program and may be considered for future rulemaking.

An individual felt the list should be revised every three years or less to upgrade control requirements to the best available control technology (BACT) or the lowest achievable emissions rate (LAER).

Historically, the SEL has been revised at less than three-year intervals, and a continuation of this timing can be anticipated. Rather than establishing a formal schedule, the staff would prefer to initiate changes as the need arises and as resources are available.

An individual was totally opposed to the entire SEL because of his assertions that the list is not truly limited to insignificant sources of air pollution and that no real standard exists as to how recordkeeping can be judged as sufficient regarding compliance with each standard exemption. The purpose of exemptions, as provided in the TCAA, is to exempt those facilities which will not make a significant contribution of air contaminants to the atmosphere. Such facilities must meet the special requirements of the applicable standard exemption(s) and must not otherwise violate any requirements of the TCAA or the FCAA. The special requirements have been developed by the TACB staff to ensure that the emissions are truly insignificant.

The Delhi Gas Pipeline Corporation (Delhi), the Association of Texas Intrastate Natural Gas Pipelines (ATINGP), the Panhandle Eastern Corporation (Panhandle), and the Texas Chemical Council (TCC) requested that the text of any standard exemption proposal be published in the *Texas Register* in the same manner as a rule or regulation proposal. The practice of not publishing documents incorporated by reference is a *Texas Register* procedure, not a TACB staff decision. In order to offset this disadvantage, hearing notices, which are published, contain clear indications by number and/or title as to which exemptions are the subject of rulemaking. Additionally, the staff publishes a detailed discussion of each change and the specific language of each proposed new or revised exemption. Interested parties can easily obtain copies of this information through the TACB central or regional offices. Even though documents incorporated by reference are not printed in the *Texas Register*, any revisions are subjected to the same scrutiny and review in the rulemaking process as are the numbered/lettered rules. The TACB will continue to incorporate the SEL by reference

Union Carbide Chemical and Plastics Company requested removal of the last sentence of §116.4 which reads "A permit may contain condition(s) that preclude future use of standard exemptions at any existing or proposed facility under the same TACB Account Number." They stated that the use of standard exemptions should be limited by permit number, not the TACB account number, and should be chemical specific, not a blanket denial of all the standard exemptions. The 3M Environmental Engineering and Pollution Control Corporation (3M) requested that the TACB delete the statement since the SEL and corresponding requirements ensure that all sources requiring a permit are excluded from using standard exemptions. One individual stated that the last sentence must have the "may" changed to "will" to remove any doubt that incremental increases in air pollution in a particular area will not be allowed.

TCC, ATINGP, Baker and Botts, the Greater Houston Partnership, the Texas Mid-Continent Oil and Gas Association (TMOGA), the Mobil Oil Corporation (Mobil), Exxon Chemical Americas, Valero Natural Gas Partners (Valero), and El Paso Natural Gas Company (EPNGC) felt that the proposed amendment to §116.4 would effectively eliminate use of the SEL, since most chemical plants in Texas are either subject to TACB permits or will be under Title V permits. They also stated that the proposed rule would effectively nullify Health and Safety Code §382.057, which authorizes exemptions, and they were concerned that there is no apparent restriction on the TACB authority to exercise this option. Mitchell Energy Corporation (Mitchell) and Mobil opposed the amendment out of a concern that such a condition, if included in the general permit regulations, could become a standard condition in every permit. They stated that this proposal would not decrease emissions, only delay the permit process, and reduce the flexibility that industry needs. Mobil stated that this section could be amended if the TACB was concerned about enforceability of standard exemptions and/or that their use could result in increased emissions above predicted effects screening levels. The commenter suggested that each standard exemption use be documented and submitted to the TACB, and that the TACB require a revised emissions inventory and modeling showing the emissions increase.

Haltermann, Incorporated and Dixie Chemical Company (Dixie) felt that adoption of blanket provisions eliminating standard exemptions would not only be burdensome on the TACB staff and the regulated community, but would threaten the very existence of the specialty chemical business These businesses engage in shortterm chemical processing projects with manufacturing companies. They have a TACB permit to process, store, and load specific compounds; however, they routinely use standard exemptions to process compounds not specifically authorized by the permit. Dixie stated that exemptions are needed for time savings since it takes twelve months for a new permit and six to 12 months for a permit amendment. Often, market pressures require such timely response to gain a production contract, and exemptions actually minimize air emissions by causing a company to take appropriate measures to meet exemption limitations.

The proposed language which was added to §116.4 is not a change in current policy of the TACB. The intent of the staff is to state the existing policy in the regulation, not to institute a blanket denial of all standard exemptions or to operate in an unrestricted manner. The word "may" in the last sentence gives the Permits Program staff the flexibility required in reviewing permits, but does not mandate a blanket denial as would the word "will." However, in order to eliminate a possible misunderstanding of the staff intent, the TACB has adopted the following wording: "Upon a specific finding by the executive director that an increase of a particular pollutant could result in a significant impact on the environment or could cause the facility to become subject to review under 40 CFR 51.165 (Nonattainment) or 40 CFR 52.21 (Prevention of Significant Deterioration), the executive director may include a special permit condition which states that without prior approval by the executive director, the permittee may not use the authority of a standard exemption to construct an additional source at that facility which will result in a net emissions increase of this particular pollutant."

There were no comments to the proposed changes in §116.11.

Amoco Production Company (Amoco); Phillips Petroleum Company (Phillips); Southern Union Gas (Southern); Delhi; TCC; Caterpillar, Incorporated (Caterpillar); ATINGP; TMOGA; Compressor Systems, Incorporated; Lone Star Gas Company (Lone Star); Mitchell; Trident NGL, Incorporated (Trident); ARCO Oil and Gas Company (ARCO); Panhandle; Gas Compressor Association (GCA); Waukesha Engine Division of Dresser Industries (Waukesha); Dresser Industries; Emissions Plus, Incorporated (EPI); American Gauge Corporation; ENTEX, Production Operators, Incorporated (POI); Valero; EPNGC; Halliburton Resource Management (Halliburton), Tidewater Compression Service, Incorporated (Tidewater); an individual;

Mobil; Houston Industrial Silencing; CHERCO Compressors, Incorporated; and Gemini Engine Company submitted comments concerning Standard Exemption 6. A general discussion and staff recommendations on major issues brought out in the testimony is followed by a discussion of comments received on specific topics.

The most significant issues raised were: pipeline quality natural gas fuel is typically not readily available for field gas compressors; the use of standard United States Environmental Protection Agency (EPA) compliance test methods on an annual basis is economically burdensome; air-fuel ratio (AFR) controllers are not offered on all new low-emission lean-burn engines and are not always necessary; and a requirement for emission controls on relocated, previously uncontrolled, lean-burn engines is economically burdensome and still may not ensure that these engines meet the proposed emission standard.

The staff considered each of these points and others raised in the testimony.

On the issue of fuel quality, the staff agrees with commenters who stated that using sour gas is justified in remote sour gas fields where pipeline quality natural gas is not available. Using the cleanest fuel available is preferable from the standpoint of engine maintenance, so there is an economic incentive to avoid burning sour gas in a stationary engine. If sour gas is used as a fuel, the existing §116.6(a)(1) limit of 25 tons of sulfur dioxide (SO2) per year may be enforced by inspection of records of fuel sulfur content. In such cases, the staff has used quarterly analysis of field gas sulfur content to ensure compliance.

Regarding annual standard EPA stack testing for nitrogen oxides (NO_x) and carbon monoxide (CO), the staff agrees that annual testing of affected engines can be expensive, but the staff continues to support a requirement for a periodic, clearly enforceable emission test. The need for testing exists because engine emission controls are subject to degradation over time, whether or not add-on emission controls are used. The selftesting of emissions using portable analyzers, proposed by numerous commenters, suffers from unresolved technical issues regarding the validity of wet-cell based analyzer test results. The standard compliance test methods also are typically conducted by independent testing firms, which eliminates the potential for bias that is inherent in self-evaluation using nonstandard test procedures. Two ways of reducing the cost of determining compliance have been adopted: reduce the frequency of the formal test for compliance determination from annual to biennial; and expand the range of allowable test methods to include less expensive test methods, such as EPA Reference Method 19 for determination of flow rate and California Air Resources Board Method 100 (adopted June 29, 1983) for NO_x and oxygen (O_2), which are incorporated by reference in condition (b)(3)(C).

The issue of AFR controls is discussed in later comments. Perhaps the most important issue raised by commenters concerned the proposal to require emission controls on engines which involve new installations (new construction) subject to Regulation VI, but use old equipment which has been relocated. The staff finds three reasons to promulgate an emission control requirement for these sources. First, the overall purpose of the construction permit approach is to allow for the gradual reduction of air emissions, as new BACT controlled sources replace older, dirtier sources. Second, the public is subject to reduced emission impacts from a new installation with well controlled engines compared to a similar new installation using old engines without emission controls. Third, the existing Standard Exemption 6, which requires no emission controls for any engine manufactured prior to September 23, 1982, encourages importation of old, dirty engines into Texas from other areas such as California, where engine emission standards are far more stringent, and New Mexico, where the time necessary to obtain a permit encourages keeping emissions from new construction below permit trigger levels. The staff believes that periodic reevaluation of the SEL, to ensure that it reflects the current purposes of the Permits Program, is appropriate.

The testimony identified several reasonable concerns with the immediate imposition of a uniform emission limit for newly constructed gas-fired engines, without regard for date of manufacture. Standard Exemption 6, as proposed, potentially requires emission control and testing on a small fraction of the total population of engine facilities. For instance, a firm count of leased gas compressors from the now defunct Field Gas Compression Association (FGCA) indicates that, in Texas, fewer than 7.0% of the member-leased engines are rated greater than 500 horsepower (hp). The individual impact of the emission control proposal may be substantially greater to engine leasing companies whose equipment is more frequently relocated. Second, for technical reasons, although some old engines may be amenable to having their emissions substantially reduced, it is not practical for all such engines to meet the proposed NO_x emission standard of 2.0 grams per horsepower-hour (g/hp-hr). Rich-burn engines can meet the proposed limit with nonselective catalytic converter reduction (NSCR) technology with resulting emissions reductions which are very cost-effective. Relocated old lean-burn engines present more difficulty. Although any lean-burn engine could technically meet the proposed standard (in some cases, by rebuilding the engine to a low emission configuration and for any lean-burn, by using selective catalytic conversion), the cost, in some cases, may not be economically reasonable considering the remaining value of the engine and the present market value of the gas produced. There are many types of old lean-burn, gas-fired engines operating in Texas, some manufactured as long as fifty years ago. The majority of these engines are unlikely to be relocated, since they are sited at gas production plants or on pipelines. There are others, used in field gas production, which are relocated frequently. The staff presently does not have the resources to identify the most prevalent models of old lean-burn engines which normally are relocated and the specific emission controls available for these engines. Engines which reduce emissions by operating parameter adjustment are far more likely to exceed emission limits than engines which reduce emissions by rebuilding. Therefore, the staff believes that periodic emission checks and testing are even more important if the proposed emission requirements are relaxed. After further discussion and meeting with representatives of the gas production and transmission industry in Texas, the emission limits have been relaxed to levels which would allow, in many cases, operating parameter adjustments to be used to achieve emissions compliance.

NO_x emissions contribute to the formation of ground-level ozone, visibility degradation, small particulate matter, and acid deposition. The majority of engine emissions occur in rural areas which meet ambient air quality standards for ozone and NO_x. Environmental benefits from reducing NO_x emissions can be expected in several ways. Emission controls will result in measurable reductions in ambient concentrations within a few hundred feet of an engine, since the typical low stack height causes significantly elevated NO_x levels near the engine. Second, gradual reductions occurring throughout a region will improve values, such as visibility, which do not have a prescribed standard. Third, in urban areas currently exceeding the federal air quality standard for ozone, NO_x reductions may help lower ozone levels.

Southern commented that nitrogen dioxide (NO. levels in Texas are well below the National Ambient Air Quality Standards (NAAQS). Southern is correct that the NAAQS for NO_2 has not been exceeded anywhere in Texas. The Los Angeles air basin is the only area in the United States with monitored exceedances of the NO_2 standard.

Southern stated that natural gas fueled engines are not the source for perceived NO_x emissions problems in Texas. Halliburton compared gas-fired engine emissions favorably with such facilities as coal and oil-fired power generating plants. The staff disagrees. Natural gas fired engines may contribute over 30% of the total point source NO_x emissions in Texas, which is comparable to the 40% contribution from the largest stationary source category, electric utility power plants. NO_x emissions per cubic foot of gas burned from reciprocating internal combustion (IC) engines are much higher than external combustion sources such as utility boilers. This is due to high flame temperatures caused by combustion air preheating on the compression stroke, low heat loss during combustion, and long residence time at high flame temperatures (particularly for slow-speed stationary engines) caused by low revolutions per minute. A 35% efficient engine controlled to 2.0 g/hp-hr of NO_x emits 0.6 pound NO_x/million British thermal unit (MMBtu), which is comparable to coal-fired utility boiler emissions and is ten times higher than controlled gas-fired boiler emissions. NO_x emissions in the natural gas production industry are generated primarily by natural gas compressor engines and turbines. The TACB computerized inventory of statewide emission sources indicates that 253,000 tons per year (TPY), or 19% of the total point source NO_x, is emitted from oil and gas production sources and transmission related sources under Standard Industrial

Classification codes 1311, 1321, and 4922. However, this figure clearly and severely understates the total NO_x contribution of gas-fired engines because the TACB data base includes only a fraction of the gasfired engine emission sources. Within the urban ozone nonattainment areas, the inventory only includes NO_x emissions sources of more than 100 TPY, excluding those which are not also major sources of volatile organic compound (VOC) emissions. Outside the urban ozone nonattainment areas, the inventory only includes permitted sources which emit more than 250 tons of NO_x per year. These sources are typically gas processing plants, not field gas or small pipeline engines; therefore, there is no complete inventory of all stationary engines.

In 1991, Dale Steffes of the FGCA estimated there are 9,000 gas compressor engines rated less than 500 hp and 3,000 gas compressor engines rated more than 500 hp in Texas. Other engine uses include numerous and typically very small irrigation operations (50,000-100,000 engines in the 50-100 hp range operating approximately 3,500 hours per year, according to estimates from Southern), cogeneration and electric generation operations, and petrochemical and refining applications. Using estimates of the total population of natural gas fueled, natural gas compression engines in Texas from the FGCA, the oil and gas portion of the stationary engine population contributes approximately 25% of the total stationary source NO_x emissions in Texas. Considering all uses of stationary gas-fired engines, as much as 32% of the total stationary source NO_x emissions in Texas derives from stationary gas-fired engines.

Southern commented that the TACB is overresponding to certain aspects of the FCAA. Delhi expressed concern that the proposed rulemaking was an attempt to meet the 15% reduction requirement in nonattainment areas. The "Discussion of Proposed Revisions to Standard Exemption List, January 17, 1992" (copy to Southern on February 4, 1992), stated that the proposed changes to Standard Exemption 6 update the exemption to reflect controls similar to current BACT practice of the Permits Program. The adopted changes are not in response to the FCAA.

Southern commented that liquid-fuel refineries and electric utilities will not be affected by the proposed changes. FCAA mandated rule changes regarding new or modified sources of NO_x in Texas urban ozone nonattainment areas were proposed concurrently and adopted prior to this proposed rulemaking. Further rule changes to reduce existing source NO_x are underway as mandated by Section 182(f) of the 1990 FCAA. The staff disagrees that "VOC emissions are likely to play a greater role than NO_x in formation of ground level ozone." Both NO_x and VOC emissions are necessary for the generation of ground-level ozone. Current models show that elimination of man-made NO_x would eliminate ozone, whereas elimination of man-made VOC could still result in exceedances of the ozone NAAQS in some areas, due to the presence in the atmosphere of naturally occurring VOC compounds. New or modified electric utility units are subject to BACT NO_x controls which, today, may include selective catalytic reduction (SCR) technology. Although technologically justifiable, the adopted Standard Exemption 6 does not rely on SCR as the basis for emission control of gas-fired engines.

Southern and Tidewater questioned the requirement to register engines rated more than 240 hp, rather than 500 hp. No change has been adopted to the requirement to register engines. The requirement allows the TACB to evaluate the stated engine hp of engines near 500 hp and to track the engines in the 240-500 hp range, without requiring emission controls.

Southern asked under what circumstances an engine could be located in a nonattainment area and how the modeling requirements of Standard Exemption 6 would apply.

No changes to the modeling requirements have been adopted at this time. A requirement to model emissions other than NO. is at the discretion of the TACB. Ozone emissions (none), VOC emissions (low), particulate matter emissions (no emission factors), and SO_2 emissions (low) from natural gas-fired engine operations often are so low that modeling of these air contaminants is unnecessary. The adopted revisions to §116.6 and the General Rules affect construction of engine facilities located in ozone nonattainment areas. With the reduction of emission rates in the definition of "major source," many previously exemptible new facilities (including engines) in the ozone nonattainment counties in Texas will be subject to permit, rather than exemption, requirements. LAER may also apply to those engines.

Southern commented that the selection of lean-burn engines is still quite limited and that NSCR and prestratified charge (PSCR) technology are not well demonstrated. The majority of new, large stationary gas-fired engines sold in the United States are low emission engines. Southern provided the TACB staff emission summaries, without authorship, of the "published data for Caterpillar richburn engines equipped with catalytic converters." The staff was unable to find anyone at Caterpillar knowledgeable of the source of this information. Regardless of the data source, the 2-4.0% range of O_2 content makes the point very effectively that NSCR converters must use an O_2-based sensor to operate properly. Automatic AFR control has been standard on automobile and NSCR converter controlled stationary engines for years. The TACB requires the use of an O_2-based AFR controller to maintain O_2 content in the 0-0.5% range. The optimum set point is often at 4, 000 parts per million (ppm) O_2. Although the 2.0 g/hp-hr NO_x limit only reflects an 80% reduction of NO_x across the converter, the TACB has test data and other reports showing that greater than a 97% reduction is achievable for a properly operating gasfired engine with NSCR. Lists of engine types potentially retrofittable with NSCR, PSCR, and clean-burn technology are available upon request from the TACB staff.

Southern asked whether BACT controls should be required outside of nonattainment areas. Delhi and ENTEX commented that the proposed emission controls are expensive and suggested that the proposed changes be limited to nonattainment areas. Lone Star and POI pointed to the TACB permit rule defining 250 TPY of NO_x and CO per facility as insignificant as justification for not going forward with new emission control requirements.

The TCAA requires a permit system in Texas. The cornerstone of the permit system is the application of BACT, as identified in §382.051(d)(1) of the TCAA, to limit air emissions from new or modified facilities which emit air contaminants. Standard Exemption 6, like the other 121 exemptions, is an optional exemption from permit review, based on the finding by the TACB that upon investigation, such facilities or types of facilities will not make a significant contribution of air contaminants to the atmosphere. The 250-TPY exemption for NO_x and CO was allowed at the request of the gas processing industry. The staff felt that concomitant with continuing to consider these levels "insignificant" the exemption should require the application of enforceable control measures.

Southern commented that BACT control measures suggest "money is no object." Costs are central in the BACT determination. LAER technology, which requires technological practicability without balancing costs, is necessary for new or modified major sources in nonattainment areas. Reasonably achievable control technology (RACT) gives even more weight to economic issues than BACT and is appropriate to rules affecting an entire population of existing sources in a nonattainment area. Although the above is generally true, there are several ozone nonattainment counties in California outside the Los Angeles Basin in which RACT rules have been enacted requiring engine NO_x emissions limits of 0.75 g/hp-hr for all existing rich-burn and less than 2.0 g/hp-hr for all existing lean-burn engines rated more than 50 hp. These existing source RACT rules (requiring retrofit controls) are considerably more stringent than the new source rules currently adopted by the TACB.

Southern commented that the majority of gas-fired engines impacted by the proposed rules operate only seasonally. Information previously supplied to the TACB by Southern, shows clearly that the adopted rule exempts the vast majority of engines, including seasonally operated gas-fired engines, from any emission control requirement. These exempted units are small gas gathering engines and irrigation engines. Average capacity factors on engines rated more than 500 hp are not available, but have been estimated at 50% in Santa Barbara County, also an area of declining oil and gas reserves. The TACB must regulate facilities which operate less than 100% of the time at less than 100% full load, in order to reduce air emissions.

Delhi commented that the staff discussion that was provided went beyond the scope of the *Texas Register* notice published on January 31, 1992. The "Discussion of Proposed Revisions to Standard Exemption List, January 17, 1992" is information for staff use, was not approved by the board, and does not constitute board decision making.

Delhi commented that the proposed rule sets retroactive emission limits to existing

sources. The rule as adopted is not a retroactive requirement. New construction refers to the construction of facilities not previously located at a site, therefore, relocated engines are subject to TACB Regulation VI and must obtain a permit or meet all the requirements of Standard Exemption 6.

From the public viewpoint, locating an old dirty engine nearby is probably less acceptable than locating a new engine nearby which has had its emissions reduced by application of control measures. The staff believes the public should have the benefit of control measures applied to new facilities regardless of whether the equipment was manufactured recently or long ago.

Delhi suggested, as an alternative to requiring emission controls upon new construction, requiring emission controls upon overhaul. The staff recognizes that such a change in the TACB practice might be more cost effective, but in order for it to achieve any emission reduction, there would need to be a change in the definition of overhaul to include routine overhauls. The current Standard Exemption 6 defines overhaul as exceeding 50% of the cost of a like or similar new unit. In practice, no engine overhaul is ever so extensive; therefore, a control requirement based on the current definition is tantamount to no controls. The commenter's suggestion may have merit, but would need much further study to determine if such a procedure could be developed within the context of general permit review.

Delhi asked the staff for numbers to support the significance of uncontrolled engines being imported into Texas. The staff does not have information regarding the numbers of used engines which have been imported from regions of the country with more stringent emission limits (notably California) or from New Mexico where the requirement to obtain a permit for more than 25 TPY of any air contaminant has led to selection of new low emission engines for expedience. The staff believes that until the blanket exemption from emission control requirements for newly located old engines is ended, the importation of old dirty engines will remain economically attractive.

Delhi commented that the removal of the exemption for temporary replacement engines is not addressed in Standard Exemptions 5 or 6. The staff agrees that provision for temporary replacement engines or turbines is needed and the language of the previous Standard Exemption 6 has been reinserted to allow for this.

TMOGA requested confirmation that the intent of the reference to applicable requirements of EPA New Source Performance Standards (NSPS) Subpart GG was not to impose NSPS requirements on turbines other than those to which Subpart GG of the NSPS are applicable. The staff acknowledges that the intent of the reference to NSPS Subpart GG was not to extend its applicability, but rather to remind potential Standard Exemption 6 users of the need to comply with Subpart GG.

The TCC suggested an exemption from modeling for overhauled engines that reduce emissions. Tidewater asked if a unit is located in a building or under a roof, whether the structure itself is considered an obstruction. As noted in the January 17, 1992 staff discussion, changes to the modeling requirements were not proposed with this rulemaking proposal. The TCC's recommendation and several others received after the close of the formal public comment period will be considered for future rulemaking. In addition to nearby structures, the building or cover in which an engine or turbine is located is a potential obstruction to windflow.

An individual questioned whether the emission control technologies for engines have remained static for 11 years. The staff notes that the basis for proposing changes to Standard Exemption 6 was to reflect current BACT practice which incorporates recent developments in technology.

Delhi, ATINGP, TMOGA, ARCO, Southern, ENTEX, and Valero commented that the proposed fuel sulfur limit restrictions are unnecessarily stringent and that many field gas compressors operate on field gas rather than pipeline-quality natural gas. Phillips pointed out that the proposed sulfur limit for oil is much less stringent than the proposed sulfur limits for gas fuels and recommended a gas fuel sulfur limit of 100 grains sulfur per 100 dry standard cubic feet (dscf) of gas. Valero commented that there was no mention in the staff discussion as to why the particular limits were proposed. TMOGA recommended deletion of the sulfur limit condition entirely.

The staff agrees that the proposed requirement to limit gas fuel to pipeline quality natural gas with a maximum of five grains sulfur per 100 dscf or fuel gas with a maximum of 10 grains sulfur per 100 dscf was unnecessarily stringent. The proposed pipeline quality gas sulfur limits were based on "typical sales-gas specifications set by intrastate and interstate utility-company contracts," according to a June 26, 1978 article in *The Oil and Gas Journal*, and the plant fuel gas sulfur limit is the NSPS Subpart J limit for refinery fuel gas. These limits are not reflective of the field gas typically used in gas production. A change in wording has been adopted to allow the gas fuel sulfur content to be tailored to engine size, consistent with the current §116.6 general limit of 25 TPY of SO_2 from facilities constructed under a standard exemption. To enforce the 25-TPY limit when sour gas fuel is used, a provision has been adopted to require that quarterly values for sulfur content be recorded. Table 29 (required to provide the TACB supporting information with the exemption registration) will be modified to require an initial calculation of the potential annual SO_2 emissions from the engine in cases where pipeline quality fuel is not proposed. In addition to making the 25 TPY SO[sub]2[sub] limit more practical to enforce, retaining the proposed paragraph puts the liquid fuel quality specification on a par with Standard Exemption 7.

Amoco, Phillips, Delhi, TCC, ATINGP, TMOGA, EPNGC, Lone Star, Mitchell, Trident, ARCO, Panhandle, Valero, and Tidewater commented that EPA-approved stack sampling costs will be significant. Most commenters cited costs ranging from $2,000-$5,000 per engine test, depending on the number of engines tested, and implied that portable analyzers and/or stain tubes are sufficient for emissions checks.

The staff agrees that the cost of the proposed annual sampling is significant. The proposed annual test has been replaced with a biennial compliance test to reduce costs. The staff did not have confidence in stain tubes or portable analyzers to yield reliable, accurate emissions information suitable for making emissions compliance determinations. The adopted compliance test requires the standard EPA point source emission measurement techniques for pollutant concentration of NO[sub]x[sub] and CO. These methods are known to be enforceable and accurate. The equipment necessary to meet the EPA standards typically includes a chemiluminescent analyzer for NO_x (requires a temperature-controlled environment, typically a mobile air-conditioned trailer), an infrared analyzer for CO, and is usually operated by independent sampling firms. This independence reduces the chances for engine operator bias in the measurements. The TACB has seen no independent laboratory evaluation of the ability of portable instruments (which are typically based on a wet electrochemical cell analyzer) to meet the specifications of EPA Methods 10 and 20. The staff has reviewed information that indicates that the portable analyzers do not meet the NO_x to NO_2 response test of EPA Method 20. Failure to measure NO_2 accurately (or at all) is a large shortcoming for reciprocating engine NO_x measurement because engines, unlike boilers and heaters, potentially emit a significant portion of total NO_x as NO_2. The staff also sees evidence that high concentrations of CO (typical of rich-burn IC engines) severely attenuate the instrument response to NO_x emissions. An other concern is the pressure pulsation typical of reciprocating engine exhaust which may produce inaccuracy in the measurement by its effect on the cell. There appears to be the possibility of a hysteresis or memory effect in the instrument reading when the time interval between measurements is short. The staff believes these major technical concerns with portable analyzers need to be addressed before the analyzers are recognized as being suitable for making compliance determinations in the broad context of rulemaking.

There is a strong practical potential for portable emission analyzers which often are sold as being capable of measuring NO_x, CO, O_2, and hydrocarbons (combustibles). Engineers in emissions research and the pollution control equipment industry have used them because they give an immediate in-the-field measurement. If the devices can be shown to be accurate within limits and become accepted by the TACB and EPA for IC engine emission compliance use, perhaps, in conjunction with enforceable standardized test procedures designed around the technology, the costs of determining air emissions compliance for combustion-related air contaminants will be greatly reduced. The potential exists for governmental regulators to assess stack emissions compliance directly, with little more expenditure of time and resources above the initial investment of $2,000-$6,000 per analyzer than the cost of a plant visit.

POI suggested that EPA Method 19 would be an appropriate test method for exhaust flow

rate measurement. The staff has identified two test method alternatives which offer some possibility of reducing test costs. California Air Resources Board Method 100 for NO_x, CO, and O_2 contains some minor variations to EPA Method 10 and 20 and may allow minor cost savings for some testing firms. Exhaust flow rate is necessary to determine emission rate. EPA Reference Method 19 uses the fuel flow rate to indirectly calculate exhaust flow rate using F factors rather than the more traditional EPA Reference Method 2 which uses a pitot tube flow sampling procedure. The engine owner or operator may accommodate the installation of a fuel flow meter on the engine fuel line at the time of engine construction. If fuel flow is measurable, the exhaust flow calculation may be obtained by the F factor procedure of EPA Method 19 instead of the pitot tube flow sampling procedure of EPA Method 2. The F factor method is less expensive than the pitot tube method since it is simpler and faster.

Amoco and Delhi suggested that portable analyzers are accurate enough to be used for compliance determinations. A survey of the TACB regional offices indicates widespread lack of confidence in the portable analyzers as a means of determining emission compliance. In four cases where a regional office found an engine not meeting the emission limit of the exemption, only one was based on portable analyzer results. In another case, the catalytic converter was found lying on the ground, and in the two others, the convertor was visibly not installed as represented. Portable analyzers are generally not considered a reliable compliance technique, and the self-reporting aspect of portables makes the technique less likely to result in an unbiased compliance determination.

Amoco provided portable NO_x analyzer data to buttress their comments that the portables should be acceptable equivalents to EPA Reference Method testing. The test data that Amoco provided indicated that the portable analyzer was able to match in a side-by-side test the results of an analyzer to which it was compared. Although short-term reproducibility is an encouraging sign, this information alone is not sufficient to assess the inherent accuracy and reliability of the portable analyzer as a stand alone measurement device.

Caterpillar suggested an exemption for several of their engine lines from the proposed emission checks of condition (b)(3)(B) on the basis that these engines either use operating parameters to maintain O_2 accurately in the range necessary for NO_x compliance, or they directly monitor O_2 as accurately as portable analyzers or stain tubes measure NO_x. ARCO also suggested using O_2 monitor output on engines equipped with an O_2 sensor as an indicator of NO_x emissions compliance. Delhi, Lone Star, and Tidewater recommended quarterly emission checks as preferable to emission checks following engine maintenance.

The intent of requiring emission checks following maintenance which may affect emissions was to maintain continuous compliance. The TACB has reworded the requirement to check NO_x and CO following maintenance or changes in fuel quality, but only if there is a reasonable expectation (by the operator or the TACB) that emissions will increase above normal levels. The many different models and applications of engines make it impractical to develop specific criteria for requiring or exempting emission checks for every model and application or to define every change which may increase emissions. The adopted emission checks are simple, and the frequency of the checks should reflect the sensitivity of a particular engine to exceed its NO_x limit with changes in operating parameters. Newer engines capable of emissions compliance over the range of loads/speeds and resilient to air-fuel variations require fewer checks than older engines which may have a limited compliance operating range, do not use an AFR controller, or are operating under operating parameter adjustment to achieve emission compliance. The lack of specificity in the emission checks is also justified in that the checks are not meant to be the prime basis to determine compliance with the emission limits.

The staff notes that standard compliance test procedures are considered preferable to portable analyzers to ensure emissions compliance following changes in fuel quality, O_2 sensor replacements, or other catalyst system maintenance. The adopted rule allows the use of "indicator of compliance" techniques, such as stain tubes or portable analyzers, for these tests, thus, reducing the potential cost impacts of the rule. The staff has estimated the cost of EPA emissions test procedures for gas-fired engines by using written cost estimates from sampling companies from Texas and California. California estimates were about $1,500 per engine tested compared to Texas estimates of $2,500 to $3,500 per engine tested and much of the testimony which cited costs in the $2,000 to $4,000 range. The staff believes that the annual and biennial testing required by California district rules tends to drive down the cost per engine tested. The number of engines potentially subject to the rule was estimated from the FGCA estimate of 3,000 field and gas plant engines and the GCA estimate of 1,000-1,200 field gas engines rated greater than 500 hp in Texas. The staff notes a comparison of the latter number to the exact count of 163 field gas engines rated greater than 500 hp in Texas owned by FGCA-member leasing companies, which in turn were estimated to represent two-thirds of the total leased engines in Texas, and in turn, one-third of the total leased and owner operated engines, for a total of 733. This compares to a TACB survey which indicates approximately 250 engines rated greater than 500 hp registered per year. The TACB survey also indicates that above 825 hp, about two-thirds of the engines are relocated engines manufactured prior to September 23, 1982. The TACB numbers suggest that the total number of engines becoming subject to the rule over ten years is closer to onethird of 2,500 or 833. Turnover of engines at gas plants is much less than in the field. Nonetheless, if 1,500 engines rated greater than 500 hp become affected by Standard Exemption 6 over the next 10 years, test costs would eventually reach 1,500 x $2,000 each biennium or $1.5 million per year.

Delhi commented that it is unreasonable to require identical engines operating at a site to be tested. The staff disagrees. Experience shows that identical model units, operating in identical service, can have different emissions. Catalytic converter performance clearly varies over time.

TMOGA, and others supporting TMOGA comments, commented that the proposed thirty-day period for accomplishing an initial stack test is more stringent than NSPS at 40 CFR 60.8, which allows 60 days after achieving maximum production rate, but no later than 180 days after initial startup. TMOGA recommended the TACB adopt the NSPS time frame. The length of time needed between source startup and the initial compliance test depends on the length of time required to start up and stabilize a new facility and to schedule a source sampling firm to conduct the test. A reciprocating engine facility of the size allowed by Standard Exemption 6 will need nowhere near the 180-day period which is sometimes necessary to bring a new power plant on line. The problem of scheduling source sampling is somewhat independent of the type of facility sampled; however, scheduling the test may be initiated after the decision is made to locate an engine at a site. The staff agrees that scheduling would be facilitated by allowing some additional time before sampling is required. A 60-day period is consistent with TACB practice for permitted engine testing of projects of the size that may be allowed by Standard Exemption 6, and an engine facility will normally be capable of operating at maximum load upon startup; therefore, the allowable time has been increased to 60 days for accomplishing the initial emission test at a new engine facility.

TMOGA asked for clarification that the proposed requirement to determine emissions in the "as-found operating condition" was not meant to require deferral of normal maintenance or necessary repairs. The staff agrees that the proposal was not meant to require deferral of normal maintenance or necessary repairs. The intent was that the sampling should be representative of normal operating conditions. If testing were purposefully and routinely scheduled to immediately follow engine maintenance (especially maintenance which would be expected to reduce emissions with or without emission pretesting), this would not meet the intent of the "as-found operating condition" requirement.

ATINGP and Lone Star commented that periodic testing should not be required for intermittent or standby operations. It was not the intent of the TACB staff that engines be operated merely to test them. An allowance for sampling every 15,000 hours of operation has been adopted in lieu of the biennial stack test. In order to enforce such a schedule, elapsed operating time meters are necessary to document hours of engine operation. The staff notes that intermittently operated engines used for portable, emergency, or standby operations are currently exempt from all permit requirements under Standard Exemption 5.

ARCO proposed that the operator be allowed to choose any appropriate test method as long as it measures within acceptable accuracies. The staff supports this in general, how-

ever, in regard to developing new test methods, the determination of "appropriate" and "acceptable accuracy" should be done by an independent, qualified engineering laboratory.

Delhi commented that annual compliance emission testing is more stringent than current requirements for large NO_x sources such as power plants. Since 1971, new power plants have been required to install continuous emissions monitors (CEM) for NO_x, a more expensive means of determining compliance than an annual emission test. Title IV of the 1990 FCAA requires virtually all power plants to install emissions monitors as well. The quality assurance of the monitors will require annual stack testing in addition to continuous monitoring. The current practice of the TACB Permits Program is to require NO_x CEMS for new boiler facilities rated more than 100 MMBtu/hr heat input. A boiler of this size must meet the TACB BACT guideline of 0.06 pound NO_x/MMBtu and may emit no more than 26 TPY of NO_x. A biennial stack sampling requirement for engines is not unreasonable in comparison to new boiler facilities with similar emissions.

Caterpillar and Waukesha commented that their carburetted, four-stroke lean-burn engines do not require an automatic AFR controller to maintain emissions compliance, unless the fuel heating value varies significantly. Caterpillar stated that a variation within 5.0% of the design lower heating value is acceptable, and from additional discussion with Waukesha, 50 British thermal unit (Btu) from the design lower heating value is acceptable. The Waukesha criterion is between 5.0% and 6.0% variation for a typical 900 Btu/dscf natural gas. The AFR controller wording has been revised to require AFR control specifically if the fuel heating value varies more than 50 Btu/dscf from the design lower heating value of the fuel.

TMOGA requested exemption from the condition of requiring an automatic AFR controller if the fuel varies more than 50 Btu from the design lower heating value for "upset conditions" on engines located immediately downstream of a gas processing plant, if the cause of the fuel variation is due to short-term upsets at the plant. The purpose of requiring the AFR controller is to address this situation. The situation has occurred in which an engine was tested, and found to be out of emission compliance while the engine was operating satisfactorily on rich gas fuel and moving gas out of the plant to the pipeline. Upsets which still allow continued production should be minimized. An intent of the adopted rule is to increase the likelihood that the facilities operate in compliance, since the TACB has limited resources to devote to engine emission compliance.

Phillips suggested revising AFR controller requirements to allow for future technologies which may achieve the same results. The staff agrees that rules should reflect best technology, but disagrees that removing necessary requirements for current technology is the best way to accomplish this. The staff is receptive to any well-developed rule proposals which may result in more cost-effective emissions reductions.

TMOGA, and EPNGC by reference, commented that the proposed AFR requirement could require AFR controllers on engines with built-in AFR controllers. They also suggested that the language allow for AFR controllers or "other proven technology." TMOGA's first comment may reflect the lack of a definition of AFR controller. The staff considers built-in AFR controllers which are not based on exhaust O_2 control to be AFR controllers. Rule language has been adopted to require AFR controllers only in situations where AFR controllers have been identified to be necessary for emissions compliance and may not otherwise be installed.

Mitchell, POI, and Caterpillar commented that the staff discussion underestimated the cost of O_2 based AFR controllers. POI also commented that AFR controller performance is not adequate to maintain optimum AFR on a continuous basis. Tidewater commented that remote field sites need battery power to operate AFR controllers.

The staff agrees that the staff discussion presented with the original proposal may have underestimated AFR controller costs. The cost data was a documentable example meant to be illustrative of AFR controller cost. Lockable cases have been necessary to prevent battery theft in some remote locations without electricity. The staff is familiar with several cases of rich-burn engines unable to achieve the expected emission reductions using a catalytic converter which could be attributed to difficulty in AFR control. The AFR control problem, also alluded to in some California engine NO_x rule staff discussions, is usually due to the poor maintenance condition of the engine. Add-on technology, such as NSCR, intrinsically takes more effort to maintain compliance than process modifications such as low-emission, lean-burn technology. However, the add-on technology is demonstrated and very effective at reducing emissions when operated properly. The higher cost estimates presented by Mitchell, POI, and Caterpillar do not materially affect the Permits Program staff evaluation that, if necessary to maintain emission limits, AFR controllers reflect BACT.

Tidewater commented that some two-cycle, 600 hp gas compressor engines could not be controlled readily with AFR controllers. The two-cycle engine type that Tidewater refers to is an older, relatively low efficiency design. The adopted language does not require these engines to use an AFR controller unless it would be installed at a site where the fuel gas would be expected to vary more than 50 Btu/dscf from the typical value. If the heating value of the fuel changes to a new design value, which may result in an increase in emissions, the owner or operator of the engine would be required to make emission checks following such occurrence, as required by condition (b)(3)(B).

Caterpillar and Waukesha commented that the proposed definition of engine hp rating is confusing because it allows two different approaches, one based on standard conditions and the other on site conditions. TMOGA, EPNGC by reference, Lone Star, Waukesha, and EPI commented that the engine hp rating should be based on the maximum speed rating of the driven equipment. EPI commented that hp ratings should also take into account re-rating of engines through combustion or ancillary equipment modifications, such as applying the PSCR system. TMOGA commented that it is appropriate to take into account maximum potential load when that load is lower than the engine manufacturer's rated full load. Lone Star proposed an alternate definition of hp rating, based on the on-site driven equipment maximum speed, except for the reference to maximum continuous load rating being based on Diesel Equipment Manufacturers Association uniform performance standards.

The need to define hp here was solely for making the determination of any applicable emission limit, with different limits set at 500 hp and 825 hp. It is appropriate to take into account the maximum potential load. This is consistent with TACB Permits practice to accept derates which, for example, would require the owner or operator to change out the driven equipment in order to eliminate the hp restriction. Such a change would be a modification to the engine. Differences exist among manufacturers as to how they rate load capability. The staff believes the lack of uniformity among engine manufacturer hp ratings is a marketing standards issue, which is not crucial to the working of Standard Exemption 6. The manufacturer has an incentive to rate a given engine at maximum hp for a given speed. The adopted definition, based on the engine manufacturer hp rating, prevents the engine user from underestimating the hp rating in an attempt to avoid emission control. The new definition eliminates hp rating adjustment to site reference ambient conditions, which is fine tuning compared to the larger relaxation of allowing hp rating according to any on-site driven equipment speed limitation.

The hp rating definition discussed in the previous paragraph has been adopted. The staff doubts that EPI would be impacted by the definition as adopted, as an engine rated above 500 hp still needs emissions control.

Mobil stated that the proposal would require overhauled engines to meet the proposed limit. Modified engines are also subject to Regulation VI. Normal maintenance, rebuilding, or reconditioning costs in excess of 50% of the cost of a new, similar, or complete replacement engine or turbine is considered a new facility. In practice, this level of overhaul never occurs and is not how engines come into new source review. However, engine changes resulting in a greater hp output capability constitute modification if, prior to considering emission controls, there is an increase in the potential to emit.

Mobil commented that a 2.0 g/hp-hr NO_x emission limit based on engine modification is not possible for two-stroke engines. The staff disagrees with this statement. For example, the original clean-burn engine development by Cooper Industries in the late 1970s was done on two-stroke engines and achieved emissions of 1.5 g/hp-hr of NO_x. The Staff Discussion could have clarified that a retrofit is not available in every case. The staff also notes that the TACB does not endorse any manufacturer or engine rebuilder. The re-

sponsibility remains with the engine owner or operator to comply with the emission limit. SCR technology is available for any lean-burn engine to meet the originally proposed standards, although the cost of maintenance for typically remotely-located engine facilities usually makes this option economically unreasonable for the gas production industry.

TMOGA, Lone Star, Mitchell, and Tidewater commented on the cost and technical difficulty of two-stroke engines to meet the proposed emission limit.

The staff has considered the specific information provided by Tidewater on the practicality of achieving a 5.0 g/hp-hr of NO_x limit on certain low-emission rebuilt two-stroke engines. Currently, these engines would require SCR to meet a 5.0 g/hp-hr NO_x limit under all operating conditions. The staff did not consider the costs and operator maintenance required of SCR control to be reasonable for the typical remote, economically marginal, casinghead gas compression application. The staff has adopted an emission limit of 8.0 g/hp-hr of NO_x for two-stroke engines manufactured prior the applicable date of the adopted Standard Exemption 6, for engines which would not have been subject to the 5.0 g/hp-hr of NO_x limit of the previous Standard Exemption 6.

TMOGA, ATINGP, Lone Star, Mitchell, Trident, and Valero suggested limiting the scope of applicability of the proposed control requirements. The staff recognizes that there is a wide range of types and emission capabilities of existing engines used in the natural gas production industry. Emission control limitations have been adopted that would allow a more gradual phase of emissions reductions than originally proposed. The adopted language includes maintaining the current 5.0 g/hp-hr NO_x mission limit for any lean-burn engines rated 825 hp or greater and manufactured within the period that the current exemption is applicable; a somewhat higher emission limit of between 5.0 and 8.0 g/hp-hr of NO_x for old 4-stroke lean-burn engines that would be subject to emission controls for the first time; and, as discussed in the previous paragraph, an 8.0 g/hp-hr NO_x limit for old two-stroke engines not previously subject to emission limit under Standard Exemption 6. The information provided by Lone Star supports the staff position that the adopted emission limits for lean-burn engines will be more cost effective than the original proposal. The adopted Standard Exemption 6 limits any rich-burn engine to 2.0 g/hp-hr of NO_x over the engine operating range. This limit, which also reflects the Permits Staff BACT practice after 1987, is not more stringent than the originally proposed language because any rich-burn engine controlled with a nonselective catalytic converter and AFR controller which meets a 2.0 g/hp-hr NO_x emission limit at the manufacturer rated full load and speed, will meet the limit over the range of operating conditions. The adopted emission limit also benefits the PSCR-controlled engine, which may operate now over its operating range to meet a 2.0 g/hp-hr NO_x limit. The original proposal, to meet the 2.0 g/hphr NO_x] limit at the manufacturer rated full load and speed, was impracticable for this technology which entails a derate from full rated hp.

Mobil commented that most gas processing plants in the state which do not use turbines, use two-stroke compressor engines in the 800-2,200 hp range, and that, upon investigation, the fiscal impact of requiring emission control will be significant. The staff notes that the majority of compressor engines used in gas plants are located on a permanent basis and will not typically become subject to the adopted standards. As previously noted, a relaxation of the standards for lean-burn engines has been adopted.

Delhi commented that the capital cost of the proposed rule would be $2 million and operating costs would be $200,000 annually. Delhi provided no breakdown of costs and emission reductions for their equipment to allow the staff to estimate cost effectiveness. The staff experience has been that, in case-by-case BACT evaluation of engine emission controls, the calculated cost effectiveness for engine rebuilding to low-emission configuration has been reasonable when compared to a guideline of $2,000 per annual ton of NO_x reduction.

Delhi and Southern stated that the proposed rule discriminates against gas fuel by requiring a more stringent standard than liquid fuel fired engines. Performance standard-based air emission regulations reflect technological capability and economic reasonableness. Emissions capabilities vary by type of equipment. Without SCR, diesel engines are unable to achieve a 2.0 g NO_x/hp-hr limit. In Texas, stationary diesel engines are used almost exclusively as sources of standby power; e.g., emergency power backup generators and fire water pump engines. With operational schedules typically less than 100 hours per year, SCR would not be economically reasonable for new diesel engine facilities. If the staff becomes aware of any base-load diesel engine applications in Texas, a reevaluation of the emission limits for diesels will be considered. The staff notes that the suggestion was not made to make diesel and gas-fired engine limits equivalent to electric motor driven equipment, which are zero emitters.

Delhi, ATINGP, TMOGA, EPNGC by reference, Waukesha, and POI commented that the proposed 2.0 g/hp-hr NOx limit at full speed and load, versus 5. 0 g/hp-hr of NO_x at other conditions, was confusing. The intent was not to make the 2.0 g/hp-hr NO_x limit hypothetical only. The intent was to reflect the Permits Staff post-1987 BACT practice which recognizes the inability of some slow-speed engines to meet the 2.0 g/hp-hr NO_x limit under high torque and reduced speed conditions. The staff has limited a lean-burn engine manufactured after the effective date of the proposed exemption, operating simultaneously at greater than 80% torque and reduced speed, to 5.0 g/hp-hr of NO_x. Similar relaxations are built into the other proposed limits, except that the previous Standard Exemption 6 limit for any engine rated 825 hp or greater has been maintained for engines that were manufactured within the time frame during which this limit has been applicable.

Southern commented that the proposed emission limits are unrealistic at partial load conditions. This comment is unclear regarding the data which causes concern for partially loaded engines. The concern with lean-burn engines operating with higher g/hp-hr emissions at high torque and reduced speed has been addressed with higher emission limits. Lightly loaded richburn engines may more appropriately use PSCR technology rather than NSCR.

Phillips provided cost estimates of the Standard Exemption 6 rule impact on their rich-burn engines. POI expressed concern with the economic reasonableness of requiring emissions control on rich-burn engines rated greater than 500 hp. The staff considers the cost estimates for putting catalytic converters on Phillips operated rich-burn engines very realistic. Annual costs for Phillips will diminish as their fleet of relocated engines becomes controlled. The cost effectiveness of a catalytic converter and AFR controller installed on an 825 hp White-Superior 8G825 engine, based on actual operation at 585 hp is $172 per ton of NO_x reduction. Rich-burn NSCR technology applied to a gas-fired engine is one of the most cost effective NO_x reduction techniques available anywhere. Although the staff does not currently set a specific dollar-per-ton limit on cost effectiveness, $2, 000 per ton has been used in the past. Assumptions in the estimate include the following: operation at cross-over (AFR set to produce 10 grams of NO_x and 10 g/hp-hr of CO), a catalyst life of three years, amortized controller cost over ten years, and $4,000 test cost over two years. The cost effectiveness estimate would be much lower if the uncontrolled engine was operated at the manufacturer recommended (best fuel economy) setting (15 g/hp-hr of NO_x]) and full rated load of 825 hp. Fuel savings resulting from use of the AFR controller are also not considered. Some rich-burn engine operators, although not required to install catalysts, have installed AFR controllers as a money-saving device to improve fuel economy.

POI asked what the reported CO emission rate should be on Table 29 of the Standard Exemption registration. Specific CO emission limits for Standard Exemption 6 have not been adopted. The general §116.6 limit of 250 TPY applies.

During the staff discussions with industry after the close of the formal comment period, the staff received a comment which was pertinent to NO_x emissions limits for gas turbines. Solar Turbines Incorporated commented that a 2.0 g/hp-hr NO_x emission limit for gas turbines will not be achievable over the range of ambient operating conditions until the introduction of their low NO[sub]x[sub] combustor designs.

Although many small gas turbines already meet the proposed 2.0 g/hp-hr NO_x limit, upon reviewing the available information, not all such turbines do. Turbine emissions from the majority of small turbine models do not exceed 3.0 g/hp-hr of NO_x. In 1994, low-NO_x emissions combustors are expected to be available for small gas turbines to meet limits in the range of 0.75 g/hp-hr of NO_x or less. A gas turbine limit of 3.0 g/hp-hr of NO_x has been adopted for now and the emission limits will be re-evaluated after new emissions technology becomes available.

The TCC requested that condition (a) in Standard Exemption 7 be expanded to allow emissions of combustion products from air emission vents, as well as fuel combustion, by allowing the use of boilers, heaters, etc. as control devices so long as a 98% combustion efficiency is maintained and no more than the emissions levels of Standard Exemption 118 are emitted. The TCC agreed with the addition of condition (b)(4). The TCC requested a rewording of condition (c) to improve clarity by moving the phrase "containing 0.3% by weight sulphur" ahead of the phrase "being a petroleum distillate oil."

The staff believes that most boilers, heaters, ovens, etc. are not suitable abatement devices which can maintain a 98% combustion efficiency and emissions below the levels of Standard Exemption 118. Experience has demonstrated that these devices are not "incinerators" which can not meet combustion efficiency and emission limits. When waste streams are burned beyond the confines of other exemptions, such as Standard Exemption 88, the staff believes that permits should be required. The staff agrees that the suggested rewording of condition (c) improves the clarity of the condition and the alternative wording has been adopted.

Phillips stated that condition (a) in Standard Exemption 61 should be amended to include other emission control systems which are safer than combustion and comparable in efficiency. Phillips also stated that liquid phase separation having a partial pressure greater than 1.5 pounds per square inch absolute (psia) also should be exempt if the VOC gases are contained and combusted or controlled by a device achieving a minimum 95% reduction of emissions. The staff agrees that other emission control systems should be included in condition (a) as alternatives to combustion control systems. Alternative wording has been adopted which allows any abatement system meeting the requirements of Standard Exemption 68(e) and scrubbing systems for ammonia or acid gas emissions. Further, the staff agrees with Phillips that liquid phase separation having a partial pressure greater than 1.5 psia should also be exempt if the VOC gases are contained and combusted, or controlled by a device achieving a minimum 95% reduction of emissions, and wording has been adopted that reflects this exemption.

The TCC stated that in condition (a), the word "biological" should be changed to the word "anaerobic," and "activated sludge wastewater treatment processes" should be added as a separate item. The TCC also felt that cooling towers should be exempted in condition (b). The staff agrees. The word "biological" has been changed to "anaerobic" and the line item "activated sludge wastewater treatment processes" has been added. However, the staff does not agree that all cooling towers should be exempt; but, cooling towers could be exempted if VOC or other air contaminants are not stripped to the atmosphere. The requirement for cooling towers has been limited to those cases in which VOC or other air contaminants are not stripped to the atmosphere.

TPS Technologies, Inc. (TPSTI) commented that all aeration or landfarming of petroleum-contaminated soils should be prohibited in the State of Texas, and that Standard Exemption 68 should only pertain to equipment or processes with air pollution control devices capable of 99% collection, capture, and/or destruction efficiencies. TPSTI also stated that large scale, off-site aeration operations should be banned as an environmental hazard and a danger to public health. The commenter contended that since these sites qualify under TACB's definitions as an emission "source" and as a "process," and are required to undergo construction and installation of high density polyethylene liners, they should be classified as "facilities" requiring an air permit and BACT.

It is not the intent of the staff to use this standard exemption to address aeration or landfarming of petroleum-contaminated soils. The primary purpose of Standard Exemption 68 is to allow on-site decontamination of petroleum contaminated soil and water, typically at a service station with an underground storage tank leak. The staff believes that 99% efficiency is too stringent considering cost and technical feasibility.

TPSTI commented that they are faced with an enormous and potentially insurmountable competitive disadvantage by large scale, off-site aeration operations which aerate (landfarm) petroleumcontaminated soil without the requirement for either an air permit or a VOC capture/control device. Texas Soil Recycling, Inc. (Texas Soil) supported the proposed revisions to Standard Exemption 68, specifically because they were fair, economically obtainable, and environmentally safe. The Texas Soil permit cost 10% of one month's revenue, and, at this cost, they contended that there was little reason facilities receiving off-site soils should not be required to obtain a permit.

It was not the intent of the TACB to place a firm who wishes to abate emissions at a competitive disadvantage. In the current situation, however, the staff does not believe that it can require operations, such as landfarming and other open field soils aeration, to obtain a permit if there has been no "construction" of stationary sources. The staff has recommended that separate regulation development concerning this situation be pursued, especially if the soil aerators are creating a nuisance problem.

Southwest Thermal agreed that additional monitoring, controls, and recordkeeping are necessary to ensure compliance with the new maximum allowable emission limits. Therefore, they suggested that all units operating under Standard Exemption 68 be required to have on-line monitoring systems to constantly monitor and record VOC, CO, NO_x, and oxides of sulfur and that such records be kept on site and available for inspection at all times for a period of two years. If the commenter means CEMs, the costs will be very high for such small, portable operations. CEMs for VOC (or a specific chemical) , NO_x, or SO_2 cost in excess of $50,000 $100,000 each, therefore, the staff believes that it is not economically reasonable for these temporary operations to install CEMs. A frequent VOC breakthrough check is adequate for a carbon adsorption system. The staff has determined that daily VOC checks with a flame ionization detector instrument were too frequent and, therefore, too costly for these temporary operations. The staff has changed the VOC breakthrough check in condition (e)(4)(A) to a weekly requirement, but has not added a CEM requirement to this exemption.

Texas Soil stated that there are currently many plants operating statewide using Standard Exemption 68 which are receiving offsite soils. In addition, the current exemption allows temporary facilities to operate within 1,000 feet of residences without public notification or significant sampling requirements.

However, some soil treatment firms have improperly defined "temporary" and have leased buildings and set up permanent facilities at locations which contain no on-site contamination. Therefore, Texas Soil recommended that TACB require registration of mobile plants and restrict treatment to on-site materials only. The issue of temporary facilities which have leased buildings and set up permanent facilities at locations which do not contain on-site contamination is an enforcement issue which must be dealt with on a case-by-case basis. The adopted Standard Exemption 68, allows only facilities on the site of the occurrence of the contamination to be eligible for the exemption. Staff discussions have revealed that the proposal, as written, prohibits benzene emissions within 100 feet of an off-site receptor. Since benzene emissions will be insignificant based on the adopted control measures, protection from benzene exposure is ensured without the 100 foot limit. Regarding the issue of facilities being sited without public notice, standard exemptions do not require public notice. Any operation which wishes to use Standard Exemption 68 must register in accordance with the proposed condition (f), and operations are restricted to on-site materials in accordance with the proposed condition (a). The staff has deleted the reference to the 100 foot distance requirement in Standard Exemption 118(b) from condition (b).

Southwest Thermal stated that the use of a properly registered or permitted warehouse for the accumulation of contaminated soil has the positive aspects of removing contaminated soil (particularly petroleum storage tanks) from the site on a timely basis, reducing pollution from run-off, reducing business interruption and, therefore, improving economics, and even remediating the smallest quantities of contaminated soil instead of disposing in a landfill. The staff has no objections to storing contaminated soil in warehouses. However, because warehouses can be very near residences, could have much odor potential, and will almost certainly involve significant truck traffic, the staff believes such facilities should be reviewed under permits. Therefore, the adopted language does not allow warehouse operations to use Standard Exemption 68.

Texas Soil replied to the oral testimony of Southwest Thermal who stated that offering storage of contaminated soils for future treatment was environmentally advantageous and that the Texas Water Commission (TWC)

registration was sufficient regulation for this application. Texas Soil suggested that it is environmentally advantageous, but TWC registration requires no air monitoring, emission controls, or public notification. Therefore, they recommended that these fixed facilities be permitted by TACB.

The staff believes that if such a site is not a "facility," the TACB can not require permitting and control under Regulation VI. If the site is a "facility," then it must comply with the conditions of the proposed Standard Exemption 68 or get a permit. Under a permit or an exemption, the emissions will be minimized. Public notice would be required for any permit and public notice is required under the procedures leading to consideration of this standard exemption.

Southwest Thermal proposed a revision to condition (a) which would allow soil and water remediation at an off-site facility. As identified earlier, it is not the intent of the TACB that commercial operations be exempted. The exemption is only intended for facilities treating the soil at the site of the original contamination. Commercial operations that involve processing large quantities of soil and large amounts of truck traffic should obtain a permit in accordance with Regulation VI. The staff has not adopted the suggested revision to condition (f).

Southwest Thermal stated that the maximum allowable emissions portion of the proposal does not consider the through-put capabilities of the thermal remediation unit for the emissions created in production. Therefore, a small and less efficient thermal remediation unit can possibly make the maximum allowable emission per hour and be emitting cumulative emissions significantly higher than a highly-efficient, large capacity unit. They propose that a viable alternative would be to establish a maximum allowable VOC emission limit of 0.02 pound per ton (or greater capacity) per hour.

The staff believes that the best technology should be applied to the commercial facilities, and for this and other reasons, requires commercial facilities to be reviewed under permit. However, because the emissions potential at each spill site is very small and temporary, the staff believes that meeting the criteria of the proposed standard exemption is adequate to address emission controls for on-site remediation operations. For TACB to require maximum expenditure of dollars on state-of-the-art technology for a relatively small or non-toxic emission would be economically unreasonable. Therefore, a maximum allowable VOC emission limit of 0.02 pound per ton per hour has not been adopted.

One individual expressed concern that, under condition (b), the TACB appears to think that only benzene is dangerous enough to control under Standard Exemption 118 regarding wastewater facilities. There are many other toxic compounds (butadiene, toluene, and xylene) which need the stronger control that Standard Exemption 118 requires. The individual also did not understand the difference under condition (a) of soil being treated on-site or trucked in from another site. The commenter argued that the same amounts and types of air pollution are generated and must be controlled equally.

Benzene is the most toxic and the most volatile of the toxic components of concern. The TACB staff recognizes that gasoline compounds, other than benzene, are also toxic. However, the staff experience has demonstrated that where benzene is controlled, the other gasoline components are also controlled to even safer levels. Because condition (b) is restricted to "petroleum" chemicals, the control for toluene, xylene, ethylbenzene, etc., will be automatically controlled when benzene is controlled. Stronger controls on compounds other than benzene have not been adopted.

The staff acknowledges considerable difference between treating soil on-site and trucking soil and treating off-site. In almost every case, the amount of VOC emissions removed from the on-site treatment of the spill is very small, sometimes only a few hundred pounds of VOC. Therefore, when treated on-site, there is little potential for emissions impacts. More importantly, the on-site treatment will be temporary. Off-site treatment is completely different in that the quantities of soil treated at a commercial facility may be very large with significant emissions potential, and probably will operate over a period of years.

One individual stated that, in condition (e)(1), no destruction efficiency is required for vapors burned in a direct-flame combustion device. A destruction efficiency specification was not intended by the staff For an incinerator, this efficiency is typically in excess of 99% if the flame is obvious and the temperatures are maintained. There is a need to scrutinize the catalytic unit with an efficiency specification because these units historically do not destroy vapors as reliably as do incinerators or boilers. A destruction efficiency for directflame combustion devices has not been adopted.

The TCC suggested that condition (e)(3) be revised to allow a concentration alternative to the 90% destruction demonstration requirement, and the duplicate word "records" be removed from the last sentence. One individual stated that condition (e)(3) only has a 90% destruction of vapors requirement, however, BACT is closer to 95-99% according to vendor advertisements. TPSTI suggested that even the use of a flare or the 90% destruction efficiency suggested for catalytic oxidizers is not adequate for the protection of Texas air resources.

The staff believes that a concentration alternative is not needed where the control efficiency is specified or an emission limit applies. Such an alternative would make the exemption more complex and would not provide an additional benefit in air pollution control. On-site inspections of the actual abatement system will rely on checks of the operating parameters to assure effective operation. The operating parameters will be represented in the registration for the exemption in accordance with condition (f). Condition (e)(3) has been adopted without adding a concentration alternative. However, the redundant word "records" has been removed. The staff believed that with a small emissions rate, a 90% destruction efficiency is adequate to protect public health, and the efficiency has been adopted as proposed.

TCC stated that, in condition (e)(4)(B), the certified gas mixture of 0 parts per million by volume (ppmv) = 10% is not possible to prepare, and should be changed to a non-zero ppm such that the tolerance is meaningful. The tolerances for the calibration gas were stated incorrectly in the proposal. The correct tolerances should be 10 ppmv 2.0% and 100 ppmv 2.0%. The staff has inserted wording to indicate the correct tolerances.

TCC suggested that condition (e)(4)(C) be reworded to replace the word "occurs" with the words "is measured". The staff agrees with the wording change and the word "occurs" has been replaced with the words "is measured."

TCC requested the TACB to elaborate on the concept of "expected uncontrolled emissions" and to give guidance as to the types of operations or events that would be included under such a heading. The staff agrees that the term "expected uncontrolled emissions" is somewhat vague, and the last sentence of condition (f) has been changed to "The registration shall contain specific information concerning the basis (measured or calculated) for the expected emissions from the facility. The registration shall also explain details as to why the emission control system can be expected to perform as represented."

The City of Dallas opposed the proposed removal of the existing condition in Standard Exemptions 71 and 93 for open bodied vehicle dust control. The requirement for open bodied vehicle dust control was inadvertently deleted and has been reinserted into the adopted language.

The Houston Area Ready Mix Concrete Association and the Texas Aggregates and Concrete Association were opposed to the word "related" in the new proposed condition (g) in Standard Exemption 71, and condition (j) in Standard Exemption 93, and suggested that the word "related" be deleted. Pioneer Concrete of Texas, Allstar Redi-Mix, Town and Country Concrete, and C.O.D. Concrete contended that the proposed Standard Exemptions 71 and 93 will give a contractor or supplier an unfair advantage over commercial ready mix concrete producers. The staff agrees that the word "related" is misleading and might appear to allow unfair competition by a temporary concrete contractor or supplier. The word "related" has been deleted.

TCC requested that the TACB combine Standard Exemptions 71 and 93. Although there is a similarity between the two exemptions, Standard Exemption 71 was designed for permanent concrete plants with tighter controls, and Standard Exemption 93 was designed for concrete plants temporarily located at job sites. Some temporary concrete plants can meet the tighter controls of Standard Exemption 71 and, therefore, they should be able to take advantage of the exemption. The two exemptions should remain separate to give flexibility to the regulated industries.

An individual stated that the phrase "maximum control of dust emissions" should be defined and wanted to know what would constitute a violation of this requirement. The phrase "maximum control of dust emissions" is commonly understood by field compliance

personnel at each TACB regional office who are responsible for enforcement of compliance with this requirement. The term "maximum control" has not been further defined in this exemption.

The City of Dallas recommended that a condition be added to Standard Exemption 76 to require pilot plants to be registered with a PI-7 form. Registration of pilot plants is not needed because most pilot plants typically are very small sources with insignificant emissions. Most pilot plants need to change products and, therefore, raw materials, very often and on short notice. Historically, pilot plants have not been a significant source of public complaints or emission problems. Therefore, the staff believes that as long as a pilot plant meets the conditions of this exemption, there is no need to use public resources to track them through PI-7 form registration.

Phillips requested that the 5 million pounds per year design production capacity limit be removed. The Owens-Corning Fiberglass Corporation (Owens-Corning) stated that the size of the facility should not necessarily be the main factor, but rather the total emissions, as size may be required to replicate a production process. Product development groups within the corporation are being located at the production facilities to more closely replicate the operation of a pilot plant to actual production processes. Owens-Corning also believes that realistic timing for a pilot plant operation, for a specific product from initial screening trials to a production viable process, can be 18-24 months. The commenter stated that a production volume/time limit combined condition is a more realistic approach to maximize development and yet meet environmental objectives.

The staff believes that true pilot plants are very small and do not produce more than a few million pounds of product per year for market testing. However, the staff also believes that some so called "pilot plants" may be, in fact, commercial production units which conduct production campaigns of several items per year. It was never intended to exempt commercial operations from permitting. The staff also believes that production/time formulas will only complicate this exemption. For this reason, the 5 million pound per year limit has been adopted as proposed.

TCC supported the changes to this exemption as worded in the proposal, especially the allowance for small emissions of nontoxic materials, such as CO_2 and methane.

3M suggested the following statement be added to reflect the use of individual pieces of equipment for development of several different products or processes: "This five-year limit on pilot plant activity applies to equipment devoted to development of one specific product or process; therefore, that equipment can be subsequently used for development of other process(es) or product(s), setting a new time limit for its use." One individual suggested that three years is sufficient time to determine whether something is going to work.

The intent of proposed condition (c) is not to limit the use of equipment to a five-year period; therefore, the staff agrees that the pilot plant equipment should be able to be used after the five-year limit expires, provided that it is used in a separate pilot plant application. 3M wording has been added to condition (c). Regarding the three versus five-year limit, the staff believes that although a significant number of pilot plants can complete their task in three years, many pilot plants need a five-year period in which to complete a project. Some of the market testing can require several years. The five year time limit has been adopted as proposed.

One individual stated that the phrase "recreational area" used in Standard Exemption 76 and others is not defined and wanted to know if this term was limited to a designated recreational area. Also, the commenter asked if areas which are not publicly owned can be considered recreational areas due to traditional use. The term "recreational area" has been used by the TACB staff for many years without difficulty. In the staff interpretation, "recreational area" applies to any area where the general public can congregate for recreation, whether on company property or offsite. It has been determined, for example, that a softball field used by the general public on a company plant site is a "recreational area." The language has been adopted as proposed with no further definition.

The Texas Hospital Association (THA), Driscoll Foundation Children's Hospital (Driscoll), Good Shepherd Medical Center (Good Shepherd), Parkland Memorial Hospital, and St. Paul Medical Center (St. Paul) stated that the costs of meeting proposed Standard Exemption 89 range from a low of $7,000 to a high of $180,000 per hospital. The commenters believe this is an unnecessary burden on most healthcare facilities which would jeopardize the ability of Texas hospitals to continue in the mission of providing the opportunity for safe, affordable, and accessible health care. St. Paul stated that emission control devices, such as scrubbers, have the additional expenses of dealing with the resultant hazardous materials, which can be very costly.

The intent of the staff during the development of this proposal was to provide a way for those hospitals which are truly insignificant sources of ethylene oxide (EtO) emissions to be able to use Standard Exemption 89 and avoid the high cost of a permit and resultant control measures. However, the results of modelling performed by the staff will not allow any loosening of the proposed exemption conditions without raising concern that significant concentration of Eto will occur. Recent developments in the closed-loop EtO recovery systems indicate that the cost for emission control devices is being reduced to reasonable levels. For example, there are vendors who are marketing closed-loop systems which will recover both the EtO and the diluent gas, if the diluent is a chlorofluorocarbon (CFC) or a hydrochlorofluorocarbon (HCFC). A closed-loop system would meet the proposed standard exemption by complying with condition (c)(2). Additionally, the closed-loop system does not produce a hazardous material which needs to be disposed of as a hazardous waste as when a scrubber system is used.

A recent THA study of member hospitals indicated that none of the hospitals providing data currently meet the existing or proposed language of Standard Exemption 89. THA stated that their review of EtO regulations in several other states reveals that the TACB proposal would make EtO regulations in Texas the most stringent in the nation. Good Shepherd opposed these rules as being too stringent with little or no positive environmental impact. One individual was concerned that the property line allowable for EtO will be over three times the screening level. The individual also was opposed to TACB allowing CFC or other ozone destroying chemicals to be used in such sterilizing facilities, and was appalled that TACB would allow some discharge of EtO with no controls as allowed under proposed condition (c)(1).

The staff received copies of EtO regulations from the states of New York, Rhode Island, and California, and the staff disagrees that the Texas exemption is the most stringent in the nation. The issue at hand is the requirement to apply for and receive a permit for a toxic air pollutant in accordance with §116.1 of Regulation VI. The purpose of Standard Exemption 89 is to allow those hospitals which are insignificant sources of EtO a means to avoid the time and expense of acquiring a permit. Use of the exemption, however, necessitates that the sources apply control measures to their emissions. If the source is not an insignificant source, then the operator must apply for a permit and have control measures specified on a case-by-case basis. For those sources which can qualify for this exemption, the application of control measures to the emissions source may reduce emissions impacts at the property line from over 3,000 micrograms per cubic meter to less than 60 micrograms per cubic meter, depending on the individual site. The screening level for EtO is 18 micrograms per cubic meter. The individual commenter must bear in mind that the screening level is not a concentration standard, but rather a guideline for staff use. The staff intends to continue work on this issue as new and improved technology develops. Regarding the use of CFC as a diluent gas, the industry is rapidly converting the diluent gas to HCFC which is not as reactive in depleting stratospheric ozone. In addition, the industry is exploring other diluent gases which perform as well as CFC, in addition to developing closed loop recovery systems which minimize the loss of CFC to the atmosphere.

Good Shepherd requested that TACB postpone the approval and implementation of this exemption. THA and St. Paul requested TACB withdraw the proposed revision of Standard Exemption 89 until all issues are addressed. If this requires regulatory revision outside the scope of Standard Exemption 89, the THA requested rulemaking for such a revision. The staff believes that a delay in the approval and implementation of this exemption would not be in the best interest of the general public. The adopted changes to Standard Exemption 89 are more flexible than the previous standard exemption, and will allow additional hospitals the ability to meet this exemption. The staff will consider future rulemaking in an effort to totally resolve the situation.

THA and St. Paul recommended that TACB set air quality standards for EtO sterilizers, that hospitals report emissions and compliance information to the TACB, that noncompliant hospitals make necessary modifications, and that TACB monitor air quality to ensure continued compliance. THA and St. Paul suggested that one approach to an air quality standard is to use the Occupational Safety and Health Administration time-weighted average of no more than 1 ppm of EtO over an eight hour period, or excursion limits of 5 ppm during any one 15 minute period. The THA and St. Paul also recommended raising the annual allowable EtO quantity per sterilizer to qualify for exemption, and suggested that the TACB create a regulation similar to the tiered control system used in California. In the tiered system, the greater the quantity, the greater the control, and the shorter the phase-in period. THA and St. Paul also recommended a minimum phase-in period of 18 months for hospitals to achieve compliance with any standards ultimately adopted. Driscoll urged a freeze of two years be considered in order to give hospitals time to retrofit or purchase new equipment. One individual requested that under condition (e), the phrase "and kept in good working order" be added to ensure proper operation and maintenance.

The staff agrees that each of these suggested approaches to regulating EtO has merit and the agency will analyze each approach in future rulemaking. The staff intends to make use of the knowledge and experience of the regulated industry in addition to the control equipment manufacturers. Regarding the requests for delay in the implementation of Standard Exemption 89, an addition to condition (h) has been adopted to allow existing sources which use greater than four pounds per year but less than 100 pounds per year, and which can use this exemption, until May 31, 1994 to implement the appropriate control measures. Language has also been adopted that allows existing sources which use greater than 100 pounds but less than 2000 pounds per year, until November 30, 1993 to implement the appropriate control measures.

Phillips supported the requirement in Standard Exemption 100 that venting of sweet, commercial grade natural gas pipelines, exempted from (conditions (a) and (b)), be conducted in a manner that does not endanger nearby facilities. The TCC also supported the proposed changes to this exemption.

One individual felt that the phrase "venting is done in a manner that does not endanger nearby facilities" needs definition to clearly delineate the test which must be met to fulfill this condition. The staff agrees that clarification is needed and wording has been adopted that identifies areas where an ignition source may exist or where accidental ignition of the venting gas may increase risk of fire at nearby tanks or other facilities.

Composite Technology Engine Components (CTEC) requested the TACB to allow Standard Exemption 123 interaction with Standard Exemption 106 by including wording similar to Standard Exemption 106 which would allow the exemption of chemicals not listed or referenced in Table 118A. Since Standard Exemption 123 is modeled on Standard Exemption 118, it should provide at least as much flexibility as Standard Exemption 118 now does. The staff has identified no benefit in giving Standard Exemption 123 all the provisions of Standard Exemption 118, because Standard Exemption 123 was designed for a specific industry and allows more emissions than Standard Exemption 118. Condition (a) of Standard Exemption 123 has been reworded to allow the commenter use of Standard Exemptions 106 and 118.

CTEC requested that TACB allow Standard Exemption 123 by modeling. The commenter proposed that if an operation at an aerospace equipment and parts manufacturing plant is specifically addressed in another exemption, and the plant operation substantially complies complies with that other exemption, and the plant produces appropriate dispersion modeling results demonstrating that emissions are less than the Effects Screening Level for the chemicals of concern, then, the operation should be exempt under Standard Exemption 123. The staff believes that due to the lack of a modeling protocol, allowing Standard Exemption 123 by dispersion modelling would be inappropriate at this time. The equation described in condition (d) for the emissions limit, based upon the distance from the emissions point to the nearest off-site receptor, should accomplish the same result as a dispersion model.

CTEC requested that TACB clarify reporting requirements and proposed a modification to condition (e) to reflect the concept that a TACB form PI-7 is a notification and should allow for flexibility in process changes. The second paragraph in condition (e) should read that, in the case of a future exemption, a plant is not "requesting" emissions, rather the plant is "projecting" emissions. CTEC suggested that the reporting requirement be limited to exempt processing operations.

The staff agrees that the TACB form PI-7 is a notification of projected emissions, not a request for emissions. The wording "shall include all emission sources" in condition (e) has been changed to "shall include all process emission sources," and the existing wording "requested maximum allowable" has been changed to "projected maximum allowable." The staff believes that, in order to determine whether or not a source meets the exemption criteria, the operator must consider total emissions. The language has been adopted as proposed such that emissions reporting is not restricted to only process operations.

One individual opposed this exemption because emission limits can be easily exceeded via fugitive losses. The commenter also suggested that the 100 foot distance limit is not sufficient for such a plant since some of the pollutants that are emitted can travel 100 feet and cause problems. The commenter requested that the phrase "Material and solvent usage record shall be maintained in sufficient detail to document compliance with this standard exemption" be defined so investigators, the public, and the company know what is expected.

The staff believes that the recordkeeping requirement of Standard Exemption 123 is sufficient to allow the investigator to determine the actual emissions and, therefore, verify the exemption quantities. The equation described in condition (d) for the emissions limit, based upon the distance from the emissions point to the nearest off-site receptor, will account for the 100 foot distance limit by reducing the allowable emissions for that emissions point accordingly. Finally, the staff believes that the phrase "Material and solvent usage record shall be maintained in sufficient detail to document compliance with this standard exemption" is a standard phrase which is well understood by TACB field personnel and the regulated community. These portions of Standard Exemption 123 have been adopted as proposed.

The TACB is an equal opportunity employer and does not discriminate on the basis of race, color, religion, sex, national origin, age, or disability in employment or in the provision of services, programs, or activities.

In compliance with the Americans With Disabilities Act, this document may be requested in alternate formats by contacting the Air Quality Planning Program staff at (512) 908-1457, (512) 9081500 GAX or 1-800-RELAY-TX (TDD), or by writing or visiting at 12118 North IH-35, Park 35 Technology Center, Building A, Austin, Texas 78753.

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

§116.4. Special Conditions. Permits to construct and operate, special permits, and exemptions may contain general and special conditions. The holders of exemptions, construction and operating permits, and special permits shall comply with any and all such conditions. Upon a specific finding by the executive director that an increase of a particular pollutant could result in a significant impact on the environment or could cause the facility to become subject to review under 40 CFR 51.165 (Nonattainment) or 40 CFR 52. 21 (Prevention of Significant Deterioration), the executive director may include a special permit condition which states that without prior approval by the executive director, the permittee may not use the authority of a standard exemption to construct an additional source at that facility which will result in a net emissions increase of this particular pollutant.

§116.6. Exempted Facilities.

(a) Pursuant to the Texas Clean Air Act (TCAA), §382.057, the facilities or types of facilities listed in the Standard Exemption List, dated June 18, 1992, as filed in the Secretary of State's Office and herein adopted by reference, are exempt from the permit requirements of the TCAA, §382.0518, because such facilities will not make a significant contribution of air con-

taminants to the atmosphere; provided, however, that:

(1) total actual emissions authorized under standard exemption from the proposed facility shall not exceed 250 tons per year of carbon monoxide or nitrogen oxides, or 25 tons per year of volatile organic compounds (VOC) or sulfur oxides or inhalable particulate matter, or 25 tons per year of any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen;

(2) total actual emissions authorized under standard exemptions from the property where the proposed facility is to be located shall not exceed 250 tons per year of carbon monoxide or nitrogen oxides, or 25 tons per year of VOC or sulfur oxides or inhalable particulate matter, or 25 tons per year of any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen, unless at least one facility at such property has been subject to public notification and comment as required by §116.10 of this title (relating to Public Notification and Comment Procedure);

(3) construction or modification of the facility shall be commenced prior to the effective date of a revision of the Standard Exemption List under which the construction or modification would no longer be exempt;

(4) proposed facility shall comply with the applicable provisions of §111 and §112, and the new source review requirements of Part C and Part D, of the Federal Clean Air Act (FCAA) and regulations promulgated thereunder;

(5) there are no permits under the same Texas Air Control Board (TACB) Account Number that contain a condition or conditions precluding use of the standard exemption or standard exemptions.

(b) Notwithstanding the provisions of this section, any facility which constitutes a major source, or any modification which constitutes a major modification under the FCAA, as amended by the FCAA Amendments of 1990, and regulations promulgated thereunder shall be subject to the requirements of §116.3 of this title (relating to Consideration for Granting Permits to Construct and Operate) rather than this section;

(c) No person shall circumvent by artificial limitations the requirements of §116.1 of this title (relating to Permit Requirements).

(d) The emissions from the facility shall comply with all rules and regulations of the TACB and with the intent of the TCAA, including protection of health and property of the public and all emissions control equipment shall be maintained in good condition and operated properly during operation of the facility.

(e) Copies of the current Standard Exemption List are available from the TACB Air Quality Planning Annex, located at 12118 North IH-35, Park 35 Technology Center, Building A, Austin, Texas 78753, and at all TACB regional offices.

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 June 29, 1992.

TRD-9208973 Lane Hartsock
Deputy Director, Air Quality Planning
Texas Air Control Board

Effective date: July 20, 1992

Proposal publication date: January 28, 1992

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

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Part XIV. Texas Board of Irrigators

Chapter 421. Introductory Provisions

General Provisions

The Texas Board of Irrigators adopts amendments to §§421.1, 421.36, and 421.39, concerning introductory provisions, without changes to the proposed text as published in the May 8, 1992, issue of the *Texas Register* (17 TexReg 3356).

These adopted rules are identical to the emergency rules that were published in the January 31, 1992, issue of the *Texas Register* (17 TexReg 761) except for the correction of a grammatical error in the definition of water conservation in §421.1 (concerning definitions).

These amendments are adopted under Texas Civil Statutes, Article 8751, §7. These amendments are adopted in order to implement certain provisions of Texas Senate Bill 544, 72nd Legislature (1991), which went into effect on September 1, 1991, and became Texas Civil Statutes, Article 8751. These amendments are adopted in order to define the duties and responsibilities of officers and employees of the board as well as to provide guidelines for maintaining official open records.

No comments were received regarding adoption of the amendments.

• 31 TAC §421.1

The amendment is adopted under Texas Civil Statutes, Article 8751, §7, which provide the Texas Board of Irrigators with the authority to adopt rules necessary to carry out its powers and duties under Texas Civil Statutes, Article 8751.

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 June 29, 1992.

TRD-9208948 Joyce Watson
Executive Secretary
Texas Board of Irrigators

Effective date: July 20, 1992

Proposal publication date: May 8, 1992

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

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General Provisions Affecting Board

• 31 TAC §421.36, §421.39

The amendments are adopted under Texas Civil Statutes, Article 8751, §7, which provide the Texas Board of Irrigators with the authority to adopt rules necessary to carry out its powers and duties under Texas Civil Statutes, Article 8751.

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 June 29, 1992.

TRD-9208947 Joyce Watson
Executive Secretary
Texas Board of Irrigators

Effective date: July 20, 1992

Proposal publication date: May 8, 1992

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

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Part XIV. Texas Board of Irrigators

Chapter 423. Registration of Irrigators and Installers

Application for Registration

The Texas Board of Irrigators adopts amendments to §§423.1, 423.4, 423.7, 423.10, 423.13, 423.19, 423.22, 423.41, 423.50, and 423.56, concerning application for registration to become a licensed irrigator or installer, without changes to the proposed text as published in the May 8, 1992, issue of the *Texas Register* (17 TexReg 3358).

These adopted rules are identical to the emergency rules that were published in the January 31, 1992, issue of the *Texas Register* (17 TexReg 763).

These amendments are adopted under Texas Civil Statutes, Article 8751, §7. These amendments are adopted adopted in order to implement certain provisions of Texas Senate Bill 544, 72nd Legislature (1991), which went into effect on September 1, 1991, and became Texas Civil Statutes, Article 8751. These amendments are in order to delineate eligibility requirements and procedures for those applying for certificates of registration.

No comments were received regarding adoption of the amendments.

• 31 TAC §§423.1, 423.4, 423.7, 423.10, 423.13, 423.19, 423. 22

The amendments are adopted under Texas Civil Statutes, Article 8751, §7, which provide the Texas Board of Irrigators with the authority to adopt rules necessary to carry out its powers and duties under Texas Civil Statutes, Article 8751.

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 June 29, 1992.

TRD-9208946 Joyce Watson
Executive Secretary
Texas board of Irrigators

Effective date: July 20, 1992

Proposal publication date: May 8, 1992

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

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Examinations

• 31 TAC §§423.41, 423.50, 423.56

The amendments are adopted under Texas Civil Statutes, Article 8751, §7, which provide the Texas Board of Irrigators with the authority to adopt rules necessary to carry out its powers and duties under Texas Civil Statutes, Article 8751.

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 June 29, 1992.

TRD-9208945 Joyce Watson
Executive Secretary
Texas board of Irrigators

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Proposal publication date: May 8, 1992

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

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Chapter 425. Certificate of Registration and Seal

Certificate of Registration

The Texas Board of Irrigators adopts amendments to §§425.16, 425.19, 425.22, 425.25, and 425.41, concerning certificates of registration, without changes to the proposed text as published in the May 8, 1992, issue of the *Texas Register* (17 TexReg 3360).

These adopted rules are identical to the emergency rules that were published in the January 31, 1992, issue of the *Texas Register* (17 TexReg 764).

These amendments are adopted under Texas Civil Statutes, Article 8751, §7. These amendments are adopted in order to implement certain provisions of Texas Senate Bill 544, 72nd Legislature (1991), which went into effect on September 1, 1991, and became Texas Civil Statutes, Article 8751. These amendments are adopted in order to provide guidelines for the expiration of certificates of registration, the renewal of certificates of registration, and the penalty for failure to renew a certificate of registration.

No comments were received regarding adoption of the amendments.

• 31 TAC §§425.16, 425.19, 425.22, 425.25

The amendments are adopted under Texas Civil Statutes, Article 8751, §7, which provide the Texas Board of Irrigators with the authority to adopt rules necessary to carry out its powers and duties under Texas Civil Statutes, Article 8751.

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 June 29, 1992.

TRD-9208944 Joyce Watson
Executive Secretary
Texas board of Irrigators

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

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Seal

• 31 TAC §425.41

The amendment is adopted under Texas Civil Statutes, Article 8751, §7, which provide the Texas Board of Irrigators with the authority to adopt rules necessary to carry out its powers and duties under Texas Civil Statutes, Article 8751.

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

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TRD-9208943 Joyce Watson
Executive Secretary
Texas board of Irrigators

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

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Chapter 427. Water Supply Connections

Standards for Connections to Potable Water Supplies

• 31 TAC §§427.2, 427.4, 427.6, 427.8

The Texas Board of Irrigators adopts new §§427.2, 427.3, 427.6, and 427.8, an amendment to 427.4, and the repeal of 427.10, concerning standards for connections to potable water supplies, without changes to the proposed text as published in the May 8, 1992, issue of the *Texas Register* (17 TexReg 3361).

These adopted rules are identical to the emergency rules that were published in the January 31, 1992, issue of the *Texas Register* (17 TexReg 766) except for the correction of a grammatical error in the explanation of minimum industry standards for depth coverage of piping in §427.8(e) (concerning minimum industry standards for irrigators/installers) and a new §427.3 (concerning water conservation).

These new sections are adopted under Texas Civil Statutes, Article 8751, §7. These amendments and new sections are adopted in order to implement certain provisions of Texas Senate Bill 544, 72nd Legislature (1991), which went into effect on September 1, 1991, and became Texas Civil Statutes, Article 8751. These amendments and new sections are adopted in order to provide guidelines for: local inspection of irrigation systems; the type of backflow prevention device to install; and minimum industry standards for irrigators and installers.

No comments were received regarding adoption of the sections.

The amendment new sections are adopted under Texas Civil Statutes, Article 8751, §7, which provide the Texas Board of Irrigators with the authority to adopt rules necessary to carry out its powers and duties under Texas Civil Statutes, Article 8751.

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 June 29, 1992.

TRD-9208942 Joyce Watson
Executive Secretary
Texas board of Irrigators

Effective date: July 20, 1992

Proposal publication date: May 8, 1992

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

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• 31 TAC §427.10

The repeal is adopted under Texas Civil Statutes, Article 8751, §7, which provide the Texas Board of Irrigators with the authority to adopt rules necessary to carry out its powers and duties under Texas Civil Statutes, Article 8751.

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 June 29, 1992.

TRD-9208941 Joyce Watson
Executive Secretary
Texas board of Irrigators

Effective date: July 20, 1992

Proposal publication date: May 8, 1992

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

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Chapter 429. Violation of Statute or Board Rule

Complaint Process

The Texas Board of Irrigators adopts the repeal of §§429.1, 429.13, 429. 16, 429.19, 429.22, and 429.41; new §§429.1-429.3, 429.5, 429.11, and 429. 13-429.19; and amendments to §§429.4, 429.7, 429.10, 429.44, 429.51, 429.53, and 429.55, concerning the processing of a complaint filed with the board against an irrigator or installer, the investigation of a complaint, informal resolution of a complaint, revocation of registration by the board, civil penalties to be assessed by a court, and action by the attorney general to recover civil penalties and pursue injunctive relief; the steps taken to file a complaint with the board against an irrigator or installer, setting complaint on board agenda for further investigation, board consideration of and action on complaints, referral of complaints by the board to hearings before the Texas Water Commission, referral of probable violations to the board by board members, and the Texas Water Commission's authority to revoke the registration of a licensed irrigator or installer; and the board's issuance of enforcement orders, hearings with respect to alleged violations of the Licensed Irrigators Act or of any order of the board, the steps taken to file a complaint with the board against an irrigator or installer, policies allowing the public to speak on issues under the board's jurisdiction, notice of complaint status, the hearing request and enforcement report, the procedures for notice, hearing, action, and appeal of alleged violations of Texas Civil Statutes, Article 8751, or a rule of the board. The amendments, repeals, and new sections are adopted without changes to the proposed text as published in the May 8, 1992, issue of the *Texas Register* (17 TexReg 3363).

These adopted rules are identical to the emergency rules that were published in the January 31, 1992, issue of the *Texas Register* (17 TexReg 768) except for the correction of grammatical errors in §429.11 (concerning notice of complaint status), §429.13(b)(2) (concerning hearing request and enforcement report), §429.17(b) (concerning board consideration of complaint; board action on complaint), §429.51(a) (concerning civil penalty); and the addition of §429.5 (concerning public comment).

These amendments, repeals, and new sections are adopted under Texas Civil Statutes, Article 8751, §7. These amendments are adopted in order to implement certain provisions of Texas Senate Bill 544, 72nd Legislature (1991), which went into effect on September 1, 1991, and became Texas Civil Statutes, Article 8751. These amendments, repeals, and new rules are adopted in order to provide guidelines for making complaints to the Board of Irrigators, investigating complaints, and resolving complaints through either informal resolution or a formal hearing.

In the May 8, 1992, issue of the *Texas Register* (17 TexReg 3363), in the first sentence of the preamble it is stated that the Board of Irrigators proposes a new §429.41 where in fact the Board of Irrigators proposed the repeal of §429.41.

No comments were received regarding adoption of the sections.

• 31 TAC §§429.1, 429.13, 429.16, 429.19, 429.22

The repeals are adopted under Texas Civil Statutes, Article 8751, §7, which provide the Texas Board of Irrigators with the authority to adopt rules necessary to carry out its powers and duties under Texas Civil Statutes, Article 8751.

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 June 29, 1992.

TRD-9208939 Joyce Watson
Executive Secretary
Texas board of Irrigators

Effective date: July 20, 1992

Proposal publication date: May 8, 1992

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

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• 31 TAC §§429.1-429.5, 429.7, 429.10, 429.11, 429.13-429.19

The amendments and new sections are adopted under Texas Civil Statutes, Article 8751, §7, which provide the Texas Board of Irrigators with the authority to adopt rules necessary to carry out its powers and duties under Texas Civil Statutes, Article 8751.

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 June 29, 1992.

TRD-9208940 Joyce Watson
Executive Secretary
Texas board of Irrigators

Effective date: July 20, 1992

Proposal publication date: May 8, 1992

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

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Revocation of Registration

• 31 TAC §429.41

The repeal is adopted under Texas Civil Statutes, Article 8751, §7, which provide the Texas Board of Irrigators with the authority to adopt rules necessary to carry out its powers and duties under Texas Civil Statutes, Article 8751.

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 June 29, 1992.

TRD-9208938 Joyce Watson
Executive Secretary
Texas board of Irrigators

Effective date: July 20, 1992

Proposal publication date: May 8, 1992

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

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• 31 TAC §429.44

The amendment is adopted under Texas Civil Statutes, Article 8751, §7, which provide the Texas Board of Irrigators with the authority to adopt rules necessary to carry out its powers and duties under Texas Civil Statutes, Article 8751.

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 June 29, 1992.

TRD-9208937 Joyce Watson
Executive Secretary
Texas board of Irrigators

Effective date: July 20, 1992

Proposal publication date: May 8, 1992

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

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Penalty

• 31 TAC §§429.51, 429.53, 429.55

The amendments are adopted under Texas Civil Statutes, Article 8751, §7, which provide the Texas Board of Irrigators with the authority to adopt rules necessary to carry out its powers and duties under Texas Civil Statutes, Article 8751.

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 June 29, 1992.

TRD-9208936 Joyce Watson
Executive Secretary
Texas board of Irrigators

Effective date: July 20, 1992

Proposal publication date: May 8, 1992

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

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Chapter 431. Standards of Conduct

Subchapter A. Licensed Irrigator and Installer Standards

• 31 TAC §§431.1-431.6

The Texas Board of Irrigators adopts amendments to §§431.1-431.6, concerning the standards of conduct for licensed irrigators or

installers, without changes to the proposed text as published in the May 8, 1992, issue of the *Texas Register* (17 TexReg 3367).

These adopted rules are identical to the emergency rules that were published in the January 31, 1992, issue of the *Texas Register* (17 TexReg 772).

These amendments are adopted under Texas Civil Statutes, Article 8751, §7. These amendments are adopted in order to: add installers as a group that is governed by 31 TAC Chapters 421, 423, 425, 427, 429, and 431; provide guidelines for advertising by irrigators and installers; and provide consumers with information regarding regulation of irrigation in Texas.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 8751, §7, which provide the Texas Board of Irrigators with the authority to adopt rules necessary to carry out its powers and duties under Texas Civil Statutes, Article 8751.

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 June 29, 1992.

TRD-9208935 Joyce Watson
Executive Secretary
Texas board of Irrigators

Effective date: July 20, 1992

Proposal publication date: May 8, 1992

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

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 9. Property Tax Administration

Subchapter C. Appraisal District Administration

- **34 TAC §9.401**

The Comptroller of Public Accounts adopts new §9.401, concerning the application form for a charitable organization property tax exemption, with changes to the proposed text as published in the February 11, 1992, issue of the *Texas Register* (17 TexReg 1216).

The new section is necessary because the 72nd Legislature, 1991, First Called Session, added a new function to the type of charitable activities that may qualify for the exemption. In addition, the legislature transferred responsibility for adopting property tax rules to the comptroller, effective November 24, 1991. The new section establishes requirements for the contents of a charitable organization property tax exemption application form and adopts by reference a model application form. Both changes occur in subsection (b). Paragraph (5) shows the addition of the word "if" at the beginning of the paragraph for clarity. The second change is to paragraph (14) and changes the Tax Code cite to §11.18(d)(15).

No comments were received regarding adoption of the new section.

The new section is adopted under the Tax Code, §11.43 and §11.44, which provides the comptroller with the authority to prescribe the contents of property tax exemption applications and contents of the notice of exemption requirements.

§9.401. Exemption Applications for Charitable Organizations.

(a) All appraisal offices shall prepare applications for charitable organization exemptions and make them available to the public.

(b) Each application form shall provide spaces for the applicant to indicate the following information:

(1) the name and address of the person who completes the application form;

(2) the capacity in which the person who completes the form serves the organization;

(3) the name of the organization and its mailing address;

(4) whether the organization is operated by an individual, an association, a corporation, a foundation, or a trust;

(5) if the organization is a corporation that does not provide a function specified in the Tax Code, §11.18(d)(1), (2), (8), (9), (12), or (16), whether the corporation is a nonprofit corporation;

(6) the real and personal property upon which the exemption is claimed;

(7) whether the organization owns the property on which the exemption is claimed;

(8) for each parcel of real property, the legal description of the property, the primary use of the property, whether the property is reasonably necessary in performing the organization's functions, any other uses of the property, and all parties other than the applicant organization which have used the property in the year preceding the application;

(9) for each item of personal property, the nature and location of the item;

(10) whether the organization is organized exclusively to perform religious, charitable, scientific, literary, and educational functions;

(11) whether the organization is organized exclusively to engage in and does exclusively engage in one or more of the functions listed in the Tax Code, §11.18(d)(1)-(17), and which functions the organization engages in;

(12) all financial transactions for the preceding year which involved sale of an interest in the organization for gain, transfers of property between the organization and persons having an interest in the organization, and loans between the organization and persons having an interest in the organization;

(13) whether the organization operates, or its charter permits it to operate, in a manner which permits the accrual of profits or distribution of any form of private gain; and

(14) where the applicant indicates that it engages in functions listed in the Tax Code, §11. 18(d)(15), the following additional information:

(A) whether the organization is governed by a volunteer board of directors;

(B) whether the organization is affiliated with a state or national organization that authorizes, approves, or sanctions volunteer charitable fund raising organizations;

(C) whether the organization qualifies for exemption under the Internal Revenue Code, §501(c)(3), as amended; and

(D) whether the organization distributes contributions to at least five other associations, each of which is governed by a volunteer board of directors, qualifies for exemption under the Internal Revenue Code, §501(c) (3), receives a majority of its annual revenues from gifts and government grants, and provides services without regard to the recipient's ability to pay.

(c) The appraisal office shall indicate on the application form that the applicant must attach a copy of the charter, bylaws, or other documents adopted by the organization to govern its affairs.

(d) With respect to the documents described in subsection (c) of this section, the application shall contain spaces for the applicant to indicate:

(1) whether the documents pledge the organization's assets for use in performing its charitable functions and the page and paragraph number of such language;

(2) whether the documents require that upon dissolution of the organization that the organization's assets be

transferred to a similar organization which is qualified for exemption under the Internal Revenue Code, §501(c)(3), as amended, or to the State of Texas;

(3) whether Internal Revenue Service regulations require that the documents provide for transfer of the organization's assets upon dissolution first to its members and then immediately from its members to a similar organization qualified for exemption under the Internal Revenue Code, §501(c)(3), as amended, or to the State of Texas.

(e) All applications shall require the applicant to sign and date the application and indicate in what capacity he represents the organization.

(f) All applications shall include the following affirmation, above the signature and date spaces and below the spaces for information required by subsections (b)-(d) of this section: "By signing this application, you designate the property described in the attached schedules A & B as the property against which the exemption for charitable organizations may be claimed in this appraisal district. You certify that this information is true and correct to the best of your knowledge and belief."

(g) All applications shall include the following statement in boldface type beneath the space for the signature and date: Under the Texas Penal Code, §37.10, if you make a false statement on this application, you could receive a jail term of up to one year and a fine of up to $2,000, or a prison term of two to 10 years and a fine of up to $5,000.

(h) If the chief appraiser routinely requires supporting documentation for any charitable exemption, the appraisal office shall note the types of documentation required on the application.

(i) All applications shall contain the following statement: "This application covers property you owned on January 1 of this year. You must file the completed application between January 1 and May 1 of this year. Be sure to attach any additional documents requested. If the chief appraiser grants the exemption, you do not have to reapply every year. You must reapply if the chief appraiser requires you to do so, or if you want the exemption to apply to property not listed in this application. However, you have a duty to notify the chief appraiser in writing if and when your right to this exemption ends."

(j) The Comptroller of Public Accounts adopts by reference Form 11.18, Application for Charitable Organization Property Tax Exemption. Copies of the form are available for public inspection at the Office of the Secretary of State, Texas Register Section, or may be obtained from the Comptroller of Public Accounts, Property Tax Division, 4301 Westbank Drive, Building B, Suite 100, Austin, Texas 78746-6565.

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 June 26, 1992.

TRD-9208861 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: July 17, 1992

Proposal publication date: February 11, 1992

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

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• 34 TAC §9.402

The Comptroller of Public Accounts adopts new §9.402, concerning the application forms for special use appraisals, without changes to the proposed text as published in the February 11, 1992, issue of the *Texas Register* (17 TexReg 1216).

The new section is necessary because the 72nd Legislature, 1991, First Called Session, added a new use to the types of uses that qualify as an agricultural use of land. In addition, the legislature transferred responsibility for adopting property tax rules to the comptroller, effective November 24, 1991. The new section adopts by reference a model application form for each available special use appraisal. A change was made in citing the statutory authority in the preamble to the new section.

No comments were received regarding adoption of the new section.

The new section is adopted under the Tax Code, §§23.43, 23.54, 23.75, 23. 85, and 23.95, which provides the comptroller with the authority to prescribe the content of application for special appraisal.

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 June 26, 1992.

TRD-9208862 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

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Proposal publication date: February 11, 1992

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

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• 34 TAC §9.403

The Comptroller of Public Accounts adopts new §9.403, concerning the application forms for a miscellaneous property tax exemptions, without changes to the proposed text as published in the February 11, 1992, issue of the *Texas Register* (17 TexReg 1217).

The new section is necessary because the 72nd Legislature, 1991, First Called Session, created three new property tax exemptions. In addition, the legislature transferred responsibility for adopting property tax rules to the comptroller, effective November 24, 1991. The new section establishes general requirements for miscellaneous property tax exemption forms and adopts 11 property tax exemption application forms by reference.

No comments were received regarding adoption of the new section.

The new section is adopted under the Tax Code, §11.43 and §11.44, which provides the comptroller with the authority to prescribe the contents of each exemption application form and the notice of exemption application requirements.

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 June 26, 1992.

TRD-9208863 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: July 17, 1992

Proposal publication date: February 11, 1992

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

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• 34 TAC §9.404

The Comptroller of Public Accounts adopts new §9.404, concerning the application form for a property tax exemption for goods exported from Texas, without changes to the proposed text as published in the February 11, 1992, issue of the *Texas Register* (17 TexReg 1217).

The new section is necessary because the 72nd Legislature, 1991, First Called Session, changed the qualification requirements for exemption. In addition, the legislature transferred responsibility for adopting property tax rules to the comptroller, effective November 24, 1991. The new section prescribes the contents of the application form for exemption of goods exported from Texas, and adopts the form by reference.

No comments were received regarding adoption of the new section.

The new section is adopted under the Tax Code, §11.43 and §11.44, which provides the comptroller with the authority to prescribe the contents of property tax exemption applications and contents of the notice of exemption requirements.

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 June 26, 1992.

TRD-9208864 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: July 17, 1992

Proposal publication date: February 11, 1992

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

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• 34 TAC §9.405

The Comptroller of Public Accounts adopts new §9.405, concerning the application form for a residence homestead property tax exemption, without changes to the proposed text as published in the February 11, 1992, issue of the *Texas Register* (17 TexReg 1217).

The new section is necessary because the 72nd Legislature, 1991, First Called Session, transferred responsibility for adopting property tax rules to the comptroller, effective November 24, 1991. The new section establishes requirements for the contents of a residence homestead property tax exemption application form and adopts by reference a model application form.

No comments were received regarding adoption of the new section.

The new section is adopted under the Tax Code, §11.43 and §11.44, which provides the comptroller with the authority to prescribe the contents of property tax exemption applications and contents of the notice of exemption requirements.

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 June 26, 1992.

TRD-9208865 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: July 17, 1992

Proposal publication date: February 11, 1992

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

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Subchapter D. Appraisal Review Board

• 34 TAC §9.801

The Comptroller of Public Accounts adopts new §9.801, concerning notice of protest, without changes to the proposed text as published in the February 11, 1992, issue of the *Texas Register* (17 TexReg 1218).

The new section is necessary because the 72nd Legislature, 1991, First Called Session, added elements of information required on a notice of protest form. In addition, the legislature transferred responsibility for adopting property tax rules to the comptroller, effective November 24, 1991. The new section establishes requirements for a notice of protect form, including a provision giving the property owner an opportunity to request a copy of the appraisal review board's hearing procedures.

No comments were received regarding adoption of the new section.

The new section is adopted under the Tax Code, §5.07, which provides the comptroller with the authority to prescribe the contents of all forms necessary for the administration of the property tax system, and §41.44, which provides the comptroller with the authority to prescribe the contents of a form for notice of protest.

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 June 26, 1992.

TRD-9208866 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: July 17, 1992

Proposal publication date: February 11, 1992

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

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• 34 TAC §9.802

The Comptroller of Public Accounts adopts new §9.802, concerning the affidavit to be signed by an appraisal review member hearing a property owner's protest, without changes to the proposed text as published in the February 11, 1992, issue of the *Texas Register* (17 TexReg 1218).

The new section is necessary because the 72nd Legislature, 1991, First Called Session, required this affidavit of appraisal review board members. In addition, the legislature transferred responsibility for adopting property tax rules to the comptroller, effective November 24, 1991. The new section prescribes the contents of the appraisal review board member's affidavit stating that the member has not communicated with another person concerning the property under protest or any matter related to the property owner's protest.

No comments were received regarding adoption of the new section.

The new section is adopted under the Tax Code, §5.07, which provides the comptroller with the authority to prescribe the contents of all forms necessary for the administration of the property tax system.

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 June 26, 1992.

TRD-9208867 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: July 17, 1992

Proposal publication date: February 11, 1992

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

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Subchapter E. Tax Office Administration

• 34 TAC §9.1001

The Comptroller of Public Accounts adopts new §9.1001, concerning the property tax receipts, without changes to the proposed text as published in the February 11, 1992, issue of the *Texas Register* (17 TexReg 1218).

The new section is necessary because the 72nd Legislature, 1991, First Called Session, added two elements of information required on a property tax receipt. In addition, the legislature transferred responsibility for adopting property tax rules to the comptroller, effective November 24, 1991. The new section establishes requirements for the current and delinquent property tax receipts, including a provision requiring that the receipt show the tax rate and taxable value for the property for each year for which the receipt is requested.

No comments were received regarding adoption of the new section.

The new section is adopted under the Tax Code, §31.075, which provides the comptroller with the authority to prescribe the description of property required on a property tax receipt.

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 June 26, 1992.

TRD-9208868 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: July 17, 1992

Proposal publication date: February 11, 1992

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

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 85. Admission and Placement

Commitment and Reception

• 37 TAC §85.3

The Texas Youth Commission (TYC) adopts an amendment to §85.3, without changes to the proposed text as published in the May 26,

1992, issue of the *Texas Register* (17 TexReg 3832).

The amendment to the section will bring about more accurate information in agency rules.

The section concerns the admission process of youth in the custody of the agency. A reference to judge is being changed to committing court.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.071, which provides the Texas Youth Commission with the authority to examine and make a study of each child and to establish rules governing the study.

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 June 26, 1992.

TRD-9208922 Ron Jackson
Executive Director
Texas Youth Commission

Effective date: July 20, 1992

Proposal publication date: May 26, 1992

For further information, please call: (512) 483-5244

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Chapter 91. Discipline and Control

Due Process Hearings Procedures

• 37 TAC §91.33

The Texas Youth Commission (TYC) adopts an amendment to §91.33, with changes to the proposed text as published in the May 19, 1992, issue of the *Texas Register* (17 TexReg 3720).

The amendment to the section will bring about more timely and efficient administrative procedures in the scheduling and reviewing of the hearings, as well as assurance that the youth will receive documentation of the results.

The amendment provides instructions for the primary service worker to schedule hearings and requires that the youth be given a copy of the hearing manager's report of a Level II hearing. The change to the proposed text states that a delay of more than seven days in scheduling the hearing of a youth in the custody of TYC must be justified by documentation of circumstances which made it unavoidable to schedule the hearing earlier.

The amendment is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

§91.3. Level II Hearing Procedure.

(a) (No change.)

(b) Rules.

(1) The primary service worker shall call the institutional facility administrator or regional director to schedule the hearing as soon as practical but not later than seven days, excluding weekends and holidays, after the alleged violation. A delay-of more than seven days in scheduling the hearing must be justified by documentation of circumstances which made it impossible, impractical, or inappropriate to schedule the hearing earlier.

(2) The institutional facility administrator or regional director responsible for the program to which the youth is currently assigned appoints an impartial staff member to act as hearing manager.

(3) The hearing manager shall be a Texas Youth Commission (TYC) staff member who is trained to function as a hearing manager and has not previously participated in a Level II hearing for the youth.

(A) If the youth is currently assigned to an institution, the hearing manager shall be someone not directly responsible for supervising the youth.

(B) If the youth is currently assigned to a halfway house, the hearing manager shall not be a member of the halfway house staff.

(C) If the youth is currently assigned to a contract program, the hearing manager shall not be the TYC casemanager assigned to that program.

(D) If the youth is currently assigned to his or her home, the hearing manager shall not be the parole officer assigned to the youth's case.

(4) The youth's primary service worker shall be responsible for assembling all evidence and giving all notices required for the hearing.

(5) The youth shall be given written notice of his rights not less than 24 hours prior to the hearing. The youth's rights are:

(A) the right to remain silent;

(B) the right to be assisted by an advocate at the hearing;

(C) the right to confront and cross-examine adverse witnesses who testify at the hearing;

(D) the right to contest adverse evidence admitted at the hearing;

(E) the right to call readily available witnesses and present readily available evidence on his own behalf at the hearing; and

(F) the right to appeal from the results of the hearing.

(6) The youth shall be given written notice of the reasons for calling the hearing, the proposed action to be taken, and the evidence to be relied upon not less than 24 hours prior to the hearing.

(7) Reasonable efforts shall be made to notify the youth's parent(s) of the time and place of the hearing not less than 24 hours prior to the hearing.

(8) The hearing shall consist of two parts: fact-finding and disposition, and shall be held where the youth resides unless the hearing manager determines that some other site is more appropriate.

(9) The youth shall be assisted by an informed and responsible advocate appointed by the hearing manager. Whenever practical, the advocate shall be a person chosen by the youth.

(10) The hearing shall be tape recorded and the recording shall be the official record of the hearing. Tape recording shall be preserved for six months following the hearing.

(11) The youth shall be present during the hearing unless he waives his presence or his behavior prevents the hearing from proceeding in an orderly and expeditious fashion.

(A) A waiver of the youth's presence shall be in writing and signed by the youth and his advocate.

(B) If the youth waives his presence, the hearing may be conducted by teleconference.

(C) If a youth is excluded for behavioral reasons, those reasons shall be documented in the hearing record.

(12) All credible evidence may be considered, irrespective of its form.

(13) A victim who appears as a witness should be provided a waiting area where he is not likely to come in contact with the youth except during the hearing.

(14) Witnesses need not take an oath prior to testifying.

(15) The hearing manager, primary service worker, and advocate may question each witness in turn. The primary service worker and advocate may offer summation statements.

(16) The standard of proof for all disputed issues is a preponderance of the evidence. "Preponderance of the evidence" means whether the credible evidence makes it more likely than not that a particular proposition is true.

(17) After announcing his findings of fact, the hearing manager shall proceed to disposition to determine whether the action proposed by staff is appropriate under TYC policy.

(A) A hearing manager's decision that a youth be transferred is final.

(B) A hearing manager's decision to assign a minimum length of stay is final subject to approval by the executive director or designee. If, subsequent to the assignment of a minimum length of stay, the executive director disapproves the assignment, neither the assignment nor a transfer may then occur.

(18) The hearing manager shall prepare the Hearing Manager's Report of a Level II Hearing, CCF-170 of his findings which includes grounds for the hearing and evidence relied upon and the decision.

(19) The youth is informed of his/her right to appeal to the executive director. The pendency of an appeal shall not preclude implementation of the hearing manager's dispositional decision.

(20) A copy of the report (CCF-170), is given to the youth immediately following the close of the hearing.

(21) A copy of the report is placed in the masterfile only if the reasons for the hearing are found, i.e., it is proven that the youth violated the rules. If the reasons for the hearing are not found, all references to the disciplinary action are removed from the youth's masterfile.

(22) The hearing manager's report is reviewed by the institutional superintendent or regional director, as are all disciplinary reports, to assure consistency in the application of policy.

(23) Copies of all Hearing Manager's Report of a Level II Hearing, CCF-170 are maintained by the institutional superintendent and regional director.

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

Issued in Austin, Texas, on June 24, 1992.

TRD-9208829 Ron Jackson
Executive Director
Texas Youth Commission

Effective date: July 17, 1992

Proposal publication date: May 19, 1992

For further information, please call: (512) 483-5244

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Chapter 93. General Provisions

Records, Reports, Forms

• 37 TAC §93.57, §93.59

The Texas Youth Commission (TYC) adopts amendments to §93.57 and §93. 59, concerning records, reports, forms, without changes to the proposed text as published in the May 26, 1992, issue of the *Texas Register* (17 TexReg 3833).

The amendments to the sections will bring about needed information readily available to a TYC program receiving a new youth.

The sections concern access to youth records and youth masterfile records. In §93.57 corrections in terms are being made. In §93.59, the amendment states that the masterfile will be moved with a youth or by UPS following a youth's movement to a different TYC program.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, §61.073, which provides the Texas Youth Commission with the authority to keep written records on each child.

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 June 26, 1992.

TRD-9208923 Ron Jackson
Executive Director
Texas Youth Commission

Effective date: July 20, 1992

Proposal publication date: May 26, 1992

For further information, please call: (512) 483-5244

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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 S. Reimbursement Methodology for Nursing Facilities

• 40 TAC §19.1807

The Texas Department of Human Services (DHS) adopts an amendment to §19. 1807, concerning rate setting methodology, without changes to the proposed text as published in the May 22, 1992, issue of the *Texas Register* (17 TexReg 3777).

The justification for the amendment is to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) and federal regulations issued September 26, 1991, by the Health Care Financing Administration (HCFA). OBRA '90 and the HCFA regulations require DHS to reimburse individuals directly for costs they incur in completing a nurse aide training and competency evaluation program prior to nursing facility employment. The individual must be employed within 12 months of testing. The basis for reimbursement requires that the individual be employed for at least six months in a nursing facility to receive full reimbursement and at least three months to receive partial reimbursement.

The amendment will function by ensuring an improved level of competency of nurse aides employed in nursing facilities as a result of state reimbursement for training costs.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

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 June 26, 1992.

TRD-9208843 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Effective date: August 1, 1992

Proposal publication date: May 22, 1992

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

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Part IX. Texas Department on Aging

Chapter 255. Statutes and Regulations

Policies and Procedures

• 40 TAC §255.39

The Texas Department on Aging adopts amendments to §255.39 concerning funding allocation formula for retired senior volunteer projects, without changes to the proposed text as published in the April 28, 1992, issue of the *Texas Register* (17 TexReg 3051).

This section establishes the method for allocating state general revenue to the Retired Senior Volunteer Program (RSVP) projects in Texas.

This section will permit Retired Senior Volunteer Programs to understand the basis on which state general revenue is awarded to each project.

Favorable comments from three correspondents were received by the department. These correspondents expressed support especially for not using number of volunteers and volunteer hours as criteria to receive the funding needed, and the provision that no project will receive more than it's required match as determined at the start of the state fiscal year.

Three correspondents from one RSVP project opposed to the funding formula as proposed believe that the formula does not give credit to programs which are successful in recruiting volunteers; that undue weight is given to the total square miles in each project's service area; and that emphasis is given to providing match money to those projects which are unwilling or unable to raise money on their own.

Commenting in favor of the amendment were the East Texas Human Development Corporation, Texas Tech University RSVP Project, and Panhandle Community Services.

Commenting against the amendment were Senior Community Services, Inc., San Antonio RSVP Project, and Senator Cyndi Taylor Krier.

The department recognizes the effect this formula may have on a few of the RSVP projects but continues to support the proposed rule for adoption because of the benefits it will provide to the majority of the projects.

The amendment is adopted under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the department.

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

Issued in Austin, Texas, on June 23, 1992.

TRD-9208768 Mary Sapp
Executive Director
Texas Department on Aging

Effective date: July 15, 1992

Proposal publication date: April 28, 1992

For further information, please call: (512) 444-2727

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Texas Department of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's note: As required by the Insurance Code, Article 5.96 and Article 5.97, the Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act.

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the State Board of Insurance, 333 Guadalupe, Austin.)

The State Board of Insurance adopted on June 24, 1992, a filing by the Western Surety Company of Sioux Falls, South Dakota, of revisions to the standard and uniform Notary Public Errors and Omissions Policy.

In accordance with the provisions of the Insurance Code, Article 5.97, the text of the filing has been filed in the Office of the Chief Clerk of the Department of Insurance. The filing has been available for public inspection for 15 days, and a public hearing has not been requested by any party.

The policy revisions incorporate previously board approved amendatory language into the policy. The revisions add policy wording required by the Insurance Code, Articles 21.56, relating to notice of settlement of liability claims and 21.49-2D relating to cancellation and nonrenewal of certain policies. The revisions also amend the complaint notice to comply with the provisions of 28 TAC §1.601 relating to toll-free telephone numbers and information and complaint procedures.

There are no rate consequences to the adopted form revisions.

This notice is filed pursuant to the Insurance Code, Article 5.97, which exempts board action on this filing from the requirements of the Administrative Procedure and Texas Register Act.

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 June 29, 1992.

TRD-9208971 Linda K von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Effective date: July 18, 1992

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

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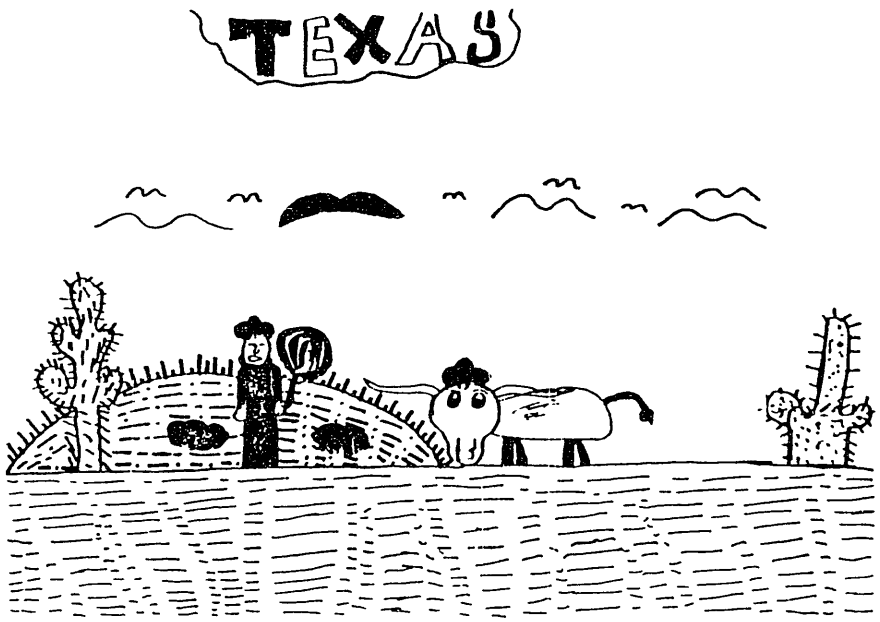

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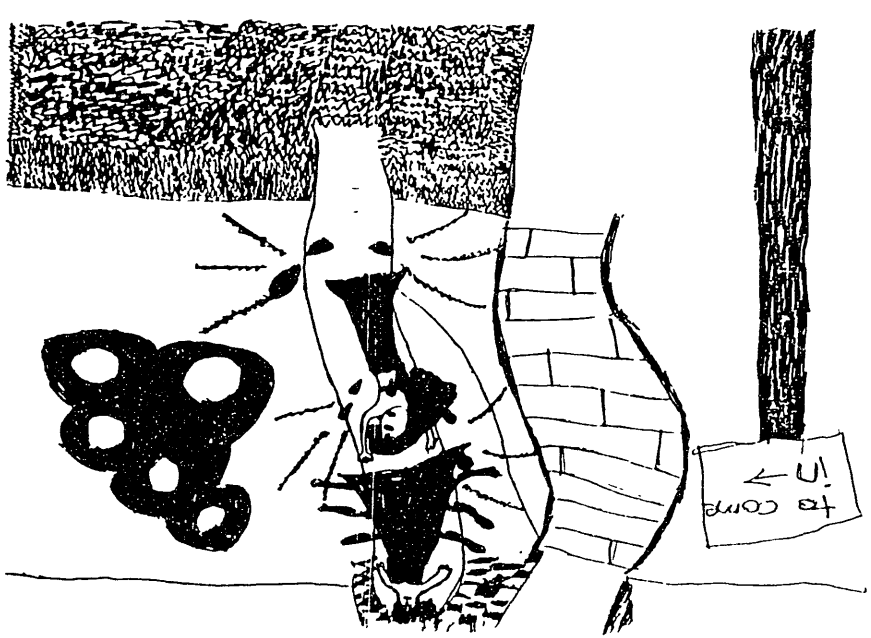

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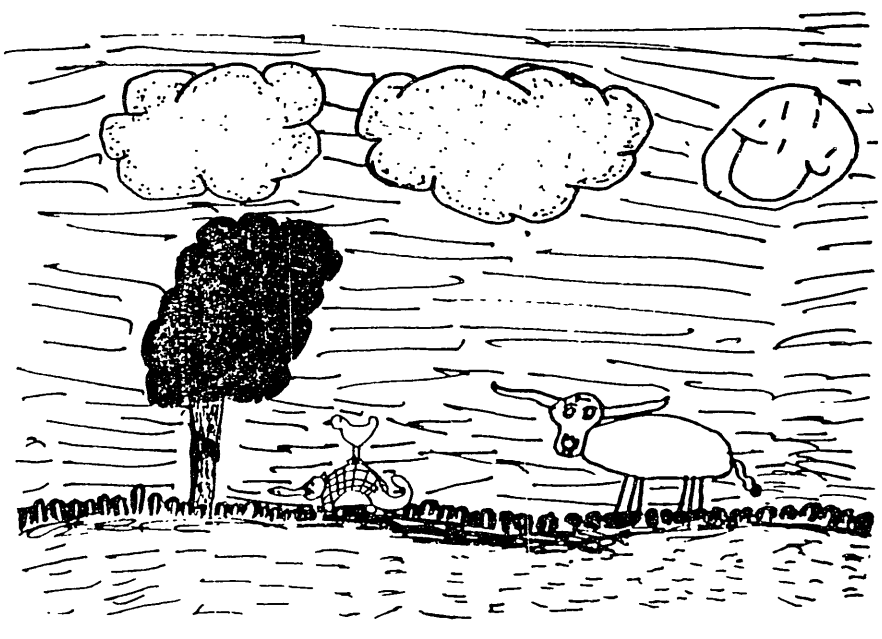

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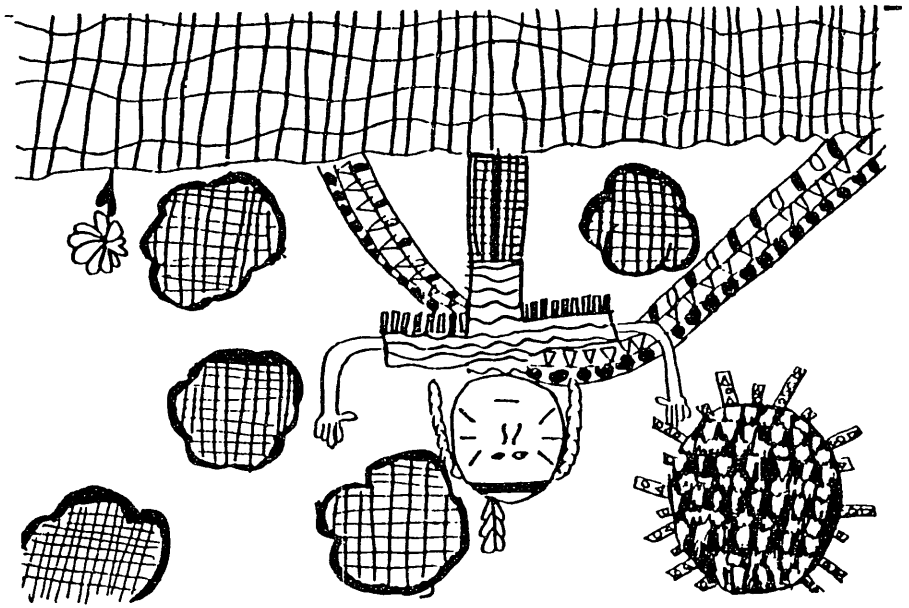

K-23

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 outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, 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 Commission on Alcohol and Drug Abuse

Monday, July 6, 1992, 1 p.m. The Criminal Justice Issues Committee of the Texas Commission on Alcohol and Drug Abuse will meet at the Perry Brooks Building, Eighth Floor Conference Room, 720 Brazos Street, Suite 800, Austin. According to the complete agenda, the committee will review and discuss history of legislation creating therapeutic community beds in prison system; updates and current status of Request for Proposals sent out by the Texas Commission on Alcohol and Drug Abuse; report on funding availability for programs; history and update on treatment alternatives to incarceration programs; plans for future activities; after care issues; and Phase in of House Bill 93 beds.

Contact: Ted Sellers, 720 Brazos Street, #403, Austin, Texas 78701, (512) 867-8805.

Filed: June 26, 1992, 8:14 a.m.

TRD-9208826

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Texas Education Agency

Monday, July 6, 1992, 3 p.m. The State Textbook Language Arts Committee of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the complete agenda, the committee will hear testimony, limited to residents of Texas and representatives of publishing companies who submitted written requests to appear on or before the June 15 deadline. Members of the State Textbook Language Arts Committee remain under no-contact rules until the close of balloting in August 1992.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: June 26, 1992, 4:25 p.m.

TRD-9208889

Tuesday, July 7, 1992, 8:30 a.m. The State Textbook Social Studies Committee of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 1-104, Austin. According to the complete agenda, the committee will hear testimony, limited to residents of Texas and representatives of publishing companies who submitted written requests to appear on or before the June 15 deadline. Members of the State Textbook Social Studies Committee remain under no-contact rules until the close of balloting in August 1992.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: June 26, 1992, 4:24 p.m.

TRD-9208888

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Texas Employment Commission

Tuesday, July 7, 1992, 8:30 a.m. The Texas Employment Commission will meet at the TEC Building, 101 East 15th Street, Room 644, Austin. According to the agenda summary, the commission will discuss approval of prior meeting notes; meet in executive session to discuss Administaff, Inc. versus James Kaster et al; John Chong and Lily Chong versus Texas Employment Commission; Relief Services, Inc. versus Texas Employment Commission; and relocation of agency headquarters; actions, if any, resulting from executive session; discussion and authorization for expenditure for a fair market value appraisal and other services necessarily attendant to the sale of Marshall agency-owned building; internal procedures of commission appeals; consideration and action on tax liability case and higher level appeals in unemployment compensation cases listed on Commission Docket 27; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: June 29, 1992, 4:10 p.m.

TRD-9209024

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Texas Commission on Fire Protection

Wednesday-Friday, July 8-10, 1992, 9 a.m. (Revised agenda) The Texas Commission on Fire Protection will meet at 3006B Longhorn Boulevard, Austin. According to the agenda summary, the commission will review and discuss matters from the executive director; discussion and possible approval of policies that define the respective responsibilities of the commission and the staff of the commission, including, but not limited to, disciplinary actions against persons and entities regulated by the commission and appeals to the commission.

Contact: Jack Woods, P.O. Box 2286, Austin, Texas 78768-2286, (512) 322-3550.

Filed: June 29, 1992, 8:52 a.m.

TRD-9208908

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Texas Department of Insurance

Monday, July 6, 1992, 9 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at the Greenshores Resort, 6900 Greenshores Road, Austin. According to the complete agenda, the board will discuss and analyze agency planning and budgetary concepts and review of internal policies for next fiscal year.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: June 26, 1992, 8:24 a.m.

TRD-9208827

Tuesday, July 7, 1992, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby III, Eighth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Employers Mutual Casualty Company, Des Moines, Iowa, and Emcasco Insurance Company, Des Moines, Iowa, which hold certificates of authority. Docket Number 11506.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby III, Austin, Texas 78701, (512) 475-2983.

Filed: June 29, 1992, 9:02 a.m.

TRD-9208911

Tuesday, July 7, 1992, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby III, Eighth Floor, Austin. According to the complete agenda, the section will reopen a public hearing to consider the application of Robert L. Sanchez, Midlothian, for a Group I, Legal Reserve Life Insurance Agent's license. Docket Number 11402.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby III, Austin, Texas 78701, (512) 475-2983.

Filed: June 29, 1992, 9:02 a.m.

TRD-9208912

Wednesday, July 8, 1992, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby III, Eighth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Robert Lawrence Bennett, of Houston, who holds a Group I, Legal Reserve Life Insurance Agent's license and Local Recording Agent's license. Docket Number 11495.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby III, Austin, Texas 78701, (512) 475-2983.

Filed: June 29, 1992, 9:06 a.m.

TRD-9208913

Thursday, July 9, 1992, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby III, Eighth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether a cease and desist order should be issued against Sentinel Insurance Administrators, Inc.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby III, Austin, Texas 78701, (512) 475-2983.

Filed: June 29, 1992, 9:06 a.m.

TRD-9208914

Monday, July 13, 1992, 1:30 p.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby III, Eighth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against Ronnie D. Clayton, of Atlanta, who holds a Local Recording Agent's license and to consider the application for a Group I, Legal Reserve Life Insurance Agent's license. Docket Number 11502.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby III, Austin, Texas 78701, (512) 475-2983.

Filed: June 29, 1992, 9:06 a.m.

TRD-9208915

Wednesday, July 22, 1992, 2 p.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, 333 Guadalupe Street, Room 100, Austin. According to the complete agenda, the section will consider Docket Number 1910 concerning an appeal from the action of the Commissioner of Insurance disapproving a negotiated deductible on a workers' compensation insurance policy.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: June 25, 1992, 3:26 p.m.

TRD-9208822

Wednesday, July 22, 1992, 2 p.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, 333 Guadalupe Street, Room 100, Austin. According to the complete agenda, the board will hold a public hearing under Docket Number R-1912 to consider proposed amendments to 28 TAC §§21.202-21.204 concerning unfair claims settlement practices. The proposed rule was published in the May 29, 1992 issue of the *Texas Register* (17 TexReg 3895).

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: June 25, 1992, 3:25 p.m.

TRD-9208821

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Texas Juvenile Probation Commission

Thursday, July 9, 1992, 6:30 p.m. The Evaluation Committee of the Texas Juvenile Probation Commission will meet at the Guest Quarters Hotel, 303 West 15th Street, Austin. According to the agenda summary, the committee will call the meeting to order; and discuss the personnel evaluation of the executive director. This meeting will be closed to the public under the authority of Article 6252-17, §2(g), Texas Revised Civil Statutes.

Contact: Bernard Licarione, P.O. Box 13547, Austin, Texas 78711, (512) 443-2001.

Filed: June 29, 1992, 10:36 a.m.

TRD-9208980

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Texas Department of Licensing and Regulation

Monday, July 6, 1992, 9 a.m. The Inspections and Investigations, Tow Trucks of the Texas Department of Licensing and Regulation will meet at the E. O. Thompson Building, 920 Colorado Street, Room 1012, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Joel Gardner doing business as Midway Auto for violation of Vernon's Texas Civil Statutes, Articles 6687-9b and 9100.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 475-2899.

Filed: June 26, 1992, 9:57 a.m.

TRD-9208840

Tuesday, July 7, 1992, 9 a.m. The Inspections and Investigations, Air Conditioning of the Texas Department of Licensing and Regulation will meet at the E. O. Thompson Building, 920 Colorado Street, Room 1012, Austin. According to the complete agenda, the department will reopen the administrative hearing to receive additional testimony in the case of Timothy Smith doing business as Smith Services for violation of Vernon's Texas Civil Statutes, Articles 8861 and 9100.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 475-2899.

Filed: June 26, 1992, 9:56 a.m.

TRD-9208839

Wednesday, July 8, 1992, 9 a.m. (Rescheduled from June 8, 1992). The Inspections and Investigations, Tow Trucks of the Texas Department of Licensing and Regulation will meet at the E. O. Thompson Building, 920 Colorado Street, Room 1012, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Agency Rent-A-Car, Inc. for violation of Vernon's Texas Civil Statutes, Articles 6687-9b and 9100.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 475-2899.

Filed: June 26, 1992, 9:57 a.m.

TRD-9208841

Thursday, July 9, 1992, 9 a.m. The Inspections and Investigations, Manufactured Housing of the Texas Department of Licensing and Regulation will meet at the E. O. Thompson Building, 920 Colorado Street, Third Floor Conference Room, Austin. According to the complete agenda, the department will reopen the administrative hearing to consider the admission of state's exhibits "B" and "D" into the record in the case of Bob Douthit, Douthit House Movers for violation of Vernon's Texas Civil Statutes, Articles 5221f and 9100.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 475-2899.

Filed: June 29, 1992, 2:48 p.m.

TRD-9209012

Monday, July 13, 1992, 9 a.m. The Texas Department of Licensing and Regulation will meet at the E. O. Thompson Building, 920 Colorado Street, Room 1012, Austin. According to the complete agenda, the department will hold an appeal hearing to consider the grievance of Charles Reed in accordance with the Departmental Administrative Operating Procedures, Section 14, adhering to the limits of §14.14.05 of the same rules.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 475-2899.

Filed: June 29, 1992, 2:48 p.m.

TRD-9209013

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Texas Board of Licensure for Nursing Home Administrators

Thursday, July 9, 1992, 7 p.m. The Policy Procedures Committee of the Texas Board of Licensure for Nursing Home Administrators will meet at 4800 North Lamar Boulevard, Suite 310, Austin. According to the complete agenda, the committee will call the meeting to order; take roll call; develop board policy of public comments; discuss personnel policy delay; discuss disciplinary policy; and discuss classified advertising in the quarterly newsletter. The education committee will review education waiver requests; discuss test revisions; review test results from May exam; review preceptor curriculum; discuss audio/video CE credit; discuss partial CE credit; review sponsor approval requests; and review requests to approve additional CE credit.

Contact: Janet Lacy, 4800 North Lamar Boulevard, Suite 310, Austin, Texas 78756, (512) 458-1955.

Filed: June 29, 1992, 3:23 p.m.

TRD-9209016

Friday, July 9, 1992, 7 p.m. The Finance Committee of the Texas Board of Licensure for Nursing Home Administrators will meet at 4800 North Lamar Boulevard, Suite 310, Austin. According to the complete agenda, the finance committee will call the meeting to order; take roll call; review budget-past and projected; review special funding approval by Governor's Office; review changes anticipated by Preceptor Seminar fee of $10; discuss increasing CE hours to 40 over a two year period, including a mandatory Ethics Seminar and Regulations Seminar, reflecting current regulations.

Contact: Janet Lacy, 4800 North Lamar Boulevard, Suite 310, Austin, Texas 78756, (512) 458-1955.

Filed: June 29, 1992, 3:24 p.m.

TRD-9209017

Friday, July 10, 1992, 10 a.m. The Texas Board of Licensure for Nursing Home Administrators will meet at the Chris Cole Building, 4800 North Lamar Boulevard, Conference Room, Austin. According to the agenda summary, the board will call the meeting to order; take roll call; agenda approval; discuss approval of minutes of April 24, 1992 and May 9, 1992 meetings; review Strategic Plan for Governor's Office, LAR and Performance Audit; committee reports; taskforce on long term care; executive director's proposal for decision on licensure disciplinary matters; staff reports; report from Ex-Officio members; chair report; guest speaker-representative from Sunset Commission; discuss personnel matters; final vote on application procedures; view AGE WAVE video; review agency code of ethics; code of ethics for nursing home administrators; discuss task force for test revision; and adjourn.

Contact: Janet Lacy, 4800 North Lamar Boulevard, Suite 310, Austin, Texas 78756, (512) 458-1955.

Filed: June 29, 1992, 3:26 p.m.

TRD-9209018

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Texas Optometry Board

Wednesday, July 15, 1992, 1:30 p.m. The Investigation-Enforcement Committee of the Texas Optometry Board will meet at 9101 Burnet Road, Suite 214, Austin. According to the complete agenda, the committee will hold informal conferences with licensees regarding possible violations of the Texas Optometry Act; and will review complaint files and meet with executive director.

Contact: Lois Ewald, 9101 Burnet Road, Suite 214, Austin, Texas 78758, (512) 835-1938.

Filed: June 26, 1992, 9:18 a.m.

TRD-9208837

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Texas Parks and Wildlife Department

Wednesday, July 8, 1992, 2 p.m. The Operation Game Thief Committee of the Texas Parks and Wildlife Department will meet at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin. According to the complete agenda, the committee will discuss approval of November 6, 1991 public hearing minutes; discuss financial report; consider payment of rewards; and set date of next meeting.

Contact: Captain Steve Pritchett, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4626.

Filed: June 29, 1992, 9:40 a.m.

TRD-9208966

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Public Utility Commission of Texas

Monday, July 6, 1992, 1 p.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the commission will hold an open meeting at which the Department of Energy will give a presentation on the supercollider project.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 26, 1992, 3:28 p.m.

TRD-9208871

Monday, July 6, 1992, 1:30 p.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the commission will hold a prehearing conference in Docket Number 10831-application of Southwestern Bell Telephone Company to revise its tariff to redefine the Point of demarcation ("Demarc") and the location of the network.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 26, 1992, 3:29 p.m.

TRD-9208872

Thursday, July 9, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the commission will hold a settlement conference in Docket Number 10921-Brazos Electric Power Cooperative, Inc. standard avoided cost calculation for purchases of capacity and energy from qualifying facilities, pursuant to PUC Substantive Rule 23. 66(h).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 26, 1992, 3:29 p.m.

TRD-9208874

Tuesday, July 14, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the commission will hold a hearing on the merits in Docket Number 11074-application of Pedernales Electric Cooperative, Inc. to revise tariff schedules PCA and EIS.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 25, 1992, 3:03 p.m.

TRD-9208819

Monday, July 20, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the commission will hold a settlement conference in Docket Number 10836-Southwestern Public Service Company standard avoided cost calculation for purchases of capacity and energy from qualifying facilities, pursuant to PUC Substantive Rule 23.66(h).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 26, 1992, 3:29 p.m.

TRD-9208876

Wednesday, July 29, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the commission will hold a settlement conference in Docket Number 10823-West Texas Utilities Company standard avoided cost calculation for purchases of capacity and energy from qualifying facilities, pursuant to PUC Substantive Rule 23.66(h).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 26, 1992 3:29 p.m.

TRD-9208877

Wednesday, August 5, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the commission will hold a settlement conference in Docket Number 10825-Southwestern Electric Power Company standard avoided cost calculation for purchases of capacity and energy from qualifying facilities, pursuant to PUC Substantive Rule 23.66(h).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 26, 1992, 3:29 p.m.

TRD-9208878

Monday, August 10, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the commission will hold a settlement conference in Docket Number 11229-application of West Texas Utilities Company to revise tariff for experimental economic development rider.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 26, 1992, 3:29 p.m.

TRD-9208873

Wednesday, August 12, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the commission will hold a settlement conference in Docket Number 10826-Central Power and Light Company standard avoided cost calculation for purchase of capacity and energy from qualifying facilities, pursuant to PUC Substantive Rule 23.66(h).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 26, 1992, 3:29 p.m.

TRD-9208879

Thursday, August 27, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the commission will hold a settlement conference in Docket Number 10856-Texas New Mexico Power Company standard avoided cost calculation for purchases of capacity and energy from qualifying facilities, pursuant to PUC Substantive Rule 23.66(h).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 26, 1992, 3:30 p.m.

TRD-9208880

Friday, September 25, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the commission will hold a settlement conference in Docket Number 10917-Gulf States Utilities Company standard avoided cost calculation for purchases of capacity and energy from qualifying facilities, pursuant to PUC Substantive Rule 23.66(h).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 26, 1992, 3:30 p.m.

TRD-9208881

Tuesday, September 29, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the commission will hold a settlement conference in Docket Number 10913-Sam Rayburn G&T Electric Cooperative, Inc. standard avoided cost calculation for purchases capacity and energy from qualifying facilities, pursuant to PUC Substantive Rule 23.66(h).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 26, 1992, 3:30 p.m.

TRD-9208882

Thursday, October 1, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the com-

mission will hold a settlement conference in Docket Number 10912-Tex-La Electric Cooperative, Inc. standard avoided cost calculation for purchases capacity and energy from qualifying facilities, pursuant to PUC Substantive Rule 23.66(h).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 26, 1992, 3:30 p.m.

TRD-9208883

Thursday, October 1, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the commission will hold a settlement conference in Docket Number 10911-Northeast Texas Electric Cooperative, Inc. standard avoided cost calculation for purchases capacity and energy from qualifying facilities, pursuant to PUC Substantive Rule 23.66(h).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 26, 1992, 3:30 p.m.

TRD-9208884

Wednesday, October 7, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the commission will hold a settlement conference in Docket Number 10915-Lower Colorado River Authority standard avoided cost calculation for purchases of capacity and energy from qualifying facilities, pursuant to PUC Substantive Rule 23.66(h).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 26, 1992, 3:30 p.m.

TRD-9208885

Thursday, October 8, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 11218-application of Southwestern Bell Telephone Company for change in depreciation rates.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 29, 1992, 2:55 p.m.

TRD-9209014

Wednesday, October 14, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the commission will hold a settlement conference in Docket Number 10824-El Paso Electric Company standard avoided cost calculation for purchases of capacity and energy from qualifying facilities, pursuant to PUC Substantive Rule 23.66(h).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 26, 1992, 3:29 p.m.

TRD-9208875

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Texas Racing Commission

Monday, July 6, 1992, 10 a.m. The Texas Racing Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the complete agenda, the commission will call the meeting to order; take roll call; discuss approval of minutes from June 1, 1992; vote to adopt the following Horse and Greyhound Rules: §§319.365, 313.103, 319. 110, 309.198, 319.3, 319.5, 319.111, 309.316, 311.174, and 319.202; presentation by Tom Alexander regarding Simulcasting and Drugs and Uniform Rules; consideration of and votes on the following matters: request by Bandera Downs, Inc., for approval of proposed ownership change; request for approval of agreement between Manor Downs, Inc., and Texas Horsemen's Benevolent and Protective Association; application period to receive applications for Class 3 or 4 racetrack license; request by Gulf Greyhound Partners, Ltd., for exemptions regarding width of track and banking; proposal for decision in Number 92-02-02, in regard: the appeal by Dale Roberts from Stewards' Ruling Trinity 436; discuss old and new business; and adjourn.

Contact: Paula Cochran Carter, P.O. Box 12080, Austin, Texas 78701, (512) 794-8461.

Filed: June 26, 1992, 12:15 p.m.

TRD-9208851

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School Land Board

Tuesday, July 7, 1992, 10 a.m. The School Land Board will meet at the General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Room 831, Austin. According to the agenda summary, the board will discuss approval of previous board meeting minutes; pooling applications, Clarksville (Cotton Valley) Field, Red River County; applications to lease highway right of way for oil and gas, Orange County; coastal public lands-lease applications, Turtle Bay, Matagorda County and Hynes Bay, Refugio County; easement application, Galveston Bay, Galveston County; structure permit terminations, Espiritu Santo Bay, Calhoun County; Laguna Madre, Cameron and Kleberg Counties; structure permit amendment, Laguna Madre, Cameron County; meet in executive session to discuss real estate transaction, Bexar County; and to discuss pending and proposed litigation.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: June 29, 1992, 4:15 p.m.

TRD-9209025

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Stephen F. Austin State University

Monday, July 13, 1992, 1:30 p.m. The Board of Regents of Stephen F. Austin State University will meet at the Arlington Park Centre, Arlington. According to the agenda summary, the board will discuss approval of minutes; discuss personnel; academic and student affairs; financial affairs; buildings and grounds; reports; and meet in executive session.

Contact: Dr. William J. Brophy, P.O. Box 6078, Nacogdoches, Texas 75962, (409) 568-2201.

Filed: June 29, 1992, 4:57 p.m.

TRD-9209029

Tuesday, July 14, 1992, 9 a.m. The Board of Regents of Stephen F. Austin State University will meet at the Arlington Park Centre, Arlington. According to the agenda summary, the board will discuss approval of minutes; discuss personnel; academic and student affairs; financial affairs; buildings and grounds; reports; and meet in executive session.

Contact: Dr. William J. Brophy, P.O. Box 6078, Nacogdoches, Texas 75962, (409) 568-2201.

Filed: June 29, 1992, 4:57 p.m.

TRD-9209028

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Texas Planning Council for Developmental Disabilities

Wednesday, July 8, 1992, 9 a.m. The Advocacy and Public Information Committee of the Texas Planning Council for Developmental Disabilities will meet at the Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Austin. According to the agenda summary, the committee will call the meeting to order; discuss approval of minutes; presentation by Jennifer Cernoch, Texas Respite Resource Network; position statements: review draft community living

position; review draft child care position; state policy/legislation: review issues to include in legislative platform; federal policy/legislation; and chairs report. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Denese Holman at (512) 483-4087.

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4081.

Filed: June 25, 1992, 11:27 a.m.

TRD-9208809

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Texas Southern University

Tuesday, July 7, 1992, 3 p.m. The Personnel and Academic Affairs Committee of the Board of Regents of Texas Southern University will meet at Texas Southern University, 3100 Cleburne Avenue, Hannah Hall, Room 117, Houston. According to the complete agenda, the committee will consider reports on progress of academic activities and programs; and personnel actions.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: June 26, 1992, 9:16 a.m.

TRD-9208834

Thursday, July 9, 1992, 8:30 a.m. The Board of Regents of Texas Southern University will meet at Texas Southern University, University Library, Fifth Floor, Houston. According to the complete agenda, the board will meet to consider minutes; report of the president; report from standing committees; and meet in executive session.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: June 26, 1992, 9:17 a.m.

TRD-9208835

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Texas Water Commission

Wednesday, July 8, 1992, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the commission. 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 scheduling an item in the entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: June 26, 1992, 4:51 p.m.

TRD-9208900

Wednesday, July 8, 1992, 9 a.m. (Revised agenda. Contested). The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the commission. 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 scheduling an item in the entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: June 29, 1992, 2:07 p.m.

TRD-9208998

Wednesday, July 8, 1992, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the commission including specifically the adoption of new or amended agency regulations. 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 the entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: June 26, 1992, 4:52 p.m.

TRD-9208901

Wednesday, July 8, 1992, 9 a.m. (Revised agenda. contested). The Texas Water Commission will meet at Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the commission. 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 the entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: June 29, 1992, 4:19 p.m.

TRD 9209026

Wednesday, July 22, 1992, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will consider a Temporary Order for Mission Consolidated Independent School District to authorize the disposal of treated domestic wastewater effluent from a new elementary school by subsurface drain field. The wastewater treatment facility is to be 1/2 mile west of State Highway 107 and approximately one mile south of FM Road 676 in Hidalgo County. Temporary Order Number 92-11T.

Contact: John Carleton, P.O. Box 13087, Austin, Texas 78711, (512) 463-8069.

Filed: June 26, 1992, 9:16 a.m.

TRD-9208831

Tuesday, July 28, 1992, 1 p.m. (Rescheduled from July 21, 1992). The Office of Hearings Examiner of the Texas Water Commission will meet at the San Antonio Convention Center, Centro A & D, 200 East Market, San Antonio. According to the agenda summary, the commission will consider an amended application and preliminary public hearing on Living Waters Artesian Springs, Limited for Proposed Permit Number 03462. The permit would authorize the disposal of waste generated from an intensive aquacultural operation. The facility is located approximately 400 feet east-southeast of the intersection of State Highway 1604 and FM 2536, and approximately 13 miles southwest of the City of San Antonio, Bexar County.

Contact: Claire Arenson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: June 26, 1992, 9:16 p.m.

TRD-9208832

Tuesday, August 4, 1992, 1 p.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the Erath County Courthouse, County Courtroom, On the Square, Stephenville. According to the agenda summary, the commission will hold a public hearing on an application for waste disposal permit by Jack Tuls doing business as Tuls Dairy to authorize disposal of waste and wastewater from a dairy. The dairy is on the north side of FM Road 1188, approximately three miles northwest of the intersection of FM Road 1188 and Highway 377 in Erath County.

Contact: Clay Harris, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: June 26, 1992, 9:16 a.m.

TRD-9208833

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Texas Workers' Compensation Insurance Facility

Tuesday, July 7, 1992, 9 a.m. The Governing Committee of the Texas Workers' Compensation Insurance Facility will meet at the Guest Quarters Hotel, 303 West 15th Street, Austin. According to the agenda summary, the committee will discuss approval of the minutes of June 2, 1992; consider and possibly act on appeal by Kamyr, Inc.; new procedures for handling and accounting for deposit premium funds; report on tax exempt ruling from I.R.S.; receipt and discussion of Price Waterhouse report on status of audit and tax issues; action on procedures for wire transfer of funds; unpaid and deferred assessments; revised 1992 operating budget; requests for reimbursement from servicing companies; recommendations from Appeals Subcommittee; hear executive director's report; meet in executive session(s) regarding personnel matters and pending legal matters; following closed executive session(s), the Governing Committee will reconvene in open and public session and take any action as may be desirable or necessary as a result of the closed deliberations.

Contact: Russell R. Oliver, 8303 MoPac Expressway, North, #310, Austin, Texas 78759, (512) 345-1222.

Filed: June 29, 1992, 3:41 p.m.

TRD-9209019

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Regional Meetings

Meetings Filed June 25, 1992

The Andrews Center Board of Trustees met at 2323 West Front Street, Board Room, Tyler, July 2, 1992, at 4 p.m. Information may be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75712, (903) 597-1351. TRD-9208810.

The Brazos River Authority Administrative Policy Committee, Board of Directors met at 4400 Cobbs Drive, Waco, June 30, 1992, at 9 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9208777.

The Brazos River Authority Water Quality Committee, will meet at the Skylab Room, West Tower, Hyatt Regency DFW Hotel, Dallas-Fort Worth Airport, July 7, 1992, at 10 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9208778.

The Brazos River Authority Visions 2000 Task Force, Board of Directors will meet at the Skylab Room, West Tower, Hyatt Regency DFW Hotel, Dallas-Fort Worth Airport, July 7, 1992, at 12:30 p.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9208779.

The Brazos River Authority Lake Management Committee, Board of Directors will meet at the Lake Supervisor's Office, Possum Kingdom Lake, July 10, 1992, at 9:30 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9208780.

The Brazos River Authority Water Utilization Committee, Board of Directors will meet at the Lake Supervisor's Office, Possum Kingdom Lake, July 10, 1992, at 12:30 p.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9208781.

The Cass County Appraisal District Appraisal Review Board met at the Cass County Appraisal District Office, 502 North Main Street, Linden, June 29, 1992, at 9 a.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (903) 756-7545. TRD-9208812.

The East Texas Council of Governments Executive Committee met at the ETCOG Offices, Kilgore, July 2, 1992, at 2 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9208808.

The Johnson County Rural Water Supply Corporation Board of Directors met at the Corporate Office, Highway 171 South, Cleburne, June 29, 1992, at 6 p.m. (Revised agenda). Information may be obtained from Charlene SoRelle, P.O. Box 509, Cleburne, Texas 76031, (817) 645-6646. TRD-9208825.

The Mental Health and Mental Retardation Authority of Brazos Valley Board of Trustees met at 804 Texas Avenue, Conference Room A, Bryan, July 2, 1992, at 1:30 p.m. Information may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77805, (409) 822-6467. TRD-9208813.

The Sabine Valley Center Finance Committee met at the Grove-Moore Center, 401 North Grove, Marshall, June 29, 1992, at 11 a.m. Information may be obtained from Mack O. Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9208815.

The Sabine Valley Center Personnel Committee will meet at the Administration Building, 107 Woodbine Place, Bramlette Lane, Longview, July 6, 1992, at 6:30 a.m. Information may be obtained from Mack O. Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9208817.

The Sabine Valley Center Care and Treatment Committee will meet at the Administration Building, 107 Woodbine Place, Bramlette Lane, Longview, July 6, 1992, at 6:30 p.m. Information may be obtained from Mack O. Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9208816.

The Sabine Valley Center Board of Trustees will meet at the Administration Building, 107 Woodbine Place, Bramlette Lane, Longview, July 6, 1992, at 7 p.m. Information may be obtained from Mack O. Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 758-2471. TRD-9208814.

The Wise County Appraisal District Appraisal Review Board held an emergency meeting at 210 East Walnut, Decatur, June 26, 1992, at 10 a.m. The emergency status was necessary as the original submission form mailed on June 11, 1992, received at state office on June 15, 1992 per return receipt, lost after receipt on June 15, 1992. Information may be obtained from La Reesea Pittman, 206 South State Street, Decatur, Texas 76234, (817) 627-3081. TRD-9208806.

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Meetings Filed June 26, 1992

The Austin-Travis County Mental Health and Mental Retardation Center Board of Trustees met at 1430 Collier Street, Board Room, Austin, June 29, 1992, at 5 p.m. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764-3548, (512) 447-4141. TRD-9208849.

The Bexar Appraisal District Appraisal Review Board will meet at 535 South Main, San Antonio, July 1-2, 6-9, 13-17, 21-24, 27-31, 1992, at 8:30 a.m. Information may be obtained from B. M. Houston, 535 South Main, San Antonio, Texas 78204, (512) 224-8511. TRD-9208902.

The Deep East Texas Council of Governments Regional Solid Waste Task Force met at the Lufkin City Hall, 300 Shepherd Avenue, Room 202, Lufkin, July 1, 1992, at 2 p.m. Information may be obtained from Katie Bayliss, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704. TRD-9208853.

The Creedmoor Maha Water Corporation Board of Directors met at 1699 Laws Road, Mustang Ridge, July 1, 1992, at 7:30 p.m. Information may be obtained from Charles P. Laws, 1699 Laws Road, Buda, Texas 78610, (512) 243-1991. TRD-9208856.

The Gonzales County Appraisal District Board of Directors met at 928 St. Paul Street, Gonzales, June 30, 1992, at 6 p.m. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (512) 672-2879. TRD-9208893.

The Gonzales County Appraisal District Appraisal Review Board met at 928 St. Paul Street, Gonzales, July 2, 1992, at 9 a.m. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (512) 672-2879. TRD-9208894.

The Liberty County Central Appraisal District Board of Directors held an emergency meeting at 315 Main Street, Liberty, July 1, 1992, at 9:30 a. m. The emergency status was necessary to discuss legal matters. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336-5722. TRD-9208899.

The Nolan County Central Appraisal District Board of Review met at the Nolan County Courthouse, Third Floor, Sweetwater, July 1, 1992, at 9 a. m. Information may be obtained from Lane Compton, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421. TRD-9208838.

The Shackelford Water Supply Corporation Directors met at the Fort Griffin Restaurant, Albany, July 1, 1992, at noon. Information may be obtained from E. D. Fincher, P.O. Box 1295, Albany, Texas 76430, (915) 762-2519. TRD-9208842.

The Texas Municipal Power Agency ("TMPA") Board of Directors met at the Texas Commerce Tower, 28th Floor, Main Conference Room, 2200 Ross Avenue, Dallas, June 30, 1992, at 6:45 p.m. Information may be obtained from Carl J. Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013. TRD-9208857.

The Texas Municipal Power Agency ("TMPA") Board of Directors met at the Texas Commerce Tower, 28th Floor, Main Conference Room, 2200 Ross Avenue, Dallas, July 1, 1992, at 7 p.m. Information may be obtained from Carl J. Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013. TRD-9208858.

The Wheeler County Appraisal District Board of Directors will meet at the District's Office, County Courthouse Square, Wheeler, July 6, 1992, at 7:30 p.m. Information may be obtained from Larry M. Schoenhals, P.O. Box 1200, Wheeler, Texas 79096, (808) 826-5900. TRD-9208836.

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Meetings Filed June 29, 1992

The Callahan County Appraisal District Board of Directors will meet at the Callahan County Appraisal District Office, 130-A West Fourth Street, Baird, July 6, 1992, at 7:30 p.m. Information may be obtained from Jane Ringhoffer, P.O. Box 806, Baird, Texas 79504, (915) 854-1165. TRD-9209008.

The Canadian River Municipal Water Authority Board of Directors will meet at the CRMWA Headquarters Building, Sanford Dam, Sanford, July 8, 1992, at 11 a.m. Information may be obtained from John C. Williams, P.O. Box 99, Sanford, Texas 79078, (806) 865-3325. TRD-9209009.

The Capital Area Planning Council General Assembly will meet at the Wyndham Southpark Hotel, IH-35 South/Ben White Boulevard, Austin, July 8, 1992, at 11:45 a.m. Information may be obtained from Richard G. Bean, 2520 IH-35 South, Suite 100, Austin, Texas 78704, (512) 443-7653. TRD-9208910.

The Cash Water Supply Corporation will meet at the Administration Office on FM 1564 East, Greenville, July 14, 1992, at 7 p.m. Information may be obtained from Donna Mohon, P.O. Box 8129, Greenville, Texas 75404, (903) 883-2695. TRD-9209010.

The Coryell County Appraisal District Appraisal Review Board met at the Coryell County Appraisal District Office, 113 North Seventh Street, Gatesville, July 1, 1992, at 9:30 a.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76528, (817) 865-6593. TRD-9209007.

The Garza County Appraisal District Board of Directors will meet at the Appraisal District Office, 124 East Main, Post, July 9, 1992, at 8:30 a. m. Information may be obtained from Billie Y. Windham, P.O. Drawer F, Post, Texas 79356, (806) 495-3518. TRD-9208968.

The Golden Crescent Private Industry Council, Inc. Quality Work Force Planning Committee will meet at the Student Center, Victoria College, Rooms A and B, 2200 East Red River, Victoria, July 8, 1992, at 10:30 a.m. Information may be obtained from Carol Matula, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9208909.

The Gray County Appraisal District Board of Directors met at 815 North Sumner, Pampa, July 2, 1992, at 5 p.m. Information may be obtained from Sherri Schaible, P.O. Box 836, Pampa, Texas 79066-0836, (806) 665-0791. TRD-9209015.

The Houston-Galveston Area Council Natural Resources Advisory Committee met at 3555 Timmons, Fourth Floor, Houston, July 2, 1992, at 3 p.m. Information may be obtained from Ann Weinle, 3555 Timmons Lane, Suite 500, Houston, Texas 77027, (713) 993-4566. TRD-9208981.

The Hunt County Appraisal District Appraisal Review Board will meet at the Hunt County Appraisal District, Board Room, 4801 King Street, Greenville, July 6-10, 1992, at 8:30 a.m. Information may be obtained from Mildred Compton, P.O. Box 1339, Greenville, Texas 75401, (903) 454-3510. TRD-9208907.

The Jones County Appraisal District met at the District's Office, 1137 East Court Plaza, Anson, July 2, 1992, at 9 a.m. Information may be obtained from John Steele, 1137 East Court Plaza, Anson, Texas 79501, (915) 823-2422. TRD-9208970.

The North Plains Groundwater Consolidated District Number Two Board of Directors will meet at the District Courtroom, Ochiltree County Courthouse, 511 South Main, Perryton, July 6, 1992, at 10 a.m. Information may be obtained from Richard S. Bowers, P.O. Box 795, Dumas, Texas 79029, (806) 935-6401. TRD-9209011.

The Region 14 Education Service Center Board of Directors will meet at 1850 Highway 351, Abilene, July 9, 1992, at 5:30 p.m. (Revised agenda and rescheduled from June 18, 1992). Information may be obtained from Taressa Huey, 1850 Highway 351, Abilene, Texas 79601-4750, (915) 675-8608. TRD-9208969.

The Tax Appraisal District of Bell County Appraisal Review Board will meet at the Tax Appraisal District Building, 411 East Central Avenue, Belton, July 6-9, 1992, at 9 a.m. Information may be obtained from Mike Watson, P.O. Box 390, Belton, Texas 76513-0390, ext. 29, (817) 939-5841. TRD-9208967.

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Meetings Filed June 30, 1992

The Ark-Tex Council of Governments Executive Committee held an emergency meeting at the Two Senoritas Restaurant (formerly the Wildflower Inn) , Mt. Pleasant, July 2, 1992, at 5:30 p.m. The emergency status was necessary due to time constraints and deadlines for recruitment of executive director. Information may be obtained from Laurie Dean, 911A North Bishop Road, Wake Village, Texas 75501, (903) 832-8636. TRD-9209048.

The Bell-Milam-Falls Water Supply Corporation Board of Directors will meet at the WSC Office, FM 485, Cameron, July 3, 1992, at 8:30 a.m. Information may be obtained from Dwayne Jekel, P.O. Drawer 150, Cameron, Texas 76520, (817) 697-4016. TRD-9209030.

The Erath County Appraisal District Appraisal Review Board will meet at 1390 Harbin Drive, Board Room, Stephenville, July 7, and July 9, 1992, at 9 a.m. Information may be obtained from Nicolle Minder,

1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434. TRD-9209034.

The Grayson Appraisal District Appraisal Review Board will meet at 205 North Travis, Sherman, July 6, and July 31, 1992, at 9 a.m. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9209032.

The Lee County Appraisal District Appraisal Review Board will meet at 218 East Richmond Street, Giddings, July 8, 1992, at 9 a.m. Information may be obtained from Delores Shaw, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618. TRD-9209035.

The Millersview-Doole Water Supply Corporation Board of Directors will meet at the Corporation's Business Office, One Block West of FM 765 and FM 2134, Millersview, July 6, 1992, at 8 p.m. Information may be obtained from Glenda M. Hampton, P.O. Box E, Millersview, Texas 76862-1005, (915) 483-5438. TRD-9209033.

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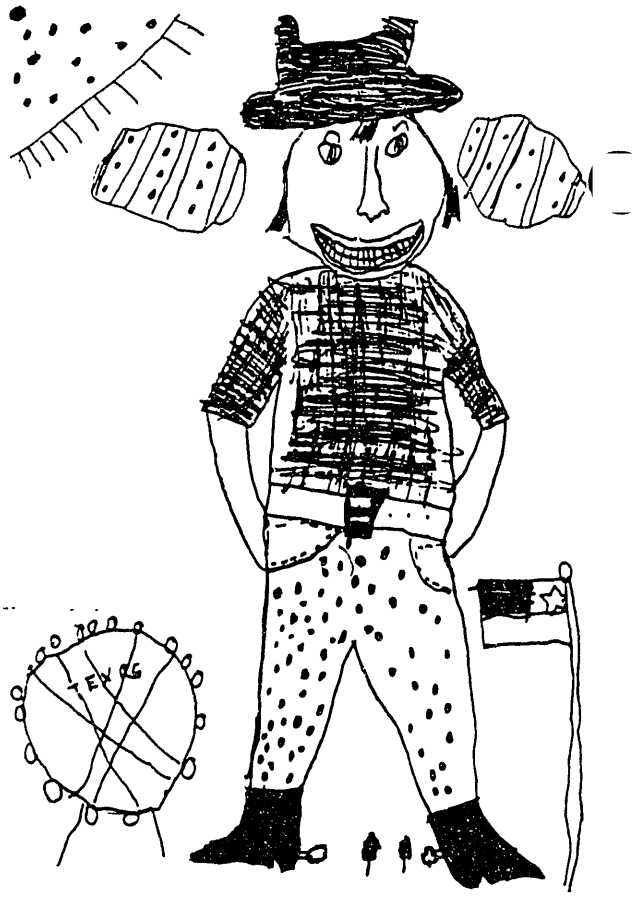

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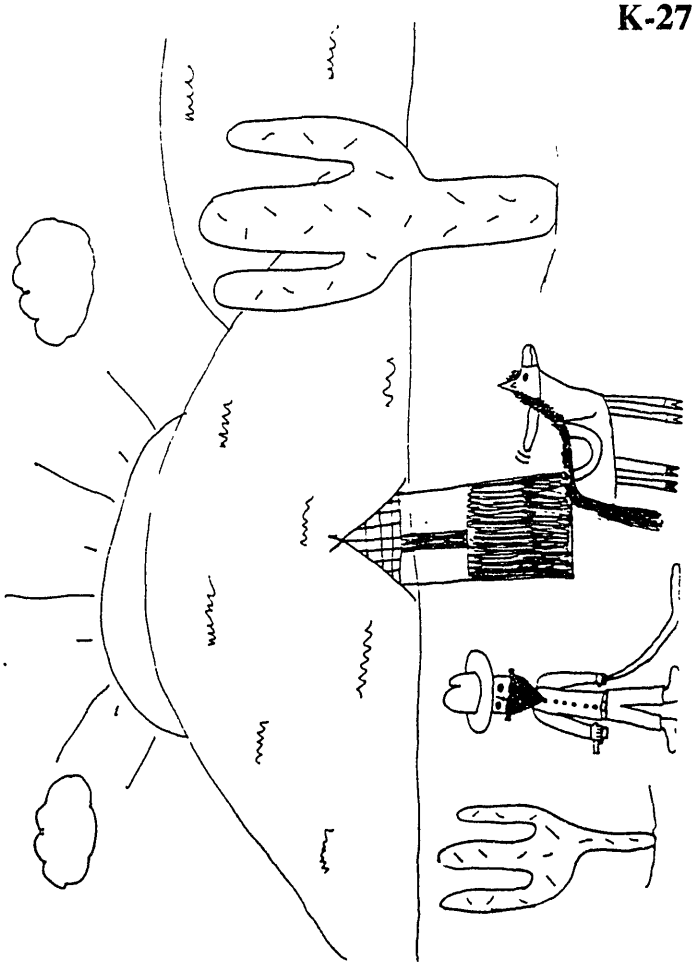

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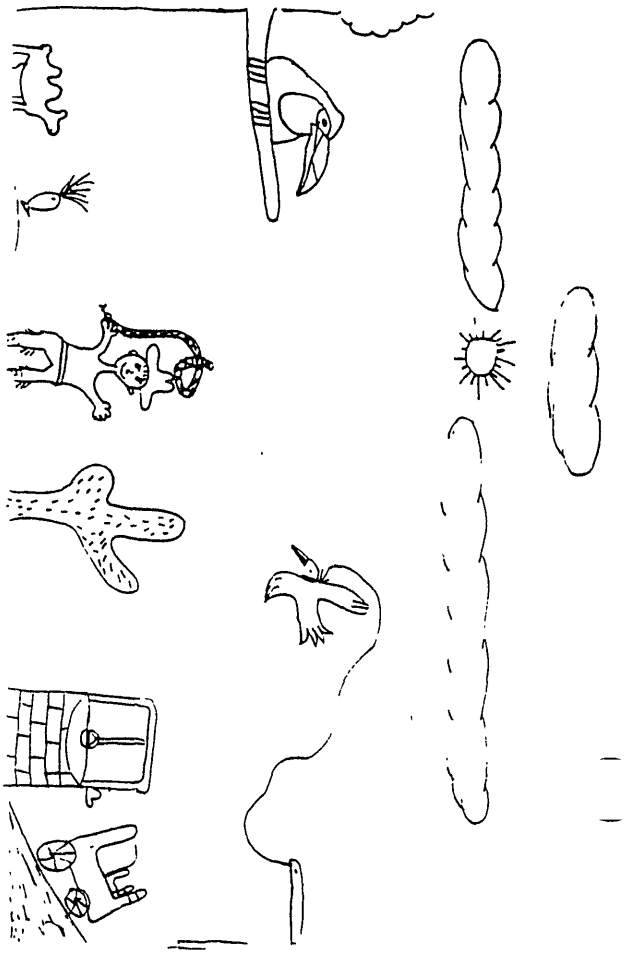

In Addition

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 Air Control Board

Notice of Public Hearings

Notice is hereby given that pursuant to the requirements of the Texas Clean Air Act, §382.017(a); the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5; and the Procedural Rules of the Texas Air Control Board (TACB), §103.11(4); the TACB will conduct public hearings to receive testimony concerning revisions to its rules.

The TACB proposes a new Subchapter C, concerning Benzene, and an undesignated head, concerning Gasoline Terminals in East Austin, Travis County, to Regulation III, concerning Control of Air Pollution From Toxic Materials. The purpose of this new undesignated head is to limit emissions from bulk gasoline terminals located in proximity to residences in East Austin bounded by Springdale Road, Jain Street, Airport Boulevard, and Alf Street. The new requirements will include fugitive monitoring, vacuum assisted vapor collection or semi-annual tank truck leak testing, automatic shut-off instrumentation on the loading racks, and recordkeeping. Also, truckloading when the vapor control device is not operating is prohibited.

Public hearings will be held on July 29, 1992, at 7 p.m. and on July 30, 1992 at 2 p.m. in the Auditorium (Room 201S) of the TACB central office Air Quality Planning Annex, located at 12118 North IH-35, Park 35 Technology Center, Building A, Austin, Texas 78753. The hearings are structured for the receipt of oral or written comments by interested persons. Interrogation or cross-examination is not permitted, however, a TACB staff member will discuss the proposal 30 minutes prior to each hearing and will be available to answer questions.

Written comments not presented at the hearings may be submitted to the TACB central office through July 31, 1992. Material received by the Regulation Development by 4 p.m. on that date will be considered by the board prior to any final action on the proposed revisions. Copies of the proposed revisions are available at the central office of the TACB Air Quality Planning Annex, located at 12118 North IH-35, Park 35 Technology Center, Building A, Austin, Texas 78753 and at all TACB regional offices. For further information, contact Dwayne Meckler at (512) 908-1487.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 908-1815. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on June 23, 1992.

TRD-9208976 Lane Hartsock
Deputy Director, Air Quality Planning
Texas Air Control Board

Filed: June 29, 1992

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

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Notice is hereby given that pursuant to the requirements of the Texas Clean Air Act (TCAA), §382.017(a); the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5; the Procedural Rules of the Texas Air Control Board (TACB), §103.11(4); and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency (EPA) regulations, concerning State Implementation Plans, the TACB will conduct public hearings to receive testimony concerning revisions to its rules.

Revisions are being proposed to Regulation VI, concerning Control of Air Pollution by Permits for new Construction or Modification. In response to the 1990 Federal Clean Air Act requirements, an alternative site analysis for new major sources or modifications in nonattainment areas is proposed for incorporation into §116.3(a)(7) and (10). Proposed revisions to §116.1 and §116.3(b) replace the previous requirements for an operating permit with a new requirements for an operating permit with a new requirement for operations certification. A new paragraph has been added to §116.3(c) to allow a source or a rocket motor or engine test facility to offset emission increases by alternative or innovative means. In addition, references in §116.12 to operating permits will be removed, references to continuance will be replaced with references to renewal, the renewal period will be established at five years as of December 1, 1991, and the fee schedule will be simplified to eliminate alternative methods of determining fees. A sentence has been added to §116.12(a) to exempt a permit holder from increased fees or other penalties resulting from failure to submit a renewal application by the due date when the tardiness can be attributed to military service outside the State of Texas. A new §116.14 is being proposed, regarding Compliance History Requirements, in response to TCAA requirements. The new section specifies the components of the compliance history and prescribe the responsibilities of the applicant and the TACB staff in compiling the compliance history.

A public hearing on the proposal will be held on July 28, 1992, at 2 p.m. in the Auditorium (Room 201S) of the TACB central office Air Quality Planning Annex, located at 12118 North IH-35, Park 35 Technology Center, Building A, Austin, Texas 78753. The hearing is structured for the receipt of oral or written comments by interested persons. Interrogation or cross-examination is not permitted, however, a TACB staff member will discuss the proposal at 1:30 p.m. before the hearing and will be available to answer questions.

Written comments not presented at the hearing may be submitted to the TACB Air Quality Planning Annex, located at 12118 North IH-35, Park 35 Technology Center, Building A, Austin, Texas 78753 through July 30, 1992.

Material received by the Regulation Development Division by 4 p.m. on that date will be considered by the Board prior to any final action on the proposed sections. Copies of the proposal are available at the TACB Air Quality Planning Annex, located at 12118 North IH-35, Park 35 Technology Center, Building A, Austin, Texas 78753 and at all TACB 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 hearing should contact the agency at (512) 908-1815. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on June 29, 1992.

TRD-9208978 Lane Hartsock
Deputy Director, Air Quality Planning
Texas Air Control Board

Filed: June 29, 1992

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

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Office of the Texas Attorney General

Texas Clean Air Act Enforcement Settlement Notice

Notice is given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Clean Air Act. The Texas Health and Safety Code, §382.096 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. National Medical Waste of Texas, Inc.***, Cause Number 9162903 in the 239th District Court of Brazoria County.

Nature of Defendant's Operations: National Medical Waste of Texas, Inc. operates a medical waste incinerator at 4322 Brookside Road near Pearland, in Brazoria County.

Proposed Agreed Judgment: The proposed agreed final judgment contains provisions for injunctive relief, civil penalties, and attorneys' fees.

Injunctive Relief: The judgment contains numerous injunctive requirements, including a requirement that the defendant suspend incineration operations on October 15, 1992, unless it has passed a stack emission test and has operated in full compliance with the Texas Clean Air Act between October 9 and October 15, 1992.

Civil Penalties: The judgment requires the defendant to pay a $110, 000 civil penalty to the state.

Attorneys' Fees: The judgment requires the defendant to pay $25, 000 in attorneys' fees to the state.

For a complete description of the proposed settlement, the complete proposed agreed final judgment should be reviewed. Requests for copies of the judgment and written comments on the judgment should be directed to David Preister, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 440-8002. Written comments must be received within 30 days of publication of this notice in the *Texas Register*.

Issued in Austin, Texas, on June 24, 1992.

TRD-9208740 Will Pryor
First Assistant Attorney General
Office of the Texas Attorney General

Filed: June 24, 1992

For further information, please call: (512) 463-2040

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Texas Department of Commerce

JTPA Older Worker Program RFP

In accordance with the Job Training Partnership Act (JTPA), Public Law 97-300, the Texas Department of Commerce (Commerce) announces a request for proposals (RFP) to operate older worker programs in Texas. The older worker program was approved by the State Job Training Coordinating Council in accordance with Title II of the JTPA. The programs will provide employment and training services that assist older workers, aged 55 years and older in improving their basic educational, employability skills, and to be placed in jobs.

Detailed information regarding the project format is set forth in the request for proposal instructions which will be available on or about June 30, 1992 at the following location: Texas Department of Commerce, Work Force Development Division, First City Centre, 816 Congress, Suite 1300, P.O. Box 12728, Austin, Texas 78711.

The deadline for receipt of the proposals in responses to this request will be Thursday, July 30, 1992 at 4 p.m. (CST). Responses received after this deadline will not be considered.

Commerce reserves the right to accept or reject any or all proposals submitted. Commerce is under no legal requirement to execute a resulting contract on the basis of this advertisement and intends the material provided only as a means of identifying the various contractor alternatives. Commerce intends to use responses as a basis for further negotiation of specific project details with potential contractors. Commerce will base its choice on demonstrated competence, qualifications, and evidence of superior conformance with criteria.

This RFP does not commit Commerce to pay any costs incurred prior to execution of a contract. Issuance of this material in way obligates Commerce to award a contract or to pay any costs incurred in the preparation of a response. Commerce specifically reserves the right to vary all provisions set forth any time prior to execution of a contract where Commerce deems it to be in the best interest of the State of Texas.

Availability of funds for the older worker program is subject to the approval of the State Job Training Coordinating Council.

For further information regarding this notice, or to obtain copies of the RFP Instructions, please contact: Arturo Gil, Texas Department of Commerce, Work Force Development Division, First City Centre, 816 Congress, Suite 1300, P.O. Box 12728, Austin, Texas 78711, (512) 320-9826.

Issued in Austin, Texas, on June 24, 1992.

TRD-9208850 Cathy Bonner
Executive Director
Texas Department of Commerce

Filed: June 26, 1992

For further information, please call: (512) 320-9666

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Comptroller of Public Accounts

Amendment to Consultant Proposal Request Notice

The Comptroller of Public Accounts (CPA) published a consultant services' request for proposals (RFP) for a consultant to assist the CPA by reviewing the work of the Tax Rewrite Project and assessing if a reengineering of this project is possible and feasible in the development of an Integrated Tax System (ITS) in the June 12, 1992, issue of the *Texas Register* (17 TexReg 4282-4283).

Specifically, the RFP Notice is amended as follows.

"All written inquiries must be made by 5 p.m., July 7, 1992."

"Proposals must be received by the CPA no later than 3 p.m., August 6, 1992. Proposals received after this date and time will not be considered. The period of performance is estimated to begin on or about September 15, 1992, and extend for a six-month period."

RPF available-June 12, 1992; Proposals due-August 7, 1992; Work begins-September 15, 1992.

Issued in Austin, Texas, on June 26, 1992.

TRD-9208860 Charles C. Johnstone
Senior Legal Counsel
Comptroller of Public Accounts

Filed: June 26, 1992

For further information, please call: (512) 463-4158

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Texas Education Agency

Correction of Errors

The Texas Education Agency proposed amendments to 19 TAC §75.142, concerning a well-balanced secondary curriculum, and to §175.12, concerning minimum standards for operation of proprietary schools. The rules were published in the June 23, 1992, *Texas Register* (17 TexReg 4512).

Due to typesetting and proofreading errors by the *Texas Register* proposed new language was not printed in boldface type. Paragraph §75.142(c) (4), concerning the Prealgebra course, is new language. Clause §175.127(b) (11)(E)(iv), concerning meeting the requirements of clauses (ii) and (iii), is new language.

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Correction to Request for Application #701-92-042-Centers for Professional Development and Technology

This notice is filed in accordance with the Texas Education Code, §13. 050.

In the June 16, 1992, issue of the *Texas Register* (17 TexReg 4380) the Texas Education Agency published a request for application (#701-92-042) for the establishment of centers for professional development and technology whose primary purpose is to integrate technology and innovative teaching practices to meet the needs of the youth of Texas in an experiencially-based program. The purpose of this notice is to make revisions to the notice due to errors by the agency.

As published, the deadline for submitting the application was August 7, 1992. The correct deadline date for submitting the application is August 14, 1992.

The paragraph titled "Eligible Applicants" should begin with: "Institutions of higher education...apply." The first few words: "Applications must be submitted by" should be deleted.

In the paragraph, **Description**, the phrase, "from IHEs with approved teacher education programs" should be deleted. The word "is" in the last sentence of this same paragraph should be deleted and changed to "in."

Issued in Austin, Texas, on June 23, 1992.

TRD-9208887 Lionel R. Meno
Commissioner of Education
Texas Education Agency

Filed: June 26, 1992

For further information, please call: (512) 463-9701

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Texas Ethics Commission

Notice for State Agencies to Appoint Ethics Advisors

The Texas Ethics Commission is required by law to provide ethics training to all state employees. In order to most efficiently fulfill this obligation, the Ethics Commission requests that each state agency appoint an ethics advisor by July 6, 1992. The ethics advisor will act as the agency's liaison to the Ethics Commission, will attend ethics training seminars provided by the commission, and will ultimately provide ethics training to the agency's employees.

The Texas Ethics Commission is required by Texas Civil Statutes, Article 6252-9d.1, §1.11(a)(6), to provide a program of ethics training for state employees in cooperation with state agencies.

Ethics advisor appointments should be sent to Pamela Young, Assistant General Counsel, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or call (512) 463-5800.

Issued in Austin, Texas, on June 23, 1992.

TRD-9208733 John Steiner
Executive Director
Texas Ethics Commission

Filed: June 24, 1992

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

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General Land Office

Consultant Proposal Request

The Texas General Land Office (GLO) recently awarded a contract to develop the funds management information system (FMIS). FMIS is an integrated software system that will permit the agency to more effectively manage the

debt and investments associated with its Veterans Land Board programs.

Pursuant to the provisions of Texas Civil Statutes, Article 6252-11c, GLO is requesting proposals for consulting services as interim project manager (IPM) during the development of FMIS. The IPM will serve as project leader, advising GLO management and representing GLO's interest in the project, functioning as the focal point for all GLO related coordination during development. The consultant will have an in-depth understanding of the project goals and advise the GLO funds management staff in the decision making process necessary to accomplish these goals. The IPM will be engaged for at least the first six months of the one-year estimated life required for development of the project. By the end of the first six-month period, completion of the project's first three phases (verification of requirements, conceptual design, and detailed design), is expected. Also by the end of the first six-month period, the project's permanent manager, a current member of the GLO staff, will have been phased in.

The consulting services constitute and expansion and increase in scope of services currently performed by William D. Briggs, a private consultant. It is GLO's intent to award the contract to this consultant unless a significantly better offer is submitted.

The closing date for receipt of offers of consulting services is 5 p.m., July 21, 1992. Further information can be obtained by contacting Bruce R. Salzer at (512) 463-5198.

The consultant selected as IMP will demonstrate considerable direct experience in project management of large complex financial systems. The consultant will have a comprehensive knowledge of debt and investment systems capabilities, including cash flow, cash management, debt management, investment tracking, arbitrage and rebate requirements, investment analysis, portfolio management, and market conditions.

Issued in Austin, Texas, on June 25, 1992.

TRD-9208776 Garry Mauro
Commissioner
General Land Office

Filed: June 25, 1992

For further information, please call: (512) 463-5394

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Governor's Office of Immigration and Refugee Affairs

Announcement of Available Funds and Request for Proposals-Refugee Social Services

Summary. The Governor's Office of Immigration and Refugee Affairs is pleased to announce the availability of Refugee Social Service Grant Funds for the purpose of providing social services to increase the employability of the eligible refugee population in Texas. The actual amount of the award will be contingent upon federal appropriation.

The Code of Federal Regulations (CFR) 45 parts 400 and 401 give the state the authority to contract with public or private non-profit agencies to provide employment related services to refugees in Texas. In Texas, the Governor's Office of Immigration and Refugee Affairs is responsible for the administration of the Refugee Social Services Program.

Funds will be awarded on a competitive basis to those applicants that can demonstrate the greatest aptitude for effectively serving the desired constituents. All contracts will be on a cost reimbursement basis. Applicants may propose a comprehensive Plan of Operation that addresses all areas of the refugee's needs as defined in the detailed Request for Proposals. The Plan of Operation may also be directed toward those specific services for which the applicant has the greatest expertise.

All public or private non-profit agencies and organizations that can demonstrate the expertise necessary to provide services to the refugee communities of Texas are encouraged to submit proposals. Proposals must be typewritten or printed, and five copies must be submitted to: Debbie Desmond, Refugee Program Manager, Governor's Office of Immigration and Refugee Affairs, 9101 Burnet Road #216, Austin, Texas 78758.

Application Deadline Date. All proposals must be received in the Governor's Office of Immigration and Refugee Affairs by 4 p.m. Central Standard Time, August 10, 1992. No proposal received after that deadline will be considered.

Evaluation of Proposal and Award. The final selection of grantees for award will be made by the Governor's Office of Immigration and Refugee Affairs after careful evaluation of each proposal according to written evaluation criteria and in accordance with applicable state and federal laws and regulations.

A copy of the complete RFP package including a detailed explanation of the RFP and the evaluation criteria will be sent upon written request. Please contact Debbie Desmond or Tim Sorrells at the previous mentioned address.

Issued in Austin, Texas, on June 22, 1992.

TRD-9208852 David A. Talbot
General Counsel
Office of the Governor

Filed: June 26, 1992

For further information, please call: (512) 463-1788

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Texas Department of Human Services

Public Notice

The Texas Department of Human Services (DHS) has received approval from the Health Care Financing Administration, to amend the Title XIX Medical Assistance Plan by Transmittal Number 92-15, Amendment Number 354. The amendment reflects the 1992 Federal poverty level amounts for Qualified Medicare Beneficiaries (QMBs). The amendment is effective April 1, 1992. If additional information is needed, please contact Judy Coker, (512) 450-3227.

Issued in Austin, Texas, on June 26, 1992.

TRD-9208844 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Filed: June 26, 1992

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

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The Texas Department of Human Services (DHS) has received approval from the Health Care Financing Administration, to amend the Title XIX Medical Assistance Plan by Transmittal Number 92-16, Amendment Number 355. The amendment incorporates the provisions of 4211 and 4212 of the Omnibus Reconciliation Act of 1987 (OBRA '87) regarding resident assessments and inspections of care that were issued under Program Memorandum 92-2. The amendment is effective October 1, 1990. If additional information is needed, please contact Judy Coker, (512) 450-3227.

Issued in Austin, Texas, on June 26, 1992.

TRD-9208845 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Filed: June 26, 1992

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

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The Texas Department of Human Services (DHS) has received approval from the Health Care Financing Administration, to amend the Title XIX Medical Assistance Plan by Transmittal Number 92-17, Amendment Number 356. The amendment transfers the eligibility resource information regarding certain children to the State Plan preprint page issued under Program Memorandum 92-2. The amendment is effective April 1, 1992. If additional information is needed, please contact Kay Priest, (512) 450-3426.

Issued in Austin, Texas, on June 26, 1992.

TRD-9208846 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Filed: June 26, 1992

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

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The Texas Department of Human Services (DHS) has received approval from the Health Care Financing Administration, to amend the Title XIX Medical Assistance Plan by Transmittal Number 92-18, Amendment Number 357. The amendment adds coverage of physical therapy services to the home health benefit. The amendment is effective May 1, 1992. If additional information is needed, please contact Genie DeKneef, (512) 338-6509.

Issued in Austin, Texas, on June 26, 1992.

TRD-9208847 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Filed: June 26, 1992

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

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The Texas Department of Human Services (DHS) has received approval from the Health Care Financing Administration, to amend the Title XIX Medical Assistance Plan by Transmittal Number 92-19, Amendment Number 358. The amendment deletes the provisions regarding "Maintenance of AFDC Efforts" as instructed in Dallas Regional Medical Services Letter Number 92-32. The amendment is effective October 1, 1991. If additional information is needed, please contact Cathy Rossberg, (512) 450-3766.

Issued in Austin, Texas, on June 26, 1992.

TRD-9208848 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Filed: June 26, 1992

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

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The Texas Department of Human Services (DHS has published a report outlining its proposed intended use of federal block grant funds during fiscal year 1993 for Title XX social services programs. In November and December, 1991, four public hearings were held around the state to obtain testimony on the recommended use of Title XX and LIHEAP funds. To obtain free copies of the report, send written requests to Nancy Murphy, Section Manager, Policy and Document Support, Mail Code E-503, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030. DHS is seeking written comments from representatives of both public and private sectors regarding the proposed use of Title XX block grant funds. Written comments will be accepted through August 3, 1992. Please mail comment to the address listed previously.

Issued in Austin, Texas, on June 25, 1992.

TRD-9208824 Nancy Murphy
Agency Liaison, Policy and Document Support
Texas Department of Human Services

Filed: June 25, 1992

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

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Texas Department of Insurance

Correction of Error

The Texas Department of Insurance submitted a notification pursuant to the Insurance Code, Chapter 5, Subchapter L. The notice was published in the April 21, 1992, *Texas Register* (17 TexReg 2877). Due to an error by the agency, the May 6, 1992, effective date published was incorrect. The effective date should be June 20, 1992.

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Texas Department of Mental Health

Correction of Error

The Texas Department of Mental Health and Mental Retardation submitted a notice entitled Invitation to Apply to Become a Home and Community-Based Services-OBRA (HCS-O) Program Provider, which appeared in the June 16, 1992, *Texas Register* (17 TexReg 4385).

Due to a proofreading error by the *Texas Register*, the last sentence of the first paragraph incorrectly contains the word "not". The sentence should read as follows.

"As a result of HCFA's approval of the amendment specifying the HCS-O Waiver Program be made available statewide, effective March 1, 1992, HCS-O Program Pro-

vider applicants may now elect in their applications to serve any one county or counties in Texas."

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Texas Motor Vehicle Commission

Correction of Error

The Texas Motor Vehicle Commission adopted amendments to 16 TAC §105.15, §105.23, and §105.25, concerning advertising of motor vehicles by new vehicle dealers, manufacturers, distributors, and other persons. The rules were published in the May 19, 1992, *Texas Register* (17 TexReg 3725).

Due to revisions made by the agency after publication of the final submission, changes should be made as follows.

In §105.15 the last sentence should be revised to read "A demonstrator or factory official vehicle may not be advertised or sold except by a dealer franchised and licensed to sell that line make of new vehicle." This replaces "be sold only by" with "not be advertised or sold except by".

In §105.23 "New vehicles" should be changed from plural to singular: "A new vehicle".

In §105.25, A new sentence should be added at the beginning of the section before "An advertisement...". The new sentence should read as follows. "The Commission is adopting the Federal Trade Commission closed end credit disclosure rules which presently read as folows."

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Texas Parks and Wildlife Department

Consultant Contract Award

This consultant service selection report is filed in accordance with the provisions of Texas Civil Statutes, Article 6252-11c. The consultant proposal request appeared in the April 4, 1992, issue of the *Texas Register* (17 TexReg 2490).

The consultant will provide services for the assessment of current and future integrated information system(s) needs of the agency. This assessment will lead to the evaluation of hardware and software which addresses these needs and which also complies with the definition of "open" integrated information system standards, as supported by the Texas Department of Information Resources.

The name and address of the consultant selected is Sterling Information Group, Inc., 1007 Mopac Circle, Suite 201, Austin, Texas 78746. Total value of the contract is not to exceed $49,720. Consultant shall be paid in three incremental payments based upon completion of specific phases of the study. Term of the contract is from June 22, 1992-August 31, 1992.

Issued in Austin, Texas, on June 25, 1992.

TRD-9208770 Paul M. Shinkawa
Director, Legal Services
Texas Parks and Wildlife Department

Filed: June 25, 1992

For further information, please call: (512) 389-4867

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Texas Public Finance Authority

Request for Proposals for Accounting Services

The Texas Public Finance Authority (TPFA) is requesting proposals for accounting services. The deadline for proposal submission is 12 noon, August 1, 1992.

Selection will be based on the qualifications and experience of the firms, as well as the reasonableness of the hourly rate, provided that all criteria and specifications are met or exceeded.

Copies of the proposal request may be obtained by calling or writing Ms. Catherine L. Nall, Texas Public Finance Authority, P.O. Box 12906, Austin, Texas 78711, (512) 463-5544.

Issued in Austin, Texas, on June 24, 1992.

TRD-9208803 Catherine L Nall
Chief Accountant I
Texas Public Finance Authority

Filed: June 25, 1992

For further information, please call: (512) 463-5544

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Public Utility Commission of Texas

Notice of Application To Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 15, 1992, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

Docket Title and Number: Application of Cap Rock Electric Cooperative, Inc. for a certificate of convenience and necessity for proposed transmission lines within Howard, Borden, Martin, and Midland Counties, Docket Number 11248 before the Public Utility Commission of Texas.

The Application: In Docket Number 11248, Cap Rock Electric Cooperative, Inc. requests approval of its application to construct approximately 88 miles of 138kV transmission line.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas, on June 23, 1992.

TRD-9208754 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: June 24, 1992, 3:19 p.m.

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

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Notice is given to the public of the filing with the Public Utility Commission of Texas an application on June 5, 1992, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act, §§16(a), 50, 52, and 54. A summary of the application follows.

Docket and Title Number: Application of Southwestern Bell Telephone Company to amend certificate of convenience and necessity within Fort Bend County, Docket Number 11236, before the Public Utility Commission of Texas.

The Application: In Docket Number 11236, Southwestern Bell Telephone Company seeks approval of its application to realign the boundary between the Barker Zone of its Houston Metropolitan exchange and Fort Bend Telephone Company's Katy exchange in order to establish a boundary to alleviate conflicts involving future telephone service.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Office at (512) 458-0256, or (512) 458-0221 teletypewriter for the deaf on or before August 25, 1992.

Issued in Austin, Texas, on June 26, 1992.

TRD-9208886 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: June 26, 1992

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

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Notice of Intent To File Pursuant to PUC Substantive Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas (PUC) an application pursuant to PUC Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Harris County, Houston.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for approval of Plexar-Custom Service for Harris County pursuant to PUC Substantive Rule 23.27(k). Tariff Control Number 11268.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Harris County. The geographic service market for this specific service is the Houston area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on June 26, 1992.

TRD-9208755 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: June 24, 1992

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

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Notice of Proposed Rulemaking

The Public Utility Commission of Texas is considering proposal of a rule that would address the ratemaking treatment to be afforded costs of postretirement benefits other than pensions that are subject to the requirements of recently adopted Statement of Financial Accounting Standards Number 106 (SFAS 106). The commission staff has prepared a draft rule that is available to interested parties. To obtain a copy, please contact Paula Mueller, Assistant General Counsel, at (512) 458-0288.

The commission seeks comments from interested parties on all aspects of the appropriate ratemaking treatment for costs subject to the requirement of SFAS 106, on the draft rule, and in particular, the following questions.

What criteria should be used to determine the "reasonableness" of the request to convert to inclusion of postretirement benefit expense other than pensions in cost of service on an accrual basis ("SFAS 106 treatment")?

Are there reasons a utility should not be limited to a one-time election to convert to SFAS 106 treatment?

Is the $10 million dollar threshold for establishment of an external trust fund reasonable?

Are there funding limitations other than those imposed by the Internal Revenue Service and the Employee Retirement Income Security Act (ERISA) that would limit the amount of annual contributions that could be made to the external fund?

Should utilities be required to use the amount of SFAS 106 expense included in rates to fund the external trust fund to the maximum extent allowed by law?

Are the ERISA investment and fiduciary requirements sufficient to protect the funds provided by ratepayers, or should the commission specify its own requirements?

Would any costs be associated with establishing an internal reserve account? If so, should these costs be included in cost of service in setting rates or as an offset to the internal fund?

What accounts and/or subaccounts do utilities anticipate the allowed expenses (including interest expense) would be booked to? What would a "typical" entry look like?

What are the problems raised by creation of a single external trust fund for OPEB liability for utilities that provide service in states other than Texas? Would it be appropriate to use jurisdictional allocators? How would such allocators be developed? Should a separate trust fund be established for each jurisdiction?

Should a mechanism be provided to review and adjust the internal reserve account or external trust fund outside a rate case?

Should there be a date prior to which a utility should be required to establish an external trust fund? If so, when should that date be?

Comments should be filed within 30 days of the date of publication of this notice. Persons should refer to Project Number 11125 when filing comments. Interested parties are asked to notify the commission in advance of filing comments of their intent to file comments. The commission will use these filings to prepare an official service list for this rulemaking proceeding. Parties that file comments should serve a copy of their comments on the other parties on this service list.

Issued in Austin, Texas, on June 25, 1992.

TRD-9208869 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: June 26, 1992

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

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Texas Racing Commission

Correction of Error

The Texas Racing Commission proposed new 16 TAC §309.200, concerning stakes and other prepayment races, and adopted an amendment to §313.111, concerning age restrictions. The rules were published in the June 16, 1992, *Texas Register* (17 TexReg 4326 and 4345).

In §309.200, third paragraph of the preamble, the sentence should be deleted which reads: "There will be no effect on small businesses." The effect on small businesses was addressed.

In §309.200(b)(2), the paragraph should end in a semicolon instead of a period.

In §313.111, the second paragraph of the preamble incorrectly reads "... the supply or horses...". It should read "...the supply of horses...".

♦ ♦ ♦

Notice of Application Period

The Texas Racing Commission announces that March 1-March 30, 1990, the commission will accept application documents in support of a Class 1 pari-mutuel racetrack license in Harris County and Class 2 pari-mutuel racetrack licenses statewide.

Under Texas Racing Commission rules, the commission may designate an application period of not more than 60 days in which application documents for a racetrack license may be filed.

On December 11, 1989, the Texas Racing Commission adopted a timeline for beginning the application process and designated the period from 8 a.m., March 1-5 p.m., March 30, 1990, as the application period for a Class I racetrack license in Harris County and Class 2 racetrack licenses statewide.

For more information contact Lisa Gonzales, hearings Coordinator, at (512) 476-7223. The Texas Racing Commission offices are located at the First State Bank Building, Suite 625, 400 West 15th, Austin, Texas 78701 or write P.O. Box 12080, Austin, Texas 78711.

Issued in Austin, Texas on January 17, 1990.

TRD-9000610 Paula Cochran Carter
General Counsel
Texas Racing Commission

Filed: January 17, 1990

For further information, please call: (512) 476-7223

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Railroad Commission of Texas

Correction of Error

The Railroad Commission of Texas proposed an amendment to 16 TAC §11. 1004, concerning quarry and pit safety regulations. The rule was published in the June 23, 1992, *Texas Register* (17 TexReg 4511). Due to a proofreading error by the *Texas Register*, the earliest possible date of adoption was printed incorrectly as June 24, 1992. The correct date is July 24, 1992.

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Texas Rehabilitation Commission

Request for Proposals

The Texas Planning Council for Developmental Disabilities (Council) announces the availability of funds to be awarded by the Texas Rehabilitation Commission on its behalf for the following projects.

Local/Regional Community Living Systems Change Projects. The Council is requesting proposals for projects that will promote the inclusion of children and adults with developmental disabilities into their communities and have implications for changing the state system of community living services and supports for people with developmental disabilities and their families. The purpose of this RFP is to address the Council goal: "To increase the availability and stability of community living options and appropriate support services" and the Council activity to "advocate for changes in community living policies and programs...which ensure that all programs are responsive to individual needs and preferences and are provided in integrated community settings."

Local/Regional Employment Systems Change Projects. The Council is requesting proposals for projects in the area of community integrated employment that have implications for changing the system in Texas of providing employment services and supports for people with developmental disabilities and their families. The purpose of this RFP is to address the Council goal: "To promote the development of integrated employment options for people with developmental disabilities" by the support of projects in three priority areas: conversion of sheltered workshop or day activity programs; new supported employment or other community integrated employment programs; cooperative projects with employers.

All Children Belong Demonstration Projects. The Council will fund field-initiated community living demonstration projects that identify children and adolescents (ages 0-18) living in residential facilities and move them into homes with families. The projects will identify children, their service and support needs, and find homes for children living in: a state school; nursing homes in a local area; residential facility placements; hospitals in a local area; large intermediate care facilities; and in other institutions or congregate living arrangements.

Inclusive Education Demonstration Projects. The purpose of this RFP is to fund projects that will demonstrate innovative ways to provide fully inclusive educational programs for students eligible for special education services, consistent with the Council's education position statement. Eligible applicants are limited to public independent school districts, including districts in cooperatives.

Inclusive Education Systems Change Project. The purpose of this RFP is to promote the inclusion of all children in regular school environments across Texas. The major goals of the project are: to promote awareness of inclusive education concepts, practices, and resources for all Texas school campuses; to provide technical assistance to local demonstration projects; to provide a forum for discussion and recommendations for the adoption and implementation of laws, funding, policies, and procedures that support inclusive education at the national, state, and local levels; and to develop a statewide strategic plan for inclusive education. Partial funding for this activity will be provided by the Texas Education Agency.

Terms. A total of $1 million per year is estimated to be available for multiple projects funded under these RFPs, except inclusive education systems change project which is estimated at $225,000 to $300,000 per year available for one project. All funding is contingent on availability of funds. A minimum of 25% nonfederal match, 10% in designated poverty areas, is required for all funded projects. The initial budget period will be December 1, 1992-May 31, 1993.

For the application packet containing the five full requests for proposals, application forms, and instructions, please submit a written or fax request to: W. D. Neilson, Texas Planning Council for Development Disabilities, 4900 North Lamar Boulevard, Austin, Texas 78751-2399, (512) 483-4088, (512) 483-4097 (fax).

Deadline. Proposals will be accepted at the Texas Planning Council Office, 4900 North Lamar Boulevard, Office #4141, Fourth Floor, Austin, until 4 p.m. on the deadline dates indicated in the proposal kit. Deadlines vary from September 11-October 30, depending on the RFP. No fax copies of proposals will be accepted. Copies of application kit may not be faxed to applicants.

Issued in Austin, Texas, on June 25, 1992.

TRD-9208811 Charles W. Schiesser
Assistant Commissioner
Texas Rehabilitation Commission

Filed: June 25, 1992

For further information, please call: (512) 483-4051

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Texas Southern University

Consultant Proposal Request Extension

Scope of Work. In accordance with the provisions of Article 6252-11(C), Texas Southern is requesting proposals for services of a consultant to assist with requirements definition, alternatives evaluation and selection recommendations for administrative software.

Description of Services: organize and coordinate campus project efforts for a comprehensive review of administrative information system requirements and alternatives evaluation; identify specific deficiencies and improvement opportunities related to administrative software applications; coordinate, advise and participate in campus evaluations of vendor package alternatives, client/vendor reference site evaluations, program development opportunities and migration strategies; provide supported recommendations to the campus on viable alternatives including functional reviews, technology assessments, vendor performance references, market focus evaluations, and budget/staffing implications of the recommendations; assist the University with vendor(s) selected; assist in preparing and reviewing recommendations for the university and the state.

Submission of Proposal. A proposal sent by mail should be addressed as follows: Rodger G. Carr, Director of Management Information Systems, Computing Services, Texas Southern University, 3100 Cleburne Avenue, Houston, Texas 77004. Hand delivered proposals will be accepted daily between 9 a.m. and 3 p.m., except Saturdays, Sundays, and holidays at Room 228 Hannah Hall on the Texas Southern Campus. Acceptance of proposals will be extended through July 17, 1992. No proposals will be received or considered after July 17, 1992.

Proposal Requirements. To be considered, the following items of information must be included in a consultant's proposal: proposed plan of work for the engagement; references, including client contact information, from similar consulting engagement; names of consultant's staff to be used in this engagement and a complete resume and two client references for each; guaranteed start date of engagement after date of award; estimates of Texas Southern staff resources expected to be applied to the engagement; and proposed fee and expenses for the engagement.

Evaluation Criteria. Procedure for selecting consultant, but not limited to the following: thorough knowledge and experience with higher education administrative information systems; experience in requirements definition, applications software evaluation, alternatives evaluation, contract negotiations and project work plan development in a similar environment; understanding the specific needs of Texas Southern University and higher education requirements in the State of Texas; extensive higher education experience of individuals assigned to the project; references from similar consulting engagements; quality of proposals' approach to accomplish project requirements; and reasonableness of proposed cost of services in relation to work described.

Terms and Conditions of the Contract. The following terms and conditions must be accepted by all respondents.

TSU reserves the right to reject any and all proposals.

The selected consultant will not be eligible to participate in any hardware/software procurement contracts arising out of the study. This does not preclude negotiations of subsequent contracts with the vendor selected.

All information generated is the exclusive property of TSU.

Cost of travel, lodging, telephones, and other services required by the selected contractor must be included in the overall cost.

The consultant will be required to submit weekly status reports and participate in program report meetings with the time of the meeting to be at the discretion of TSU.

Contact Person. Any consultant interested in submitting a proposal may obtain a copy of the request for proposal for purchase of administrative software by contacting Rodger Carr, Computing Services, Texas Southern University, 3100 Cleburne Avenue, Houston, Texas 77004.

Contract Award Procedures. Final selection will be made by Texas Southern University by August 28, 1992, based on evaluations and recommendations provided by a panel of University personnel. The University will award a contract to the firm or organization which is considered to be in the best interest of Texas Southern University.

Issuance of this request in no way constitutes a commitment by Texas Southern University to award a contract.

Issued in Houston, Texas, on June 23, 1992.

TRD-9208823 Everett O. Bell
Executive Director for Board Relations
Texas Southern University

Filed: June 25, 1992

For further information, please call: (713) 527-7951

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Texas Water Commission

Public Hearing Notices

The Texas Water Commission will conduct a public hearing beginning at 6:30 p.m., August 17, 1992, City of Hamilton, City Hall, Council Chambers, 200 East Main Street, Hamilton, in order to receive testimony concerning the waste load evaluation report for Dissolved Oxygen in the Leon River below Proctor Lake in the Brazos River Basin (Segment 1221). The public hearing shall be conducted in accordance with the Texas Water Code, §26.011 and §26.037.

The primary purpose of a waste load evaluation is to define treatment levels for wastewater dischargers to a segment and specify other program actions that need to be taken in order to attain and maintain the water quality standards, describe nonpoint source pollution from areas tributary to a segment, and identify treatment level alternatives using receiving stream water quality simulations. A section containing recommended treatment levels and other proposed recommended actions is also included.

The public is encouraged to attend the hearing and to present relevant evidence or opinions concerning the waste load evaluation. Written testimony which is submitted prior to or during the public hearing will be included in the record. The commission would appreciate receiving a copy of all written testimony at least five days before the hearing. Copies of written testimony and questions concerning the public hearing should be addressed to Larry Koenig, Texas Water Commission, Standards and Assessments Division, P.O. Box 13087, Austin, Texas 78711-3087 or call (512) 463-8462.

A limited number of copies of the draft waste load evaluation are available for review in the Texas Water Commission Library, Room B-20 of the Stephen F. Austin Building, 1700 North Congress Avenue in Austin. A copy of the report may be obtained upon written request from Larry Koenig at the above address. There are no charges for the pre-hearing draft copies of the waste load evaluation; however, a fee will be charged for the finalized post-hearing copies.

The date selected for this hearing is intended to comply with deadlines set by statute and regulation. Any publication or receipt of this notice less than 45 calendar days prior to the hearing date is due to the necessity of scheduling the hearing on the date selected.

Issued in Austin, Texas, on June 29, 1992.

TRD-9208950 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Filed: June 29, 1992

For further information, please call: (512) 463-8462

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The Texas Water Commission will conduct a public hearing beginning at 6:30 p.m., August 19, 1992, City of Laredo, City Hall, Council Chambers, 1110 Houston Street, Laredo, in order to receive testimony concerning the waste load evaluation report for Dissolved Oxygen in the Rio Grande below Amistad Reservoir in the Rio Grande Basin (Segment 2304). The public hearing shall be conducted in accordance with the Texas Water Code, §26.011 and §26.037.

The primary purpose of a waste load evaluation is to define treatment levels for wastewater dischargers to a segment and specify other program actions that need to be taken in order to attain and maintain the water quality standards, describe nonpoint source pollution from areas tributary to a segment, and identify treatment level alternatives using receiving stream water quality simulations. A section containing recommended treatment levels and other proposed recommended actions is also included.

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A limited number of copies of the draft waste load evaluation are available for review in the Texas Water Commission Library, Room B-20 of the Stephen F. Austin Building, 1700 North Congress Avenue in Austin. A copy of the report may be obtained upon written request from Mark Rudolph at the above address. There are no charges for the pre-hearing draft copies of the waste load evaluation; however, a fee will be charged for the finalized post-hearing copies.

The date selected for this hearing is intended to comply with deadlines set by statute and regulation. Any publication or receipt of this notice less than 45 calendar days prior to the hearing date is due to the necessity of scheduling the hearing on the date selected.

Issued in Austin, Texas, on June 29, 1992.

TRD-9208951 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Filed: June 29, 1992

For further information, please call: (512) 463-8436

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1992 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1992 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 February 28, November 6, December 1, and December 29. A bullet beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
1 *Friday, January 3	Friday, December 27	Tuesday, December 31
2 *Tuesday, January 7	Tuesday, December 31	Thursday, January 2
3 Friday, January 10	Monday, January 6	Tuesday, January 7
4 Tuesday, January 14	Wednesday, January 8	Thursday, January 9
5 Friday, January 17	Monday, January 13	Tuesday, January 14
6 Tuesday, January 21	Wednesday, January 15	Thursday, January 16
Friday, January 24	1991 ANNUAL INDEX	
7 Tuesday, January 28	Wednesday, January 22	Thursday, January 23
8 Friday, January 31	Monday, January 27	Tuesday, January 28
9 Tuesday, February 4	Wednesday, January 29	Thursday, January 30
10 Friday, February 7	Monday, February 3	Tuesday, February 4
11 Tuesday, February 11	Wednesday, February 5	Thursday, February 6
12 Friday, February 14	Monday, February 10	Tuesday, February 11
13 Tuesday, February 18	Wednesday, February 12	Thursday, February 13
14 *Friday, February 21	Friday, February 14	Tuesday, February 18
15 Tuesday, February 25	Wednesday, February 19	Thursday, February 20
Friday, February 28	NO ISSUE PUBLISHED	
16 Tuesday, March 3	Wednesday, February 26	Thursday, February 27
17 Friday, March 6	Monday, March 2	Tuesday, March 3
18 Tuesday, March 10	Wednesday, March 4	Thursday, March 5
19 Friday, March 13	Monday, March 9	Tuesday, March 10
20 Tuesday, March 17	Wednesday, March 11	Thursday, March 12
21 Friday, March 20	Monday, March 16	Tuesday, March 17
22 Tuesday, March 24	Wednesday, March 18	Thursday, March 19
23 Friday, March 27	Monday, March 23	Tuesday, March 24
24 Tuesday, March 31	Wednesday, March 25	Thursday, March 26
25 Friday, April 3	Monday, March 30	Tuesday, March 31
26 Tuesday, April 7	Wednesday, April 1	Thursday, April 2
27 Friday, April 10	Monday, April 6	Tuesday, April 7
Tuesday, April 14	FIRST QUARTERLY INDEX	
28 Friday, April 17	Monday, April 13	Tuesday, April 14
29 Tuesday, April 21	Wednesday, April 15	Thursday, April 16

30 Friday, April 24	Monday, April 20	Tuesday, April 21
31 Tuesday, April 28	Wednesday, April 22	Thursday, April 23
32 Friday, May 1	Monday, April 27	Tuesday, April 28
33 Tuesday, May 5	Wednesday, April 29	Thursday, April 30
34 Friday, May 8	Monday, May 4	Tuesday, May 5
35 Tuesday, May 12	Wednesday, May 6	Thursday, May 7
36 Friday, May 15	Monday, May 11	Tuesday, May 12
37 Tuesday, May 19	Wednesday, May 13	Thursday, May 14
38 Friday, May 22	Monday, May 18	Tuesday, May 19
39 Tuesday, May 26	Wednesday, May 20	Thursday, May 21
40 *Friday, May 29	Friday, May 22	Tuesday, May 26
41 Tuesday, June 2	Wednesday, May 27	Thursday, May 28
42 Friday, June 5	Monday, June 1	Tuesday, June 2
43 Tuesday, June 9	Wednesday, June 3	Thursday, June 4
44 Friday, June 12	Monday, June 8	Tuesday, June 9
45 Tuesday, June 16	Wednesday, June 10	Thursday, June 11
46 Friday, June 19	Monday, June 15	Tuesday, June 16
47 Tuesday, June 23	Wednesday, June 17	Thursday, June 18
48 Friday, June 26	Monday, June 22	Tuesday, June 23
49 Tuesday, June 30	Wednesday, June 24	Thursday, June 25
50 Friday, July 3	Monday, June 29	Tuesday, June 30
51 Tuesday, July 7	Wednesday, July 1	Thursday, July 2
52 Friday, July 10	Monday, July 6	Tuesday, July 7
Tuesday, July 14	SECOND QUARTERLY INDEX	
53 Friday, July 17	Monday, July 13	Tuesday, July 14
54 Tuesday, July 21	Wednesday, July 15	Thursday, July 16
55 Friday, July 24	Monday, July 20	Tuesday, July 21
56 Tuesday, July 28	Wednesday, July 22	Thursday, July 23
57 Friday, July 31	Monday, July 27	Tuesday, July 28
58 Tuesday, August 4	Wednesday, July 29	Thursday, July 30
59 Friday, August 7	Monday, August 3	Tuesday, August 4
60 Tuesday, August 11	Wednesday, August 5	Thursday, August 6
61 Friday, August 14	Monday, August 10	Tuesday, August 11
62 Tuesday, August 18	Wednesday, August 12	Thursday, August 13
63 Friday, August 21	Monday, August 17	Tuesday, August 18
64 Tuesday, August 25	Wednesday, August 19	Thursday, August 20
65 Friday, August 28	Monday, August 24	Tuesday, August 25
66 Tuesday, September 1	Wednesday, August 26	Thursday, August 27
67 Friday, September 4	Monday, August 31	Tuesday, September 1
68 Tuesday, September 8	Wednesday, September 2	Thursday, September 3
69 *Friday, September 11	Friday, September 4	Tuesday, September 8

70 Tuesday, September 15	Wednesday, September 9	Thursday, September 10
71 Friday, September 18	Monday, September 14	Tuesday, September 15
72 Tuesday, September 22	Wednesday, September 16	Thursday, September 17
73 Friday, September 25	Monday, September 21	Tuesday, September 22
74 Tuesday, September 29	Wednesday, September 23	Thursday, September 24
75 Friday, October 2	Monday, September 28	Tuesday, September 29
76 Tuesday, October 6	Wednesday, September 30	Thursday, October 1
77 Friday, October 9	Monday, October 5	Tuesday, October 6
Tuesday, October 13	THIRD QUARTERLY INDEX	
78 Friday, October 16	Monday, October 12	Tuesday, October 13
79 Tuesday, October 20	Wednesday, October 14	Thursday, October 15
80 Friday, October 23	Monday, October 19	Tuesday, October 20
81 Tuesday, October 27	Wednesday, October 21	Thursday, October 22
82 Friday, October 30	Monday, October 26	Tuesday, October 27
83 Tuesday, November 3	Wednesday, October 28	Thursday, October 29
Friday, November 6	NO ISSUE PUBLISHED	
84 Tuesday, November 10	Wednesday, November 4	Thursday, November 5
85 Friday, November 13	Monday, November 9	Tuesday, November 10
*86 Tuesday, November 17	Tuesday, November 10	Thursday, November 12
87 Friday, November 20	Monday, November 16	Tuesday, November 17
88 Tuesday, November 24	Wednesday, November 18	Thursday, November 19
89 Friday, November 27	Monday, November 23	Tuesday, November 24
Tuesday, December 1	NO ISSUE PUBLISHED	
90 Friday, December 4	Monday, November 30	Tuesday, December 1
91 Tuesday, December 8	Wednesday, December 2	Thursday, December 3
92 Friday, December 11	Monday, December 7	Tuesday, December 8
93 Tuesday, December 15	Wednesday, December 9	Thursday, December 10
94 Friday, December 18	Monday, December 14	Tuesday, December 15
95 Tuesday, December 22	Wednesday, December 16	Thursday, December 17
96 Friday, December 25	Monday, December 21	Tuesday, December 22
Tuesday, December 29	NO ISSUE PUBLISHED	
1 (1993) Friday, January 1	Monday, December 28	Tuesday, December 29

Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues requested. Each copy of a back issue is $5 including postage. You may use your Mastercard or Visa to purchase back issues or subscription services. To order by credit card, please call the *Texas Register* at (512) 463-5561. All purchases made by credit card will be subject to an additional 1.9% service charge. Fore more information, please write to the *Texas Register*, P.O. Box 13824, Austin, TX 78711-3824 or call (512) 463-5561.

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