Texas Register

Volume 16, Number 50, July 2, 1991 Pages 3646-3745

In This Issue...

CONTENTS CONTINUED INSIDE

Texas Register

The *Texas Register* (ISSN 362-4781) is published semi-weekly 100 times a year except January 4, July 9, September 6, December 3, December 31, 1991. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78711.

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

Information Available: The eight 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

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Withdrawn Sections-sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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

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 doument published on page 2402 of Volume 6 (1981) is cited as follows: 6 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: "14 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 14 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 Administrative Code*, sections number, 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 Publications

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, Texas 78711-3824
512-463-5561

Secretary of State
John Hannah, Jr.

Director
Dan Procter

Assistant Director
Dee Wright

Documents Section Supervisor
Patty Parris

Documents Editors
Lisa Brull
Janlene Allen

Open Meetings Clerk
Jill S. Dahnert

Production Section Supervisor
Ann Franklin

Production Editor

Typographers
Sherry Rester
Janice Rhea
Carla Carter

Circulation/Marketing

Roberta Knight

TAC Editor
Dana Blanton

TAC Typographer
Madeline Chrisner

Subscriptions-one year (96 regular issues), $90; six months (48 regular issues and two index issues), $70. Single copies of most issues are available at $4 per copy.

In Addition

Texas Air Control Board

Office of the State Auditor

Texas Department of Commerce-Texas Literacy Council

Texas Department of Health

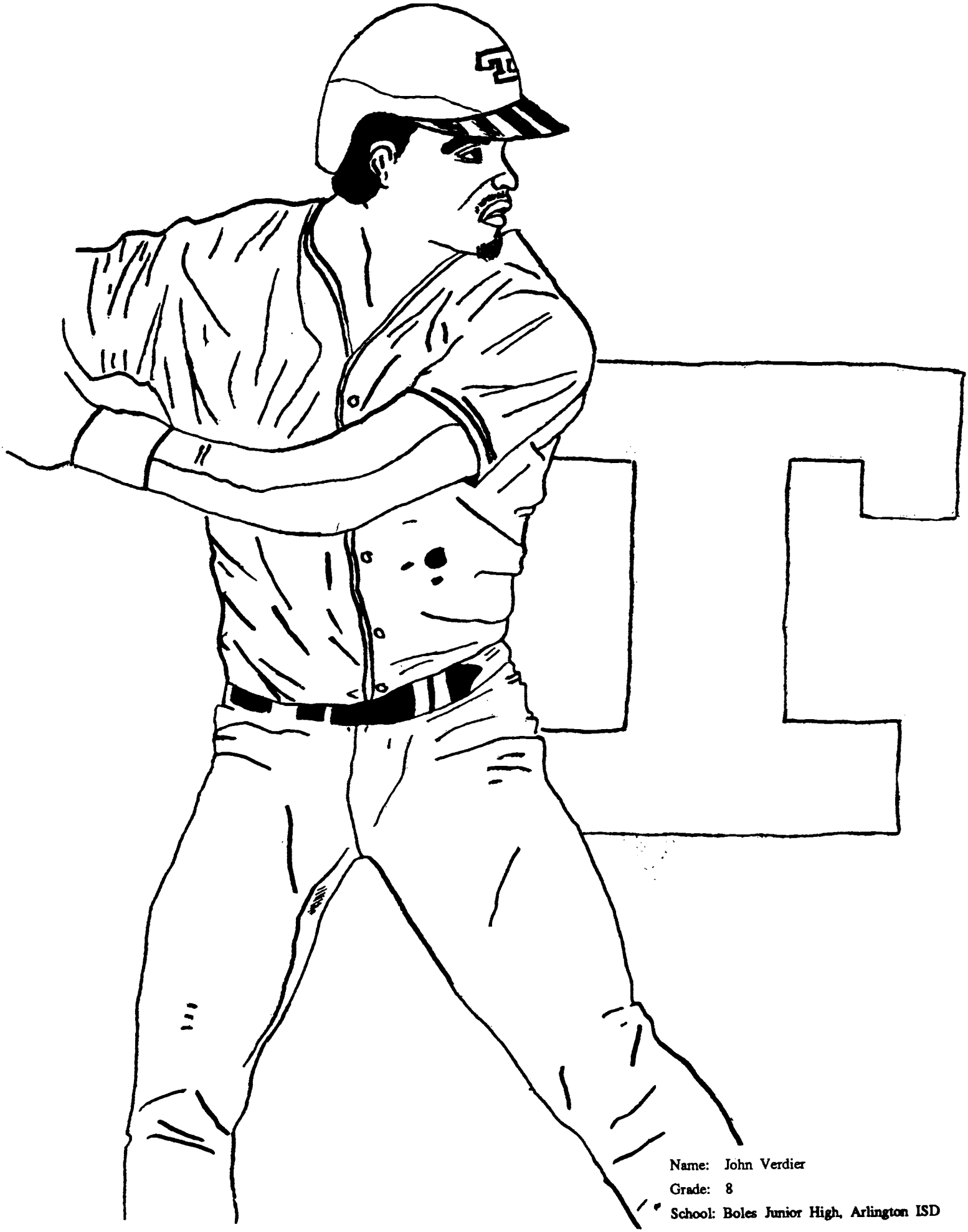
Texas Department of Human Services

State Board of Insurance

Public Utility Commission of Texas

State Purchasing and General Services Commission

Texas Water Commission



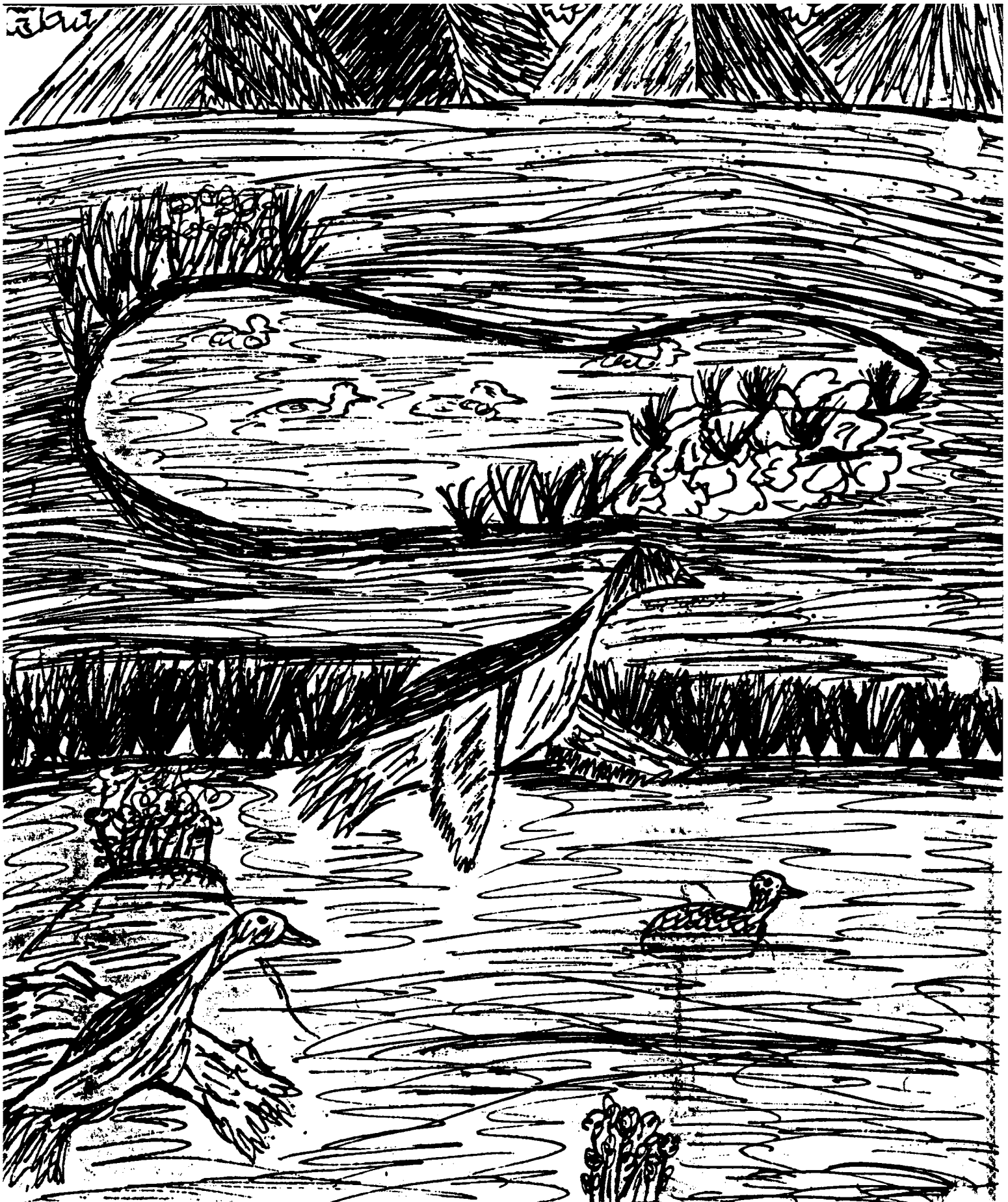
Name: John Verdier
Grade: 8
School: Boles Junior High, Arlington ISD

Chris Green

Name: Chris Green

Grade: 8

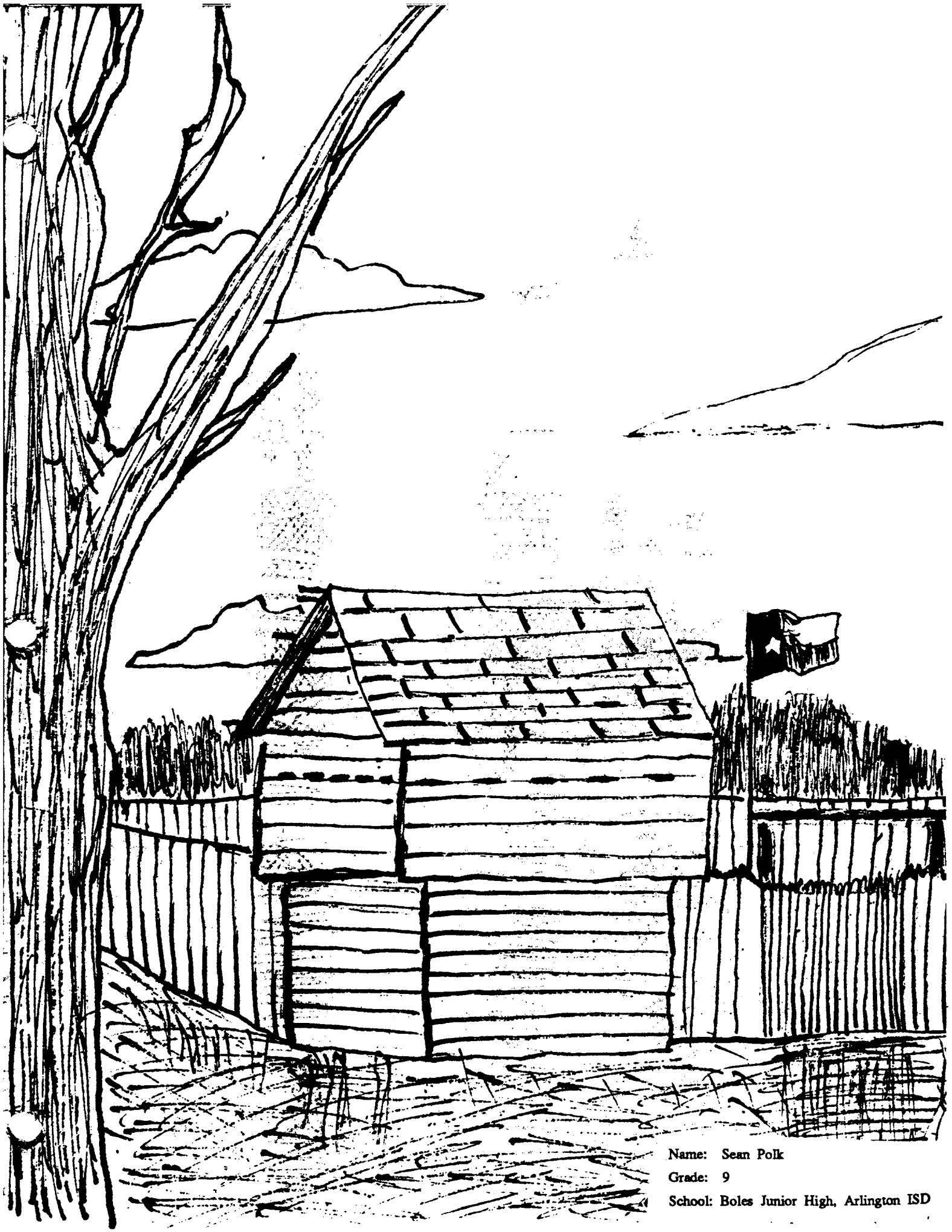
School: Boles Junior High, Arlington ISD



Name: Blake Mycoski

Grade: 8

School: Boles Junior High, Arlington ISD



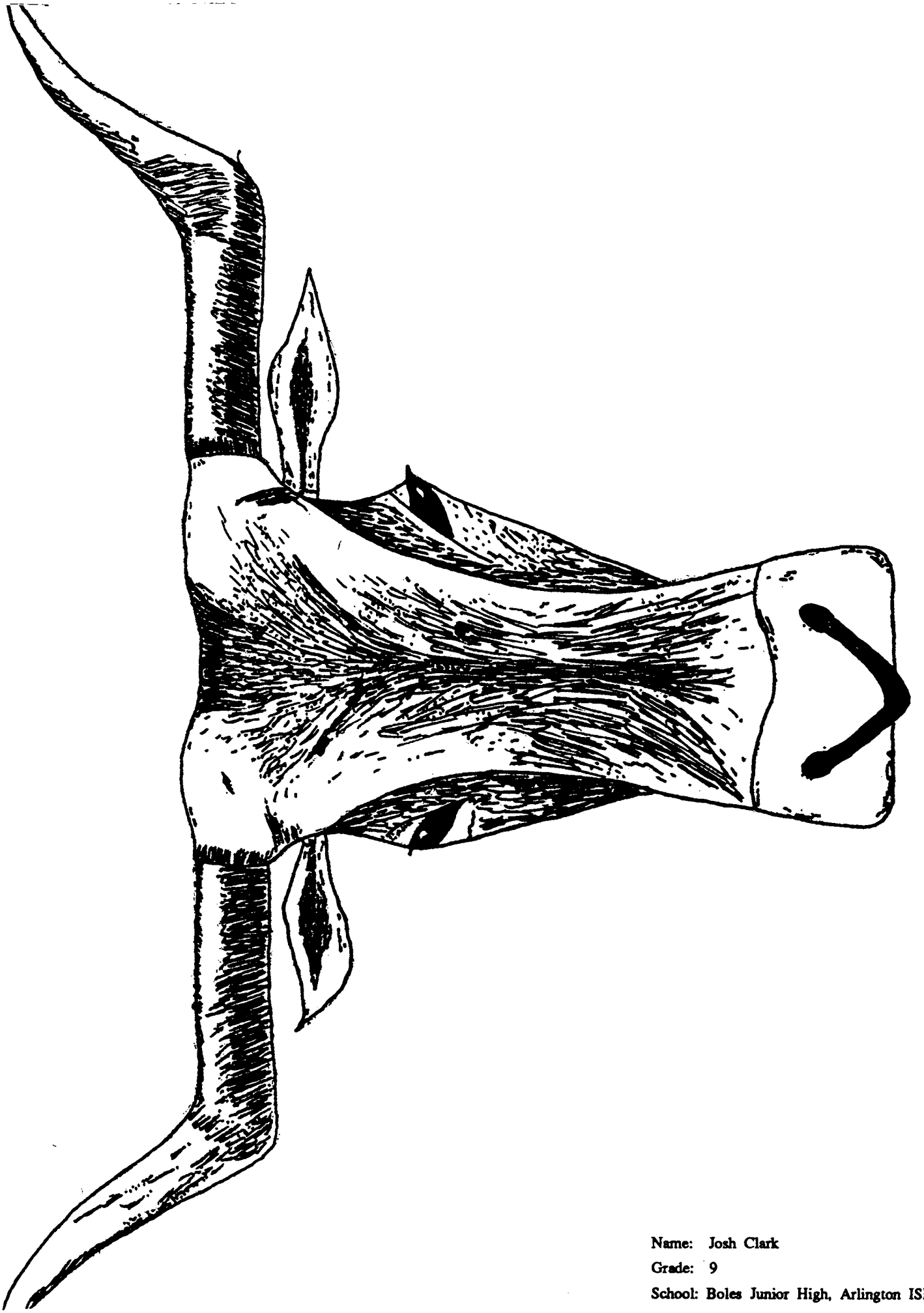
Name: Sean Polk

Grade: 9

School: Boles Junior High, Arlington ISD

Name: Ryan Mitchell
Grade: 9
School: Boles Junior High, Arlington ISD

Name: Lauren Gooch
Grade: 9
School: Boles Junior High, Arlington ISD



Name: Josh Clark

Grade: 9

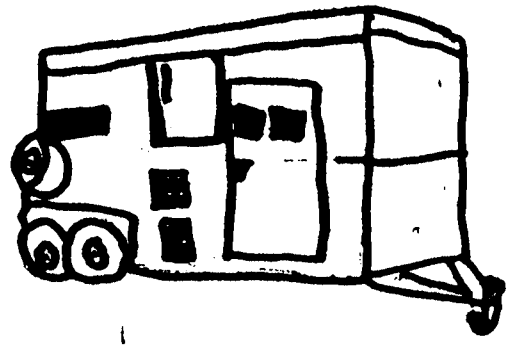
School: Boles Junior High, Arlington ISD

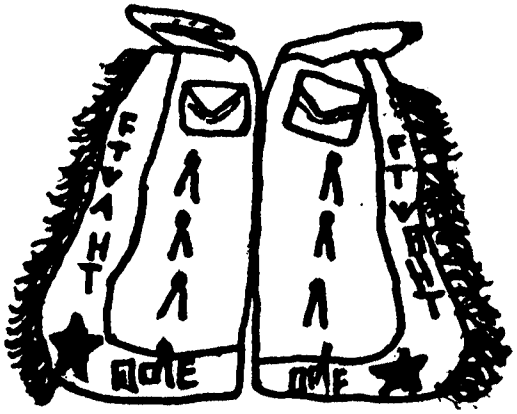
Name: Rachel Graham

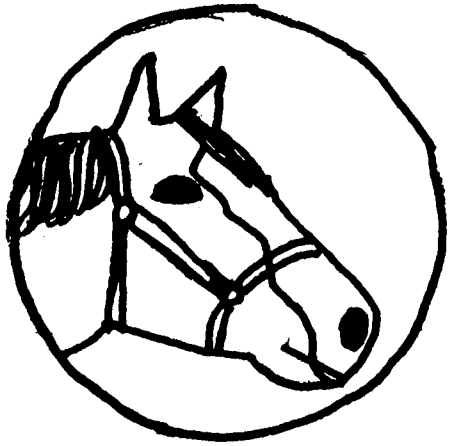
Grade: 8

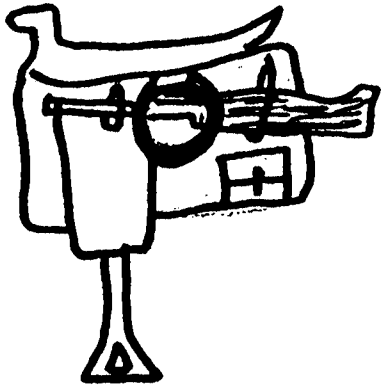
School: Boles Junior High, Arlington ISD

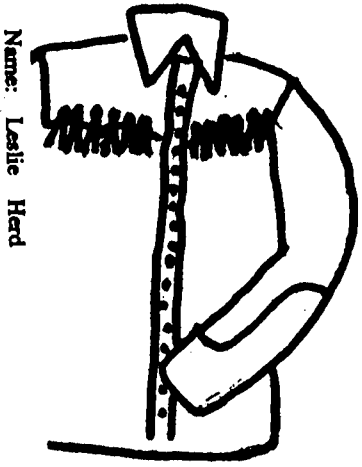
WEST



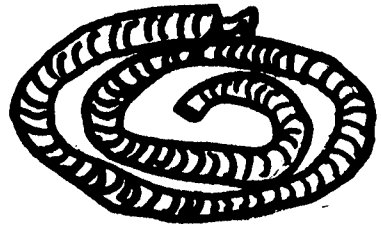








TEXAS



Name: Leslie Herd
Grade: 7
School: Boles Junior High, Arlington ISD

TAC Titles Affected

TAC Titles Affected–July

The following is a list of the administrative rules that have been published this month.

TITLE 1. ADMINSTRATION

Part V. State Purchasing and General Services Commission

1 TAC §113.10—3665

1 TAC §113.13—3691

1 TAC §113.17—3691

1 TAC §§113.21, 113.23, 113.25—3692

1 TAC §125.47—3693

1 TAC §§125.61, 125.63, 125.65, 125.67—3693

Part XIII. Texas Incentive and Productivity Commission

1 TAC §§275.1, 275.3, 275.5, 275.7, 275.9, 275.11, 275.13, 275.15, 275.17, 275.19, 275.21—3665

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

16 TAC §5.181—3667

16 TAC §11.221—3675

16 TAC §7.1—3668

16 TAC §7.2—3668

16 TAC §7.3—3669

16 TAC §7.4—3671

16 TAC §7.5—3671

16 TAC §7.6—3671

16 TAC §7.7—3672

16 TAC §7.8—3673

16 TAC §7.9—3673

16 TAC §7.10—3674

16 TAC §§7.10, 1.15, 7.20, 2.22, 7.25, 7.27, 7.35—3673

16 TAC §7.11—3674

16 TAC §7.48—3675

16 TAC §11.221—3675

TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

25 TAC §§405.1-405.18—3697

25 TAC §§410.101-410.122—3704

Part V. Center for Rural Health Initiatives

25 TAC §§500.21-500.42—3659, 3675

TITLE 28. INSURANCE

Part II. Texas Workers' Compensation Commission

28 TAC §133.3—3708

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

31 TAC §115.10—3676, 3708

31 TAC §§115.112, 115.114, 115.116, 115.119—3713

31 TAC §§115.122, 115.126, 115.129—3676, 3713

31 TAC §115.126, §115.129—3676

31 TAC §§115.132, 115.136, 115.139—3718

31 TAC §115.136, §115.139—3677

31 TAC §§115.212, 115.215, 115.216, 115.219—3719

31 TAC §115.222, §115.229—3720

31 TAC §115.224, §115.229—3678

31 TAC §115.239—3721

31 TAC §§115.315, 115.316, 115.319—3721

31 TAC §115.317—3722

31 TAC §§115.322, 115.324, 115.325, 115.327, 115.329—3722

31 TAC §§115.332, 115.334, 115.335, 115.337, 115.339—3723

31 TAC §§115.342, 115.344, 115.345, 115.347, 115.349—3724

31 TAC §115.417, §115.419—3725

31 TAC §§115.421-115.427, 115.429—3726

31 TAC §§115.422, 115.423, 115.425, 115.426, 115.429—3678

31 TAC §§115.432, 115.435, 115.436, 115.437, 115.439—3728

◆ ◆ ◆

Emergency Sections

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

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

TITLE 25. HEALTH SERVICES

Part V. Center for Rural Health Initiatives

Chapter 500. Executive Committee for the Center for Rural Health Initiatives

Subchapter B. Texas Outstanding Rural Scholar Recognition and Forgiveness Loan Program

• **25 TAC §§500.21-500.42**

The Executive Committee of the Center for Rural Health Initiatives adopts on an emergency basis new Subchapter B, §§500.21-500.42 concerning the Texas Outstanding Rural Scholar Recognition and Forgiveness Loan Program. The new subchapter is similar to rules formerly adopted by the Texas Higher Education Coordinating Board under Title 19, Texas Administrative Code, Subchapter O. The new subchapter differs substantively from previous rules in two areas. New §500.24 regarding "eligible institutions of higher education" and new §500. 26 regarding "eligible scholar" are altered to conform to statutory changes made by Senate Bill 445. Eligible institutions now include nonprofit health-related schools and programs; eligible scholars now include non-senior high school and college students.

New §500.21 establishes the purpose, administrative responsibilities, and delegation of powers and duties. Section 500.22 defines terms used in the subchapter. Sections 500.23-500.28 establish eligibility under the program by clarifying what constitutes an "allied health professional," "eligible institution of higher education,""community agent,""rural scholar,"and "outstanding rural scholar" for program purposes. Section 500.29 sets out the responsibilities, composition, terms of office, and operations of the Outstanding Rural Scholar Advisory Committee. Section 500.30 and §500.31 clarify the operation of the Outstanding Rural Scholar Recognition Program and establish the way in which outstanding rural scholars will be selected. Section 500.32 sets out the qualifications for forgiveness loans for Outstanding Rural Scholars; §§500.33-500.41 determine loan limits, payments to students, changes in student status, funds returned to the program, conditions of loans, interest on loans and compliance and noncompliance with such conditions. Section 500.42 requires dissemination of a directory of community agents and of general information about the program.

The new subchapter is adopted on an emergency basis in order to implement the provisions of Senate Bill 445, 72nd Legislature, 1991, which transferred administration of the Outstanding Rural Scholar Recognition and Loan Forgiveness Program to the Center for Rural Health Initiatives from the Texas Higher Education Coordinating Board. Senate Bill 445 took effect on June 5, 1991. Therefore, emergency rules are necessary to implement Senate Bill 445 and to ensure continuity in the program, including authorizing the provision of loans to students in the program for the Fall semester. The rules also are being proposed for permanent adoption in this issue of the *Texas Register.*

The new sections are adopted under Texas Civil Statutes, Article 4414b-1, §4(d), which authorize the Center for Rural Health Initiatives to administer the Outstanding Rural Scholar Recognition Program; Texas Civil Statutes, Article 4414b-1.1, §9, which authorize the executive committee of the Center for Rural Health Initiatives to adopt rules as necessary to implement the program; and under Article 6252-13a, §5, which authorizes the Center for Rural Health Initiatives to adopt rules on an emergency basis.

§500.21. Purpose, Administration, Delegation of Powers and Duties.

(a) The purpose of the Texas Outstanding Rural Scholar Recognition and Forgiveness Loan Program is to recognize, encourage, and financially support Outstanding Rural Scholars in health professions studies at institutions of higher education and to lead them to provide health care in rural areas and communities of Texas.

(b) The executive committee of the Center for Rural Health Initiatives (center), as the governing body of the center, or its successor or successors, shall administer the Texas Outstanding Rural Scholar Recognition and Forgiveness Loan Program.

(c) The executive committee delegates to the executive director of the center the powers, duties, and functions authorized by as provided in this subchapter.

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

Advisory committee–The Outstanding Rural Scholar Advisory Committee.

Center–The Center for Rural Health Initiatives.

Cosigner–A cosigner of a promissory note executed under these rules shall be a person signing a note, other than the loan recipient, who is a citizen or permanent resident of the United States over 21 years of age and who is gainfully employed or otherwise demonstrates financial responsibility. Such a person may be a relative other than the spouse and may not be a student. The community agent may serve as a cosigner. A cosigner is jointly and severally responsible for all promissory notes issued through the program and signed by the rural scholar and him or herself.

Executive Committee–The executive committee of the Center for Rural Health Initiatives.

Executive director–The executive director of the Center for Rural Health Initiatives.

Forgiveness loan(s)–For the purposes of this subchapter, loans made through the Texas Outstanding Rural Scholar Forgiveness Loan Program, which can be canceled by providing health care services to the community.

Full-time student–As defined by the institution of higher education or health professions program in which the Outstanding Rural Scholar is enrolled.

Fund–The Texas Outstanding Rural Scholar Loan Fund administered by the executive committee as the governing body of the Center for Rural Health Initiatives from which forgiveness loans are made.

Half-time student–As defined by the institution of higher education or health professions program in which the Outstanding Rural Scholar is enrolled.

Health care professional–Any provider of health care or health related services in the fields of medicine, dentistry, optometry, pharmacy, chiropractic, psychology, nursing, and allied health.

Health professions–The fields of medicine, dentistry, optometry, pharmacy, chiropractic, psychology, nursing, and allied health.

Program officer–The Texas Outstanding Rural Scholar Forgiveness Loan Program Officer designated by the institution of higher education to represent the program on that campus.

Resident of Texas–A resident of Texas as described inEducation Code, Chapter 54, Subchapter B. Nonresidents eligible to pay Texas resident tuition at institutions of higher education are excluded.

Rural area–Any nonmetropolitan county as defined by the United States Census Bureau in its most recent census.

Rural community–Any incorporated or unincorporated municipality in a rural area.

§500.23. Allied Health Professional. An allied health professional is any individual who:

(1) has received a certificate, an Associate Degree, a Bachelor's Degree, a Masters Degree, a Doctoral Degree, or post-doctoral training in a science relating to health care; and

(2) shares in the responsibility for the delivery of health care services or related services, including:

(A) services relating to the identification, evaluation, and prevention of diseases and disorder;

(B) dietary and nutritional services;

(C) health promotion services;

(D) rehabilitation services; or

(E) health system management services.

§500.24. Eligible Institution of Higher Education.

(a) For purposes of the Outstanding Rural Scholar Forgiveness Loan Program, an eligible institution of higher education may be any public institution as defined in the Texas Education Code, §61.003(8), or any nonprofit, independent institution as defined in the Texas Education Code, §61.222, or any other nonprofit health-related school or program.

(1) Any health related schools or programs within eligible institutions must be accredited by the Commissions Colleges of the Southern Association of Colleges and Schools, the Liaison Committee on Medical Education, the American Osteopathic Association, the Texas State Board of Nurse Examiners for Registered Nurses, the Texas Board of Vocational Nurse Examiners, or, in the case of allied health, an accrediting body recognized by the United States Department of Education.

(2) An eligible institution must follow the Civil Rights Act of 1964 (Public Law 88-353) Title VI in avoiding discrimination in admissions.

(b) Designation of institutional representative. Unless otherwise specified by the chief executive officer of the institution, the director of student financial aid shall serve as the Outstanding Rural Scholar Forgiveness Loan Program officer, shall be the executive committee's on-campus agent to certify all institutional transactions and activities with respect to the fund, and shall be responsible for all records and reports reflecting the transactions with respect to the fund.

§500.25. Community Agent. A community agent may be any entity with council members, a board of trustees, or commissioners having perpetuity that:

(1) is responsible to and serves a rural area or rural community; and

(2) is legally authorized to raise funds and/or accept grants, financial gifts from citizens, scholarship funds, or private foundation funds.

§500.26. Eligible Scholar. An eligible scholar is one who is a Texas resident, is nominated and sponsored by and has financial support committed from a community agent as defined in these rules, and is:

(1) a high school student who:

(A) is enrolled or intends to enroll in a postsecondary institution on at least a half-time basis to pursue a course of study to become a health care professional; and

(B) is in the upper 25% of his or her high school's class, if such class numbers 48 or greater; or

(2) a college student who:

(A) is enrolled or intends to enroll in a postsecondary institution on at least a half time basis to become a health care professional; and

(B) has a grade point average equivalent to 3.00 on a 4.00 scale in all college course work or is in the upper 25% of his or her class; or

(3) an individual who:

(A) has a high school diploma or equivalent;

(B) demonstrates to the satisfaction of a community agent as defined in these rules that he or she has the motivation, qualities, and abilities that lead to success in the health professions; and

(C) intends to enroll, or is enrolled, in a postsecondary institution on at least a half-time basis to become a health care professional.

§500.27. Rural Scholar. A rural scholar is a student scholar nominated by a community agent for consideration by the advisory committee.

§500.28. Outstanding Rural Scholar. An outstanding rural scholar is a rural scholar selected for recognition by the advisory committee in competition with other rural scholars.

§500.29. Outstanding Rural Scholar Advisory Committee.

(a) Role. The Outstanding Rural Scholar Advisory Committee serves as an advisory committee to the executive committee and:

(1) recommends guidelines to the executive committee for use by community agents in nominating and sponsoring rural scholars;

(2) selects and ranks outstanding rural scholars for the executive committee;

(3) assists the executive committee in building community support for the Outstanding Rural Scholar Recognition Program;

(4) assists the executive committee in dispensing the information prepared by the executive committee on the Outstanding Rural Scholar Recognition Program; and

(5) advises the executive committee on the progress of the Outstanding Rural Scholar Recognition Program.

(b) Composition. The composition of the advisory committee is as follows:

(1) one rural practicing family practice physician;

(2) one rural hospital administrator;

(3) one rural practicing registered professional nurse;

(4) one rural practicing allied health professional;

(5) one dean of a medical school;

(6) one dean of a nursing school;

(7) one dean of a school of allied health science;

(8) one head of a vocational/technical institution;

(9) one community college administrator;

(10) one individual knowledgeable in student financial assistance programs;

(11) one rural public school superintendent; and

(12) one rural resident.

(c) Appointments. Appointments to the advisory committee by the executive committee shall be made with consideration to geographical areas of the state.

(d) Vacancies. Vacancies on the advisory committee shall be filled by the executive committee in the same manner as indicated in subsections (b) and (c) of this section.

(e) Terms. The committee members serve terms of six years with the terms of one-third of the members expiring on August 31 of each odd-numbered year. All committee members are eligible for reappointment to consecutive terms.

§500.30. Outstanding Rural Scholar Recognition Program.

(a) The community agent, in cooperation with high schools and postsecondary institutions, is responsible for initiating and developing the local nominee selection process and support mechanism for a rural area or rural community for the Outstanding Rural Scholar Recognition Program.

(b) The community agent and high schools and postsecondary institutions are responsible for providing information about the program to interested persons.

(c) The community agent is responsible for preparing a portfolio for each rural scholar sponsored by the agent for review by the advisory committee. That portfolio must include:

(1) the rural scholar's name, birth date, and Social Security Number;

(2) evidence that the student is an eligible scholar;

(3) evidence that the rural scholar intends to enroll in a postsecondary institution for the purpose of pursuing an education in a health professions field and return to the rural area or rural community to provide health care upon graduation, certification, licensure, and/or registry, as required to practice in the State of Texas. This evidence must consist of the following:

(A) the results of an interview with the rural scholar. The interview must include but is not limited to responses to questions provided by the advisory committee;

(B) a typed essay of no more than 500 words composed by the rural scholar stating the following:

(i) the reasons for entering the oompetition;

(ii) the reasons for entering a health professions field;

(iii) the reasons for wanting to provide health care services to rural Texans; and

(iv) the health profession he or she plans to pursue and the anticipated time required to complete the program of study;

(4) results of any standardized tests taken by the rural scholar;

(5) evidence of academic honors and awards bestowed upon or received by the rural scholar;

(6) evidence of service awards received by the rural scholar;

(7) a list of extracurricular activities in which the rural scholar has participated or is participating;

(8) no more than three recommendations from the professional staff of the high school, college, or university or from employers, and/or community leaders;

(9) a statement from the community agent of why the rural scholar was selected and a statement of the community agent's satisfaction that the rural scholar's intentions are genuine;

(10) credentials of the community agent including the following:

(A) proof that the community agent meets the criteria of a community agent as described in these rules;

(B) a brief description of the local selection process; and

(C) a statement from the community agent of its commitment to support and encourage the rural scholar in ways other than through financial support including a description of how this support will be provided;

(11) a statement from the community agent of the projected need for a health care provider in the rural area or rural community in the health profession for which the nominee will be trained to provide services; and

(12) a statement that the community agent is willing to provide funds to the rural scholar, and if the scholar is selected for a forgiveness loan, that it believes it will be able to provide at least 50% of the cost of education at the eligible institution in which the rural scholar enrolls.

(d) The advisory committee may request additional information and/or interviews from the community agent and the rural scholar as needed.

(e) The portfolio described in subsection (c) of this section must arrive at the center no later than October 15.

(f) The advisory committee will rank scholars based on the information in the student portfolios.

§500.31. Designation of Outstanding Rural Scholars.

(a) The advisory committee shall select and rank the outstanding rural scholars and inform the executive committee of their selections. The executive committee shall notify the community agents of the outstanding rural scholars selected for each year and provide the community agents with a certificate of award signed by the executive director for each Outstanding Rural Scholar on or before January 15 of each year.

(b) By February 8 of each year the community agent shall send the center proof of the public recognition provided each outstanding rural scholar. Such recognition must include an announcement in local newspapers of the outstanding rural scholar's selection and may include public recognition of the outstanding rural scholar at civic gatherings and school assemblies.

(c) In addition to subsection (b) of this section, the community agent of each top ranked Outstanding Rural Scholar who may be eligible for a forgiveness loan will be asked to provide the executive committee by February 8:

(1) the name of the eligible institution the scholar will attend;

(2) the one year cost of education for the scholar;and

(3) a certified statement of the community agent's committee to provide 50% of the cost of education if their nominee receives a forgiveness loan.

(d) By February 15 of each year, the executive committee shall provide institutions of higher education with lists of Outstanding Rural Scholars.

§500.32. Qualifications for Forgiveness Loans. The executive director may authorize, or cause to be authorized, forgiveness loans to Outstanding Rural Scholars at any eligible institution, provided:

(1) the applicant:

(A) is a resident of Texas;

(B) is enrolled, or accepted for enrollment, for the number of hours required by the eligible institution for the student's program of study;

(C) has completed an application for an Outstanding Rural Scholar Forgiveness Loan;

(D) has provided the executive committee evidence of an agreement entered into by the Outstanding Rural Scholar and the community agent;

(E) has obtained the signature of a cosigner on the forgiveness promissory note;

(F) maintains satisfactory academic progress in an educational pro-

gram, except that one semester of grace may be extended to students on academic probation during which time the student may receive a forgiveness loan;

(G) maintains intent to pursue a course of studying the health professions until accepted in a health professions program or is pursuing a course of study in the health professions; and

(2) the community agent makes a formal commitment to provide 50% of the student's cost of education throughout the student's agreed upon program of study.

§500.33. Priorities for Application Processing. Applications received by the executive committee on or before June 30 of each year will be processed in order based upon the rank assigned the outstanding rural scholar by the advisory committee. Applications received after all appropriated funds are committed and/or after June 30 shall be processed only if funds from loan cancellations and repayments become available during the period for which the loan is needed. Renewal applications have priority over new applications.

§500.34. Annual Loan Limits. For each year of eligibility,the amount of a forgiveness loan an outstanding rural scholar may receive may not exceed the cost of education at the eligible institution of higher education in which the outstanding rural scholar is enrolled.

§500.35. Payments to Students.

(a) No payment shall be made to any outstanding rural scholar until the sponsoring community agent has deposited to the fund an amount equal to 50% of the principal amount of the loan to be disbursed.

(b) No payment shall be made to any outstanding rural scholar until he or she has executed a promissory note payable to the fund for the full amount of any authorized loan plus interest and other fees.

(c) For the purpose of any promissory note executed by the student, the defense that he or she was a minor at the time he or she executed a promissory not shall not be available to him or her in any action arising on said note.

§500.36. Change in Student Status. The program officer and the outstanding rural scholar must notify the executive committee promptly:

(1) if during the student's enrollment, the student ceases to be enrolled full time in a course of study in a health professions field requiring full-time enrollment;

(2) if during the student's enrollment, the student ceases to be enrolled at least half time; or

(3) if during the student's enrollment, the student changes his or her major course of study to a major that is not in a health professions field.

§500.37. Returned Funds. In any semester or term in which a student becomes ineligible to participate in the forgiveness loan program, funds disbursed to the student from the fund during that semester or term shall be returned to the program in accordance with the following schedule:

(1) in the first week of classes, the refund is 100%;

(2) in the second week of classes, the refund is 70%;

(3) in the third week of classes, the refund is 60%;

(4) in the fourth week of classes, the refund is 40%; and

(5) in the fifth week of classes, the refund is 0%.

§500.38. Conditions of Loans. A forgiveness loan made under provisions of this subchapter is contingent upon the Outstanding Rural Scholar having a formal agreement with the community agent, in which the community agent pledges to provide financial and other support to the scholar and the scholar pledges to provide health care services to the community.

§500.39. Interest on Forgiveness Loans. The interest on forgiveness loans shall be simple interest and the interest rate to be charged shall be a fixed rate set from time to time by the executive director and ratified by the executive committee. Interest shall accrue from the date of disbursement until the loans are either totally repaid or forgiven.

§500.40. Compliance with Conditions of Forgiveness Loans.

(a) Forgiveness of loans under provisions of this subchapter may occur if the forgiveness loan recipient fulfills the terms of the promissory note to become a health care professional and provides health care to a rural area or rural community. The health care provider must:

(1) be fully credentialed, certified, licensed, and/or registered as required to practice in the State of Texas in the health care field in which health care is provided; and

(2) reside in the rural area or rural community in which the health care is provided.

(b) A forgiveness loan recipient may have the principal and interest of one year's loan forgiven for each 12 months he or she provided health care on a full-time basis in the rural area or rural community. If employment is on less than a full-time basis, benefits will be prorated.

(c) Only outstanding principal and interest remaining unpaid are eligible for forgiveness.

(d) Should the executive committee, on the recommendation of the advisory committee, find the sponsoring community not to be in need of the scholar's services, the executive committee may permit the borrower to fulfill terms of the promissory note regarding loan forgiveness by practicing in a rural area or community elsewhere in Texas.

§500.41. Noncompliance with Conditions of Forgiveness Loans.

(a) Period of loan repayment. The principal amounts of forgiveness loans that must be repaid shall be repaid in installments over a period of not more than 10 years.

(b) Repayment of loans. The executive committee may place a forgiveness loan in repayment if it determines at any time that the Outstanding Rural Scholar is not complying with the conditions of the loan as described in this subchapter.

(1) Although loans may be prepaid at any time without penalty, repayment shall extend over the period authorized in subsection (a) of this section.

(2) The executive committee will provide a repayment schedule calling for the minimum payment within the loan period. In no case will the minimum monthly repayment be less than $50 on all such loans.

(3) Amounts repaid shall be deposited in the fund.

(4) A charge of five percent 5.0% of the monthly payment or five dollars, whichever is less, shall be assessed on any payment received later than ten days from the due date of such payment. Such charges shall be collected out of the first payments made in excess of the interest then due.

(5) The executive director may postpone required periodic installments of principal and any accrued interest during any authorized period. Any such periods shall not be included in determining the ten year repayment period.

(6) The cosigner may not be held responsible for therepayment of the loan, accrued interest, and other charges if the borrower dies or becomes totally and permanently disabled.

(c) Grace periods of loans. The following provisions regarding grace periods will apply to all forgiveness loan recipients.

(1) A loan recipient who changes his or her field of study out of a health profession field will be found in non-

compliance. Repayment begins four months after he or she drops below half time.

(2) A loan recipient pursuing a course of study requiring full-time enrollment who ceases to be enrolled full time will be found in noncompliance. Repayment will begin four months after he or she ceases to be enrolled full time.

(3) A loan recipient who ceases to be enrolled at least half time will be found in noncompliance and repayment will begin four months after dropping to less than half-time enrollment.

(4) A loan recipient who ceases to provide the health care in a rural area or rural community before the total principal and interest on all outstanding loans are forgiven will be found in noncompliance. Repayment will begin immediately.

(d) Grace periods for students studying medicine. In addition to the provisions in subsection (c) of this section, for students who have pursued studies in medicine, the following provisions regarding grace periods will apply to forgiveness loan recipients.

(1) A loan recipient who is accepted for a residency or internship and who has not begun a residency or internship program within four months of completion of medical school or who, within four months of completion of postgraduate study, does not continue into a residency or internship will be in noncompliance. Repayment will begin immediately.

(2) A loan recipient who graduates but does not complete the minimum requirements for licensure by the Texas State Board of Medical Examiners will be found in noncompliance. Repayment will begin four months from the time he or she discontinues formal training.

(3) A loan recipient who meets the minimum requirements for licensure by the Texas State Board of Medical Examiners, is not continuing in a residency program, and does not practice in a rural area or rural community within four months of licensure will be found in noncompliance. Repayment will begin immediately.

(4) A loan recipient who has completed a residency or internship program has four months to begin practicing in a rural area or rural community. If practice does not begin within four months, the loan recipient will be found in noncompliance. Repayment will begin immediately.

(e) Grace periods for students studying health professions other than medicine. In addition to the provisions in subsection (c) of this section, for students pursuing studies in health professions other than medicine, the following provisions regarding grace periods will apply to forgiveness loan recipients.

(1) A loan recipient who does not become fully credentialed, certified, licensed and/or registered as required to practice in the State of Texas within one year of completing the required professional education will be found in noncompliance and repayment will begin immediately.

(2) A loan recipient who does not begin providing professional health care in a rural area or rural community within four months of becoming fully credentialed, certified, licensed and/or registered as required to practice in the State of Texas will be found in noncompliance. Repayment will begin immediately.

(f) Postponement of repayment. The executive director may delay the repayment requirement for recipients enrolled on at least a half-time basis at an eligible institution. These postponement periods are not included when calculating the maximum period. The executive director may also waive or delay repayment for recipients who give evidence of extreme financial hardship, in which case the period of postponement will not be included in determining the maximum repayment period. The executive director may require payments on the interest being accrued during the time of a postponement.

(g) Enforcement of collection. When a recipient of a loan authorized by this law has failed or refused to make as many as six monthly payments due in accordance with a promissory note(s),then the full amount of remaining principal, interest, and late charges shall immediately become due and payable. The recipient's name and last known address and other information as requested by the executive director shall be reported to the attorney general. Suit for the remaining sum shall be instituted by the attorney general or any county or district attorney acting for him in the county of the recipient's residence or in Travis County, unless the attorney general finds reasonable justification for delaying suit and so advises the executive director in writing.

(1) Upon notification by the executive director of default on this loan, the educational institution shall cause the records, including transcripts of the forgiveness loan recipient, to become unavailable to him or her or any other person outside the institution until the participating institution has been notified by the executive director that such default has been corrected. Should the default continue beyond at least 60 days from the date suit service was obtained, the executive director will cause a judgement to be entered which may be filed in the county records where the service was obtained. The executive director will release such judgment once the recipient has completed the repayment of the debt as stipulated in the judgment.

(2) In all cases of default, the forgiveness loan recipient will be responsible for the payment of principal and all accrued charges, including interest, late charges, skiptracing fees, court costs, and attorney fees.

(h) Provisions for disability and death. The executive committee shall cancel a forgiveness loan recipient's repayment obligations if it determines:

(1) on the basis of a sworn affidavit of a qualified physician, that the forgiveness loan recipient is unable to complete a course of study or provide health care because of a disability that is expected to continue indefinitely or result in death; or

(2) on the basis of a death certificate, or other evidence of death that is conclusive under state law, that the forgiveness loan recipient has died.

§500.42. Directory of Community Agents, Dissemination of Program Information. The executive committee shall maintain a directory of community agents which it can provide to interested individuals, schools, and institutions of higher education. The executive committee shall disseminate information about the Texas Outstanding Rural Scholar Recognition and Forgiveness Loan Program to all interested parties.

Issued in Austin, Texas, on June 24, 1991.

TRD-9107507 Liberty Ogbonna
Executive Director
Center for Rural Health Initiatives

Effective date: June 24, 1991

Expiration date: October 22, 1991

For further information, please call: (512) 479-8893

♦ ♦ ♦

Name: James Guthrie

Grade: 9

School: Rockdale High School, Rockdale ISD

Proposed Sections

Before an agency may permanently adopt a new or amended section, or repeal an existing section, a proposal detailing the action must be published in the *Texas Register* at least 30 days before any action may be taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive sections, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

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

TITLE 1. ADMINISTRATION

Part V. State Purchasing and General Services Commission

Chapter 113. Central Purchasing Division

Purchasing

• 1 TAC §113.10

The State Purchasing and General Services Commission proposes an amendment to §113.10, concerning delegating the purchase of services to state agencies. The proposed amendment will provide for review by the central purchasing authority of service procurements, the estimated cost of which exceeds $100,000. The central purchasing authority may then advertise and award the requirement or may defer the advertisement and award to the state agency.

Ron Arnett, director for purchasing, has determined that for each year of the first five years 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. Arnett also has determined that for each year of the first five years the section is in effect the public benefit anticipated as result of enforcing the section will be increased efficiency and competitiveness of the purchase of services by state agencies and the avoidance of common contracting errors frequently experienced in the past. The effect on small businesses will be that the section will make access to competitive bidding of services over $100,000 easier for small businesses as the central purchasing authority will be advertising many of these requirements allowing a small business to receive multiple bids for services from one central bidders list. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Judith Porras, General Counsel, State Purchasing and General Services Commission, P.O. Box 13047, Austin, Texas 787110-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendment is proposed under Texas Civil Statutes, Article 601b, §3.01, which provide the State Purchasing and General Services Commission with the authority to promulgate rules to accomplish the purpose of Article 3.

§113.10. Delegated Purchases.

(a) General delegation. Pursuant to the provisions of Texas Civil Statutes, Article 601b, §3.08, competitive bidding whether formal or informal is not required for purchases not in excess of $250. Purchases subject to Texas Civil Statutes, Article 6203c (required to be made from the Texas Department of Criminal Justice [Corrections], see also §113.11 of this title (relating to Texas Department of Criminal Justice [Corrections], Purchases) and Texas Civil Statutes, 601b, §3.23), as well as purchases of products and services of blind and severely disabled persons subject to the Human Resources Code, Texas Civil Statutes, Chapter 122 (see also §113.12 of this title (relating to Purchase of Blind-Made Goods and Services) and Texas Civil Statutes, 601b, §3.22), shall be made in accord with those statutes and will not be affected by this delegation. By authority granted under Texas Civil Statutes, 601b, §3.06, the commission has delegated purchasing functions in the following cases to agencies of the state (spot and emergency purchase rules will apply to all types of delegated purchases):

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

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

(b)-(d) (No change.)

(e) Acquisition of services. The commission has approved a delegation of purchasing functions connected with the acquisition of [all] services, **the estimated cost of which does not exceed $100,000 per year,** as described in the Act, Section 3.01(b), and not excluded therein from commission responsibility. Purchases made under this authority must be obtained through competitive bids and documentation forwarded to the commission for approval. If an agency receives certification as described in paragraph (1) of this subsection, it need not send to the commission documentation required by the commission except when the acquisition of services either is made under the proprietary specifications requiring written justification in accord with Texas Civil Statutes, 601b, §3.09, or is anticipated to be in an amount in excess of $25,000. **A state agency may not break down a large purchase into small purchases in order to meet the specified dollar amounts. The purchase of services, the estimated cost of which is anticipated to exceed $100,000 per year, requires review by the commission staff of proposed specifications/statement of work and a determination of whether the commission or the user agency should make the advertisement and award. The staff may determine that the service should be advertised to the commission's bidders lists in which case the commission will make the award in accordance with open market procedures (see §113.8 of this title (relating to Open Market Purchases)). If the staff determines it to be in the state's best interest, as no competitive advantage can be obtained by the commission in making the advertisement and award, the commission staff may defer the advertisement and award to the user agency.**

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

(f)-(1) (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 25, 1991.

TRD-9107544

Judith M. Porras
General Counsel
State Purchasing and General Services Commission

Earliest possible date of adoption: August 2, 1991

For further information, please call: (512) 463-3446

◆ ◆ ◆

Part XIII. Texas Incentive and Productivity Commission

Chapter 275. Productivity Bonus Program

• 1 TAC §§275.1, 275.3, 275.5, 275.7, 275.9, 275.11, 275.13, 275.15, 275.17, 275.19, 275.21

The Texas Incentive and Productivity Commission proposes new §§275.1, 275. 3, 275.5, 275.7, 275.9, 275.11, 275.13, 275.15, 275.17, 275.19, and 275.21, concerning rules for the Productivity Bonus Program currently under Chapters 289, 291, 293, 295, and 297. These rules have been proposed for repeal. The rules are much the same except for changes made to §275.3 and §275.17 to incorporate new statutory provisions. The new

rules leave out the reference to a submission date so that agencies may submit productivity plans at any time. Changes were made to include hourly, part-time, and temporary employees and employees who perform functions that are equivalent to those performed by classified employees in other agencies. In addition, the new rules specify that part-time employees receive a pro-rata share of any bonus. A subsection title was amended for clarification.

M. Elaine Powell, executive director, has determined that for each year of the first five years the sections are in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. As a result of the proposed rules with changes, agencies will submit productivity plans to increase productivity and decrease costs. The actual cost savings or increased productivity cannot be estimated since the productivity plans have not been submitted yet. There will be no fiscal implications for local government.

Ms. Powell 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 cost savings, increased efficiency and revenues, improvement in state employee morale, and availability of funds for state projects through increased productivity. Consolidation of the rules into one chapter will make the rules easier to read and amend. 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 M. Elaine Powell, Executive Director, Texas Incentive and Productivity Commission, P.O. Box 12482, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Article 6252-29a, §1, which authorize the Texas Incentive and Productivity Commission to promulgate rules for its programs.

§275.1. Definitions for the Productivity Bonus Program. The following words and terms, when used in Chapters 289-297 of this part, shall pertain only to the Productivity Bonus Program and shall have the following meanings, unless the context clearly indicates otherwise.

Act–Texas Civil Statutes, Article 6252-29a, Incentive and Productivity Act and Text of Conference Committee Report Senate Bill Number 222 and Governor's Veto Proclamation, 71st Legislature, 1989.

Application–The form submitted by an agency director to the commission to request a productivity bonus award after monitoring the progress of the agency or division in implementing its productivity bonus plan.

Certification–The process by which the executive director of an agency ascertains the amount of savings realized by the agency or division to the comptroller of public accounts.

Commission–The Texas Incentive and Productivity Commission (TIPC).

Division–A unit of a state agency that: has an identifiable self-contained budget; or maintains its financial records under an accounting system approved by the state auditor that permits the accurate identification of the expenditures and receipts of the unit.

Executive director–The appointed or elected executive administrator of a state agency.

Implementation year–The fiscal year during which the agency or division puts the concepts outlined in the agency's or division's productivity plan into effect.

Productivity bonus account–An account created by the state treasurer for each state agency or division participating in the productivity bonus program.

Productivity bonus award–A cash bonus awarded to an eligible state agency, division of that agency, or employees thereof after a productivity plan has been successfully implemented and proven to save money in recognition of increased productivity.

Productivity plan–A proposal detailing planned cost reductions and changes in operations that an agency or division intends to make in the next fiscal year, with the goal of improving efficiency while maintaining service levels.

State agency–A department, commission, board, office, or other agency in the executive or judicial branch of government. The term does not include the office of the governor or any institution of higher education as defined by the Education Code, §61.0003.

Verification period–The 90-day period following the implementation year, during which the commission verifies the amount of the savings certified by the executive director of an agency and decides whether or not to grant a productivity bonus award.

§275.3. Submission of Productivity Plans.

(a) Submission. The executive director of a state agency may submit a productivity plan to the commission that, if implemented, would cause the agency or division to qualify for a productivity bonus award as outlined §293.3 of this title (relating to Qualifications for Award).

(b) Form. The productivity plan shall be submitted in a form prescribed by the commission.

§275.5. Approval by Commission.

(a) Approval required. The commission must approve an agency's productivity plan before the agency may implement the plan and apply for a productivity bonus award.

(b) Additional information. The commission may return any productivity plan to an agency executive director to request additional information or to clarify details relating to the plan.

(c) Commission review. Within 30 days of receipt of the productivity plan, the commission shall review the plan and inform the executive director in writing that the plan is approved or rejected.

(d) Plan implementation. An agency may implement the productivity plan upon approval.

§275.7. Plan Revisions.

(a) An agency may make reasonable revisions or adjustments to its approved productivity plan during the implementation year.

(b) The agency shall inform the commission in writing of any revisions or adjustments to its approved productivity plan at least quarterly.

§275.9. Application.

(a) Timing. No later than August 1 of the implementation year, the executive director may apply for a productivity bonus award.

(b) Form. The application must be made in the form prescribed by the commission.

(c) Evaluation components. In the application, the executive director must provide the commission with evaluation components, developed by the agency or division that establish a quantitative measure of the agency's or division's productivity and performance.

§275.11. Qualifications for Award.

(a) Biennium appropriation divided To qualify for a productivity bonus award, a state agency or division whose appropriation was specifically divided between fiscal years, must demonstrate to the commission that the agency or division operated at less cost during the implementation year than the amount appropriated to that agency or division for that fiscal year with no decrease in the agency's or division's required level of services.

(b) Biennium appropriation not divided. If the appropriation for the agency's or division's fiscal biennium was not specifically divided between fiscal years, the amount reasonably attributable to the implementation year from the total appropriation shall be the basis of evaluation as to whether or not the agency or division operated for less cost with no decrease in the required level of service.

(c) Legitimate savings. The commission shall consider as a legitimate savings a reduction in expenditures made possible by:

(1) reductions in overtime for eligible employees;

(2) elimination of consultant fees;

(3) elimination of budgeted positions;

(4) elimination of unnecessary travel;

(5) elimination of unnecessary printing and mailing;

(6) elimination of payments for unnecessary advertising, membership dues, subscriptions, and other nonessential outlays of state agency or division funds;

(7) increased efficiency in use of energy;

(8) improved office procedures and systems; and

(9) any other practice or device that the commission determines has resulted in verifiable savings.

(d) Cost of operation. An agency's or division's claimed cost of operation shall not be in whole or part the result of:

(1) a lowering of the quality of the service rendered;

(2) reduced pass-through or transfer expenditures;

(3) receipts realized in excess of budgeted amounts;

(4) failure to implement merited promotions, reclassifications, or authorized salary increases;

(5) postponement of scheduled purchases, repairs, or payments of accounts payable to a future fiscal year;

(6) stockpiling of inventory in the preceding fiscal year in order to reduce requirements during the fiscal year;

(7) substitution of non-state funds for state appropriations; or

(8) any other practice, event, or device that the commission determines has caused a distortion that results in inaccurate claimed cost of operation.

§275.13. Savings Transfer.

(a) Timing. No later than August 1 of the implementation year, the executive director shall certify the amount of savings realized by the agency's or division's productivity plan to the comptroller of public accounts.

(b) Productivity bonus account transfer. The comptroller of public accounts shall transfer that amount from the appropriation of the state agency to the agency's or division's productivity bonus account.

§275.15. Application Review.

(a) Timing. Within 60 days after the end of the implementation year, the commission shall review the application of the state agency.

(b) Determination of costs. The commission shall compare the expenditures of the state agency or division with the agency's or division's total appropriation, if appropriate, and shall determine the amount by which the agency or division has reduced its cost of operations during the implementation year.

(c) Additional information. The agency or division shall provide the commission with any additional information which may be required by the commission in its review of the agency's or division's application.

(d) Adjustments. The commission shall make any adjustments it determines are necessary to eliminate distortions. These adjustments may include consideration of legislative increases in employee compensation and inflationary increases in the cost of services, materials, and supplies.

(e) Notification to agency. If the commission determines that a state agency or division qualifies for a productivity bonus, the commission shall notify the executive director of the agency no later than 90 days after the end of the implementation year.

§275.17. Awards to Employees.

(a) Amount. If the commission approves an agency or division for a productivity bonus award, the commission shall award to the employees of the agency or division an amount not to exceed 25% of the amount in the agency's or division's productivity bonus account.

(b) Employee eligibility. To be considered eligible for an award, an employee must be a classified employee under the Position Classification Act of 1961 (Texas Civil Statutes, Article 6252-11) and must be an employee of the agency or division at the time the award is approved by the commission and must be an employee who:

(1) is an hourly, part-time, or temporary employee;

(2) is a classified employee under the Position Classification Act of 1961 (Texas Civil Statutes, Article 6252-11,); or

(3) performs functions that are equivalent to functions performed by a classified employee in other state agencies.

(c) Pro rata share of bonus. A current employee who has worked for the agency or division for less than the full implementation year or on a part-time basis is entitled to a pro rata share based on the fraction of the implementation year and the average fraction of the work week that the employee worked in the agency or division.

(d) Distribution. The awarded amount shall be distributed in equal shares to the eligible current employees of the agency or division.

(e) Bonus limit. A bonus made to any individual employee may not exceed $5,000.

§275.19. Awards to a Division.

(a) Distribution. If the commission approves a productivity bonus award for a division of a state agency, the balance of the amount in the division's productivity bonus account remaining after the award to employees, shall be distributed between the state agency to which the division belongs and the fund from which the original division appropriation was made.

(b) Appropriation to agency. One third of the balance after award to employees shall be appropriated to that agency to be used by the administration of the agency during the subsequent fiscal year to further agency productivity. The remainder shall be credited to the appropriate fund.

§275.21. Awards to Agencies.

(a) Distribution. If the commission approves a productivity bonus award for an entire agency, the balance of the amount in the agency's productivity bonus account remaining after the award to employees, shall be distributed between the state agency and the fund from which the agency's original appropriation was made.

(b) Appropriation. One third of the balance after award to employees shall be appropriated to that agency to be used by the administration of the agency during the subsequent fiscal year to further agency productivity. The remainder shall be credited to the appropriate fund.

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, 1991.

TRD-9107595

M. Elaine Powell
Executive Director
Texas Incentive and Productivity Commission

Earliest possible date of adoption: August 2, 1991

For further information, please call: (512) 475-2393

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

Part 1. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter L. Insurance Requirements

• 16 TAC §5.181

The Railroad Commission of Texas proposes an amendment to §5.181, concerning evidence of insurance required. The amendment is proposed to set the required limits for accidental insurance coverage which may be car-

ried in lieu of workers' compensation insurance. The new subsection is proposed as a response to the provisions of Senate Bill 691 of the 72nd Legislature.

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

Ronald D. Stutes, hearings examiner, has determined that for each of the first three years the section is in effect the public benefit anticipated as a result of enforcing the section is the continued protection of carrier employees in the most cost-effective manner. 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; in fact, since carriers are given a new option, they will presumably choose the least expensive alternative and will therefore experience a cost savings.

Public comment is invited and may be submitted within 30 days to Ronald D. Stutes, Hearings Examiner, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711.

The amendment is proposed under the Texas Motor Carrier Act, Texas Civil Statutes, Article 911b §13, which authorizes the commission to set the rates for accidental insurance in lieu of workers' compensation coverage.

§5.181. Evidence of Insurance Required.

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

(c) Notwithstanding the provisions of subsection (a)(3) of this section, a motor carrier may protect its employees by obtaining accidental insurance coverage from a reliable insurance company authorized to write such policies in this state. The accidental insurance coverage shall be in the amount of $300,000 or more per occurrence. Proof of insurance shall be on a form prescribed by the commission, and shall be filed with the commission along with the filing fee prescribed in §5.184 of this subchapter (relating to Insurance Carrier). A motor carrier may not be self-insured for the coverage required in this subsection.

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, 1991.

TRD-9107515 Martha V. Swanger
Hearings Examiner
Legal Division, General Law

Earliest possible date of adoption: August 2, 1991

For further information, please call: (512) 463-7090

◆ ◆ ◆

Chapter 7. Gas Utilities Division

Procedural Rules

• 16 TAC §7.1

The Railroad Commission of Texas (commission) proposes amendments to §§7.1, 7.2, and 7.3, the repeal of §§7.10-7.15, 7.20-7.22, 7.25-7.27, and 7.35; and new §§7.4-7.11.

The commission proposes to amend §§7.1, 7.2, and 7.3 concerning, respectively, definitions, filing of documents, and communications by gas utilities with members or employees of the commission. The proposed amendments are made for purposes of clarity and to assure uniformity with, and eliminate repetition of, the commission's General Rules of Practice and Procedure effective June 1, 1991. All proposed amendments, with the exception of a provision for duplicate filings of pleadings and documents contained in §7.2, are non-substantive.

The commission proposes to repeal §§7.11, 7.25, 7.26, and 7.27 concerning, respectively, filing of documents, proposals for decision, filing of exceptions and replies, and final decisions and orders. The repeals are proposed because the commission's General Rules of Practice and Procedure effective June 1, 1991, render these sections merely repetitive and therefore unnecessary. All repeals are non-substantive.

The commission also proposes to repeal §7.14 (procedure for abandonment or discontinuance of service), §7.10 (contents of pleadings), §7.12 (establishing and changing residential and commercial rates-statement of intent), §7.13 (procedure to establish and change residential and commercial rates in unincorporated areas), §7.15 (deadline for the filing of prepared testimony and exhibits by a utility seeking appellate review of municipal action and statements of intent to increase a city gate rate), §7.20 (contents of notice), §7.21 (publication and service of notice), and §7.22 (statements of intent to participate) and to simultaneously propose new §§7.4, 7.5, 7.6, 7.7, 7.8, 7.9, 7.10, and 7.11, respectively, also concerning the same subject matters. The repeals are simultaneous adoptions are proposed to renumber and clarify the rules and to assure uniformity with and eliminate repetition of the commission's General Rules of Practice and Procedure effective June 1, 1991. All proposed repeals and adoptions are non-substantive.

The commission proposes to repeal §7.35 and to simultaneously propose new §7.48, both concerning construction work in progress and allowance for funds used during construction. The repeal and simultaneous adoption are proposed to place the rule in the proper undesignated head relating to substantive rather than procedural rules and to clarify the rule.

Linda M. Toutant, Hearings Examiner, Legal Division, Gas Utilities/LP-Gas Section, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Miss Toutant also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be increased certainty, uniformity, and compliance. 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 Linda M. Toutant, Hearings Examiner, Legal Division, Gas Utilities/LP-Gas Section, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7015, within 30 days following the date of publication in the *Texas Register*.

The amendment is proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which requires agencies to adopt rules of practice. The proposed amendment is nonsubstantive and made for purposes of grammatical clarity and conformance with the provisions of 16 TAC §1.2 and related provisions of Chapter 7, specifically existing §§7.13, 7.14, 7.15, and 7.35.

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

Bulletin–A Division publication printed twice monthly containing information about the division such as notices of hearings, final orders and decisions, rules, and other information of general interest to the public. It shall be sent to all persons and agencies requesting to be put on the bulletin mailing list and paying the applicable fee.

Transportation/Gas Utilities Division (division)–That administrative subdivision [unit] of the commission responsible for the regulation of the natural gas utility industry in Texas.

Gas utility (utility)–See definition in Gas Utility Act, Texas Civil Statutes, Article 6050 [(1960)], and Gas Utility Regulatory Act, §1.03(3)[, passed by the 68th Legislature, 1983].

Municipality–A city, incorporated village, or town, existing, created, or organized under the general, home-rule, [home rule], or special laws of the state.

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

Issued in Austin, Texas, on June 25, 1991.

TRD-9107535 Martha V. Swanger
Hearings Examiner, Legal Division, General Law
Railroad Commission of Texas

Earliest possible date of adoption: August 2, 1991

For further information, please call: (512) 463-7015

◆ ◆ ◆

• 16 TAC §7.2

The amendment is proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a,

which require agencies to adopt rules of practice. The amendment is non-substantive with the exception of its requirement of the filing of duplicate pleadings and documents. The amendment is made to conform to the provisions of 16 TAC §§1.21, 1.23, and 1. 24 and for purposes of clarification and conformity.

§7.2. Filing of Documents. **An original, or copy of the original, and one copy of all pleadings initiating a proceeding shall be filed with the director of the Transportation/Gas Utilities Division. An original, or copy of the original, and one copy of all other pleadings and documents shall be filed with the Gas Utilities Section of the Legal Division. The mailing address of the Transportation/Gas Utilities Division and the Legal Division is: Railroad Commission of Texas, P.O. Box 12967, 1701 North Congress Avenue, Austin, Texas 78711-2967.** The office hours of the **Transportation/Gas Utilities** Division **and Legal Division are from 8 a.m. to 5 p.m., Monday-Friday. Offices are closed on Saturdays and Sundays and on certain state-observed holidays. [All written communications may be mailed to: Director, Gas Utilities Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967, or delivered to William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.]**

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, 1991.

TRD-9107536 Martha V. Swanger
Hearings Examiner, Legal Division, General Law
Railroad Commission of Texas

Earliest possible date of adoption: August 2, 1991

For further information, please call: (512) 463-7015

• 16 TAC §7.3

The amendment is proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which require agencies to adopt rules of practice. The amendment is non-substantive and made for purposes of grammatical clarity and conformance with the provisions of the rule itself and 16 TAC §§1.6, 1.23, and 1.24 and a related provision of Chapter 7, specifically, existing §7.2.

§7.3. Communication by Gas Utilities with Members or Employees of the Railroad Commission.

(a) There shall be maintained accurate logs of all personal contacts and telephone communications between gas utilities or their representatives and members of the commission or employees of the **Transportation/Gas Utilities Division or Legal Division.** This log shall be open to the public for inspection [by any member of the public] during normal office hours. This log shall contain:

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

(5) a statement of any action requested by a gas utility or its representative.

(b) There shall be maintained copies of all written correspondence between members of the commission or employees of the **Transportation/Gas Utilities Division or Legal Division** and gas utilities or their representatives. These copies shall be open to the public for inspection during normal office hours.

[(c) Unless required for the disposition of ex parte matters authorized by law, members of the commission, or employees of the Gas Utilities Division assigned to render a decision or make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of fact or law, with any party or his representative, except on notice and opportunity for all parties to participate.]

(c)[(d)] The form for recording personal contacts and telephone communications is attached hereto and adopted for the purpose of this section.

RAILROAD COMMISSION OF TEXAS
REGISTRATION FORM

REPORT OF REGISTRATIONS
REPRESENTATION BEFORE STATE AGENCIES
Article 6252–23, Sec. 2, Vernon's Annotated Civil Statutes

If you represent another person, firm, partnership, corporation or association in a case, proceeding, application or other matter before this agency, follow the instructions for 1 line.

RECORD OF COMMUNICATION
PUBLIC UTILITY REGULATORY ACT
Article 1446c, Sec. 34, Vernon's Annotated Civil Statutes

If you are a public utility officer or employee, affiliate or representative communicating with this regulatory authority, a member or employee thereof, follow the instructions for 2 line.

Reserved	Date	1 List: a. Your name and address	b. Name and address of party represented	c. Case, proceeding or application	d. Whether or not representative has or expects to receive a financial benefit
	☐ Telephone call ☐ Personal contact ☐ Letter	2 List: a. Name of person contacting authority	b. Name of business entities represented	c. Subject matter of communication	d. Action, if any requested by public utility
	Date	1			
	☐ Telephone call ☐ Personal contact ☐ Letter	2			
	Date	1			
	☐ Telephone call ☐ Personal contact ☐ Letter	2			
	Date	1			
	☐ Telephone call ☐ Personal contact ☐ Letter	2			
	Date	1			
	☐ Telephone call ☐ Personal contact ☐ Letter	2			
	Date	1			
	☐ Telephone call ☐ Personal contact ☐ Letter	2			

[graphic]

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, 1991.

TRD-9107537 Martha V. Swanger
Hearings Examiner, Legal Division, General Law
Railroad Commission of Texas

Earliest possible date of adoption: August 2, 1991

For further information, please call: (512) 463-6858

◆ ◆ ◆

• 16 TAC §7.4

The new section is proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statute, Article 6252-13a, which requires agencies to adopt rules of practice. New §7.4 contains no substantive changes and is proposed for purposes of placing the rule in proper sequence, clarifying the rule grammatically and otherwise, and conforming the rule to the provisions of 16 TAC §1.23 and §1.25 and a related provision of Chapter 7, specifically, existing §7.2.

§7.4. Procedure for Abandonment or Discontinuance of Service.

(a) Discontinuance of service by a gas utility to any city gate or local distribution company shall require prior written commission approval. Except in emergency situations, an application to abandon or discontinue service shall be filed with the director of the Transportation/Gas Utilities Division at least 60 days prior to the proposed effective date of the proposed abandonment or discontinuance of service. In addition to the information required in §1.25 of this title (relating to Form and Content of Pleadings), the application shall state the following:

(1) the number of directly affected customers in each class;

(2) the names and addresses of all directly affected customers;

(3) the specific reasons for the proposed abandonment;

(4) the alternative energy sources available to the directly affected customers; and

(5) any previous notice provided by the utility to the directly affected customers.

(b) A copy of the application shall be sent to all directly affected customers by the gas utility simultaneously with the filing of the application to abandon service with the director of the Transportation/Gas Utilities Division. If a statement of intent to participate or motion to intervene is filed within 30 days from the date of the filing of the statement of intent, and party status is thereby subsequently established, a formal hearing shall be held. If no statement of intent to participate is filed, or no intervention pleading is filed and granted, then the matter may be handled on an informal administrative basis.

(c) In emergency situations, the gas utility shall file an application to abandon or discontinue service at the earliest possible time after the utility becomes aware that abandonment or discontinuance is necessary. Emergency procedures may be set up by the Transportation/Gas Utilities Division to handle these emergency situations.

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, 1991.

TRD-9107526 Martha V. Swanger
Hearings Examiner, Legal Division, General Law
Railroad Commission of Texas

Earliest possible date of adoption: August 2, 1991

For further information, please call: (512) 463-7015

◆ ◆ ◆

• 16 TAC §7.5

The new section is proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statute, Article 6252-13a, which requires agencies to adopt rules of practice. New §7.5 contains no substantive changes and is proposed for purposes of placing the rule in proper sequence, clarifying the rule grammatically and otherwise, and conforming the rule to the provisions of 16 TAC §§1.23 and §1.25 and a related provision of Chapter 7, specifically, existing §§7.2, 7.6, and 7.12.

§7.5. Contents of Statements of Intent and Petitions for Review of Municipal Action.

(a) In addition to the information required in §1.25 of this title (relating to Form and Content of Pleadings), and any necessary additional information required by the commission to evaluate the filing, all statements of intent to increase rates and petitions for review of action by municipality shall contain the following:

(1) the proposed revisions of rates and schedules;

(2) a statement specifying in detail each proposed change;

(3) the effect the proposed change is expected to have on the revenues of the applicant; and

(4) the classes and numbers of utility customers affected.

(b) The commission may reject any filing under this section which does not substantially comply with the requirements stated in this section at the time of filing or a reasonable time therefrom. A statement of intent or petition for review of action by a municipality shall not be deemed filed until all items listed in subsection (a) of this section have been filed with the director of the Transportation/Gas Utilities Division.

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, 1991.

TRD-9107527 Martha V. Swanger
Hearings Examiner, Legal Division, General Law
Railroad Commission of Texas

Earliest possible date of adoption: August 2, 1991

For further information, please call: (512) 463-7015

◆ ◆ ◆

• 16 TAC §7.6

The new section is proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which requires agencies to adopt rules of practice. New §7.6 contains no substantive changes and is proposed for purposes of placing the rule in proper sequence, clarifying the rule grammatically, sequentially, and otherwise, and conforming the rule to the provisions of 16 TAC §1.23 and §1.25 and related provisions of Chapter 7, specifically, existing §§7.2, 7.10, and 7.55.

§7.6. Establishing and Changing Residential and Commercial Rates-Statement of Intent.

(a) Contents. In addition to the information required in §7.5 of this title (relating to Content of Statements of Intent and Petitions for Review of Municipal Action), the following information shall be sworn to and contained in each statement of intent to change residential and commercial rates within the original jurisdiction of the commission:

(1) a statement as to whether the proposed rates will or will not exceed 115% of the average of all rates for similar services of all municipalities served by the same utility within the same county;

(2) a statement as to whether or not the proposed change will result in a "major change," as that term is defined in Texas Civil Statutes, Article 1446e, §5.08(b).

(b) Requirement of additional information for automatic cost of service increases in adjacent municipalities. If the rate proposed for residential and commercial rates within the original jurisdiction of the commission is the same rate as that in effect in the nearest incorporated area in Texas served by the same utility, and the rate change in the municipality is the result of an automatic cost of service adjustment, as defined in subsection (c) of this section, the gas utility shall file with the director of the Transportation/Gas Utilities Division, in addition to the information listed in subsection (a) of this section, the following information:

(1) all calculations used to derive the cost of service adjustment;

(2) the effect of the proposed rates on each affected customer class; and

(3) a copy of the cost of service adjustment clause in effect in the adjacent municipality.

(c) Definition of cost of service adjustment clause. Any rate provision other that a purchased gas adjustment clause provided for in §7.55 of this title (relating to Gas Cost Recovery), which operates to automatically increase or decrease without prior consent or authority of the appropriate regulatory authority.

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, 1991.

TRD-9107528 Martha V. Swanger
Hearings Examiner, Legal Division, General Law
Railroad Commission of Texas

Earliest possible date of adoption: August 2, 1991

For further information, please call: (512) 463-7015

◆ ◆ ◆

• 16 TAC §7.7

The new section is proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statute, Article 6252-13a, which requires agencies to adopt rules of practice. New §7.7 contains no substantive changes and is proposed for purposes of placing the rule in proper sequence, clarifying the rule grammatically and otherwise, and conforming the rule to the provisions of 16 TAC §1.23 and §1.25 and a related provision of Chapter 7, specifically, existing §§7.2, 7.10, 7.12, 7.20 and 7.21.

§7.7. Procedure to Establish and Change Residential and Commercial Rates in Unincorporated Areas.

(a) Definitions. For purposes of this section, residential and commercial rates subject to the commission's original jurisdiction shall be classified as either "environs rates" or "special rates."

(1) Environs rates-Residential and commercial rates for a gas utility applicable to natural gas sales and service in unincorporated areas adjacent to or near incorporated cities and towns, aside from "special rates" as defined in paragraph (2) of this subsection.

(2) Special rates-Residential and commercial rates for a gas utility applicable to natural gas sales and service established pursuant to commission orders applicable only to service by a given utility within a specified area and not specifically keyed to the rates charged in any incorporated area.

(b) Levels of environs rates.

(1) The environs rates may be the same rates as those in effect in the nearest incorporated area in Texas served by the same utility where gas is obtained from at least one common pipeline supplier or transmission system. The commission, on application by a utility, on complaint by any affected person, or on its own motion may review the rate in, or boundaries of, a given environs area and may consent to or direct adjustment where appropriate.

(2) Notwithstanding subsection (a)(1) of this section and paragraph (1) of this subsection, environs rates shall include any quality of service rules adopted by the commission, such as §7.45 of this title (relating to Quality of Service). Such quality of service rules shall apply to environs areas and become part of environs rates regardless of whether the same quality of service rules are in effect in the related incorporated areas.

(c) Rate changes for environs rates. Rate changes in environs shall be made in accordance with the following procedures.

(1) The statement of intent and notice shall be made as otherwise required under Texas Civil Statutes, Article 1446e, §5.08(a) and §7.6 of this title (relating to Establishing and Changing Residential and Commercial Rates-Statement of Intent). In addition, when environs rates are to be changed at the same time and to the same extent as the related incorporated area (city) rate and the proposed change does not constitute a "major change," the statement of intent to increase such environs rates shall include (in completed form) the following legend: This is a Statement of Intent to change environs rates for the unincorporated areas in the vicinity of _____, and contains rates identical with and to become effective upon the same date as rates contained in a similar Statement of Intent filed on or about this date by this utility with said city. This Statement of Intent is intended to produce the same residential and commercial rates as finally approved for the City of _____ and applies to the rates set out herein or any lower rates finally approved for the City of _____. Any rate changes pursuant to this Statement of Intent will not become effective until identical changes have become effective within the City of _____. All rate schedules filed with the environs Statement of Intent shall bear the following legend: "Effective on the latter of _____ or such other date as new rates become effective in the City of _____."

(2) The utility shall give notice of the filing of a statement of intent to change environs rates as required by §7.10 of this title (relating to Publication and Service of Notice.)

(3) Upon request, the environs rates may become effective upon the same date as the rates became effective in the municipality upon a showing of good cause pursuant to Texas Civil Statutes, Article 1446e, §5.08(b). In no event may environs rates become effective any earlier than the initial filing date with the director of the Transportation/Gas Utilities Division. If an appeal should be taken from the city to the commission and the commission establishes rates the same as or less than those in the environs statement of intent, the rates established by the commission in the city may become simultaneously effective in the environs area. If that appeal should be dismissed, any rates which have been established in the city may become effective in the environs area at the time of dismissal, provided that the rates established in the city are the same as or less than those in the environs statement of intent.

(4) Prior to final commission approval of the proposed environs rates, the utility shall furnish a copy of any action taken by the city with respect to the related statement of intent, the form of written notice mailed to affected environs area customers, and an affidavit of publication from the newspaper in which notice by publication was made, or an affidavit stating the manner in which notice was otherwise given pursuant to Texas Civil Statutes, Article 1446e, §5.08(a). Nothing herein shall restrict the commission's power and duty on its own motion or upon complaint from any affected person at any time within 30 days from the date when such change would otherwise have become effective to undertake such investigation and hearing as provided in Texas Civil Statutes, Article 1446e, §5.08(c), as may appear appropriate under the circumstances to determine fair and reasonable rates for the environs area in question.

(d) Rate changes proposed pursuant to cost of service adjustments. The commission shall review a cost of service adjustment, as defined in §7.6(c) of this title (relating to Establishing and Changing Residential and Commercial Rates-Statement of Intent), for a proposed environs rate on a cost of service basis. The cost of service adjustment clause in effect in the adjacent municipality shall not be applicable or put into effect for the affected environs area,

although the utility may request the same rates that are in effect in the adjacent municipality for the environs area. The review of the proposed rate increases pursuant to these clauses may be conducted on an informal basis and will not require a formal hearing unless a complaint is received pursuant to subsection (c)(4) of this section or the commission elects to conduct a formal hearing.

(e) Other rate changes. This section shall not apply to major rate changes or to changes in special rates.

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, 1991.

TRD-9107529 Martha V. Swanger
Hearings Examiner, Legal Division, General Law
Railroad Commission of Texas

Earliest possible date of adoption: August 2, 1991

For further information, please call: (512) 463-7015

♦ ♦ ♦

Procedural Rules

• 16 TAC §7.8

The new section is proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which require agencies to adopt rules of practice. New §7.8 contains no substantive changes and is proposed for purposes of placing the rule in proper sequence, clarifying the rule grammatically and sequentially, and conforming the rule to the provisions of 16 TAC §1.23 and §1.48 and related provisions of Chapter 7, specifically, existing §7.2 and §7.21.

§7.8. Deadline for the Filing of Prepared Testimony and Exhibits by a Utility Seeking Appellate Review of Municipal Action and Statements of Intent to Increase a City Gate Rate.

(a) Petitions for review. Any utility filing a petition for review appealing the decision of the governing body of a municipality to the commission shall file its direct evidence to support its proposed rate increase, including those items required pursuant to §7.50 of this title (relating to Certain Matters to be Submitted in Rate Hearings) and prepared testimony of all of its witnesses and exhibits with the director of the Transportation/Gas Utilities Division of the same date it files its petition for review.

(b) Statements of intent to increase city gate rates. Any utility filing a statement of intent to increase a city gate rate which is subject to the original jurisdiction of the commission shall file its direct evidence to support its proposed rate increase, including those items required pursuant to §7.50, and prepared testimony of all of its witnesses and exhibits with the director of the Transportation/Gas Utilities Division on the same date it files its statement of intent.

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, 1991.

TRD-9107530 Martha V. Swanger
Hearings Examiner, Legal Division, General Law
Railroad Commission of Texas

Earliest possible date of adoption: August 2, 1991

For further information, please call: (512) 463-7015

♦ ♦ ♦

• 16 TAC §7.9

The new section is proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which require agencies to adopt rules of practice. New §7.9 contains no substantive changes and is proposed for purposes of placing the rule in proper sequence and conforming the rule to the provisions of 16 TAC §1.24 and §1.43 as well as Texas Civil Statutes, Article 1446e, §5.08(a), and related provisions of Chapter 7, specifically, existing §7.2 and §7.13.

§7.9. Contents of Notice.

(a) In all proceedings involving rate setting, the notice shall include the following information:

(1) the proposed revision of rates and schedules;

(2) a statement specifying in detail each proposed change;

(3) the effect the proposed change is expected to have on the revenues of the company;

(4) the classes and numbers of utility customers affected;

(5) any other information required by the commission.

(b) In addition to the information required in subsection (a) of this section, in all proceedings involving statements of intent to change "environs rates," as the term is defined in §7.7(a)(1) of this title (relating to Procedure to Establish and Change Residential and Commercial Rates in Unincorporated Areas), notice shall also include: the date of the filing of the statement of intent, a statement as to whether or not the proposed rates constitute a "major change," a statement that the proposed change in rates will not become effective until similar changes have become effective within the nearest incorporated city if the rates are sought to be at the same level as the city rates, the location where information concerning the proposed change may be obtained, and a statement that any affected person may file in writing comments or a protest concerning the proposed change in the environs rates with the Gas Utilities Section of the Legal Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967, at any time within 30 days following the date on which the change would or has become effective. If notice is effected by mail under the provisions of Texas Civil Statutes, Article 1446e, §5.08(a), such notice shall be printed in type large enough for easy reading and shall be the only information contained on the piece of paper on which it is written. It shall be proper for the utility to give the aforesaid notice by mailing or otherwise delivering the same in accordance with its customary billing procedures.

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, 1991.

TRD-9107531 Martha V. Swanger
Hearings Examiner, Legal Division, General Law
Railroad Commission of Texas

Earliest possible date of adoption: August 2, 1991

For further information, please call: (512) 463-7015

♦ ♦ ♦

• 16 TAC §§7.10-7.15, 7.20-7.22, 7.25-7.27, 7.35

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

The repeals are proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which require an agency to adopt rules of practice.

§7.10. Form and Content of Pleadings.

§7.11. Filing of Documents; Pleadings.

§7.12. Establishing and Changing Residential and Commercial Rates-Statement of Intent.

§7.13. Procedure to Establish and Change Residential and Commercial Rates in Unincorporated Areas.

§7.14. Procedure for Abandonment or Discontinuance of Service.

§7.15. Deadline for the Filing or Prepared Testimony and Exhibits by Utility Seeking Appellate Review of Municipal Action and Statements of Intent to Increase a City Gate Rate.

§7.20. Contents of Notice.

§7.21. Publication and Service of Notice.

§7.22. Statement of Intent to Participate.

§7.25. Proposals for Decision.

§7.26. Filing of Exceptions and Replies.

§7.27. Final Decisions and Orders.

§7.35. Construction Work in Progress and Allowance for Funds Used During Construction.

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, 1991.

TRD-9107525 Martha V. Swanger
Hearings Examiner, Legal Division, General Law
Railroad Commission of Texas

Earliest possible date of adoption: August 2, 1991

For further information, please call: (512) 463-7015

◆ ◆ ◆

• 16 TAC §7.10

The new section is proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which require agencies to adopt rules of practice. New §7.10 contains no substantive changes and is proposed for purposes of placing the rule in proper sequence, clarifying the rule grammatically and sequentially, and conforming the rule to the provisions of 16 TAC §§1.8, 1.23, 1.24, 1.42, 1.45, and 1.48, as well as Texas Civil Statutes, Article 1446e, §5,08(a) and related provisions of Chapter 7, specifically existing §§7.2, 7.13, and 7.15.

§7.10. Publication and Service of Notice.

(a) Rate-setting proceedings.

(1) In all rate proceedings, notice shall be given in the following ways:

(A) publication of notice of hearing in the next Gas Utilities Division Bulletin published after the date of issuance of the notice of hearing.

(B) in accordance with §1.45 of this title (relating to Notice of Hearing in Nonrulemaking Proceedings) and, when applicable, §1.48 of this title (relating to Service in Protested Contested Cases);

(C) as required under Texas Civil Statutes, Article 1446e, §5.08(a);

(D) the Legal Division may also require that notice be mailed or delivered to other affected persons or agencies.

(2) In addition to the notice required in paragraph (1) of this subsection, notice shall also be given in rate proceedings involving only the commission's appellate jurisdiction, by serving all parties in the original rate proceeding and the affected municipality with a copy of the petition for review on the same date the petition for review is filed. If any person or entity intervenes, the utility shall furnish a copy of its direct evidence and prepared testimony filed with the director of the Transportation/Gas Utilities Division, to the intervenor within five days from the date the motion to intervene is granted.

(3) In addition to notice required in paragraph (1) of this subsection, notice shall also be given in rate proceedings involving city gate rates, by serving all directly affected customers with a copy of the statement of intent on the same date the statement of intent is filed. If any person or entity intervenes, the utility shall furnish a copy of its direct evidence and prepared testimony filed with the director of the Transportation/Gas Utilities Division, to the intervenor within five days from the date the motion to intervene is granted.

(b) Rulemaking proceedings. In rulemaking proceedings, notice shall be given in the following ways:

(1) in accordance with §1.42 of this title (relating to Notice of Rulemaking Proceedings);

(2) the Legal Division shall mail notice to all persons who have made timely written requests of the commission for advance notice of its rule-making proceedings;

(3) publication of the notice of hearing in the next Gas Utilities Bulletin published after the date of issuance of the notice of hearing;

(4) the Legal Division may require the applicant to mail or deliver notice to other affected persons or agencies.

(c) Proceedings other than ratesetting or rulemaking proceedings. In proceedings other than ratesetting or rulemaking, notice shall be given in the following ways:

(1) publication of the notice of hearing in the next Gas Utilities Bulletin published after the date of issuance of the notice of hearing;

(2) the Legal Division may require the applicant to mail or deliver notice to other affected persons or agencies.

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, 1991.

TRD-9107532 Martha V. Swanger
Hearings Examiner, Legal Division, General Law
Railroad Commission of Texas

Earliest possible date of adoption: August 2, 1991

For further information, please call: (512) 463-7015

◆ ◆ ◆

• 16 TAC §7.11

The new section is proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which requires agencies to adopt rules of practice. New §7.11 contains no substantive changes and is proposed for purposes of placing the rule in proper sequence, clarifying the rule grammatically and otherwise, and conforming the rule to the provisions of 16 TAC §1.24 and a related provision of Chapter 7, specifically, existing §7. 2.

§7.11. Statement of Intent to Participate.

In the event that the Legal Division receives a letter or other communication from an affected person concerning a statement of intent filed pursuant to Texas Civil Statutes, Article 1446e, §5.08(c), the examiner shall, within a reasonable time thereafter, forward to such affected person a form for filing a complaint and statement of intent to participate. The complaint and statement of intent to participate form must be signed, sworn to, and acknowledged before a notary public by the affected person. The complaint and statement of intent to participate form shall state the complainant's name, address, the rate increase about which he complains, and a statement that the complainant or his representative will appear and participate through the presentation of evidence and arguments should a hearing be called by the commission to consider the rate increase. If the complaint and statement of intent to participate form is not properly executed and returned to the Legal Division within 14 days after the mailing by the director, then it will not be considered to be a proper "complaint by any affected person," pursuant to Texas Civil Statutes, Article 1446e, §5.08(c), requiring a hearing on the statement of the intent. In the event that the initial complaint is received before the deadline contained in the Texas Civil Statutes, Article 1446e, §5.08(c), and the complaint and statement of the intent to participate form is received after that date, it shall be deemed to be filed as of the date of the filing of the original complaint.

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, 1991.

TRD-9107533 Martha V. Swanger
Hearings Examiner, Legal Division, General Law
Railroad Commission of Texas

Earliest possible date of adoption: August 2, 1991

For further information, please call: (512) 463-7015

♦ ♦ ♦

Substantive Rules

• 16 TAC §7.48

The new section is proposed under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which require agencies to index and make available for public inspection all statements of policy. New §7.48 contains no substantive changes and is proposed for purposes of placing the rule in proper sequence and clarifying the rule.

§7.48. Construction Work in Progress and Allowance for Funds Used during Construction.

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

(1) Construction work in progress or CWIP–Funds expended by a gas utility which are irrevocably committed to construction projects not yet completed or placed into service.

(2) Allowance for funds used during construction or AFC–The net cost of borrowed funds for the period of construction used for construction purposes and a reasonable rate on other funds when so used until included in the rate base.

(b) A utility may be permitted, subject to any revenue adjustment, required, to include AFC related to a project in its rate base in rate proceedings after completion of the project. If, pursuant to this rule, a utility is permitted to include CWIP related to a project in its rate base, only that AFC accruing prior to such inclusion shall be permitted.

(c) A utility may be permitted to include CWIP in its rate base only where necessary to the financial integrity of the utility. CWIP shall be deemed necessary to the financial integrity of a utility only where shown by clear and convincing evidence that its inclusion is necessary in order to maintain a sufficient financial liquidity so as to meet all capital obligations and to allow the utility to raise needed capital or is necessary to prevent the impairment of a utility's service. A mere averment or demonstration that exclusion of CWIP would result in an increase in the cost of funds to the utility or general assertions that the financial integrity of the utility would be impaired shall not be deemed sufficient to permit such inclusion.

(d) A utility permitted to include CWIP pursuant to this section shall utilize as a rate base amount the expenditures for such projects as are reflected on its books as of the test year. The amount shall be determined in a manner consistent with the calculation of other rate base information to reflect a uniform treatment of the test year items.

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, 1991.

TRD-9107534 Martha V. Swanger
Hearings Examiner, Legal Division, General Law
Railroad Commission of Texas

Earliest possible date of adoption: August 2, 1991

For further information, please call: (512) 463-6858

♦ ♦ ♦

Chapter 11. Surface Mining and Reclamation Division

Subchapter D. Coal Mining

• 16 TAC §11.221

The Railroad Commission of Texas proposes an amendment to §11.221, concerning local mining regulations pertaining to self-bonding criteria.

Ron Reeves, assistant director, Legal Division-Surface Mining, 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. Reeves 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 procedures and reduced costs involved in self-bonding applications for surface coal mining operations. 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 Ron Reeves, Assistant Director, Legal Division-Surface Mining, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967.

The amendment is proposed under Texas Civil Statutes, Article, 5920-11, which provide the Railroad Commission of Texas with the authority to promulgate rules pertaining to surface coal mining operations.

§11.221. State Program Regulations.

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

(c) The Railroad Commission of Texas has published the state program regulations, as amended August 12, 1991, in booklet form titled "Coal Mining Regulations." Copies may be obtained from the Surface Mining and Reclamation Division, P.O. Drawer 12967, Austin, Texas 78711-2967.

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, 1991.

TRD-9107514 Martha V. Swanger
Hearings Examiner, Legal Division, General Law
Railroad Commission of Texas

Proposed date of adoption: September 2, 1991

For further information, please call: (512) 463-6841

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

Part V. Center for Rural Health Initiatives

Chapter 500. Executive Committee for the Center for Rural Health Initiatives

Subchapter B. Texas Outstanding Rural Scholar Recognition and Forgiveness Loan Program

• 25 TAC §§500.21-500.42

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

The Executive Committee of the Center for Rural Health Initiatives proposes new Subchapter B, §§500.21-500.42, concerning the Texas Outstanding Rural Scholar Recognition and Forgiveness Loan Program. The purpose of the proposed rules is to implement the provisions of Senate Bill 445, 72nd Legislature, 1991, which transferred the Outstanding Rural Scholar Recognition Program to the Center for Rural Health Initiatives from the Texas Higher Education Coordinating Board. The rules define terms, establish program eligibility requirements for students, institutions and communities, set out the duties and terms of the Outstanding Rural Scholar Advisory Committee, clarify the terms and conditions on forgiveness loans and establish repayment provisions for student found in noncompliance with loan conditions.

The proposed rules are similar to those formerly adopted by the Texas Higher Education Coordinating Board under Title 19, Texas Administrative Code, Subchapter O, concerning the Texas Outstanding Scholar Recognition and Loan Forgiveness Program.

The new subchapter differs substantively from previous rules in two areas. New §500.24 regarding "eligible institutions of higher education" and new §500.26 regarding "eligible scholar" are altered to conform to statutory changes made by Senate Bill 445. Eligible institutions now include certain nonprofit health-related schools and programs. Requirements that institutions submit cost data annually are omitted, and eligible schol-

ars now include non-senior high school and college students.

Bryan Sperry, executive director, has determined that for the first five-year period the sections are in effect there will be minimal fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Sperry 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 enhanced opportunities for rural Texas communities to attract trained health care professionals and enhanced opportunities for Texas students willing to work in rural areas to pursue training in health professions. Since the rules govern a voluntary program, there will be no effect on small business, no anticipated economic cost to persons required to comply, and no impact on local employment.

Comments on the proposal may be submitted by August 2, 1991, to Leslie Friedlander, Center for Rural Health Initiatives, P.O. Box 1708, Austin, Texas 78767-1708, (512) 479-8891.

The new sections are proposed under Texas Civil Statutes, Article 4414b-1, §4(d), which authorize the Center for Rural Health Initiatives to administer the Outstanding Rural Scholar Recognition Program and Texas Civil Statutes, Article 4414b-1.1, §9, which authorize the executive committee of the Center for Rural Health Initiatives to adopt rules as necessary to implement the program.

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, 1991.

TRD-9107508 Liberty Ogbonna
Executive Assistant
Center for Rural Health Initiatives

Earliest possible date of adoption: August 2, 1991

For further information, please call: (512) 479-8893

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

Chapter 115. Control of Air Pollution From Volatile Organic Compounds

Subchapter A. Definitions

Definitions

• 31 TAC §115.10

The Texas Air Control Board (TACB) proposes an amendment to §115.10, concerning definitions. The proposed changes have been developed in response to a requirement by the United States Environmental Protection Agency (EPA) to correct certain regulation deficiencies and inconsistencies to ensure compliance with applicable requirements for control and collection systems of volatile organic compounds.

The proposed changes to §115.10 add definitions for capture efficiency, capture system, carbon adsorber, carbon adsorption system, control device, and control system. These new definitions would ensure consistency with terminology now used by EPA.

Bennie Engelke, director of administrative services, 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.

Lane Hartsock, director of the planning and development program, 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 rules which are more uniformly applicable nationwide and satisfaction of a requirement by EPA. There will be no effect on small businesses. There are also no fiscal implications for facilities affected by the definitions.

A public hearing on this proposal is scheduled for 7 p.m. on July 22, 1991, in the Auditorium of the TACB located at 12124 Park 35 Circle, Austin.

Copies of the proposed section are available from Dwayne Meckler at the central office of the TACB, 12124 Park 35 Circle, Austin, Texas 78753, and at all TACB regional offices. Public comment, both oral and written, on the proposed changes is invited at the hearing. The TACB would appreciate receiving five copies of testimony prior to or at the hearing. Written testimony received by the Regulation Development Section at the TACB central office by 4 p.m. on July 23, 1991, will be included in the hearing record.

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

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

Capture efficiency–The amount of volatile organic compounds collected by a capture system which is expressed as a percentage derived from the weight per unit time of VOC entering a capture system and delivered to control device divided by the weight per unit time of total VOC generated by a source of VOC.

Capture system–All equipment (including, but not limited to, hoods, ducts, fans, booths, ovens, dryers, etc.) that contains, collects, and transports an air pollutant to a control device.

Carbon adsorber–An add-on control device which uses activated carbon to adsorb volatile organic compounds from a gas stream.

Carbon Adsorption system–A carbon adsorber with an inlet and outlet for exhaust gases and a system to regenerate the saturated adsorbent.

Control device–Equipment (such as an incinerator or carbon adsorber) used to reduce, by destruction or removal, the amount of air pollutant(s) in an air stream prior to discharge to the ambient air.

Control system–A combination of one or more capture system(s) and control device(s) working in concert to reduce discharges of air pollutants to the ambient air.

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

Issued in Austin, Texas, on June 25, 1991.

TRD-9107579 Lane Hartsock
Director, Planning and Development Program
Texas Air Control Board

Proposed date of adoption: September 13, 1991

For further information, please call: (512) 908-1770

♦ ♦ ♦

Subchapter B. General Volatile Organic Compound Sources

Vent Gas Control

• 31 TAC §115.126, §115.129

The Texas Air Control Board (TACB) proposes amendments to §115.126, and §115.129, concerning vent gas control. The proposed changes have been developed in response to a requirement by the United States Environmental Protection Agency (EPA) to correct certain regulation deficiencies and inconsistencies as part of a nationwide program termed "leveling the playing field."

The proposed change to §115.126, concerning recordkeeping requirements, adds an additional reference to provide consistency in maintaining temperature, maintenance, and testing records for facilities required to comply with §115. 121(a)(3). The proposed change to §115.129, concerning counties and compliance schedules, adds a reference to identify a compliance date for the additional recordkeeping requirements.

Bennie Engelke, director of administrative services, 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.

Lane Hartsock, director of the planning and development program, has determined that for each year of the first five years the sections are in effect the pubic benefit anticipated as a result of enforcing the sections will be rules which are more uniformly applicable nationwide and satisfaction of a requirement

by EPA. There will be no effect on small businesses. Economic costs to persons and businesses required to implement the proposed changes would involve minor costs associated with additional recordkeeping requirements.

A public hearing on this proposal is scheduled for 7 p.m. on July 22, 1991, in the auditorium of the TACB located at 12124 Park 35 Circle, Austin.

Copies of the proposed sections are available from Dwayne Meckler at the central office of the TACB, 12124 Park 35 Circle, Austin, Texas 78753, and at all TACB regional offices. Public comment, both oral and written, on the proposed changes is invited at the hearing. The TACB would appreciate receiving five copies of testimony prior to or at the hearing. Written testimony received by the Regulation Development Section at the TACB central office by 4 p.m. on July 23, 1991, will be included in the hearing record.

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

§115.126 Recordkeeping requirements. For the counties referenced in §115.129(a)(2) of this title (relating to Counties and Compliance Schedules), the owner or operator of any facility which emits volatile organic compounds (VOC) through a stationary vent shall maintain records at the facility for at least two years and shall make such records available to representatives of the Texas Air Control Board, United States Environmental Protection Agency, or local air pollution control agency having jurisdiction in the area, upon request. These records shall include, but not be limited to, the following.

(1) Records for each vent required to satisfy the provisions of §115. 121(a)(2) and (3) of this title (relating to Emission Specifications) shall be sufficient to demonstrate the proper functioning of applicable control equipment to design specifications, including:

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

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

§115.129. Counties and Compliance Schedules.

(a) All affected persons in Brazoria, Dallas, El Paso, Galveston, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties shall be in compliance with this undesignated head (relating to Vent Gas Control) in accordance with the following schedules.

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

(3) All persons in Harris County affected by the provisions of §115.126(1)(A)-(C) of this title (relating to Recordkeeping Requirements) for facilities required to comply with §115.121(a)(3) of this title (relating to Emission Specifications) shall be in compliance with these sections as soon as practicable, but no later than July 31, 1992.

(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 25, 1991.

TRD-9107580 Lane Hartsock
Director, Planning and Development Program
Texas Air Control Board

Earliest possible date of adoption: September 13, 1991

For further information, please call: (512) 908-1770

♦ ♦ ♦

Water Separation

• 31 TAC §115.136, §115.139

The Texas Air Control Board (TACB) proposes amendments to §115.136, and §115.139, concerning water separation. The proposed changes have been developed in response to a specific requirement by the United States Environmental Protection Agency (EPA) to correct certain regulation deficiencies and inconsistencies as part of a nationwide program termed "leveling the playing field."

The proposed change to §115.136, concerning recordkeeping requirements, adds a requirement to continuously monitor the exhaust gas temperature immediately downstream of a direct-flame incinerator. The proposed change to §115.139, concerning counties and compliance schedules, identifies a compliance date for the additional monitoring requirement.

Bennie Engelke, director of administrative services, 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.

Lane Hartsock, director of the Planning and Development Program, has determined that for each year of the first five years the sections are in effect the pubic benefit anticipated as a result of enforcing the sections will be rules which are more uniformly applicable nationwide and satisfaction of a requirement by EPA. There will be no effect on small businesses. Economic costs to persons and businesses required to implement the proposed measures are associated with the temperature monitoring and recordkeeping requirements. The costs are estimated as follows: annual cost per temperature monitoring unit will be $0 for fiscal year (fy) 1991 and $15,000 for fys 1992-1995. Any costs beyond 1995 would be continuing annual operating, maintenance, and recordkeeping costs. All estimates are stated in 1991 dollars with no adjustment for inflation and assume continuing costs equal to those incurred during 1992-1995.

A public hearing on this proposal is scheduled for 7 p.m. on July 22, 1991, in the auditorium of the TACB located at 12124 Park 35 Circle, Austin.

Copies of the proposed section are available from Dwayne Meckler at the central office of the TACB; 12124 Park 35 Circle, Austin, Texas 78753, and at all TACB regional offices. Public comment, both oral and written, on the proposed changes is invited at the hearing. The TACB would appreciate receiving five copies of testimony prior to or at the hearing. Written testimony received by the Regulation Development Section at the TACB central office by 4 p.m. on July 23, 1991, will be included in the hearing record.

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

§115.136. Recordkeeping Requirements. For the counties referenced in §115.139(a) of this title (relating to Counties and Compliance Schedules), any person who operates a single or multiple compartment volatile organic compound water separator without the controls specified in §115.132(a) of this title (relating to Control Requirements) shall maintain complete and up-to-date records sufficient to demonstrate continuous compliance with the applicable exemption criteria including, but not limited to, the names and true vapor pressures of all such materials stored, processed, or handled at the affected property, and any other necessary operational information. Affected persons shall also continuously monitor **exhaust gas temperature immediately downstream of a direct-flame incinerator,** temperatures upstream and downstream of a catalytic incinerator or chiller, and the exhaust gas concentration of any carbon adsorption system to determine breakthrough.

§115.139. Counties and Compliance Schedules.

(a) All affected persons in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties shall be in compliance with this undesignated head (relating to Water Separation) in accordance with the following schedules.

(1) (No change.)

(2) All persons in Brazoria, Dallas, El Paso, Galveston, Harris, Jefferson, Orange, Tarrant Counties shall be in compliance with the continuous monitoring requirements to determine carbon adsorption system breakthrough and to measure temperatures [temperature] at direct-flame and catalytic incinerators or chillers contained in §115.136 of this title (relating to Recordkeeping Requirements), as soon as practicable, but no later than July 31, 1992.

(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 25, 1991.

TRD-9107581 Lane Hartsock
Director, Planning and Development Program
Texas Air Control Board

Proposed date of adoption: September 13, 1991

For further information, please call: (512) 908-1770

◆ ◆ ◆

Subchapter C. Volatile Organic Compound Marketing Operations

Filling of Gasoline Storage Vessels (Stage I) For Motor Vehicle Fuel Dispensing Facilities

• 31 TAC §115.224, §115.229

The Texas Air Control Board (TACB) proposes amendments to §115.224 and §115.229, concerning filling of gasoline storage vessels (Stage I) for motor vehicle fuel dispensing facilities. The proposed changes have been developed in response to a requirement by the United States Environmental Protection Agency (EPA) to correct certain regulation deficiencies and inconsistencies as part of a nationwide program termed "leveling the playing field."

The proposed change to §115.224, concerning inspection requirements, adds Brazoria and Galveston Counties to the requirement that gasoline tank-trucks be annually inspected for leaks as evidenced by a prominently displayed certification. The proposed changes to §115.229, concerning counties and compliance schedules, identifies a compliance date for the additional inspection requirements.

Bennie Engelke, director of administrative services, 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.

Lane Hartsock, director of the planning and development program, has determined that for each year of the first five years the sections are in effect the pubic benefit anticipated as a result of enforcing the sections will be rules which are more uniformly applicable nationwide and satisfaction of a requirement by EPA. There will be no effect on small businesses. Economic costs to persons and businesses required to implement the proposed measures are associated with the leak testing and recordkeeping requirements are estimated as follows: annual cost per tank-truck will be $0 for fiscal year (fy) 1991 and $500 for fys 1992-1995. Any costs beyond 1995 would be continuing leak testing and recordkeeping costs. All estimates are stated in 1991 dollars with no adjustment for inflation.

A public hearing on this proposal is scheduled for 7 p.m. on July 22, 1991, in the Auditorium of the TACB located at 12124 Park 35 Circle, Austin.

Copies of the proposed section are available from Dwayne Meckler at the central office of the TACB, 12124 Park 35 Circle, Austin, Texas 78753, and at all TACB regional offices. Public comment, both oral and written, on the proposed changes is invited at the hearing. The TACB would appreciate receiving five copies of testimony prior to or at the hearing. Written testimony received by the Regulation Development Section at the TACB central office by 4 p.m. on July 23, 1991, will be included in the hearing record.

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

§115.224. Inspection Requirements. For all affected persons in the counties referenced in §115.229 of this title (relating to Counties and Compliance Schedules), the following inspection requirements shall apply.

(1) (No change.)

(2) In **Brazoria,** Dallas, El Paso, **Galveston,** Harris, and Tarrant Counties, the gasoline tank-truck tank has been inspected for leaks within one year in accordance with the requirements of this undesignated head (relating to Control of Volatile Organic Compound Leaks from Gasoline Tank-Trucks), as evidenced by a prominently displayed certification affixed near the Department of Transportation certification plate.

§115.229. Counties and Compliance Schedules.

(a) All affected persons in Brazoria, Dallas, El Paso, Galveston, Harris, and Tarrant Counties shall be in compliance with this undesignated head (relating to Filling of Gasoline Storage Vessels (Stage I) For Motor Vehicle Fuel Dispensing Facilities) in accordance with the following schedules.

(1) (No change.)

(2) All persons in Brazoria and Galveston Counties affected by the provisions of §115.222(7) and (8) of this title (relating to Control Requirements) **and §115.224(2) of this title (relating to Inspection Requirements)** shall be in compliance with this section as soon as practicable, but no later than July 31, 1992.

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, 1991.

TRD-9107582 Lane Hartsock
Director, Planning and Development Program
Texas Air Control Board

Earliest possible date of adoption: September 13, 1991

For further information, please call: (512) 908-1000 ext. 1770

◆ ◆ ◆

Subchapter E. Solvent-Using Processes

Surface Coating Processes

• 31 TAC §§115.422, 115.423, 115.425, 115.426, 115.429

The Texas Air Control Board (TACB) proposes amendments to §§115.422, 115. 423, 115.425, 115.426, and 115.429, concerning surface coating processes. The proposed changes have been developed in response to a requirement by the United States Environmental Protection Agency (EPA) to correct certain regulation deficiencies and inconsistencies to ensure compliance with applicable requirements for control and collection systems of volatile organic compounds.

The proposed change to §115.422, concerning control requirements, deletes a reference to provisions for which there is no exemption and applies the "once in, always in" concept across-the-board to all surface coating facilities. The proposed change to §115.423, concerning alternate control requirements, corrects a reference to reflect the current EPA protocol for capture efficiency testing and the proposed change to §115.425, concerning testing requirements, adds additional requirements for current capture efficiency compliance testing to be consistent with EPA guidance. The proposed change to §115.426, concerning recordkeeping requirements, adds additional recordkeeping requirements of the capture efficiency testing. The proposed change to §115. 429, concerning counties and compliance schedules, adds Brazoria, Dallas, El Paso, Galveston, Harris, Jefferson, Orange, and Tarrant Counties to the counties which require capture efficiency testing and establishes a July 31, 1992, compliance schedule for these counties.

Bennie Engelke, director of administrative services, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state and local government.

Lane Hartsock, director of the Planning and Development Program, has determined that for each of the first five years the sections are in effect the public benefit anticipated as a result of implementing the sections will be rules which are more uniformly applicable nationwide and satisfaction of a requirement by EPA. Economic costs to persons and businesses required to implement the proposed measures are associated with the initial capture efficiency testing and recordkeeping requirements. The costs are estimated as follows: annual cost per test on a line will be -0- for fiscal year 1991; and $15,000 for fiscal years 1992-1995. Any costs beyond 1995 would be continuing annual operating, maintenance, and recordkeeping costs. All estimates are stated in 1991 dollars with no adjustment for inflation.

A public hearing on this proposal is scheduled for 7 p.m. on July 22, 1991, in the Auditorium of TACB located at 12124 Park 35 Circle, Austin.

Copies of the proposed sections are available from Dwayne Meckler at the central office of TACB, 12124 Park 35 Circle, Austin, Texas 78753, and at all TACB regional offices. Public comment, both oral and written, on the proposed changes is invited at the hearing. TACB would appreciate receiving five copies of testimony prior to or at the hearing. Written testimony received by the Regulation Development Section at the TACB central office by 4 p.m. on July 23, 1991 will be included in the hearing record.

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

§115.422. Control Requirements. For the counties referenced in §115.429(2)(A) of this title (relating to Counties and Compliance Schedules):

(1) (No change.)

(2) any surface coating operation that becomes subject to the provisions of **§115.421 of this title (relating to Emission Specifications)** paragraph (1)(A), (B), and (C) of this section] by exceeding the provisions of §115.427 of this title (relating to Exemptions) shall remain subject to the provisions in **§115.421** [of this subsection], even if throughput or emissions later fall below exemption limits.

§115.423. Alternate Control Requirements. For all affected persons in the counties referenced in §115.429 of this title (relating to Counties and Compliance Schedules), the following alternate control techniques may apply.

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

(3) If a vapor recovery system is used to control emissions from coating operations, the capture and abatement system shall be capable of achieving and maintaining emission reductions equivalent to the emission limitations of §115.421 of this title (relating to Emission Specifications) and an overall control efficiency of at least 80% of the VOC emissions from those coatings. The owner or operator of any surface coating facility shall submit design data for each capture system and emission control device which is proposed for use to the executive director for approval. Any capture efficiency testing shall be performed in accordance with **§115. 425(4)** [§115.425(2)(D)] of this title (relating to Testing Requirements).

(4) (No change.)

§115.425. Testing Requirements. For the counties referenced in 115.429 of this title (relating to Counties and Compliance Schedules), the following testing requirements shall apply.

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

(4) The capture efficiency shall be measured using one of the four protocols in 40 Code of Federal Regulations, Part 52.741, Subpart O, Appendix B.

§115.426. Recordkeeping Requirements. For the counties referenced in §115.429 of this title (relating to Counties and Compliance Schedules), the following recordkeeping requirements shall apply.

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

(3) The owner or operator shall maintain, on file, the capture efficiency protocol submitted under §115.425(4) of this title (relating to Testing Requirements). If any changes are made to capture or control equipment, the owner or operator is required to notify the executive director in writing within 30 days of these changes and a new capture efficiency and/or control device destruction or removal efficiency test may be required.

(4)[(3)] In accordance with the schedule referenced in §115. 429(1), records shall be maintained sufficient to document the applicability of the condition for exemptions referenced in §115.427 of this title (relating to Exemptions).

§115.429. Counties and Compliance Schedules. All affected persons in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties shall be in compliance with this undesignated head (relating to Surface Coating Processes) in accordance with the following schedules:

(1) (No change.)

(2) the following additional compliance schedules.

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

(C) All affected persons in Brazoria, Dallas, El Paso, Galveston, Harris, Jefferson, Orange, and Tarrant Counties shall be in compliance with §115.425(4) of this title (relating to Testing Requirements) and §115.426(2)(A)(iii) and (3) of this title (relating to Recordkeeping Requirements) as soon as practicable, but no later than July 31, 1992.

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, 1991.

TRD-9107583 Lane Hartsock
Director, Planning and Development Program
Texas Air Control Board

Proposed date of adoption: September 13, 1991

For further information, please call: (512) 908-1000, ext. 1770

◆ ◆ ◆

Graphic Arts (Printing) by Rotogravure and Flexographic Processes

- **31 TAC §§115.435, 115.436, 115.439**

The Texas Air Control Board (TACB) proposes amendments to §§115.435, 115. 436, and 115.439, concerning graphic arts (printing) by rotogravure and flexographic processes. The proposed changes have been developed in response to a requirement by the United States Environmental Protection Agency (EPA) to correct certain regulation deficiencies and inconsistencies to ensure compliance with applicable requirements for control and collection systems of volatile organic compounds.

The proposed change to §115.435, concerning testing requirements, adds a requirement that capture efficiency compliance testing be conducted with protocols established by EPA regulations. The proposed change to §115.436, concerning recordkeeping requirements, requires that the capture efficiency protocol be kept on file and that TACB be notified of any capture or control equipment change. The proposed changes to §115.439, concerning counties and compliance schedules, add compliance dates for the new requirements.

Bennie Engelke, director of administrative services, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state and local governments.

Lane Hartsock, director of the Planning and Development Program, has determined that for each of the first five years the sections are in effect the public benefit anticipated as a result of implementing the sections will be rules which are more uniformly applicable nationwide and satisfaction of a requirement by EPA.

Economic costs to persons and businesses required to implement the proposed measures are associated with the initial capture efficiency testing and recordkeeping requirements. The costs are estimated as follows: annual cost per test on a line will be -0- for fiscal year 1991; and $15,000 for fiscal years 1992-1995.

Any costs beyond 1995 would be continuing annual operating, maintenance, and recordkeeping costs. All estimates are stated in 1991 dollars with no adjustment for inflation.

A public hearing on this proposal is scheduled for 7 p.m. on July 22, 1991, in the Auditorium of TACB located at 12124 Park 35 Circle, Austin.

Copies of the proposed sections are available from Dwayne Meckler at the central office of TACB, 12124 Park 35 Circle, Austin, Texas 78753, and at all TACB regional offices. Public comment, both oral and written, on the proposed changes is invited at the hearing. TACB would appreciate receiving five copies of testimony prior to or at the hearing. Written

testimony received by the Regulation Development Section at the TACB central office by 4 p.m. on July 23, 1991, will be included in the hearing record.

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

§115.435. Testing Requirements. For the counties referenced in §115.439 of this title (relating to Counties and Compliance Schedules), compliance with §115.432 of this title (relating to Control Requirements) in Dallas and Tarrant Counties shall be determined by applying the following test methods, as appropriate:

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

(7) the capture efficiency which shall be measured using one of the four protocols in 40 Code of Federal Regulations, Part 52.741, Subpart O, Appendix B.

(8) [(7)] minor modifications to these test methods and procedures approved by the executive director.

§115.436. Recordkeeping Requirements. For the counties referenced in §115.439 of this title (relating to Counties and Compliance Schedules), the owner/ or operator of any graphic arts facility subject to the control requirements of §115.432 of this title (relating to Control Requirements) shall:

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

(6) maintain on file the capture efficiency protocol submitted under §115.435(7) of this title (relating to Testing Requirements). If any changes are made to capture or control equipment, the owner or operator is required to notify the executive director in writing within 30 days of these changes and a new capture efficiency and/or control device destruction or removal efficiency test may be required.

§115.439. Counties and Compliance Schedules. All affected persons in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties shall be in compliance with this undesignated head (relating to Graphic Arts (Printing) by Rotogravure and Flexographic Processes) in accordance with the following compliance schedules.

(1) (No change.)

(2) All persons affected by §115.432(3) of this title (relating to Control Requirements), **§115.435(7) of this title (relating to Testing Requirements),** §115.436(3)(C) **and (6)** of this title (relating to Recordkeeping Requirements), and §115.437(1) of this title (relating to Exemptions) shall be incompliance with these sections as soon as practicable, but no later than July 31, 1992.

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, 1991.

TRD-9107584 Lane Hartsock
Director, Planning and Development Program
Texas Air Control Board

Proposed date of adoption: September 13, 1991

For further information, please call: (512) 908-1770

◆ ◆ ◆

Chapter 116. Permits

• 31 TAC §116.11

The Texas Air Control Board (TACB) proposes an amendment to §116.11, concerning permit fees, to accomplish two changes. The first is to require separate and distinct permit fees for all facilities that must comply with the prevention of significant deterioration (PSD) of air quality regulations promulgated by the United States Environmental Protection Agency (EPA) in the Code of Federal Regulations (CFR) at 40 CFR 52.21, as amended October 17, 1988. These fees are needed to support the greater level of staff resources to review and act on PSD permit applications. The second is to increase the current permit fee rate for sources not required to comply with the PSD regulations. The last sentence of subsection (a) is proposed for deletion to remove obsolete material, and the TACB mailing address is corrected in subsection (c).

Lawrence Pewitt, P.E., director of the permits program, has determined that for the first five-year period the section is in effect there will be fiscal implications for state government as a result of enforcing or administering the section. There are anticipated increases in fee revenues to the state as follows. There will be a minimum increase in the fee for non-PSD permits of $150 and a maximum increase of $25,000. This proposal assumes approval of an increase in the upper fee limit to $75,000 by the Texas Legislature. The maximum fee currently allowed by the Texas Clean Air Act (TCAA) is $50,000. The proposed fee for PSD permits would range from $1,500 to $75,000, based on a rate of 0.5% of the capital costs of the project. Previously, PSD permits would have been charged the standard permit fee. If the Texas Legislature chooses not to set the maximum fee at $75,000, the fees will be changed to reflect the new maximum allowed in the statute. There will be no fiscal implications for local government. The anticipated economic cost to persons who are required to comply with the section as proposed would be the applicable fee amounts calculated in the fee schedule of §116.11(b)(2). The fiscal impact on small businesses would also be the increase in the applicable fee amounts calculated in the fee schedule.

Mr. Pewitt 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 complete recovery of the cost of providing services and a reduced need for the TACB to request appropriated funds from the general revenue fund.

A public hearing on this proposal is scheduled for 2 p.m. on July 30, 1991, in the Auditorium of the TACB located at 12124 Park 35 Circle, Austin.

Copies of the proposed revision are available from Barry Irwin at the central office of the TACB, 12124 Park 35 Circle, Austin, Texas 78753, and at all TACB regional offices. Public comment, both oral and written, on the proposal is invited at the hearing. The TACB would appreciate receiving five copies of any written testimony prior to or at the hearing. Written testimony received by the Regulation Development Section at the TACB central office by 4 p.m. on July 31, 1991 will be included in the hearing record.

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

§116.11. Permit Fees.

(a) Applicability. Any person who applies for a permit to construct a new facility or to modify an existing facility pursuant to §116.1 of this title (relating to Permit Requirements) shall remit, at the time of application for such permit, a fee based on the estimated capital cost of the project. The fee will be determined as set forth in subsection (b) of this section (concerning determination of fees). [By May 31, 1986, the Executive Director shall review the fees assessed and the costs recovered pursuant to this section and present to the board a report of the results of such review which shall include recommended changes to the section as may be appropriate.]

(b) Determination of fees [Fees].

(1) (No change.)

(2) The following fee schedule may be used by a permit applicant to determine the fee to be remitted with a permit application.

(A) If the estimated capital cost of the project is less than $300,000 or if the project consists of new facilities controlled and operated directly by the federal government for which an application is submitted after January 1, 1987, **and the federal regulations for prevention of significant deterioration (PSD) of air quality do not apply,** the fee is **$450** [$300] **or $1,500 if the PSD regulations do apply.** The provisions of paragraphs (3) and (4) of this subsection do not apply to a project consisting of new facilities controlled and operated directly by the federal government.

(B) If the estimated capital cost of the project is $300,000 or more and the PSD regulations do not apply, [to $50 million] the fee is **0.15%** [0.1%] of the estimated capital cost of the project or **0.5% if the PSD regulations do apply. The maximum fee is $75,000.**

[(C) If the estimated capital cost of the project is over $50 million, the fee is $50,000.]

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

(c) Payment of fees. All permit fees will be remitted in the form of a check or money order made payable to the Texas Air Control Board and delivered with the application for construction permit, special permit, or permit amendment to the Texas Air Control Board, **12124 Park 35 Circle Austin Texas 78753** [6330 Highway 290 East, Austin, Texas, 78723]. Required fees must be received before the agency will begin examination of the application.

(d)-(f) (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, 1991.

TRD-9107550 Lane Hartsock
Director, Planning and Development Program
Texas Air Control Board

Proposed date of adoption: September 30, 1991

For further information, please call: (512) 908-1770

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter N. County Sales and Use Tax

- **34 TAC §3.253**

The Comptroller of Public Accounts proposes new §3.253, concerning county use tax. The new section provides guidance on the collection and allocation of county use tax to retailers located outside counties with county sales and use tax who do business in counties imposing county sales and use tax.

Tom Plaut, chief revenue estimator, 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.

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 in providing new information regarding tax responsibilities. This section is proposed under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no 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.

§3.253. County Use Tax.

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

(1) Engaged in business–A retailer is engaged in business in a county if the retailer does any of the following:

(A) maintains, occupies, or uses, permanently or temporarily, directly or through an agent, an office, place of distribution, sales or sample room, warehouse, storage place, or other location;

(B) has any representative, agent, salesman, canvasser, or solicitor operating in the county under the authority of the retailer for the purpose of selling, delivering, or the taking of orders for any taxable items;

(C) promotes a flea market, trade day, or other event involving sales of taxable items;

(D) uses independent salespersons in direct sales of taxable items;

(E) derives receipts from a lease of tangible personal property located in a county;

(F) solicits orders for taxable items by means of advertising that is broadcast from, printed at, or distributed from, a location in the county if the advertising is intended for consumers within the county and is only secondarily disseminated to bordering counties. Advertising will be considered to be intended for county consumers if 75% or more of the recipients are located in the county;

(G) solicits orders for taxable items by mail if:

(i) the solicitations are substantial and recurring; and

(ii) the retailer uses any banking, financing, debt collection, telecommunications, or marketing activities occurring in the county, or benefits from a location in the county of authorized installations, servicing, or repair facilities. A retailer located outside the county who is not otherwise engaged in business in the county will not be considered as engaging in business in the county by merely placing a request for financing, telecommunications, banking, marketing, or debt collection services at a location of a service provider outside the county even though the service is performed in whole or in part in the county;

(H) allows a franchisee or licensee to operate under its trade name if the franchisee or licensee is required to collect county sales or use tax; or

(I) solicits orders for taxable items by mail or other media and federal law permits the State of Texas to require the retailer to collect Texas sales or use tax.

(2) Interstate or intrastate transit–Interstate or intrastate transit has ceased when the journey is interrupted for reasons of convenience or business needs of the owner but does not include a temporary interruption necessary and incidental to the transit.

(3) Storage–Includes any retention of taxable items in the county for any purpose other than sale, lease, or rental in the regular course of business.

(4) Taxing county–Any county in Texas that has adopted the county sales and use tax imposed by the Tax Code, Chapter 323.

(5) Use–The exercise of any right or power over taxable items except sale, lease, or rental of the items in the regular course of business. With respect to a taxable service, use means the derivation in the county of a direct or indirect benefit from the service.

(6) Use tax–A tax that is imposed on the exercise or enjoyment of any right or power over taxable items incident to the ownership, possession, or custody of those items.

(b) Imposition of county use tax.

(1) If taxable items are purchased outside the state or within Texas but not within a taxing county and those items are shipped or delivered by the retailer directly into or brought by the purchaser or lessee directly into a taxing county for storage, use, or other consumption, county use tax is due.

(2) County use tax does not apply to taxable items in interstate or intrastate transit.

(3) County use tax is due on the purchase or lease price of taxable items and is reported in the period in which the taxable items are first stored, used, or otherwise consumed in a taxing county.

(4) County use tax does not apply when the taxable items are transferred from some other county in Texas or from a point outside a county where they were first stored, used, or otherwise consumed.

(5) If, in a taxing county, storage facilities contain taxable items purchased outside Texas and at the time of storage it is not known whether the items will be used in or removed from Texas, a taxpayer may elect to report county use tax when the items are first stored or when the items are first removed from storage for use in Texas. Once an election is made, the county use tax must be reported in a consistent manner. If county use tax is paid on stored items that are subsequently removed from Texas before use, the tax may be recovered in accordance with the refund and credit provisions of §3.325 of this title (relating to Refunds, Interest, and Payments Under Protest) and §3.338 of this title (relating to Allowance of Credit for Tax Paid to Suppliers).

(c) Collection and allocation of county use tax by a retailer located in Texas. A retailer located in Texas but outside a taxing county is required to collect county use tax if the retailer:

(1) is engaged in business in the taxing county;

(2) sells, leases, or rents taxable items for storage, use, or other consumption in that county; and

(3) ships or delivers those items into the county to the purchaser.

(d) Collection and allocation of county use tax by a retailer located outside Texas. A retailer located in another state is required to collect county use tax if the provisions of subsection (c)(1), (2), and (3) of this section apply.

(e) Purchaser's liability for use tax. If a seller is not required to collect county use tax, the purchaser is responsible for filing reports and paying the tax.

(f) Exceptions.

(1) Both county sales tax and county use tax cannot apply to the same transaction. County use tax is not applicable if the purchaser paid county sales tax to a Texas retailer or owes county sales tax to a Texas retailer who failed to collect it. The comptroller may proceed against the seller or purchaser for the county tax owed by either.

(2) County use tax does not apply to the storage, use, or other consumption of taxable items in this state if the sale or use of the items would be exempt from the state sales and use tax were it purchased within the state.

(3) Credit will be allowed against county use tax liability to the extent sales or use tax is legally due and paid to another state.

(4) If taxable items are purchased outside Texas, temporarily stored in Texas in a taxing county, and then removed and used solely outside Texas, county use tax does not apply.

(5) The purchase of taxable items will not be presumed to have been for use in a taxing county if the items were purchased and used outside Texas for more than one-year before the date of entry into a taxing county. Transactions covered by the provisions of the Tax Code, §151.330(a), are also subject to the one year presumption if the items covered by the transactions are returned to a taxing county. The use outside Texas must be substantial and constitute a primary use for which the property was purchased. Either the comptroller or the purchaser may introduce evidence to establish the intent or absence of intent to use the taxable items in a taxing county at the time of purchase.

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, 1991.

TRD-9107489 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: August 2, 1991

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

Subchapter O. State Sales and Use Tax

• 34 TAC §3.282

The Comptroller of Public Accounts proposes an amendment to §3.282, concerning auditing taxpayer records. The amendment provides information to retailers regarding the time period for obtaining resale certificate and exemption certificates prior to an audit.

Tom Plaut, chief revenue estimator, 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.

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 in providing new information regarding tax responsibilities. This section is proposed under the Tax Code, Title 2, and does not require a statement of fiscal implications for 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 Lucy Glover, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

The amendment 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.

§3.282. Auditing Taxpayer Records.

(a)-(e) (No change.)

(f) Resale and exemption certificates.

(1) Resale and exemption certificates should be available at the time of the audit. **All certificates obtained on or after the date the auditor actually begins work on the audit at the seller's place of business or on the seller's records are subject to verification. All incomplete certificates will be disallowed regardless of when they were obtained** [Certificates acquired by the seller after the audit begins are subject to independent confirmation before the deductions will be allowed in an audit].

(2) **The seller has 60 days from the date written notice is received by the seller from the comptroller in which to deliver the certificates to the comptroller. For the purposes of this section, written notice given by mail is presumed to have been by the seller within three business days from the date of deposit in the custody of the United State Postal Service. The seller may overcome the presumption by submitting proof from the United States Postal Service or by other competent evidence showing a later delivery date.** If the seller is not in possession of the certificates within 60 days from the date written notice is given by the comptroller that certificates pertaining to periods or transactions specified in the notice are required, any deductions claimed which require resale or exemption certificates will be disallowed. Exemptions claimed by those certificates acquired during this 60-day period will be subject to independent verification by the comptroller before the deductions will be allowed. Certificates delivered [presented] after the 60-day period will not be accepted. See §3.285 of this title (relating to Sales for Resale; Resale Certificate); §3.287 of this title (relating to Exemption Certificates); and §3.288 of this title (relating to Direct Payment Procedures and Qualifications).

(3) **When a 60-day letter has been received, a resale or** [Effective October 2, 1984, resale and] exemption **certificate is** [certificates are] the only acceptable proof that a taxable item was purchased for resale or qualifies for exemption. [For transactions which occurred prior to October 2, 1984, other types of proof of resale or exemption may be presented. The alternate proof must also be presented within 60 days as stated in paragraph (2) of this subsection.]

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

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

Issued in Austin, Texas, on June 24, 1991.

TRD-9107491 Martin Cherry
Chief, General Law
Section

Earliest possible date of adoption: August 2, 1991

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

♦ ♦ ♦

• 34 TAC §3.286

The Comptroller of Public Accounts proposes an amendment to §3.286, concerning seller's and purchaser's responsibilities. The amendment provides information to retailers regarding the time period for obtaining resale and exemption certificates. The amendment also adds information regarding tax collected under the bracket formula in the Tax Code, §151.053.

Tom Plaut, chief revenue estimator, 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.

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 in providing new information regarding tax responsibilities. This section is proposed under the Tax Code, Title 2, and does not require a statement of fiscal implications for 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 Lucy Glover, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

The amendment 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.

§§3.286. Seller's and Purchaser's Responsibilities.

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

(1) Engaged in business. A retailer is engaged in business in Texas if the retailer is:

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

(D) utilizing independent salespersons in direct sales of taxable items [by a company, corporation, or other person];

(E)-(F) (No change.)

(G) soliciting orders for taxable items by mail if:

(i) (No change.)

(ii) the retailer uses any banking, financing, debt collection, telecommunication, or marketing activities occurring in Texas, or benefits from a location in Texas of authorized **installation**[installations], servicing, or repair facilities. A retailer located outside the state who is not otherwise engaged in business in this state will not be considered as engaging in business in this state by merely placing a request for financing, telecommunication, banking, marketing, or debt collection services at an out-of-state location of a service provider even though the service is performed in whole or in part in Texas.

(H)-(I) (No change.)

(2)-(4) (No change.)

(b) Permits required.

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

(3) Independent salespersons of direct sales organizations will not be required to hold sales tax permits. **It is the responsibility of the direct sales organizations to hold Texas permits and to collect Texas tax.**

(c) Obtaining a permit.

(1) (No change.)

(2) Each legal entity (corporation, partnership, sole proprietor, etc.) must apply for its own permit. The permit cannot be transferred from one owner to another. It is valid only for the person to whom it was issued and for the transaction of business only at the address shown on the permit. The permit must be renewed yearly on the date of issuance or renewal. The fee for renewal is $25 for each place of business. If a person operates two or more types of business under the same roof, only one permit is needed. It is the seller's responsibility to send an application for renewal and the permit fee to the comptroller no later than the 30th day before the expiration date shown on the permit. Failure to renew causes automatic expiration on the renewal date and the seller is considered to be operating without a permit which is a **criminal offense** [misdemeanor punishable by a fine of not more than $500 per day].

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

(d) Collection and remittance of the tax.

(1) Each seller must collect the tax on each separate retail sale in accordance with the statutory bracket system in **the Tax Code, §151. 053.** Copies of the bracket system should be displayed in each place of business so both the seller and the customers may easily use them. The tax is a debt of the purchaser to the seller until collected.

(2) The sales tax applies to each total sale, not to each item of each sale. For example, if two items are purchased, each costing $ .07, the seller must collect the tax on the total selling price of $.14.**Tax must be reported and remitted to the comptroller as provided by the Tax Code, §151.410. When tax is collected properly under the bracket system, any overcollection need not be remitted by the seller. Conversely, when the tax collected under the bracket system is less than the tax due on the total receipts, the seller is responsible for remitting tax on total receipts even though not collected from customers.**

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

(e)-(h) (No change.)

(i) Resale and exemption certificates.

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

(7) The seller should obtain the properly executed resale or exemption certificates at the time **a taxable transaction** [the sale] occurs.**All certificates obtained on or after the date the auditor actually begins work on the audit at the seller's place of business or on the seller's records are subject to verification. All incomplete certificates will be disallowed regardless of when they were obtained.** [If the certificates are not obtained at the time of the sale, they are subject to verification before they will be honored.] The seller has 60 days from the date written notice is **received by** [given by the comptroller to] the seller **from the comptroller** in which to deliver certificates to the comptroller. **For the purposes of this section, written notice given by mail is presumed to have been received by the seller within three business days from the date of deposit in the custody of the United States Postal Service. The seller may overcome the presumption by submitting proof from the United States Postal Service or by other competent evidence showing a later delivery date.** Any certificates delivered to the comptroller during the 60-day period will be subject to verification **by the comptroller** before any deductions will be allowed. Certificates delivered to the comptroller after the 60-day period will not be accepted and the deduction will not be granted. See §3.285 of this title (relating to Resale Certificate; Sales for Resale), §3.287 of this title (relating to Exemption Certificates), §3.288 of this title (relating to Direct Payment Procedures and Qualifications), and §3.282 of this title (relating to Auditing Taxpayer Records).

(j) Suspension of permit.

(1) If a person fails to comply with any provision of the Tax Code, Title 2, [or of the Bingo Enabling Act,] or with the rules issued by the comptroller under those statutes, the comptroller may suspend the person's permit or permits.

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

(k) (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, 1991.

TRD-9107492 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: August 2, 1991

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

♦ ♦ ♦

Subchapter P. Local Sales and Use Tax

• 34 TAC §3.375

The Comptroller of Public Accounts proposes an amendment to §3.375, concerning administration of use tax; collection by retailer. The amendment adds new definitions of "engaged in business," deletes references to the "bracket formula," and makes other minor changes for clarity.

Tom Plaut, chief revenue estimator, 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.

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 in providing new information regarding tax responsibilities. This section is proposed under the Tax Code, Title 2, and does not require a statement of fiscal implications for 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 Lucy Glover, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

The amendment 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.

§3.375. City Use Tax [Administration of Use Tax; Collection by Retailer].

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

(1) Engaged in business–A retailer is engaged [Engaged] in business in a [particular] city if the retailer does [means and includes] any of the following:

(A) maintains, occupies, or uses [Any retailer maintaining, occupying, or using], permanently or temporarily, directly or through an agent, an office, place of distribution, sales or sample room, warehouse, storage place, or other location;

(B) has [Any retailer having] any representative, agent, salesman, canvasser, or solicitor operating in the city under the authority of the retailer for the purpose of selling, delivering, or [the] taking [of] orders for any taxable items;[.]

(C) promotes a flea market, trade day, or other event involving sales of taxable items;

(D) uses independent salespersons in direct sales of taxable items;

(E) derives receipts from a lease of tangible personal property located in the city;

(F) solicits orders for taxable items by means of advertising that is broadcast from, printed at, or distributed from, a location in the city if the advertising is intended for consumers within the city and is only secondarily disseminated to bordering cities. Advertising will be considered to be intended for city consumers if 75% or more of the recipients are located in the city;

(G) solicits orders for taxable items by mail if:

(i) the solicitations are substantial and recurring; and

(ii) the retailer uses any banking, financing, debt collection, telecommunications, or marketing activities occurring in the city, or benefits from a location in the city of authorized installations servicing, or repair facilities. A retailer located outside the city who is not otherwise engaged in business in the city will not be considered as engaging in business in the city by merely placing a request for financing, telecommunications, banking, marketing, or debt collection services at a location of a service provider outside the city even though the service is performed in whole or in part in the city;

(H) allows a franchisee or licensee to operate under its trade name if the franchisee or licensee is required to collect city sales or use tax; or

(I) solicits orders for taxable items by mail or other media and federal law permits the State of Texas to require the retailer to collect Texas sales or use tax.

(2) Interstate or intrastate transit has ceased–Interstate or intrastate transit has ceased when [When] the [interstate] journey is interrupted for reasons of convenience or business needs of the owner but does not include a temporary interruption necessary and incidental to the transit.

[(3) Intrastate transit has ceased–When the intrastate journey is interrupted for reasons of convenience or business needs of the owner but does not include a temporary interruption necessary and incidental to the transit.]

(3)[(4)] Storage–Includes any retention of taxable items in the city [Texas] for any purpose other than sale, lease, or rental in the regular course of business [or for subsequent use solely outside Texas].

(4)[(5)] Taxing city–Any city in Texas that has adopted the city [local] sales and use tax imposed by the Tax Code, Chapter 321.

(5) [(6)] Use–The exercise of any right or power over taxable items except the sale, lease, or rental of the items in the regular course of business [or the holding of the items for the purpose of subsequently transporting them outside Texas for use solely outside Texas]. With respect to a taxable service, use means the derivation in the city of direct or indirect benefit from the service.

(6)[(7)] Use tax–A [nonrecurring] tax that [which] is imposed on the exercise or enjoyment of any right or power over taxable items incident to the ownership, possession, or custody of those items.

(b) Imposition of city use tax.

(1) If taxable items are purchased outside the state or within Texas but not within [out of state for use in] a taxing city and those items are brought by the purchaser or lessee or shipped or delivered by the retailer directly into a taxing [that] city for storage, use, or other consumption, city use tax is due. [The liability may be extinguished by payment of the city use tax directly to the comptroller or to a retailer authorized to collect it. See §3.286 of this title (relating to Seller's Responsibilities) concerning use tax permit requirements for out-of-state retailers.]

(2) City use tax does not apply to taxable items in interstate or intrastate transit. [If taxable items are purchased within the state but not within a taxing city, and those items are shipped or delivered by the retailer directly into or brought by the purchaser or lessee directly into a taxing city, the items are subject to the city use tax. The city use tax, if any, is determined by the location where the items are first stored, used, or otherwise consumed.]

(3) City use tax is due on the purchase or lease price of taxable items and is reported in the period in which the taxable items are first stored in a taxing city, or if not stored, where the taxable

items are first used, or otherwise consumed, in a taxing city [The basis of the tax is the purchase price. The tax should be reported in the period in which the taxable items are first stored, used, or otherwise consumed].

(4) City use tax does not apply when the taxable items are transferred from some other city in Texas or from a point outside a city where they were first stored, or if not stored, where the items were first used, or otherwise consumed.

[(5) If, in a taxing city, storage facilities contain taxable items purchased out of state and, at the time of storage, it is not known whether the items will be used in or removed from Texas, then the taxpayer may elect to report city use tax when the items are first stored or when they are first removed from storage for use. Once the election is made, the tax must be reported in a consistent manner. If city use tax is paid on stored items that are subsequently removed from Texas before use, the tax may be recouped in accordance with the refund and credit provisions in §3.325 of this title (relating to Refunds [, Interest,] and Payments Under Protest) and §3.338 of this title (relating to Allowance of Credit for Tax Paid to Suppliers).

[(c) Collection by retailer.

[(1) Retailer not maintaining a place of business in this state. Every out-of-state retailer who:

[(A) does not maintain a place of business within this state; but

[(B) is engaged in business in a taxing city;

[(C) sells, leases, or rents taxable items for storage, use, or other consumption in that city; and

[(D) ships or delivers those items into the city to the purchaser; shall collect both the use tax imposed by the state and the use tax imposed by the city. The combined tax shall be collected at the time the sale is made.]

(c)[(2)] **Collection and allocation of city use tax by a retailer located in Texas. A retailer located in Texas but outside a taxing city is required to collect city use tax if the retailer** [Retailer maintaining a place of business within this state. Every retailer who]:

[(A) maintains a place of business within this state but not in a taxing city;]

(1) [(B)] is engaged in business in a taxing city;

(2)[(C)] sells, leases, or rents taxable items for storage, use, or other consumption in that city; and

(3)[(D)] ships or delivers those items into the city to the purchaser[; shall collect both the sales tax imposed by the state and the use tax imposed by the city. The combined tax shall be collected at the time the sale is made].

(d) Collection and allocation of city use tax by a retailer located outside Texas who is required to collect state use tax. A retailer located in another state who is required to collect state use tax on a transaction is also required to collect city use tax if the provisions of subsection (c)(1)-(3) of this section apply.

(e)[(d)] Purchaser's liability for use tax. If a [the] seller is not required to collect [any state or] city use tax [which is due], the purchaser is still responsible for filing reports and paying the tax.

(f)[(e)] *Exceptions.*

(1) **Both city sales tax and city use tax cannot apply to the same transaction.** City use tax is not applicable if the purchaser paid city sales tax to a [Texas] retailer or owes city sales tax to a [Texas] retailer who failed to collect it. The comptroller may proceed against the seller or the purchaser for the city sales tax owed by either.

(2) City use tax **does not apply** [is not applicable] to the storage, use, or other consumption of taxable items in this state if the sale or use of the items would be exempt from the state sales and use tax [were it purchased within this state].

(3) Credit will be allowed against [a] city use tax liability to the extent sales or use tax is legally due and paid to another state [under the conditions provided in the Texas Tax Code, §141.001 and §151.303].

(4) If taxable items are purchased out of state, temporarily stored in Texas **in a taxing city**, and then removed and used solely outside Texas, city use tax does not apply.

(5) The purchase of taxable items will not be presumed to have been for use in a taxing city[,] if the items were purchased and used outside Texas for more than one year before the date **the items were first stored, used, or consumed in a taxing city** [of entry into Texas]. **Transactions covered by the provisions of the Tax Code, §151.330(a), are also subject to the one-year presumption if the items covered by the transactions are returned to a taxing city by the purchaser.** The use outside Texas must be substantial and constitute a primary use for which the property was purchased. Either the comptroller or the purchaser may introduce evidence to establish the intent or absence of intent to use the taxable items in a taxing city at the time of purchase.

[(f) Collection formula. When the sales price in a taxing city shall involve a fraction of a dollar, the two combined taxes (state and city) shall be added to the sale price upon the following schedules, provided that, for successive brackets for the schedule, the tax shall be computed by multiplying 5.0% times the amount of sale. Any fraction of $.01 which is less than one- half of $.01 of tax shall not be collected. Any fraction of $.01 of tax equal to one-half of $. 01 or more shall be collected as a whole cent of tax.

[Amount of Sale:	Tax:
[$.00 -- $ .09	No tax
[.10 -- .29	$ .01
[.30 -- .49	.02
[.50 -- .69	.03
[.70 -- .89	.04
[.90 -- 1.09	.05]

[graphic]

(g) Storage facilities. If, in a taxing city, storage facilities contain taxable items purchased outside Texas and at the time of storage it is not known whether the items will be used in or removed from Texas, a taxpayer may elect to report city use tax when the items are first stored or when they are first removed from storage for use in Texas. Once the election is made, the city use tax must be reported in a consistent manner. If city use tax is paid on stored items that are subsequently removed from Texas before use, the tax may be recovered under the refund and credit provisions in §3.325 of this title (relating to Refunds, Interest, and Payments Under Protest) and §3.338 of this title (relating to Allowance of Credit for Tax Paid to Suppliers).

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, 1991.

TRD-9107488 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: August 2, 1991

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

◆ ◆ ◆

Subchapter R. Metropolitan Transit Authority Sales and Use Tax

• 34 TAC §3.425

The Comptroller of Public Accounts proposes an amendment to §3.425, concerning administration of use tax, imposition, and collection. The amendment adds new definitions of "engaged in business" and makes other minor changes for clarity.

Tom Plaut, chief revenue estimator, 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.

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 in providing new information regarding tax responsibilities. This section is proposed under the Tax Code, Title 2, and does not require a statement of fiscal implications for 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 Lucy Glover, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

The amendment 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.

§3.425. Transit [Administration of] Use Tax[; Imposition and Collection].

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

(1) Authority–Any metropolitan transit authority or city transit department in Texas that has adopted the transit tax imposed by the Tax Code, Chapter 322 [Metropolitan Transit Authority Sales and Use Tax].

(2) Engaged in business–A retailer is engaged [Engaged] in business in an [a particular] authority if the retailer does [means and includes] any of the following:

(A) maintains, occupies, or uses [any retailer maintaining, occupying, or using], permanently or temporarily, directly or through an agent, an office, place of distribution, sales or sample room, warehouse, storage place, or other location; [and]

(B) has [any retailer having] any representative, agent, salesman, canvasser, or solicitor operating in the authority on behalf of the retailer or its subsidiary for the purpose of selling, delivering, or the taking of orders for any taxable items;[.]

(C) promotes a flea market, trade day, or other event involving sales of taxable items;

(D) uses independent salespersons in direct sales of taxable items;

(E) derives receipts from a lease of tangible personal property located in the authority;

(F) solicits orders for taxable items by means of advertising that is broadcast from, printed at, or distributed from, a location in the authority if the advertising is intended for consumers within the authority. Advertising will be considered to be intended for authority consumers if 75% or more of the recipients are located in the authority;

(G) solicits orders for taxable items by mail if:

(i) the solicitations are substantial and recurring; and

(ii) the retailer uses any banking, financing, debt collection, telecommunications, or marketing activities occurring in the authority, or benefits from a location in the authority of authorized installations, servicing, or repair facilities. A retailer located outside the authority who is not otherwise engaged in business in the authority will not be considered as engaging in business in the authority by merely placing a request for financing, telecommunications, banking, marketing, or debt collection services at a location of a service provider outside the authority even though the service is performed in whole or in part in the authority;

(H) allows a franchisee or licensee to operate under its trade name if the franchisee or licensee is required to collect transit sales or use tax; or

(I) solicits orders for taxable items by mail or other media and federal law permits the State of Texas to require the retailer to collect Texas sales or use tax.

(3) Interstate or intrastate transit has ceased–Interstate or intrastate transit has ceased when [When] the [interstate] journey is interrupted for reasons of convenience or business needs of the owner but does not include a temporary interruption necessary and incidental to the transit.

[(4) Intrastate transit has ceased–When the intrastate journey is interrupted for reasons of convenience or business needs of the owner but does not include a temporary interruption necessary and incidental to the transit.]

(4)[(5)] Storage–Includes any retention of taxable items in an authority [Texas] for any purpose, other than sale, lease, or rental in the regular course of business [or for subsequent use solely outside Texas].

(5)[(6)] Use–The exercise of any right or power over taxable items except the sale, lease, or rental of the item in the regular course of business [or the holding of the items for the purpose of subsequently transporting them outside Texas for use solely outside Texas]. With respect to a taxable service, use means the derivation in an authority of direct or indirect benefit from the service.

(6)[(7)] Use tax–A [nonrecurring] tax[, complementary to the sales tax,] that [which] is imposed on the exercise or enjoyment of any right or power over taxable items incident to the ownership, possession, or custody of those items.

(b) Imposition of transit [MTA] use tax.

(1) If taxable items are purchased outside the state or within Texas but not within [out of state for use in] an authority and those items are brought or shipped into an [that] authority for storage, use, or other consumption, transit [MTA] use tax is due. [The retailer is required to collect the MTA use tax under the conditions described in subsection (c) of this section. If the retailer is not required to collect the MTA use tax, the purchaser must pay the MTA use tax directly to the comptroller. Reference should be made to §3.286 of this title (relating to Seller's Responsibilities) regarding use tax permit requirements for out-of-state retailers.]

(2) Transit use tax does not apply to taxable items in interstate or intrastate transit. [If taxable items are purchased within the state but not within an authority, and those items are shipped or delivered by the retailer directly into or brought by the purchaser or lessee directly into an authority, the items are subject to

the MTA use tax. The retailer is required to collect the MTA use tax under the conditions described in subsection (c) of this section. If the retailer is not required to collect the MTA use tax, the purchaser must pay the MTA use tax directly to the comptroller. The MTA use tax, if any, is determined by the location where the items are first stored, used, or otherwise consumed.]

(3) **Transit use tax is due on the purchase or lease price of taxable items and is reported in the period in which the taxable items are first stored, used, or otherwise consumed in an authority.** [The basis of the tax is the purchase price. The tax should be reported in the period in which the taxable items are first stored, used, or otherwise consumed.]

(4) MTA use tax does not apply when the taxable items are transferred from some other authority or from a point outside an authority where they were first stored, used, or otherwise consumed.

(5) If, in an authority, storage facilities contain taxable items purchased **outside Texas** [out of state] and, at the time of storage, it is not known whether the items will be used in or removed from Texas, a [then the] taxpayer may elect to report **transit** [MTA] use tax when the items are first stored or are first removed from storage for use in Texas. Once the election is made, the **transit use** tax must be reported in a consistent manner. If **transit** [MTA] use tax is paid on stored items that are subsequently removed from Texas before use, the tax may be recovered [recouped] under the refund and credit provisions in §3.325 of this title (relating to Refunds, Interest, and Payments Under Protest) and §3.338 of this title (relating to Allowance of Credit for Tax Paid to Suppliers).

[(c) Collection by retailer.

[(1) Retailer not maintaining a place of business in this state. Every out-of-state retailer who:

[(A) does not maintain a place of business within this state; but

[(B) is engaged in business in an authority;

[(C) sells, leases, or rents taxable items for storage, use, or other consumption in that authority; and

[(D) ships or delivers those items into the authority to the purchaser; shall collect the use tax imposed by the state and the use tax imposed by the city and the authority. The combined tax shall be collected at the time the sale is made.]

(c)[(2)] **Collection and allocation of transit use tax by a retailer located in Texas. A retailer located in Texas but outside an authority is required to collect transit use tax if the retailer** [Retailer maintaining a place of business in this state. Every retailer who]:

[(A) maintains a place of business within this state, but not within an authority;]

(1)[(B)] is engaged in business in the [an] authority;

(2)[(C)] sells, leases, or rents taxable items for storage, use, or other consumption in that authority; and

(3)[(D)] ships or delivers those items into the authority to the purchaser[; shall collect the sales tax imposed by the state, the sales or use tax imposed by the city, and the use tax imposed by the authority. The combined tax shall be collected at the time the sale is made].

(d) Collection and allocation of transit use tax by a retailer located outside Texas. A retailer located in another state is required to collect transit use tax if the provisions of subsection (c)(1)-(3) of this section apply.

(e)[(d)] Purchaser's liability for use tax. If a [the] seller is not required to collect **transit** [any state, city, or MTA] use tax [which is due], the purchaser is still responsible for filing reports and paying the tax.

(f)[(e)] Exceptions.

(1) **Both transit sales tax and transit use tax cannot apply to the same transaction. Transit** [MTA] use tax is not applicable if the purchaser paid **transit** [MTA] sales tax to a Texas retailer or owes **transit** [MTA] sales tax to a Texas retailer who failed to collect it. The comptroller may proceed against the seller or the purchaser for the **transit** [MTA] sales tax owed by either.

(2) **Transit** [MTA] use tax **does not apply** [is not applicable] to the storage, use, or other consumption of taxable items in this state if the sale or use of the items would be exempt from the state sales and use tax were the items purchased within this state.

(3) Credit will be allowed against [an] **transit** [MTA] use tax liability to the extent sales or use tax is legally due and paid to another state under the conditions provided in the [Texas] Tax Code, Chapter 141 and §151.303.

(4) If taxable items are purchased out of state, temporarily stored in **Texas in an authority**, and then removed and used solely outside Texas, **transit** [MTA] use tax does not apply.

(5) The purchase of taxable items will not be presumed to have been for use in an authority if the items were purchased out of state and used outside Texas for more than one year before the date of entry into an authority. Transactions covered by the provisions of the [Texas] Tax Code, §151.330(a), are also subject to the **one-year** [one year] presumption if the items covered by the transactions are returned to the authority by the purchaser. The use outside Texas must be substantial and constitute a primary use for which the property was purchased. Either the comptroller or the purchaser may introduce evidence to establish the intent or absence of intent to use taxable items in an authority at the time of purchase.

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

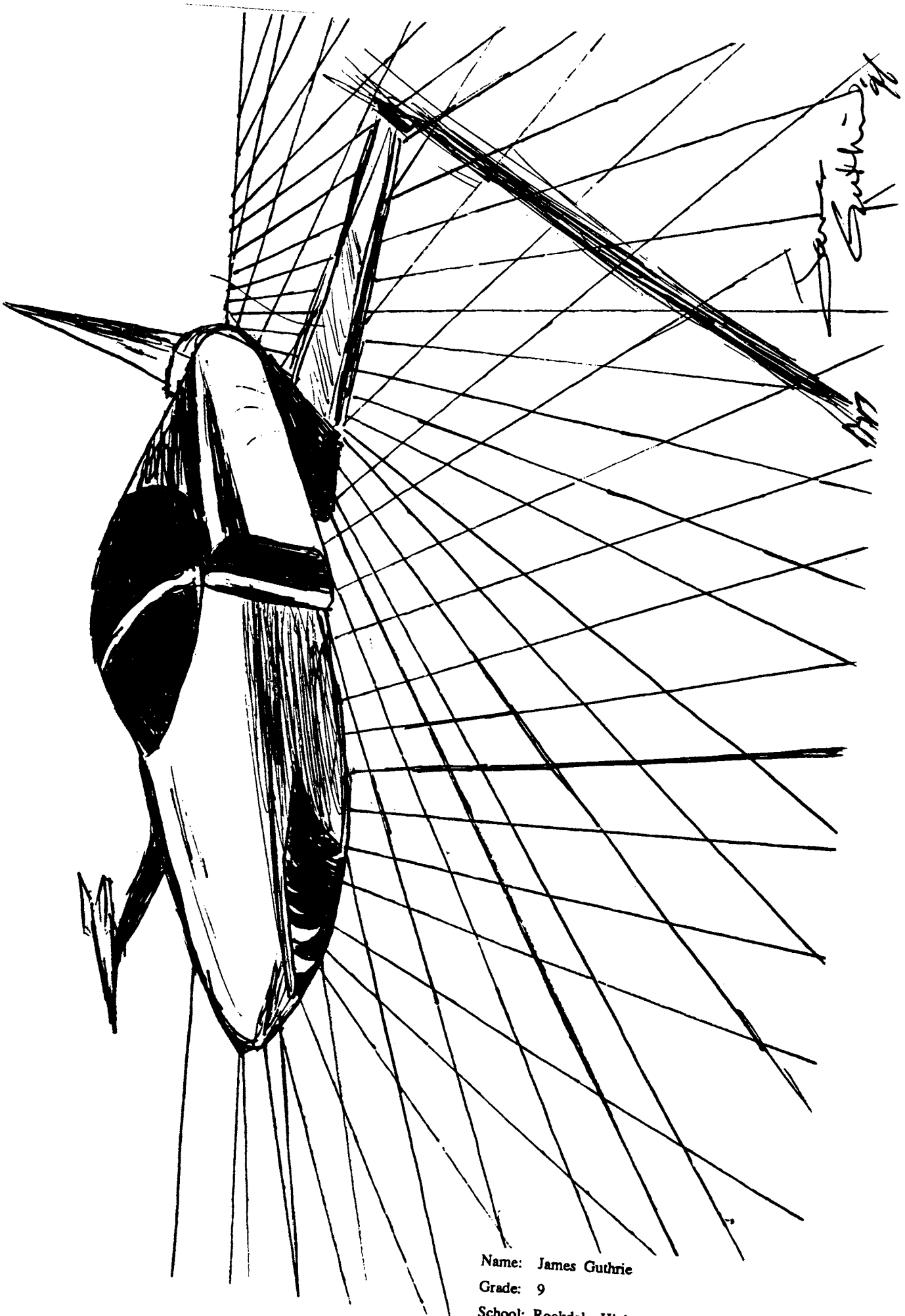
Issued in Austin, Texas, on June 24, 1991.

TRD-9107490

Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: August 2, 1991

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



Name: James Guthrie

Grade: 9

School: Rockdale High School, Rockdale ISD

Withdrawn Sections

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 334. Underground and Aboveground Storage Tanks

Subchapter K. Petroleum Substance Waste

• 31 TAC §334.481, §334.482

The Texas Water Commission has withdrawn the emergency effectiveness of new §334.481 and §334.482, concerning underground and aboveground storage tanks. The text of the emergency §334.481 and §334.482 appeared in the March 22, 1991, issue of the *Texas Register* (16 TexReg 167). The effective date of this withdrawal is July 5, 1991.

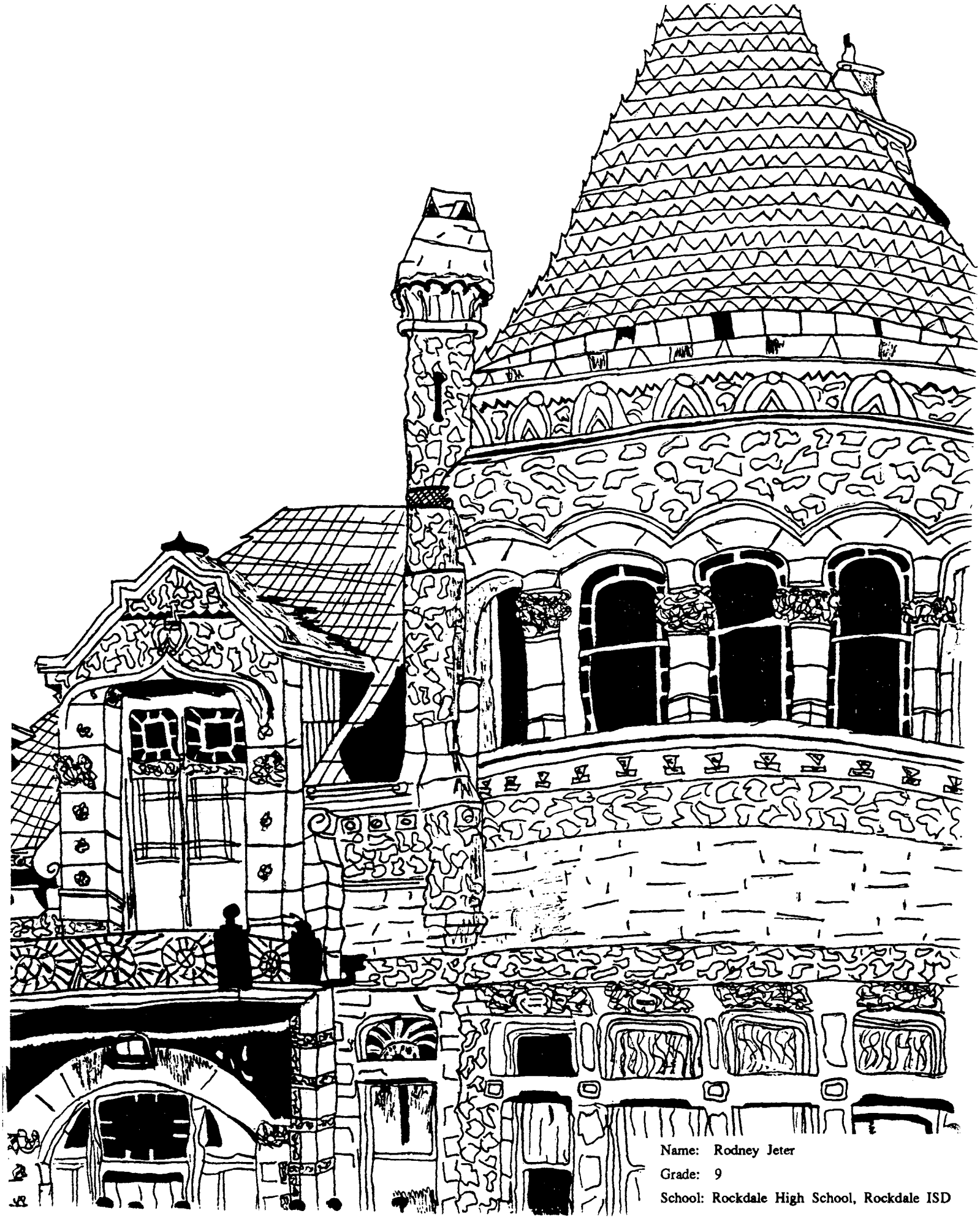
Issued in Austin, Texas, on June 26, 1991.

TRD-9107598 Jim Haley
Director, Legal Division
Texas Water Commission

Effective date: July 5, 1991

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

♦ ♦ ♦



Name: Rodney Jeter

Grade: 9

School: Rockdale High School, Rockdale ISD

Adopted Sections

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

Part V. State Purchasing and General Services Commission

Chapter 113. Central Purchasing Division

The State Purchasing and General Services Commission adopts an amendment to §113.13 and new sections 113.21, 113.23, and 113.25. Section 113.23 and §113. 25 are adopted with changes to the proposed text as published in the May 3, 1991, issue of the *Texas Register* (16 TexReg 2449). Section 113.13 and §113. 21 are adopted without changes and will not be republished.

The amendment and new sections are adopted to implement provisions of Senate Bill 740, 71st Legislature, 1989.

The adopted amendment and new sections advise of restrictions placed on the purchase or lease of schools buses and passenger vehicles, unless the vehicles are capable of using compressed natural gas (CNG) or other alternative fuel. The sections also advise school districts and state agencies of information submission requirements and criteria used by the commission in granting waivers to the requirements of Senate Bill 740.

Four separate entities submitted a variety of comments in response to the proposed amendment and new sections. One commenter questioned the determination that there will be fiscal implications to the proposed sections. Another commenter requested clarification in the language of §113.25 to distinguish between the terms "motor vehicle" and "passenger vehicle." Another commenter requested that the hardship grace period for vehicles converted after purchase as specified in §113.23 and §113.25 be set at 180 days rather than the proposed 90 days. An additional commenter expressed particular concern about safety standards and requested the addition of a provision for granting waivers until it has been determined that conversion systems are available competitively and all safety, operational, and technical requirements have been met. Particular concern was made to the crash worthiness provision contained in the Federal Safety Standards. A final commenter expressed support and agreement and noted that the proposed amendment and new sections appear to be complete and equitable.

A commenter in favor of adoption of the sections as proposed was the Texas LP-Gas Association. Commenters opposing adoption of the sections as proposed were: the State Department of Highways and Public Transportation; the Texas General Land Office; and Conwell Smith Sales Company.

The commission disagrees that there will be no fiscal implications from compliance with the proposed amendment and new sections. Although it is acknowledged that savings from the use of alternative fuels is probable, and that certain gas utilities may provide financing for vehicle conversions and would recoup their costs through long-term fuel contracts, the net effect of these savings and finance arrangements are unknown at this time. Therefore, the commission believes that it is prudent to show the estimated known costs of compliance with these rules while recognizing that a certain amount of these costs may be offset in the future.

The commission agrees that clarification is necessary in §113.25 to distinguish between the terms "motor vehicle" and "passenger vehicle." Therefore, changes have been made in the title to this section to provide this clarification.

The commission does not believe that it is necessary to increase the hardship grace period from 90 days to 180 days. However, it is acknowledged under certain circumstances it may not be possible to convert a vehicle within 90 days due to general industry conditions. Therefore, changes have been made in §113.23 and §113.25 to allow for consecutive 90-day hardship waivers to address this potential situation. Since Senate Bill 740 clearly authorized schools and state agencies to purchase necessary equipment and facilities in accordance with applicable law, a special waiver provision to delay implementation of conversions until conversion systems are available competitively is not necessary. Further, Senate Bill 740 expressly requires the commission, in the case of state agency purchases, and the commission and school districts, in the case of school bus purchases, to comply with all applicable safety standards promulgated by the United States Department of Transportation and the Railroad Commission of Texas or their successor agencies. As compliance with applicable safety standards is a mandatory requirement of Senate Bill 740, imposed primarily on the commission, safety is not viewed as an appropriate ground for waiver. Instead, if it is not affirmatively established that such standards are satisfied, alternative fuel vehicles could not be placed in service.

The commission also takes this opportunity to make minor changes in §113.25 to eliminate confusion regarding whether or not vehicles purchased, or vehicles delivered after September 1, 1991, must comply with the rules. It is the intent of Senate Bill 740 that vehicles purchased after this date be subject to the requirements to use alternative fuels.

Purchasing

• 1 TAC §113.13

The amendment is adopted under Texas Civil Statutes, Article 601b, §3.03, and the Education Code, §21.174.

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 25, 1991.

TRD-9107546 Judith M. Porras
General Counsel
State Purchasing and General Services Commission

Effective date: July 16, 1991

Proposal publication date: May 3, 1991

For further information, please call: (512) 463-3446

♦ ♦ ♦

• 1 TAC §113.17

The State Purchasing and General Services Commission adopts new §113.17, concerning the enhancement of the effectiveness and economy of the purchasing system, without changes to the proposed text as published in the April 2, 1991, issue of the *Texas Register* (16 TexReg 1925).

The new section is necessary to allow the commission to administer purchases of information resources technologies as defined by Texas Civil Statutes, Article 4413(32j) and Department of Information Resources (DIR) rules.

The new section will require the requesting agency to certify compliance with Texas Civil Statutes, Article 4413(32j) and DIR rules in order that purchase actions for information resources technology items may commence.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Civil Statutes, Article 601b, §3. 01, which provide the State Purchasing and General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of Article 3.

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

Issued in Austin, Texas, on June 25, 1991.

TRD-9107543 Judith Monaco Porras
General Counsel
State Purchasing and General Services Commission

Effective date: July 16, 1991

Proposal publication date: April 2, 1991

For further information, please call: (512) 463-3446

♦ ♦ ♦

Purchase of Alternative Fuel Vehicles

• 1 TAC §§113.21, 113.23,113.25

The new sections are adopted under Texas Civil Statutes, Article 601b, §3. 03, and the Education Code, Section 21.174.

§113.23. Purchase of School Buses.

(a) Except as provided in subsection (b) of this section, after September 1, 1991, no motor vehicle used for transporting school children will be purchased or leased for any county or local school district operating more than 50 such vehicles unless that vehicle is an alternative fuel vehicle.

(b) The commission shall waive the requirements of subsection (a) of this section upon receipt of a board's certification either that:

(1) the district's vehicles will be operating primarily in an area in which neither the school district nor a supplier can reasonably be expected to establish a central refueling station for alternative fuels;

(2) the district is unable to acquire or be provided equipment or refueling facilities for alternative fuels at a cost that is reasonably expected to result in no greater net cost than the continued use of traditional gasoline or diesel fuels measured over the expected useful life of the equipment or facilities provided; or

(3) the district is unable to acquire or be provided any alternative fuel vehicles or equipment necessary for such vehicles.

(c) A waiver issued pursuant to subsection (b) of this section does not constitute a waiver or reduction of the fleet compliance requirements set forth in the Texas Education Code, §21.174(d)(1). A school district may request such a waiver or reduction in accordance with §125.65 of this title (relating to Reduction and/or Waiver of Required Fleet Percentages). If a school district is unable to obtain alternative fuel vehicles or the facilities and equipment necessary for alternative fuel vehicles, a waiver will be granted.

(d) The certification specified in subsection (b) of this section must be submitted on the board's official stationery, be signed by the president and secretary of the board, and contain a verification that it was made in accordance with the requirements of the Texas Education Code, §21. 174(c)(5). The certification must also be accompanied by copies of the notice of public meeting and the minutes or an excerpt of the minutes of the public meeting at which the board considered the certification action.

(e) Requisitions for a school bus to be purchased after September 1, 1991, will not be processed by the commission unless the requisition specifies an alternative fuel vehicle or is accompanied by a certification in substantial compliance with subsections (b) and (d) of this section. If the requisition specifies an alternative fuel vehicle as a result of a conversion, it must contain an additional certification as to the anticipated time after delivery that the conversion will be completed. The conversion must be completed prior to the vehicle being placed in service, unless undue hardship would result. In the case of potential undue hardship, the commission may approve use of the vehicle for one or more periods of 90 days following delivery before it is converted.

§113.25. Purchase of Motor Vehicles.

(a) A state agency may not purchase or lease a vehicle designed or used primarily for the transportation of persons, including a station wagon, that has a wheel base longer than 113 inches or that has more than 145 SAE net horsepower. This provision does not apply to the purchase or lease of a vehicle to be used primarily for criminal law enforcement or a bus, motorcycle, pickup, van, truck, three-wheel vehicle, tractor, or ambulance.

(b) Except as provided in subsections (c) and (d) of this section, after September 1, 1991, no motor vehicle may be purchased or leased for a state agency operating a fleet of more than 15 vehicles, excluding law enforcement and emergency vehicles, unless that vehicle is an alternative fuel vehicle.

(c) Requisitions for purchase or lease of vehicles after September 1, 1991, to a state agency operating a fleet of more than 15 vehicles, excluding law enforcement or emergency vehicles, will not be processed by the commission unless the requisition specifies an alternative fuel vehicle, or is accompanied by a request for waiver in accordance with §125.65 of this title (relating to Reduction and/or Waiver of Required Fleet Percentages), or a current and valid waiver issued under that section is on file with the commission. If the requisition specifies an alternative fuel vehicle as a result of a conversion, it must contain certification as to the anticipated time after delivery that the conversion will be completed. The conversion must be completed prior to the vehicle being placed in service, unless hardship would result. In the case of potential undue hardship, the commission may approve use of the vehicle for one or more periods of 90 days following delivery before it is converted. A request for waiver submitted with a requisition will be referred to the Travel and Transportation Division of the commission and will be granted or denied in accordance with §125.65.

(d) If a waiver is granted or is on file, the commission will process the purchase requisition without undue delay. If a waiver request is denied, the commission will return the requisition to the agency without further processing.

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 25, 1991.

TRD-9107545 Judith M. Porras
General Counsel
State Purchasing and General Services Commission

Effective date: July 16, 1991

Proposal publication date: May 3, 1991

For further information, please call: (512) 463-3446

♦ ♦ ♦

Chapter 125. Travel and Transportation Division

The State Purchasing and General Services Commission adopts an amendment to §125.47 and new §§125.61, 125.63, 125.65, and 125.67. Section 125.65 is adopted with changes to the proposed text as published in the May 3, 1991, issue of the *Texas Register (16 TexReg 2450). Sections 125.47, 125.61-125.63, and 125.67 are adopted without changes and will not be republished.*

The amendment and new sections are adopted to implement provisions of Senate Bill 740, 71st Legislature, 1989.

The adopted amendment and new sections advise of the range of services and support provided by the State Vehicle Fleet Management Section of the Travel and Transportation Division to school districts and state agenciesin facilitating the use of vehicles capable of using alternative fuel. Fleet percentages of compressed natural gas (CNG) and other alternative fuels vehicles and deadline for meeting percentages are mandated. The sections also advise school districts and state agencies of information submission requirements and criteria used by the commission in granting waivers to the requirements of Senate Bill 740.

Four separate entities submitted a variety of comments in response to the proposed amendment and new sections. One commenter requested clarification as to whether or not a state agency must satisfy only one criteria or all criteria to qualify for a waiver of fleet percentage requirements in accordance with §125. 65. A commenter also requested clarification as to the way vehicles that have lost their waiver status are added to the vehicle fleet and what impact this will have on the required fleet percentages.

Another commenter questioned the determination that there will be fiscal implications to the proposed sections. A commenter also suggested that language be included to account for changing industry circumstances

during the two-year life of any waiver that may be granted. Another commenter suggested that a specific time deadline be set for the filing of requests for waivers well prior to September 1, 1994, the date of the first fleet percentage requirement. Also, a commenter proposed that there be an opportunity for state agencies and other interested parties to provide input prior to the granting of any waivers.

An additional commenter noted that certain adjustments appeared to be necessary in the standard life cycle cost benefit analysis to reflect the actual formula to be used by the commission. A commenter also requested clarification on how to address costs for conversions expected over multiple year periods. A commenter noted too that the component in the analysis relative to projected savings is deficient since specific reliable data is not yet available to project such savings. In addition, a commenter suggested that the commission's pay back method was incomplete because it failed to consider the time value of money.

A final commenter expressed support and agreement and noted that the proposed amendment and new sections appear to be complete and equitable.

A commenter favoring adoption of the proposed sections was the Texas LP-Gas Association. Commenters opposing adoption of the proposed sections were: the State Department of Highways and Public Transportation; the Texas General Land Office; and Durham Transportation of Texas, Inc.

The commission believes that no changes are necessary to §125.65 in regard to whether or not a state agency must satisfy only one criteria or all criteria to qualify for a waiver of fleet percentage requirements. The language in the proposed section indicates that a state agency may be granted a waiver if a state agency satisfies one or more of the criteria shown.

In regard to the commenter requesting changes as to how to treat a vehicle that loses its waiver status as it relates to the overall fleet percentage requirements, the commission believes that no changes are necessary. Senate Bill 740 established fleet conversion percentage requirements for all motor vehicles. If, for any reason, a motor vehicle is required to comply with the provision of Senate Bill 740, that vehicle must be included in any calculation related to determining fleet percentage requirements.

The commission disagrees that there will be no fiscal implications from compliance with the proposed amendment and new sections. Although it is acknowledged that savings from the use of alternative fuels are probable, and that certain gas utilities may provide financing for vehicle conversions and would recoup their costs through long-term fuel contracts, the net effect of these savings and finance arrangements is unknown at this time. Therefore, the commission believes that it is prudent to show the estimated known costs of compliance with these rules while recognizing that a certain amount of these costs may be offset in the future.

The commission does not believe it is necessary to include language in the rules that will provide for changing industry circumstances during the two-year life of a waiver that may be granted. Although improvements in technology are likely to occur over any two-year period, the degree of such change is not likely to effect the validity of any waiver granted. Should any major technological or operation breakthrough occur that would substantially impact the validity of a waiver, the commission can adopt an appropriate rules amendment at that time.

Senate Bill 740 specifies that the first deadline for minimum vehicle fleet percentage requirements be September 1, 1994. In addition, it specifies that new vehicles and school buses purchased after September 1, 1991, be capable of operating on an alternative fuel. Because of this requirement for new purchases, the commission believes that there is ample incentive for a state agency or school district to file a request for waiver well in advance of the date the percentage requirements become effective and that no specific filing deadline is necessary.

In regard to the comment that proposed there be language in the rules to allow an opportunity for interested parties to give their input prior to waivers being granted, the commission believes that this is an issue that is better addressed through commission policy than through rules. The commission believes that it is not necessary to specify the actual life cycle cost benefit analysis (LCCBA) formulas. In applying for a waiver, only the table as shown in §125.65, which is based upon standard LCCBA formulas, needs to be used; a formula is not required.

The comment regarding the conversion of vehicles on a phased-in basis over multiple years may be addressed in one of two ways. First, calculations can be made separately on each conversion phase. Or, second, the total estimated costs and benefits for all conversions can be calculated at one time. Either can be handled using standard LCCBA formulas. A workbook on the cost effectiveness of using alternative fuels using LCCBA is available from the commission to assist those who want to make these calculations. The various LCCBA formulas are listed therein. This workbook can be used to show how these two different calculations could be handled. The commission realizes that estimates of savings will not necessarily be extremely accurate; however, estimates of fuel and other savings can be made from records of entities using alternative fuels. The commission feels that the best estimate of these costs as well as the benefits should be utilized in calculating cost effectiveness of using alternative fuels.

The LCCBA method of calculating payback does, in fact, include the cost of money and the time value of money. The pay back period in the rules includes the time value of money; simple payback does not. The LCCBA concept uses the constant dollar value of resources in calculations of cost effectiveness of a system or whatever is analyzed. This method does not, however, provide for budgeting; it is to be used only for decision making. If budgeting is to be accomplished, then the effects of appreciation or depreciation of money must be taken into account in order to provide for a specified amount of funds at a certain time in the future. To allow for potential economic changes, the commission takes this opportunity to make a minor modification in the language of §125.65(e)(8), to allow for alternative factors to be considered when determining the cost of money. In addition, notations have been added to the LCCBA table to note that different P, max. factors apply when it is determined by a state agency that an alternative cost of money percentage may best apply.

State Vehicle Fleet Management

- **1 TAC §125.47**

The amendment is adopted under Texas Civil Statutes, Article 601b, §14.01, which provide the commission with the authority to adopt rule necessary to implement the provisions of Article 14.

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 25, 1991.

TRD-9107548 Judith M. Porras
General Counsel
State Purchasing and General Services Commission

Effective date: July 16, 1991

Proposal publication date: May 3, 1991

For further information, please call: (512) 463-3446

Texas Alternative Fuels Program

- **1 TAC §§125.61, 125.63, 125.65, 125.67**

The new sections are adopted under Texas Civil Statutes, Article 601b, §14.01, which provide the commission with the authority to adopt rules necessary to implement the provisions of Article 14.

§125.65. Reduction and/or Waiver of Required Fleet Percentages.

(a) Any state agency operating a fleet of more than 15 motor vehicles, excluding law enforcement and emergency vehicles,and any school district operating more than 50 motor vehicles used for transporting school children are required to achieve a fleet percentage of alternative fuel vehicles equal to or greater than 30% of the total number of such vehicles operated by September 1, 1994, and a percent equal to or greater than 50% by September 1, 1996. Contingent upon favorable review by the Texas Air Control Board by December 31, 1996, determining that the alternative fuel program has been effective in reducing total annual emissions from vehicles, state agencies and school districts shall achieve a fleet percentage equal to or greater than 90% of alternative fuel vehicles by September 1, 1998, and thereafter.

(b) An agency or school district may request a waiver or reduction of the requirements of subsection (a) of this section by submitting a certification that:

(1) the vehicles will be operating primarily in an area in which neither the agency or school district nor a supplier has or can reasonably be expected to establish a central refueling station for alternative fuels;

(2) the agency or school district is unable to acquire or be provided equipment or refueling facilities necessary to operate vehicles using an alternative fuel at a projected cost that is reasonably expected to result in no greater net costs than the continued use of traditional gasoline or diesel fuels measured over the expected useful life of the equipment or facilities supplied; or

(3) the agency or school district is unable to acquire or be provided any alternative fuel vehicles or equipment necessary for such vehicles.

(c) The certification requesting a waiver or reduction of the requirements of subsection (a) of this section must be sent to the Vehicle Fleet Section, Travel and Transportation Division of the commission and must be accompanied by the information described in either subsection (d) or (e) of this section.

(d) A certification under subsection (b)(1) of this section must be accompanied and supported by at least the following:

(1) state the total number of vehicles in the fleet subject to these rules;

(2) state the total number of vehicles currently operating on an approved alternative fuel;

(3) state what percentage of the fleet, subject to these rules, is impacted by the requested waiver or reduction of the requirements;

(4) identify, by vehicle license plate number, each vehicle to be waived;

(5) identify the city, or town nearest to where each vehicle identified in paragraph (4) of this subsection is normally garaged;

(6) identify, by name, any alternative fuels vendor or supplier with a stationary supply of fuel within a 10 mile radius, or mobile fuel suppliers within a 30-mile radius of where each vehicle identified in paragraph (4) of this subsection is normally garaged;

(7) provide copies of any correspondence, or other documentation relevant to the request for waiver or reduction of the requirements.

(e) A certification under subsection (b) (2) of this section must be accompanied and supported by an agency prepared cost benefit analysis for each alternative fuel which includes the following:

(1) total initial cost of providing the entire alternative fuel facility, or a portion thereof, including, but not limited to, the following: (If the equipment is provided at no initial cost whatsoever to the agency and the fuel vendor plans to recoup the initial cost through increased fuel costs, then only those items furnished by the agency such as land shall be included in the total initial cost.)

(A) cost of land at current market value, on which to install any compressor station, tanks, and refueling facilities;

(B) cost of compressor and related facilities, including cost of providing operating power, if not already available at the site, any engineering work for site preparation;

(C) cost of refueling and related facilities, including fast and slow refueling stations, refueling tanks;

(D) cost of providing alternative fuel to the site such as gas pipeline;

(E) cost of engine conversion kits and fuel cylinders and/or tanks, including installation costs;

(F) cost of initial training and certification of mechanics, and training of drivers to operate alternative fuel vehicles, if required;

(G) cost of future major overhauls of the compressor system according to the compressor manufacturer's recommended major overhaul schedule (see paragraph (7) of this subsection);

(H) cost of future major overhauls or replacement of the refueling stations if the expected life is less than 30 years;

(I) costs of future replacement of fuel conversion kits (see paragraph (7) of this subsection); and

(J) any other costs or expenditures necessary to provide a complete, turnkey facility;

(2) total annual mileage expected for the vehicle fleet or for those vehicles covered by the cost study;

(3) total annual fuel savings calculated from the difference between the fuel costs using gasoline/diesel and using alternative fuel for the total annual mileage found in paragraph (2) of this subsection;

(4) an estimate of any additional savings such as reduced maintenance costs (these could include savings from extended oil change intervals, longer spark plug life,and other savings in maintenance);

(5) an estimate of the total annual operating costs,including, but not limited, to the following:

(A) compressor and refueling station maintenance, not replacement cost or cost of major overhaul (see paragraph (1) of this subsection) ;

(B) cost of labor for removing, testing, and reinstalling alternative fuel cylinders/tanks for inspection and testing;

(C) cost of maintenance and repair of engine conversion kits;

(D) cost of testing fuel cylinders/tanks;

(E) cost of training additional mechanics and labor cost differential, if any, for mechanics and other personnel servicing alternative fuel equipment;

(F) cost of electrical power to operate the compressors and refueling stations; and

(G) other annual costs uniquely associated with the operation of the alternative fuel program;

(6) determine the total annual savings from the difference between the total annual fuel and other savings (sum of paragraphs (3) and (4) of this subsection), and the total annual operating costs, paragraph (5) of this subsection;

(7) estimate the expected life of the various components of the system. If accurate lifetimes are not available, the following shall be used:

(A) conversion kits = 15 years (if removed from old and reinstalled on new vehicles; if not reinstalled, use six years for conversion kits for automobiles and small buses, and 10 years for light- and medium-duty trucks and large buses);

(B) fuel cylinders/tanks = 30 years (or less if lifetimes are not 30 years);

(C) compressors = 30 years (or replacement at the time recommended by the compressor manufacturer for the third major overhaul. If not known or not listed by the manufacturer, use 10 years);

(8) determine the capitalized costs of the various components in subsection (e) of this section and then calculate the payback period by using the total capitalized costs; total annual savings, paragraph (6) of this subsection; and 10% cost of money (or the actual interest rate applicable at the time the calculation is made) in

standard life cycle cost benefit analysis formulae; and

(9) the commission may provide technical assistance for state agencies and school districts to make the analysis required by this section.

(f) The director of the Travel and Transportation Division of the commission will review the request for waiver from or reduction of the requirements of subsection (a) of this section and will issue a written waiver or reduction to the state agency or school district and provide a copy to the Purchasing Division of the commission. A waiver or reduction issued under this section will remain valid for two years from date of issuance. A waiver will be granted on a certification under subsection (b)(2) of this section if the total capitalized cost, P, max. is more than 9.43 times the total annual savings, A, for an expected compressor or system lifetime of 30 years. If the compressor lifetime is less than 30 years, or if a compressor is not used, and the component in subsection (e)(1) of this section with the longest expected lifetime is less than 30 years, a waiver will be granted if the total capitalized costs are more than the following values (if other than 10% interest is used, adjust accordingly):

will be granted if the total capitalized costs is more than the following values (if other than 10% interest is used, adjust accordingly):

P, max.	Expected Life
6.14A	10
6.49A	11
6.81A	12
7.10A	13
7.36A	14
7.60A	15
7.82A	16
8.02A	17
8.20A	18
8.36A	19
8.51A	20
8.65A	21
8.77A	22
8.88A	23
8.98A	24
9.07A	25
9.16A	26
9.23A	27
9.30A	28
9.41A	29
9.43A	30

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 25, 1991.

TRD-9107547 Judith M. Porras
General Counsel
State Purchasing and General Services Commission

Effective date: July 16, 1991

Proposal publication date: May 3, 1991

For further information, please call: (512) 463-3446

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 405. Client (Patient) Care

Subchapter A. Prescribing of Medication Mental-Health Services

• 25 TAC §§405.1-405.18

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§405.1-405.18, concerning client (patient) care 405.1, 405.3, 405.6-405.9, 405.12, and 405.14-405.16 are adopted with changes to the proposed text as published in the December 25, 1990, issue of the *Texas Register* (15 TexReg 7487). Sections 405.2, 405.4, 405.5, 405.10, 405.11, 405.13, 405.17, and 405.18 are adopted without changes and will not be republished.

The purpose of the new sections is to replace the existing Chapter 405, Subchapter GG, relating to prescribing of psychoactive drugs, for persons receiving mental health services at TDMHMR state facilities and community mental health and mental retardation centers. (Chapter 405, Subchapter GG will continue to exist and govern prescribing of psychoactive drugs at mental retardation facilities.)

The new subchapter is the product of comprehensive revisions undertaken after a court-mandated review of the existing subchapter. As a result of the review, it was determined that the existing Chapter 405, Subchapter GG did not take into account progress in psychiatry and mental health treatment, was too limited in scope, and had conceptual, administrative, format, and clinical shortcomings. The content of the proposed new subchapter was developed by a group which included medical directors, hospital and community psychiatrists, outside psychiatric consultants, other medical consultants, pharmacists, nurses, and quality assurance professionals. Resulting drafts were reviewed by a number of state hospital and community center psychiatrists. The revision process was overseen, and the drafts reviewed, by TDMHMR's medical director and deputy commissioner for Mental Health Services. The new subchapter has been approved by the court in RAJ *v.* Jones.

The new sections apply to community centers as well as TDMHMR facilities, and govern prescribing of medications in addition to those defined as "psychoactive. " The new sections clarify guidelines related to prescribing practices, and explicitly state that compliance is part of the physician's job description.

Revisions to the rule include an amendment to reflect the start-up date of the 1991 mental health standards, and the addition of references to Texas laws and federal regulations governing storage and record keeping with regard to controlled substances. The definition of "inpatient" was revised to clarify terms, and the definition of "TDMHMR Formulary" was revised for the purpose of being consistent with other department documents. A definition was added for "prescription medication." Staff authorized to perform AIMS was made consistent throughout the rule, and reference to maximum doses in §405.7(7)(C) was removed. Section 405.7(7)(D) was revised for the purpose of clarification. Other changes include highlighting the importance of the risk/benefit discussion, and a revision which limits the need for documentation of rationale for using a dosage which varies from that recommended in the TDMHMR formulary or other reference to higher doses only.

Comments concerning the new sections were received from several individuals; Clinical Pharmacy Programs at San Antonio, Department of Pharmacology, University of Texas Health Science Center at San Antonio; Medical Advisory Committee to the Texas Board of Mental Health and Mental Retardation; College of Pharmacy, The University of Texas at Austin; Abilene Mental Health-Mental Retardation Center, Abilene; Austin-Travis County Mental Health-Mental Retardation Center, Austin; Dallas County Mental Health and Mental Retardation Center, Dallas; Heart of Texas Region Mental Health-Mental Retardation Center, Waco; Johnson County Mental Health-Mental Retardation Center, Cleburne; Martin Luther Home, Inc., Seguin; Riceland Regional Mental Health Authority, Wharton; Texas Mental Health Consumers, Austin; Texas Pharmaceutical Association, Austin; Texas State Board of Pharmacy, Austin; and Tri-County MHMR Services, Conroe. The majority of commenters focused on outlining the role of the clinical pharmacologist in the monitoring of prescribing of medications. Commenters were generally supportive of the new sections.

The department acknowledges the contributions of the clinical pharmacologist in consultations with physicians and in the monitoring of patients. However, the primary responsibility for the care of the patient rests with the physician, and the department's involvement in RAJ *v.* Jones precludes delegating most responsibilities related to prescribing medication.

Commenting on the proposal as a whole, a respondent called for the creation of an informed consent for medication. The commenter asserted that no individual should be forced to be medicated unless an emergency exists which is life-threatening to the patient or others, and the medication is discontinued when the emergency is concluded unless the patient has given consent for medication. The commenter further asserted that forced medication violates the spirit of the RAJ *v.* Jones mandate that TDMHMR provide a treatment plan in collaboration with the individual patient. The commenter qualified this statement by noting that almost every patient is prescribed medication with no realistic options or alternatives offered. The department responds that issues of consent are dealt with in Chapter 405, Subchapter FF of this title, relating to consent to treatment with psychoactive medication.

A commenter asked if the rules would apply to her facility, citing the fact that it does not receive funds from TDMHMR. The department responds that the rules do not apply to that facility.

In less global commentary, a respondent suggested referencing the 1991 mental health standards in §405.1(c). The department agrees, and the language has been revised to reflect this.

Several commenters called for the inclusion of a definition for the clinical pharmacologist in §405.3. The commenters suggested that differentiated roles in patient care functions exist between baccalaureate and doctoral level pharmacists. The commenters noted that the Board of Pharmaceutical Specialties recognizes pharmacotherapy as a specialty. The department acknowledges the contribution of the clinical pharmacologist to the provision of patient care. However, the term "clinical pharmacologist" is not used within the rule and therefore, does not require definition.

The same commenters endorsed amending the definition of "hypnotic" to read "Medication prescribed solely to induce sleep," thus eliminating the phrase "usually marketed and." The commenters noted that other categories of medications which are primarily marketed for other indications are used as hypnotics. The definition has been amended to reflect the commenters' concerns.

Several commenters supported the inclusion of a definition for the term "medication order," noting that the lack of such an inclusion could preclude an authorized agent from being permitted to phone in orders on behalf of the prescriber. The commenters suggested use of the terminology found in the Texas Pharmacy Act, §5, which defines "medication order" as a written order from a practitioner or a verbal order from a practitioner or his authorized agent for administration of a drug or device. The definition of "prescription" has been revised to address the commenters' concerns.

With regard to the term "prescription," the same commenters recommended replacement with the term and corresponding definition for "prescription drug order." The commenters noted that the term "prescription" is defined as a "written order signed...," which the commenters believed could preclude an authorized agent from being permitted to phone in orders on behalf of the prescriber. The definition of "prescription" has been revised to address the commenters' concern.

Several respondents called for amendment of §405.5(b) regarding clinical records system to read "The physician shall, at the earliest op-

portunity, enter in the patient record information to support the diagnosis or provisional diagnosis. The physician or qualified designee shall describe the symptoms...." The commenters explained that the clinical pharmacologist is trained to evaluate patients' behaviors and assess their relevance as target symptoms for prescribed drug therapy; the recommended change would allow the clinical pharmacologist, as a qualified designee, to describe the symptoms. The department responds that the purpose of the provision is to ensure that the patient has been evaluated by a physician.

Also with regard to §405.5(b), a commenter noted that while the provision specifies a maximum 24-hour delay between initiation of medication and required documentation, it only refers to inpatients. The commenter suggested a maximum 72-hour delay for outpatients. The department responds that the provisions of the rule do not preclude such action.

A commenter recommended that a specific time frame be provided in §405.6(1) where the provision currently states "as soon as possible." The department responds that "as soon as possible" is the best time frame available for the guideline.

A number of commenters supported rewording §405.6(4) to allow the physician or clinical pharmacologist to request the determination of the concentrations of medications. The commenters justified the recommendation by noting that the activity is part of the clinical pharmacologist's position description with TDMHMR. The language has been generalized to allow for local discretion.

With regard to §405.7(2), regarding the nonpsychiatric use of psychotropic medications, the same commenters recommended rewording to read the "physician or other qualified consultant...must note in the...." The commenters noted that regulations for accreditation of MR/DD facilities (ACDD) specify that psychotropic medication utilization evaluation may be performed by a psychiatrist or qualified psychopharmacologist (equivalent to clinical pharmacologist); the commenters also noted that consultation by a clinical pharmacologist meets this criterion for ACDD. The department responds that the intent of the provision is that the person prescribing the medication be accountable for its use.

Concerning §405.7(3)(C), several commenters suggested allowing a qualified consultant to document the use of polypharmacy. The department responds that the intent of the provision is not only to ensure documentation, but to ensure that the patient has been evaluated by a physician.

Several respondents suggested replacing the term "accepted" with "initiated" in §405.7(5)(A). The respondents suggested this was a more appropriate term since the physician or dentist originates the telephone order. The department responds that the intent of the provision is to ensure that orders are accepted from only those persons authorized to initiate orders.

A number of commenters recommended that the phrase "...or that individual's authorized physician/dentist designee..." be replaced with the phrase "...or that individual's authorized agent" in §405.7(5)(D). The commenters explained that "authorized agent" is the official designation as established by the Texas Pharmacy Act, Section 5. The department responds that its intent is that this responsibility not be delegated to an individual not authorized to prescribe.

The same commenters called for inclusion of "hypnotic" drugs in addition to antipsychotic and anxiolytic drugs in §405.7(7)(A), regarding PRN orders. The commenters suggested good medical practice limits the use of PRN hypnotics to a short term basis, and suggested that failure to include hypnotics would mean a PRN hypnotic would be in effect for a longer period of time, as outlined in §405.7(7)(B). The department responds that the class of drugs is more aptly suited for a longer validation.

With regard to §405.7(7)(B), the commenters called for decreasing the validity of PRN orders from 31 days to 14 days. The commenters suggested that having PRN orders valid for 31 days increased the risk that a patient who should not receive the PRN would have a PRN administered. The department responds that decreasing the time period to 14 days is not necessary and would be unduly limiting and cumbersome.

A commenter called for a clarification of §405.7(7)(D), suggesting that the intent of the provision was unclear. The commenter was uncertain whether the provision applied only to inpatient settings or was meant to apply to all outpatients, including those who also receive residential services. The department responds that the specific provision is not intended to apply to outpatients, and the language has been revised to reflect this.

Concerning §405.8(c)(2)(A), several commenters endorsed the addition of two roles designated for pharmacist review. The commenters recommended adding (iv) appropriate clinical use indication and (v) positive pregnancy results received from the clinical laboratory and notify the prescriber prior to the dispensing of any medication. The department responds that the information necessary to make these additional assessments is not generally available in the pharmacy.

A commenter expressed concern over use of the term "should be dispensed" in §405.8(c)(2)(D)(i) and (ii), noting that it could be interpreted to require pharmacists to dispense medication even though professional judgment suggested otherwise. Several other commenters called for deletion of §405.8(c)(2)(D)(iii) , noting that the pharmacist is liable for all medication dispensed. The commenters explained that according to pharmacist practice standards, medication should not be dispensed by a pharmacist who believes a problem may exist with the medication order. Another commenter appealed to the pharmacist's ethical duty to refuse to dispense medication which the pharmacist felt would place the patient at significant risk. Another commenter expressed concern that the emergency provision could be abused to circumvent input and counsel of the pharmacist in making the final decision. The department responds to the concerns by deleting §405.8(c)(2)(D).

A commenter addressed HCFA regulations concerning the use of psychotropic drugs in relation to §405.9. While the regulations do not apply directly to state hospitals, the commenter asserted that they established a standard of practice, and the commenter suggested including a requirement for monthly medication regimen reviews by pharmacists as outlined in the HCFA regulations. The suggestion is worthy. However, there are significant fiscal implications if such a standard were enacted systemwide. Nothing in the rule would preclude such a review being conducted at local discretion.

Revision of §405.9(a) was recommended by several commenters, who remarked that as written, it did not reflect the clinical capabilities and credentials of the clinical pharmacologist. The department responds that policy mandates performance of initial inpatient monitoring by a physician.

The same commenters also called for revision of §405.9(d) to reflect the clinical pharmacologist's ability to facilitate the physician's role in treating the poorly responsive patient. The department responds that the rule does not preclude consultation; however, department policy mandates reassessment be performed by a medical doctor.

The commenters made the same recommendation for §405.11(5), suggesting it be revised to reflect the clinical pharmacologist's ability to assist the physician in the performance of documentation activities. The department responds that the intent of the provision is that the person prescribing the medication be accountable for its use.

With regard to §405.12, a commenter noted that the community-based service (CBS) would appear to be required to pay for care by another physician for a pregnant or nursing patient who was unable or unwilling to pay for care for herself or her nursing infant. The commenter recommended clarification of whether or not the CBS is indeed responsible for this cost, and noted that such responsibility would create added costs for some facilities. The department responds that the contracting CBS is responsible for the costs associated with the provision of care for patients. The issue of responsibility for costs, however, is outside the scope of the rule.

Concerning §405.12(a)(1), several commenters observed that a consultative opinion regarding the appropriateness of drug therapy in pregnancy is essential, and suggested that a qualified consultant, which could include the clinical pharmacologist, be permitted to provide that input. The department responds that for the purpose of managing a pregnant patient, the expertise of an obstetrician, pediatrician, or the physician responsible for the patient's care is necessary.

The same commenters asked that a qualified consultant be permitted to provide written documentation for the rationale of using large doses of psychotropic medications in children/adolescents in §405.12(b). The department responds that the purpose of the provision is to ensure that a psychiatrist has seen the patient, not to ensure documentation of rationale.

A commenter suggested that the provisions of §405.12(d) seemed to be in direct conflict with Standard H.8.54 of the mental retardation standards. The commenter questioned under which rule or standard facilities would be evaluated when psychoactive drugs are prescribed for persons with mental retarda-

tion. The department responds that the rule and standards would never apply to the same service setting.

The commenter also noted that not all patients reside with paid staff, and recommended that provisions be included in §405.16 for administration or supervision of self-administration by guardians or other person(s) judged to be responsible and capable of doing it correctly. And the commenter suggested that patients assessed as unable to self administer correctly and who either have no acceptable person available to volunteer to supervise them or who refuse such supervision be required to be referred to a program where the needed level of supervision can be provided. The commenter suggested that should the patient refuse to participate in such a program, the CBS have the option to either commit the patient to the program involuntarily or discontinue medication until such time as it was determined that the patient is capable of taking it or having it administered as prescribed. The department responds that this section is silent on supervision/administration by family or guardians. They are certainly allowed by law to participate in care of the patient, and we do not limit that in this section. The "other persons judged to be responsible" is too vague and shouldn't be addressed here. The provisions the commenter suggests for referral and which would allow the CBS to commit patients to the program voluntarily are beyond the scope of the rule.

With regard to §405.16, a commenter suggested the provision calling for assessment was a violation of the dignity of the patient; suggested the provision for supervision of administration of outpatients was a violation of the patient's privacy; and recommended provisions for non-compliance. The department responds that this provision is intended to serve as a measure of prudence and protection for the client and does not violate privacy or otherwise reflect negatively on the patient's dignity.

Also with regard to §405.16, a commenter called for clarification of the statutory authority of registered nurses. The commenter suggested delegating medication administration in a community-based service might be a violation of the Nursing Practice Act. The department responds that the provision of the rule relates to delegating medication administration at long-term care facilities. Delegation of medication administration by RNs to unlicensed persons is not permitted at CBSs.

A commenter called for removal of the term "professional" from the phrase "a registered professional nurse" in §405.16(c), noting that there is no such thing as a non-professional nurse. The word "professional" has been deleted.

A commenter suggested that the requirements outlined in §405.16(a) will increase costs for the agency because hours budgeted for physicians or RNs would have to be increased. The commenter suggested that it would be reasonable to permit completion of the assessment by an LVN, providing it were done with an instrument approved by an RN or MD. The commenter observed that most LVNs are capable of and trained for such responsibility. The department responds that the requirement is a part of providing high-quality care.

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

§405.1. Purpose.

(a) The purpose of this subchapter is to establish policy for select aspects of appropriate prescribing, utilization, and monitoring of certain medications by physicians and service settings of the Texas Department of Mental Health and Mental Retardation (TDMHMR). This subchapter is not intended to be a complete guide, nor should it be the physician's only source of standards for prescribing. Rather, it is designed to address some potential problems encountered in medical practice in TDMHMR facilities and community-based services.

(b) Nothing in this subchapter should be construed as expanding the scope of the current (1989) RAJ settlement decree or the scope of lawsuit-related monitoring or auditing of service sites or procedures.

(c) This subchapter supercedes the TDMHMR Mental Health Community Standards (1989), Chapter 14, Standards 14.1-14.50 and 14.58-14.61 until September 1991. Standards 14.51-14.57 are not superceded and must be met by community mental health and mental retardation centers until September 1991. After September 1991, this subchapter shall be adopted as part of new TDMHMR Mental Health Community Service Standards.

(d) This provisions of this subchapter shall apply in conjunction with Texas laws and federal regulations governing storage and record keeping with regard to controlled substances, including, but not limited to, those stated in Texas Civil Statutes, Article 4476-5 (Texas Controlled Substances Act), federal Drug Enforcement Agency (DEA) regulations, Medical Practice Act, Nurse Practice Act, and Pharmacy Practice Act.

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

Administration of medication–The direct application of a medication to the body of a patient, by any means, including handing a patient a single dose of medication to be taken orally.

Antipsychotic medication–Medication commonly prescribed for control of psychotic symptoms and certain illnesses described as "psychotic. " For purposes of this subchapter, the term includes (but may not be limited to) phenothiazines, butyrophenones, thioxanthenes, dibenzoxazepines, and molindone-related compounds. Also referred to as "neuroleptic medication."

Anxiolytic medication–A medication, sometimes referred to as a "minor tranquilizer," which alleviates symptoms or signs of anxiety. For purposes of this subchapter, "anxiolytic" includes medications usually prescribed for other purposes when they are prescribed solely for anxiety.

Chief physician–The clinical director of a state hospital or state center or the medical director of a community center. Except as noted elsewhere in this subchapter, or in situations in which he/she declines to accept the consultation, the chief physician is, by definition, qualified to render the consultations or second opinions required by this subchapter.

Chief physician designee–A physician credentialed and, if applicable, privileged, by the facility or community-based service and appointed by the chief physician to act in the capacity of chief physician as needed. When designated to review patient care, such reviewing physician will be other than the prescribing physician.

Commissioner–The commissioner of the Texas Department of Mental Health and Mental Retardation (TDMHMR).

Community-based service–(CBS) Service provided in or near a patient's community, under the jurisdiction of the Texas Department of Mental Health and Mental Retardation (e.g., facility community-based service) or service provided by a community mental health or mental retardation center established pursuant to Texas Civil Statutes, Article 5547-203; by their contract providers; or by providers employed by or contracting directly with the department. Also, a center providing such services.

Community mental health and mental retardation center or community center–A CBS provider established pursuant to Texas Civil Statutes, Article 5547-203.

Crisis stabilization unit (CSU)–A program licensed by TDMHMR in accordance with Chapter 401, Subchapter K of this title (concerning Licensure of Crisis Stabilization Units) to provide 24-hour residential services which are usually ,short-term in nature to persons who are demonstrating psychiatric crises.

Department–The Texas Department of Mental Health and Mental Retardation (TDMHMR).

Direct care staff–Employed or contracted staff persons who may be involved in patient care related to medications, but who are not licensed or registered physicians, physician assistants, nurses, pharmacists, or mental health professionals. Dispensing of medication Preparing, packaging, compounding, or labeling a medication for delivery in the course of professional practice to an ultimate user or the user's agent by or pursuant to the lawful order of a physician, dentist, or podiatrist.

Emergency–A situation in which, in the opinion of the treating physician, or other appropriate professional, the immediate use of medication is essential to interrupt imminent physical danger to self or others.

Facility–Any state hospital, state center, or other part of TDMHMR that delivers medical and mental health services.

Hypnotic or hypnotic medication–Medication prescribed solely to induce sleep.

Inpatient–A person who is currently admitted to a hospital, crisis stabilization unit, or intermediate care facility (a facility offering moderate supervision and moderately structured activities. typically offering 24 hour supervision with the need for awake staff at night determined according to specific program type and the needs of the resident). Does not include persons receiving day treatment or residential/housing services provided, directly or contractually, by community MHMR center or facility community-based programs.

Licensed vocational nurse–A person with a current license issued by the Texas State Board of Vocational Nurse Examiners to practice vocational nursing.

Maintenance dose–A scheduled amount of medication designed to maintain remission of an illness or alleviation its symptoms, as contrasted to acute treatment. Often, but not always, the lowest effective dose for this purpose.

Medical staff–The physicians, and in some cases other clinical professionals, credentialed to practice in a facility or community-based service. In a hospital, the medical staff is a formal organization responsible for, among other things, medical quality assurance.

Medical standards–Information generally accepted by physicians as valid and reliable for clinical use, as expressed:

(A) in professionally accepted current medical texts, journals, or other literature; and/or

(B) by professionally recognized authorities or training programs. Mental status examination An organized assessment of a patient's present orientation, appearance, behavior, affect, mood, communication, thought process, thought content, memory, judgment, and cognition, insofar as they can be elicited or accurately inferred.

Outpatient–A person receiving medical (including psychiatric) or psychological services who is not an inpatient, including one who resides in a group home or transitional living program.

Patient–Any person receiving medical, psychological or other clinical services from a facility or CBS.

Patient record–The facility, CBS, or provider's official written record of patient care (medical record, chart).

Pharmacist–A person with a current license issued by the Texas State Pharmacy Board to practice pharmacy.

Physician or licensed physician–A doctor of medicine or osteopathy who holds a current license issued by the Texas State Board of Medical Examiners to practice medicine, or who possesses an institutional practice permit issued by the Texas State Board of Medical Examiners. A licensed dentist or podiatric physician, when acting within the scope of professional training and licensure, is authorized to prescribe, dispense, and administer medications appropriate to the specialty, and is included in this definition.

Physician assistant–A person who is a graduate of a physician assistant training program accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association Council on Medical Education, or who has passed the certifying examination given by the National Commission on the Certification of Physician's Assistants. When performing the clinical duties of a physician assistant, such individuals are assumed to be acting under a supervising physician (as defined in this section).

Polypharmacy–Simultaneous use of more than one medication having very similar or identical mechanisms of action, except as otherwise provided in this subchapter.

Prescription–A lawful written order signed by a licensed physician, dentist, or podiatrist, or a lawful telephone/verbal order from a licensed physician, dentist, or podiatrist, or the authorized agent of a licensed physician, dentist, or podiatrist to dispense or administer medication to a patient.

Presciption medication–A substance for which federal or state law requires a prescription before it may be legally dispensed to the public.

PRN–As needed.

Psychiatrist–A doctor of medicine or osteopathy who has completed an approved residency in the medical specialty of psychiatry.

Psychotropic medication–Medication whose primary intended therapeutic effect is psychiatric.

Registered nurse–A person with a current license issued by the Texas State Board of Nurse Examiners to practice professional nursing.

Supervising physician–The licensed physician and doctor of medicine or osteopathy who, as a result of application to and approval of the Texas State Board of Medical Examiners, assumes responsibility and legal liability for the services rendered by a specific physician assistant.

TDMHMR Executive Formulary Committee–A committee appointed by the commissioner which is responsible for creation and revision of the TDMHMR Formulary and other duties.

TDMHMR Formulary–A continually revised printed listing by nonproprietary name of all drugs approved for use within TDMHMR facilities by the Executive Formulary Committee.

§405.6. Patient Evaluation and Review in Inpatient and Crisis Stabilization Unit (CSU) Settings. When the requirements of this section are met by information acquired by or from another institution or individual (e. g., laboratory results or clinical summaries from another hospital), the admitting or attending physician will document the clinical acceptability of that information in the patient record.

(1) History and physical assessment. Except in an emergency, a physician or advanced nurse practitioner, physician's assistant (P.A.), or medical student under a physician's supervision shall conduct a medical history and physical assessment prior to initiating medication. That assessment will include obtaining of history and performance of such physical examination sufficient for safe prescription of the medication contemplated, and will be documented in the patient record. If antipsychotic medication is contemplated, the assessment will include screening for abnormal involuntary movements using a standardized procedure (e.g., AIMS), by an appropriately trained physician, P.A., registered nurse, or pharmacist. In an emergency, such history and assessment will be completed and documented as soon as possible.

(2) Mental status examination.

(A) Except in an emergency, the physician will conduct a thorough mental status examination prior to initiating psychotropic medication or any medication (other than hypnotics) reasonably expected to affect significantly the patient mental status. In an emergency, the mental status exam will be done as soon as possible.

(B) At least every six months, patients receiving psychotropic medication will have a thorough mental status examination by a qualified physician, the results and interpretation of which will become a permanent part of the patient record.

(3) Diagnostic, screening, and monitoring procedures.

(A) Except in an emergency, the physician shall ensure and document in the patient record that careful consideration has been given to the need for laboratory screening or other procedures to gather relevant clinical information prior to initiation of medication. Attention will be given to the determination of biological functioning or baseline data with regard to at least the following:

(i) blood and blood components;

(ii) relevant metabolic systems (e.g., hepatic, renal, endocrine); and

(iii) body systems relevant to medication toxicity or adverse effect (e.g., hematologic, reproductive).

(B) The prescribing physician will be aware of special physical, laboratory, consultative, or other evaluative or surveillance needs associated with particular medications and patient conditions, and will carry them out according to this subchapter and other accepted medical standards.

(C) When medication is prescribed in an emergency, the requirements noted in subparagraphs (A) and (B) of this paragraph must be performed as soon as possible following initiation of medication.

(D) After medication is initiated, laboratory and other evaluations shall be carried out as appropriate to meet medical standards. Such standards may vary for individual patients and medications or combinations of medications, but in no case shall more than 12 months elapse without reexamination of the relevant hematologic, metabolic, and toxicity-sensitive systems outlined in subparagraph (A) of this paragraph.

(E) Laboratory and other test results are maintained in the patient record in the manner required by facility or community-based service (CBS) policy and procedure. All laboratory reports are reviewed, initialed, and dated by the physician, and significant abnormal results are commented upon in the progress notes.

(F) The chief physician (or, in service settings with a medical staff organization, the medical staff) will, as part of routine quality assurance activities periodically review physician and facility or CBS compliance with the procedures outlined in subparagraphs (A)-(D) of this paragraph, and will, as necessary, establish general and/or specific intervals and procedures for laboratory and other screening of patients taking medication.

(4) Medication concentrations in fluids and tissues. Concentrations of medication in body fluids or tissues shall be determined when possible and clinically indicated. Such determinations may be indicated, provided appropriately valid and reliable laboratory measures are available, in cases of:

(A) suspected lack of compliance by the patient with prescribed treatment;

(B) suspected toxicity, adverse effects, or unexpected side effects;

(C) need for monitoring or correlating fluid or tissue concentrations of medication with change in symptoms or other clinical findings;

(D) use of or need for unusual amounts of medication;

(E) lack of expected target symptom improvement after appropriate dosage and duration of treatment; or

(F) use of medication (e.g., lithium carbonate, carbamazepine) for which periodic sampling is a routine part of treatment.

§405.7. General Guidelines for Prescribing in All Service Settings. Although this and other sections of this subchapter may refer to explanations, rationale, or consultation with or approval by other persons regarding exceptions to routine prescribing, no condoning of medical practice outside accepted medical standards is implied or should be inferred.

(1) Dose and route of administration. Doses shall be at or below the maximum doses indicated in the TDMHMR Formulary or in accepted medical texts. Higher doses or unusual routes of administration may be used only with documentation in the patient record of consultation with, and agreement by, the chief physician, chief physician designee, or other qualified consultant. The rationale for the higher dose or unusual route of administration must be clearly documented in the patient record.

(2) Nonpsychiatric use of psychotropic medications. When a psychotropic medication is prescribed for a nonpsychiatric symptom, sign, or condition, standards of practice recommended by accepted medical texts, journals, and/or authorities, the pharmaceutical manufacturer, and/or relevant government agencies (e.g., the Food and Drug Administration), may justify its use. The physician must note in the patient record the condition for which the medication is being prescribed.

(3) Polypharmacy. Simultaneous use, in one patient, of two or more medications with very similar or identical mechanisms of action shall not be used as a mechanism to avoid single drug dosage recommendations. Polypharmacy is acceptable only in the following situations:

(A) when overlapping medications as part of a change from one medication to another;

(B) when PRN medication similar to the current one, but requiring a different route of administration or effect, is needed (reference paragraph (7) of this subsection); or

(C) when supported in the patient record by sound clinical rationale or by a written report of consultation from a qualified physician. Such consultation will include assessments of the patient and review of the patient record.

(4) External standards. If a service setting must meet an external standard regarding psychotropic medications which is more stringent than those in this subchapter, then the more stringent standard shall prevail.

(5) Telephone orders for medication.

(A) Telephone orders are accepted only from licensed physicians or dentists or their authorized agents.

(B) Telephone orders are received and entered in the patient record only by licensed nurses.

(C) Entry of a telephone order will include the date, the time the order was received, and the signature and title of the person who accepts and records the order.

(D) The ordering physician/dentist, or that individual's authorized physician/dentist designee, will authenticate the order, within a reasonable period, with a dated, timed signature.

(6) Patient consent, information, and education.

(A) Except in an emergency, prior to initiation of medication, the person being treated, the parent if the person is a minor, or another individual legally authorized to consent on the person's behalf, if any, shall be informed of the potential benefits and risks of the prescribed medication, and that informing is documented in the patient record.

(B) The facility or CBS provides individual and/or group education to patients and, when appropriate, their families, regarding medications prescribed by its clinicians or consultants. Medication education, at least to the extent of discussion of dosage, expected benefit, and potential side- or adverse effects, is provided each time a new medication is prescribed or any time the medication regimen is altered in a way which would result in a significant change in the risks or benefits for the patient, and is documented in the patient record. This requirement does not apply in cases of substitution of an identical or nearly identical medication (e. g., a generic substitution), in cases of substituting medications of similar chemical group (e.g., another tricyclic or another phenothiazine), or in cases of routine adjustment of medication not part of acute care.

(C) Consent for medication will be obtained according to the guidelines

in Chapter 405, Subchapter FF of this title (relating to Consent to Treatment with Psychoactive Medication).

(7) Pro Re Nata (PRN) orders.

(A) Except in outpatient settings, PRN orders for antipsychotic and anxiolytic medications are valid for a maximum of 96 hours.

(B) Except in outpatient settings, All PRN orders for medications other than antipsychotic and anxiolytic drugs are valid for a maximum of 31 days.

(C) All PRN orders must contain:

(i) the target symptoms or signs which trigger their use;

(ii) the dose to be used;

(iii) the minimum interval allowed between doses; and

(iv) the maximum dose in a single 24-hour period.

§405.8. General Guidelines for All Service Settings: Records and Monitoring of Prescribing and Administration Procedures.

(a) In all programs in which medications are administered or in which self-administration is supervised, a copy of the physician or dentist's orders for all current medications will be kept in the patient record. In residential programs, a copy will also be kept at the residential site.

(b) All patients receiving facility- or community-based service (CBS)-prescribed medications will have the following documented in the patient record:

(1) known medication allergies;

(2) name(s) of all medications currently prescribed;

(3) dose(s) and dosage schedule(s);

(4) route of administration;

(5) if an outpatient, amount dispensed or authorized;

(6) signature of prescribing physician or dentist;

(7) if dispensed or administered by facility or CBS personnel, a record of dispensing and/or administration and identifying initials or signature of administering person; and

(8) if administered parenterally, the site of injection.

(c) The department will rely on the judgment of the following persons to monitor the prescribing of medication.

(1) Attending physician. The attending physician, and, in the case of inpatients, the admitting physician before an attending physician accepts care of the patient, shall be the primary person responsible for adhering to the requirements of this subchapter, and to other applicable standards, in treating patients.

(2) Chief pharmacist. In a facility or CBS which operates a pharmacy, or which uses a TDMHMR-operated pharmacy, the chief pharmacist shall be responsible for ensuring that all pharmacists adhere to the following monitoring procedures.

(A) Prior to dispensing or distributing medication, the pharmacist shall review the prescription for:

(i) dosage within accepted range as indicated in the TDMHMR Formulary;

(ii) known medication interactions; and

(iii) polypharmacy.

(B) If a discrepancy appears to exist, the pharmacist should contact the attending physician (or physician covering the patient if the attending physician is not available) for resolution of the discrepancy. If the issue is resolved, the resolution will be documented in the patient record by a physician, pharmacist, or by a registered nurse with the cosignature of a physician.

(C) If the contact does not resolve the apparent discrepancy, or if the attending physician or covering physician is not available, the pharmacist will contact the chief physician or the chief physician designee for resolution of the issue. The decision of the chief physician or designee will be entered in the patient record by a physician, pharmacist, or registered nurse, will be identified as coming directly orally or in writing from the chief physician or designee, and will be cosigned by that person.

(3) Other persons. A registered nurse, pharmacist, physician assistant, or physician who feels that a prescription may represent an unjustified hazard to a patient may, in addition to other measures which may be taken, contact the chief physician or chief physician designee. If this occurs, the fact that such contact was made, and the results of the contact, will be documented in the patient record.

§405.9. General Guidelines for All Service Settings: Ongoing Evaluation of Patients Taking Prescription Medications (see also §405.14 of this title (relating to Required Assessments for Patients Receiving Medication in Community-based services (CBS)).

(a) Initial inpatient monitoring. When a new prescription medication is initiated for an inpatient, or a dose is significantly changed, the patient's response and clinical condition shall be directly evaluated and documented in the record by a physician as often as medically necessary, for the period of time needed to stabilize the clinical response, but at least weekly for one month, unless the patient is discharged in the interim. This requirement does not apply in cases of substitution of an identical or nearly identical medication (e.g., a generic substitution) or in cases of routine adjustment of medication not part of acute psychiatric care.

(b) Inpatient monthly review. The physician shall review an inpatient's medication at least monthly. The review will include at least a patient interview, an assessment of patient response and effect on target symptoms, side effects and adverse effects, and an opinion about need for continuing medication and dose.

(c) Inpatient quarterly review. Every third monthly inpatient review will include specific attention to potential long-term adverse effects of the medication. For patients taking antipsychotic medications, this will include documentation of a standardized assessment of abnormal involuntary movement (e.g., AIMS) conducted by an appropriately trained physician, physician's assistant, registered nurse, or pharmacist. Documentation will include whether or not the medication was discontinued prior to testing. All positive findings will be verified by a qualified physician, and the verification documented in the patient record.

(d) Inpatients or outpatients inadequately responsive to medication. Patients inadequately responsive to medication prescribed in appropriate dose and duration shall be reassessed by the treating physician in an effort to determine the reasons for the lack of response and alternative modes of treatment, and the reassessment documented in the patient record. If, following such reassessment, it is determined that the patient is not receiving benefits from a medication outweighing potential hazards, the medication will be discontinued, or an alternative medication substituted.

§405.12. Additional Considerations in All Service Settings: Special Populations.

(a) Pregnant or nursing patients. When, based upon consideration of potential benefits and risks, psychotropic medication is required during pregnancy or nursing the following will occur:

(1) Except in emergency, consultation will be obtained from an obstetrics consultant or the physician currently managing the pregnancy (in the case of pregnant patients) or from a pediatrician or the physician currently managing the infant (in the case of nursing patients), prior to prescribing.

(2) The acute need for treatment and careful consideration of non-

medication treatment modalities will be documented.

(3) Every effort will be made to use the effective medication with fewest potential side- and adverse effects for the patient, fetus, and/or nursing infant, in the lowest effective dose.

(4) Except in an emergency, a risk/benefit discussion will occur between the physician, the patient, and the patient's legally authorized representative, if any.

(5) A summary of current treatment, including diagnosis and medications, will be communicated to the physician or clinic (if any) providing prenatal or postnatal care.

(6) The actions taken in paragraphs (1)-(5) of this subsection will be documented in the patient record.

(b) Children/adolescents. In cases in which large doses of psychotropic medications not usually recommended for pediatric use are warranted, justification and consultation with a psychiatrist, preferably a child psychiatrist, must be documented in the patient record.

(c) Patients with alcohol and/or drug dependency.

(1) Coexisting psychiatric diagnoses should be carefully established before prescribing.

(2) Medications with significant addictive potential should be used only with caution after acute withdrawal.

(d) Mentally retarded patients.

(1) Patients should be treated with psychotropic medication, and particularly antipsychotic medication, only for a disorder or syndrome for which the medication is appropriately utilized. It should not be prescribed solely for behavioral problems or behavior control. The necessity for the use of psychotropic medication in a patient with mental retardation must be substantiated by:

(A) documentation of psychiatric diagnosis or symptoms, including organic psychiatric disorders; or

(B) a clearly defined need for a psychotropic adjunct to other medication or behavior management procedures; or

(C) a medical condition for which the medication is an accepted treatment.

(2) Except for emergency situations, psychotropic medications are prescribed for the mentally retarded only after behavioral and clinical baselines have been established.

(3) Except in an emergency, the treatment team should be apprised of the potential risks and benefits of the medication being considered, and participate in the overall treatment program.

(e) Elderly patients. As a general rule, older patients need lesser doses of lithium, neuroleptics, and antidepressants. Extra caution in prescribing sedatives and benzodiazipines should be taken. Many elderly patients have additional medical problems such as hypertension and dehydration, and the potential for drug interactions is increased because of the medication for these concurrent conditions.

§405.14. Required Assessments for Patients Receiving Medication in Community-based Services (CBS).

(a) Basis for assessments and related medical and psychiatric procedures. CBS medical and psychiatric procedures are the responsibility of the CBS physician, through the chief physician. The CBS maintains written acceptable policies and procedures which address physician responsibilities, meet the other standards of this subchapter, and include policies and procedures addressing the following:

(1) medical assessment of physical and/or mental symptoms and signs, including physical examination and prescribing of all medical procedures, consultations, and/or laboratory tests;

(2) admission to and discharge from CBS-operated or contracted hospitals and crisis stabilization units (CSUs);

(3) prescribing, monitoring, and discontinuing all medications and other somatic therapies; and

(4) the approval by the chief physician of all policies and procedures related to medical/psychiatric services and somatic therapies.

(b) Pre-treatment workup. Excluding emergencies, and unless documentation exists that they have been adequately performed within the past 12 months or other factors obviate their clinical usefulness, the following will be accomplished, the results considered by the physician, and documented in the patient record prior to initial prescribing:

(1) medical history, including medication history, current prescription and non-prescription medications, and known allergies. The medical history is reviewed and updated at least annually or more frequently as warranted;

(2) psychiatric history and thorough mental status examination (reference §405.6 (1) and (2) of this title, (relating to Patient Evaluation and Review in Inpatient and CSU Settings)) if prescribing psychotropic medications;

(3) assessment of physical condition to include, at least, the systems relevant to the target symptoms, medication(s) to be prescribed, and potential medication toxicity or side- and adverse effects;.

(4) other procedures, including laboratory studies, as clinically indicated or relevant to systems mentioned in paragraph (3) of this subsection. If delay of medication is contraindicated or delay of procedure results is acceptable for baseline needs, these procedures may be obtained or recorded after initiation of medication;

(5) diagnosis(es) or provisional diagnosis(es), with supporting signs and symptoms;

(6) identification of target symptoms for which medication is prescribed.

(c) Outpatient medication reviews. CBS physician review of patients receiving CBS-prescribed medications includes chart review and scheduled in-person assessment as clinically prudent and necessary, with chart review by a physician at least every three months. In no event shall more than six months pass without an in-person assessment by a physician. This interval should be shorter for patients particularly susceptible to serious adverse effects (e.g., tardive dyskinesia). If a patient fails to keep a follow-up appointment, a judgement may be made by the physician (and documented in the patient record) that medication benefit outweighs the potential risk of prescribing without in-person review, and the medication continued for up to 60 days. Medication reviews are documented in the patient record and include, but may not be limited to;

(1) physical and/or mental symptoms and signs;

(2) mental status examination;

(3) medication's effect on target symptoms;

(4) rationale for any change in medication; and

(5) medication side effects and adverse effects.

(d) Dyskinesias and related syndromes. In patients known to be taking antipsychotic medications, a standardized assessment for abnormal involuntary movements (e.g., AIMS), conducted by an appropriately trained physician, physician's assisant, registered nurse, or pharmacist, will be completed and the result documented at least every six months. The documentation will indicate whether the patient was assessed without discontinuing the antipsychotic medication.

(1) All findings will be verified by a qualified physician, and the verification documented in the patient record within 30 days.

(2) If dyskinesia is diagnosed, procedures specified in §405.11 of this title (relating to Special Considerations in All Service Settings: Patients With Dyskinesias) will apply.

(3) The CBS will maintain written policies and procedures consistent with paragraph (3) of this subsection.

(e) CBS medical staff protocols and standards for prescribed medications are consistent with all relevant parts of this subchapter and with accepted medical practice, as reflected by accepted professional literature, medical authorities, pharmaceutical manufacturers, and/or government regulation.

§405.15. Dosage of Psychotropic Medications for Patients Receiving Community-based Services. When it is clinically indicated that the dosage of medication(s) exceeds the dosage recommended in the TDMHMR Formulary or other accepted reference, the attending physician will document the rationale for the higher dosage in the patient record and, insofar as possible and appropriate in that community setting, meet the conditions of review and documentation outlined elsewhere in this subchapter (e.g., §405.7 of this title (relating to General Guidelines for Prescribing in All Service Settings)).

§405.16. Administration of Medications to Patients Receiving Community-based Services (CBS).

(a) When a patient requires medication, the program provides one of the following options: unsupervised self-administration, supervised self-administration, or medication administration by a CBS staff member or provider with an appropriate license or permit in an authorized setting. The medication administration option chosen is based on an assessment completed by a physician, physician assistant, or registered nurse and documented in the patient record.

(b) All direct care staff supervising the self-administration of medication are provided, prior to assuming this duty, a training course in the supervision of self-administration of medication, taught by a physician, registered nurse, or pharmacist.

(1) This training course includes basic instruction, at a level consistent with lay understanding and usefulness, in at least the following:

(A) basic pharmacology specific to medications likely to be prescribed, including:

(i) classification of medications;

(ii) medication actions and common target symptoms;

(iii) potential toxicity and side- and adverse effects;

(iv) routes of medication administration;

(v) understanding of prescription labels;

(vi) applicable laws and rules;

(vii) use of appropriate resource literature;

(viii) abbreviations related to medications;

(ix) training in the use of forms pertinent to the medication process.

(B) CBS policies and procedures, including:

(i) administration, storage, handling, maintenance, and disposal of medications;

(ii) recognizing, managing, reporting, and documenting side effects, adverse reactions, and medication errors; and

(iii) patient training in medication self-administration, if applicable;

(C) supervision of self-administration of medication, if applicable, including:

(i) techniques and methods; and

(ii) documentation requirements.

(D) basic first aid and cardiac life support (BCLS, CPR) training.

(2) Upon completion of the course, the competency of each participant is assessed, affirmed, and documented by a physician, pharmacist, or registered nurse prior to assumption of covered duties.

(c) A registered nurse may delegate the administration of medications to unlicensed persons holding valid medication aide permits in settings licensed by the Texas Department of Health under Texas Civil Statutes, Article 4442c. A direct care staff member who has been certified by the Texas Department of Health as medication aide may administer the following medications:

(1) prescribed oral medications;

(2) prescribed otic, ophthalmic, nasal, rectal, and vaginal preparations; and

(3) other prescribed topical preparations, provided:

(A) application does not involve broken or abraded skin; and

(B) application does not require aseptic technique.

(d) The medication, including over-the-counter preparations, has been prescribed by a physician or dentist and dispensed in accordance with the Texas Pharmacy Act and other applicable statutes.

(e) The direct care staff member is currently certified in basic cardiopulmonary resuscitation and in basic first aid.

(f) In semi-independent and nonresidential programs, patients who are self-medicating without supervision may take over-the-counter medication preparations at their own discretion, unless the CBS physician documents that this is contraindicated.

(g) Based on the assessment required in subsection (a) of this section, patient training in self-administration and/or self-medication is provided when needed, as part of the patient's treatment plan, and is documented in the patient record.

(h) Medication education for patients is carried out as appropriate and as required by Chapter 405, Subchapter FF of this title (relating to Consent to Treatment with Psychoactive Medication).

(i) The CBS provides medication education in accordance with §405.7(6) of this title (relating to General Guidelines for Prescribing in All Service Settings).

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 25, 1991.

TRD-9107541 Ann Utley
Chair
Texas Department of Mental Health Mental Retardation

Effective date: July 16, 1991

Proposal publication date: December 25, 1990

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

◆ ◆ ◆

Chapter 410. Volunteer Services and Public Information

Subchapter C. Capital Improvements by Citizen Groups

- **25 TAC §§410.101-410.122**

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§410.101-410.122 concerning capital improvements by citizen groups. Sections 410.102-410.109, 410.111-410.112, 410.114-410.117, 410.119, and 410.122 are adopted with changes, §§410.101, 410.110, 410.113, 410.118, are adopted without changes from the proposed text as published in the May 14, 1991, issue of the *Texas Register* (16 TexReg 2654). The new sections replace the repeals of §§403.251-403.274, also concerning capital improvements by citizen groups.

A preliminary version of Chapter 410, Subchapter D was distributed to staff at TDMHMR facilities and advocacy organiza-

tions in early March. Several comments and recommendations were received, and are reflected in the adopted sections. The new sections update terminology and references to various department entities and call for design professionals in place of the former requirement of consultants. The new rules also remove the provision concerning application to the Texas Health Facilities Commission for certain capital improvements.

Changes to §§410.103, 410.105-410.109, 410.111, 410.112, 410.114-410.117, 410.119, and 410.122 involve replacing references to construction with terms more reflective of the various types of capital improvement projects which could be pursued. Changes to §410.102. and §410.103 clarify the application of these rules to facility outreach and community service locations. Provisions for situations when the volunteer services council cannot or will not execute a proposed capital improvement project have been inserted in changes to §410.104. Changes to §410.108 require the capital improvement committee to inform the department of the estimated cost of the proposed capital improvement; changes to §410.115 require the capital improvement committee to certify that sufficient funds are in escrow to complete the capital improvement. The department's right to request copies of documents related to the capital improvement and inspect the project throughout its execution is clarified through changes to §410.117.

No comments were received regarding adoption of the new sections.

The new sections 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.

§410.102. Application. The provisions of this subchapter shall apply to any situation in which individuals and citizen groups wish to provide capital improvements to facilities of the Texas Department of Mental Health and Mental Retardation or their outreach or community services locations.

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

Board–The Texas Board of Mental Health and Mental Retardation.

Bond–An insurance agreement pledging surety for financial loss caused to another by the act or default of a third person or by some contingency over which the third person may have no control. Bonds for capital improvement projects, as may be stipulated by the contract documents, are furnished to the owner by the contractor.

Capital improvement–An improvement to the grounds or buildings of the facility or their outreach or community services locations, including landscaping, sitework, and buildings or other permanent structures.

Central Office–The central office of the Texas Department of Mental Health and Mental Retardation, located at 909 West 45th Street, Austin.

Commissioner–The commissioner of the Texas Department of Mental Health and Mental Retardation.

Committee–The capital improvement committee sponsored by the Volunteer Services Council for the purpose of providing a capital improvement.

Construction administrator–A construction specialist on the staff of the Maintenance and Construction Section of the Central Office employed to inspect and administer the construction phase of projects financed from appropriated state funds at one or more TDMHMR facilities. The construction administrator also performs periodic inspections of Volunteer Services Council projects for the capital improvement committee to assure compliance with departmental standards.

Contract documents–The owner/contractor agreement, the conditions of the contract (general, supplementary, and other conditions), the contractor's proposal, the invitation and instructions to bidders, the drawings, the specifications, and all addenda issued prior to, and all modifications issued after execution of the contract. The contract documents form the contract which represents the entire and integrated agreement between the owner and the contractor and supersedes all prior negotiations, representations, or agreement, either written or oral. The contract documents are complementary and what is required by any one document is as binding as if required by all.

Contractor–The entity which has been awarded the contract for the performance of a specific capital improvement project.

Design professional–The architect/engineer of a capital improvement project.

Facility–A state school, state hospital, state center, or other entity which is a part of the Texas Department of Mental Health and Mental Retardation.

Facility director of volunteer services–The state employee who acts as liaison between the facility and the Volunteer Services Council or the community. The facility director of volunteer services is responsible to the superintendent or director of the facility and relies on the director of volunteer services at Central Office for guidance, direction, and advice. The facility director of volunteer services interprets the needs of the facility to the council or the community and interprets the resources of the council and the community to the facility. In some facilities, the director of volunteer services is also the director of public information.

Maintenance and Construction Section–The Maintenance and Construction Section of the Support Services Department at the Central Office of the Texas Department of Mental Health and Mental Retardation.

Person being served–A person who is receiving mental health or mental retardation services from the Texas Department of Mental Health and Mental Retardation.

Planning coordinator–An architect or engineer on the staff of the Maintenance and Construction Section of the Central Office employed to coordinate the planning of capital improvement projects financed from appropriated state funds at one or more TDMHMR facilities. The planning coordinator acts in the capacity of the department's representative for the duration of capital improvement projects and as an advisor to assigned facilities and the capital improvement committee in matters relating to the project.

Plant maintenance manager–The state employee who is responsible for the management of plant maintenance activities at a state hospital, state school, or state center and who serves as an ex officio member of the capital improvement committee.

Project manager–A person designated by the capital improvement committee who acts on behalf of the committee in dealing with the design professional and the contractor through the duration of the project. State The State of Texas.

Superintendent/director–The chief administrator of a department facility.

TDMHMR–The Texas Department of Mental Health and Mental Retardation.

Volunteer Services Council–The Volunteer Services Council for a facility of TDMHMR.

Volunteer Services Section–The Volunteer Services Section of the Central Office of the Texas Department of Mental Health and Mental Retardation.

§410.104. Initial Contact with Persons Desiring to Provide Capital Improvements; the Nature of the Volunteer Services Council.

(a) Individuals or groups desiring to provide capital improvements shall contact the superintendent of the facility and will be given a copy of this subchapter and referred to the Volunteer Services Council chairman for the facility for which they desire to provide the improvements.

(b) The Volunteer Services Council is a separately chartered, private, nonprofit organization. Although they have no control over the state facilities, the Volunteer Services Councils have been organized expressly for the purpose of extending to the persons being served at facilities services and items that can be acquired from the communities as donations. The Volunteer Services Council often initiates projects from within its own membership.

(c) Nothing in this subchapter is meant to prevent the execution of capital improvement projects meeting the approval of the superintendent or director. Should a situation arise in which the Volunteer Services Council cannot or will not execute a project, the superintendent may consider alternative means of pursuing the project which meet the requirements and capabilities of the facility.

§410.105. Appointment of Capital Improvement Committee; Ex Officio Members.

(a) The Executive Committee of the Volunteer Services Council shall appoint, for the purpose of providing a capital improvement, a capital improvement committee which shall be composed of responsible citizens in the community.

(b) Ex officio members of the established capital improvement committee shall include the superintendent or director of the facility, the facility director of volunteer services, the facility business manager, a planning coordinator from Central Office Maintenance and Construction.

§410.106. Functions and Responsibilities of the Capital Improvement Committee.

(a) Initial functions and responsibilities of the capital improvement committee shall include the following:

(1) determining the feasibility and need for the proposed capital improvement;

(2) selecting an honorary chairman who is knowledgeable of the ways and means of fundraising;

(3) selecting a working chairman who is well known in the community, a friend of the facility, and conscientious in the discharging of duties; and

(4) in the case of a proposed chapel, selecting a resource committee composed of a representative from three major faiths (Protestant, Catholic, and Jewish) to serve as consultants along with others deemed necessary. For other capital improvements, experts of recognized community standing and expertise in their particular fields should be selected as consultants.

(b) The committee must:

(1) work under the sponsorship of the Volunteer Services Council;

(2) be a policy and procedure setting body for raising funds and executing the capital improvement project;

(3) report periodically on the progress of the committee to the Volunteer Services Council; and

(4) insure that all buildings meet the requirements of applicable federal and state laws regarding handicapped requirements and energy conservation.

(c) If for any reason the capital improvement committee should fail to function, the Volunteer Services Council has the right and the responsibility to dissolve and reorganize the committee immediately.

§410.107. Retaining a Design Professional; Requirements for an Agreement with a Design Professional.

(a) The capital improvement committee must retain the services of a professional architect or professional engineer, licensed to practice in Texas, to prepare contract documents, such as drawings and specifications for projects that by law must be designed by these licensed professionals.

(b) The agreement between the committee and the design professional shall include both a description of the services to be provided throughout the project and the basis for compensation. The nature and extent of services will vary according to the type and complexity of the project. For larger and more complex projects, the agreement with the design professional may include not only services in project design and production of contract documents, but also administration of the project and frequent inspections during its execution.

(c) The design professional shall be provided a copy of the provisions of this subchapter.

§410.108. Capital Improvement Proposal Letter; Contents; Proposed Name for the Improvement; Recipients of Letter.

(a) After establishing the feasibility of and need for the proposed capital improvement, the council chairman shall prepare a letter, cosigned by the superintendent or director, proposing the erection of the improvement, citing the estimated cost of the improvement, and requesting permission to conduct a fundraising campaign for such purpose. In the event that utilization of the improvement is contingent upon concurrent or future improvements to be provided by the facility, or in the event that any part of the execution of the project is to be performed by or paid for by the facility, the letter shall include a description of the improvement or work to be performed by or paid for by the facility.

(b) The committee may propose a name for the completed capital improvement in the letter or may recommend a name at a later time. The name of the improvement must be approved by the board.

(c) The letter must be addressed to the commissioner, Texas Department of Mental Health and Mental Retardation, with copies sent to the MH or MR deputy commissioner (as appropriate) and directors of:

(1) Legal Services;

(2) Support Services; and

(3) Volunteer Services and Public Information.

(d) An example of the capital improvement proposal letter is referred to as Exhibit A and is available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

§410.109. Approval, Recommendation, and Action by the Board.

(a) After receipt of the Volunteer Council's letter proposing the capital improvement, and at the request of the commissioner, Volunteer Services and Public Information shall prepare a board agenda item recommending that the board approve the requests to execute the capital improvement and to conduct a fundraising campaign.

(b) After considering the merits of the proposal, the board acts on the request for the capital improvement.

§410.111. Programming Phase: Establishment of the Program for the Project; Selection of the Capital Improvement Site.

(a) After a design professional has been retained as required by the nature of the project to be undertaken, the capital improvement committee, the facility director of volunteer services, the superintendent or director of the facility, and the design professional shall jointly establish the program for the project, which will include the following considerations:

(1) the nature of the persons being served who will use the improvement;

(2) the kinds of activities to be provided by the improvement;

(3) relationships between and among the improvement and the rest of the facility; and

(4) a preliminary determination of how much can be done with the available funds.

(b) Selection of the capital improvement site will be an outcome of the programming phase. The Volunteer Services Council chairman shall write a letter to the commissioner requesting approval of the selected site, and including a drawing showing the proposed location of the project. An example of this letter is referred to as Exhibit B and is available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

(c) The Maintenance and Construction Section shall review the proposed site location and determine its suitability with regard to the facility's master plan for future development, availability of utilities, site conditions, such as tree cover, slope, and other natural features, and vehicular or pedestrian traffic. The Maintenance and Construction Section shall then recommend to the commissioner that the site be approved or that another site be selected.

§410.112. Schematic Design Phase: Preparation, Review, and Approval of Drawings and Specifications.

(a) After the commissioner approves a site for the project, the capital

improvement committee, the superintendent or director of the facility, and the design professional shall begin the schematic design phase. In this phase, the general size and appearance of the project are determined and the functional characteristics are defined. Drawings and written specifications in brief form are generally necessary to complete this phase.

(b) At the completion of the schematic design phase, the Volunteer Services Council chairman must submit the drawings and specifications to the commissioner for approval. An example of the letter submitting such documents is referred to as Exhibit C and is available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

(c) The Maintenance and Construction Section will review and comment upon the submitted documents. This review may facilitate further development later in the design or execution of the project.

§410.114. Bidding the Project; Reserving the Right to Reject Any and All Bids; Procedures Where There Are Insufficient Funds; Additional Review by Commissioner Required when Contract Documents are Modified.

(a) For smaller projects or isolated elements of larger projects, the capital improvement committee may at its discretion obtain volunteers to perform the work. Otherwise, the committee may request bids for the execution of the project. The design professional can offer recommendations on methods of accomplishing this.

(b) The committee should insure that the specifications or the invitation to bid, or both, reserve to the committee the right to reject any and all bids. This will protect the committee in the event that the minimum cost of the project exceeds the available funds.

(c) In the event that the funds available prove insufficient to complete the project, the capital improvement committee may raise additional funds, have the project redesigned, or eliminate from the contract documents any nonessential elements necessary and feasible.

(d) If the contract documents are modified in any way from the condition in which they were reviewed and approved by the commissioner, they must be resubmitted to him for further review and approval before the project may be executed in accordance with the modified contract documents.

§410.115. Placing Funds in Escrow. Prior to the execution of a contract for execution of the project, the total council cost of the project must be placed in escrow. The capital improvement committee's bonded treasurer should be consulted for advice on the best way of placing these funds in escrow. The capital improvement committee shall prepare a letter certifying sufficient funds to complete the proposed capital improvement project are in escrow. The letter shall be addressed to the commissioner, Texas Department of Mental Health and Mental Retardation, with copies sent to the MH or MR deputy commissioner (as appropriate) and directors of:

(1) Legal Services;

(2) Support Services; and

(3) Volunteer Services and Public Information.

§410.116. Signing the Contract; Requisites of the Contract.

(a) Unless all work is to be performed by volunteers, the capital improvement committee selects a contractor for the project and executes a contract, naming the capital improvement committee of the Volunteer Services Council as the owner of the project. The capital improvement committee shall be responsible for all costs incurred by the project, including, but not limited to, the costs of locating and tapping into utilities, erection of a construction fence, and/or repairs to roads or sodded areas damaged by construction activities; the committee shall not be responsible for costs accrued from concurrent projects undertaken by the facility, as described in §410.108 of this title (relating to Capital Improvement Proposal Letter: Contents; Proposed Name for the Improvement; Recipients of Letter).

(b) The contract shall be for the completion of the project. For projects requiring a prime contractor, work by volunteers or work donated by subcontractors shall not be permitted, as the prime contractor could not then be held responsible for errors or omissions in the work.

(c) The contract documents shall stipulate that the contractor's warranty of the work is to be extended to the department after the project is accepted by the department.

(d) The contract shall require the contractor to provide performance and payment bonds, liability insurance, and builder's risk insurance. The Volunteer Services Council shall be named as the beneficiary.

§410.117. Capital Improvement Contract: Conference Before Commencement of Contracted Work; Duties of the Professional Consultant During the Capital Improvement Project.

(a) Before contracted work begins, the Volunteer Services Council chairman shall schedule a conference to be attended by the capital improvement committee, the facility director of volunteer services, the design professional, the prime contractor and his job superintendent, the subcontractors, the superintendent or director and the plant maintenance manager of the facility and the Central Office construction administrator. If the work is to be performed by volunteers, those in charge of the work shall attend instead of the prime and subcontractors.

(b) During the conference, the Central Office construction administrator shall specify to the contractor any mandatory inspections which will be required as the project is executed. The contractor will also be informed of the department's right to conduct other inspections, as well as the department's right to request copies of any pertinent documents from the contractor, including warranties and liens.

(c) During the conference, the superintendent or director, or a designated representative, shall inform the contractors of the facility's rules and regulations. This will include a description of items and actions prohibited on the grounds of the facility. Normal working hours and arrangements necessary for overtime work will be discussed. The route to be followed by vehicles delivering materials will be discussed, as well as any other matter of importance relating to execution of the project.

(d) All instructions to the contractor should be made through the design professional, and all contractor requests directed to the capital improvement committee should be routed through the design professional or the designated project manager. The design professional or project manager should verify performance of the work and should approve payment to the contractor when satisfied that the contractor is entitled thereto. These payments should be disbursed by the bonded treasurer.

(e) The Central Office Maintenance and Construction Section shall advise the committee of its findings and recommendations resulting from mandatory and other inspections of the capital improvement project, and shall provide the contractor with a written approval before the project may be continued. These inspections help to insure that the projects meet the various standards the department is striving to maintain.

(f) Upon completion of the project, but before releasing the contractor or turning the project over to the state, the committee shall inform the director of Support Services that the project is complete and ready for a final inspection. If this inspection discloses deficiencies, follow-up inspections shall be performed until the project is free of deficiencies.

§410.119. Design and Construction Codes and Standards. All capital improvement projects executed on the grounds of a facility will be required to meet specific design and construction codes and standards stipulated by TDMHMR. The capital improvement committee shall ascertain the codes and standards which apply to the project prior to beginning the design of the project.

§410.122. Distribution.

(a) The provisions of this subchapter shall be distributed to the mem-

bers of the Texas Board of Mental Health and Mental Retardation; the medical director; deputy commissioners, associate deputy commissioners, assistant deputy commissioners, directors, and section chiefs of central office; and superintendents, directors, plant maintenance managers, and directors of volunteer services of all department facilities.

(b) The superintendent or director of each department facility shall be responsible for the dissemination of the information contained in this subchapter to all appropriate staff members.

(c) The department, the superintendent or director, or the director of volunteer services of each department facility shall, upon request, provide a copy of this subchapter to individuals or citizen groups who are interested in making a capital improvement to a facility 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 24, 1991.

TRD-9107481 Ann Utley
Chair
Texas Department of Mental Health and Mental Retardation

Effective date: July 15, 1991

Proposal publication date: May 14, 1991

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

♦ ♦ ♦

TITLE 28. INSURANCE

Part II. Texas Worker's Compensation Commission

Chapter 133. Medical Benefits-General Medical Provisions

Subchapter A. General Rules for Required Reports

• 28 TAC §133.3

Texas Worker's Compensation Commission adopts new §133.3, concerning responsibilities of treating doctor, without changes to the proposed text as published in April 23, 1991, issue of the *Texas Register* (16 TexReg 2271). The new section details the responsibilities of the treating doctor. The section is necessary to clarify what the doctor who is primarily responsible for an injured workers' health care must do.

The section identifies who is a treating doctor, and describes the doctor's responsibilities to approve or recommend efficient health care for injured employees; make medical reports; certify maximum medical improvement and assign an impairment rating; agree or disagree with the certification and evaluation of other certifying doctors; and be responsible for medically necessary spinal surgery recommendations.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 8308, §4.66, which authorize the commission to establish rules requiring certain reports and records of health care providers and makes the treating doctor responsible for maintaining efficient utilization of health care; and under §2.09(a), which authorizes the commission to adopt rules necessary for implementation and enforcement of the Texas Workers' Compensation 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, 1991.

TRD-9107596 Susan M. Kelley
General Counsel
Texas Worker's Compensation Commission

Effective date: July 17, 1991

Proposal publication date: April 23, 1991

For further information, please call: (512) 440-3973

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

Chapter 115. Control of Air Pollution from Volatile Organic Compounds

Subchapter A. Definitions

Definitions

• 31 TAC §115.10

The Texas Air Control Board (TACB) adopts an amendment to §115.10, concerning definitions, with changes to the proposed text as published in the February 12, 1991, issue of the *Texas Register* (16 TexReg 830). The amendment satisfies a general requirement in the 1990 amendments to the Federal Clean Air Act for reasonably available control technology correction; and a specific requirement by the United States Environmental Protection Agency (EPA) to correct certain regulation deficiencies and inconsistencies as part of a nationwide program termed "leveling the playing field."

The amendment to §115.10 adds definitions for coating, coating line, printing line, and pounds of volatile organic compounds (VOCs) per gallon of solids. These definitions are to clarify emission specifications and control requirements in the subchapters relating to Surface coating processes and graphic arts. The definitions for leak, pounds of VOC per gallon of coating (minus water and exempt solvent), and VOC were modified to be consistent with terms now used by EPA.

Public hearings were held on March 4, 1991, in Beaumont and El Paso and on March 5, 1991, in Houston and Arlington. Testimony was received from six commenters during the comment period. EPA supported the proposed revisions, in general. Five commenters opposed the proposed amendments. They were the LTV Aerospace and Defense Company (LTV), General Dynamics Corporation (GD), United States Air Force (USAF), Texas Chemical Council (TCC), and Mobil Oil Corporation (Mobil).

In accordance with an EPA requirement, the TACB has included a definition of "coating" consistent with that found in EPA's federal implementation plan (FIP) for the Chicago area. LTV, GD, and USAF felt certain items that were included in the definition, such as sealants adhesives ink, maskants, and temporary protective coatings, do not meet the commonly accepted definition of coatings. LTV felt sealants and adhesives were not intended a part of the coating control techniques guidelines (CTGs), and USAF commented that some adhesive materials such as tapes, putties, sheets, and caulks do not resemble coatings. GD commented that, if it is necessary to regulate adhesives and sealant, then a separaterule regarding their use shouldbe developed by the TACB. Since the items included in the definition are mandated by EPA, they cannot be eliminated from the current definition. However, the staff will work with EPA to encourage the acceptance of a separate rule for certain materials.

Comments were received from four parties about the proposed addition of a definition for "coating line." EPA required that the definition be added to the regulation in a manner consistent with wording in the Chicago FIP. EPA felt that a line should only contain one flashoff area, drying area, and/or oven and commented that the references to these areas should be made singular. Since this is not necessarily consistent with the staff's findings, parentheses will be put around each ending "s" to allow for more than one of each type of area on a line. This would provide greater flexibility in the definition. The remaining three parties' comments dealt with the meaning and scope of the definition. GD and USAF felt that the wording in the definition was vague, with no clear guidelines as to the beginning and end of a line. As previously discussed, the definition ia based upon wording in the Chicago FIP as required by EPA. The staff is currently working with EPA to establish clearer guidelines as to the beginning and end of a line. LTV felt that the definition would not cover all surface coating processes, and that alternate control requirements (ACRs) should be explicitly exempted in the definition. An individual ACR might allow interline averaging, but would not affect the definition. Because of this, the staff does not feel that an ACR is exempt from the definition of a coating line. USAF also was concerned that the definition was not consistent with those in 40 Code of Federal Regulations 60 (regarding new source performance standards). Although the staff can appreciate the concern with consistency, it can only recommend that EPA rectify inconsistencies in its definitions.

Comments were received from EPA and an individual that the definitions for "pounds of VOC per gallon of coatings, less water and exempt solvents" and for "pounds of VOC per gallon of solids" did not account for exempt solvents in all applicable parts of the defini-

tions. The staff changed these definitions by adding the phrase "exempt solvents" at each appropriate place and by clarifying as to how each unit is to be calculated.

Three parties commented on the proposed changes to the definition of the term "leak." An individual supported the proposed addition of sight, smell, and sound as leak qualifiers. However, TCC and Mobil felt that smell and sound were vague, unquantifiable areas that could not be enforced consistently. These qualifications, however, all serve as indicators of a leak, individually or in the aggregate.

An individual recommended that the concentration at which a leak is defined should be lowered from 10,000 parts per million by volume (ppmv) to 1,000 ppmv. This recommendation would be more restrictive than the existing rule and cannot be considered at this time. Because the 10,000 ppmv concentration was established in the CTGs relating to fugitive emissions control, the staff is not currently considering lowering this concentration.

TCC and Mobil felt that leaks should apply only to liquids with a true vapor pressure of more than 0.147 pounds per square inch absolute at 68-Degrees Fahrenheit ("light" liquids). However, any VOC escaping a process stream can evaporate, and the staff does not believe in defining a leak solely on the basis of the process fluid's vapor pressure.

Mobil and TCC requested that definitions for instrument system, liquids dripping, light liquid, heavy liquid, and emergency roof drains be added to the definitions in the section. Although new definitions cannot be added at this point, the staff will take these requests into consideration for future rulemaking.

The amendment is 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.

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

Coating–A material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, adhesives, thinners, diluents, inks, maskants, and temporary protective coatings.

Coating line–An operation consisting of a series of one or more coating application systems and including associated flashoff area(s), drying area(s), and oven(s) wherein a surface coating is applied, dried, or cured.

Leak–A volatile organic compound concentration greater than 10,000 parts per million by volume (ppmv) or the dripping or exuding of process fluid based on sight, smell, or sound.

Pounds of volatile organic compounds per gallon of coating (minus water and exempt solvents–Basis for emission limits for surface coating processes. Can be calculated by the following equation:

Pounds of volatile organic compounds (VOC) per gallon of coating (minus water and exempt solvents) = $\frac{W_v}{V_m - V_w - V_{es}}$

Where: W_v = weight of VOC, in pounds, contained in V_m gallons of coating

V_m = volume of coating, generally assumed to be one gallon

V_w = volume of water, in gallons, contained in V_m gallons of coating

V_{es} = volume of exempt solvents, in gallons, contained in V_m gallons of coating

Pounds of volatile organic compounds (VOC) per gallon of solids = $\frac{W_v}{V_m - V_v - V_w - V_{es}}$

Where: W_v = weight of VOC, in pounds, contained in V_m gallons of coating

V_m = volume of coating, generally assumed to be one gallon

V_v = volume of VOC, in gallons, contained in V_m gallons of coating

V_w = volume of water, in gallons, contained in V_m gallons of coating

V_{es} = volume of exempt solvents, in gallons, contained in Vm gallons of coating

Printing line–An operation consisting of a series of one or more printing processes and including associated drying areas.

Volatile organic compound (VOC)–Any compound of carbon or mixture of carbon compounds excluding methane, ethane, 1,1,1-trichloroethane (methyl chloroform), methylene chloride (dichloromethane), trichlorofluoromethane (CFC-11), dichlorodifluoromethane (CFC-12), chlorodifluoromethane (CFC-22), trifluoromethane (FC-23), trichlorotrifluoroethane (CFC-113), dichlorotetrafluoroethane (CFC-114), chloropentafluoroethane (CFC-115), dichlorotrifluoroethane (HCFC-123), tetrafluoroethane (HFC-134a), dichlorofluoroethane (HCFC-141b), chlorodifluoroethane (HCFC-142b), carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.

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 25, 1991.

TRD-9107561 Lane Hartsock
Director, Planning and Development Program
Texas Air Control Board

Effective date: July 17, 1991

Proposal publication date: February 12, 1991

For further information, please call: (512) 908-1770

Subchapter B. General Volatile Organic Compound Sources

Storage of Volatile Organic Compounds

- **31 TAC §§115.112, 115.114, 115.116, 115.119**

The Texas Air Control Board (TACB) adopts amendments to §§115.112, 115. 114, 115.116, and 115.119. Sections 115.112, 115.114, and 115.119 are adopted with changes to the proposed text as published in the February 12, 1991, issue of the *Texas Register* (16 TexReg 830). Section 115.116 is adopted without changes and will not be republished.

The amendment to §115.112 adds a requirement to specify the minimum control efficiency on a vapor recovery system and eliminates an existing uncertainty associated with applicability of the rule by clarifying that all floating roof storage tanks are affected. The amendment to §115.114 increases the frequency of visual secondary seal inspections from annual to semiannual. The amendment to §115.116 corrects an exemption reference and adds a requirement to monitor carbon adsorption systems for breakthrough. The amendment to §115.119 updates the expired compliance date and adds a new compliance date for new requirements.

Public hearings were held on March 4, 1991, in Beaumont and El Paso and on March 5, 1991, in Houston and Arlington. Testimony was received from four commenters during the comment period. The United States Environmental Protection Agency (EPA) was supportive of the proposed revisions. Three commenters opposed the proposed amendments. They were the Texas Chemical Council (TCC), Mobil Oil Corporation (Mobil), and one individual.

Comments were received from TCC and an individual regarding the minimum control efficiency specified for vapor recovery systems. The individual recommended that the minimum control efficiency which was added to this regulation should be set at 95% instead of the proposed 90%. Staff supports the 90% efficiency number required by EPA as reasonably available control technology, which takes into account that costs of controls will rapidly escalate as control efficiency is increased. TCC simply commented that the compliance date for the rule might be difficult to meet. However, since the date set is within a time frame established by EPA, the staff is unable to change this date.

EPA and TCC provided comments regarding covers on emergency roof drains on internal floating roof storage tanks. EPA recommended that the existing rule not be changed because external floating roof storage tanks should continue to be affected by the rule. The TACB staff concurs and has deleted the reference to internal floating roof storage tanks.

An individual commented on §115.113. This rule was not proposed for revision and, therefore, the comments cannot be considered at this time. However, these comments may be considered in future rulemaking.

Comments were received from EPA, Mobil, and TCC regarding the proposed changes to seal inspections for storage tanks. EPA noted that reference to semiannual inspections and §115.112(a)(2)(F) in the introductory paragraph were inconsistent since §115.114(1), which was not proposed for revision, still referred to annual inspections. Mobil and TCC both felt that annual inspections on secondary seals are sufficient to maintain vapor control. To eliminate inconsistencies, the staff changed the wording to require only semiannual visual inspections of secondary seals, with the physical measuring of gap areas, as required by §115.114(1), being required only annually.

The amendments are adopted under the Texas Clean Air Act (TCAA), 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.

§115.112. Control Requirements.

(a) For all persons in the counties referenced in §115.119(a) of this title (relating to Counties and Compliance Schedules), the following requirements shall apply.

(1) No person shall place, store, or hold in any stationary tank, reservoir, or other container any volatile organic compound (VOC) unless such container is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere, or is equipped with at least the control device specified in Table I(a) for VOC other than crude oil and condensate, or Table II(a) for crude oil and condensate.

(2) For floating roof storage tanks subject to the provisions of paragraph (a)(1) of this subsection, the following requirements shall apply.

Table I(a).

REQUIRED CONTROL DEVICES FOR STORAGE TANKS FOR VOC OTHER THAN CRUDE OIL AND CONDENSATE

True Vapor Pressure of Compound at Storage Conditions	Nominal Storage Capacity	Emission Control Requirements
< 1.5 psia (10.3 kPa)	Any	None
≥ 1.5 psia (10.3 kPa) and < 11 psia (75.8 kPa)	≤ 1,000 gal (3,785 L*)	None
	> 1,000 gal (3,785 L) and ≤ 25,000 gal (94,635 L)	Submerged fill pipe or vapor recovery system
	> 25,000 gal (94,635 L) and ≤ 40,000 gal (151,416 L)	Internal or external floating roof (any type) or vapor recovery system
	> 40,000 gal (151,416 L)	Internal floating roof or External floating roof with primary seal (any type) and secondary seal or vapor recovery system
≥ 11 psia (75.8 kPa)	≤ 1,000 gal (3,785 L)	None
	> 1,000 gal (3,785 L) and ≤ 25,000 gal (94,635 L)	Submerged fill pipe or vapor recovery system
	> 25,000 gal (94,635 L)	Submerged fill pipe and vapor recovery system

*L = Liter

Table II(a).

REQUIRED CONTROL DEVICES FOR STORAGE TANKS
FOR CRUDE OIL AND CONDENSATE

True Vapor Pressure of Compound at Storage Conditions	Nominal Storage Capacity	Emission Control Requirements
< 1.5 psia (10.3.kPa)	Any	None
≥ 1.5 psia (10.3 kPa) and < 11 psia (75.8 kPa)	≤ 1,000 gal (3,785 L)	None
	> 1,000 gal (3,785 L) and ≤ 40,000 gal (151,416 L)	Submerged fill pipe or vapor recovery system
	> 40,000 gal (151,416 L)	Internal floating roof or External floating roof with primary seal (any type) and secondary seal or vapor recovery system
≥ 11 psia (75.8 kPa)	≤ 1,000 gal (3,785 L)	None
	> 1,000 gal (3,785 L) and ≤ 40,000 gal (151,416 L)	Submerged fill pipe or vapor recovery system
	> 40,000 gal (151,416 L)	Submerged fill pipe and vapor recovery system

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

(D) Any emergency roof drain must be provided with a slotted membrane fabric cover that covers at least 90% of the area of the opening.

(E)-(F) (No change.)

(b) (No change.)

(c) Vapor recovery systems used as a control device on any stationary tank, reservoir, or other container shall maintain a minimum control efficiency of 90%.

§115.114. Inspection Requirements. For all persons in the counties referenced in §115.119(a) of this title (relating to Counties and Compliance Schedules), all secondary seals used to comply with §115.112(a)(1) of this title (relating to Control Requirements) shall be inspected according to the following schedules by the owner, operator, or authorized representative to insure compliance with §115.112(a)(2)(E) and (F) of this title (relating to Control Requirements).

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

(3) All secondary seals shall be visually inspected semiannually to insure compliance with §115. 112(a)(2)(E)-(F).

§115.119. Counties and Compliance Schedules.

(a) All affected persons in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties shall be in compliance with this undesignated head (relating to Storage of Volatile Organic Compounds) in accordance with the following schedules.

(1) All affected persons shall be in compliance with all compliance schedules which have expired prior to January 1, 1991, in accordance with §115.930 of this title (relating to Compliance Dates).

(2) All persons in Brazoria, Dallas, El Paso, Galveston, Harris, Jefferson, Orange, or Tarrant Counties affected by the provisions of §115.112(c) of this title (relating to Control Requirements), §115.114(3) of this title (relating to Inspection Requirements), and §115. 116(3)(C) of this title (relating to Recordkeeping Requirements) shall be in compliance with these sections as soon as practicable, but no later than July 31, 1992.

(b) (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 25, 1991.

TRD-9107562 Lane Hartsock
Director, Planning and Development Programs
Texas Air Control Board

Effective date: July 17, 1991

Proposal publication date: February 12, 1991

For further information, please call: (512) 908-1770

♦ ♦ ♦

Subchapter B. General Volatile Organic Compound Sources

Vent Gas Control

• 31 TAC §§115.122, 115.126, 115.129

The Texas Air Control Board (TACB) adopts amendments to §§115.122, 115. 126, and 115.129, with changes to the proposed text as published in the February 12, 1991, issue of the *Texas Register* (16 TexReg 830).

The amendment to §115.122 involves a provision stating that if exemption limits are exceeded, then the requirements of this section become applicable. The amendment to §115.126 adds requirements to monitor temperatures at catalytic incinerators or chillers and carbon adsorption systems for breakthrough. The amendment to §115.129 updates the expired compliance date and adds a new compliance date for new requirements.

Public hearings were held on March 4, 1991, in Beaumont and El Paso and on March 5, 1991, in Houston and Arlington. Testimony was received from seven commenters during the comment period. The United States Environmental Protection Agency (EPA) supported the proposed revisions, in general. Six commenters opposed the proposed amendments. They were the LTV Aerospace and Defense Company (LTV), General Dynamics Corporation (GD), Mobil Oil Corporation (Mobil), Texas Chemical Council (TCC), and two individuals.

The intent of the "once in, always in" provision is that once a facility is required to implement applicable control measures, the facility needs. to remain subject to controls even if emissions or throughput later fall below applicable exemption limits. In response to an EPA requirement, this provision was proposed for rules concerning vent gas control. Five commenters submitted remarks concerning these proposed amendments. Of the five, one simply indicated approval of the philosophy. Two commenters, Mobil and TCC, requested clarification on whether a facility which must be in compliance with control requirements must maintain the controls because of the amendments, and whether the controls are to be operated only during times when exemption levels would be exceeded. The staff agreed and modified the wording to more clearly establish that once a facility exceeds an exemption level and must utilize controls, the facility will be required to maintain the controls even if emissions or throughput are later sustained at a level below any applicable exemption limit.

Four commenters, LTV, GD, Mobil, and TCC, were concerned that the amendments would result in the loss of exemption status for "a single excursion," "the smallest violation," or due to upsets or maintenance activities. Although it is not entirely clear what is meant by a single excursion or a small violation, the staff agrees that EPA's intent with the provision is to require a source exceeding the applicable exemption level to implement controls. This, however, would not include uncontrollable, short-term upsets or planned maintenance activities. Additionally, Mobil and TCC wanted a definition of exceedance. The regulation previously held and continues to hold the implicit understanding that upsets and maintenance were to be handled by TACB rules dealing with these issues and not by this regulation, unless otherwise specifically stated. If an exceedance is not an upset, e.g., it is caused by an increase in production, then the source is subject to the control requirements. Each exceedance will need to be evaluated on a case-by-case basis to determine whether it was an upset. Therefore, the staff does not recognize the need to define the term.

LTV, GD, Mobil, and TCC also indicated concern that the amendments required immediate compliance with the control requirements upon exceedance of the exemptions. The staff position is that applicable control measures are to be in place prior to changes in operation or equipment that will result in increasing emissions or throughput. Additionally, LTV commented that the date of May 31, 1991 conflicted with other dates in the rules. In the modified wording for these proposed amendments, the date is removed because the intent is that this provision should be applicable upon the effective date of the rules. Furthermore, references to "once in, always in" in the compliance date section in each of the applicable undesignated heads is recommended for deletion. The staff believes that these compliance dates are unnecessary since the provision is to become applicable upon the effective date of the rules.

Comments were received from EPA and an individual regarding recordkeeping requirements for general vent gas sources. EPA noted that recordkeeping specified in §115.126(1) should be required for sources covered by §115. 121(3) as well as those covered by §115.121(2). This change was not proposed as part of the public hearing, and thus, cannot be accomplished at this time. However, these comments will be considered in future rulemaking. The individual wanted the TACB to clarify whether records required by this rule and similar records elsewhere in the regulation are to be made available to the public. As stated in the opening paragraph of §115.126, the records are to be made available to the TACB, EPA, and any local program having juris- diction. Much of the information in records is proprietary information, and the TACB cannot require a company to make this information available to the public upon request. However, the public does have access to non-proprietary information in the TACB permit and compliance files.

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

§115.122. Control Requirements.

(a) For all persons in the counties referenced in §115.129(a) of this title (relating to Counties and Compliance Schedules), the following control requirements shall apply.

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

(3) Any vent gas stream that becomes subject to the provisions of paragraph (1) or (2) of this subsection by exceeding provisions of §115.127(a) of this title (relating to Exemptions) will remain subject to the provisions of this subsection, even if throughput or emissions later fall below the exemption limits.

(b) (No change.)

§115.126. Recordkeeping Requirements. For the counties referenced in §15.129(a)(2) of this title (relating to Counties and Compliance Schedules), the owner or operator of any facility which emits volatile organic compounds (VOC) through a stationary vent shall maintain records at the facility for at least two years and shall make such records available to representatives of the Texas Air Control Board, United States Environmental Protection Agency, or local air pollution control agency having jurisdiction in the area, upon request. Thee records shall include, but not be limited to, the following.

(1) Records for each vent required to satisfy the provisions of §115. 121(a)(2) of this title (relating to Emission Specifications) shall be sufficient to demonstrate the proper functioning of applicable control equipment to design specifications, including:

(A) (No change.)

(B) continuous monitoring of temperatures upstream and downstream of a catalytic incinerator or chiller;

(C) the exhaust gas VOC concentration of any carbon adsorption system to determine breakthrough;

(D) the date and reason for any maintenance and repair of the required control devices and the estimated quantity and duration of VOC emissions during such activities; and

(E) the results of any testing of any vent conducted at an affected facility in accordance with the provisions specified in §115.125 of this title (relating to Testing Requirements).

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

§115.129. Counties and Compliance Schedules.

(a) All affected persons in Brazoria, Dallas, El Paso, Galveston, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties shall be in compliance with this undesignated head (relating to Vent Gas Control) in accordance with the following schedules.

(1) All affected persons shall be in compliance with all compliance schedules which have expired prior to January 1, 1991, in accordance with §115.930 of this title (relating to Compliance Dates).

(2) All persons in Brazoria, Dallas, El Paso, Galveston, Harris, Jefferson, Orange, and Tarrant Counties affected by the provisions of §115. 126(1)(B) and (C) of this title (relating to Recordkeeping Requirements) shall be in compliance with these sections as soon as practicable, but no later than July 31, 1992.

(b) (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 25, 1991.

TRD-9107563 Lane Hartsock
Director, Planning and Development Program
Texas Air Control Board

Effective date: July 17, 1991

Proposal publication date: February 12, 1991

For further information, please call: (512) 908-1770

◆ ◆ ◆

Water Separation

• 31 TAC §§115.132, 115.136, 115.139

The Texas Air Control Board (TACB) adopts amendments to §§115.132, 115. 136, and 115.139. Sections 115.132 and 115.139 are adopted with changes to the proposed text as published in the February 12, 1991, issue of the *Texas Register* (16 TexReg 830). Section 115.136 is adopted without changes and will not be republished.

The amendment to §115.132 involves a provision stating that if exemption limits are exceeded, then the requirements of this section become applicable. The amendment to §115.136 adds requirements to monitor temperatures at catalytic incinerators or chillers and carbon adsorption systems for breakthrough. The amendment to §115.139 updates the expired compliance date and adds a new compliance date for new requirements.

Public hearings were held on March 4, 1991, in Beaumont and El Paso and on March 5, 1991, in Houston and Arlington. Testimony was received from seven commenters during the comment period. One individual and the United States Environmental Protection Agency (EPA) supported the proposed revisions. Five commenters opposed the proposed amendments. They were the LTV Aerospace and Defense Company (LTV), General Dynamics Corporation (GD), Mobil Oil Corporation (Mobil), Texas Chemical Council (TCC), and one individual. The intent of the "once in, always in" provision is that once a facility is required to implement applicable control measures, the facility needs to remain subject to controls even if emissions or throughput later fall below applicable exemption limits. In response to an EPA requirement, this provision was proposed for rules concerning water separation. Five commenters submitted remarks concerning these proposed amendments. Of the five, one simply indicated approval of the philosophy. Two commenters, Mobil and TCC, requested clarification on whether a facility which must be in compliance with control requirements must maintain the controls because of the amendments, and whether the controls are to be operated only during times when exemption levels would be exceeded. The staff agreed and modified the wording to more clearly establish that once a facility exceeds an exemption level and must utilize controls, the facility will be required to maintain the controls even if emissions or throughput are later sustained at a level below any applicable exemption limit.

Four commenters, LTV, GD, Mobil, and TCC, were concerned that the amendments would result in the loss of exemption status for "a single excursion," "the smallest violation," or due to upsets or maintenance activities. Although it is not entirely clear what is meant by a single excursion or a small violation, the staff agrees that EPA's intent with the provision is to require a source exceeding the applicable exemption level to implement controls. This, however, would not include uncontrollable, short-term upsets or planned maintenance activities. Additionally, Mobil and TCC wanted a definition of exceedance. The regulation previously held and continues to hold the implicit understanding that upsets and maintenance were to be handled by TACB rules dealing with these issue. and not by this regulation, unless otherwise specifically stated. If an exceedance is not an upset, e.g, it is caused by an increase in production, then the source is subject to the control requirements. Each exceedance will need to be evaluated on a case-by-case basis to determine whether it was an upset. Therefore, the staff does not recognize the need to define the term.

LTV, GD, Mobil, and TCC also indicated concern that the amendments required immediate compliance with the control requirements upon exceedance of the exemptions. The staff position is that applicable control measures are to be in place prior to changes in operation or equipment that will result in increasing emissions or throughput. Additionally, LTV commented that the date of May 31, 1991 conflicted with other dates in the rules. In the modified wording of these amendments, the date is removed because the intent is that this provision should be applicable upon the effective date of the rules. Furthermore, reference to "once in, always in" in the compliance date section in each of the applicable undesignated heads is deleted. The staff believes that these compliance dates are unnecessary since the provision is to become applicable upon the effective date of the rules.

EPA commented that exhaust temperatures immediately downstream of a direct-flame incinerator needed to be added to the recordkeeping requirements of §115.136.

Changes in this area are not within the scope of allowable changes due to additional restrictiveness. However, the changes will be incorporated in future rulemaking.

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

§115.132. Control Requirements.

(a) For the counties referenced in §115.139 (a) of this title (relating to Counties and Compliance Schedules), no person shall use any single-or multiple-compartment volatile organic compound (VOC) water separator, except for facilities other than petroleum refineries in Gregg County, which separates materials containing VOC obtained from any equipment which is processing, refining, treating, storing, or handling VOC unless each compartment is controlled in one of the following ways:

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

(4) any water separator that becomes subject to the provisions of paragraphs (1),(2), or (3) of this subsection by exceeding provisions of §115.137(a) of this title (relating to Exemptions) will remain subject to the provisions of this subsection, even if throughput or emissions later fall below the exemption limits.

(b) (No change.)

§115.139. Counties and Compliance Schedules.

(a) All affected persons in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties shall be in compliance with this undesignated head (relating to Water Separation) in accordance with the following schedules.

(1) All Affected persons shall be in compliance with all compliance schedules which have expired prior to January 1, 1991, in accordance with §115.930 of this title (relating to Compliance Dates).

(2) All persons in Brazoria, Dallas, El Paso, Galveston, Harris, Jefferson, Orange, and Tarrant Counties shall be in compliance with the continuous monitoring requirements to determine carbon adsorption system breakthrough and to measure temperature\ at catalytic incinerators or chillers contained in §115.136 of this title (relating to Recordkeeping Requirements), aa soon as practicable, but no later than July 31, 1992.

(b) (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 25, 1991.

TRD-9107564 Lane Hartsock
Director, Planning and Development Program
Texas Air Control Board

Effective date: July 17, 1991

Proposal publication date: February 12, 1991

For further information, please call: (512) 908-1770

Subchapter C. Volatile Organic Compound Marketing Operations

Loading and Unloading of Volatile Organic Compounds

• 31 TAC §§115.212, 115.215, 115.216, 115.219

The Texas Air Control Board (TACB) adopts amendments to §§115.212, 115. 215, 115.216, and 115.219. Sections 115.212, 115.216, and 115.219 are adopted with changes to the proposed text as published in the February 12, 1991, issue of the *Texas Register* (16 TexReg 830). Section 115.215 is adopted without changes and will not be republished.

The amendment to §115.212 involves a provision stating that if exemption limits are exceeded, then the requirements of this section become applicable, and add requirements for Dallas, El Paso, and Tarrant Counties. The amendment to §115.215 corrects the reference to a federal test method. The amendment to §115.216 adds a requirement to monitor carbon adsorption systems for breakthrough. The amendment to §115.219 updates the expired compliance date and adds new compliance dates for new requirements.

Public hearings were held on March 4, 1991 in Beaumont and El Paso and on March 5, 1991 in Houston and Arlington. Testimony was received from five commenters during the comment period. The United States Environmental Protection Agency (EPA) supported the proposed revisions. Four commenters opposed the proposed amendments. They were the LTV Aerospace and Defense Company (LTV), General Dynamics Corporation (GD), Mobil Oil Corporation (Mobil), and Texas Chemical Council (TCC).

The intent of the "once in, always in" provision is that once a facility is required to implement applicable control measures, the facility needs to remain subject to controls even if emissions or throughput later fall below applicable exemption limits. In response to an EPA requirement, this provision was proposed for rules concerning volatile organic compounds (VOC) loading/ unloading. Five commenters submitted remarks concerning these proposed amendments. Of the five, one simply indicated approval of the philosophy. Two commenters, Mobil and TCC, requested clarification on whether a facility which must be in compliance with control requirements must maintain the controls because of the amendments, and whether the controls are to be operated only during times when exemption levels would be exceeded. The staff agreed and modified the wording to more clearly establish that once a facility exceeds an exemption level and must utilize controls, the facility will be required to maintain the controls even if emissions or throughput are later sustained at a level below any applicable exemption limit.

Four commenters, LTV, GD, Mobil, and TCC, were concerned that the amendments would result in the loss of exemption status for "a single excursion," "the smallest violation," or due to upsets or maintenance activities. Although it is not entirely clear what is meant by a single excursion or a small violation, the staff agrees that EPA's intent with the provision is to require a source exceeding the applicable exemption level to implement controls. This, however, would not include uncontrollable, short-term upsets or planned maintenance activities. Additionally, Mobil and TCC wanted a definition of exceedance. The regulation previously held and continues to hold the implicit understanding that upsets and maintenance were to be handled by TACB rules dealing with these issue and not by this regulation, unless otherwise specifically stated. If an exceedance is not an upset, e.g., it is caused by an increase in production, then the source is subject to the control requirements. Each exceedance will need to be evaluated on a case-by-case basis to determine whether it was an upset. Therefore, the staff does not recognize the need to define the term. LTV, GD, Mobil, and TCC also indicated concern that the amendments required immediate compliance with the control requirements upon exceedance of the exemptions. The staff position is that applicable control measures are to be in place prior to changes in operation or equipment that will result in increasing emissions or throughput. Additionally, LTV commented that the date of May 31, 1991 conflicted with other dates in the rules. In the modified wording for these proposed amendments, the date is removed because the intent is that this provision should be applicable upon the effective date of the rules. Furthermore, references to "once in, always in" in the compliance date section in each of the applicable undesignated head is recommended for deletion. The staff believes that these compliance dates are unnecessary since the provision is to become applicable upon the effective date of the rules.

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.

§Control Requirements.

(a) For all persons in the counties referenced in §115.219(a) of this title (relating to Counties and Compliance Schedules), the following control requirements shall apply.

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

(4) No person in Dallas, El Paso, Harris, and Tarrant Counties shall permit the transfer of gasoline from a transport vessel into a gasoline bulk plant storage tank unless the following requirements are met:

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

(5) No person in Dallas, El Paso, Harris, and Tarrant Counties shall permit the transfer of gasoline from a gasoline bulk plant into a delivery tank-truck tank unless the following requirements are met:

(A)-(G) (No change.)

(6) Any gasoline terminal or bulk plant that become subject to the provisions of paragraphs (1), (2), (3), (4), or (5) of this subsection by exceeding provisions of §115.217(a) of this title (relating to Exemptions) will remain subject to the provision of this subsection, even if throughput or emission later fall below exemption limits.

(b) (No change.)

§115.216. Recordkeeping Requirements. For the counties referenced in §115.219(a) of this title (relating to Counties and Compliance Schedules), affected by §115.211(a) of this title (relating to Emission Specifications), and §115.212(a) of this title (relating to Control Requirements), the owner or operator of any volatile organic compound (VOC) loading or unloading facility shall maintain the following information at the facility for at least two years and shall make such information available upon request to representatives of the Texas Air Control Board, United States Environmental Protection Agency, or local air pollution control agency having jurisdiction in the area:

(1) (No change.)

(2) for vapor recovery system:

(A) (No change.)

(B) the inlet and outlet gas temperature of a chiller or catalytic incinerator;

(C) the exhaust gas VOC concentration of any carbon adsorption system to determine breakthrough; and

(D) the date and reason for any maintenance and repair of the required control devices and the estimated quantity and duration of VOC emissions during such activities.

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

§115.219. Counties and Compliance Schedules.

(a) All affected persons in Brazoria, Dallas, El ,Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties shall be in compliance with this undesignated head (relating to Loading and Unloading of Volatile Organic Compounds) in accordance with the following schedules.

(1) All affected persons shall be in compliance with all compliance schedules which have expired prior to January 1, 1991, in accordance with §115.930 of this title (relating to Compliance Dates).

(2) All persons in Dallas, El Paso, and Tarrant Counties affected by the provisions of §115.212(a)(4) and (5) of this title (relating to Control Requirements) shall be in compliance as soon as practicable, but no later than July 31, 1992.

(3) All persons in Dallas and Tarrant Counties affected by the provisions of §115.216(2)(C) of this title (relating to Recordkeeping Requirements) shall be in compliance with the sections as soon as practicable, but no later than July 31, 1992.

(b) (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 25, 1991.

TRD-9107565 Lane Hartsock
Director, Planning and Development Program
Texas Air Control Board

Effective date: July 17, 1991

Proposal publication date: February 12, 1991

For further information, please call: (512) 908-1770

Filling of Gasoline Storage Vessels (STAGE I) for Motor Vehicle Fuel Dispensing Facilities

• 31 TAC §115.222, §115.229

The Texas Air Control Board (TACB) adopts amendments to §115.222 and §115.229, with changes to the proposed text as published in the February 12, 1991, issue of the *Texas Register* (16 TexReg 830).

The amendment to §115.222 involves a provision stating that if exemption limits are exceeded after May 31, 1991, requirements of this section become applicable. The requirement are also being added to Brazoria, Galveston, Jefferson, and Orange Counties. The amendment to §115.229 updates the expired compliance date and adds a new compliance date for new requirements.

Public hearings were held on March 4, 1991 in Beaumont and El Paso and on March 5, 1991 in Houston and Arlington. Testimony was received from six commenters during the comment period. The United State Environmental Protection Agency (EPA) supported the proposed revisions, in general. Five commenters opposed the proposed amendments. They were the LTV Aerospace and Defense Company (LTV), General Dynamics Corporation (GD), Mobil Oil Corporation (Mobil), Texas Chemical Council (TCC), and Coalition Advocating A Safe Environment (CASE).

The intent of the "once in, always in" provision is that once a facility is required to implement applicable control measures, the facility needs to remain subject to controls even if emissions or throughput later fall below applicable exemption limits. In response to an EPA requirement, this provision was proposed for rules concerning Stage I. Five commenters submittedremarks concerning these proposed amendments. Of the five, one simply indicated approval of the philosophy. Two commenters, Mobil and TCC, requested clarification on whether a facility which must be in compliance with control requirements must maintain the controls because of the amendments, and whether the controls are to be operated only during times when exemption levels would be exceeded. The staff agreed and modified the wording to more clearly establish that once a facility exceeds an exemption level and must utilize controls, the facility will be required to maintain the controls even if emissions or throughput are later sustained at a level below any applicable exemption limit.

Four commenters, LTV, GD, Mobil, and TCC, were concerned that the amendments would result in the loss of exemption status for "a single excursion," "the smallest violation," or due to upsets or maintenance activities. Although it is not entirely clear what is meant by a single excursion or a small violation, the staff agrees that EPA's intent with the provision is to require a source exceeding the applicable exemption level to implement controls. This, however, would not include uncontrollable, short-term upsets or planned maintenance activities. Additionally, Mobil and TCC wanted a definition of exceedance. The regulation previously held and continues to hold the implicit understanding that upsets and maintenance were to be handled by TACB rules dealing with these issues and not by this regulation, unless otherwise specifically stated. If an exceedance is not an upset, e.g., it is caused by an increase in production, then the source is subject to the control requirements. Each exceedance will need to be evaluated on a case-by-case basis to determine whether it was an upset. Therefore, the staff does not recognize the need to define the term.

LTV, GD, Mobil, and TCC also indicated concern that the amendments required immediate compliance with the control requirements upon exceedance of the exemptions. The staff position is that applicable control measures are to be in place prior to changes in operation or equipment that will result in increasing emissions or throughput. Additionally, LTV commented that the date of May 31, 1991 conflicted with other dates in the rules. In the modified wording for these proposed amendments, the date is removed because the intent is that this provision should be applicable upon the effective date of the rules. Furthermore, references to "once in, always in" in the compliance date section in each of the applicable undesignated heads is recommended for deletion. The staff believes that these compliance dates are unnecessary since the provision is to become applicable upon the effective date of the rules.

EPA commented that the program for inspecting and certifying gasoline tank trucks covered in §115.224(2) should be expanded to Brazoria and Galveston Counties. Changes in this area are not within the scope of this set of proposed revisions since there are no substantive changes to this subparagraph. However, these comments will be considered in future rulemaking.

The Coalition Advocating A Safe Environment (CASE) commented that Jefferson and Orange Counties should be added to §115.229 making affected facilities in these counties use Stage I controls. As indicated by the preamble to the Stage I rules, the addition of Jefferson and Orange Counties to these requirements was intended. However, reference to the two counties was inadvertently omitted in the rules. The staff is now of the opinion that Jefferson and Orange Counties cannot be added without conducting further hearings on the matter. EPA has agreed that this issue can be addressed in future rulemaking.

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.

§115.222. Control Requirements. For all affected persons in the counties referenced in §115.229 of this title (relating to Counties and Compliance Schedules), a vapor balance system will be assumed to comply with the specified emission limitation of §115.221 of this title (relating to Emission Specifications) if the following conditions are met:

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

(7) the gauge pressure in the tank-truck tank does not exceed 18 inches of water (4.5 kPa) or vacuum exceed six inches of water (1.5 kPa);

(8) no leak, as defined in §115.010 of this title (relating to Definitions), exists from potential leak sources when measured with a combustible gas detector; and

(9) any motor vehicle fuel dispensing facility that becomes subject to the provisions of paragraphs (1)-(8) of this subsection by exceeding provisions of §115.227 of this title (relating to Exemptions) will remain subject to the provisions of this subsection, even if throughput or emissions later fall below exemption limits.

§115.229. Counties and Compliance Schedule. All affected persons in Brazoria, Dallas, El Paso, Galveston, Harris, and Tarrant Counties shall be in compliance with this undesignated head (relating to Filling of Gasoline Storage Vessels (Stage I) For Motor Vehicle Fuel Dispensing Facilities) in accordance with the following schedules.

(1) all affected persons shall be in compliance with all compliance schedules which have expired prior to January 1, 1991, in accordance with §115. 930 of this title (relating to Compliance Dates).

(2) All persons in Brazoria and Galveston Counties affected by the provisions of §115.222(7) and (8) of this title (relating to Control Requirements) shall be in compliance with this section as soon as practicable, but no later than July 31, 1992.

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

Issued in Austin, Texas, on June 25, 1991.

TRD-9107566 Lane Hartsock
Director, Planning and Development Program
Texas Air Control Board

Effective date: July 17, 1991

Proposal publication date: February 12, 1991

For further information, please call: (512) 908-1770

◆ ◆ ◆

Control of Volatile Organic Compound Leaks From Gasoline Tank-Trucks

• 31 TAC §115.239

The Texas Air Control Board (TACB) adopts an amendment to §115.239, without changes to the proposed text as published in the February 12, 1991, issue of the *Texas Register* (16 TexReg 830).

The amendment to §115.239 updates the expired compliance date and adds a new compliance date for the additional counties of Brazoria, Galveston, Jefferson, and Orange now affected by the requirement.

Public hearings were held on March 4, 1991 in Beaumont and El Paso and on March 5, 1991 in Houston and Arlington. Testimony was not received from any commenters during the comment period.

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

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

Issued in Austin, Texas, on June 25, 1991.

TRD-9107567 Lane Hartsock
Director, Planning and Development Program
Texas Air Control Board

Effective date: July 17, 1991

Proposal publication date: February 12, 1991

For further information, please call: (512) 908-1770

◆ ◆ ◆

Subchapter D. Petroleum Refining and Petrochemical Processes

Process Unit Turnaround and Vacuum-Producing Systems in Petroleum Refineries

• 31 TAC §§115.315, 115.316, 115.319

The Texas Air Control Board (TACB) adopts amendments to §§115.315, 115. 316, and 115.319, and the repeal of §115.317. Section 115.319 is adopted with changes to the proposed text as published in the February 12, 1991, issue of the *Texas Register* (16 TexReg 830). Sections 115.315, 115.316, and 115.317 are adopted without changes and will not be republished.

The amendment to §115.315 corrects a reference to a federal test method. The amendment to §115.316 adds requirements to monitor temperatures at catalytic incinerators or chillers and carbon adsorption systems for breakthrough. The amendment to §115.319 updates the expired compliance date and add a new compliance date for new requirements. The repeal of §115.317 involves removal of the 100-pound per day exemption from emissions specification requirements.

Public hearings were held on March 4, 1991, in Beaumont and El Paso and on March 5, 1991, in Houston and Arlington. Testimony was received from two commenters during the comment period. The United States Environmental Protection Agency (EPA) supported the proposed revisions. The Texas Chemical Council (TCC) opposed the proposed amendments.

TCC objected to eliminating the exemption for vacuum-producing systems emitting less than or equal to 100 pounds of VOC in any consecutive 24-hour period, stating that controlling these sources are not cot-effective and it would be difficult to meet the compliance deadline in §115.319(2). Since the exemption is being repealed per EPA's requirement, and the compliance time- line is also established by EPA, the revisions will be left as proposed.

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

§115.319. Counties and Compliance Schedules. All affected persons in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties shall be in compliance with this undesignated head (relating to Process Unit Turnaround and Vacuum-Producing Systems in Petroleum Refineries) in accordance with the following schedules:

(1) all compliance schedules which have expired prior to January 1, 1991, in accordance with §115.930 of this title (relating to Compliance Dates); and

(2) all persons in Brazoria, El Paso, Galveston, or Harris Counties affected by the provisions of §115.316(1)(B)

and (C) of this title (relating to Recordkeeping Requirements) or the repeal of §115.317 of this title (relating to Exemptions) shall be in compliance with these sections as soon as practicable, but no later than July 31, 1992.

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 25, 1991.

TRD-9107568 Lane Hartsock
Director, Planning and Development Program
Texas Air Control Board

Effective date: July 17, 1991

Proposal publication date: February 12, 1991

For further information, please call: (512) 908-1770

◆ ◆ ◆

Process Unit Turnaround and Vacuum-Producing Systems in Petroleum Refineries

• 31 TAC §115.317

The repeal is adopted under Texas Clean Air Act (TCAA), §382.017, Texas Health and Safety Code Annotated (Vernon 1990), which provides the TACB with the authority to adopt rules consistent with the policy and purpose of the TCAA.

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

Issued in Austin, Texas, on June 25, 1991.

TRD-9107569 Lane Hartsock
Director, Planning and Development Program
Texas Air Control Board

Effective date: July 17, 1991

Proposal publication date: February 12, 1991

For further information, please call: (512) 908-1770

◆ ◆ ◆

Fugitive Emission Control in Petroleum Refineries

• 31 TAC §§115.322, 115.324, 115.325, 115.327, 115.329

The Texas Air Control Board (TACB) adopts amendments to §§115.322, 115. 324, 115.325, 115.327, and 115.329. Sections 115.327 and 115.329 are adopted with changes to the proposed text as published in the February 12, 1991, issue of the *Texas Register* (16 TexReg 830). Sections 115.322, 115.324, and 115.325 are adopted without changes and will not be republished.

The amendment to §115.322 adds a clarification for valve closing during maintenance operations. The amendment to §115.324 increases the frequency of pump seal and liquid service pipeline valves from annual to quarterly. The amendments to §115.325 replaces the reference to "actual operating temperature" with a specific temperature. The amendment to §115.327 eliminates the exemption for two-inch valves and lowers the exemption level on liquid vapor pressure. The amendment to §115.329 updates the expired compliance date and adds a new compliance date for new requirements.

Public hearings were held on March 4, 1991, in Beaumont and El Paso and on March 5, 1991, in Houston and Arlington. Testimony was received from six commenters during the comment period. The United States Environmental Protection Agency (EPA) supported the proposed revisions. Five commenters opposed the proposed amendments. They were the Texas Chemical Council (TCC), Mobil Oil Corporation (Mobil), Chevron U.S.A., Inc. (Chevron), El Paso Refinery, L.P., and one individual.

Both TCC and Mobil supported the additional requirement of §115.322(4) to close the upstream valve prior to closing the line in order to remove the sealing device from a line. Chevron, however, felt this requirement was not enforceable since it was difficult to demonstrate compliance. The staff included this procedure because it clarifies the purpose of installing sealing devices to avoid any preventable emissions during sampling or maintenance.

An individual commented that rupture disks should be placed downstream of pressure relief valves. While this proposal cannot be incorporated at this time, this suggestion will be taken into consideration for future revisions to the rule.

Comments were received from El Paso Refinery, L.P.; TCC; and Mobil on the proposed changes to §115.324 regarding inspection requirements in petroleum refineries. Both TCC and Mobil recommended that quarterly measurements should be performed only on pump seals and pipeline valves in light liquid service, and that all other service be monitored only on an annual basis. El Paso Refinery, L.P. proposed that pumps with dual mechanical seals, pumps with a closed vent being sent to a control device, and pumps with no detectable emissions be exempt from the requirements of §115.324. Since EPA requires that all pump seals and pipeline valves be monitored on a quarterly basis, the amendments will remain as proposed. Mobil and TCC also proposed changes to §115.324(8) that would authorize refinery units with two years of annual data showing a 2.0% or less leak rate to immediately be able to apply for an annual valve monitoring schedule. El Paso Refinery, L.P. also commented on §115.324(8) , recommending that a facility should qualify for an annual monitoring schedule after only two quarters of monitoring which show no leaks. Since §115.324(8) is not currently proposed for revision, it cannot be changed at this time. However, the staff will take the suggestions into consideration for future rulemaking.

Overall, the commenters supported the change in §115.325(2), requiring that determination of true vapor pressure be based on 68 Degrees Fahrenheit instead of actual operating temperature. However, Chevron recommended that the test method be updated from ASTM Method D323-82 to ASTM Method D323-89 and stated that neither test method was appropriate to test for the new exemption level of 0.044 psia. The staff will evaluate the appropriateness of changing test methods for future rulemaking.

Comments of a similar nature were received from Mobil and TCC regarding §115.327, §115.337, and §115.347 which deal with exemptions from fugitive emissions controls. In all three rules, the commenters wanted the proposed paragraph (2), regarding exemptions from monitoring requirements, to affect process liquids with a true vapor pressure equal to or less than 0.147 psia rather than those with a true vapor pressure equal to or less than 0.044 psia. Additionally, both commenters wanted TACB to add exemptions from the monitoring requirements for valves in instrument systems and valves that are unsafe to monitor. Because EPA has required that, for RACT purposes, light liquids be defined as those with true vapor pressures equal to or less than 0.044 psia, §115.327(2), §115.337(2), and §115.347(2) shall remain as written with the exception of the correction of typo-graphical changes. The proposed exemptions for instrument system valves and valves considered unsafe to monitor will be taken into consideration for future rulemaking.

EPA also noted the process liquid spot pressure cutoff point listed for the exemption in §115.347(2) was incorrectly listed as 0.03 kPA, rather than 0.3 kPa. The staff made the same correction to §115.327(2) and §115.337(2).

An individual commented that the units exempted from monitoring by §115. 327(4) should be under an inspection schedule. Comments on this rule are not within the scope of the proposed revisions since there are no substantive changes to this paragraph; the paragraph number is simply being changed. However, these comments will be considered in future rulemaking.

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

§115.327. Exemptions. For all affected persons in the counties referenced in §115.329 of this title (relating to Counties and Compliance Schedules), the following exemptions shall apply.

(1) Components which contact a process fluid that contains less than 10% Volatile Organic Compound (VOC) by weight are exempt from the requirements of this undesignated head (relating to Fugitive Emission Control in Petroleum Refineries).

(2) Components which contact a process liquid containing VOC having a true vapor pressure equal to or less than 0.044 psia (0.3 kPa) at 68 Degrees Fahrenheit (20 Degrees Celsius) are exempt from the requirements of §115.324 of this title (relating to Inspection Requirements) if the components are inspected visually according to the inspection schedules specified within this same section.

(3) Petroleum refineries or individual process units in a temporary nonoperating status shall submit a plan for compliance with the provisions of this undesignated head (relating to Fugitive

Emission Control in Petroleum Refineries), as soon as practicable, but no later than one month before the process unit is scheduled for start-up and be in compliance as soon as practicable, but no later than three months after start-up. All petroleum refineries affected by this paragraph shall notify the Texas Air Control Board of any nonoperating refineries or individual process units when they are shut down and dates of any start-ups as they occur.

(4) Pressure relief devices connected to an operating flare header, components in continuous vacuum service, storage tank valves, and valves that are not externally regulated (such as in-line check valves) are exempt from the monitoring requirement of §115. 324 of this title (relating to Inspection Requirements).

(5) Compressors in hydrogen service are exempt from the requirements of §115. 324 of this title (relating to Inspection Requirements) if the owner or operator demonstrates that the percent hydrogen content can be reasonably expected to always exceed 50.0% by volume.

§115.329. Counties and Compliance Schedules. All affected persons in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties shall be in compliance with this undesignated head (relating to Fugitive Emission Control in Petroleum Refineries) in accordance with the following schedules.

(1) All affected persons shall be in compliance with all compliance schedules which have expired prior to January 1, 1991, in accordance with §115.930 of this title (relating to Compliance Dates).

(2) All persons in Brazoria, Dallas, El Paso, Galveston, Harris, Jefferson, Orange, and Tarrant Counties affected by the provisions of §115.324(2)(B)-(C) of this title (relating to Inspection Requirements) and §115.327(2) of this title (relating to Exemptions) shall be in compliance with these sections as soon as practicable, but no later than July 31, 1992.

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 25, 1991.

TRD-9107570 Lane Hartsock
Director, Planning and Development Program
Texas Air Control Board

Effective date: July 17, 1991

Proposal publication date: February 12, 1991

For further information, please call: (512) 908-1770

◆ ◆ ◆

Fugitive Emission Control in Synthetic Organic Chemical Polymer, Resin, and Methyl Tert-Butyl Ether Manufacturing Process

- **31 TAC §§115.332, 115.334, 115.335, 115.337, and 115.339**

The Texas Air Control Board (TACB) adopts amendments to §§115.332, 115. 334, 115.335, 115.337 and 115.339, with changes to the proposed text as published in the February 12, 1991, issue of the *Texas Register* (16 TexReg 830-855).

The amendment to §115.332 adds methyl tert-butyl ether to applicability under the regulation and clarifies the valve closing sequence during maintenance operations. The amendment to §115.334 clarifies and consolidates how a leaking component is to be detected. The amendment to §115.335 replaces actual operating temperature with a specific temperature. The amendment to §115.337 eliminates the exemption for two-inch valves and lower the exemption level on liquid vapor pressure. The amendment to §115.339 updates the expired compliance date and add a new compliance date for new requirements.

Public hearings were held on March 4, 1991, in Beaumont and El Paso and on March 5, 1991, in Houston and Arlington. Testimony was received from three commenters during the comment period. The United States Environmental Protection Agency (EPA) supported the proposed revisions. Mobil Oil Corporation (Mobil) and the Texas Chemical Council (TCC) opposed the proposed amendments.

Comments of a similar nature were received from Mobil and TCC regarding §§115.327, 115.337, and 115.347 which deal with exemptions from fugitive emissions controls. In all three rules, the commenters wanted the proposed subparagraph (2), regarding exemptions from monitoring requirements, to affect process liquids with a true vapor pressure equal to or less than 0.147 psia rather than those with a true vapor pressure equal to or less than O.044 psia.

Additionally, both commenters wanted TACB to add exemptions from the monitoring requirements for valves in instrument system sand valves that are unsafe to monitor. Because EPA has required that, for RACT purposes, light liquids be defined as those with true vapor pressure equal to or less than O. 044 psia, §115.327(2), §115.337(2), and §115.347(2) shall remain as written with the exception of the correction of typographical changes. The proposed exemptions for instrument system valves and valves considered unsafe to monitor will be taken into consideration for future rulemaking.

EPA noted that references to methyl tert-butyl ether (MTBE) manufacturing processes were not included in §115.337. Since references to MTBE were inadvertently left out of several rules, corrections are made in all cases.

EPA also noted the process liquid spot pressure cutoff point listed for the exemption in §115.347(2) was incorrectly listed as 0.03 kPA, rather than 0.3 kPa. The staff made the same correction to §115.327(2) and §115.337(2).

Mobil and TCC commented that §115.334 and §115.344 should continue to treat leaks identified by sound or smell as potential leaks only and that testing should be performed to verify leaks before tagging and scheduling for repair. The staff does not support these arguments because hydrocarbon analyzers often are not effective in detecting leaks of heavier process fluids due to low vapor pressures. Therefore, the amendment shall remain as proposed.

TCC and Mobil argued that §115.335 should be revised to allow use of calculations to determine the Reid vapor pressure of individual chemical compounds. Due to the variety of ways that such a value may be calculated, the staff cannot support use of these methods as adequate support to show compliance.

The amendments are adopted under the Texas Clean Air Act (TCAA), §382.017, Texas Health and Safety Code Annotated (Vernon 1990), which provides TACB with the authority to adopt rule consistent with the policy and purpose of the TCAA.

§115.332. Control Requirements. For the counties referenced in §115.339 of this title (relating to Counties and Compliance Schedules), no person shall operate a synthetic organic chemical, polymer, resin, or methyl tert-butyl ether (MTBE) manufacturing process, as defined in §115.10 of this title (relating to Definitions) without complying with the following requirements.

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

(4) Except for safety pressure relief valves, no valves shall be installed or operated at the end of a pipe or line containing VOC unless the pipe or line is sealed with a second valve, a blind flange, a plug, or a cap. The sealing device may be removed only while a sample is being taken or during maintenance operations, and when closing the line, the upstream valve shall be closed first.

(5) (No change.)

§115.334. Inspection Requirements. For all affected persons in the counties referenced in §115.339 of this title (relating to Counties and Compliance Schedules), the following inspection requirements shall apply.

(1) The owner or operator of a synthetic organic chemical, polymer, resin, or methyl tert-butyl ether (MTBE) manufacturing process shall conduct a monitoring program consistent with the following provisions:

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

(D) measure (with a hydrocarbon gas analyzer) emissions from any relief valve which has vented to the atmosphere within 24 hours;

(E) measure (with a hydrocarbon gas analyzer) immediately after re-

pair the emissions from any component that was found leaking.

(2) The owner or operator of a synthetic organic chemical, polymer, resin, or MTBE manufacturing process upon the detection of a leaking component by use of an instrument, or by sight, sound, or smell shall affix to the leaking component a weatherproof and readily visible tag, bearing an identification number and the date the leak was located. This tag shall remain in place until the leaking component is repaired.

(3) (No change.)

§115.335. Testing Requirements. For the counties referenced in §115.339 of this title (relating to Counties and Compliance Schedules), compliance with this undesignated head (relating to Fugitive Emission Control in Synthetic Organic Chemical, Polymer, Resin, and Methyl Tert-Butyl Ether Manufacturing Processes) shall be determined by applying the following test methods, as appropriate:

(1) (No change.)

(2) determination of true vapor pressure using American Society for Testing and Materials Test Method D323-82 for the measurement of Reid vapor pressure, adjusted for 68 Degrees Fahrenheit (20 Degrees Celsius) in accordance with API Publication 2517, Third Edition, 1989; or

(3) (No change.)

§115.337. Exemptions. For the counties referenced in §115. 339 of this title (relating to Counties and Compliance Schedules), the following exemptions shall apply.

(1) Components which contact a process fluid that contains less than 10% volatile organic compound (VOC) by weight are exempt from the requirements of this undesignated head (relating to Fugitive Emission Control in Synthetic Organic Chemical, Polymer, Resin, and Methyl Tert-Butyl Ether Manufacturing Processes).

(2) Components which contact a process liquid containing VOC having a true vapor pressure equal to or less than 0.044 psia (0.3 kPa) at 68 Degrees Fahrenheit (20 Degrees Celsius) are exempt from the requirements of §115.334 of this title (relating to Inspection Requirements) if the components are inspected visually according to the inspection schedules specified within this same section.

(3) Synthetic organic chemical, polymer, resins, and methyl tert-butyl ether (MTBE) manufacturing process units in a temporary nonoperating status shall submit a plan for compliance with the provisions of this undesignated head (relating to Fugitive Emission Control in Synthetic Organic Chemical, Polymer, Resin, and Methyl Tert-Butyl Ether Manufacturing Processes) within one month prior to start-up and be in compliance as soon as practicable, but no later than three months after start-up. All synthetic organic chemical, polymer, resin, and MTBE manufacturing processes affected by this subsection shall notify the Texas Air Control Board of any nonoperating process units when they are shut down and dates of any start-ups as they occur.

(4) Processes at the same location, but unrelated to the production of synthetic organic chemicals, polymers, resins, and MTBE are exempt from the requirements of this undesignated head (relating to Fugitive Emission Control in Synthetic Organic Chemical, Polymer, Resin, and Methyl Tert-Butyl Ether Manufacturing Processes).

(5) The following items are exempt from the monitoring requirements of §115. 334 of this title (relating to Inspection Requirements):

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

§115.339. Counties and Compliance Schedules. All affected persons in Harris County shall be in compliance with this undesignated head (relating to Fugitive Emission Control in Synthetic Organic Chemical, Polymer, Resin, and Methyl Tert-Butyl Ether Manufacturing Processes) in accordance with all compliance schedules which have expired prior to January 1, 1991, in accordance with §115.930 of this title (relating to Compliance Dates), except that persons affected by the addition of methyl tert-butyl ether manufacturing processes to §115.332 of this title (relating to Control Requirements), §115. 334(1) and (2) of this title (relating to Inspection Requirements), §115.335 of this title (relating to Testing Requirements), §115.336 of this title (relating to Recordkeeping Requirements), and §115.337 of this title (relating to Exemptions) shall be in compliance with these sections as soon as practicable, but no later than July 31, 1992.

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 25, 1991.

TRD-9107571 Lane Hartsock
Director, Planning and Development Program
Texas Air Control Board

Effective date: July 17, 1991

Proposal publication date: February 12, 1991

For further information, please call: (512) 908-1770

◆ ◆ ◆

Fugitive Emission Control In Natural Gas/Gasoline Processing Operation

- **31 TAC §§115.342, 115.344, 115.345, 115.347, 115.349**

The Texas Air Control Board (TACB) adopts amendments to §§115.342, 115.344, 115.345, 115.347 and 115.349. Sections 115.347 and 115.349 are adopted with changes to the proposed text as published in the February 12, 1991, issue of the *Texas Register* (16 TexReg 830). Sections 115.342, 115. 344, and 115.345 are adopted without changes and will not be republished.

The amendment to §115.342 adds a procedural clarification for valve closings during maintenance operations. The amendment to §115.344 clarifies and consolidates how a leaking component is to be detected. The amendment to §115.345 replaces the reference to "actual operating temperature" with a specific temperature. The amendment to §115.347 eliminates the exemption for two-inch and smaller valve, lower the exemption level on liquid vapor pres- ure, and modify several citations. The amendment to §115.349 updates the expired compliance date and add a new compliance date for new requirements.

Public hearings were held on March 4, 1991, in Beaumont and El Paso and on March 5, 1991, in Houston and Arlington. Testimony was received from three commenters during the comment period. The United States Environmental Protection Agency (EPA) supported the proposed revisions. Mobil Oil Corporation (Mobil) and the Texas Chemical Council (TCC) opposed the proposed amendments.

Comments of a similar nature were received from Mobil and TCC regarding §§115.327, 115.337, and 115.347 which deal with exemptions from fugitive emissions controls. In all three rules, the commenters wanted the proposed paragraph (2), regarding exemptions from monitoring requirements, to affect process liquids with a true vapor pressure equal to or less than 0.147 psia rather than those with a true vapor pressure equal to or less than 0.044 psia. Additionally, both commenters wanted TACB to add exemptions from the monitoring requirements for valves in instrument systems and valves that are unsafe to monitor. Because EPA has required that, for RACT purposes, light liquids be defined as those with true vapor pressures equal to or less than 0.044 pia, §115.327(2), §115.337(2), and §115.347(2) shall remain as written with the exception of the correction of typographical changes. The proposed exemptions for instrument system valves and valves considered unsafe to monitor will be taken into consideration for future rulemaking.

EPA also noted the process liquid spot pressure cutoff point listed for the exemption in §115.347(2) was incorrectly listed as 0.03 kP, rather than 0.3 kPa. The staff made the same correction to §115.327(2) and §115.337(2).

Mobil and TCC commented that §115.334 and §115.344 should continue to treat leaks identified by sound or smell as potential leaks only and that testing should be performed to verify leaks before tagging and scheduling for repair. The staff does not support these argu-

ments because hydrocarbon analyzers often are not effective in detecting leaks of heavier process fluids due to low vapor pressures. Therefore, the amendments should remain as proposed.

The amendments are adopted under the Texas Clean Air Act (TCAA), §382.017, Texas Heath and Safety Code Annotated (Vernon 1990), which provides TACB with the authority to adopt rules consistent with the policy and purpose of the TCAA.

§115.347. Exemption. For the counties referenced in §115. 349 of this title (relating to Counties and Compliance Schedules), the following exemptions shall apply.

(1) Components which contact a process fluid that contains less than 1.0% volatile organic compound (VOC) by weight are exempt from the requirements of this undesignated head (relating to Fugitive Emission Control in Natural Gas/Gasoline Processing Operations).

(2) Components which contact a process liquid containing VOC having a true vapor pressure equal to or less than 0.044 psia (0.3 kPa) at 68-Degrees Fahrenheit (20-Celsius) are exempt from the requirements of §115.344 of this title (relating to Inspection Requirements) if the components are inspected visually according to the inspection schedules specified within this same section.

(3) Natural gas/gasoline processing units in a temporary nonoperating status and which satisfy the conditions of paragraphs (1) and (2) of this section are exempt from the requirements of this undesignated head (relating to Fugitive Emission Control in Natural Gas/Gasoline Processing Operations). All natural gas/gasoline processing operations affected by this paragraph shall notify the Texas Air Control Board of any non-operating process units when they are shut down and dates of any start-ups as they occur.

(4) Processes at the same location but unrelated to the production of natural gas/gasoline processing are exempt from the requirements of this undesignated head (relating to Fugitive Emission Control in Natural Gas/Gasoline Processing Operations).

(5) Natural gas/gasoline processing units where the total design throughput at a property is less than 10 million standard cubic feet of gas per day and there is no capability to fractionate the mixed natural gas liquids are exempt from the requirements of this undesignated head (relating to Fugitive Emission Control in Natural Gas/Gasoline Processing Operations).

(6) The following items are exempt from the monitoring requirements of §115.344(1) of this title (relating to Inspection Requirements):

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

§115.349. Counties and Compliance Schedules. All affected persons in Harris County shall be in compliance with this undesignated head (relating to Fugitive Emission Control in Natural Gas/Gasoline Processing Operations) in accordance with all compliance schedules which have expired prior to January 1, 1991, in accordance with §115.930 of this title (relating to Compliance Dates), except that all persons affected by §115.347(2) of this title (relating to Exemptions) and the deletion of exemptions for two-inch valves, shall be in compliance with these sections as soon as practicable, but no later than July 31, 1992.

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 25, 1991.

TRD-9107572 Lane Hartsock
Director, Planning and Development Program
Texas Air Control Board

Effective date: July 17, 1991

Proposal publication date: February 12, 1991

For further information, please call: (512) 908-1770

Subchapter E. Solvent-Using Processes

Degreasing Processes

• 31 TAC §115.417, §115.419

The Texas Air Control Board (TACB) adopts amendments to §115.417 and §115.419, with changes to the proposed text as published in the February 12, 1991, issue of the *Texas Register* (16 TexReg 830).

The amendment to §115.417 deletes the three pounds per day exemption in Dallas, El Paso, Harris, and Tarrant Counties. The amendment to §115.419 updates the expired compliance date and adds a new compliance date for new requirements.

Public hearings were held on March 4, 1991, in Beaumont and El Paso and on March 5, 1991, in Houston and Arlington. Testimony was received from three commenters during the comment period. The United States Environmental Protection Agency (EPA) supported the proposed revisions. General Dynamics Corporation (GD) and the City of Dallas opposed the proposed amendments.

Both GD and the City of Dallas opposed the repeal of the three pounds of VOC per day exemption for degreasing operations in Dallas, Tarrant, and Harris Counties. Elimination of this exemption is mandated by EPA despite resource difficulties expressed by the staff regarding enforcement. Inequities noted by GD regarding a 550-pound per day exemption for El Paso degreasing operations will be taken into consideration and are expected to be removed in future rulemaking associated with "leveling the playing field."

EPA noted that although a compliance schedule subsection §115.419(3) is proposed for deletion, it is referred to in §115.417(7), concerning exemptions, which was not proposed for repeal. EPA felt that §115.419(3) should therefore be retained. Due to the deletion of the three pounds per hour exemption in Dallas and Tarrant Counties, it is no longer necessary to retain §115.417(7). Staff deleted both §115.419(3) and §115.417(7).

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

§115.417. Exemptions. For the counties referenced in §115. 419 of this title (relating to Counties and Compliance Schedules), the following exemptions shall apply.

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

(3) Degreasing operations located on any property in any affected counties except Dallas, El Paso, Harris, and Tarrant which can emit, when uncontrolled, a combined weight of volatile organic compounds (VOC) less than 550 pounds (249.5 kg) in any consecutive 24-hour period are exempt from the provisions of §115.412 of this title (relating to Control Requirements).

(4) Any conveyorized degreaser with less than 20 ft2 (2 m2) of air/vapor interface is exempt from the requirement of §115.412(3)(A) of this title (relating to Control Requirements).

(5) Any open-top vapor degreaser with an open area less than 10 ft2 (1 m2) is exempt from the refrigerated chiller or the carbon adsorber requirements in §115.412(2)(D)(ii) and (iv) of this title (relating to Control Requirements).

(6) An owner or operator who operates a remote reservoir cold solvent cleaner which uses solvent with a true vapor pressure equal to or less than 0.6 psia (4.1 kPa) measured at 100 Degrees Fahrenheit (38 Degrees Celsius) and which has a drain area less than 16 in2 (100cm2) and who properly disposes of waste solvent in enclosed containers is exempt from §115.412(1) of this title (relating to Control Requirements).

§115.419. Counties and Compliance Schedules. All affected persons in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties shall be in compliance with this undesignated head (relating to Degreasing Processes) in accordance with the following schedules.

(1) All affected persons shall be in compliance with all compliance schedules which have expired prior to January 1, 1991, in accordance with §115.930 of this title(relating to Compliance Dates).

(2) All persons in El Paso County affected by the provisions of §115. 417(3) of this title (relating to Exemption) shall be in compliance with this section as soon as practicable, but no later than July 31, 1992.

(3) All person in Dallas, Harris, and Tarrant Counties affected by the deletion of any exemptions from §115.417 of this title (relating to Exemptions) shall be in compliance with this section as soon as practicable, but no later than July 31, 1992.

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 25, 1991.

TRD-9107573 Lane Hartsock
Director, Planning and Development Program
Texas Air Control Board

Effective date: July 17, 1991

Proposal publication date: February 12, 1991

For further information, please call: (512) 908-1770

◆ ◆ ◆

Surface Coating Processes

• 31 TAC §§115.421-115.427, 115.429

The Texas Air Control Board (TACB) adopts amendments to §§115.421-115. 423, 115.425-115.427, and 115.429, and new §115.424. Sections 115.422, 115.423, 115.426, 115.427, and 115.429 are adopted with changes to the proposed text as published in the February 12, 1991, issue of the *Texas Register* (16 TexReg 830). Sections 115.421, 115.424, and 115.425 are adopted without change and will not be republished.

The amendment to §115.421 modifies the basis of allowable emissions from pounds volatile organic compounds (VOC) per gallon of coating (minus water) to pounds of VOC per gallon of solids for large appliance, furniture, coil, paper, fabric, vinyl, can, and miscellaneous metal parts and products coatings. The amended allowable emissions are equivalent to those used in the previous version of the rule. The applicability of the limitations were changed from the application system to each coating line to provide for "line by line" compliance as required by the United States Environmental Protection Agency (EPA). Plastisol coatings were added to the limitations for vinyl coating. The phrase "and exempt solvents" was included with water when determining pounds per gallon of coating. In the section on automobile and light-duty truck coating, the assumed transfer efficiency was changed from 30% to 65% and the term "air spray applicator or equivalent" changed to "all application equipment" to meet EPA requirements.

The amendment to §115.422 involves a provision stating that if exemption limits are exceeded after May 31, 1991, requirements of this section become applicable. The amendment to §115.423 adds clarifying language to several subsections. Most substantively, the method to test for capture efficiency of a vapor recovery system was added to paragraph (3), and a cautionary statement was added to paragraph (4) to indicate that EPA approval may be needed for alternate controls.

The amendments to §115.424 adds clarifying language and requires that samples of the coatings for analysis be supplied to TACB, federal, or local program inspectors at no cost. The amendments to §115.425 and §115.426 correct respective referenced citations. The requirement to continuously monitor carbon adsorption bed exhaust to determine if breakthrough has occurred is also added to the latter section.

The amendment to §115.427 involves deleting an obsolete exemption and correcting all citation references. EPA also requires that the documentation required to qualify for an exemption be approved by both the TACB executive director and EPA. The amendment to §115.429 updates the expired compliance date and adds new compliance date for new requirements.

Public hearings were held on March 4, 1991, in Beaumont and El Paso and on March 5, 1991, in Houston and Arlington. Testimony was received from eight commenters during the comment period. EPA and one individual supported the proposed revisions. Six commenters opposed the proposed amendments. They were the LTV Aerospace and Defense Company (LTV), General Dynamics Corporation (GD), Mobil Oil Corporation (Mobil), the Texas Chemical Council (TCC), the United States Air Force (USAF), and the City of Dallas.

The intent of the "once in, always in" provision is that once a facility is required to implement applicable control measures, the facility needs to remain subject to controls even if emissions or throughput later fall below applicable exemption limits. In response to an EPA requirement, this provision was proposed for rules concerning surface coating. Five commenters submitted remarks concerning these proposed amendments. Of the five, one simply indicated approval of the philosophy. Two commenters, Mobil and TCC, requested clarification on whether a facility which must be in compliance with control requirements must maintain the controls because of the amendments, and whether the controls are to be operated only during times when exemption levels would be exceeded. The staff agreed and modified the wording to more clearly establish that once a facility exceeds an exemption level and must utilize controls, the facility will be required to maintain the controls even if emissions or throughput are later sustained at a level below any applicable exemption limit.

Four commenters, LTV, GD, Mobil, and TCC, were concerned that the amendments would result in the loss of exemption status for "a single excursion," "the smallest violation," or due to upsets or maintenance activities. Although it is not entirely clear what is meant by a single excursion or a small violation, the staff agrees that EPA's intent with the provision is to require a source exceeding the applicable exemption level to implement controls. This, however, would not include uncontrollable, short-term upsets or planned maintenance activities. Additionally, Mobil and TCC wanted a definition of exceedance. The regulation previously held and continues to hold the implicit understanding that upsets and maintenance were to be handled by TACB rules dealing with these issues and not by this regulation, unless otherwise specifically stated. If an exceedance is not an upset, e.g. it is caused by an increase in production, then the source is subject to the control requirements. Each exceedance will need to be evaluated on a case-by-case basis to determine whether it was an upset. Therefore, the staff does not recognize the need to define the term.

LTV, GD, Mobil, and TCC also indicated concern that the amendments required immediate compliance with the control requirements upon exceedance of the exemptions. The staff position is that applicable control measures are to be in place prior to changes in operation or equipment that will result in increasing emissions or throughput. Additionally, LTV commented that the date of May 31, 1991, conflicted with other dates in the rules. In the modified wording for these proposed amendments, the date is removed because the intent is that this provision should be applicable upon the effective date of the rules. Furthermore, reference to "once in, always in" in the compliance date section in each of the applicable undesignated heads is recommended for deletion. The staff believes that these compliance date are unnecessary since the provision is to become applicable upon the effective date of the rules.

USAF commented that the costs of obtaining line-by-line compliance and implementing changes brought about by new definitions would have extreme implications. The staff agrees that costs are likely to substantially increase as a result of these EPA requirements. Furthermore, the staff believes that refinement of EPA definitions is necessary. Future rulemaking on this subject is anticipated.

GD objected to the changing of baseline transfer efficiency for automobile and light-duty truck refinishers in Dallas and Tarrant Counties from 30% to 65% in §115.421(8)(C). This change in transfer efficiency, however, was made per EPA requirements and, therefore, will not be deleted.

EPA commented that the "once in, always in" provision of the surface coating control requirements section should also encompass the emissions specifications section (§115.421). Such changes cannot be made without additional public hearings, since the revision was not part of the current proposal.

The City of Dallas asked for clarification of the purpose of having solvent directed into a container to prevent evaporation as specified by §115.422(1)(C) and §115.421(9)(C). The City of Dallas contends that the VOCs will be emitted at another location and, therefore, no credit should be given for VOC handled as specified. The staff feels that by requiring solvent to be directed into containers, recycling and reuse is promoted, thereby reducing the potential for region wide emissions.

USAF was concerned with the addition of capture efficiency testing to §115. 423(3), saying the requirement is burdensome, expensive, and added time delays. The staff amended the wording to clarify that capture

efficiency testing is not automatically required for all facilities. However, the actual method to test for capture efficiency has been established by EPA and will be required by EPA in future TACB rulemaking.

LTV objected to the addition of wording to §115.423(4) regarding EPA approval of certain alternate control requirements (ACRs) due to added review time. EPA has maintained throughout the years that if an ACR has conditions that are not specified in Regulation V, then the ACR constitutes a revision to the state implementation plan, which requires EPA approval. The staff's wording establishes EPAs' requirements for ACRs and will remain as written.

Comments were received from GD, LTV, and the City of Dallas stating that the emissions limitations for the exemption addressed in §115.427(6)(A) were too restrictive. However, these exemption levels are contained in the currently implemented version of Regulation V and were effective on August 31, 1990, in Dallas and Tarrant Counties and on December 31, 1990, in El Paso and Harris Counties. The implication that the current proposal changes those compliance dates to July 31, 1992, is erroneous. Since TACB is not proposing a relaxation of the compliance dates or the exemption levels, the exemption will remain as it is currently worded with a deletion of the compliance date.

GD commented on the syntax of the surface coating exemption in §115.427(6) (B). A phrase was added stating that in order for the exemption to be granted by the executive director, documentation had to be provided showing control equipment is not technically or economically feasible. However, with the phrase inserted where proposed, the exemption appears to require documentation that the necessary coating performance and control equipment are not technically or economically feasible, and that the performance and controls cannot be achieved with compliant coatings. To correctly reflect the intent of the changes to this exemption, the phrase regarding control equipment was simply moved to the end of the sentence

USAF and GD provided comments stating that operations such as touch-up swabs, spray cans, and artists' paint brushes should be explicitly exempt from emissions specifications. The staff feels, however, that the three-pound per hour, 15-pound per day exemption in §115.427(6)(A) covers these operations adequately, and if a facility exceeds the exemption limitations, state-wide actions should be taken.

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

§115.422. Control Requirements. For the counties referenced in §115.429(2)(A) of this title(relating to Counties and Compliance Schedules):

(1) any automobile refinishing operation shall minimize volatile organic compound (VOC) emissions during equipment cleanup by the following procedures:

(A) install and operate a system which totally encloses spray guns, cups, nozzles, bowls, and other parts during washing, rinsing, and draining procedures;

(B) recycle all wash solvents from an enclosed reservoir which must be kept closed at all times, except when being refilled with fresh solvent solution; and

(C) dispose of all waste solvents and associated cleaning material in closed containers;

(2) any surface coating operation that becomes subject to the provisions of paragraph (1)(A), (B), and (C) of this section by exceeding the provisions of §115.427 of this title (relating to Exemptions) shall remain subject to the provisions of this paragraph, even if throughput or emissions later fall below exemption limits.

§115.423. Alternate Control Requirements. For all affected persons in the counties referenced in §115.429 of this title (relating to Counties and Compliance Schedules), the following alternate control techniques may apply.

(1) (No change.)

(2) Any alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria, such as use of improved transfer efficiency in this section, may be approved by the executive director in accordance with §115.910 of this title (relating to Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

(3) If a vapor recovery system is used to control emissions from coating operations, the capture and abatement system shall be capable of achieving and maintaining emission reductions equivalent to the emission limitations of §115.421 of this title (relating to Emission Specifications) and an overall control efficiency of at least 80% of the VOC emissions from those coatings. The owner or operator of any surface coating facility shall submit design data for each capture system and emission control device which is proposed for use to the executive director for approval. Any capture efficiency testing shall be performed in accordance with §115.425(2)(D) of this title (relating to Testing Requirements).

(4) For any surface coating process or processes at a specific property, the executive director may approve requirements different from those in §115.421(9) based upon his determination that such requirements will result in the lowest emission rate that is technologically and economically reasonable. When he makes such a determination, the executive director shall specify the date or dates by which such different requirements shall be met and shall specify any requirements to be met in the interim. If the emissions resulting from such different requirements equal or exceed 25 tons a year for a property, the determinations for that property shall be reviewed every two years. Executive director approval does not necessarily constitute satisfaction of all federal requirements nor eliminate the need for approval by the United States Environmental Protection Agency in cases where specified criteria for determining equivalency have not been clearly identified in applicable sections of this chapter.

§115.426. Recordkeeping Requirements. For the counties referenced in §115.429 of this title (relating to Counties and Compliance Schedules), the following recordkeeping requirements shall apply.

(1) (No change.)

(2) The owner or operator of any surface coating facility which utilizes a vapor recovery system approved by the executive director in accordance with §115.423(3) of this title (relating to Alternate Control Requirements) shall:

(A) install and maintain monitors to accurately measure and record operational parameters of all required control devices as necessary to ensure the proper functioning of those devices in accordance with design specifications, including:

(i) (No change.)

(ii) the total amount of VOC recovered by carbon adsorption or other solvent recovery systems during a calendar month;

(iii) continuous monitoring of carbon adsorption bed exhaust to determine if breakthrough has occurred; and

(iv) the dates and reasons for any maintenance and repair of the required control devices and the estimated quantity and duration of VOC emissions during such activities;

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

(3) In accordance with the schedule referenced in §115.429(1), records shall be maintained sufficient to document the applicability of the conditions for exemptions referenced in §115.427 of this title (relating to Exemptions).

§115.427. Exemptions. For the counties referenced in §115. 429 of this title (relating to Counties and Compliance Schedule), the following exemption shall apply.

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

(6) In accordance with the schedule referenced in §115.429(1), the following exemptions shall apply to surface coating operations in Dallas, El Paso, Har-

ris, and Tarrant Counties, except for aircraft prime coating controlled by §115.421(9)(A)(v) of this title (relating to Emission Specifications) and automobile and truck refinishing controlled by §115.421(8)(B) and (C).

(A) Surface coatings operations on a property which when uncontrolled will emit a combined weight of VOC of less than three pounds per hour and 15 pounds in any consecutive 24-hour period shall be exempt from the provisions of §115.421, and §115.423 of this title (relating to Alternate Control Requirements).

(B) Surface coating operations on a property which when uncontrolled will emit a combined weight of VOC of less than 100 pounds in any consecutive 24-hour period shall be exempt from the provisions of §115.421 and §115. 423 if documentation is provided to and approved by both the executive director of the Texas Air Control Board and the United States Environmental Protection Agency, to demonstrate that necessary coating performance criteria cannot be achieved with coating which satisfy applicable emission specifications and that control equipment is not technically or economically feasible.

(7) The following coatings are exempt from the application of this undesignated head (relating to Surface Coating Processes):

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

§115.429. Counties and Compliance Schedule. All affected persons in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties shall be in compliance with this undesignated head (relating to Surface Coating Processes) in accordance with the following schedules:

(1) all compliance schedules which have expired prior to January 1, 1991, in accordance with §115.930 of this title (relating to Compliance Date); and

(2) the following additional compliance schedules.

(A) All persons affected by changes from gallon of coating to gallon of solids and the addition of exempt solvents for calculating VOC content in §115.421 of this title (relating to Emissions Specifications) shall be in compliance with this section as soon as practicable, but no later than July 31, 1992.

(B) All affected persons in Dallas and Tarrant Counties shall be in compliance with §115.421(8)(C) and (D) as soon a practicable, but no later than July 31, 1992.

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 25, 1991.

TRD-9107574 Lane Hartsock
Director, Planning and Development Program
Texas Air Control Board

Effective date: July 17, 1991

Proposal publication date: February 12, 1991

For further information, please call: (512) 908-1770

◆ ◆ ◆

Graphic Arts (Printing) By Rotogravure and Flexographic Processes

- **31 TAC §§115.432, 115.435, 115.436, 115.437, 115.439**

The Texas Air Control Board (TACB) adopts amendments to §§115.432, 115. 435, 115.436, 115.437, and 115.439. Sections 115.432, 115.437, and 115.439 are adopted with changes to the proposed text as published in the February 12, 1991, issue of the *Texas Register* (16 TexReg 830). Sections 115.435 and 115. 436 are adopted without changes and will not be republished.

The amendment to §115.432 involves a provision stating that if exemption limits are exceeded then the requirements of this section become applicable. Clarification is also added to indicate that capture system refers to each printing line. The amendment to §115.435 add a reference to federal performance test procedures. The amendment to §115.436 adds a requirement to monitor carbon adsorption system for breakthrough. The amendment to §115.437 make the 100 tons per year exemption to be based on maximum production capability. The amendment to §115.439 updates the expired compliance date and adds a new compliance date for new requirements.

Public hearings were held on March 4, 1991, in Beaumont and El Paso and on March 5, 1991, in Houston and Arlington. Testimony was received from six commenters during the comment period. The United States Environmental Protection Agency (EPA) and one individual supported the proposed revisions. Four commenters opposed the proposed amendments. They were the LTV Aerospace and Defense Company (LTV), General Dynamics Corporation (GD), Mobil Oil Corporation (Mobil), and Texas Chemical Council (TCC).

The intent of the "once in, alway in" provision is that once a facility is required to implement applicable control measures,the facility needs to remain subject to controls even if emissions or throughput later fall below applicable exemption limits. In response to an EPA requirement, this provision was proposed for rule concerning graphic arts. Five commenters submitted remarks concerning these proposed amendments. Of the five, one simply indicated approval of the philosophy. Two commenters, Mobil and TCC, requested clarification on whether a facility which must be in compliance with control requirements must maintain the controls because of the amendments, and whether the controls are to be operated only during times when exemption levels would be exceeded. The staff agreed and modified the wording to more clearly establish that once a facility exceeds an exemption level and must utilize controls, the facility will be required to maintain the controls even if emissions or throughput are later sustained at a level below any applicable exemption limit.

Four commenters, LTV, GD, Mobil, and TCC, were concerned that the amendments would result in the loss of exemption status for "a single excursion," "the smallest violation," or due to upsets or maintenance activities. Although it is not entirely clear what is meant by a single excursion or a small violation, the staff agrees that EPA's intent with the provision is to require a source exceeding the applicable exemption level to implement controls. This, however, would not include uncontrollable, short-term upsets or planned maintenance activities. Additionally, Mobil and TCC wanted a definition of exceedance. The regulation previously held and continues to hold the implicit understanding that upsets and maintenance were to be handled by TACB rules dealing with thee issues and not by this regulation, unless otherwise specifically stated. If an exceedance is not an upset, e.g., it is caused by an increase in production, then the source is subject to the control requirements. Each exceedance will need to be evaluated on a case-by-case basis to determine whether it was an upset. Therefore, the staff does not recognize the need to define the term.

LTV, GD, Mobil, and TCC also indicated concern that the amendments required immediate compliance with the control requirements upon exceedance of the exemptions. The staff position is that applicable control measures are to be in place prior to changes in operation or equipment that will result in increasing emissions or throughput. Additionally, LTV commented that the date of May 31, 1991, conflicted with other dates in the rules. In the modified wording for these proposed amendments, the date is removed because the intent is that this provision should be applicable upon the effective date of the rules. Furthermore, references to "once in, always in" in the compliance date section in each of the applicable undesignated heads is recommended for deletion. The staff believes that these compliance dates are unnecessary since the provision is to become applicable upon the effective date of the rules.

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

§115.432. Control Requirements. For the counties referenced in §115.439 of this title (relating to Counties and Compliance Schedules):

(1) no person shall operate or allow the operation of a packaging rotogravure, publication rotogravure, or flexo-

graphic printing line that uses solvent-containing ink unless volatile organic compound (VOC) emissions are limited by one of the following:

(A) application to the substrate of low solvent ink with a volatile fraction containing 25% by volume or less of VOC solvent and 75% by volume or more of water and exempt solvent;

(B) application to the substrate of high solids solvent-borne ink containing 60% by volume or more of nonvolatile material (minus water and exempt solvent); or

(C) operation of a carbon adsorption or incineration system to reduce the VOC emissions from an effective capture system by at least 90% by weight. The design and operation of the capture system for each printing line must be consistent with good engineering practice and shall be required to provide for an overall reduction in VOC emissions, as demonstrated to the satisfaction of the executive director, upon request, of at least the following weight percentages:

(i) 75% for a publication rotogravure process;

(ii) 65% for a packaging rotogravure process; or

(iii) 60% for a flexographic printing process;

(2) any graphic arts facility that becomes subject to the provisions of paragraph (1)(A) , (B), or (C) of this section by exceeding provisions of §115.437 of this title (relating to Exemptions) will remain subject to the provisions of this subsection, even if throughput or emissions later fall below exemption limits;

(3) any capture efficiency testing of the capture system must be conducted in accordance with §115.435 of this title (relating to Testing Requirements).

§115.437. Exemptions. For the counties referenced in §115. 439 of this title (relating to Counties and Compliance Schedules), the following exemptions shall apply.

(1) All rotogravure and flexographic facilities on a property, except those specified in paragraph (2) of this section, which when uncontrolled have a maximum potential to emit a combined weight of volatile organic compounds (VOC) less than 100 tons (91 metric tons) in one year (based on historical ink and VOC solvent usage, and at maximum production capacity) are exempt from the requirements of §115.432 of this title (relating to Control Requirements).

(2) In Dallas and Tarrant Counties, all rotogravure and flexographic printing facilities on a property which, when uncontrolled, emit a combined weight of VOC less than 50 tons in one year (based on historical ink and solvent usage) are exempt from the requirements of §115.432 of this title (relating to Control Requirements).

§115.439. Counties and Compliance Schedules. All affected persons in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties shall be in compliance with this undesignated head (relating to Graphic Arts (Printing) by Rotogravure and Flexographic Processes) in accordance with the following compliance schedules.

(1) All affected persons shall be in compliance with all compliance schedules which have expired prior to January 1, 1991, in accordance with §115. 930 of this title (relating to Compliance Dates).

(2) All persons affected by §115.432(3) of this title (relating to Control Requirements), §115.436(3)(C) of this title (relating to Recordkeeping Requirements), and §115.437(1) of this title (relating to Exemptions) shall be in compliance with the sections as soon as practicable, but no later than July 31, 1992.

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 25, 1991.

TRD-9107575 Lane Hartsock
Director, Planning and Development Program
Texas Air Control Board

Effective date: July 17, 1991

Proposal publication date: February 12, 1991

For further information, please call: (512) 908-1770

Subchapter F. Miscellaneous Industrial Sources

Cutback Asphalt

• 31 TAC §115.512, §115.519

The Texas Air Control Board (TACB) adopts amendments to §115.512 and §115.519. Section 115.519 is adopted with changes to the proposed text as published in the February 12, 1991 issue of the *Texas Register* (16 TexReg 830). Section 115.512 is adopted without changes and will not be republished.

The amendment to §115.512 adds a requirement of cutback asphalt use during the ozone season in Brazoria, El Paso, Galveston, Harris, Jefferson, and Orange Counties. The amendment to §115.519 updates the expired compliance date and adds a new compliance date for new requirements.

Public hearings were held on March 4, 1991, in Beaumont and El Paso and on March 5, 1991, in Houston and Arlington. Testimony was not received from any commenters during the comment period on the revisions to the individual subsections of §115.512 and §115.519.

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

§115.519. Counties and Compliance Schedules. All affected persons in Brazoria, Dallas, El Paso, Galveston, Harris, Jefferson, Nueces, Orange, and Tarrant Counties shall be in compliance with this undesignated head (relating to Cutback Asphalt) in accordance with all compliance schedules which have expired prior to January 1, 1991, in accordance with §115.930 of this title (relating to Compliance Dates), except that all persons in Brazoria, El Paso, Galveston, Harris, Jefferson, and Orange Counties affected by §115.512(3) of this title (relating to Control Requirements) shall be in compliance as soon as practicable, but no later than April 16, 1992.

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 25, 1991.

TRD-9107576 Lane Hartsock
Director, Planning and Development Program
Texas Air Control Board

Effective date: July 17, 1991

Proposal publication date: February 12, 1991

For further information, please call: (512) 908-1770

Pharmaceutical Manufacturing Facilities

• 31 TAC §§115.532, 115.536, 115.537, 115.539

The Texas Air Control Board (TACB) adopts amendments to §§115.532, 115. 536, 115.537, and 115.539. Section 115.532 and §115.539 are adopted with changes to the proposed text as published in the February 12, 1991, issue of the *Texas Register*(16 TexReg 830). Section 115.536 and §115.537 are adopted without changes and will not be republished.

The amendment to §115.532 involves a provision stating that if exemption limits are exceeded then the requirements of this section become applicable. The amendment to §115.536 adds a requirement to monitor carbon adsorption systems for breakthrough. The amendment to §115.537 involves lowering the exemption level for Dallas, El Paso, and Tarrant Counties. The amendment to §115.539 updates the expired compliance date and adds a new compliance date for new requirements.

Public hearings were held on March 4, 1991, in Beaumont and El Paso and on March 5,

1991, in Houston and Arlington. Testimony was received from six commenters during the comment period. The United States Environmental Protection Agency (EPA) and one individual supported the proposed revisions. Four commenters opposed the proposed amendments. They were the LTV Aerospace and Defense Company (LTV), General Dynamics Corporation (GD), Mobil Oil Corporation (Mobil), and Texas Chemical Council (TCC).

The intent of the "once in, always in" provision is that once a facility is required to implement applicable control measures, the facility needs to remain subject to controls even if emissions or throughput later fall below applicable exemption limits. In response to an EPA requirement, this provision was proposed for rules concerning pharmaceuticals. Five commenters submitted remarks concerning these proposed amendments. Of the five, one simply indicated approval of the philosophy. Two commenters, Mobil and TCC, requested clarification on whether a facility which must be in compliance with control requirements must maintain the controls because of the amendments, and whether the control are to be operated only during time when exemption levels would be exceeded. The staff agree and modified the wording to more clearly establish that once a facility exceeds an exemption level and must utilize controls, the facility will be required to maintain the controls even if emissions or throughput are later sustained at a level below any applicable exemption limit.

Four commenters, LTV, GD, Mobil, and TCC, were concerned that the amendment would result in the loss of exemption status for "a single excursion," "the smallest violation," or due to upsets or maintenance activities. Although it is not entirely clear what is meant by a single excursion or a small violation, the staff agrees that EPA's intent with the provision is to require a source exceeding the applicable exemption level to implement controls. This, however, would not include uncontrollable, short-term upsets or planned maintenance activities. Additionally, Mobil and TCC wanted a definition of exceedance. The regulation previously held and continues to hold the implicit understanding that upsets and maintenance were to be handled by TACB rules dealing with these issues and not by this regulation, unless otherwise specifically stated. If an exceedance is not an upset, e.g. it is caused by an increase in production, then the source is subject to the control requirements. Each exceedance will need to be evaluated on a case-by-case basis to determine whether it was an upset. Therefore, the staff does not recognize the need to define the term.

LTV, GD, Mobil, and TCC also indicated concern that the amendments required immediate compliance with the control requirements upon exceedance of the exemptions. The staff position is that applicable control measures are to be in place prior to changes in operation or equipment that will result in increasing emissions or throughput. Additionally, LTV commented that the date of May 31, 1991, conflicted with other dates in the rules. In the modified wording for these proposed amendments, the date is removed because the intent is that this provision should be applicable upon the effective date of the rule. Furthermore, references to "once in, always in" in the compliance date section in each of the applicable undesignated heads is recommended for deletion. The staff believes that these compliance dates are unnecessary since the provision is to become applicable upon the effective date of the rules.

The amendments are adopted under the Texas Clean Air Act (TCAA), §382.017, Texas Health and Safety Code Annotated (Vernon 1990), which provide TACB with the authority to adopt rules consistent with the policy and purpose of the TCAA.

§115.532. Control Requirements. For the counties referenced in §115.539 of this title (relating to Counties and Compliance Schedules), the owner or operator of a synthesized pharmaceutical manufacturing facility shall provide the following specified controls.

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

(5) Pharmaceutical manufacturing facility. Any pharmaceutical manufacturing facility that becomes subject to the provisions of paragraphs (1) -(4) of this section by exceeding provisions of §115.537 of this title (relating to Exemptions) will remain subject to the provisions of this section, even if throughput or emissions later fall below exemption limits.

§115.539. Counties and Compliance Schedules. All affected persons in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties shall be in compliance with this undesignated head (relating to Pharmaceutical Manufacturing Facilities) in accordance with the following schedules.

(1) All affected persons shall be in compliance with all compliance schedules which have expired prior to January 1, 1991, in accordance with §115.930 of this title(relating to Compliance Dates).

(2) All persons in Dallas, El Paso, and Tarrant Counties affected by the provisions of §115.536(2)(A)(ii) of this title (relating to Recordkeeping Requirements) and §115.537(6) of this title (relating to Exemptions) shall be in compliance with this section as soon as practicable, but no later than July 31, 1992.

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 25, 1991.

TRD-9107577 Lane Hartsock
Director, Planning and Development Program
Texas Air Control Board

Effective date: July 17, 1991

Proposal publication date: February 12, 1991

For further information, please call: (512) 908-1770

◆ ◆ ◆

Part IX. Texas Water Commission

Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste

Subchapter E. Interim Standards for Owners and Operators of Hazardous Waste Storage Processing, or Disposal Facilities

• 31 TAC §335.112

The Texas Water Commission adopts an amendment to §335.112, concerning industrial solid and municipal hazardous waste management and standards, without changes to the proposed text as published in the April 23, 1991, issue of the *Texas Register* (16 TexReg 2278).

The amendment is adopted to implement the federally mandated change from the extraction procedure (EP) method to the toxicity characteristic leaching procedure (TCLP) method for determining characteristically hazardous waste and to expand the list of constituents for which the leachate will be analyzed.

The federal TCLP rule adopted in the March 29, 1990, issue of the *Federal Register* was promulgated pursuant to the Resource Conservation and Recovery Act, 42 United States Code (USC), §6901 et seq (1976) (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). Under RCRA, §3006(g), 42 United States Code 6926(g), new requirements imposed by HSWA take effect in authorized states (of which Texas is one) at the same time they take effect in nonauthorized states. While states must still adopt HSWA-related provisions to retain final authorization, the HSWA requirements are implemented by EPA in authorized states in the interim. Pursuant to 40 Code of Federal Regulations (CFR), §271.21(e)(2), Texas must modify its program to reflect federal program changes and must subsequently submit those program modifications to EPA for approval. Upon EPA approval of the state program modifications, Texas will be authorized to implement the TCLP requirements in lieu of EPA. On February 20, 1991, the Texas Water Commission adopted amendments to 31 TAC Chapter 335, Subchapters A, E, and F which accomplished most of the rule changes necessary to obtain EPA authorization to implement the TCLP requirements. The amendments hereby adopted will complete all the rule changes necessary for the State of Texas to obtain final TCLP authorization for the EPA.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Water Code, §5.103, Texas Water Code Annotated, Chapter 5 (Vernon 1990), which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and pursuant to the Texas Solid Waste Disposal Act, §361.017 and §361.024, Texas Health and Safety Code

Annotated, Chapter 361 (Vernon Supplemental 1990), which provides the Texas Water Commission with the authority to promulgate rules necessary to accomplishing the purposes of the Act which includes controlling all aspects of the management of industrial solid and municipal hazardous wastes. The adopted amendment is in response to EPA's adoption of the HSWA mandated TCLP rules set forth in the March 29, 1990, issue of the *Federal Register* (55 FedReg 11796).

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 25, 1991.

TRD-9107523 Jim Haley
Director, Legal Division
Texas Water Commission

Effective date: July 16, 1991

Proposal publication date: April 23, 1991

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

◆ ◆ ◆

Subchapter O. Land Disposal Restrictions

• 31 TAC §335.431

The Texas Water Commission adopts an amendment to §335.431, concerning industrial solid and municipal hazardous waste management and standards, without changes to the proposed text as published in the April 23, 1991, issue of the *Texas Register* (16 TexReg 2278).

The amendment is adopted to implement the federally mandated change from the extraction procedure (EP) method to the toxicity characteristic leaching procedure (TCLP) method for determining characteristically hazardous waste and to expand the list of constituents for which the leachate will be analyzed.

The federal TCLP rule adopted in the March 29, 1990, issue of the *Federal Register* (55 FedReg 11796) was promulgated pursuant tot he Resource Conservation and Recovery Act, 42 United States Code, (USC), §6901 et seq (1976) (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). Under RCRA, §3006(g), new requirements imposed by HSWA take effect in authorized states (of which Texas is one) at the same time they take effect in nonauthorized states. While states must still adopt HSWA-related provisions to retain final authorization, the HSWA requirements are implemented by EPA in authorized states in the interim. Pursuant to 40 Code of Federal Regulations (CFR), §271.21(e)(2), Texas must modify its program to reflect federal program changes and must subsequently submit those program modifications to EPA for approval. Upon EPA approval of the state program modifications, Texas will be authorized to implement the TCLP requirements in lieu of EPA. On February 20, 1991, the Texas Water Commission adopted amendments to 31 TAC Chapter 335, Subchapters A, E, and F which accomplished most of the rule changes necessary to obtain EPA authorization to implement the TCLP requirements. The amendments hereby adopted will complete all the rule changes necessary for the State of Texas to obtain final TCLP authorization from the EPA.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Water Code, §5.103, Texas Water Code Annotated, Chapter 5 (Vernon 1990), which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and pursuant to the Texas Solid Waste Disposal Act, §361.017 and §361.024, Texas Health and Safety Code Annotated, Chapter 361 (Vernon Supplemental 1990), which provides the Texas Water Commission with the authority to promulgate rules necessary to accomplishing the purposes of the Act which includes controlling all aspects of the management of industrial solid and municipal hazardous wastes. The adopted amendment is in response to EPA's adoption of the HSWA mandated TCLP rules set forth in the March 29, 1990, issue of the *Federal Register* (55 FedReg 11796).

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 25, 1991.

TRD-9107522 Jim Haley
Director, Legal Division
Texas Water Commission

Effective date: July 16, 1991

Proposal publication date: April 23, 1991

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

◆ ◆ ◆

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 3. Income Assistance Services

Subchapter I. Income

• 40 TAC §3.902

The Texas Department of Human Services (DHS) adopts an amendment to §3. 902, concerning treatment of educational assistance in the Food Stamp Program.

The justification for the amendments is to comply with the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990.

The amendment will function by excluding as income in the Food Stamp program educational assistance payments received under the Carl D. Perkins Act.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public assistance and nutritional assistance programs. The amendment is adopted under federal requirements to be effective July 1, 1991.

§3.902. Types.

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

(c) Food stamps. DHS counts as income the types of income stipulated in 7 Code of Federal Regulations, §273.9(b), except as specified in subsection (d) of this section.

(d) Food stamps. DHS excludes as income the types of income stipulated in 7 Code of Federal Regulations, §273.9(c) except for child support payments and educational assistance funded through the Carl D. Perkins Vocational Education Act. DHS does not exclude any portion of child support payments. DHS excludes educational assistance made available for attendance costs as required by Public Law 101-392, the Carl D. Perkins Vocational and Applied Technology Act Amendments of 1990.

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

Issued in Austin, Texas, on June 26, 1991.

TRD-9107594 Nancy Murphy
Agency liaison, Policy and Document Support
Texas Department of Human Services

Effective date: July 1, 1991

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

◆ ◆ ◆

Chapter 48. Community Care for Aged and Disabled

Home and Community-based Services

• 40 TAC §48.2203 §48.2205

The Texas Department of Human Services (DHS) adopts amendments to §48. 2203 and §48.2205 without changes to the proposed text as published in the May 17, 1991, issue of the *Texas Register* (16 TexReg 2723).

The justification for the amendments is to require providers to submit bills to DHS for services within 95 days and to correct rejected claims within 180 days.

The amendments will function by allowing more timely reimbursement of providers and monitoring of provider claims.

The department received no comments regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department 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, 1991.

TRD-9107587

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

Effective date: August 1, 1991

Proposal publication date: May 17, 1991

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

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.*

Texas Department of Aviation

Thursday, July 11, 1991, 9:30 a.m. (time change 1:30 p.m. to 9:30 a.m.) The Texas Board of Aviation of the Texas Department of Aviation will meet at the Anson Jones Building, 410 East Fifth Street, Room 221, Austin. According to the revised agenda summary, the board will review and discuss facilities development program: proposed reprogramming of Georgetown from Federal FY 1991 to Federal FY 92 or 93; consideration of proposed projects to be moved from Federal FY 92 to Federal FY 91 for Cotulla, Grand Prairie, Henderson, New Braunfels, Rockport and Seymour; consideration of proposed projects to be moved from federal FY 92 to Federal FY 93 for Atlanta, Fredericksburg, Greenville and Weslaco; hear director's report: discussion on recommendation for agency consolidation; and budget status report.

Contact: Lydia Scarborough, P.O. Box 12607, Austin, Texas 78711, (512) 476-9262.

Filed: June 26, 1991, 1:34 p.m.

TRD-9107607

Thursday, July 11, 1991, 11:30 a.m. The Texas Board of Aviation of the Texas Department of Aviation will meet at Louie B's Restaurant, 301 East Sixth Street, Austin. According to the agenda summary, this function is primarily a social event and no formal action is planned, the board members may discuss items concerning the board meeting.

Contact: Lydia Scarborough, P.O. Box 12607, Austin, Texas 78711, (512) 476-9262.

Filed: June 26, 1991, 1:34 p.m.

TRD-9107608

♦ ♦ ♦

Texas Education Agency

Monday, July 8, 1991, 8 a.m. The State Textbook Secondary Science 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 hold a joint hearing before the Commissioner of Education and the 1991 State Textbook Secondary Science Committee. Testimony will be limited to residents of Texas and representatives of publishing companies who submitted written requests to appear on or before the June 14, deadline. Members of the State Textbook Secondary Science Committee remain under no-contact rules until the close of balloting in August, 1991.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: June 26, 1991, 7:54 a.m.

TRD-9107557

Monday, July 8, 1991, 10:30 a.m. The State Textbook Mathematics 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 hold a joint hearing before the Commissioner of Education and the 1991 State Textbook Mathematics Committee. Testimony will be limited to residents of Texas and representatives of publishing companies who submitted written requests to appear on or before the June 14, deadline. Members of the State Textbook Mathematics Committee remain under no-contact rules until the close of balloting in August 1991.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: June 26, 1991, 7:54 a.m.

TRD-9107558

Tuesday, July 9, 1991, 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 hold a joint hearing before the Commissioner of Education and the 1991 State Textbook Social Studies Committee. Testimony will be limited to residents of Texas and representatives of publishing companies who submitted written requests to appear on or before the June 14, deadline. Members of the State Textbook Social Studies Committee remain under no-contact rules until the close of balloting in August 1991.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: June 26, 1991, 7:54 a.m.

TRD-9107559

Tuesday, July 9, 1991, 10 a.m. The Advisory Committee for Budgeting, Accounting and Auditing of the Texas Education Agency will meet at the Texas Association of School Business Officials , 1701 Directors Boulevard, Austin. According to the complete agenda, the committee will review, discuss, and adopt an amendment to Change 25 of Bulletin 679, Financial Accounting Manual, to change accounting procedures related to County Education Districts.

Contact: Thomas D. Canby, Jr., 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9095.

Filed: June 26, 1991, 7:54 a.m.

TRD-9107560

Thursday, July 11, 1991, 9 a.m. The School Facilities Advisory Committee will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 6-101, Austin. According to the complete agenda, the committee will approve May 30, 1991 minutes; give progress report for the State Board of Education; and preliminary report on standards for instructional space.

Contact: Joe Wisnoski, 1701 North Congress Avenue, Room 3-101, Austin, Texas 78701, (512) 463-9704.

Filed: June 26, 1991, 7:54 a.m.

TRD-9107556

♦ ♦ ♦

Texas Council on Vocational Education

Thursday-Friday, July 18-19, 1991, 8:45 a.m. and 8:30 a.m. respectively. The Texas Council on Vocational Education will meet at the Radisson Marina Hotel, Shoreline Room, 300 North Shoreline Boulevard, Corpus Christi. According to the agenda summary, the council will be greeted by Mary Helen Berlanga, a member of the State Board of Education, who will administer the oath of office to new council members. The council will hear reports on the July 12-13 state board of education meeting, July 11-12 meeting of the Texas Higher Education Coordinating Board, and June 13-14 meeting of the State Apprenticeship and Training Advancement Committee; update on actions of the United States Congress and State Legislature; review federal and state responsibilities; develop a schedule of work for 1991-1992; elect council officers for 1991-1992; discuss current vocational education issues including the middle school curriculum; master and state plans for vocational education; and academic excellence indicators, as well as other business.

Contact: Will Reece, P.O. Box 1886, Austin, Texas 78767, or 1717 West Sixth Street, Suite 360, 78703, (512) 463-5490.

Filed: June 25, 1991, 10:43 a.m.

TRD-9107516

♦ ♦ ♦

Health and Human Services

Wednesday, July 3, 1991, 1:30 p.m. The Subcommittee on Health Services of the Health and Human Services will meet at the Henry B. Gonzales Convention Center, Fiesta Room A, San Antonio. According to the complete agenda, the subcommittee will study the emergency apprehension and detention process; the involuntary commitment process; procedures used by private mental health facilities for involuntary and voluntary commitments and related treatments and billings.

Contact: Dick Kreglo, 1009 Sam Houston Building, Austin, Texas 78701, (512) 463-0330.

Filed: June 25, 1991, 11:16 a.m.

TRD-9107521

♦ ♦ ♦

Texas Department of Human Services

Tuesday, July 9, 1991, 9:30 a.m. The Child Care Administrators and Facilities Advisory Committee of the Texas Department of Human Services will meet at 701 West 51st Street, Fourth Floor, West Tower, Conference Room 4W, Austin. According to the complete agenda, the committee will hear the director's report; legislative information; day care and child care placing agency standards revision; and adoption statistics.

Contact: Doug Sanders, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3253.

Filed: June 26, 1991, 3:59 p.m.

TRD-9107625

♦ ♦ ♦

Texas Department of Licensing and Regulation

Tuesday, July 9, 1991, 9 a.m. (rescheduled from June 17, 1991). The Business and Occupational Programs, Tow Trucks of the Texas Department of Licensing and Regulation will meet at 920 Colorado Street, E. O. Thompson Building, Eighth Floor Conference Room, 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 Respondent's license for Atilano Cereceres for violation of Statutes, Articles 6687-9b and 9100.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 475-2899.

Filed: June 26, 1991, 9:11 a.m.

TRD-9107590

Friday, July 12, 1991, 9 a.m. The Manufactured Housing Division of the Texas Department of Licensing and Regulation will meet at 920 Colorado Street, E. O. Thompson Building, Suite 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 Respondent's license for Larry Turner for violation of Statutes, Articles 5221f and 9100.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 475-2899.

Filed: June 26, 1991, 9;12 a.m.

TRD-9107591

Tuesday, July 30, 1991, 9 a.m. (rescheduled from April 22, 1991). The Business and Occupational Programs, Talent Agencies of the Texas Department of Licensing and Regulation will meet at 920 Colorado Street, E. O. Thompson Building, Room 1012, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the respondent's license for Kim Liebelt doing business as Take One Entertainment for violation of Statutes, Articles 5221a-9 and 9100.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 475-2899.

Filed: June 26, 1991, 9:12 a.m.

TRD-9107592

♦ ♦ ♦

Texas Lay Midwifery Board

Friday, July 12, 1991, 10 a.m. The Texas Lay Midwifery Board will meet at the Texas Department of Health, 1100 West 49th Street, Room G-107, Austin. According to the complete agenda, the board will introduce new members and new program secretary; consider and possibly act on interaction with Texas Board of Health; midwifery rules; identification/documentation forms; newborn screening paperwork; informed choice/disclosure form; implementation of legislation prior to December 1991; education and continuing education units; and consider other business not requiring board action.

Contact: Joceline Alexander, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700.

Filed: June 26, 1991, 1:59 p.m.

TRD-9107615

♦ ♦ ♦

Public Utility Commission of Texas

Monday, August 26, 1991, 9 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 10121-application of Bayou Cogeneration, Inc. and Houston Lighting and Power Company for certification of cogeneration agreement.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 25, 1991, 3:29 a.m.

TRD-9107539

Thursday, August 29, 1991, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 9985-inquiry of the general counsel into the reasonableness of the rates and services of Alltel Texas, Inc.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 25, 1991, 3:30 p.m.

TRD-9107540

♦ ♦ ♦

Texas State Soil and Water Conservation Board

Monday, July 8, 1991, 11 a.m. The Texas State Soil and Water Conservation Board will meet at 311 North Fifth Street, Conference Room, Temple. According to the complete agenda, the board will review and take appropriate action on district director appointments; and consider proposed changes in the soil and water conservation program.

Contact: Robert G. Buckley, P.O. Box 658, Temple, Texas 76503, (817) 773-2250, STS 820-1250.

Filed: June 27, 1991, 8:10 a.m.

TRD-9107629

♦ ♦ ♦

Texas State Technical Institute

Monday, July 1, 1991, 9 a.m. The Executive Committee of the Texas State Technical Institute met at the TSTI-System Building, via teleconference call, Waco. According to the complete agenda, the committee of the board of regents will meet by teleconference call and award a contract for TSTI-Harlingen. This contract is to renovate Building B for library use and modify the air conditioning duct system in both Buildings B and C. These funds were appropriated for the current biennium and the work had to be delayed to allow as short a time lag as possible between converting Building B to library use and having the Engineering Graphics Building available for displaced classes; and discuss TSTI-Waco Airport Master Plan.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Building 32-1, Waco, Texas 76705, (817) 799-3611.

Filed: June 27, 1991, 10:45 a.m.

TRD-9107638

♦ ♦ ♦

Texas Water Commission

Friday, July 5, 1991, 10 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 123, Austin. According to the agenda summary, the commission will consider the executive director's report on agency administration, policy, budget procedures, and personnel matters.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: June 26, 1991, 3:37 p.m.

TRD-9107623

Tuesday, July 9, 1991, 1:30 p.m. The Groundwater Protection Committee of the Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 1149, Austin. According to the agenda summary, the committee will discuss and take action on update on groundwater related legislation; joint groundwater monitoring and contamination report of the Agricultural Chemicals Subcommittee; consideration of the state management plan for agricultural chemicals in groundwater; and make announcements and information exchange for groundwater related activities.

Contact: Bruce Fink, 1700 North Congress Avenue, Austin, Texas 78711-3987, (512) 463-7898.

Filed: June 26, 1991, 9:51 a.m.

TRD-9107602

Thursday, July 11, 1991, 10 a.m. The Task Force 21: Waste Management Policy for the Future of the Texas Water Commission will meet at the John H. Reagan Building, 105 West 15th Street, Room 102, Austin. According to the complete agenda, the task force will continue discussion of Senate Bill 1099 implementation issues and waste management policy; make introductions; discuss key issues: 120-day permitting rules; permit process study; needs assessment; reduction rules; other issues/new initiatives; and adjourn.

Contact: Barbara Beaudry, 1700 North Congress Avenue, Austin, Texas 78724, (512) 463-7760.

Filed: June 26, 1991, 9:51 a.m.

TRD-9107601

Thursday, July 18, 1991, 10 a.m. The Texas Water Commission will meet at the William B. Travis State Office Building, 1701 North Congress Avenue, Room 5-103, Austin. According to the agenda summary, the commission will hold a hearing on an application submitted by Tres Vidas, Inc., doing business as TV Water Corporation for a Water Certificate of Convenience and Necessity (CCN) and to propose decertification of a portion of Files Valley Water Supply Corporation's CCN Number 10902. The CCN applied by for Tres Vidas, Inc, doing business as TV Water Corporation would authorize the provision of water utility service to an area approximately 7.5 miles northeast of downtown Hillsboro, in Hill County. Docket Number 9041-C.

Contact: Deborah Parker, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: June 26, 1991, 3:37 p.m.

TRD-9107624

Thursday, August 8, 1991, 10 a.m. The Task Force 21: Waste Management Policy for the Future of the Texas Water Commission will meet at the John H. Reagan Building, 105 West 15th Street, Room 102, Austin. According to the complete agenda, the task force will continue discuss of Senate Bill 1099 implementation issues and waste management policy; make introductions; discuss key issues: 120-day permitting rules; permit process study; needs assessment; reduction rules; other issues/new initiatives; and adjourn.

Contact: Barbara Beaudry, 1700 North Congress Avenue, Austin, Texas 78724, (512) 463-7760.

Filed: June 26, 1991, 9:51 a.m.

TRD-9107600

Friday, September 27, 1991, 10 a.m. The Task Force 21: Waste Management Policy for the Future of the Texas Water Commission will meet at the John H. Reagan Building, 105 West 15th Street, Room 102, Austin. According to the complete agenda, the task force will continue discussion of Senate Bill 1099 implementation issues and waste management policy; make introductions; discuss key issues: 120-day permitting rules; permit process study; needs assessment; reduction rules; other issues/new initiatives; and adjourn.

Contact: Barbara Beaudry, 1700 North Congress Avenue, Austin, Texas 78724, (512) 463-7760.

Filed: June 26, 1991, 9:51 a.m.

TRD-9107599

♦ ♦ ♦

Texas Youth Commission

Wednesday, July 3, 1991, 9:30 a.m. The Board of the Texas Youth Commission will meet at 4900 North Lamar Boulevard, Room 7230, Austin. According to the agenda summary, the board will approve FY 1991 fund transfers; review of legislation enacted by the 72nd Legislature, regular session; annual review of strategic plan objectives; statistical summary/report on student population; report on alleged mistreatment investigations; and meet in executive session.

Contact: Ron Jackson, P.O. Box 4260, Austin, Texas 78765, (512) 483-5000.

Filed: June 25, 1991, 3:24 p.m.

TRD-9107538

♦ ♦ ♦

Regional Meetings

Meetings Filed June 25, 1991

The Appraisal Review Board met at 100 North Gray Street, Junior High Cafeteria, Stanton, July 1, 1991, at 9 a.m. Information may be obtained from Elaine Stanley, P.O. Box 1349, Stanton, Texas 79782, (915) 756-2823. TRD-9107551.

The Appraisal Review Board will meet at the Appraisal Review Office, 308 North St. Peter Street, Stanton, July 2, 1991, at 9 a.m. Information may be obtained from Elaine Stanley, P.O. Box 1349, Stanton, Texas 79782, (915) 756-2823. TRD-9107552.

The Central Appraisal District of Taylor County Appraisal Review Board met at 1534 South Treadaway Street, Abilene, July 1, 1991, at 1:30 p.m. Information may be

obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381. TRD-9107553.

The Central Appraisal District of Taylor County Appraisal Review Board will meet at 1534 South Treadaway Street, Abilene, July 3, 1991, at 1:30 p. m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381. TRD-9107554.

The Central Appraisal District of Taylor County Appraisal Review Board will meet at 1534 South Treadaway Street, Abilene, July 8-12, 1991, at 1: 30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381. TRD-9107555.

The Dallas Area Rapid Transit Corporate Location Ad Hoc Committee met at the DART Office, 601 Pacific Avenue, Executive Conference Room, Dallas, June 28, 1991, at 10 a.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9107518.

The Edwards County Appraisal District Appraisal Review Board will meet at the New County Annex Building, Rocksprings, July 3, 1991, at 9 a.m. Information may be obtained from Natalie Goggans, P.O. Box 378, Rocksprings, Texas 78880, (512) 683-4189. TRD-9107519.

The Edwards County Appraisal District Appraisal Review Board will meet at the New County Annex Building, Rocksprings, July 16, 1991, at 9 a.m. Information may be obtained from Natalie Goggans, P.O. Box 378, Rocksprings, Texas 78880, (512) 683-4189. TRD-9107517.

The Hood County Appraisal District Appraisal Review Board met at 1902 West Pearl Street, Granbury, July 1, 1991, at 8:30 a.m. Information may be obtained from Harold Chesnut, P.O. Box 819, Granbury, Texas 76048-0819, (817) 573-2471. TRD-9107520.

The Kendall Appraisal District Appraisal Review Board will meet at 207 East San Antonio Street, and 123 West Johns Road, Boerne, July 9-12, 1991, at 9 a.m. Information may be obtained from Alton Pfeiffer, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012. TRD-9107586.

♦ ♦ ♦

Meetings Filed June 26, 1991

The Austin-Travis County Mental Health and Mental Retardation Center Board of Trustees held an emergency meeting at the Texas Rehabilitation Commission Central Office, 4900 North Lamar Boulevard, Public Hearing Room, First Floor, Austin, June 26, 1991, at 6:30 p.m. The emergency status was necessary due to difficulty encountered in securing meeting room. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764-3548, (512) 440-4031. TRD-9107626.

The Carson County Appraisal District Appraisal Review Board will meet at 102 Main Street, Panhandle, July 2, 1991, at 8:30 a.m. Information may be obtained from Dianne Lavake, P.O. Box 970, Panhandle, Texas 79068-0970, (806) 537-3569. TRD-9107627.

The Cass County Appraisal District Appraisal Review Board met at the Cass County Appraisal District Office, 502 North Main Street, Linden, July 1, 1991, at 9 a.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (903) 756-7545. TRD-9107613.

The Central Texas Economic Development District Executive Committee will meet at the Food Service Technical Building, TSTI Campus, Waco, July 11, 1991, at 2 p.m. Information may be obtained from Bruce Gaines, P.O. Box 154118, Waco, Texas 76715, (817) 799-0258. TRD-9107614.

The Dallas Central Appraisal District Board of Directors met at 2949 North Stemmons Freeway, Dallas, July 1, 1991, at 7:30 a.m. Information may be obtained from Rick L. Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9107612.

The Texas Municipal League Intergovernmental Risk Pool Board of Trustees Executive Committee met at the Metropolitan Club, Austin, July 1, 1991, at 11 a.m. Information may be obtained from Jackson B. Floyd, 211 East Seventh Street, #300, Austin, Texas 78701, (512) 320-1325. TRD-9107593.

The West Central Texas Council of Governments Criminal Justice Advisory Committee will meet at 1125 East North 10th Street, Abilene, July 9, 1991, at 10 a.m. Information may be obtained from Les Wilkerson, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544. TRD-9107622.

♦ ♦ ♦

Meetings Filed June 27, 1991

The Henderson County Appraisal District Appraisal Review Board will meet at 1751 Enterprise Street, Athens, July 3, 1991, at 9 a.m. Information may be obtained from Helen Marchbanks, 1751 Enterprise Street, Athens, Texas 75751, (903) 675-9296. TRD-9107633.

The North Plains Groundwater Conservation District Board of Directors will meet at the District Office, 603 East First Street, Dumas, July 8, 1991, at 10 a.m. Information may be obtained from Richard S. Bowers, P.O. Box 795, Dumas, Texas 79029, (806) 935-6401. TRD-9107637

The Scurry County Appraisal District Board of Directors will meet at the Scurry County Appraisal District, 2612 College Avenue, Snyder, July 2, 1991, at 8 a.m. Information may be obtained from L. R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549. TRD-9107632.

♦ ♦ ♦

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 Hearing

Notice is hereby given that pursuant to the requirements of the Texas Clean Air Act, §382.017(a); 40 Code of Federal Regulations 51.102 of the United States Environmental Protection Agency regulations concerning State Implementation Plans; the Administrative Procedure and Texas Register Act, §5, Texas Civil Statutes, Article 6252-13a; and §103.11(4) of the Texas Air Control Board (TACB) procedural rules, the TACB will conduct a public hearing to receive testimony concerning revisions to its rules.

The TACB proposes amendments to §115.010, concerning definitions; §115. 126 and §115.128, concerning vent gas control; §115.136 and §115.139, concerning water separation; §115.224 and §115.229, concerning Stage I control; §§115.422-115.429, concerning surface coating processes; and §§115. 435, 115.436, and 115.439, concerning graphic arts. The amendments are proposed in order to correct certain regulation deficiencies and inconsistencies to ensure compliance with applicable requirements for control and collection systems of volatile organic compounds.

A public hearing will be held on July 22, 1991, at 2 p.m. in the auditorium of the TACB located at 12124 Park 35 Circle, Austin.

The hearing is structured for the receipt of oral or written comments. Interrogation or cross-examination is not permitted; however, a TACB staff member will be available to answer questions informally.

Written comments not presented at the hearing may be submitted to the TACB central office in Austin prior to and including July 23, 1991. Material received 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 located at 12124 Park 35 Circle, Austin, Texas 78753, and at all TACB regional offices. For further information, call Dwayne Meckler, (512) 908-1000.

Issued in Austin, Texas, on June 19, 1991.

TRD-9107578 Lane Hartsock
Director, Planning and Development Program
Texas Air Control Board

Filed: June 26, 1991

For further information, please call: (512) 908-1770

♦ ♦ ♦

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, §5, Texas Civil Statutes, Article 6252-13a; and §103.11(4) of the Procedural Rules of the Texas Air Control Board (TACB), the TACB will conduct a public hearing to receive testimony concerning revisions to its rules.

The TACB proposes two substantive amendments to §116.11, concerning permit fees. The first adds separate and distinct permit fees for all facilities which my comply with the prevention of significant deterioration of air quality (PSD) regulations promulgated by the Environmental Protection Agency. The second increases in the current permit fees for facilities not required to comply with the PSD regulations.

A public hearing will be held on July 30, 1991, at 2 p.m. in the Texas Air Control Board Auditorium located at 12124 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments. Interrogation or cross-examination is not permitted, however, a TACB staff member will be available to answer questions informally. Written comments not presented at the hearing may be submitted to the TACB central office prior to and including July 31, 1991. Comments received 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 located at 12124 Park 35 Circle, Austin, Texas 78753, and at all TACB regional offices. For further information, call Barry Irwin at (512) 908-1461.

Issued in Austin, Texas, on June 25, 1991.

TRD-9107549 Lane Hartsock
Director, Planning and Development Program
Texas Air Control Board

Filed: June 25, 1991

For further information, please call: (512) 908-1770

♦ ♦ ♦

Office of the State Auditor

Consultant Contract Award

Contractor. The State Auditor's Office (SAO) announces that the firm of Sun Shore Services, Inc. has been awarded a contract, under the provisions of Texas Civil Statute, Article 6252-11c, to provide consulting services through its associate Lee M. Ekstrom which relate to the management of audit projects. The business address of Sun Shore Services, Inc. is 8192 College Parkway, Fort Myers, Florida 33919.

Publication Date. The consultant proposal request was published in the May 14, 1991, issue of the *Texas Register* (16 TexReg 2671).

Description of Services. Services shall include custom-designing and presenting programs addressing principles of project management relating to audits conducted by the SAO; providing training and technical assistance to the SAO in areas of planning, scheduling, and evaluating audit projects; custom-designing a project management handbook for the SAO; and consulting with SAO staff and management regarding the application of principles of project management to audits.

Contract Amount. Services will be provided for $7,000 per workshop, inclusive of all developmental and travel

costs, with four workshops during the period of performance, for a maximum obligation of $28,000; however, the SAO expressly reserves the right to negotiate and execute amendments to the contract to obligate additional funds as the SAO determines necessary.

Contract Period. The period of performance is June 22, 1991-August 31, 1992; however, the SAO expressly reserves the right to negotiate and execute amendments to the contract to extend the period of performance as the SAO determines necessary.

Due Date for Report. The services to be performed under the contract do not involve the preparation of a consultant report.

Issued in Austin, Texas, on June 25, 1991.

TRD-9107524 Lawrence F. Alwin, CPA
State Auditor
Office of the State Auditor

Filed: June 25, 1991

For further information, please call: (512) 479-4900

♦ ♦ ♦

Texas Department of Commerce-Texas Literacy Council

Requests for Proposals

The Texas Department of Commerce, through the Texas Literacy Council, is soliciting proposals for programs to be funded under the Job Training Partnership Act (JTPA) 8.0% (80%) education coordination policy. A total of $900, 000 is available for local literacy efforts through the JTPA service delivery areas (SDAs) for the education of persons who qualify for JTPA funds and who function at or below a sixth grade reading level.

The goal of the Texas Literacy Council is to fund the development of community partnerships to serve JTPA eligible persons who are most educationally disadvantaged. The partnerships must provide the basic literacy skills required to enter employment training.

The proposed project should incorporate the following objectives to meet the Texas Literacy Council's goal proposal requirements.

The successful bidders must serve out-of-school youth and adults who meet JTPA eligibility requirements and who are most educationally disadvantaged by teaching them basic literacy skills, including reading, writing, and math. Reading should emphasize comprehension, writing should emphasize a process approach, and math should emphasize problem solving.

The successful bidders must design a curriculum reflective the specific needs of a targeted group which coordinates the local programs in a joint program to define desired educational outcomes to facilitate attendance. The program must not duplicate existing literacy efforts.

The successful bidders must form a partnership among literacy efforts at the local level and coordinate the services of each program to create a comprehensive literacy effort which can address the needs of persons at various levels of literacy.

This initiative is targeted toward out-of-school youth and adults qualifying for JTPA funds who function at or below a sixth grade reading level. The SDAs are encouraged to further target certain populations in need (e.g., aid to families with dependent children, displaced homemakers, hearing impaired-deaf, technologically displaced workers, limited English proficiency, homeless, and learning disabled).

A particular population in need is the parents of young children. The generational effects of illiteracy are well documented. Parental "literacy behaviors" influence children's school achievement, school attendance, motivation, self-concept, and behavior. Parents who have not mastered the basic literacy skills may not model appropriate literacy behaviors or pass it on to their children the attitudes and abilities involved in literacy.

There is $900,000 available to allocate to an estimated 12 programs. The maximum request amount per program is $75,000. The funding period is October 1, 1991-June 30, 1992.

The Texas Literacy Council reserves the right of final authority on awarding of grants and is under no obligation to fund any application. The department may also negotiate portions of a proposal. Any bid not meeting the minimal requirements of the RFP specifications will be deemed non-responsive and rejected. The proposal must meet the following requirements in order to be considered: the program must target the most educationally disadvantaged; only SDAs may apply for funding; the SDAs may subcontract with individual literacy efforts as long as the subcontractor has the capacity to safeguard federal funds, administer the training program to achieve planned objectives, and serve persons who meet JTPA requirements; the SDAs are responsible for ensuring that JTPA eligibility requirements are met and must provide intake services for the programs; the SDAs must form a partnership to coordinate with a local non-profit literacy council and one or more of the following: libraries, adult basic education providers, community based organizations, community colleges and technical institutes and universities; the proposal must describe the partnership and the specific roles each partner will play. The partnership agreement must be signed by a representative of each participating partner and must delineate the financial responsibilities borne by each participating group; the proposal must include a plan for referral services which coordinates the program with local referral services; the proposal must specify the number of JTPA eligible participants to be served; the proposal must: adhere to the goal in the RFP; have written measurable objectives; identify standards by which these objectives may be measured; design a series of activities to accomplish the objectives; delineate time lines for achievement of activities; and provide a final report that describes the extent to which all objectives have been met; the proposal must comply with program year 1991 JTPA, 8.0% (80%) education coordination state and federal cost category limitations policy; the program must provide accessibility to physically handicapped persons; the proposal must describe how literacy training will be integrated with other training programs; the deadline for receipt of proposals is August 1, 1991, 4:30 p.m.

The Texas Literacy Council retains the right to accept or reject any or all proposals. The Texas Literacy Council is under no legal requirement to execute a contract on the basis of its making this request for proposals, and intends the material provided herein only as a means of identifying and considering various contractor alternatives and the general cost of services desired.

This request for proposals does not commit the Texas Literacy Council to pay for any costs incurred prior to execution of a contract or prior to funding availability from the United States Department of Labor for this procurement.

The Texas Literacy Council specifically reserves the right to vary the provisions set forth herein at any time prior to

execution of a contract where the Texas Literacy Council deems such variance to be in the best interest of the State of Texas, and to act otherwise as it deems in its sole discretion.

Interested bidders may obtain proposal instructions from the Texas Department of Commerce, Texas Literacy Council, at the following address: Texas Department of Commerce, Texas Literacy Council, Work Force Development Division, First City Centre, 816 Congress Avenue, Suite 730, Austin, Texas 78701, Attn: Pat Hargrove, Program Administrator.

Issued in Austin, Texas, on June 24, 1991.

TRD-9107585 Michael Regan
Chief Administrative Officer
Texas Department of Commerce

Filed: June 26, 1991

For further information, please call: (512) 472-5059

Texas Department of Health

Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing " Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Fort Worth	Texas Wesleyan University	L04458	Fort Worth	0	06/06/91
Kingwood	Kingwood Plaza Hospital	L04482	Kingwood	0	06/12/91
Throughout Texas	Wallace, Winkler & Rice, Inc.	L04496	Waco	0	06/05/91
Throughout Texas	APAC - Texas, Inc.	L04503	Dallas	0	06/14/91

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Abilene	Humana Hospital - Abilene	L02434	Abilene	27	06/03/91
Abilene	Cardiology Consultants, Inc.	L04315	Abilene	2	06/03/91
Alvin	Oxy Petrochemicals, Inc.	L03363	Alvin	9	06/11/91
Amarillo	High Plains Baptist Hospital	L01259	Amarillo	39	06/13/91
Austin	Southwest Engineering Associates	L04427	Austin	1	06/03/91
Austin	AMBION, Inc.	L04307	Austin	2	06/12/91
Beaumont	Beaumont Medical Surgical Hospital	L02102	Beaumont	30	06/13/91
Carrollton	Trinity Medical Center	L03765	Carrollton	9	06/10/91
Channelview	ARCO Chemical Company	L04439	Channelview	2	06/14/91
Corpus Christi	Hoechst Celanese Corporation	L00409	Corpus Christi	46	06/06/91
Dallas	R. H. D. Memorial Medical Center	L02314	Dallas	24	06/13/91
Dallas	Dallas Family Hospital	L00202	Dallas	29	06/13/91
Dallas	Mallinckrodt, Inc.	L03580	Dallas	11	06/12/91
Decatur	POCO Graphite, Inc.	L03431	Decatur	7	06/14/91
Denison	Ag Processing Inc.	L03553	Denison	6	06/04/91
Denton	Denton Dialysis, Inc.	L03793	Denton	3	05/30/91
El Paso	Syncor International Corporation	L01999	El Paso	73	06/11/91
Fort Worth	MASI Healthcare Services	L03212	Fort Worth	16	06/14/91
Freeport	BASF Corporation	L01021	Freeport	39	06/10/91
Friendswood	Medical Health Physics, Inc.	L04092	Friendswood	5	06/13/91
Henderson	Henderson Memorial Hospital	L03466	Henderson	9	06/03/91
Houston	Lyondell Petrochemical Company	L00187	Houston	37	06/03/91
Houston	Syncor International Corporation	L01911	Houston	79	06/11/91

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Houston	ISK Biotech Corporation	L03521	Houston	9	06/10/91
Houston	Exploration Technologies, Inc.	L03981	Houston	2	06/14/91
Houston	University of Texas M.D. Anderson Cancer Center	L00466	Houston	50	06/10/91
Houston	Methodist Hospital	L00972	Houston	22	06/11/91
Humble	Northeast Medical Center Hospital	L02412	Humble	29	06/10/91
Jourdanton	San Miguel Electric Cooperative, Inc.	L02347	Jourdanton	17	06/14/91
La Porte	Rohm and Haas Bayport Inc.	L04368	La Porte	1	06/03/91
La Porte	B.F. Goodrich Company	L02469	La Porte	10	06/14/91

Lewisville	Lewisville Memorial Hospital	L02739	Lewisville	13	06/13/91
Longview	Good Shepherd Medical Center	L02411	Longview	33	06/03/91
Lubbock	Methodist Hospital	L00483	Lubbock	65	06/13/91
Lufkin	Memorial Medical Center of East Texas	L00356	Lufkin	19	06/11/91
Midland	Midland Inspection and Engineering Incorporated	L03724	Midland	27	06/10/91
Mission	Mission Hospital	L02802	Mission	18	06/06/91
Pasadena	Pasadena Mammography Services	L04346	Pasadena	3	06/06/91
Port Arthur	Star Enterprise - Port Arthur Plant	L00067	Port Arthur	25	06/03/91
San Antonio	RECO International	L03483	San Antonio	6	06/03/91
San Antonio	Humana Hospital San Antonio	L02266	San Antonio	30	06/12/91
San Antonio	Syncor International Corp.	L02033	San Antonio	51	06/12/91
San Antonio	J. L. Mims, Jr., M.D.	L01250	San Antonio	13	06/10/91
San Antonio	Trinity University	L01668	San Antonio	17	06/12/91
San Antonio	Baptist Memorial Hospital System	L00455	San Antonio	52	06/13/91
San Marcos	Southwest Texas State University	L03321	San Marcos	5	05/30/91
Seadrift	Union Carbide Corporation	L03105	Port Lavaca	4	06/03/91
Throughout Texas	CBI NA-CON, Inc.	L01902	Houston	23	05/31/91
Throughout Texas	Eagle X-Ray	L03246	Mont Belvieu	31	05/31/91
Throughout Texas	AnAid Inc.	L03171	Dickinson	18	05/31/91
Throughout Texas	H & G Inspection Company Inc.	L02181	Houston	55	06/06/91
Throughout Texas	Texas Industrial X-Ray Inc.	L01851	Pasadena	48	06/06/91
Throughout Texas	Guardian NDT Services Inc.	L04099	Corpus Christi	12	06/06/91
Throughout Texas	Brazos Valley Inspection Services, Inc.	L02859	Bryan	27	06/07/91
Throughout Texas	Petroleum Industry Inspectors	L04081	Houston	14	06/07/91
Throughout Texas	Midwest Inspection Service	L03120	Perryton	31	06/07/91
Throughout Texas	BIX Testing Laboratories	L02143	Baytown	43	06/07/91
Throughout Texas	Ebasco Services Incorporated	L02662	Houston	25	06/10/91
Throughout Texas	Baker, Shiflett and Associates	L02906	Fort Worth	12	06/10/91
Throughout Texas	Texas Instruments, Inc.	L00946	Dallas	58	06/10/91
Throughout Texas	T. L. James & Company, Inc.	L04162	Houston	3	06/10/91
Throughout Texas	Computalog Wireline Services, Inc.	L04286	Houston	10	06/07/91
Throughout Texas	Halliburton Logging Services, Inc.	L00442	Fort Worth	70	06/12/91
Throughout Texas	Texas Nuclear Products	L03524	Round Rock	23	06/12/91
Throughout Texas	Aviles Engineering Corporation	L03016	Houston	5	06/13/91
Throughout Texas	Texas Utilities Mining Company	L02074	Fairfield	10	06/14/91
Throughout Texas	Dick Heine, Inc.	L04235	Tyler	6	06/14/91
Throughout Texas	BJ Services Company, U.S.A.	L02684	Houston	24	06/17/91
Wichita Falls	City of Wichita Falls	L03217	Wichita Falls	6	06/12/91
Winnie	Medical Center of Winnie	L03537	Winnie	6	05/30/91

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Dallas	The U.T. Southwestern Medical Center at Dallas	L00384	Dallas	53	06/11/91
El Paso	Vista Hills Medical Center	L02551	El Paso	16	06/12/91
Fort Worth	Radiology Associates	L03953	Fort Worth	9	05/30/91
Galena Park	United States Gypsum Company	L03896	Galena Park	3	06/14/91
Groves	Doctors Hospital	L02091	Groves	18	06/14/91
Houston	Memorial City Medical Center	L01168	Houston	32	06/05/91
Houston	Rawle Andrews, M.D., Clinic Assoc.	L03818	Houston	2	06/06/91
Lake Jackson	Brzosport Memorial Hospital	L03027	Lake Jackson	8	06/10/91
Orange	E.I. DuPont de Nemours & Company	L00005	Orange	57	06/07/91
Quanah	Quanah Medical Center	L03638	Quanah	6	06/11/91
San Antonio	City of San Antonio	L03762	San Antonio	4	06/07/91
Throughout Texas	DJ Inspection Services, Inc.	L02067	Houston	22	06/03/91
Wichita Falls	Wichita General Hospital	L00350	Wichita Falls	41	06/11/91

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
La Porte	City of La Porte	L03530	La Porte	5	06/13/91
Throughout Texas	LRC Logging and Perforating	L03174	Flint	7	06/13/91
Throughout Texas	Del Rio Environmental Services	L04300	El Paso	3	06/14/91

AMENDMENTS TO EXISTING LICENSES DENIED:

Location	Name	License#	City	Amend-ment #	Date of Action
Throughout Texas	Dick Heine, Inc.	L04235	Tyler	0	06/14/91

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with **Texas Regulations for Control of Radiation** in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicantes satisfy any applicable special requirements in the **Texas Regulations for Control of Radiation.**

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or person affected may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas, 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, 1212 East Anderson Lane, Austin, from 8 a.m. to 5 p.m. Monday-Friday (except holidays).

Issued in Austin, Texas, on June 20, 1991.

TRD-9107485 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: June 24, 1991

For further information, please call: (512) 458-7236

♦ ♦ ♦

Texas Department of Human Services
Public Notice

The Texas Department of Human Services (DHS) has published a report outlining its proposed intended use of federal block grant funds during fiscal year 1992 for Title XX social services programs. To obtain free copies of the report send written requests to Nancy Murphy, Section Leader, 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 1, 1991. Please mail comments to Nancy Murphy.

Issued in Austin, Texas, on June 26, 1991.

TRD-9107589 Nancy Murphy
Agency liaison, Policy and Document Support
Texas Department of Human Services

Filed: June 26, 1991

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

♦ ♦ ♦

Public Notice Open Solicitation

Pursuant to Title 2, Chapters 22 and 32 of the Human Resources Code and 40 TAC §19.2004, in the September 11, 1990, issue of the *Texas Register* (15 TexReg. 5315), the Texas Department of Human Services (TDHS) is announcing the reopening of the open solicitation period for Sherman County, County Number 211, identified in the May 24, 1991, issue of the *Texas Register* (16 TexReg 2922). Potential contractors desiring to construct a 90-bed nursing facility in the above referenced area must submit a written reply (as described in 40 TAC §19.2004) to TDHS, Gary L. Allen, Institutional Programs Section, Long Term Care Department, Mail Code W- 519, P.O. Box 149030, Austin, Texas 78714-9030. Upon receipt of a reply from a potential contractor, TDHS will place a notice in the *Texas Register* to announce the closing date of the reopened solicitation period.

Issued in Austin, Texas, on June 26, 1991.

TRD-9107588 Nancy Murphy
Agency liaison, Policy and Document Support
Texas Department of Human Services

Filed: June 26, 1991

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

♦ ♦ ♦

State Board of Insurance

Company Licensing

The following applications have been filed with the State Board of Insurance and are under consideration.

1. Application for admission to do business in Texas for AMA Insurance Agency, Inc., a foreign third party administrator. The home office is in Chicago, Illinois.

2. Application for incorporation in Texas for AMS Group, Inc., a domestic third party administrator. The home office is in Corpus Christi, Texas.

3. Application for incorporation in Texas for Benefit Administrative Services, Inc., a domestic third party administrator. The home office is in Dallas, Texas.

4. Application for admission to do business in Texas for HMO National Network, Inc., a foreign third party administrator. The home office is in Wilmington, Delaware.

5. Application for admission to do business in Texas for United Medical Resources, Inc., a foreign third party administrator. The home office is in Cincinnati, Ohio.

Issued in Austin, Texas, on June 18, 1991.

TRD-9107495 Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: June 24, 1991

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

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for American Airlines, Fort Worth.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for Approval of PLEXAR-Custom Service for American Airlines Pursuant to Public Utility Commission Substantive Rule 23.27(k). Tariff Control Number 10424.

The Application. Southwestern Bell Telephone Company is requesting approval of PLEXAR-Custom Service for American Airlines. The geographic service market for this specific service is Fort Worth 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) 458-1256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on June 21, 1991.

TRD-9107501 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: June 24, 1991

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

♦ ♦ ♦

State Purchasing and General Services Commission

Request for Proposals

Notice is hereby given to all interested parties pursuant to Texas Civil Statutes, Article 601b, Article 14, and 1 TAC §125.17, the State Purchasing and General Services Commission is soliciting proposals for the provision of contract commercial airline fares for use by state employee traveling on official state business. The request for proposals containing all requirements necessary for an appropriate response may be obtained on or after July 1, 1991, from: State Purchasing and General Services Commission, Travel and Transportation Division, Central Services Building, Room 101, 1711 San Jacinto, Austin, Texas 78711, Attention: Michael N. Powers, Director, (512) 463-3557.

The closing date and time for receipt of proposals is 5 p.m., August 1, 1991. The commission will hold a preproposal conference on July 8, 1991, from 3 p.m. -5 p.m., in Room 1-100 of the William B. Travis State Office Building, 1701 North Congress Avenue, Austin, for the purpose of addressing questions posed by interested vendors. Attendance at this conference is not required for a proposal to be submitted.

Proposals submitted will be evaluated and an award will be made pursuant to the provisions of §125.17(b).

Issued in Austin, Texas, on June 25, 1991.

TRD-9107542 Judith Porras
General Counsel
State Purchasing and General Services Commission

Filed: June 25, 1991

For further information, please call: (512) 463-3446

♦ ♦ ♦

Texas Water Commission

Invitation for Bids

Sealed bids for the installation and maintenance of granular activated carbon (GAC) filter systems to remove petroleum product contamination from well water will be

received by the Texas Water Commission, Purchasing, P.O. Box 13087, 1700 North Congress Avenue, Room B-21, Austin, Texas 78711-3087, not later than 3 p.m. on July 19, 1991. The contract will be a unit price services contract, with 50 existing sites and the option to add additional sites as necessary.

Specifications and bid forms may be obtained by the following methods: by mail: Tara Drissell, Texas Water Commission, Petroleum Storage Tank Division, P. O. Box 13087, Austin, Texas 78711-3087; by fax: Tara Drissell, Texas Water Commission, Petroleum Storage Tank Division, (512) 371-6200.

For any questions concerning the bid process or bid package, call Tara Drissell at (512) 371-6200.

Issued in Austin, Texas, on June 26, 1991.

TRD-9107597 Jim Haley
Director, Legal Commission
Texas Water Commission

Filed: June 26, 1991

For further information, please call: (512) 371-6200

1991 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1991 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. 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 *Tuesday, January 1	Friday, December 21	Thursday, December 27
Friday, January 4	NO ISSUE PUBLISHED	
2 Tuesday, January 8	Wednesday, January 2	Thursday, January 3
3 Friday, January 11	Monday, January 7	Tuesday, January
4 Tuesday, January 15	Wednesday, January 9	Thursday, January 10
5 Friday, January 18	Monday, January 14	Tuesday, January 15
6 Tuesday, January 22	Wednesday, January 16	Thursday, January 17
Friday, January 25	1990 ANNUAL INDEX	
7 Tuesday, January 29	Wednesday, January 23	Thursday, January 24
8 Friday, February 1	Monday, January 28	Tuesday, January 29
9 Tuesday, February 5	Wednesday, January 30	Thursday, January 31
10 Friday, February 8	Monday, February 4	Tuesday, February 5
11 Tuesday, February 12	Wednesday, February 6	Thursday, February 7
12 Friday, February 15	Monday, February 11	Tuesday, February 12
13 Tuesday, February 19	Wednesday, February 13	Thursday, February 14
14 *Friday, February 22	Friday, February 15	Tuesday, February 19
15 Tuesday, February 26	Wednesday, February 20	Thursday, February 21
16 Friday, March 1	Monday, February 25	Tuesday, February 26
17 Tuesday, March 5	Wednesday, February 27	Thursday, February 28
18 Friday, March 8	Monday, March 4	Tuesday, March 5
19 Tuesday, March 12	Wednesday, March 6	Thursday, March 7
20 Friday, March 15	Monday, March 11	Tuesday, March 12
21 Tuesday, March 19	Wednesday, March 13	Thursday, March 14
22 Friday, March 22	Monday, March 18	Tuesday, March 19
23 Tuesday, March 26	Wednesday, March 20	Thursday, March 21
24 Friday, March 29	Monday, March 25	Tuesday, March 26
25 Tuesday, April 2	Wednesday, March 27	Thursday, March 28
26 Friday, April 5	Monday, April 1	Tuesday, April 2
27 Tuesday, April 9	Wednesday, April 3	Thursday, April 4
28 Friday, April 12	Monday, April 8	Tuesday, April 9
29 Tuesday, April 16	Wednesday, April 10	Thursday, April 11
*Friday, April 19	FIRST QUARTERLY INDEX	

30 Tuesday, April 23	Wednesday, April 17	Thursday, April 18
31 Friday, April 26	Monday, April 22	Tuesday, April 23
32 Tuesday, April 30	Wednesday, April 24	Thursday, April 25
33 Friday, May 3	Monday, April 29	Tuesday, April 30
34 Tuesday, May 7	Wednesday, May 1	Thursday, May 2
35 Friday, May 10	Monday, May 6	Tuesday, May 7
36 Tuesday, May 14	Wednesday, May 8	Thursday, May 9
37 Friday, May 17	Monday, May 13	Tuesday, May 14
38 Tuesday, May 21	Wednesday, May 15	Thursday, May 16
39 Friday, May 24	Monday, May 20	Tuesday, May 21
40 Tuesday, May 28	Wednesday, May 22	Thursday, May 23
41 *Friday, May 31	Friday, May 24	Tuesday, May 28
42 Tuesday, June 4	Wednesday, May 29	Thursday, May 30
43 Friday, June 7	Monday, June 3	Tuesday, June 4
44 Tuesday, June 11	Wednesday, June 5	Thursday, June 6
45 Friday, June 14	Monday, June 10	Tuesday, June 11
46 Tuesday, June 18	Wednesday, June 12	Thursday, June 13
47 Friday, June 21	Monday, June 17	Tuesday, June 18
48 Tuesday, June 25	Wednesday, June 19	Thursday, June 20
49 Friday, June 28	Monday, June 24	Tuesday, June 25
50 Tuesday, July 2	Wednesday, June 26	Thursday, June 27
51 Friday, July 5	Monday, July 1	Tuesday, July 2
Tuesday, July 9	NO ISSUE PUBLISHED	
52 Friday, July 12	Monday, July 8	Tuesday, July 9
53 Tuesday, July 16	Wednesday, July 10	Thursday, July 11
54 Friday, July 19	Monday, July 15	Tuesday, July 16
Tuesday, July 23	SECOND QUARTERLY INDEX	
55 Friday, July 26	Monday, July 22	Tuesday, July 23
56 Tuesday, July 30	Wednesday, July 24	Thursday, July 25
57 Friday, August 2	Monday, July 29	Tuesday, July 30
58 Tuesday, August 6	Wednesday, July 31	Thursday, August 1
59 Friday, August 9	Monday, August 5	Tuesday, August 6
60 Tuesday, August 13	Wednesday, August 7	Thursday, August 8
61 Friday, August 16	Monday, August 12	Tuesday, August 13
62 Tuesday, August 20	Wednesday, August 14	Thursday, August 15
63 Friday, August 23	Monday, August 19	Tuesday, August 20
64 Tuesday, August 27	Wednesday, August 21	Thursday, August 22
65 Friday, August 30	Monday, August 26	Tuesday, August 27
66 Tuesday, September 3	Wednesday, August 28	Thursday, August 29
Friday, September 6	NO ISSUE PUBLISHED	

67 Tuesday, September 10	Wednesday, September 4	Thursday, September 5
68 Friday, September 13	Monday, September 9	Tuesday, September 10
69 Tuesday, September 17	Wednesday, September 11	Thursday, September 12
70 Friday, September 20	Monday, September 16	Tuesday, September 17
71 Tuesday, September 24	Wednesday, September 18	Thursday, September 19
72 Friday, September 27	Monday, September 23	Tuesday, September 24
73 Tuesday, October 1	Wednesday, September 25	Thursday, September 26
74 Friday, October 4	Monday, September 30	Tuesday, October 1
75 Tuesday, October 8	Wednesday, October 2	Thursday, October 3
76 Friday, October 11	Monday, October 7	Tuesday, October 8
Tuesday, October 15	THIRD QUARTERLY INDEX	
77 Friday, October 18	Monday, October 14	Tuesday, October 15
78 Tuesday, October 22	Wednesday, October 16	Thursday, October 17
79 Friday, October 25	Monday, October 21	Tuesday, October 22
80 Tuesday, October 29	Wednesday, October 23	Thursday, October 24
81 Friday, November 1	Monday, October 28	Tuesday, October 29
82 Tuesday, November 5	Wednesday, October 30	Thursday, October 31
83 Friday, November 8	Monday, November 4	Tuesday, November 5
84 Tuesday, November 12	Wednesday, November 6	Thursday, November 7
85 *Friday, November 15	Friday, November 8	Tuesday, November 12
86 Tuesday, November 19	Wednesday, November 13	Thursday, November 14
87 Friday, November 22	Monday, November 18	Tuesday, November 19
88 Tuesday, November 26	Wednesday, November 20	Thursday, November 21
89 Friday, November 29	Monday, November 25	Tuesday, November 26
Tuesday, December 3	NO ISSUE PUBLISHED	
90 Friday, December 6	Monday, December 2	Tuesday, December 3
91 Tuesday, December 10	Wednesday, December 4	Thursday, December 5
92 Friday, December 13	Monday, December 9	Tuesday, December 10
93 Tuesday, December 17	Wednesday, December 11	Thursday, December 12
94 Friday, December 20	Monday, December 16	Tuesday, December 17
95 Tuesday, December 24	Wednesday, December 18	Thursday, December 19
96 *Friday, December 27	Friday, December 20	Monday, December 23
Tuesday, December 31	NO ISSUE PUBLISHED	
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

Please use this form to order a subscription to the *Texas Register*, a back issue, or to indicate a change of address. For more information about the *Texas Register* please call 512/463-5561. Please specify the exact dates and quantities of the issues requested. Each copy of a back issue is $4. You also may write to the Texas Register, P.O. Box 13824, Austin, TX 78711-3824.

❑ Change of Address

(please print)

_____
_____
_____
_____

❑ Back Issues Requested

(Please specify dates)

_____
_____
_____
_____

❑ **YES,** I want to learn about the latest changes in Texas regulations that may affect the daily operation of my business. Please begin my subscription to the *Texas Register* today.

Name _____
Organization _____
Address _____
City, ST Zip _____

I'm enclosing payment for ❑ 1 year/$90. ❑ 6 months/$70. ❑ 7 week trial/$14.
Bill me for ❑ 1 year/$90. ❑ 6 months/$70.

Make checks payable to the Secretary of State. Subscription fees will not be refunded. Do not use this card to renew subscriptions. Return to Texas Register, P.O. Box 13824 Austin, TX 78711-3824. For more information call 512/463-5561. ckc

_____
_____

Second Class Postage

PAID

Austin, Texas
and additional entry offices

_____
_____