

Texas Register

Volume 15, Number 9, February 2, 1990

Pages 511-628

In This Issue...

Office of the Governor

Appointments Made January 22, 1990

521-Interagency Council on Minority Health Affairs

521-Christopher Columbus Quincentenary Texas Jubilee Commission

521-Interagency Council on Intermediate Care Facilities for the Mentally Retarded

521-Texas Commission on the Arts

521-Interagency Council on Sex Offender Treatment

521-Commission on Human Rights

521-Texas Committee for the Humanities

Appointments Made January 23, 1990

521-Advisory Council on Community Affairs

521-Educational Excellence Committee

Appointments Made January 24, 1990

521-69th Judicial District Court, Dallam, Hartley, Moore, and Sherman Counties

Attorney General's Office

Request for Opinions

523-RQ-1912

523-RQ-1913

523-RQ-1914

523-RQ-1915

Emergency Sections

Texas Department of Agriculture

525-Fish Farm Regulations

State Board of Insurance

526-General Administration

Texas Water Commission

526-Underground and Aboveground Storage Tanks
Comptroller of Public Accounts

529-Central Administration

Proposed Sections

Texas Education Agency

531-Curriculum

531-Instructional Resources

532-Teacher Certification

533-Education Personnel Development

State Board of Insurance

535-Life, Accident, and Health Insurance for Annuities

Adopted Sections

Texas Antiquities Committee

537-Practice and Procedure

Polygraph Examiners Board

538-General Rules of Practice and Procedure

Texas Board of Professional Land
Surveying

539-Standards of Responsibility and Rules of Conduct

Texas Medical Disclosure Panel

539-Informed Consent

State Board of Insurance

540-Life, Accident, and Health Insurance and Annuities

Texas Air Control Board

549-Control of Air Pollution From Volatile Organic
Compounds

CONTENTS CONTINUED INSIDE

Texas Register

The *Texas Register* (ISSN 0362-4781) is published semi-weekly 100 times a year except June 1, 1990, July 20, 1990, November 9 and 27, 1990, and December 28, 1990. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78711.

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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 meetings

In Addition—miscellaneous information required to be published by statute or provided as a public service

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes accumulative quarterly and annual indexes to aid in researching material published.

How To Cite: Material published in the *Texas Register* is referenced by citing the volume in which a document appears, the words "TexReg," and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 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

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Comptroller of Public Accounts

588-Tax Administration

Texas Department of Human Services

590-Income Assistance Services

590-Intermediate Care Facilities/Skilled Nursing Facilities (ICF/SNF)

591-Child Protective Services

Open Meetings

593-Texas Department on Aging

593-Texas Department on Agriculture

593-Texas Council on Alzheimer's Disease and Related Disorders

593-State Bar of Texas

593-Texas Commission for the Blind

593-State Cogeneration Council

593-Interagency Council on Early Childhood Intervention

594-Texas Education Agency

594-Texas Council on Vocational Education

594-Texas Employment Commission

594-Office of the Governor-Criminal Justice Division

595-Texas Department of Health

595-Texas Health and Human Services Coordinating Council

595-State Department of Highways and Public Transportation

596-Texas Historical Commission

596-Texas Department of Human Services

596-State Board of Insurance

596-Texas Department of Mental Health Mental Retardation

597-Interagency Council on Sex Offender Treatment

597-Sex Offender Treatment Council

597-Texas Department of Criminal Justice Board of Pardons and Paroles

597-Texas Parks and Wildlife Department

597-Public Utility Commission of Texas

597-Texas Racing Commission

598-Railroad Commission of Texas

598-Texas Real Estate Commission

599-School Land Board

599-University Interscholastic League

599-Texas Water Commission

599-Regional Meetings

In Additions

Texas Department of Agriculture

601-Request for Proposals

602-Request for Qualifications

State Aircraft Pooling Board

602-Notification of Rates for Aircraft Use

Office of the State Auditor

603-Consultant Proposal Request

Texas Department of Aviation

604-Correction of Error

Texas Department of Banking

604-Notice of Application

605-Notice of Hearing

Comptroller of Public Accounts

605-Correction of Error

Office of Consumer Credit Commissioner

605-Notice of Rate Bracket Adjustment

605-Notice of Rate Ceilings

Texas Education Agency

606-Extension of Deadline for Request for Application

Employees Retirement System of Texas

607-Employees Retirement System of Texas-Consultant Contract Award-Texas Employees Uniform Group Insurance Program-Annual Audit of the Insurance Carrier's Claims Operation

607-Employees Retirement System of Texas-Texas Employees Uniform Group Insurance Program-Implementation of the Strategic Plan

Office of the Governor, Criminal Justice Division

607-Texas Narcotics Control Program 1990 Grant Program Announcement

Texas Department of Health

608-Request for Proposals

609-Request for Proposals (Amendment)

Texas Department of Human Services

609-Invitation to Bid

609–Notice of Correction

609–Notice of Public Hearing
State Board of Insurance

610–Company Licensing
Texas Medical Disclosure Panel

610–Texas Medical Disclosure Panel Medical Treatment
and Surgical Procedures

Board of Vocational Nurse Examiners

624–Correction of Error
Public Utility Commission of Texas

624–Notice of Application
Texas Water Commission

625–Enforcement Orders

625–Notice of Application for Waste Disposal Permit
Texas Water Development Board

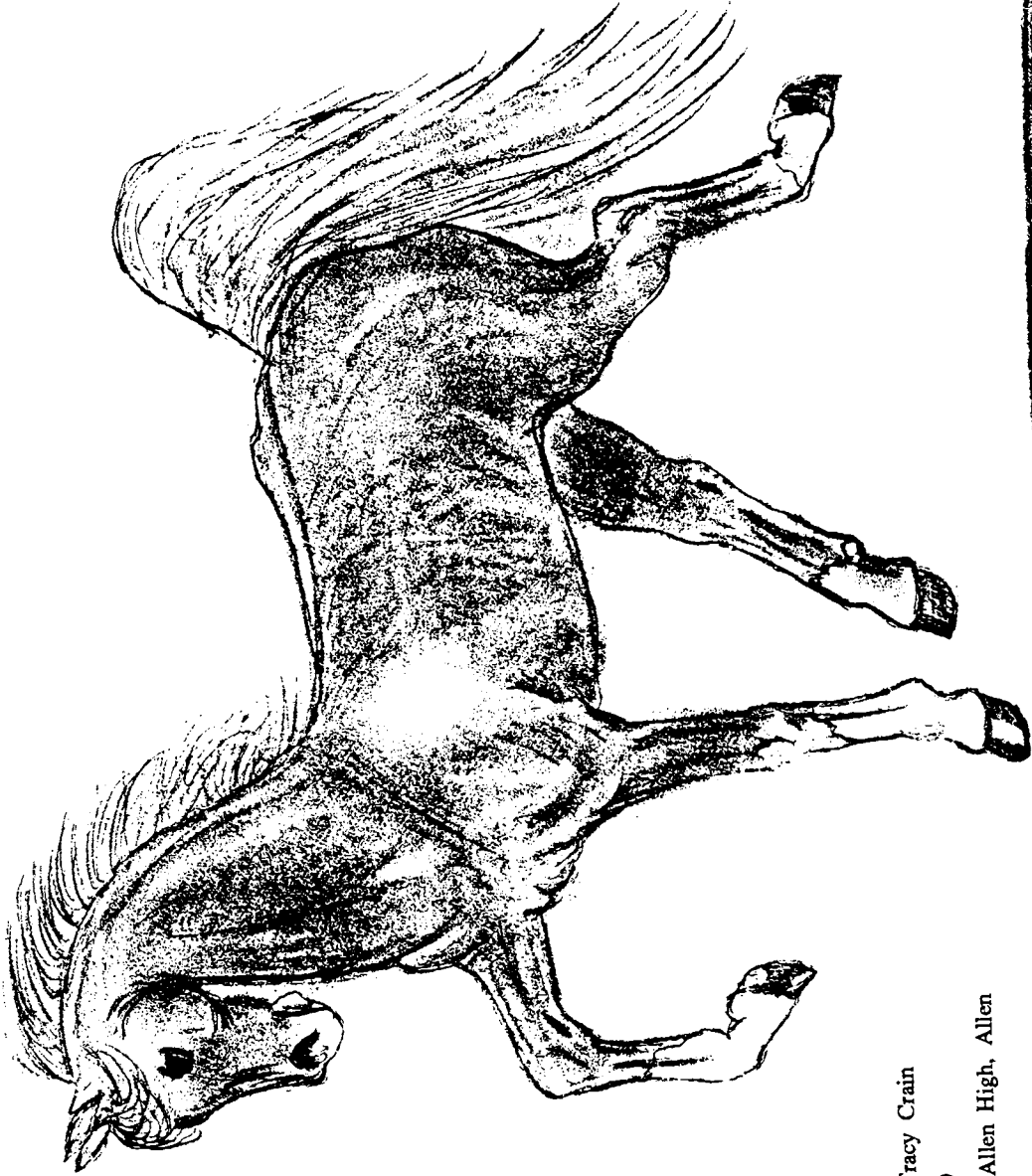
627–Request for Proposals



Name: Tom Firth

Grade: 11

School: Plano High, Plano



Name: Tracy Crain

Grade: 9

School: Allen High, Allen

BLUE STAR CONVICT



Name: Cat Butler

Grade: 11

School: Plano High, Plano



Name: Diane Cown

Grade: 11

School: Plano High, Plano

TAC Titles Affected

TAC Titles Affected—February

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

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

4 TAC §§27.1-27.6, 27.12-27.16, 27.21, 27.22, 27.102-27.104—525

TITLE 13. CULTURAL RESOURCES

Part IV. Texas Antiquities Committee

13 TAC §41.29, §41.30.....537

TITLE 19. EDUCATION

Part II. Texas Education Agency

19 TAC §75.174.....531

19 TAC §81.129.....531

19 TAC §141.23.....532

19 TAC §149.21.....533

19 TAC §149.23.....

19 TAC §149.43, §149.44.....533

TITLE 22. EXAMINING BOARDS

Part XIX. Polygraph Examiners Board

22 TAC §397.40.....538

22 TAC §397.42.....538

Part XXIX. Texas Board of Professional Land Surveying

22 TAC §663.9.....539

TITLE 25. Health Services

Part VII. Texas Medical Disclosure Panel

25 TAC §§601.1, 601.3, 601.4.....539

TITLE 28. INSURANCE

Part I. State Board of Insurance

28 TAC §§1.901-1.911526

28 TAC §§3.3302-3.3309, 3.3313-3.3318.....540

28 TAC §§3.3801-3.3812, 3.3821-3.3838.....544

28 TAC §3.3819, §3.3820.....535

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

31 TAC §115.010549

31 TAC §§115.112-115.117, 115.119.....561

31 TAC §§115.121-115.123, 115.125-115.127, 115.129 562

31 TAC §§115.131-115.133, 115.135-115.137, 115.139 564

31 TAC §§115.211-115.217, 115.219.....565

31 TAC §§115.221-115.227, 115.229.....568

31 TAC §§115.234-115.236, 115.239.....569

31 TAC §§115.242, 115.243, 115.245-115.247, 115.249 570

31 TAC §§115.311-115.313, 115.315-115.317, 115.319 572

31 TAC §§115.322-115.327, 115.329.....572

31 TAC §§115.332-115.337, 115.339.....574

31 TAC §§115.342-115.347, 115.349.....577

31 TAC §§115.412, 115.413, 115.415-115.417, 115.419 579

31 TAC §§115.421-115.423, 115.425-115.427, 115.429 580

31 TAC §§115.432, 115.433, 115.435-115.437, 115.439 583

31 TAC §§115.512, 115.513, 115.515-115.517, 115.519 584

31 TAC §§115.521-115.527, 115.529.....585

31 TAC §§115.531-115.537, 115.539.....586

31 TAC §§115.612, 115.613, 115.615, 115.617, 115.619 587

31 TAC §115.910587

31 TAC §§115.930, 115.932, 115.934, 115.936588

31 TAC §§334.201-334.213526

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

34 TAC §1.33529

34 TAC §3.681	588
34 TAC §3.682	589
34 TAC §3.683	589
34 TAC §3.684	589

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Department of Human Services

40 TAC §3.3702	590
40 TAC §16.3504	590
40 TAC §16.3903	590
40 TAC §16.6102	590
40 TAC §49.1764	591

The Governor

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

Appointments Made January 22, 1990

To be a member of the **Interagency Council on Minority Health Affairs** for a term to expire January 31, 1990: Linda C. Lopez, 11215 Whisper Sound, San Antonio, Texas 78230. Ms. Lopez is being appointed to a new position pursuant to House Bill 2484, 71st Legislature.

To be a member of the **Christopher Columbus Quincentenary Texas Jubilee Commission** for a term at the pleasure of the governor: John R. McGiffert, P. O. Box 1226, San Antonio, Texas 78294. General McGiffert is being appointed to a new position pursuant to Executive Order WPC-88-10 dated November 4, 1988.

To be a member of the **Interagency Council on Intermediate Care Facilities for the Mentally Retarded** for a term to expire February 1, 1991: L. Carl Kelly, 1102 S. Crockett, Sherman, Texas 75090. Mr. Kelly is being appointed to a new position pursuant to Senate Bill 1426, 71st Legislature.

To be a member of the **Texas Commission on the Arts** for a term to expire August 31, 1995: Richard Alvarado, P.O. Box 1890, El Paso, Texas 79999-1890. Mr. Alvarado will be replacing Ann K. Stool of Del Rio whose term expired.

To be a member of the **Interagency Council on Sex Offender Treatment** for a term to expire February 1, 1995: Walter J. Meyer, III, M.D., 2858 Dominique, Galveston, Texas 77551. Dr. Meyer will be replacing Jan Delipsey of Dallas whose term expired.

To be a member of the **Commission on Human Rights** for a term to expire September 24, 1995: Jose E. de Santiago, 842 Buschong, Houston, Texas 77035. Mr. de Santiago will be replacing Helen Giddings of Dallas whose term expired.

To be a member of the **Texas Committee for the Humanities** for a term to expire December 31, 1991: Mary Denny, Route 2, Box 271, Aubrey, Texas 76227. Mrs. Denny will be replacing William R. Tucker of Beaumont whose term expired.

Appointments Made January 23, 1990

To be a member of the **Advisory Council on Community Affairs** for a term to expire January 31, 1990: L.C. "Chaz" Neely, Jr., 9223 Honey Creek, San Antonio, Texas 78230. Mr. Neely will be filling the unexpired term of Dr. Bob Trotter of Abilene who resigned.

To be a member of the **Educational Excellence Committee** for a term to expire February 1, 1993: Edward B. Adams, 7308 Valburn Drive, Austin, Texas 78731. Mr. Adams is being appointed to a new position pursuant to Senate Bill 417, 71st Legislature.

To be a member of the **Educational Excellence Committee** for a term to expire February 1, 1993: Brenda F. Arnett, 3690 Inwood, Houston, Texas 77019. Ms. Arnett is being appointed to a new position pursuant to Senate Bill 417, 71st Legislature.

To be a member of the **Educational Excellence Committee** for a term to expire February 1, 1991: Jake Brisbin, Jr., P.O. Box 745, Marfa, Texas 79843. Mr. Brisbin is being appointed to a new position pursuant to Senate Bill 417, 71st Legislature.

To be a member of the **Educational Excellence Committee** for a term to expire February 1, 1991: Norma Y. Cardenas, 713 Xanthisma, McAllen, Texas 78504. Ms. Cardenas is being appointed to a new position pursuant to Senate Bill 417, 71st Legislature.

To be a member of the **Educational Excellence Committee** for a term to expire February 1, 1991: Ethel P. Jones, 1710 Plantivigne Road, Texarkana, Texas 75501. Mrs. Jones is being appointed to a new position pursuant to Senate Bill 417, 71st Legislature.

To be a member of the **Educational Excellence Committee** for a term to expire February 1, 1991: David B. Keith, One

Riverway, Suite 2390, Houston, Texas 77056. Mr. Keith is being appointed to a new position pursuant to Senate Bill 417, 71st Legislature.

To be a member of the **Educational Excellence Committee** for a term to expire February 1, 1995: Nancy Ann Brown Loeffler, P.O. Box 2999, San Antonio, Texas 78299-2999. Mrs. Loeffler is being appointed to a new position pursuant to Senate Bill 417, 71st Legislature.

To be a member of the **Educational Excellence Committee** for a term to expire February 1, 1993: Roger C. Minard, 8701 Cross Park Drive, Austin, Texas 78754. Mr. Minard is being appointed to a new position pursuant to Senate Bill 417, 71st Legislature.

To be a member of the **Educational Excellence Committee** for a term to expire February 1, 1991: Glenda Smith, 7605 Rustling Cove, Austin, Texas 78731. Mrs. Smith is being appointed to a new position pursuant to Senate Bill 417, 71st Legislature.

To be a member of the **Educational Excellence Committee** for a term to expire February 1, 1995: Larry J. Ward, 561 W. Campbell, Richardson, Texas 75080. Mr. Ward is being appointed to a new position pursuant to Senate Bill 417, 71st Legislature.

Appointments Made January 24, 1990

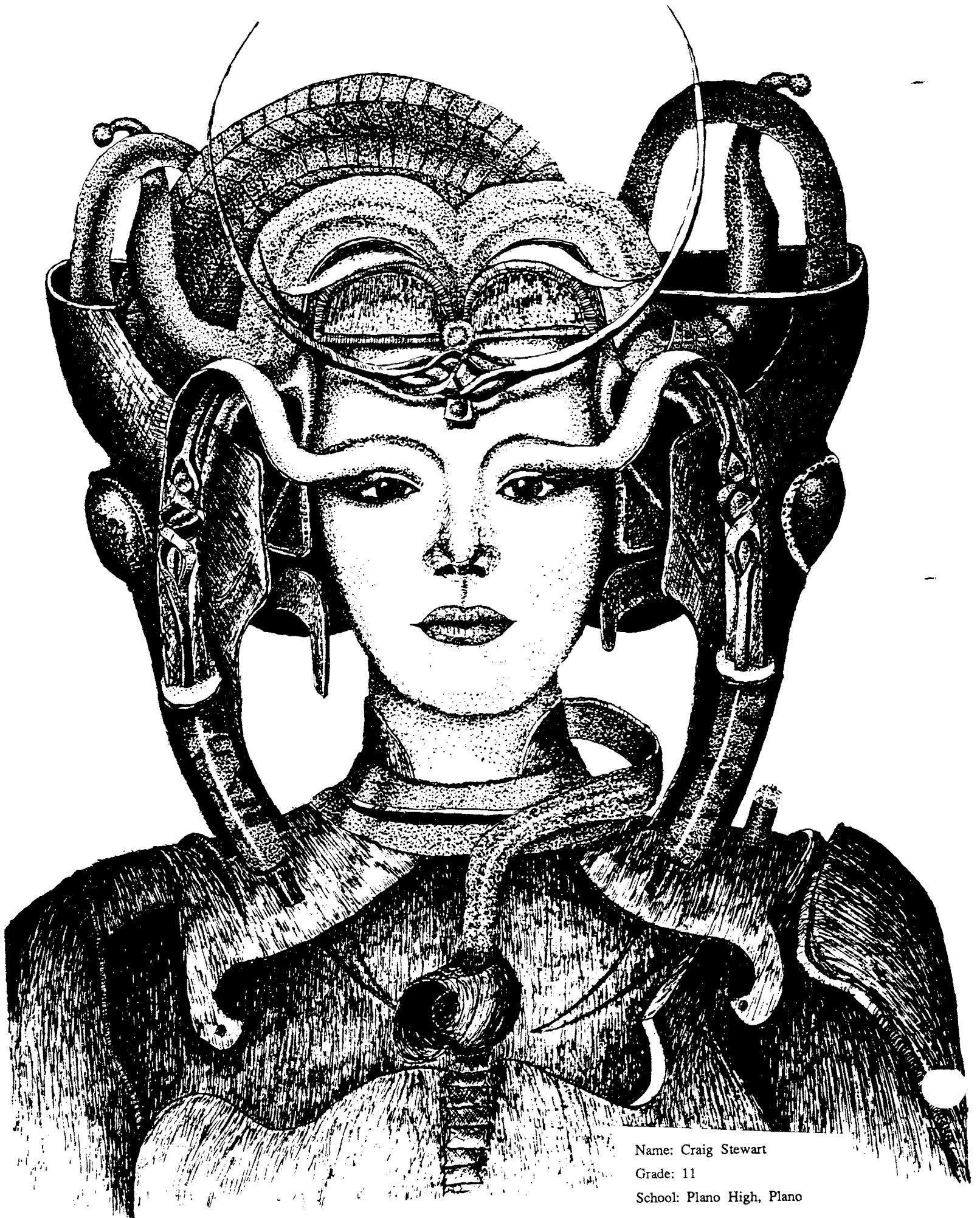
To be judge of the **69th Judicial District Court, Dallam, Hartley, Moore, and Sherman Counties** to be effective April 1, 1990 until the next general election and until his successor shall be duly elected and qualified: Ronald Eugene Enns, 208 Mockingbird Lane, Dalhart, Texas 79022. Mr. Enns will be replacing Judge Bill Sheehan of Dumas who is retiring on March 31, 1990.

Issued in Austin, Texas on January 26, 1990.

TRD-9000922

William P. Clements, Jr.
Governor of Texas





Name: Craig Stewart

Grade: 11

School: Plano High, Plano

Attorney General

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

Requests for Opinions

(RQ-1912). Request from Dennis R. Jones, Commissioner, Texas Department of Mental Health and Mental Retardation, Austin, concerning whether the Department of Mental Health and Mental Retardation is authorized to contract with the parents of mentally disabled individuals for the provision of community based mental health services.

(RQ-1913). Request from Jim Mapel, Criminal District Attorney, Brazoria County Courthouse, Angleton, concerning authority of a county to conduct a private resale of property under the Tax Code, §34.05.

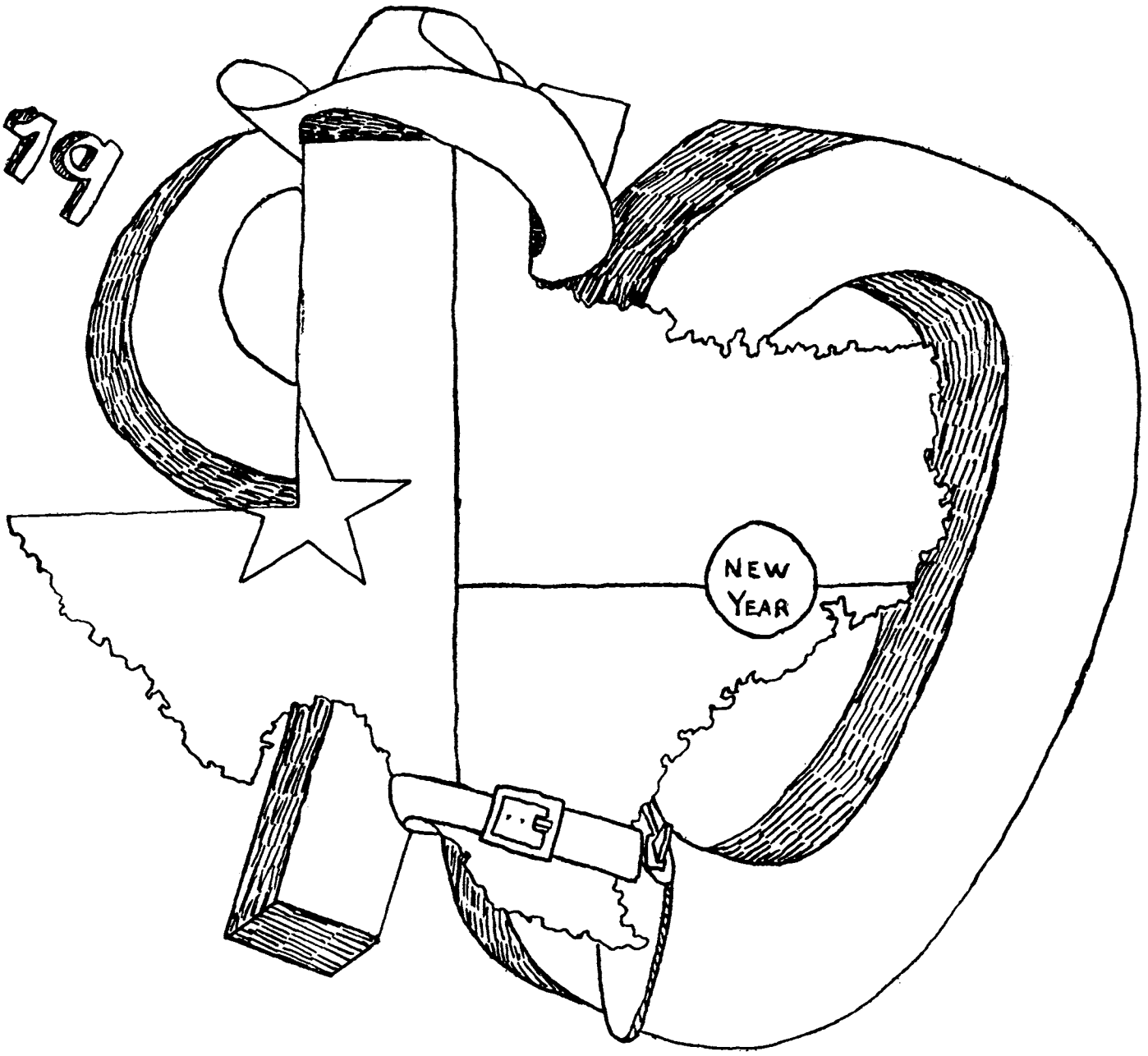
(RQ-1914). Request from Chet Brooks, Chairman, Senate Health and Human Services, Austin, concerning authority of the Texas Department of Health to reduce the financial eligibility criteria for the

Chronically Ill and Disabled Children's Program.

(RQ-1915). Request from George Pierce, Chairman, House Urban Affairs Committee, Austin, concerning authority of the parties to a collective bargaining under Texas Civil Statutes, Article 5154c-1, to waive the right to seek changes in the agreement.

TRD-9000950





Name: Juan Rodriguez

Grade: 8

School: Martin Luther King Middle School, San Antonio

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 4. AGRICULTURE Part I. Texas Department of Agriculture

Chapter 27. Fish Farm Regulations

• 4 TAC §§27.1-27.6, 27.12-27.16, 27.21, 27.22, 27.102-27.104

The Texas Department of Agriculture (the department) adopts on an emergency basis new §§27.1-27.6, 27.12-27.16, 27.21, 27.22, and 27.102-27.104, concerning the regulation of fish farms, fish farm vehicles, and cultured fish processing plants.

In the last regular legislative session, the authority for regulation of fish farms, fish farm vehicles, and cultured fish processing plants was transferred from the Texas Department of Parks and Wildlife to the department. The immediate adoption of these new sections is required to clarify any questions about the status of existing fish farmer and fish farm vehicle licenses; to allow for the immediate issuance of cultured fish processing licenses; and to allow for the immediate issuance of new fish farmer and fish farm vehicle licenses. Unless this is done, existing licenses will arguably expire on February 1, 1990, and no new licenses may be issued, creating a situation in which businesses requiring licenses may be forced to either operate illegally or not operate at all, to the detriment of the fish farm industry in Texas and the general public.

The new sections establish procedures and fees required for the issuance of fish farmer, fish farm vehicle, and cultured fish processing licenses; provide for certain records to be kept by licensees; define key terms to be used in new Chapter 27; extend the expiration date of existing licenses to May 1, 1990; and provide for the issuance of temporary licenses.

The new sections are adopted on an emergency basis under the Texas Agriculture Code, Chapter 134, which provides the department with the authority to promulgate rules for the administration of the Texas Fish Farming Act of 1989; and Texas Civil Statutes, Article 6252-13a, §5, which provide for the adoption of administrative rules on an emergency basis without notice and comment.

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

Cultured fish—Farm-raised fish or shellfish.

Department—Texas Department of Agriculture

Exotic fish species—A nonindigenous fish or shellfish species that is not normally found in the water of the state.

Fish farmer—Any person engaged in fish farming.

Fish farming—The business of producing, propagating, transporting, possessing, and selling cultured fish raised in a private pond, but does not include the business of producing, propagating, transporting, possessing, and selling cultured fish propagated for bait purposes.

Private pond—A pond, reservoir, vat, or other structure capable of holding cultured fish in confinement wholly within or on the enclosed land of an owner, lessor, or lessee.

Owner—A fish farmer licensed by the department.

§27.2. Fish Farmer's License Required. A person may not operate as a fish farmer without first having acquired from the department a fish farmer's license.

§27.3. Fish Farm Vehicle License Required.

(a) Except as provided by subsection (b) of this section, a vehicle used to transport fish from a fish farm for sale from the vehicle is required to have a fish farm vehicle license.

(b) A fish farm vehicle license is not required for a vehicle owned and operated by the holder of a fish farmer's license.

§27.4. Issuance of License; Period of Validity.

(a) The department shall issue the fish farmer's license and the fish farm vehicle license on submission by the proposed licensee of a completed application and the license fee, and each license shall be numbered on a form provided by the department.

(b) A fish farmer's or fish farm vehicle license is valid for two years after the date of issuance. The department shall renew a license on submission by the licensee of a completed application and a renewal fee unless the department determines that the licensee has violated the Texas Agriculture Code, Chapter 134, or a rule adopted under that chapter.

(c) If the Aquaculture Executive Committee makes a determination as provided by the Parks and Wildlife Code, §1.204, the department shall suspend a license until the committee issues a notice approving the continuation of the fish farming operation.

§27.5. License Fees.

(a) The initial fee for a fish farmer's license or a fish farm vehicle license is \$50.

(b) Any person holding a fish farmer's license or a fish farm vehicle license issued under this chapter for any premises or vehicle within the 12 months preceding his or her application for a license for the same premises or vehicle shall pay the renewal fee set out in this subchapter.

(c) The renewal fee for a fish farmer's license or a fish farm vehicle license shall be based on the gross receipts from the sale of cultured fish during the first 21 months of the period covered by the expiring license.

§27.6. Records.

(a) The holder of a fish farmer's license or a fish farm vehicle license shall make and keep records on the licensed premises or vehicle showing purchases or other acquisitions, sales, and shipments of cultured fish for a period of three years from each such event.

(b) These records are open to inspection by authorized employees of the department.

§27.12. Cultured Fish Processing Plant License Required. A person may not operate a cultured fish processing plant without first having acquired from the department a cultured fish processing plant license.

§27.13. License for Each Premises. A separate cultured fish processing plant license is required for each tract of land on which a cultured fish processing plant is operated. A cultured fish processing plant license is not transferable.

§27.14. Issuance of License; Period of Validity.

(a) The department shall issue the cultured fish processing plant license on submission by the proposed licensee of a completed application and the license fee, and each license shall be numbered on a form provided by the department.

(b) A license cultured fish processing plant is valid for one year after the date of issuance. The department shall renew a license on submission by the licensee of a completed application and a renewal fee unless the department determines that the licensee has violated the Texas Agriculture Code, Chapter 134, or a rule adopted under that chapter.

§27.15. License Fees.

(a) The initial fee for a cultured fish processing plant license is \$100.

(b) Any person holding a cultured fish processing plant license issued under this chapter for an premises within the 12 months preceding his or her application for a license for the same premises or vehicle shall pay the renewal fee set out in this subchapter.

(c) The renewal fee for a cultured fish processing plant license shall be based on the gross receipts from the sale of cultured fish during the first nine months of the period covered by the expiring license.

§27.16. Records.

(a) The holder of a cultured fish processing plant license shall make and keep records at the licensed plant showing purchases or other acquisitions, sales, and shipments of cultured fish for a period of three years from each such event.

(b) These records are open to inspection by authorized employees of the department.

§27.21. *Bill of Lading Required for Certain Vehicles.* A vehicle, from which no fish sales are made, transporting cultured fish from a fish farm shall carry a bill of lading that shows the number and species of cultured fish carried, the name of the owner and the location and license number of the fish farm from which the fish were transported, and the destination of the cargo.

§27.22. *Marketing of Cultured Redfish and Cultured Speckled Sea Trout.* A licensed fish farmer engaging in the raising, sale, transportation, or possession of cultured redfish or cultured speckled sea trout shall maintain on each premises or vehicle used for the same a statement that identifies the cultured redfish or cultured speckled sea trout raised by a fish farmer and shows the number and species of such cultured fish present, the name of the owner and the location and license number of the fish farm on which the fish were raised, and the destination of the cargo, if any.

§27.102. *Inspection.* The facilities of a holder of a fish farmer's license, fish farm vehicle license, or cultured fish processing plant license are subject to inspection by employees of the department during all reasonable hours.

§27.103. *Expiration of Licenses.* Any fish farmer's license or a fish farm vehicle license in effect on December 31, 1990, is continued in effect until May 1, 1990.

§27.104. *Temporary Licenses.* The Department may issue temporary fish farmer's, fish farm vehicle, and cultured fish processing plant licenses on payment of a fee of \$10 by the applicant, which licenses expire on May 1, 1990.

Issued in Austin, Texas, on January 26, 1990.

TRD-9000944 Dolores Alvarado Hibbs
Director of Hearings
Texas Department of
Agriculture

Effective date: January 26, 1990

Expiration date: May 1, 1990

For further information, please call: (512) 463-7583

TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 1. General Administration

Subchapter H. Cease and Desist Orders

• 28 TAC §§1.901-1.911

The State Board of Insurance is renewing the effectiveness of the emergency adoption of new §§1.901-1.911, for a 60-day period effective February 1, 1990. The text of new §§1.901-1.911 was originally published in the October 13, 1989, issue of the *Texas Register* (14 TexReg 5465).

Issued in Austin, Texas, on January 26, 1990.

TRD-9000907 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: February 1, 1990

Expiration date: April 2, 1990

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

TITLE 31. Natural Resources and Conservation

Part IX. Texas Water Commission

Chapter 334. Underground and Aboveground Storage Tanks

Subchapter I. Underground Storage Tank Contractor Certification and Installer Licensing

• 31 TAC §§334.201-334.213

The Texas Water Commission adopts on an emergency basis §§334.201-334.213, concerning definitions, certificate of registration for UST contractor, application for certificate of registration, issuance of certificate of registration, renewal of certificate of registration, denial of certificate of registration, license for installers and on-site supervisor, fee assessments, other requirements, exception to registration requirements, revocation, suspensions or reinstatement of certificate of registration, notice of hearing, type of hearing.

House Bill 183, 71st Legislature, requires that an underground storage tank contractor apply to the commission for a certificate of registration, and also provides that no underground storage tank may be installed, repaired, or removed except by an underground storage tank contractor who has an installer or an on-site supervisor who is licensed by the commission at the site at all times during the critical junctures of the UST installation, repair, or removal.

Section 334.201 defines relevant terms.

Section 334.202 requires that after April 1, 1990, no contractor engage in the underground storage tank business without possessing a valid certificate of registration.

Section 334.203 states the application requirements for UST contractors.

Section 334.204 concerns the issuance of the certificate of registration.

Section 334.205 relates to the requirements for the renewal of a certificate of registration.

Section 334.206 states the conditions when a certificate of registration may be denied.

Section 334.207 states that licenses for installers and on-site supervisors will not be required until such time as rules are adopted by the commission defining the requirements necessary for the issuance of such licenses.

Section 334.208 relates to fee assessments related to UST contractor registration.

Section 334.209 requires UST contractors to notify the executive director of business changes which occur during the year.

Section 334.210 states that no certificate of registration is required for persons or companies which install, remove, or repair underground storage tanks which are exempt or excluded from regulations pursuant to 31 TAC Chapter 334.

Section 334.211 describes the condition for revocation, suspension, or reinstatement of a certificate of registration.

Section 334.212 describes the notice of hearing which is necessary for the revocation, suspension, or reinstatement of a certificate of registration.

Section 334.213 states that all hearings related to the suspension or revocation of a certificate of registration are subject to the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a).

The commission finds that an urgent need exists to adopt the rules on an emergency basis as numerous installation, removal, and repairs of underground storage tanks are now taking place due to the upgrading schedule of Chapter 334. The commission believes that with the implementation of House Bill 1588, 71st Legislature, that this trend will continue.

The new sections are adopted on an emergency basis under House Bill 183, 71st Legislature, 1989, which provides the Texas Water Commission with the authority to establish a program to license underground storage tank installers and on-site supervisors, and register underground storage tank contractors; and the Texas Water Code §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

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

Business representative—A person (e.g. proprietor, senior partner, president, or designated representative of a company) who shall be responsible for compliance with this subchapter.

Certificate of registration—The document issued to an underground storage tank contractor authorizing same to engage in the underground storage tank business in the State of Texas.

Commission—The Texas Water Commission.

Critical junctures—In the case of an installation, repair, or removal of an underground storage tank system, all of the following steps:

(A) preparation of the tank bedding immediately prior to receiving the tank;

(B) setting of the tank and the piping, including placement of any anchoring devices, backfill to the level of the tank, and strapping, if any;

(C) connection of piping systems to the tank;

(D) all pressure testing of the underground storage tank, including

associated piping, performed during the installation;

(E) completion of backfill and filling of the excavation;

(F) any time during the repair in which the piping system is connected or reconnected to the tank;

(G) any time during the repair in which the tank or its associated piping is tested; and

(H) any time during the removal of the tank.

Executive director—The executive director of the Texas Water Commission.

Installation—The installation of underground storage tanks and ancillary equipment.

Installer—A person who participates in or supervises the installation, repair, or removal of underground storage tanks.

License—The document issued to an installer or on-site supervisor authorizing same to engage in the underground storage tank business in the State of Texas.

On-site supervisor—

(A) a professional engineer registered to practice in the State of Texas who has met the licensing requirements of this subchapter; or

(B) An individual with at least two years of active experience in the vocation of installation, removal, or repair of underground storage tanks, underground utilities, or other engineering construction in the State of Texas, and who meets the licensing requirements of this subchapter.

Operator—Any person in control of, or having responsibility for, the daily operation of the underground storage tank system.

Owner—Any person who owns an underground storage tank system used for storage, use, or dispensing of regulated substances.

Person—A natural person, including an owner, manager, officer, employee, or occupant.

Removal—The process of removing and disposing of an underground storage tank that is no longer in service, or the process of abandoning an underground storage tank in place after purging the tank of vapors and filling the vessel of the tank with a solid inert material.

Repair—The modification or correction of an underground storage tank and ancillary equipment. The term does not include:

(A) relining an underground storage tank through the application of epoxy resins or similar materials;

(B) the performance of a tightness test to ascertain the integrity of the tank, except when a tightness test is a prescribed element of a critical juncture of an installation, repair, or removal;

(C) the maintenance and inspection of cathodic protection devices by a corrosion expert or corrosion technician;

(D) emergency actions to halt or prevent leaks or ruptures; or

(E) minor maintenance on ancillary aboveground equipment.

Underground storage tank (UST)—Any one or combination of underground tanks and any connecting underground pipes used to contain an accumulation of regulated substances, the volume of which, including the volume of the connecting underground pipes, is 10% or more beneath the surface of the ground.

Underground storage tank business (UST business)—A business whose particular field of endeavor relates to the installation, removal, or repair of underground storage tanks.

Underground storage tank contractor (UST contractor)—A person or business entity that offers to undertake, represents itself as being able to undertake, or does undertake the installation, repair, or removal of an underground storage tank.

§334.202. Certificate of Registration for UST Contractor. Every UST contractor as defined in §334.201 of this title (relating to Definitions) shall hold a valid certificate of registration issued pursuant to this subchapter.

(1) After April 1, 1990, no UST contractor shall engage in the underground storage tank business without possessing a valid certificate of registration.

(2) A UST contractor in a partnership or joint venture need not register in its own name if each partner or the joint venture is properly registered.

(3) The UST contractor's certificate of registration number issued pursuant to §334.204 of this title (relating to Issuance of Certificate of Registration) must be prominently displayed on all bids, proposals, offers, and installation drawings.

§334.203. Application for Certificate of Registration. Any UST contractor as defined in §334.201 of this title (relating to Definitions) who is applying for a certificate of registration shall meet the following application requirements.

(1) An application for a certificate of registration shall be made on a form approved by the executive director.

(2) An application for certificate of registration shall include:

(A) the applicant's business name, business address and telephone number, and permanent mailing address and telephone number; and

(B) the business representative's name and title;

(C) the name, address, telephone number, and business representative for any branch office within the state of Texas which will be operating under the requested certificate of registration;

(D) documentation of financial assurance, including:

(i) evidence of commercial liability insurance in an amount of not less than \$1 million and of a type approved by the executive director; and a financial statement prepared in conformity with accounting principles as defined by the American Institute of Public Accountants, indicating an applicant's current net worth of not less than \$25,000; or

(ii) other evidence of financial assurance which is determined by the executive director to be sufficient for the purposes of this section;

(E) sworn statements, on forms approved by the executive director, from at least three persons (references), or a number of references deemed acceptable by the executive director, who have engaged the applicant within the previous 12 months to perform: UST installations, repairs, or removals; underground utility construction; or other engineering construction. These statements shall attest to the applicant's business integrity and quality of performance. Such statements shall also include a description of the type of construction which was performed by the applicant; and

(F) a sworn statement from the applicant attesting to the accuracy of the information provided on the application, which has been notarized.

§334.204. Issuance of Certificate of Registration.

(a) An application for a certificate of registration shall be accepted for processing upon commission receipt of a properly completed application as required by §334.203 of this title (relating to Application for Certificate of Registration), and the fee required under §334.208 of this title (relating to Fee Assessments).

(b) Within 30 days of receipt of an application, the executive director shall

evaluate the application for completeness and, if necessary, provide written comments to the applicant noting any additional information which is required for processing.

(c) Within 30 days of receipt of a properly completed application, the executive director shall either issue a certificate of registration or deny the application.

(d) A certificate of registration issued under this subchapter is not transferable, and shall be renewed annually as prescribed in §334.205 of this title (relating to Renewal of Certificate of Registration).

§334.205. Renewal of Certificate of Registration.

(a) All certificates of registration shall expire one year from the original date of issuance or from the last date of renewal.

(b) The commission shall notify each registered contractor in writing of the impending registration expiration at least 60 days prior to the expiration of the certificate of registration.

(c) The executive director shall provide application forms for renewal of contractor registration.

(d) A properly completed application for renewal shall be submitted to the executive director at least 30 days prior to the expiration date of the certificate.

(e) The application must be accompanied by the renewal fee prescribed by §334.208 of this title (relating to Fee Assessments), and evidence of financial assurance as prescribed by §334.203(2)(D) of this title (relating to Application for Certificate of Registration).

(f) The contractor shall reapply for the issuance of a certificate of registration if the certificate is not renewed earlier than one year after the expiration date of the certificate.

(g) Upon proper completion of the certificate renewal process, the executive director shall issue a certificate indicating the expiration date.

§334.206. Denial of Certificate of Registration. The executive director may deny a certificate of registration as follows:

(1) when an applicant fails to submit the required documentation as required by §334.203 of this title (relating to Application for Certificate of Registration);

(2) when an applicant fails to pay the appropriate fee as required under §334.208 of this title (relating to Fee Assessments);

(3) when an applicant submits an application with fraudulent or deceptive information; or

(4) for other cause(s) which in the opinion of the executive director constitute adequate ground(s) for denial.

§334.207. License for Installers and On-Site Supervisors. A license shall not be required for installers and on-site supervisors as defined in §334.201 of this title (relating to Definitions) until such time as rules are adopted by the commission which define the requirements necessary for the issuance of such license.

§334.208. Fee Assessments.

(a) The following fee schedule shall apply for the registration of UST contractors:

(1) application fee—\$50;

(2) issuance fee—\$100;

(3) annual renewal fee—\$75;

(4) duplicate certificate of registration—\$10;

(5) application to change certificate of registration—\$70;

(6) late renewal fee—\$25.

(b) A certificate renewal application shall be considered late when received by the executive director less than 30 days before the expiration of the certificate, and shall be subject to the late renewal fee.

§334.209. Other Requirements.

(a) All registered contractors shall notify the executive director in writing within 30 days of any change which occurs during the validated registration year. Such changes shall include, but are not limited to:

(1) change of business name, address, or telephone number;

(2) change in status of insurance;

(3) change of business representative;

(4) permanent cessation of UST business or UST activities;

(5) a filing for reorganization or protection under federal bankruptcy laws;

(6) change of branch office name, address, or telephone number.

(b) A registered UST contractor is required to maintain such financial responsibility required by §334.203 of this title (relating to Application for Certificate of Registration) throughout the period that such contractor holds a valid certificate of registration from the commission.

(c) Compliance with the provisions of this subchapter by a registered contractor shall not relieve such contractor from the responsibility of compliance with all

applicable regulations legally promulgated by the United States Environmental Protection Agency, United States Occupational Safety and Health Administration, United States Department of Transportation, Texas Air Control Board, Texas Department of Health, State Board of Insurance (including state fire marshal), Railroad Commission of Texas, Texas Department of Agriculture, State Comptroller, Texas Department of Public Safety, Texas Water Commission, and other federal, state, and local governmental agencies or entities having appropriate jurisdiction.

§334.210. Exception to Registration Requirements. The certificate of registration shall not be required for persons or companies who conduct underground storage tank installations, removals, or repairs of UST systems when such systems are completely exempt from regulation under §334.3(a) of this title (relating to Statutory Exemptions), or completely excluded from regulation under §334.4(a) of this title (relating to Commission Exclusions).

§334.211. Revocation, Suspension, or Reinstatement of Certificate of Registration.

(a) If the executive director determines good cause exists to suspend or revoke the certificate of registration of a contractor, the executive director shall request that the commission schedule a hearing before the hearing examiner or the commission. Such hearing shall be held only after proper notice has been provided to the certificate holder. The commission may suspend or revoke the certificate if the commission finds that the holder of the certificate was responsible for violating the provisions of this chapter, for falsifying any information or documents submitted to the executive director, or for other good cause.

(b) A certificate may be suspended for a period of up to one year; however, depending upon the seriousness of the offense(s), the time of suspension may be decreased or increased. A certificate is revoked automatically upon a second suspension. At the request of the certificate holder, or for other good cause shown, the certificate may be suspended indefinitely by the commission.

(c) After a period of at least one year from the date of revocation, the holder of a certificate which has been revoked may reapply for a certificate of registration pursuant to this subchapter as if applying for the first time. If a certificate is revoked a second time, the revocation shall be permanent.

§334.212. Notice of Hearings.

(a) Notice for any hearing required by §334.211 of this title (relating to

Revocation, Suspension, or Reinstatement of Certificate) shall be issued not less than 20 days prior to the hearing.

(b) Transmittal of the notice shall be by certified mail, return receipt requested.

(c) Persons to be notified include, but are not limited to, the following:

- (1) the applicant or certificate holder;
- (2) the complainant (if any); and
- (3) any other person who may be affected by the outcome of the hearing, as determined by the executive director.

§334.213. Type of Hearing. Any hearing related to the suspension or revocation of a certificate of registration is subject to the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252.13a).

Issued in Austin, Texas, on January 24, 1990.

TRD-9000931

Jim Haley
Director, Legal Division
Texas Water Commission

Effective date: January 26, 1990

Expiration date: May 26, 1990

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

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**TITLE 34. PUBLIC
FINANCE**
**Part I. Comptroller of
Public Accounts**
**Chapter 1. Central
Administration**

Practice and Procedure

• **34 TAC §1.33**

The Comptroller of Public Accounts adopts on an emergency basis the repeal of §1.33, concerning discovery. This section is being repealed in order that a substantially revised section dealing with the same subject matter may be adopted.

The section is being adopted on an emergency basis because both the tax payers and the tax divisions have started using interrogatories in the administrative hearings process. Neither the present section nor APTRA presently allows the use of interrogatories.

The repeal is adopted on an emergency basis 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.

§1.33. Discovery.

Issued in Austin, Texas, on January 25, 1990.

TRD-9000882

Bob Bullock
Comptroller of Public
Accounts

Effective date: January 25, 1990

Expiration date: May 25, 1990

For further information, please call: (512) 463-4004

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The Comptroller of Public Accounts adopts on an emergency basis new §1.33, concerning discovery. The new section sets out the comptroller's policy on the use of discovery in administrative hearings. It also expands allowable discovery to include interrogatories.

The section is being adopted on an emergency basis because both the tax payers and the tax divisions have started using interrogatories in the administrative hearings process. Neither the present section nor APTRA presently allows the use of interrogatories.

The new section is adopted on an emergency basis 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.

§1.33. Discovery.

(a) Discovery. The Administrative Procedure and Texas Register Act, §14 and §14a, as amended, applies to matters of discovery.

(b) Scope of discovery. Except for the exemptions from discovery provided in Texas Rules of Civil Procedure, Rule 166b(3), unless otherwise limited by order of the administrative law judge, the scope of discovery is as follows: Parties may obtain discovery regarding any non-confidential matter relevant to the subject matter in the pending action. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) Protective orders. Texas Rules of Civil Procedure, Rule 166b(5), is incorporated herein for the protection of the party from whom discovery is sought under this section.

(d) Objections. On or prior to the date on which a response to a discovery request is due, a party may serve written objections to a specific request or portions thereof. Objections served after the date on which the response to a discovery request is due are waived unless an extension of time has been obtained by agreement or order of the administrative law judge for good cause shown for failure to object within such period; however, objections by the comptroller to discovery requests requiring the disclosure of confidential information cannot be waived. Responses only to those discovery requests or portions thereof to which objection is made are deferred until the objections are ruled upon and for such additional time thereafter as the

administrative law judge may direct. Either party may request a hearing as to such objections at the earliest possible time.

(e) Interrogatories to parties. Any party may serve upon any other party written interrogatories to be answered by the party served, or, if the party served is a public or private corporation or partnership or association, by an officer or agent who must furnish such information as is available to the party. Interrogatories may be served at any time after a contested case has been assigned to a hearings attorney. Interrogatories served upon the comptroller may be answered by his designee.

(1) Service. Service of interrogatories and answers to interrogatories must be made on the authorized representative of a party unless service upon the party is ordered by the administrative law judge.

(2) Time to answer. The party upon whom the interrogatories have been served must serve answers on the party submitting the interrogatories within 30 days after the service of the interrogatories, unless the parties agree in writing to a

longer or shorter period of time. The administrative law judge, on motion and notice for good cause shown, may lengthen or shorten the time for serving answers or objections.

(3) Number of interrogatories. The number of questions including subsections in a set of interrogatories must be limited so as not to require more than 30 answers. No more than two sets of interrogatories may be served by a party, except by agreement. Interrogatories must be answered separately and fully in writing under oath. Answers to interrogatories must be preceded by the question or interrogatories to which the answer pertains. Copies of the interrogatories, and answers and objections thereto, must be served on all parties or their representatives. The answers must be signed and verified by the person making them.

(f) Subpoenas, depositions, and orders to allow entry. An administrative law judge, acting independently or on motion by any party, may:

(1) subpoena any person to appear and testify and to produce certain documents or other tangible items at an oral hearing;

(2) commission the taking of an oral deposition in the witness' county of residence or county where the witness does business and require production of certain documents or other tangible items at the time of deposition; and

(3) order any party to allow entry upon property under the party's control for the purpose of doing any act or making any inspection not protected by privilege and reasonably calculated to lead to the discovery of evidence material to the contested case.

Issued in Austin, Texas, on January 25, 1990.

TRD-9000881 Bob Bullock
Comptroller of Public
Accounts

Effective date: January 25, 1990

Expiration date: May 25, 1990

For further information please
call: (512) 463-4004

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Proposed Sections

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

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

TITLE 19. EDUCATION Part II. Texas Education Agency

Chapter 75. Curriculum

Subchapter G. Other Provisions

• 19 TAC §75.174

The Texas Education Agency proposes new §75.174, concerning procedures for identifying students with dyslexia and related disorders. The new section would set general guidelines requiring school districts to implement procedures to identify students with dyslexia and related disorders that are in accordance with methods approved by the State Board of Education.

Lynn Moak, deputy commissioner for research and development, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Moak and Criss Cloudt McCuller, director for planning coordination, have determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the continued support of local flexibility in the selection of identification and treatment programs. There will be no effect on small businesses as result of enforcing the section. 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 Criss Cloudt McCuller, Office of Planning Coordination, 1701 North Congress Avenue, Austin, Texas, 78701, (512) 463-9701. All requests for a public hearing on proposed sections submitted in accordance with the Administrative Procedures and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in sections has been published in the *Texas Register*.

The new section is proposed under the Texas Education Code, §21.924, which authorizes the State Board of Education to make rules regarding the identification and treatment of students with dyslexia and related disorders.

§75.174. *Students with Dyslexia and Related Disorders.*

(a) The board of trustees of each school district shall ensure that procedures

for identifying students with dyslexia and related disorders and providing appropriate instructional services to such students are implemented in the district.

(b) The district's procedures shall be implemented in accordance with the State Board of Education approved methods for screening and techniques for treating dyslexia and related disorders as described in the "Procedures Concerning Dyslexia." These procedures will be reviewed and updated by agency staff from time to time and approved by the State Board of Education.

(c) Before any identification or assessment procedures are used selectively with an individual student, the school district shall notify the student's parent, guardian, or other person standing in parental relation to the student.

(d) A parent who, after pursuing resolution of the matter with the local board of trustees in accordance with its local policy on public complaints, believes the school district in which his or her child is enrolled has not complied with this section, as it pertains to his or her child, may complain in writing to the Texas Education Agency's Complaints and Administration 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 January 17, 1990.

TRD-9000901 W. N. Kirby
Commissioner of Education

Proposed date of adoption: March 10, 1990

For further information, please call: (512) 463-9701

Chapter 81. Instructional Resources

Subchapter D. State Textbook Program

State Adoption, Acquisition, and Custody of Textbooks

• 19 TAC §81.129

The Texas Education Agency proposes an amendment to §81.129, concerning the consideration and adoption of textbooks by the State Board of Education. The proposed

amendment would add new subsection (i), which provides that if a textbook publisher requested permission to withdraw a textbook because of changes and corrections and/or because of price reductions required as a condition of adoption, and approval of the request would result in only one textbook remaining in the category, the remaining textbook could be adopted at the discretion of the board. Any publisher that filed a request to withdraw a textbook after the deadline specified in the schedule for the adoption process would be required to submit a written statement that the withdrawal was voluntary and not made under duress.

Lynn Moak, deputy commissioner for research and development, 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. Moak and Criss Cloudt McCuller, director for planning coordination, have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the allowance of the board to adopt a single textbook in a subject area in instances in which the board permits the withdrawal of one or more textbook publishers from the adoption process. There will be no effect on small businesses as a result of enforcing the section. 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 Criss Cloudt McCuller, Office of Planning Coordination, 1701 North Congress Avenue, Austin, Texas, 78701, (512) 463-9701. All requests for a public hearing on proposed sections submitted in accordance with the Administrative Procedures and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in sections has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §12.01, which provides that textbook adoptions shall be carried out in accordance with the Texas Education Code, Chapter 12; and §12.24, which provides the State Board of Education with the authority to make rules for the adoption of textbooks for use in public schools.

§81.129. *Consideration and Adoption of Textbooks by the State Board of Education.*

(a)-(h) (No change.)

(i) If a publisher requests to withdraw from the process after the date specified in the proclamation because of changes and corrections required under §81.127 of this title (relating to Report of the Commissioner of Education) or because of price reductions required by the board as a condition of adoption which the publisher states cannot be met, and if such withdrawal would reduce the number of books recommended by the State Textbook Subject Area Committee for a category to only one book, the board may, after due deliberation and consideration of the factors contributing to the request for withdrawal, grant the request for the publisher to withdraw and adopt the remaining book in the category. The request to withdraw must include a written statement signed by the publisher's authorized representative stating that the withdrawal is voluntary and that it is not made under duress.

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 January 17, 1990.

TRD-9000899 W. N. Kirby
Commissioner of Education

Proposed date of adoption: March 10, 1990

For further information, please call: (512) 463-9701

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**Chapter 141. Teacher
Certification**

**Subchapter B. Certificate
Issuance Procedures**

• 19 TAC §141.23

The Texas Education Agency proposes new §141.23, concerning the issuance of certificates based on examination. The proposed new section would enable previously certified teachers to add certificates for a different level or subject and allow secondary teachers to acquire additional teaching fields through the successful completion of the appropriate certification examination. In addition, teachers who possess a valid classroom teaching certificate and a bachelor's degree could qualify for an additional certification in a subject or at a level not covered by the teacher's existing certificate by passing the appropriate Examination for the Certification of Educators in Texas (ExCET) and then successfully completing a one-year internship. The proposed new section also would set guidelines for the internship. The new section is proposed pursuant to House Bill 2185 of the 71st Texas Legislature.

Lynn Moak, deputy commissioner for research and development, has determined that for each year of the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Moak and Criss Cloudt McCuller, director for planning coordination, also have determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing this new rule is the increased opportunity for teachers to expand their teaching qualifications and compliance with state law. There will be no effect on small businesses as result of enforcing the section. There is no anticipated economic cost for persons who are required to comply with the sections.

Comments on the proposal may be submitted to Criss Cloudt McCuller, Office of Planning Coordination, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on proposed sections submitted in accordance with the Administrative Procedures and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in sections has been published in the *Texas Register*.

The new section is proposed under the Texas Education Code, §13.0321, which authorizes the State Board of Education to adopt rules allowing certified teachers to qualify for additional certification based on examination.

§141.23. Issuance of Certificates Based on Examination.

(a) General provisions. A teacher who possesses a valid classroom teaching certificate and a bachelor's degree may qualify for an additional teaching field(s) or certification to teach at another level by passing the appropriate Examination(s) for the Certification of Educators in Texas (EXCET) that are offered for that subject. The rule shall not be used to qualify an individual for:

- (1) initial certification;
- (2) vocational certification based on skill and experience;
- (3) professional service certification; or
- (4) certification for which no EXCET requirement has been developed.

(b) Adding additional secondary teaching fields. A teacher who already possesses a secondary certificate and is seeking additional certification at the secondary level will be required to successfully pass the appropriate EXCET(s) that are offered for that secondary teaching subject listed in the Texas Education Code, §21.101(a).

(c) Additional certification for a different level or subject area. A teacher who possesses a valid classroom teaching certificate and a bachelor's degree may qualify for additional certification in a subject or at a level not covered by the teacher's existing certificate by:

- (1) passing the appropriate EXCET(s) in the subject for which the teacher is seeking additional certification; and

- (2) then completing a successful one-year internship under the supervision of an experienced certified teacher and who is teaching at that level or in that subject area.

(d) District requirements for approving individuals seeking additional certification. School districts who choose to staff positions with teachers who are qualifying for additional certification but who are not certified for that specific assignment must maintain documentation that they meet the following:

- (1) full accreditation status of the participating school district;

- (2) commitment to individual(s) seeking additional certification through adequate funding, a sufficient number of qualified supervising teachers, and other resources to deliver the internship;

- (3) provision of time for the supervising teacher and the intern to observe each other and to conduct follow-up conferences;

- (4) that all eligible candidates serving as teacher of record were assigned to an internship no later than October 1 of the school year in which the internship is to be completed; and

- (5) that districts annually report the assignment of all interns in this program who are serving as the teacher of record in the district through the Public Education Information Management System (PEIMS).

(e) The supervising teacher.

- (1) The supervising teacher shall be teaching in the subject or grade level in which the intern is seeking additional certification, and shall be experienced and certified in the subject or at that level; and

- (2) the supervising teacher shall have adequate time to assess the intern through formative instruments and to determine appropriate activities for the intern based on the needs of the intern as determined by the assessment and by input from the intern.

(f) The internship.

- (1) The teacher shall be at least on career ladder level II in order to be considered eligible for the internship.

- (2) The intern shall be provided time within the instructional day to observe the supervising teacher and other experienced teachers in the subject or at the level for which certification is sought.

- (3) The intern, regardless of career ladder assignment level, must receive two appraisals.

- (4) Internship shall begin no later than October 1 and extend through the last day of instruction.

- (g) Recommendation for additional certification. To be eligible for certification in a subject area or at a level for which an

internship is required, the intern must receive, in addition to the appraisals of the intern by two appraisers, a recommendation from the supervising teacher that signifies successful completion of the internship.

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 January 17, 1990.

TRD-9000898 W. N. Kirby
Commissioner of Education

Proposed date of adoption: March 10, 1990

For further information, please call: (512) 463-9701

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**Chapter 149. Education
Personnel Development**

**Subchapter B. Inservice
Education**

• **19 TAC §149.21**

The Texas Education Agency proposes an amendment to §149.21, concerning general requirements for inservice education. The amendment would add HIV infection, suicide prevention, and emotional disturbance to the topics that may be included in school districts' inservice education programs. The amendment is proposed pursuant to Senate Bill 959, House Concurrent Resolutions 29 and 266, and Senate Concurrent Resolution 48 of the 71st Texas Legislature.

Lynn Moak, deputy commissioner for research and development, 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. Moak and Criss Cloudt McCuller, director for planning coordination, have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the instruction of teachers in subject areas with great societal impact. There will be no effect on small businesses as a result of enforcing the section. 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 Criss Cloudt McCuller, Office of Planning Coordination, 1701 North Congress Avenue, Austin, Texas, 78701, (512) 463-9701. All requests for a public hearing on proposed sections submitted in accordance with the Administrative Procedures and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in sections has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §16.052, which requires that school districts provide not less than eight days of inservice training and preparation for teachers for each school year; and §11.207, which authorizes the State Board of Education to make rules regarding areas of

instruction to be included in school districts' inservice training.

**§149.21. General Requirements for
Inservice Education.**

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

(d) In addition to the requirements in subsection (c) of this section, the district's inservice education program may include one or more of the following:

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

(4) other topics designated by the State Board of Education and topics such as special education, abuse or neglect in students, dyslexia, discipline management, [and] teacher appraisal orientation, HIV infection, suicide prevention, and emotional disturbance.

(e)-(g) (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 January 17, 1990.

TRD-9000902 W. N. Kirby
Commissioner of Education

Proposed date of adoption: March 10, 1990

For further information, please call: (512) 463-9701

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**Subchapter C. Appraisal of
Certified Personnel**

• **19 TAC §149.43, §149.44**

The Texas Education Agency proposes amendments to §149.43 and §149.44, concerning teacher appraisal procedures, instruments, scoring, and forms. The proposed amendments would require a third appraiser when requested by a teacher if the difference between the sum of the domain subtotals for Domains I-IV for each of the two appraisers is two or more scoring categories. This would necessitate an observation by a third appraiser for an anticipated 2.0% of the teachers in the state. The third appraiser's observation would be averaged with the other two appraisers' observations. In view of the third appraiser requirement, the proposed amendments also provide for minimal time at the end of the school year for an observation by a third appraiser if needed. Formal observations would need to be completed 15 working days prior to the last day of instruction to allow time for an observation by the third appraiser. The proposed amendments would also remove obsolete language relating to unscheduled observations. The amendments are proposed pursuant to Senate Bill 417 of the 71st Texas Legislature.

Lynn Moak, deputy commissioner for research and development, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state government as a result of enforcing or administering the sections. Local school districts will bear the fiscal impact of having to retain qualified individuals

who would be given the responsibility of performing as the third appraiser. This impact, which cannot be estimated at this time, would continue beyond the first five years of the implementation of this rule.

Mr. Moak and Criss Cloudt McCuller, director for planning coordination, have determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be an improved system of appraising public school teachers and compliance with state law. There will be no effect on small businesses as a result of enforcing the sections. There is no anticipated economic cost for persons who are required to comply with the sections.

Comments on the proposal may be submitted to Criss Cloudt McCuller, Office of Planning Coordination, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on proposed sections submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in sections has been published in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §13.302, which provides the State Board of Education with the authority to adopt an appraisal process and criteria on which to appraise the performance of teachers for career ladder purposes.

§149.43. Teacher Appraisal Procedures.

(a) Appraisal qualifications.

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

(3) Appraisers other than the teacher's supervisor, including appraisers serving as a third appraiser, must be approved by the local board of trustees, have a valid teaching certificate, and have at least two years of pre-kindergarten, kindergarten, elementary, or secondary classroom teaching experience.

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

(b) (No change.)

(c) Appraisals, observations, and conferences.

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

(3) Beginning with the 1990-1991 school year, school districts which use the minimum of two appraisers during an appraisal period shall provide for an observation by a third appraiser if requested by a teacher due to a variance of two or more scoring categories between the sum of the domain subtotals for Domains I-IV awarded by the teacher's supervisor and the sum of the domain subtotals for Domains I-IV awarded by the other appraiser. Each district shall adopt procedures for uniform implementation of this procedure within the district.

(4) Each local school district shall establish a calendar for appraisal

during the required days of instruction for students during one school year. The appraisal calendar:

(A) shall designate the time frame for each of the three required appraisal periods;

(B) may uniformly extend the appraisal period for teachers who are eligible for a single appraisal throughout the days of instruction for students, at the district's discretion;

(C) shall exclude the first two weeks of instruction;

(D) shall prohibit observations on the last instructional day before any official school holiday or any other day deemed inappropriate by the local board of trustees;

(E) shall provide for scheduling of all requested observations by a third appraiser identified during Appraisal Period I as soon as practical but not later than the first 20 working days of Appraisal Period II;

(F) shall provide that all formal observations be completed 15 working days prior to the last instructional day for students, with the exception of an observation by a third appraiser or other extenuating circumstances; and

(G) shall be disseminated to all staff prior to the beginning of formal observations.

(5)[4] For formal observations, teachers shall be observed teaching classes in field(s) and teaching assignments for which they are certified whenever possible.

(6)[(5)] For the 1989-1990 school year, 50% of the formal observations must be scheduled by day and time of day, and 50% of the formal observations must be scheduled within a reasonable period of time designated by the local district and uniformly applied for all teachers. If a formal observation by a third appraiser from another campus is required, that observation must be scheduled by day and time of day. For the 1990-1991 school year and upon the development and approval of instruments, processes, or procedures to be used for purposes of appraising levels three and four of the career ladder, all formal observations using the Texas Teacher Appraisal System shall be scheduled.

(7)[(6)] Before the first observation of the teacher in any appraisal period, the requirement for consecutive minutes for [unscheduled] formal

observations may be waived by mutual consent at the request of that teacher or the appraiser. Under such waiver, each [unscheduled] formal observation may be comprised of two to three instructional segments of not less than 15 minutes each. Such waiver should be considered only when the nature of the teaching assignment requires shorter instructional segments.

(8)[(7)] Appraisers may not conduct formal observations simultaneously.

(9)[(8)] After a formal observation, each appraiser must complete a written record. The written record is not to be completed during the observation. A copy of the written record shall be given to the teacher within seven working days of the formal observation. If there are extenuating circumstances, the seven working day requirement may be extended to a maximum of 15 working days.

(10)[(9)] During an appraisal period, the teacher's supervisor may continually evaluate and document performance specifically related to the performance criteria and the indicators subsumed under the criteria in §149.42 of this title (relating to Teacher Performance Criteria). If such documentation would influence the teacher's appraisal, the documentation must be shared in writing with the teacher within seven working days of the occurrence or, in unusual circumstances, the teacher supervisor's knowledge of the occurrence. This additional documentation shall be combined with, but shall not replace, the formal observation to determine credit for the criteria or indicators. Appraisers other than the teacher's supervisor shall have access to Domain V documentation only in the event that the teacher's total score for the year on Domain V determined by the teacher's supervisor is less than meets expectations as specified in §149.44(b)(2) of this title (relating to Teacher Appraisal Instrument Scoring Procedures, and Forms).

(11)[(10)] Following each formal observation, an appraiser must conduct a post-observation conference with the teacher if the teacher's performance is judged less than meets expectations in one or more domains. Regardless of the teacher's [teacher] performance, each teacher supervisor must conduct a post-observation conference after each formal observation. Appraisers other than the teacher's [teacher] supervisor are encouraged to conduct post-observation conferences [post-conferences] after all formal observations. Required post-observation conferences [post-conferences] must be held within 10 working days of the formal observation. If there are extenuating circumstances, the 10 working day requirement may be extended to a maximum of 15 working days. At the conclusion of the first appraisal period, a conference will be held at the request of either the teacher or the appraiser.

(d)-(g) (No change.)

§149.44. *Teacher Appraisal Instrument, Scoring Procedures, and Forms.*

(a) (No change.)

(b) The State Board of Education shall develop and approve the Texas teacher appraisal instrument, which shall include the domains and criteria listed in §149.42 of this title (relating to Teacher Performance Criteria) and indicators for each criterion.

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

(7) Scoring of the teacher's performance is done in accordance with the Texas Education Code, §13.304, and is based on the summary domain credits issued each appraisal period by the teacher's supervisor and the other appraiser(s) unless the difference between the observations is such that the teacher's performance cannot be accurately evaluated in accordance with paragraphs (1)-(6) of this subsection and an observation by a third appraiser from another campus is requested. When a third appraiser observation is made, each of the three appraisers' scores will be averaged together, recorded on the evaluation record, and will constitute the teacher's score for that appraisal period. The State Board of Education shall establish the standards for conversion of summary domain credits to domain performance scores of:

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

(C) meets expectations [satisfactory];

(D)-(E) (No change.)

(c) (No change.)

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

Issued in Austin, Texas, on January 17, 1990.

TRD-9000900 W. N. Kirby
Commissioner of Education

Earliest possible date of adoption: March 5, 1990

For further information, please call: (512) 463-9701

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TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 3. Life, Accident, and Health Insurance and Annuities

Subchapter Y. Minimum Standards for Benefits for Long-Term Coverage Under Individual and Group Policies

• 28 TAC §3.3819, §3.3820

The State Board of Insurance proposes new §3.3819 and §3.3820, concerning minimum standards for benefits for long-term coverage under individual and group policies applicable to insurers and other entities providing such insurance or benefits in Texas. The new sections are necessary to provide for uniform standards for benefits, thereby facilitating the availability of long-term care coverage that is in the best interest of the insurance consumers of this state, in conformity with the legislative mandate found in the Insurance Code, Article 3.70(F)(5). Proposed §3.3819, concerning the requirement for reserve, provides for determination of a required reserve for long-term care insurance benefits to insure that statutory requirements with respect to solvency of long-term care insurance contracts are met. Proposed §3.3820, concerning the requirement, to offer inflation protection, provides that prospective insureds be afforded both the opportunity to purchase inflation protection in a long-term care policy and information adequate to assist the prospective insured in making an informed choice with respect to such protection.

Kay Simonton, deputy insurance commissioner for the life group, has determined that for the first five-year period the proposed sections will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. There will be a fiscal implication to small businesses that are insurers issuing long-term care insurance policies, consisting of the costs explained in this notification for all insurers. On the basis of cost per \$100 of sales, there is no difference in cost of compliance between small businesses and larger businesses affected by the proposed sections. There will be no effect on local employment or local economy.

Ms. Simonton 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 administering and enforcing the sections will be more effective regulation of long-term care insurance products by refining

the minimum standards for benefits. The adoption of such sections will, in addition, facilitate the availability of an insurance product for which there is an enhanced public need. The anticipated economic cost to persons who are required to comply with proposed §3.3819 is \$200, or the actuarial cost for adjusting existing accident and health systems of reserves, for those entities already in the accident and health insurance business. For entities first entering the accident and health market and offering long-term care insurance, cost of compliance for the first year has been estimated to be \$30,000, for such items as professional fees and systems setup. There is no incremental anticipated economic cost of compliance for §3.3820 for insurers currently in the long-term care insurance business. The cost of entering the long-term care insurance business, however, has been estimated to be \$100,000 for such items as actuarial fees, printing of advertising and policies, designing the policy forms, and making arrangements for claims payments and administration of policies. For the insurers entering the market, such cost would include any cost which might be allocated to compliance with §3.3820.

Comments on the proposal may be submitted to Kay Simonton, Deputy Insurance Commissioner for the Life Group, State Board of Insurance, Mail Code 830-0, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The new sections are proposed under the Insurance Code, Article 1.04, which authorizes the State Board of Insurance to determine rules in accordance with the laws of this state; under the Insurance Code, Article 3.51-6, §5, which authorizes the State Board of Insurance to issue such rules and regulations as necessary to carry out the various provisions of the article, which concerns group accident and health insurance; and under the Insurance Code, Article 3.70-1(F)(5), which authorizes and mandates that the board adopt rules and regulations establishing minimum standards for benefits for long-term care coverage under individual policies and group policies and certificates of accident and sickness insurance delivered or issued for delivery in this state, including group coverages delivered or issued for delivery by companies subject to the Insurance Code, Chapter 20.

§3.3819. Requirement for Reserve. Reserves for long-term care benefits provided pursuant to the terms and conditions of policies or certificates which are subject to the provisions of this subchapter shall be determined in accordance with an acceptable method of reserving which is approved by the board concurrent with approval of the policy.

§3.3820. Requirement to Offer Inflation Protection.

(a) No insurer may offer a long-term care insurance policy or certificate in this state unless the insurer also offers to the prospective insured the option to purchase a policy that provides for benefit levels to increase throughout the period of coverage to account for reasonably anticipated increases in the costs of long-term care services covered by the policy. Insurers must offer to each applicant, at the time of purchase, the option to purchase a policy that:

(1) increases benefit levels annually, in a manner so that the increases are compounded annually, throughout the period of coverage;

(2) guarantees the insured individual the opportunity to increase benefit levels periodically throughout the period of coverage without providing evidence of insurability or health status; or

(3) covers a specified percentage of actual or reasonable charges.

(b) Insurers shall include the following information in or with the outline of coverage:

(1) a graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits, depicting benefit levels over at least a 20-year period; and

(2) a disclosure of any expected premium increases or additional premiums to pay for automatic or optional benefit increases. If premium increases or additional premiums will be based on the attained age of the applicant at the time of the increase, the insurer shall also disclose the magnitude of the potential premiums the applicant would need to pay at ages 75 and 85 for benefit increases. An insurer may use a reasonable hypothetical or a graphic demonstration for the purposes of this disclosure.

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 January 25, 1990.

TRD-9000883
Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: March 5, 1990

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





Name: Glen Killian
Grade: 11
School: Plano High, Plano

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 13. CULTURAL RESOURCES

Part IV. Texas Antiquities Committee

Chapter 41. Practice and Procedure

• 13 TAC §41.29, §41.30

The Texas Antiquities Committee adopts new §41.29 and §41.30, with changes to the proposed text as published in the October 27, 1989, issue of the *Texas Register* (14 TexReg 5711).

The new sections are necessary to implement Senate Bill 222, Article V, §111, 71st Legislature, Regular Session, 1989 entitled Incentive to Report Items of Value. The sections establish reasonable rules and regulations regarding disposition of reported items of value and specific criteria for evaluation of historic significance of reported items of value. Changes made consist of additions to §41.29 and §41.30 which refer to rules promulgated by the comptroller. The changes clarify the separate responsibilities and duties of the committee and the comptroller in the disposition of and reward payment for the recovery of buried, state-owned items of value.

The new sections stipulate that any and all projects conducted as a result of the appropriations rider entitled Senate Bill 222, Article V, §111, 71st Legislature, Regular Session 1989 will be implemented under Chapter 41 of this title (relating to Rules of Practice and Procedure). Project sponsors are required to obtain an antiquities permit from the Texas Antiquities Committee to recover state-owned items of value and must enter into a written contract with the Comptroller of Public Accounts for receipt of a reward payment. Project sponsors must pay all costs incurred; treat reported items of value as artifacts; submit items to the committee for evaluation of historic significance; and appraise, conserve, and curate the valuable items recovered.

During the public comment period, the committee received comments from the Comptroller of Public Accounts and the State Department of Highways and Public Transportation.

Comments were made by the comptroller regarding the promulgating of rules pursuant to the rider, Article V, §111, of the General Appropriations Act of the 1990-1991 biennium. An appropriation rider may only detail, limit, or restrict the use of funds and cannot create a new reward program or activity. The commentator believes the rider is only valid if it is executed under existing law

governing payment of rewards for information leading to recovery of property due the state. The existing law is identified as Chapter 874, Title 70, Heads of Departments, Texas Civil Statutes, Article 4344g concerning contracts for information about state claims.

Further comments were made concerning the conflict of the amount of finders fee to be authorized. The rider authorizes a fee up to 25% of the value of an item. However, the article limits payments to 5.0% of the value of recovered property. The article also requires a written contract between the comptroller and the informant. The contract is not mentioned in the proposed rules nor in the rider. Finally, the commentator favors a limitation of any reward up to 5.0% of the value of any property recovered and the addition of a contractual requirement between the informant and the comptroller.

The committee concurs with all comments received from the comptroller. A rider to an appropriations bill does not create a new reward program not already provided for by existing law. Texas Constitution, Article III, §35, prohibits the enactment of new legislation in a general appropriations act. *Moore v. Sheppard*, 192 S.W.2d 559, 561-62 (Tex.1946). Additions were made to new §41.29 and §41.30 concerning disposition of reported items of value and specific criteria for evaluation of historic significance of reported items of value which clarify reward payment procedures, contractual terms of comptroller, and permit requirements of the committee.

Therefore, claims for reward for information leading to recovery of state-owned property filed under Senate Bill 222, Article 5, §111, Incentive to Report Items of Value, 71st legislature, 1989 must be implemented under Chapter 874, Title 70, Heads of Departments, Texas Civil Statutes, Article 4344g concerning contracts for information about state claims.

The rider and the article conflict on the amount of reward to be received. The enabling rider authorizes the comptroller of public accounts to pay rewards up to 25% of any buried treasure recovered on either state or university onshore lands by individuals other than an employee or contractor of the state or university. The enacting article limits the reward amount to 5.0% of the value of any state-owned property recovered.

A project sponsor or permittee must enter into a written contract with the comptroller as an informant to receive payment. According to the article, requirements for payment under the contract shall be contingent upon a recovery by the state; may not exceed five percent of the amount of revenue or the value of the other property that the state recovers; and may be limited by agreement not to

exceed a specified, absolute dollar amount.

Additional comments received from State Department of Highways and Public Transportation state the department has no problem with the proposed rules. The department does however plan to limit access to right-of-way for the purpose of recovering items of value. Two reasons cited for this policy include safety to project sponsors and safety to the traveling public.

Also cited was possible violation of restrictive uses of acquired easements to which the department does not hold fee title. Article V, §88 of the current appropriations bill also prohibits the entrusting of state property to anyone for other than state purposes. Texas Civil Statute, Article 6710d, §§93-96, prohibits stopping, standing, or parking vehicles on highways. The Texas Penal Code, §42.03, prohibits the obstruction of any highway, street, sidewalk, etc. and authorizes peace officers, firemen, or a person with authority, to control use of the premises, to order obstruction removed, or obstructors to move.

The committee acknowledges the comments from the State Department of Highways and Public Transportation regarding the proposed rules and existing laws restricting activities within the public highway easement. The committee agrees that access requirements or restrictions for the recovery of reported items of value are subject to the existing rules of the land-owning agency or university.

The new sections are adopted under the Natural Resources Code, Title 9, Chapter 191 (revised by Senate Bill 231, 68th Legislature, 1983, and House Bill 2056, 70th Legislature, 1987), §191.052, which provides the Texas Antiquities Committee with the authority to promulgate rules and require contract or permit conditions to reasonably effect the purposes of Chapter 191.

§41.29. Disposition of Reported Items of Value.

(a) Introduction. It is the intention of the Texas Antiquities Committee that any and all projects conducted as a result of the appropriations rider entitled Senate Bill 222, Article V, §111, 71st Legislature, Regular Session, 1989, will be executed under Chapter 41, of this title (relating to Rules of Practice and Procedure). This assures that the projects will be conducted in a timely and professional scientific archaeological manner. The rider and §41.29 and §41.30 of this title (relating to Disposition of Reported Items of Value and Specific Criteria for Evaluation of Historic Significance of Reported Items of Value), apply only to on-land sites. Tidelands are

project sponsor or permittee for a limited class of buried treasure items, not for other artifacts. A rider to an appropriations bill, however, cannot create a reward program not already provided for by existing law. Therefore, to implement the stipulations of the rider payment will be executed under Chapter 874, Title 70, Heads of Departments, Texas Civil Statutes, Article 4344g, concerning contracts for information about state claims and Title 34, Public Finance, Part I Comptroller of Public Accounts, Chapter 3, Tax Administration, Subchapter A. General Rulings, §3.8, concerning informants recovery payment limitations). Article 4344g, creates a financial incentive for persons who may be able to supply the state with information concerning its public purpose to locate and recover other property to which it is entitled. Article 4344g is effective until January 1, 1991. Section 3.8 stipulates the terms under which a contract is negotiable with the comptroller and places limitations on the amount of the reward payment.

(b) Informant contract. A project sponsor or permittee must enter into a written contract with the comptroller as an informant to receive a payment for the recovery of state-owned items of value pursuant to Chapter 874, Title 70, Heads of Departments, Texas Civil Statutes, Article 4344g, concerning contracts for information about state claims. A copy of the contract must be submitted to the committee prior to the final issuance of an antiquities permit. Payment by the comptroller will be implemented under Title 34, Public Finance, Part I Comptroller of Public Accounts, Chapter 3, Tax Administration, Subchapter A. General Rulings, §3.8 concerning informants recovery payment limitations.

(c) Costs. Costs of archeological investigations will be borne by project sponsor or permittee contracted with the comptroller pursuant to §41.21 (1)(A) and (B) of this title (relating to Application for Archeological Permit). The costs of evaluation, appraisal, conservation, and curation of reported items of value will also be born solely by the permittee. The committee may require a performance bond be posted prior to issuance of an antiquities permit.

(d) Processing, ownership, housing, conserving, exhibiting, and access. Principal investigators, project sponsors, and permittees contracted with the comptroller as informants shall treat all reported items of value as artifacts according to rules specified in §41.27 of this title (relating to Disposition of Archeological Artifacts and Data).

(e) Evaluation. All reported items of value resulting from permit investigations on state or university lands and under contract with the comptroller for payment of reward must be evaluated in terms of historic significance by the Texas

Antiquities Committee according to criteria for evaluation as specified in §41.29 of this title (relating to Specific Criteria for Evaluation of Historic Significance of Reported Items of Value). Reported items of value determined to be of historic significance are state archeological landmarks and will be reviewed by the committee and placed for curation on a case-by-case basis.

(f) Conservation and curation. All recovered items of value determined to have historic significance must be conserved and curated. Curation and housing will be reviewed by the committee and decided on a case-by-case basis.

(g) Appraisal. All recovered items of value must be assigned a monetary value by an independent appraiser approved by the committee. A written appraisal must be submitted to the committee for review.

§41.30. Specific Criteria for Evaluation of Historic Significance of Reported Items of Value. Historic significance may be assigned to a reported item of value, and a reward payment approved provided that the following conditions are met:

(1) the reported item of value was recovered from state or university onshore lands by individuals other than an employee or contractor of the state or a university;

(2) project sponsor or permittee has entered into a written contract with the comptroller as an informant;

(3) recovery of the reported item was conducted under an antiquities permit and appropriate Texas Antiquities Committee rules for archeological investigations; and

(4) the reported item(s) consist(s) of buried bullion, coins, and/or jewelry and excludes any other types of artifacts.

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 January 22, 1990.

TRD-9001012 Molly F. Godwin
Certifying Official
Texas Antiquities
Committee

Effective date: February 13, 1990

Proposal publication date: October 27, 1989

For further information, please call: (512) 463-6098

TITLE 22. EXAMINING BOARDS

Part XIX. Polygraph Examiners Board

Chapter 397. General Rules of Practice and Procedure

• 22 TAC §397.40

The Polygraph Examiners Board adopts an amendment to §397.40, without changes to the proposed text as published in the October 27, 1989, issue of the *Texas Register* (14 TexReg 5715).

The amendment is adopted so that the rules of the Polygraph Examiners Act are in compliance with the Administrative Procedure and Texas Register Act (APTRA).

This section insures that the rules of the Polygraph Examiners Act are in compliance with APTRA.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4413(29cc), §6(a), the Texas Polygraph Examiners Act, which provide the Polygraph Examiners Board with the authority to issue regulations consistent with the provisions of this Act.

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

Issued in Austin, Texas, on January 24, 1990.

TRD-9000854 Bryan M. Perot
Executive Officer
Polygraph Examiners
Board

Effective date: February 14, 1990

Proposal publication date: October 27, 1989

For further information, please call: (512) 465-2058

• 22 TAC §397.42

The Polygraph Examiners Board adopts an amendment to §397.42, without changes to the proposed text as published in the October 27, 1989, issue of the *Texas Register* (14 TexReg 5715).

The amendment is adopted to insure that the rules of the Polygraph Examiners Act are in compliance with the Administrative Procedure and Texas Register Act (APTRA).

This section insures that the rules of the Polygraph Examiners Act are in compliance with APTRA.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4413(29cc), §6(a), the Texas Polygraph Examiners Act, which provide the Polygraph Examiners Board with the authority to issue regulations consistent with the provisions of this Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel

and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 24, 1990.

TRD-9000853

Bryan M. Perot
Executive Officer
Polygraph Examiners
Board

Effective date: February 14, 1990

Proposal publication date: October 27, 1989

For further information, please call: (512) 465-2058

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**Part XXIX. Texas Board
of Professional Land
Surveying**

**Chapter 663. Standards of
Responsibility and Rules of
Conduct**

• **22 TAC §663.9**

The Texas Board of Professional Land Surveying adopts an amendment to §663.9, without changes to the proposed text as published in the November 10, 1989, issue of the *Texas Register* (14 TexReg 5921).

The board is amending this portion of the rule because it is in conflict with §9 of their enabling statute, the Professional Land Surveying Practices Act.

The board is amending this section to conform to our enabling statute, the Professional Land Surveying Practices Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 5282c, §9, which provide the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations, and bylaws not inconsistent with the Texas Constitution, the laws of this state and this Act.

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

Issued in Austin, Texas, on January 22, 1990.

TRD-9000869

Betty J. Pope
Executive Director
Texas Board of
Professional Land
Surveying

Effective date: February 16, 1990

Proposal publication date: November 10, 1989

For further information, please call: (512) 452-9427

**TITLE 25. HEALTH
SERVICES**

**Part VII. Texas Medical
Disclosure Panel**

Chapter 601. Informed Consent

Medical Treatments and

Surgical Procedures

**Established by the Texas
Medical Disclosure Panel**

• **25 TAC §§601.1, 601.3, 601.4**

The Texas Medical Disclosure Panel (panel) adopts amendments to §601.1 and §601.3, and new §601.4, with changes to the proposed text as published in the August 4, 1989, issue of the *Texas Register* (14 TexReg 3785).

Section 601.1 adopts by reference lists of medical treatments and surgical procedures which physicians and health care providers are required to disclose to patients or persons authorized to consent for the patients. The amendment to §601.1 modifies the text of the section itself by updating the effective dates of the changes to List A, which the section adopts by reference. The amendment to List A identifies the procedures and lists the related risks concerning radiation therapy.

Section 601.3 adopts by reference the disclosure and consent form to be used for medical treatments and surgical procedures described in §601.1. The amendment to §601.3 adds a provision which clarifies the relation between the disclosure and consent form to be used for medical treatments and surgical procedures described in §601.1 and the form described by new §601.4 to be used for radiation therapy procedures. The panel did not change the disclosure and consent form itself.

New §601.4 adopts by reference the disclosure and consent form to be used by the physician or health care provider to inform the patient or person authorized to consent for the patient of the possible risks and hazards involved in the radiation therapy named in the form. This form is to be used in lieu of the disclosure and consent form adopted by reference in §601.3.

The Medical Liability and Insurance Improvement Act, Texas Civil Statutes, Article 4590i, §6.04, requires that the lists of medical treatments and surgical procedures and the forms for disclosure be published in the *Texas Register*. The amendment to List A in §601.1 and the disclosure and consent for radiation therapy form in new §601.4 are also adopted with changes to the proposed list and form as published in the August 4, 1989, issue of the *Texas Register* (14 TexReg 3838). Therefore, the adopted changes to List A and the disclosure and consent for radiation therapy form are being republished in the In Addition Section of this issue.

The purpose of the amendments is to clarify and update the information in the lists of medical treatments and surgical procedures established by the panel. The lists enable the physician and health care provider to be aware of the procedures which require disclosure and those which do not require disclosure.

The following is a discussion of the public comments received and evaluated by the panel during the comment period.

Concerning §601.1.18, commenters recommended limiting the length and extent of risk relating to radiation therapy procedures. The panel disagrees and considers the risks appropriate in regard to informed consent.

Concerning §601.1.18, one commenter recommended deleting those minimal risks that have little material effect on a reasonable patient's decision whether to undergo radiation therapy. The panel disagrees and considers the minimal risks appropriate in obtaining consent for radiation therapy procedures.

Concerning §601.1.18, commenters recommended clarification of the term "children" as related to radiation therapy procedures. The panel agrees and has added language to the section defining children.

Concerning §601.4, commenters recommended that adequate time be permitted to implement the utilization of §601.4 (Disclosure and Consent for Radiation Therapy) following adoption. The panel agrees and will allow 90 days to implement the form following publication in the *Texas Register*.

Concerning §601.4, one commenter recommended deleting the words "discuss these matters with my physician and to," stating redundancy as a rationale. The panel disagrees and considers the phrase enhancing to the consent form.

Concerning §601.4, commenters recommended a clarification in the utilization of the radiation therapy disclosure and consent form. The panel agrees and has revised the wording to reduce confusion and clarify the utilization of the general consent form (§601.3) and the disclosure and consent form for radiation therapy (§601.4).

Concerning §601.4, one commenter recommended that the panel indicate the purpose of photographs and the placing of a tattoo or skin mark for radiation therapy procedures. The panel disagrees and considers the wording "necessary treatment" as an appropriate explanation.

Concerning §601.4, one commenter recommended highlighting that portion of the consent form which addresses females to assure that all females acknowledge that portion of the form. The panel agrees and bold print will be used to highlight that area of the consent form.

Concerning §601.4, one commenter recommended an explanation regarding the physician signature line and stated an inconsistency with the general consent form (§601.3) which does not require a physician signature. The panel agrees and has deleted the line for physician signature.

Concerning §601.4, one commenter recommended reducing the two page consent form to one page. The panel disagrees and cited legibility reduction as a rationale. The panel also noted that the second page of the consent form is identified by the number two.

Concerning §601.4, one commenter recommended a clarification regarding the

utilization of more than one form where more than one body area was irradiated. The panel agrees and has added language which will permit either one or multiple consent forms to be used pending the discretion of the provider.

Concerning §601.118 and §601.4, commenters recommended editorial changes and correction of typographical errors noted throughout the publication. The panel agrees and has made appropriate editorial deletions and corrections to risks relating to radiation therapy and has corrected typographical errors and punctuation.

The following organizations commented on the amendments and new section: the Texas Hospital Association, the Texas Medical Record Association, and the Texas Radiological Society. The commenters were not opposed to the amendments and new section in their entirety; however, the commenters offered suggestions concerning specific provisions as outlined in the summary of comments.

The amendments and new section are proposed under Texas Civil Statutes, Article 4590i, §6.04, which authorize the panel to prepare separate lists of the medical treatments and surgical procedures that do and do not require disclosure by physicians and health care professionals of the possible risks and hazards to the patient or persons authorized to consent for the patients, and to prepare the form for the treatments and procedures which do require disclosure.

§601.1. Procedures Requiring Full Disclosure (List A).

(a) The procedures in this section, the procedures in §601.2 of this title (relating to Procedures Requiring No Disclosure), and the form described in §601.3 of this title (relating to Disclosure and Consent Form), were first published in the December 15, 1981, issue of the *Texas Register* and initially became effective on June 1, 1982. The first amendments to §601.1 and §601.2 were published in the December 3, 1982, issue of the *Texas Register* and became effective on January 1, 1983. The second amendments to §601.1 and §601.2 were published in the November 23, 1984, issue of the *Texas Register* and became effective on January 1, 1985. The third amendments to §601.1 and §601.2 were published in the April 19, 1988, issue of the *Texas Register* and became effective on May 2, 1988. The fourth amendment to §601.1 was published in the July 21, 1989, issue of the *Texas Register*, and became effective on August 3, 1989.

(b) The Texas Medical Disclosure Panel adopts by reference the list of medical treatments and surgical procedures requiring full disclosure, as amended April 1990. The list is indexed and filed in the office of the Texas Medical Disclosure Panel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and is available for public inspection during regular working hours.

§601.3. Disclosure and Consent Form. The Texas Medical Disclosure Panel adopts by reference the form to be used by the physician or health care provider to inform the patient or person authorized to consent for the patient of the possible risks and hazards involved in the medical treatments and surgical procedures named in the form. This form is to be used for the medical treatments and the surgical procedures described in §601.1 of this title (relating to Procedures Requiring Full Disclosure (List A)) except for radiation therapy as stated in §601.4 of this title (relating to Radiation Therapy Disclosure and Consent Form). This form is indexed and filed in the office of the Texas Medical Disclosure Panel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and is available for public inspection during regular working hours.

§601.4. Radiation Therapy Disclosure and Consent Form. The Texas Medical Disclosure Panel adopts by reference the form to be used by the physician or health care provider to inform the patient or person authorized to consent for the patient of the possible risks and hazards involved in the radiation therapy named in the form. This form is to be used in lieu of the general disclosure and consent form adopted in §601.3 of this title (relating to Disclosure and Consent Form) for disclosure and consent relating to only radiation therapy procedures. If a surgical or anesthetic procedure is required in combination with a radiation therapy procedure, the general disclosure and consent form and the form adopted in this section shall be used. The general disclosure and consent form shall be used for the surgical or anesthetic procedure, and the radiation therapy disclosure and consent form shall be used for the radiation therapy procedure. This form is indexed and filed in the office of the Texas Medical Disclosure Panel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and is available for public inspection during regular working hours.

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

Issued in Austin, Texas, on January 26, 1990.

TRD-9000939 James H. Duke, Jr., M.D.
Chairman
Texas Medical Disclosure
Panel

Effective date: May 3, 1990

Proposal publication date: August 4, 1989

For further information, please call: (512) 458-7245

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TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 3. Life, Accident, and Health Insurance and Annuities

Subchapter T. Minimum Standards for Medicare Supplement Policies

• 28 TAC §§3.3302-3.3309, 3.3313-3.3318

The State Board of Insurance adopts amendments to §§3.3302-3.3309 and §3.3313, and new §§3.3314-3.3318. Sections 3.3302, 3.3303, 3.3306, and 3.3307, and 3.3314 are adopted with changes to the proposed text as published in the September 14, 1989, issue of the *Texas Register* (14 TexReg 4841). Sections 3.3304, 3.3305, 3.3308, 3.3309, 3.3313, and 3.3315-3.3318 are adopted without changes and will not be republished.

Sections 3.3302-3.3309 and §§3.3313-3.3318 concern minimum standards for Medicare supplement policies. The amendments and new sections are necessary to facilitate implementation of amendments to the Insurance Code, Article 3.74, occasioned by the passage of House Bill 116 into law during the 71st Legislature, and to comply with recently enacted federal standards applicable to Medicare supplement insurance. In response to comments, this adoption includes several changes to the sections as proposed. The adoption changes §3.3302 by clarifying in paragraph (1) that the subchapter applies only to policies and certificates issued subsequent to passage of Public Law 96-265, 94 Statute 476 (42 United States Code Annotated §1395ss (1980)). The adoption of §3.3303 includes the addition of a definition of what is meant by the term "qualified actuary" in §3.3307, concerning loss ratio standards. The adoption changes §3.3306(1)(A) to clarify that the required credit to be given for satisfaction of time periods associated with pre-existing conditions upon replacement refers to specific time intervals measured in days, rather than a percentage of the total waiting period, satisfied under terms of the policy being replaced. The adoption adds language in paragraph (2) to provide that one of the three policies which insurers may offer must be a basic Medicare supplement policy that meets the minimum standards adopted by the board. The adoption changes §3.3307(d) and includes the addition of subsection (g) to clarify that although it need not necessarily be filed, the incurred claims and earned premium experience shall be maintained and be made available to the board for each policy form with credible business in force in Texas. The adoption changes subsection (f) by deleting certain disclosure requirements, since the necessity for those provisions are obviated by passage of the Medicare Catastrophic Coverage Repeal Act of 1989. The adoption changes §3.3314(a), concerning standards for facilitating comparison among policies, to clarify the degree of specificity of premium identification

for coverages or benefit modifications in addition to basic minimum standards coverage. The adoption changes subsection (b) to clarify that disclosure of additional benefits and premiums must be accompanied as well by disclosure of limitations, exclusions, conditions for renewability, or other restrictions associated with particular policy forms. In addition, the adoption changes the form which is incorporated by reference in subsection (b)(1)(A).

The amendments to §§3.3302-3.3309 and §3.3313 implement, facilitate, and require compliance with the Omnibus Reconciliation Act of 1987 (Public Law 100-203) and supplemental federal legislation which followed its passage. New §3.3314 requires insurers to identify incremental amounts of premium for basic minimum coverage, additional coverages, and total benefits. It also adopts by reference a form entitled "Comparison of Premiums and Benefits for Medicare Supplement Policies," which sets forth the format and content of the disclosure required by the new section. The board has filed a copy of the form with the Office of the Secretary of State, Texas Register Section. Persons desiring copies of the form may obtain copies from the Life Group, Mail Code 830-0, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998. New §3.3315 relates to standards for claims payment and requires compliance with federal law relating to Medicare supplement insurance. New §3.3316, concerning filing requirements for out-of-state group policies, requires that certificates for such policies be filed for prior approval, and that a copy of the master group policy also be filed for informational purposes. New §3.3317 requires that compensation to agents be restricted to renewal compensation in situations where replacement of existing coverage is with the same entity and the replacement provides substantially similar benefits. It provides an exception for replacement before the first policy year has expired, during which time the agent is to receive the pro rata portion of commission attributable to the original policy year. New §3.3318 states the effective date of the amendments and new sections and provides for distinctions between policies issued on and after September 20, 1989, and those issued before that date.

Comments generally favorable to the new sections as proposed were received from Consumers Union, Health Insurance Association of America, Texas Legal Reserve Officials Association, and USAA Life Insurance Company; however, the commenters did suggest some modification of the sections as proposed.

One commenter questioned whether the provisions of §3.3306(1)(A), as proposed, require that the portion of the time period satisfied under the policy replaced, expressed as a percentage of the total waiting period, be carried over and applied as a percentage of the waiting period satisfied under the replacement policy. In response, the board has changed paragraph (1)(A) to clarify that the credit for satisfaction of part or all of a waiting period for a pre-existing condition is to be on the basis of time intervals measured in days, rather than a percentage of the total waiting period, satisfied under the terms of the policy being replaced. One commenter

suggested the inclusion of language embodied in the statutory requirement which limits insurers to offering a maximum of three Medicare supplement policies, one of which is a basic policy. In response, the board has changed paragraph (2) to include language that one of the three policies must be a basic Medicare supplement policy that meets the minimum standards of Medicare supplement insurance policies adopted by the board.

One commenter objected to the requirement of §3.3307(d)(1) that the NAIC Medicare Supplement Experience Exhibit be included for each form issued in Texas, since that requirement represented a departure from the NAIC model. The board responds by deleting subsection (d)(1), as proposed, and by redesignating the remaining paragraphs in subsection (d) as (1)-(5). The board has also added new subsection (g) to require each company to maintain incurred claims and earned premium experience for each policy form with credible experience in Texas.

One commenter suggested that the comparison of premiums and benefits for Medicare supplement policies required by §3.3314 should be provided at the time of initial contact with a potential insured. A commenter suggested that the comparison form also incorporate a notice of availability of the basic policy and the fact that the difference between the benefits of the basic policy is the inclusion of all or none of the Medicare Part A in-hospital deductible. One commenter opposed §3.3314 because of practical difficulties associated with specifying an individual premium amount with each additional benefit or coverage. In response, the board has changed subsection (a) to provide that the premium amount for the basic minimum standards coverage, for additional coverages or benefit modifications, and for the combined total benefits under the policy must be identified on the comparison form. The board has also added to the form adopted by reference a notice of the availability of the basic policy and the fact that the difference between the benefits of the basic policy is the inclusion of all or none of the Medicare Part A in-hospital deductible. The board has determined that it is unnecessary to require furnishing the comparison form on initial contact with a proposed insured, as the 30-day free look period required by statute and rule provides appropriate opportunity for an insured to review policies issued by a company and to decide during that time if the policy the insured has selected meets the insured's needs. One commenter recommended that further disclosure requirements include notification to the consumer of the availability of qualified Medicare beneficiary funds, Medicaid, and other state and federal health assistance benefits. While the board agrees that information concerning availability of federal assistance is necessary and desirable for consumers, information about availability of such programs already is provided in the "Buyer's Guide," which is required by regulation to be provided to each proposed insured. Information on availability of qualified Medicare beneficiary funds also is included with Social Security checks. It is, therefore, the response of the board that adequate notification of availability of such assistance already is required or otherwise is made.

The amendments and new sections are adopted pursuant to the Insurance Code, Article 3.74, and Texas Civil Statutes, Article 6252-13a, §4 and §5. The Insurance Code, Article 3.74, §2(c) and (f), provides that the State Board of Insurance shall issue reasonable rules to establish specific standards for provisions in Medicare supplement policies, including requirements that are at least equal to those required by federal law, regulations, and standards. Article 3.74, §4(d), provides that the State Board of Insurance may issue reasonable rules providing loss ratio standards applicable to rates charged for Medicare supplement policies. Article 3.74, §8, provides that the State Board of Insurance shall issue reasonable rules concerning compensation to agents or other producers of Medicare supplement insurance coverage. Article 3.74, §10, provides that the State Board of Insurance may adopt rules in accordance with federal law regulating Medicare supplement policies and any other reasonable rules that are necessary to carry out Article 3.74, concerning Medicare supplement insurance and policies. Texas Civil Statutes, Article 6252-13a, §4, authorize and require each state agency to adopt rules of practice setting forth the nature and requirements of available procedures; Texas Civil Statutes, §5 prescribes the procedure for adoption of rules by a state administrative agency.

§3.3302. Applicability and Scope. Except as otherwise specifically provided, this subchapter applies to:

(1) all Medicare supplement policies as defined in the Insurance Code, Article 3.74, §1(b)(3), and §3.3303 of this title (relating to Definitions) delivered or issued for delivery in this state on or after the effective date of this subchapter; and

(2) all certificates issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in this state regardless of the place where the policy was delivered or issued for delivery. In this subchapter, the required minimum standards for Medicare supplement insurance, which make specific reference to a policy or policies, are equally applicable to a group certificate or certificates.

§3.3303. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Medicare supplement policy—A group or individual policy of accident and sickness insurance or a subscriber contract of a hospital service corporation subject to the Insurance Code, Chapter 20, or evidence of coverage issued by a health maintenance organization subject to the Texas Health Maintenance Organization Act, which policy, subscriber contract, or evidence of coverage is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or

surgical expenses of persons eligible for Medicare by reason of age. Such term does not include:

(A) (No change.)

(B) a policy or health care benefit plan including a policy or contract of group insurance or group contract of a hospital service corporation subject to the Insurance Code, Chapter 20, or group evidence of coverage issued by a health maintenance organization subject to the Texas Health Maintenance Organization Act, when such policy or plan is not marketed or held to be a Medicare supplement policy or benefit plan.

Qualified actuary—An actuary who is a member of either the Society of Actuaries or the American Academy of Actuaries.

§3.3306. *Minimum Benefit Standards.* No insurance policy, subscriber contract, or evidence of coverage may be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy unless the policy, contract, or evidence of coverage meets the standards in paragraphs (1) and (2) of this section. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

(1) General standards. The following standards apply to Medicare supplement policies and are in addition to all other requirements of this subchapter, the Insurance Code, Article 3.74, and any other applicable law.

(A) A Medicare supplement policy may not deny a claim for losses incurred more than six months from the effective date of coverage for a pre-existing condition. The policy may not define a pre-existing condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage. A Medicare supplement policy issued by an insurer which replaces an existing Medicare supplement policy within the first 24 months of the date of issue of the existing policy shall provide that any time periods already satisfied or partially satisfied under the replaced policy shall be considered satisfied or partially satisfied under the new policy, except that if new or additional benefits are included in the succeeding insurer's policy, such policy may include appropriate waiting periods as a condition of payment for such new or additional benefits.

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

(D) A "noncancellable," "guaranteed renewable," or "noncancellable

and guaranteed renewable" Medicare supplement policy shall not:

(i) provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or

(ii) be canceled or nonrenewed by the insurer solely on the grounds of deterioration of health.

(E) (No change.)

(2) Minimum benefit standards. A maximum of three separate Medicare supplement policies may be offered by any insurer or other entity designated in the Insurance Code, Article 3.74, §1(a), which offers Medicare supplement insurance or benefits for sale in this state, one of which must be a basic Medicare supplement policy that meets the minimum standards of Medicare supplement insurance policies adopted by the board. For a group master policy issued in connection with any certificates providing group Medicare supplement insurance benefits to a resident of this state, a maximum of three alternative sets of benefits may be provided in connection with such policy. Every insurance policy advertised, solicited, or issued for delivery as a Medicare supplement policy, however, must meet all the following minimum standards of coverage in subparagraphs (A)-(G) of this paragraph:

(A)-(G) (No change.)

(3) Explanation of percentages in parentheses in paragraph (2) of this section. The percentages within parentheses in paragraph (2)(A)-(G) of this section are intended to mean the copayment amounts, whatever those amounts are.

(4) Medicare eligible expenses. Medicare eligible expenses shall mean health care expenses of the kinds covered by Medicare, to the extent recognized as reasonable by Medicare. Payment of benefits by insurers for Medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity, as are applicable to Medicare claims.

§3.3307. *Loss Ratio Standards.*

(a) Minimum aggregate loss ratio standard. Medicare supplement policies delivered or issued for delivery in this state shall return to policyholders or certificateholders in the form of aggregate benefits under the policy, for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a

health maintenance organization on a service, rather than reimbursement, and earned premiums for such period, not including any changes in additional reserves, and in accordance with generally accepted actuarial principles and practices:

(1) at least 75% of the aggregate amount of premiums earned in the case of group policies; and

(2) at least 60% of the aggregate amount of premiums earned in the case of individual policies.

(b) Calendar year experience loss ratio standard. For the most recent calendar year, the ratio of incurred losses to earned premiums for all policies or certificates which have been in force for three years or more, as of December 31st of the most recent year, shall be equal to or greater than:

(1) at least 75% of the amount of premiums earned in the case of group policies; and

(2) at least 60% of the amount of premiums earned in the case of individual policies.

(c) Filing of rates and rating schedules. All filings of rates and rating schedules shall demonstrate that actual and expected losses in relation to premiums comply with the requirements of this section.

(1) Each Medicare supplement policy or certificate form shall be accompanied, upon submission for approval, by an actuarial memorandum. Such memorandum shall be prepared and signed by a qualified actuary in accordance with generally accepted actuarial principles and practices, and shall contain the information listed in the following subparagraphs:

(A) the form number that the actuarial memorandum addresses;

(B) a brief description of benefits provided;

(C) a schedule of rates to be used;

(D) a complete explanation of the rating process, including assumptions, claims data, methodology, and formulae used in developing the gross premium rates;

(E) a statement of what experience base will be used in future rate adjustments;

(F) a certification that the anticipated aggregate loss ratio is at least 60% (for individual coverage) or at least

75% (for group coverage), which certification should include a statement of the period over which the aggregate loss ratio is expected to be realized;

(G) a table of anticipated loss ratio experience for representative issue ages for each year from issue over the period of time over which the aggregate loss ratio is to be realized; and

(H) a certification that the premiums are reasonable in relation to the benefits provided.

(2) Subsequent rate adjustment filings, except for those rates filed solely due to a change in the Part A calendar year deductible, shall also provide an actuarial memorandum, prepared by a qualified actuary, in accordance with generally accepted actuarial principles and practices, which memorandum shall contain the information in the following subparagraphs.

(A) The form number addressed by the actuarial memorandum shall be included.

(B) A brief description of benefits provided shall be included.

(C) A schedule of rates before and after the rate change shall be included.

(D) A statement of the reason and basis for the rate change shall be included.

(E) A demonstration and certification by the qualified actuary shall be included to show that the past plus future expected experience after the rate change will result in an aggregate loss ratio equal to, or greater than, the required minimum aggregate loss ratio.

(i) This rate change and demonstration shall be based on the experience of the named form in Texas only, if that experience is credible.

(ii) The rate change and demonstration shall be based on experience of the named form nationwide, if the named form is used nationwide and the Texas experience is not credible, but the nationwide experience is credible.

(iii) The rate change and demonstration shall be based on experience of forms used in Texas, which are similar to the named form if the experience in clause (i) or (ii) of this subparagraph is not credible, but the experience for all similar Texas forms is credible.

(iv) The rate change and demonstration shall be based on any other reasonable experience which is credible for

purposes of this rate filing, if the experience in clauses (i), (ii), or (iii) of this subparagraph is not credible. For the purposes of this section, the definition of a credible basis shall be in accordance with generally accepted actuarial principles and practices. The assumptions used in this demonstration shall be reasonable and stated in the memorandum.

(F) For policies or certificates in force less than three years, a demonstration shall be included to show that the third-year loss ratio is expected to be equal to, or greater than, the applicable percentage.

(G) A certification by the qualified actuary that the resulting premiums are reasonable in relation to the benefits provided shall be included.

(d) Annual filing required. Every insurance entity providing Medicare supplement policies or benefits in this state shall file annually its rates, rating schedule, and supporting documentation, including ratios of incurred losses to earned premiums for the most recent calendar year broken down by calendar year of issue, for purposes of demonstrating that the insurance entity is in compliance with the loss ratio standards. The annual filing requirements in this subsection shall be as follows:

(1) the NAIC Medicare supplement experience exhibit which summarizes the experience of all individual forms with business in force in Texas;

(2) the NAIC Medicare supplement experience exhibit which summarizes the experience of all group forms with business in force in Texas;

(3) rates and rating schedules for each form with business in force in Texas;

(4) a certification by the qualified actuary that the policies or certificates in force less than three years are anticipated to produce a third-year loss ratio which is greater than or equal to the applicable loss ratio percentage; and

(5) a certification by the qualified actuary that the expected losses in relation to premiums over the entire period for which the policy is rated comply with the required minimum aggregate loss ratio standard.

(e) Refund and credits. If the loss ratio for the most recent calendar year for all Texas Medicare supplement policies or certificates which have been in force for three years or more as of December 31st of the most recent year is less than the percentage under the calendar year loss ratio standard, and such Texas experience is credible, then a premium refund or credit shall be made on an equitable basis to those

policyholders or certificate holders with coverage in force as of December 31st. Any insurance entity making a refund or credit pursuant to this subsection shall file documentation which supports that the refund or credit is reasonable and equitable. For future demonstration of compliance with loss ratio standards, such refunds or credits may be treated as incurred claims.

(f) Premium adjustments to conform with minimum standards for loss ratios. As soon as practicable, but prior to the effective date of Medicare benefit changes, every insurer, health care service plan, or other entity providing Medicare supplement insurance or contracts in this state shall file with the board, in accordance with the applicable filing procedures of this state, the items required in paragraphs (1) and (2) of this subsection.

(1) Appropriate premium adjustments necessary to produce loss ratios at least as great as originally anticipated for the applicable policies or contracts shall be filed. Such supporting documents as necessary to justify the adjustment shall accompany the filing.

(A) Every insurer, health care service plan, or other entity providing Medicare supplement insurance or benefits to a resident of this state pursuant to the Insurance Code, Article 3. 74, shall make such premium adjustments as are:

(i) necessary to produce an expected loss ratio under such policy or contract as will conform with minimum loss ratio standards for Medicare supplement policies; and

(ii) expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the insurer, health care service plan, or other entity for such Medicare supplement insurance policies or contracts.

(B) No premium adjustment which would modify the loss ratio experience under the policy, other than the adjustments described in this subsection, should be made with respect to a policy at any time other than upon its renewal date or anniversary date.

(2) Any appropriate riders, endorsements, or policy forms needed to accomplish the Medicare supplement insurance modifications necessary to eliminate benefit duplications with Medicare shall be filed. Any such riders, endorsements, or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or contract.

(g) Maintenance of data. Incurred claims and earned premium experience shall be maintained for each policy form with credible business in force in Texas, by

calendar year of issue, and shall be made available to the State Board of Insurance upon request. Experience data for policy forms with noncredible business in force in Texas may be combined and maintained with other forms.

§3.3314. Standards for Facilitating Comparison Among Policies.

(a) Premium identification. In connection with every Medicare supplement insurance policy or certificate delivered or issued for delivery in this state, the premium amount for each of the following items in paragraphs (1)-(3) of this subsection shall be identified, in accordance with the notice format and timing provisions of subsection (b) of this section, unless such information has been provided in the prescribed form at the time that application for such policy or enrollment for such benefits is made:

(1) the basic minimum standards coverage portion of the policy or certificate, which coverage shall be the minimum coverage required to meet this state's minimum standards for Medicare supplement insurance and may include coverage for the Part A in-hospital deductible amount only if that amount is provided as part of the minimum coverage;

(2) additional coverages or benefit modifications; and

(3) the combined total benefits under the policy or certificate.

(b) Notice format and timing.

(1) Such premium amounts referred to in subsection (a) of this section, as well as any limitations, exclusions, conditions for renewability, or other restrictions associated with particular policy forms, shall be set forth as provided for in subparagraphs (A) and (B) of this paragraph with respect to each Medicare supplement insurance policy or certificate delivered or offered for delivery in this state.

(A) The content of such notice must be printed on a form incorporating information for each policy or certificate offered for sale or delivery, and must follow the layout, design, and column-and-row headings in the form entitled "Comparison of Premiums and Benefits for Medicare Supplement Policies," which the State Board of Insurance has adopted and incorporated herein by reference (this form is published by the State Board of Insurance, and copies of this form are available from and on file at the offices of the Life Group, Mail Code 830-0, State Board of Insurance at 1110 San Jacinto Boulevard, Austin, Texas 78701-1998).

(B) All information required to be disclosed in the notice shall appear in no less than 10-point type.

(2) The notice concerning the premiums referred to in subsection (a) of this section shall be provided to all prospective insureds, including certificate holders under group policies, at the time application for insurance or enrollment for benefits is made.

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 January 24, 1990.

TRD-9000855 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: February 14, 1990

Proposal publication date: September 19, 1989

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

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Subchapter Y. Minimum Standards for Benefits for Long-Term Coverage Under Individual and Group Policies

• **28 TAC §§3.3801-3.3812, 3.3821-3.3838**

The State Board of Insurance adopts new §§3.3801-3.3812 and §§3.3821-3.3838, concerning minimum standards for benefits for long-term coverage under individual and group policies applicable to insurers and other entities providing such insurance or benefits in Texas. New §§3.3803, 3.3807, 3.3810, 3.3824-3.3826, 3.3828, 3.3831-3.3833, 3.3836, and 3.3837 are adopted with changes to the proposed text as published in the September 19, 1989, issue of the *Texas Register* (14 TexReg 4848). New §§3.3801, 3.3802, 3.3804-3.3806, 3.3808, 3.3809, 3.3811, 3.3812, 3.3821-3.3823, 3.3827, 3.3829, 3.3830, 3.3834, 3.3835, and 3.3838 are adopted without changes and will not be republished.

The new sections are necessary to provide for uniform standards for benefits, thereby facilitating the availability of long-term care coverage that is in the best interests of the insurance consumers of this state, in conformity with the legislative mandate found in the Insurance Code, Article 3.70(F)(5). The new sections provide parameters of definitions for specific terms which may be incorporated in long-term care insurance products, as well as coverage, renewability, extension, replacement, conversion, and disclosure provisions which are to be required for specific types of policies. In addition, the rules provide for organizational format and readability for long-term care policies. The adoption changes §3.3803, concerning applicability and scope, to clarify that certificates issued pursuant to out-of-state single employer group or labor union group long-term care policies are exempt from the requirements of this subchapter. The adoption changes §3.3807(b), concerning policy or certificate definition of guaranteed renewable, to clarify conditions under which a

group policy or certificate is permitted to be described as guaranteed renewable, and to reconcile any internal inconsistency with regard to the definition of that term. The adoption changes §3.3810(b), concerning policy or certificate definition of noncancellable, to clarify conditions under which a group policy or certificate is permitted to be described as noncancellable, and to reconcile any internal inconsistency with regard to the definition of that term. The adoption changes §3.3824 to provide for uniform pre-existing conditions provisions for both individual and group long-term care insurance policies and benefits. The adoption changes §3.3825, concerning prior hospitalization or institutionalization, to clarify in subsection (b) that the benefits addressed in that subsection are those which are provided in an institutional setting. The adoption changes §3.3826(a), concerning limitations and exclusions, by describing criteria adequate to demonstrate proof of organic disease or other proof under the coverage. The adoption includes the addition of specific standards for continuation or conversion in §3.3828, by providing definitions of bases for continuation or conversion of coverage, a definition for the term "converted policy" and terms and conditions under which continuation of coverage or conversion is required, as well as provisions regarding limitations to the requirement for continuation or conversion and the level of benefits required to be provided thereunder. The adoption changes §3.3831, concerning loss ratio standards, to delete from subsection (a) the requirement that group policies are subject to a specifically recited loss ratio standard, and further elucidates the relevant factors to be considered in evaluating the expected loss ratio for individual long-term care insurance policies. The adoption changes §3.3832 to more nearly conform the required format for the outline of coverage for both individual and group policies to that which has been adopted by the National Association of Insurance Commissioners (NAIC). The adoption changes §3.3833, concerning requirements for an outline of coverage for group certificates, to clarify that the outline of coverage for such certificates is to be uniform with that which is required for individual long-term care insurance policies. The adoption of §3.3836 rewords paragraph (2) and adds a reference in paragraph (4) to §3.3832 to reflect changes made to that section and to §3.3833. The adoption changes §3.3837 to make the date of strict compliance with this subchapter June 1, 1990.

The new sections are necessary and are designed to achieve the provision of uniform standards for benefits in long-term care insurance products, thereby facilitating the availability of long-term care coverage that is in the best interests of the insurance consumers of this state, and in accordance with the legislative mandate found in the Insurance Code, Article 3.70(f)(5). The new sections are intended to promote the availability of long-term care insurance coverage, to protect applicants for long-term care insurance as defined from unfair or deceptive sales or enrollment practices, to facilitate public understanding and comparison of long-term care insurance coverages, and to facilitate flexibility and innovation in the development of long-term

care insurance. To that end, the new sections provide parameters of definitions for specific terms which may be incorporated into long-term care insurance products, as well as coverage, renewability, extension, replacement, conversion, and disclosure provisions which are to be required for specific types of policies. In addition, the rules provide for organizational format and readability for long-term care policies and certificates.

Comments generally favorable to the proposed sections were received from Aetna Life Insurance Company, The American Council of Life Insurance, Consumers Union, Health Insurance Association of America, Metropolitan Life Insurance Company, Texas Legal Reserve Officials Association, and Transport Life Insurance Company; however, the commenters did suggest some modification of the sections as proposed.

Several groups commented about §3.3803 and questioned the proposed section's extraterritorial application to group contracts, most especially those contracts issued to single employer groups. In response, the board has changed §3.3803 to exempt certificates issued pursuant to single employer or labor union group policies, where the group policyholder is located in another state. One commenter proposed that definitions in §3.3806 be expanded to include definitions of various facilities and services. In response, the board notes that proposed §3.3812 requires that the definition of providers of services be defined in relation to the services provided, and may not be more restrictive than those found in the Insurance Code or otherwise in legislative enactments for the State of Texas. The board concludes that the proposed section requires definitions in long-term care policies to comply with the definitions applicable to particular facilities, to particular providers, and to particular services. For this reason, and in the pursuit of the primary objectives of the regulation, the board determines it unnecessary to expand the definitions in §3.3806, as proposed. One commenter recommended that pre-existing conditions provisions in proposed §3.3824(c) be changed to result in uniformity for all long-term care policies and to be limited to six months. In response, the board notes that current requirements embodied in the Insurance Code, Article 3.70-2, define pre-existing conditions limitations in a manner that makes accommodation of such a recommendation impossible at this time. In support of the concept of uniformity for pre-existing conditions provisions for all long-term care policies to the extent available under existing statute, however, the board has changed §3.3824(a) and (c) to require that pre-existing conditions limitations relating to group long-term care policies and certificates be uniform, and that the definition of a pre-existing condition for group policies and certificates may not be more restrictive than that which is used for individual policies. One commenter proposed that a new subsection be added to §3.3824 prohibiting post-claims underwriting. The board responds that §3.3824 with changes made, when read in its entirety, adequately addresses the issue of post-claims underwriting for long-term care insurance. One commenter recommended that §3.3825(c)(2) be amended to provide that no long-term care insurance policy may

condition eligibility for noninstitutional benefits on the prior receipt of institutional benefits. The board responds that the paragraph about which the recommendation was made should be left as proposed, but the adoption changes §3.3825(b) to clarify that the benefits to which that subsection applies are those which are provided in an institutional care setting. One commenter proposed that §3.3826(a) be amended to specify the criteria for determination of Alzheimer's disease or other related disorders. The board responds by changing §3.3826(a)(2) to describe criteria adequate to demonstrate proof of organic disease or other proof under the coverage, consistent with the provisions of House Bill 468, enacted by the 71st Legislature. One commenter proposed removing §3.3826(a)(3) altogether as a permitted limitation or exclusion from long-term care insurance coverage or, alternatively, that the limitation or exclusion be permitted only with regard to addiction to controlled substances. The board responds that the provisions of §3.3826(a)(3) as proposed are necessary, proper, and appropriate to the overall goals and objectives of long-term care insurance regulation and that §3.3826(a)(3) should, therefore, remain as proposed. One commenter noted that while §3.3828, as proposed, contained a requirement for continuation or conversion, it did not specify particular provisions for either continuation or conversion relating to minimum standards. The board responds by incorporating additions to the section to address standards of sufficiency for both continuation and conversion for long-term care insurance policies. Two commenters recommended the free-look period be increased from 10 to 30 days for long-term care insurance policies. While the board agrees conceptually with the proposal, provisions currently embodied in Article 3.70-2(A)(8) constrain the board from adopting a 30-day free-look provision. Several commenters made observations with regard to loss ratio provisions. A number were concerned with the inclusion of loss ratio standards for group contracts, especially single employer groups. In response, the board has changed the loss ratio provisions to exclude group contracts, at this time, from the loss ratio requirements and to track, for individual contract purposes, the NAIC model, incorporating multiple factors for consideration in evaluating an expected loss ratio of 60%. One commenter proposed that §3.3832, concerning outline of coverage, be changed to specify a minimum daily benefit amount and maximum number of days' coverage in subsection (c). The board responds that since long-term care products are only now evolving, the inclusion of a minimum daily benefit amount is not necessarily in the best interests of consumers at this time. Other commenters recommended format amendments to the outline of coverage for purposes of greater uniformity among jurisdictions. The board responds by changing the outline of coverage in §3.3832 to provide for a format more closely approximating the NAIC model. This change necessitated clarification in §3.3833 and in §3.3836 that the outline of coverage format, as adopted, is required for both individual and group policies, to parallel the NAIC model outline of coverage. One commenter questioned the extent to which the sections should be changed to clarify that this subchapter is inapplicable to life

insurance products. The board responds that §3.3803, concerning applicability and scope, specifies that the rules are limited in application to long-term care insurance products, as provided for in that section and pursuant to the legislative directive found in the Insurance Code, Article 3.70-1(F)(5). Since the provisions in §3.3803 make it clear that only individual and group health insurance products are being addressed in the sections, the board concludes that no changes are necessary in this area. Two commenters suggested that the effective date of the subchapter be delayed in order to provide insurers appropriate, reasonable time to comply with the subchapter. The board responds by changing the date of strict compliance with the regulation to June 1, 1990. One commenter recommended adding a section to the subchapter to address minimum standards for reserving in order to better insure that statutory requirements with respect to solvency of long-term care products are met. The board responds by approving for publication and comment, elsewhere in the *Texas Register*, proposed §3.3819 concerning to requirement for reserve. One commenter recommended the required addition of inflation protection to each long-term care policy, or offering the opportunity for inflation protection with each policy. The board responds by approving for publication and comment, elsewhere in the *Texas Register*, proposed §3.3820 concerning requirement to offer inflation protection, address that concern. One commenter proposed that all long-term care insurance advertising be regulated in a manner identical to advertising for Medicare supplement insurance. The board responds that incorporation of such a provision would create a practical impossibility to administer it within the confines of currently available agency resources. The board further responds that a rule currently proposed for adoption would require long-term care insurance advertising to be approved by the home office of entities with which it is associated. The proposed section, once adopted, when considered with other advertising regulations applicable generally to accident and health insurance products, should address concerns raised in the comment. One commenter proposed a continuing education requirement for agents soliciting long-term care business, similar to that for Medicare. The board responds that it currently lacks sufficient legislative authority to approve such a provision for proposal and adoption.

The new sections are adopted under the Insurance Code, Article 1.04, which authorizes the State Board of Insurance to determine rules in accordance with the laws of this state; under the Insurance Code, Article 3.51-6, §5, which authorizes the State Board of Insurance to issue such rules and regulations as are necessary to carry out the various provisions of the article, which concerns group accident and health insurance; and under the Insurance Code, Article 3.70-1(F)(5), which authorizes and mandates that the board adopt rules and regulations establishing minimum standards for benefits for long-term care coverage under individual policies and group policies and certificates of accident and sickness insurance delivered or issued for delivery in this state, including group coverages

delivered or issued for delivery by companies subject to the Insurance Code, Chapter 20.

§3.3803. *Applicability and Scope.* The sections in this subchapter apply to all long-term care insurance policies and group long-term care insurance certificates, other than those certificates issued or delivered pursuant to out-of-state single employer or labor union group policies, delivered or issued for delivery in this state on or after the effective date of this subchapter by insurers; by fraternal benefit societies, to the extent they are subject to provisions of Article 3.70-1(F)(5); and by nonprofit health, hospital, and medical service corporations, including a company subject to the Insurance Code, Chapter 20; except that they do not apply to a policy which is not advertised, marketed, nor offered as long-term care insurance or nursing home insurance.

§3.3807. *Policy or Certificate Definition of Guaranteed Renewable.*

(a) The term "guaranteed renewable" may be used only in an individual long-term care insurance policy which an insured has the right to continue in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

(b) A group long-term policy may not be described as a guaranteed renewable policy unless the insurer and policyholder have agreed by policy contract provision that the policy cannot be terminated by either the insurer or the policyholder until there are no certificates remaining thereunder. The term "guaranteed renewable" may apply to a group certificate of coverage if and only if the certificate form provides that:

(1) a conversion policy will be issued with identical benefits upon termination of coverage under the group policy for any reason, including termination of the group policy; or

(2) the certificate may be continued in force under the group policy when the certificate holder is no longer a member of the group, pursuant to a written agreement between the certificate holder and the policyholder regarding such continuation, and that a conversion policy with identical benefits must be provided in the event of policy termination; and

(3) provisions of the policy may not be changed unilaterally.

§3.3810. *Policy or Certificate Definition of Noncancellable.*

(a) The term "noncancellable" may be used only in an individual long-term care

insurance policy which the insured has the right to continue in force by the timely payment of premiums during which period the insurer has no right to make any change in any provision of the insurance or in the premium rate.

(b) A group long-term policy may not be described as a noncancellable policy unless the insurer and policyholder have agreed by policy contract provision that the policy cannot be terminated by either the insurer or the policyholder until there are no certificates remaining thereunder. The term "noncancellable" may apply to a group certificate of coverage if and only if the certificate form provides that:

(1) a conversion policy will be issued with identical benefits upon termination of coverage under the group policy for any reason, including termination of the group policy; or

(2) the certificate may be continued in force under the group policy when the certificate holder is no longer a member of the group, pursuant to a written agreement between the certificate holder and the policyholder regarding such continuation, and that a conversion policy with identical benefits must be provided in the event of policy termination; and

(3) provisions of the policy, including rates, may not be changed unilaterally.

§3.3824. *Pre-Existing Conditions Provisions.*

(a) No long-term care insurance policy or certificate issued thereunder shall use a definition of pre-existing condition which is more restrictive than the definition contained in subsection (b) of this section.

(b) Pre-existing condition means a condition for which medical advice or treatment was recommended by, or received from, a provider of health care services within six months preceding the effective date of coverage of an insured person age 65 or over; or within 12 months preceding the effective date of coverage of an insured person under age 65 in instances where the insurer elects to use a simplified application form, with or without a question as to the applicant's health at the time of the application, but without any question covering the insured's health history or medical treatment history; or within two years, in any other instance.

(c) No long-term care insurance policy, or certificate issued thereunder, may exclude coverage for a loss or confinement which is the result of a pre-existing condition, unless such loss or confinement begins within six months following the effective date of coverage of an insured person age 65 or over; or within 12 months following the effective date of coverage of an insured person under age 65 in instances where the insurer elects to use a simplified

application form, with or without a question as to the applicant's health at the time of application, but without any questions concerning the insured's health history or medical treatment history; or within two years, in any other instance.

(d) The definition of pre-existing condition does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and on the basis of the answers on that application, from underwriting in accordance with that insurer's established underwriting standards. Unless otherwise provided in the policy or certificate, a pre-existing condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in subsection (c) of this section expires. No long-term care insurance policy or certificate may exclude or use waivers or riders of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described pre-existing diseases or physical conditions beyond the waiting period described in subsection (c) of this section.

§3.3825. *Prior Hospitalization or Institutionalization.*

(a) No long-term care insurance policy may be delivered or issued for delivery in this state which conditions the eligibility for benefits on prior hospitalization.

(b) No long-term care insurance policy may be delivered or issued for delivery in this state if such policy conditions eligibility for benefits provided in an institutional care setting on the receipt of a higher level of institutional care.

(c) Any long-term care insurance policy containing any limitations or conditions for eligibility, other than those prohibited in subsection (a) or (b) of this section, shall clearly label in a separate paragraph of the policy or certificate, entitled "Limitations or Conditions on Eligibility for Benefits," such limitations or conditions, including any required number of days of confinement.

(1) No long-term care insurance policy containing a benefit advertised, marketed, or offered as a home care or a home health care benefit may condition receipt of benefits on a prior institutionalization requirement.

(2) No long-term care insurance policy which conditions eligibility of noninstitutional benefits on the prior receipt of institutional care shall require a prior institutional stay of more than 30 days for which benefits are paid.

§3.3826. *Limitations and Exclusions.*

(a) No policy may be delivered or issued for delivery in this state as a long-

term care insurance policy if such policy limits or excludes coverage by type of illness, treatment, medical condition, or accident, except as follows:

(1) a pre-existing condition or disease, as defined in §3.3824 of this title (relating to Pre-Existing Conditions Provisions);

(2) mental or nervous disorders; however, this shall not permit exclusion or limitations of benefits on the basis of Alzheimer's disease or related disorders, where a clinical diagnosis of Alzheimer's disease by a physician licensed in this state, including history and physical, neurological, psychological and/or psychiatric evaluation, and laboratory studies, has been made to satisfy any requirement for demonstrable proof of organic disease or other proof under the coverage;

(3) alcoholism and drug addiction;

(4) illness, treatment, or medical condition arising out of any of the following:

(A) war or act of war, whether declared or undeclared;

(B) participation in a felony, riot, or insurrection;

(C) service in the armed forces or units auxiliary thereto;

(D) suicide, attempted suicide, or intentionally self-inflicted injury; or

(E) aviation activity as a nonfare-paying passenger; or

(5) treatment provided in a governmental hospital; benefits provided under Medicare or other governmental program (except Medicaid); any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law; services rendered by employees of hospitals, laboratories, or other institutions; services performed by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance.

(b) Provisions of this section are not intended to prohibit exclusions and limitations by type of provider or territorial limitations.

§3.3828. *Continuation or Conversion.* An insurer or similar organization issuing a group long-term care insurance policy shall provide a basis for continuation or conversion of coverage.

(1) For the purposes of this section, the term "a basis for continuation of coverage" means a policy provision which maintains coverage under the existing group policy when such coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due. Group policies which restrict provision of benefits and services to, or contain incentives to use, certain providers and/or facilities may provide continuation benefits which are substantially equivalent to the benefits of the existing group policy. The board shall make a determination as to the substantial equivalency of benefits and, in doing so, shall take into consideration the differences between managed care and nonmanaged care plans, including, but not limited to, provider system arrangements, service availability, benefit levels, and administrative complexity.

(2) For the purposes of this section, the term "a basis for conversion of coverage" means a policy provision that an individual whose coverage under the group policy would otherwise terminate or has been discontinued for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy (and any group policy which it replaced), for at least six months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy he or she is covered, without evidence of insurability.

(3) For the purposes of this section, the term "converted policy" means an individual policy of long-term care insurance providing benefits identical to or benefits determined by the board to be substantially equivalent to, or greater than, those provided under the group policy from which conversion is made.

(4) Written application for the converted policy shall be made, and the first premium due, if any, shall be paid as directed by the insurer not later than 31 days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy and shall be renewable annually.

(5) Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at the inception of coverage under the group policy replaced.

(6) Continuation of coverage or issuance of a converted policy shall be mandatory, except where:

(A) termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

(B) the terminating coverage is replaced, not later than 31 days after termination, by group coverage effective on the day following the termination of coverage:

(i) providing benefits identical to or benefits determined by the board to be substantially equivalent to, or greater than, those provided by the terminating coverage; and

(ii) the premium for which is calculated in a manner consistent with the requirements of paragraph (5) of this section.

(7) Notwithstanding any other provision of this section, a converted policy, issued to an individual who at the time of conversion is covered by another long-term care insurance policy which provides benefits on the basis of incurred expenses, may contain a provision which results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100% of incurred expenses. Such provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

(8) The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

(9) Notwithstanding any other provision of this section, any insured individual, whose eligibility for group long-term care coverage is based upon his or her relationship to another person, shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

(10) For the purpose of this section, the term "managed care arrangement plan" is a health care arrangement or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management, or use of specific provider networks.

§3.3831. *Loss Ratio Standards*

(a) Benefits under individual long-term care insurance policies shall be deemed reasonable in relation to premiums

provided if the expected loss ratio is at least 60%, calculated in a manner which provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including:

- (1) statistical credibility of incurred claims experience and earned premiums;
- (2) the period for which rates are computed to provide coverage;
- (3) experienced and projected trends;
- (4) concentration of experience within early policy duration;
- (5) expected claim fluctuation;

- (6) experience refunds, adjustments, or dividends;
 - (7) renewability features;
 - (8) all appropriate expense factors;
 - (9) interest;
 - (10) experimental nature of the coverage;
 - (11) policy reserves;
 - (12) mix of business by risk classification; and
 - (13) product features such as long elimination periods, high deductibles, and high maximum limits.
- (b) Prior to the use of any long-term care policy form in this state, every

insurer shall submit to the board an actuarial memorandum for each such policy which includes claim experience data and assumptions made thereon to sufficiently explain how the rates for such policy form are calculated.

§3.3832. Outline of Coverage.

(a) An outline of coverage shall be delivered to an applicant for an individual long-term care insurance policy at the time of application for an individual policy. In the case of direct-response solicitations, the insurer shall deliver the outline of coverage upon the applicant's request but, regardless of request, shall make such delivery no later than at the time of policy delivery.

(b) The outline of coverage shall be in the following form:

(Company Name)

(Address - City & State)

(Telephone Number)

Long-Term Care Insurance

(1) Policy designation. This policy is (an individual policy of insurance) (a group policy which was issued in (indicate jurisdiction in which group policy was issued)).

(2) Purpose of outline of coverage. This outline of coverage provides a very brief description of some of the important features of your policy. This is not the insurance contract and only the actual policy provision will control the rights and obligations of the parties to it. The policy itself sets forth in detail those rights and obligations applicable to both you and your insurance company. It is very important, therefore, that you **READ YOUR POLICY OR CERTIFICATE CAREFULLY.**

(3) Terms under which the policy or certificate may be returned and premium refunded.

(A) (Provide a brief description of the right to return—"free look" provisions of the policy. State that the person to whom the policy is issued is permitted to return the policy within 10 days (or more, if so provided for in the policy) of its delivery to that person, and that in the instance of such return the premium shall be fully refunded.)

(B) (Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.)

(4) Medicare supplement insurance disclaimer. **THIS IS NOT MEDICARE SUPPLEMENT COVERAGE.** If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the insurance company.

(A) (For agents) Neither (insert company name) nor its agents represent Medicare, the federal government, or any state government.

(B) (For direct response) (insert company name) is not representing Medicare, the federal government, or any state government.

(5) Long-term care coverage. Long-term care insurance is designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community, or in the home. Coverage is provided for the benefits outlined in paragraph (6) of this subsection. The benefits described in paragraph (6) of this subsection, may be limited by the limitations and exclusions in paragraph (7) of this subsection.

(6) Benefits provided by this policy.

(A) (Describe covered services and benefits, related deductible(s),

waiting periods, elimination periods, and benefit maximums.)

(B) (Describe institutional benefits.)

(C) (Describe noninstitutional benefits.)

(NOTE: This portion of the outline of coverage must include an explanation of any instance in which provision of benefits is predicated upon the insured's having met a specific standard of eligibility for that benefit under the terms of the policy. The procedural requirements must be stated for such screening for the provision of benefits. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified. If activities of daily living are used to measure an insured's need for long-term care, then these qualifying criteria or screens must be explained.)

(7) Limitations and exclusions. (State the principal exclusions, reductions, limitations, restrictions, or other qualifications to the payments of benefits contained in the policy, including:

(A) (pre-existing conditions;

(B) (noneligible facilities/providers;

(C) (noneligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.);

(D) (exclusions/exceptions; and

(E) (limitations.)

THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.

(8) Relationship of cost of care and benefits. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. (As applicable, indicate the following:

(A) (that the benefit level will not increase over time;

(B) (any automatic benefit adjustment provisions;

(C) (whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;

(D) (if such a guarantee is present, whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations; and

(E) (whether any additional premium charge will be imposed, and how that is to be calculated.)

(9) Terms under which the (policy) (certificate) may be continued in force and is continued. (Provide the following:

(A) (a description of the policy renewability provisions);

(B) (for group coverage, a specific description of continuation/conversion provisions applicable to the certificate and group policy);

(C) (a description of waiver of premium provisions or a statement that there are no such provisions); and

(D) (a statement of whether or not the company has a right to change premium, and if such a right exists, a clear and concise description of each circumstance under which premium may change.)

(10) Alzheimer's disease and other organic brain disorders. (State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative illnesses and illnesses involving dementia. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.)

(11) Premium.

(A) (State the total annual premium for the policy. In the event the total premium for the policy is different from the annual premium, then the total premium also shall be stated. Initial policy fees shall be stated separately.)

(B) (If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.)

(C) (This paragraph also shall include a statement of the policy grace period.)

(12) Additional features.

(A) (Indicate if medical underwriting is used.)

(B) (Describe other important features.)

§3.3833. Group Certificates; Outline of Coverage Required. An outline of coverage is required on any group certificate issued for group long-term care insurance issued to a group as defined in the Insurance Code, Article 3.51-6, §1(a). Such outline of coverage shall be in a format identical to that which is required of individual long-term care insurance policies in §3.3832 of this title (relating to Outline of Coverage), and shall be delivered to prospective enrollees no later than the time that application for group benefits is made.

§3.3836. Standards for Policy Certificates Submitted for Approval. A certificate issued pursuant to a group long-term care insurance policy, which certificate is delivered or issued for delivery in this state, shall include:

(1) a description of the principal benefits and coverage provided in the policy;

(2) a statement of the principal exclusions, reductions, and limitations contained in the policy;

(3) a statement that the group master policy determines governing contractual provisions; and

(4) an outline of coverage as provided for in §3.3832 of this title (relating to Outline of Coverage) and §3.3833 of this title (relating to Group Certificates; Outline of Coverage Required).

§3.3837. Effective Date. The sections of this subchapter, as adopted by the board, shall become effective 20 days from the date they are filed, as adopted by the board, with the Office of the Secretary of State and shall be applicable to all long-term care insurance policies and subscriber contracts of hospital and medical service associations filed for approval on and after 30 days from such date. Policies or contracts which have been approved prior to the effective date of the sections in this subchapter and which are not in compliance with this subchapter may be continued to be used until June 1, 1990, unless approval is specifically withdrawn as provided for in the Insurance Code, Article 3.42. All such policies or contracts delivered or issued for delivery in this state after June 1, 1990, shall be in compliance with the sections of this subchapter.

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 January 25, 1990.

TRD-9000884 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: February 15, 1990

Proposal publication date: September 19, 1989

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

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TITLE 31. NATURAL RESOURCES and CONSERVATION
Part III. Texas Air Control Board

Chapter 115. Control of Air Pollution From Volatile Organic Compounds

Subchapter A. Definitions
Definitions

• 31 TAC §115.010

The Texas Air Control Board (TACB) adopts new §115.010, with changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3622).

This section is part of a series of additions to Chapter 115 primarily intended to satisfy United States Environmental Protection Agency (EPA) requirements for Phase I of the Post-1987 State Implementation Plan (SIP) revisions for ozone and to promote greater clarity and to eliminate inconsistencies resulting from numerous independent revisions over the past several years.

The following new undesignated heads in Chapter 115 are also adopted: §§115.112-115.117 and §115.119, concerning storage of volatile organic compounds; §§115.121-115.123, §§115.125-115.127, and 115.129, concerning vent gas control; §§115.131-115.133, 115.135-115.137, and 115.139, concerning water separation; §§115.211-115.217 and 115.219, concerning loading and unloading of volatile organic compounds; §§115.221-115.227 and 115.229, concerning filling of gasoline storage vessels (Stage I) for motor vehicle fuel dispensing facilities; §§115.234-115.236 and 115.239, concerning control of volatile organic compound leaks from gasoline tank-trucks; §§115.242-115.243, 115.245-115.247, and 115.249, concerning control of Reid vapor pressure of gasoline; §§115.311-115.313, 115.315-115.317, and 115.319, concerning process unit turnaround and vacuum-producing systems in petroleum refineries; §§115.322-115.327 and 115.329, concerning fugitive emission control in petroleum refineries; §§115.332-115.337 and 115.339, concerning fugitive emission control in synthetic organic chemical, polymer, and resin manufacturing processes; §§115.342-115.347 and 115.349, concerning fugitive emission control in natural gas/gasoline processing operations; §§115.412, 115.413, 115.415-115.417, and 115.419, concerning degreasing processes; §§115.421-115.423, 115.425-115.427, and 115.429, concerning surface coating processes; §§115.432, 115.433, 115.435-115.437, and 115.439, concerning graphic arts (printing) by rotogravure and flexographic processes §§115.512, 115.513, 115.515-115.517, and 115.519, concerning cutback asphalt; §§115.521-115.527 and 115.529, concerning perchloroethylene dry cleaning systems; §§115.531-115.537 and 115.539, concerning pharmaceutical manufacturing facilities; §§115.612, 115.613, 115.615-115.617, and 115.619, concerning consumer-solvent products; §115.910, concerning alternate means of control; and §§115.930, 115.932, 115.934, and 115.936, concerning compliance and control plan requirements.

Appropriate preambles are concurrently published in this issue. Since the proposed changes involved a comprehensive restructuring of Chapter 115, the TACB staff determined that it would be administratively more efficient to repeal the existing Chapter 115 in its entirety and to add a new Chapter 115. While in most instances the purpose of rule provisions remains the same, the chapter has been significantly reorganized, and the sections are renumbered and stylistically changed. The new §115.010, concerning definitions, contains definitions of terms found in Chapter 115 and revises references to the Texas Civil Statutes to reflect recent codification of the Texas Clean Air Act (TCAA).

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal; a commenter who agreed with the proposal in its entirety is classified as being for the proposal. Eleven commenters opposed the definitions section of the proposal, while no one testified in support in

addition, a series of broad issues affecting the general TACB policies and practices were raised by 29 commenters and are included in this section of the evaluation. Numerous other comments regarding the definition of terms affecting only specific source categories were also submitted as testimony. The response to these comments is included in the individual sections of this evaluation.

Two commenters, EPA and one individual, suggested reducing or eliminating the minimum size criteria in the definition for delivery vessel/tank-truck tank used in gasoline marketing operations. A survey by the TACB staff has determined that the smallest tank-trucks used to deliver gasoline have capacities of approximately 1,500 gallons. Therefore, the 1,000-gallon minimum level in the definition would exempt very small containers, such as 55 gallon drums in the back of pickup trucks, from the regulation. These containers are not included in the emission calculations for credit from these controls and are impractical to regulate.

Three commenters, the Sierra Club, EPA, and one individual, suggested that the definition of leak be revised to: reduce the VOC concentration limit from 10,000 ppm to 1,000 ppm; be based on detection by sight, sound, or smell, as well as a hydrocarbon detection device; and eliminate the minimum criteria for the vapor pressure of visible liquids leaks. The VOC concentration limit of 10,000 ppm for a leak is based on a level of significance established by EPA in several guidance documents published to define reasonably available control technology (RACT) for fugitive emissions monitoring regulations. Lowering this limit would go beyond federal guidelines and may be an appropriate strategy for achieving additional emission reductions necessary to complete a demonstration of attainment in the ozone nonattainment areas. However, this current rulemaking was not intended to result in additional controls. While detection of potential leaks may be based on sight, sound, or smell, confirmation of the VOC concentration above the established limit with a VOC detection instrument would be necessary before repairs would be required. Similarly, the elimination of the vapor pressure criteria for liquids would require sources to monitor components which do not even have the potential for exceeding the concentration limits of a VOC leak at the current 10,000 ppm leak definition.

One individual suggested revising the definition of a vapor recovery system to require reduction of VOC to at least 0.5 pounds per square inch absolute (psia), rather than 1.5 psia currently specified in the definition. Existing control technique guideline (CTG) documents for VOC storage and handling require controls only on VOC sources with emission concentrations of 1.5 psia or more. Therefore, the efficiency of a minimal vapor recovery system was established to provide sufficient reductions to achieve a level of emissions comparable to a source which would not be required to implement controls. Furthermore, several regulations contain requirements for minimum destruction efficiencies of up to 98% for vapor recovery systems on certain types of processes.

Six commenters, two from the Sierra Club and four individuals, questioned the exclusion of specific compounds, such as methylene chloride, methyl chloroform, freon 113, and other chlorofluorocarbons (CFC) from the definition of VOC since many of these compounds have potential adverse health effects and are suspected of contributing to the depletion of stratospheric ozone. However, another commenter, EPA, suggested excluding four CFCs recently exempted by EPA from the federal definition of VOC. The TACB definition of VOC is intended to be consistent with the EPA definition, which is based solely on the photochemical reactivity of the compounds toward the creation of ambient ozone. Revisions to the TACB rules will be considered in the future to ensure this consistency. Future control of the compounds excluded from the definition of VOC may be appropriate to address other specific adverse environmental effects.

Additional testimony was also received which addressed broad issues affecting the general TACB policies and practices reflected throughout Chapter 115. The following comments were considered in the development of final recommendations for all adopted sections.

Eleven commenters, the City of Dallas (Dallas), Texas Mid-Continent Oil and Gas Association (TMOGA), the City of Fort Worth (Fort Worth), North Central Texas Council of Governments, EPA, Texas Chemical Council (TCC), Ethyl Corporation (Ethyl), Dow Chemical Company (Dow), El Paso City-County Health District (EPCCHD), Chevron Corporation, and Rohm and Haas Texas Incorporated (Rohm & Haas), expressed general support for the proposed new organizational format of Regulation V. However, one commenter, Occidental Chemical Corporation (Occidental), suggested an index of revisions be compiled and made available. They also suggested that the TACB staff conduct a seminar to assist affected facilities compare the new format to the old regulation. The TACB staff will provide assistance as necessary to help make the proposed revisions understandable to the regulated community and the general public. An index to correlate the old regulation to the new regulation is being compiled and will be made available when completed. The TACB staff will consider conducting a seminar to discuss the new regulation, if warranted.

Two commenters, Dallas and Fort Worth, suggested that the first section of each undesignated head make reference to counties and compliance schedules and name the counties in each section. The organization of the new regulation places the words "Counties and Compliance Schedules" within the section number that ends with a nine for all rules to allow for ease of access in a computerized system. Also, placing the counties and compliance schedules at one place in each undesignated head makes it easier to revise control requirements and schedules without associated changes being necessary throughout the undesignated head. The counties and compliance schedules is referenced at the beginning of each section to direct the reader to the appropriate information.

Two commenters, Dallas and Fort Worth, suggested that subsections in alternate control requirements sections be combined since they are similar. Sections 115.113(a) and (b), 115.123(a) and (b), 115.133(a) and (b), and 115.213(a) and (b) were mentioned specifically. One commenter, EPA, suggested that inspection, testing, and recordkeeping requirements proposed for nonattainment counties be extended to the eight counties in Regulation V that are not considered as nonattainment. They also stated that EPA approval is necessary for any exemption in these eight counties. The TACB staff, in reorganizing Regulation V, intentionally separated counties that are considered nonattainment from all other counties. This was done by keeping nonattainment counties within the (a) subsections and all other counties in (n) subsections. The TACB staff feels that this separation adds to the understandability and enforceability of the regulation by clearly distinguishing between the two groups of counties with differing control requirements. Furthermore, only subsection (a) is considered as part of the SIP and, therefore, federally enforceable.

Four commenters, EPA and three individuals, requested language be inserted in test methods, testing procedures, recordkeeping requirements, emission monitoring, and control equipment monitoring stipulating that any deviation from the incorporated methods must be submitted as a SIP revision. Two commenters, Exxon Company U.S.A. and TMOGA, suggested that all testing methods approved by the American Society of Testing and Materials (ASTM) or EPA should be acceptable. EPA has identified and published specific acceptable test methods for use by states in determining compliance. In recent negotiations, EPA has also agreed to allow the use of certain ASTM methods. These test methods are currently recognized by the TACB staff and others as the industry standards. Furthermore, EPA has indicated that minor modifications to methods which do not involve any significant change in the results may be independently approved by the executive director. However, new test methods or major changes approved by the TACB staff must still be submitted to the EPA for approval.

One commenter, EPA, indicated that once a source exceeds an exemption limit it should not be allowed to claim that exemption in the future even if emissions consistently drop back below the limit. This concept is referred to by EPA as "once-in always-in." Exceedances of exemptions are treated the same as violations of any control requirement or emission limit. A notice of violation is issued and appropriate enforcement action is taken pursuant to the enforcement rules, 31 TAC Chapter 105. If a facility shows a history of exceedances, the TACB may require a fully enforceable board order requiring the implementation of controls or process limitations to ensure compliance. Furthermore, any process change which increases emissions above historic levels, whether they violate an exemption level or not, must obtain a TACB permit for the modification or qualify for a standard exemption. These permits are also fully enforceable. Both board orders and permits may be considered as SIP revisions. The TACB staff feels the present enforcement

options are sufficient without removing a company's options for reducing emissions after single exceedance.

Twelve commenters, Ethyl, Houston Chamber of Commerce (HCC), TCC, Dow, TMOGA, Rohm & Haas, Shell Chemical Company (Shell Chemical), Exxon Chemical Americas (Exxon Chemical), Chevron Chemical Company (Chevron Chemical), Mobil Chemical Company, Quantum Chemical Corporation (Quantum), and Occidental, stated that the proposed recordkeeping requirements are ambiguous and/or burdensome. TCC recommended that records be kept only for abnormal operating conditions that result in increased emissions along with a design file for the control equipment. Furthermore, they suggested that tests only be repeated when there is a permanent change in normal operating parameters. Five commenters, the Sierra Club and four individuals, recommended that records be kept for five years, rather than the proposed two years. The proposed recordkeeping requirements are a necessary part of Phase I of the Post-1987 SIP in order to ensure the effectiveness of the applicable control and to determine continuous compliance of all affected sources under normal conditions. These records include information which would need to be provided upon request to demonstrate compliance and, therefore, should not constitute a significant additional burden on the affected industry. No testimony was received to substantiate the commenters' claims that the recordkeeping requirements are ambiguous or burdensome. The TACB staff feels that retaining records for two years is sufficient to determine compliance since it adequately reflects recent operating history at each site.

Seven commenters, TCC, Rohm & Haas, HCC, Ethyl, Dow, Shell Chemical, and Exxon Chemical, all expressed concerns regarding the implementation of new control requirements as a result of this rulemaking. It was suggested that additional controls for all sources should be considered during the development of a comprehensive SIP. However, eight commenters, Galveston-Houston Association for Smog Prevention (GHASP), the Sierra Club, and six individuals, suggested that the Houston/Galveston consolidated metropolitan statistical area (CMSA) should be controlled at this time at least as stringently as the Dallas/Fort Worth CMSA. The additional administrative requirements proposed in this revision are intended only to ensure effectiveness of existing rules or to comply with requirements included in CTGs published by EPA to define RACT for specific source categories. No additional substantive control requirements or emission limitations were considered. Phase II of the Post-1987 SIP revision for all of the major urban ozone nonattainment areas in Texas is expected to include all of the most stringent controls currently enforced in the state, in addition to controls on smaller and previously unidentified VOC sources. The TACB staff assumed that Phase II SIP revisions would immediately follow the Phase I revisions and, therefore, would be accomplished expeditiously. It may be appropriate for the TACB staff to consider proceeding with control efforts if it appears that waiting for a federal framework for such actions may indefinitely delay useful actions.

One commenter, EPA, has also required that RACT be identified and adopted for all major sources not specifically covered by a published CTG and located in Dallas, Tarrant, Harris, and El Paso Counties. The TACB staff has previously performed and submitted to EPA an economic analysis for all major non-CTG sources in Dallas and Tarrant Counties which demonstrated that additional controls on the vent gas streams from those sources are not economically feasible. No such analysis has been performed for El Paso or Harris Counties at this time. However, the TACB staff recognizes that the EPA expects an additional evaluation of process controls for those facilities which may achieve reasonable emission reductions. The TACB staff will continue to investigate potential controls and will consider necessary rulemaking, as appropriate. As part of that investigation, the TACB staff has requested information on process controls on similar facilities in other parts of the country and will consider adoption of any identified controls for sources in Texas.

Four commenters, EPA, GHASP, the Sierra Club, and one individual, stated that Phase I of the Post-1987 SIP call requirements should include lowering of exemption levels and more stringent control measures as identified in previous EPA guidance and correspondence. The TACB staff intends to propose lowering specified exemption levels in accordance with EPA requirements during 1990. Information regarding the technical and economic reasonableness of these exemption levels will be solicited during that rulemaking and considered prior to final adoption.

One commenter, the Galveston County Health District, opposed the 550-pound exemption for VOC in several existing source categories. When controls for sources covered by most CTGs were originally implemented, they were intended to apply only to major sources, defined as emitting at least 100 tons per year, which equates to approximately 550 pounds per day. Subsequent SIP revisions have resulted in lower exemption levels for some source categories where additional emission reductions have been required to demonstrate attainment. The TACB staff intends to propose additional rulemaking to lower many of the current exemption levels in accordance with EPA requirements for RACT. Furthermore, the need to obtain additional emission reductions during the development of the Post-1987 SIP revisions will likely require control of most small sources by further lowering exemption levels.

Three commenters, TCC, Chevron Chemical, and TMOGA, opposed the requirement for annual testing of elevated valves in the fugitive emission regulations for safety reasons. One individual suggested the term "technically feasible" found in the fugitive emissions rules be defined. Elevated valves are exempted as inaccessible in the current fugitive monitoring requirements. Although EPA has stated that no such exemption is provided in the applicable CTGs for these sources, the annual inspection of elevated sources is consistent with new source performance standard requirements. "Technically feasible" within the context of these rules refers to all repairs which may be reasonably attempted while the associated

process unit remains in service. This must be a case-by-case determination depending on the type of component and leak and the potential for isolating the component without a unit shutdown.

Six commenters, Dow, TMOGA, Ethyl, HCC, TCC, and Chevron Chemical, suggested cost-effectiveness should be evaluated before adding new controls. HCC also stated that emission reductions should be credited in the SIP. The baseline emission inventory for the Post-1987 SIP revision is being prepared for the year 1988. No reductions are anticipated to result from the proposed revisions at this time. The TACB staff agrees that emission reductions from any future controls, such as a lowering of the exemption levels and additional process controls, should be credited toward a future demonstration of attainment. Little or no additional cost was associated with the proposed sections, with the exception of Reid vapor pressure controls, because most recordkeeping, inspection, and testing requirements were only necessary to document compliance with existing sections. The TACB staff has always evaluated and will continue to consider the cost-effectiveness of substantive control requirements.

One commenter, Rohm & Haas, suggested adding an exemption to Regulation V for new or modified facilities that have gone through the TACB permit review process. Regulation V and ozone control strategies involve retrofit controls based on technological advances and reduction requirements which may go beyond requirements that exist at the time a permit was issued.

One commenter Kelly Air Force Base, noted that the standard exemption list in Chapter 116 regarding permitting must be revised to correct updated clerical references to the new Chapter 115. The TACB staff recognizes the need for corrections to Chapter 116 and will propose those changes in subsequent rulemaking.

Seven commenters, GHASP, General Motors Corporation, the Sierra Club, and four individuals, requested extension of the comment period. The TACB staff, in response to these requests, extended the deadline for comments on the proposed changes to Regulation V from August 25, 1989 until September 8, 1989.

Six commenters, GHASP and five individuals, supported increasing resources for TACB and local agencies to implement Regulation V. The TACB receives annual federal grant funds from EPA for various programs including Regulation V development and enforcement. The remainder of TACB funding comes from state legislative appropriations with a significant portion of these funds are generated through inspection and permit fees assessed by the TACB. The TACB staff acknowledges that additional resource requirements will be necessary to properly enforce Regulation V and will seek additional funding, as appropriate. The TACB will continue to provide as much support as possible to local, county, and municipal programs within a cooperative working relationship.

One commenter, EPCCHD, stated that the El Paso pollution problem is a United States/Mexico joint problem. The TACB staff

concurs that the air pollution in El Paso is an international issue. The TACB staff is actively involved in ongoing federal negotiations with the governments of Mexico and Ciudad Juarez to promote cooperative efforts to improve air quality in these border communities.

Seven commenters, Ethyl, Dow, Rohm & Haas, Shell Chemical, Dupont Chemical Corporation, Exxon Chemical, and Occidental, supported comments made by the TCC. Five commenters, the Sierra Club and four individuals, supported comments made by the EPA.

The new sections are adopted under the TCAA, §382.017, which provides the TACB with the authority to make rules consistent with the policy and purposes of the TCAA.

§115.010. 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.

Architectural coating—Any protective or decorative coating applied to the interior or exterior of a building or structure, including latex paint, alkyd paints, stains, lacquers, varnishes, and urethanes.

Automobile refinishing—The recoating of individual auto-mobiles and light-duty trucks by a commercial operation other than the manufacturer to repair, restore, or alter the exterior finish, including primer, primer surfacer, alkyd enamel, base coat, clear coat, and lacquer application.

Automotive primer or primer surfacers (used in automobile refinishing)—Any base coat, sealer, or intermediate coat which is applied prior to colorant or aesthetic coats.

Automotive wipe-down solutions—Any solution used for cleaning and surface preparation.

Coating application system—Devices or equipment designed for the purpose of applying a coating material to a surface. The devices may include, but not be limited to, brushes, sprayers, flow coaters, dip tanks, rollers, knife coaters, and extrusion coaters.

Consumer-solvent products

Products sold or offered for sale by wholesale or retail outlets for individual, commercial, or industrial use which may contain volatile organic compounds, including household products, toiletries, aerosol products, rubbing compounds, windshield washer fluid, polishes and waxes, nonindustrial adhesives, space deodorants, moth control products, or laundry treatments.

Component—A piece of equipment, including, but not limited to, pumps, valves, compressors, and pressure relief valves,

which has the potential to leak volatile organic compounds.

Condensate—Liquids that result from the cooling and/or pressure changes of produced natural gas. Once these liquids are processed at gas plants or refineries or in any other manner, they are no longer considered condensates.

Custody transfer—The transfer of produced crude oil and/or condensate, after processing and/or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

Cutback asphalt—Any asphaltic cement which has been liquefied by blending with petroleum solvents (diluent).

Delivery vessel/tank-truck tank—Any tank-truck or trailer having a capacity greater than 1,000 gallons.

Drum (metal)—Any cylindrical metal shipping container with a nominal capacity equal to or greater than 12 gallons (45.4 liters) but equal to or less than 110 gallons (416 liters).

Exempt solvent—Those carbon compounds or mixtures of carbon compounds used as solvents which have been excluded from the definition of volatile organic compounds.

External floating roof—A cover or roof in an open-top tank which rests upon or is floated upon the liquid being contained and is equipped with a single or double seal to close the space between the roof edge and tank shell. A double seal consists of two complete and separate closure seals, one above the other, containing an enclosed space between them.

Flexographic printing process—A method of printing in which the image areas are raised above the non-image areas, and the image carrier is made of an elastomeric material.

Fugitive emission—Any gaseous or particulate contaminant entering the atmosphere without first passing through a vent designed to direct or control its flow.

Gasoline—Any petroleum distillate having a Reid vapor pressure (RVP) of four pounds per square inch (27.6 kPa) or greater which is produced for use as a motor fuel and is commonly called gasoline.

Gasoline bulk plant—A gasoline loading and/or unloading facility having a gasoline throughput less than 20,000 gallons (75,708 liters) per day, averaged over any consecutive 30-day period.

Gasoline terminal—A gasoline loading and/or unloading facility having a gasoline throughput equal to or greater than 20,000 gallons (75,708 liters) per day, averaged over any consecutive 30-day period.

Internal floating cover—A cover or floating roof in a fixed roof tank which rests upon or is floated upon the liquid being contained, and is equipped with a closure seal or seals to close the space between the cover edge and tank shell.

Leak—A volatile organic compound concentration greater than 10,000 parts per million by volume (ppmv) or the dripping of process fluid having a true vapor pressure greater than 0.147 psia (1.013 kpa) at 68 Degrees Fahrenheit (20 degrees Centigrade).

Liquid-mounted seal—A primary seal mounted in continuous contact with the liquid between the tank wall and the floating roof around the circumference of the tank.

Motor vehicle fuel dispensing facility—Any site where gasoline is dispensed to motor vehicle fuel tanks from stationary storage tanks.

Natural gas/gasoline processing—A process that extracts condensate from gases obtained from natural gas production and/or fractionates natural gas liquids into component products, such as ethane, propane, butane, and natural gasoline. The following facilities shall be included in this definition if, and only if, located on the safe property as a natural gas/gasoline processing operation previously defined: compressor stations, dehydration units, sweetening units, field treatment, underground storage, liquified natural gas units, and field gas gathering systems.

Non-flat architectural coating—Any coating which registers a gloss of 15 or greater on an 85 degree gloss meter or five or greater on a 60 degree gloss meter, and which is identified on the label as gloss, semigloss, or eggshell enamel coating.

Packaging rotogravure printing—Any rotogravure printing upon paper, paper board, metal foil, plastic film, or any other substrate which is, in subsequent operations, formed into packaging products or labels.

Pail (metal)—Any cylindrical metal shipping container with a nominal capacity equal to or greater than one gallon (3.8 liters) but less than 12 gallons (45.4 liters) and constructed of 29 gauge or heavier material.

Petroleum refinery—Any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of crude oil, or through the redistillation, cracking, extraction, reforming, or other processing of unfinished petroleum derivatives.

Polymer and resin manufacturing process—A process that produces any of the following polymers or resins: polyethylene, polypropylene, polystyrene, and styrenebutadiene latex.

Pounds of volatile organic compounds (VOC) per gallon of coating (minus water)—Basis for emission limits of most surface coating processes. Starting with one gallon of coating which contains a volume percentage of solids, a volume percentage of VOC, and a volume percentage of water, subtract the water percentage and recalculate an equivalent gallon of VOC and solids. The resulting new volume fraction of VOC times the

VOC density yields pounds of VOC per gallon of coating (minus water).

Process or processes—Any action, operation, or treatment embracing chemical, commercial, industrial, or manufacturing factors such as combustion units, kilns, stills, dryers, roasters, and equipment used in connection therewith, and all other methods or forms of manufacturing or processing that may emit smoke, particulate matter, gaseous matter, or visible emissions.

Property—All land under common control or ownership coupled with all improvements on such land, and all fixed or movable objects on such land, or any vessel on the waters of this state.

Publication rotogravure printing—Any rotogravure printing upon paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, or other types of printed materials.

Rotogravure printing—The application of words, designs, and/or pictures to any substrate by means of a roll printing technique which involves a recessed image area. The recessed area is loaded with ink and pressed directly to the substrate for image transfer.

Source—A point of origin of air contaminants, whether privately or publicly owned or operated. Upon request of a source owner, the executive director shall determine whether multiple processes emitting air contaminants from a single point of emission will be treated as a single source or as multiple sources.

Specified solvent-using processes.

(A) **Cold solvent cleaning**—The batch process of cleaning and removing soils from metal surfaces by spraying, brushing, flushing, and/or immersion while maintaining the solvent below its boiling point. Wipe cleaning (hand cleaning) is not included in this definition.

(B) **Open-top vapor degreasing**—The batch process of cleaning and removing soils from metal surfaces by condensing hot solvent vapors on the colder metal parts.

(C) **Conveyorized degreasing**—The continuous process of cleaning and removing soils from metal surfaces by operating with either cold or vaporized solvent.

Submerged fill pipe—A fill pipe that extends from the top of a tank to have a maximum clearance of six inches (15.2 cm) from the bottom or, when applied to a tank which is loaded from the side, that has a discharge opening entirely submerged when the pipe used to withdraw liquid from the tank can no longer withdraw liquid in normal operation.

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

(A) **Large appliance coating**—The coating of doors, cases, lids, panels, and interior support parts of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dishwashers, trash compactors, air conditioners, and other large appliances.

(B) **Metal furniture coating**—The coating of metal furniture (tables, chairs, wastebaskets, beds, desks, lockers, benches, shelves, file cabinets, lamps, and other metal furniture products) or the coating of any metal part which will be a part of a nonmetal furniture product.

(C) **Coil coating**—The coating of any flat metal sheet or strip supplied in rolls or coils.

(D) **Paper coating**—The coating of paper and pressure-sensitive tapes (regardless of substrate and including paper, fabric, and plastic film) and related web coating processes on plastic film (including typewriter ribbons, photographic film, and magnetic tape) and metal foil (including decorative, gift wrap, and packaging).

(E) **Fabric coating**—The application of coatings to fabric, which includes rubber application (rainwear, tents, and industrial products such as gaskets and diaphragms).

(F) **Vinyl coating**—The use of printing or any decorative or protective topcoat applied over vinyl sheets or vinyl-coated fabric.

(G) **Can coating**—The coating of cans for beverages (including beer), edible products (including meats, fruit, vegetables, and others), tennis balls, motor oil, paints, and other mass-produced cans.

(H) **Automobile coating**—The assembly-line coating of passenger cars, or passenger car derivatives, capable of seating 12 or fewer passengers.

(I) **Light-duty truck coating**—The assembly-line coating of motor vehicles rated at 8,500 pounds (3,855.5 kg) gross vehicle weight or less and designed primarily for the transportation of property, or derivatives such as pickups, vans, and window vans.

(J) **Miscellaneous metal parts and products coating**—The coating of miscellaneous metal parts and products in the following categories:

(i) large farm machinery (harvesting, fertilizing, and planting machines, tractors, combines, etc.);

(ii) small farm machinery (lawn and garden tractors, lawn mowers, rototillers, etc.);

(iii) small appliances (fans, mixers, blenders, crock pots, dehumidifiers, vacuum cleaners, etc.);

(iv) commercial machinery (computers and auxiliary equipment, typewriters, calculators, vending machines, etc.);

(v) industrial machinery (pumps, compressors, conveyor components, fans, blowers, transformers, etc.);

(vi) fabricated metal products (metal-covered doors, frames, etc.); and

(vii) any other category of coated metal products except the specified list in subparagraphs (A)-(I) of surface coating processes, which are included in the Standard Industrial Classification Code Major Group 33 (primary metal industries), Major Group 34 (fabricated metal products), Major Group 35 (nonelectrical machinery), Major Group 36 (electrical machinery), Major Group 37 (transportation equipment), Major Group 38 (miscellaneous instruments), and Major Group 39 (miscellaneous manufacturing industries).

(K) Factory surface coating of flat wood paneling—Coating of flat wood

paneling products, including hardboard, hardwood plywood, particle board, printed interior paneling, and tile board.

Synthetic organic chemical manufacturing process—A process that produces, as intermediates or final products, one or more of the chemicals listed in Table I of this section.

System or device—Any article, chemical, machine, equipment, or other contrivance, the use of which may eliminate, reduce, or control the emission of air contaminants to the atmosphere.

Transfer efficiency—The amount of coating solids deposited onto the surface of a part or product divided by the total amount of coating solids delivered to the coating application system.

True partial pressure—The absolute aggregate partial pressure (psia) of all volatile organic compounds in a gas stream.

True vapor pressure—The absolute aggregate partial vapor pressure (psia) of all volatile organic compounds at the temperature of storage, handling, or processing.

Vapor balance system—A system which provides for containment of hydrocarbon vapors by returning displaced vapors from the receiving vessel back to the originating vessel.

Vapor-mounted seal—A primary seal mounted so there is an annular space underneath the seal. The annular vapor space is bound by the bottom of the primary seal, the tank wall, the liquid surface, and the floating roof or cover.

Vapor recovery system—Any control system that reduces volatile organic compound (VOC) emissions such that the aggregate true partial pressure of all VOC

vapors will not exceed a level of 1.5 psia (10.3 kPa) or other emission limits specified in Chapter 115 of this title (relating to Control of Volatile Organic Compounds).

Vapor-tight—Not capable of allowing the passage of gases at the pressures encountered except where other acceptable leak-tight conditions are prescribed in the regulations.

Vent—Any duct, stack, chimney, flue, conduit, or other device used to conduct air contaminants into the atmosphere.

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), carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.

Volatile organic compound (VOC) water separator—Any tank, box, sump, or other container in which any VOC floating on or contained in water entering such tank, box, sump, or other container is physically separated and removed from water prior to outfall, drainage, or recovery of such water.

Waxy, high pour point crude oil—A crude oil with a pour point of 50 degrees Fahrenheit (10 degrees Centigrade) or higher as determined by the American Society for Testing and Materials Standard D97-66, "Test for Pour Point of Petroleum Oils."

TABLE I.
SYNTHETIC ORGANIC CHEMICALS

OCPDB No.*	Chemical	OCPDB No.*	Chemical
20	Acetal	380	Benzene
30	Acetaldehyde	390	Benzenedisulfonic acid
40	Acetaldol	400	Benzenesulfonic acid
50	Acetamide	410	Benzil
65	Acetanilide	420	Benzilic acid
70	Acetic acid	430	Benzoic acid
80	Acetic anhydride	440	Benzoin
90	Acetone	450	Benzonitrile
100	Acetone cyanohydrin	460	Benzophenone
110	Acetonitrile	480	Benzotrichloride
120	Acetophenone	490	Benzoyl chloride
125	Acetyl chloride	500	Benzyl alcohol
130	Acetylene	510	Benzyl amine
140	Acrolein	520	Benzyl benzoate
150	Acrylamide	530	Benzyl chloride
160	Acrylic acid and esters	540	Benzyl dichloride
170	Acrylonitrile	550	Biphenyl
180	Adipic acid	560	Bisphenol A
185	Adiponitrile	570	Bromobenzene
190	Alkyl naphthalenes	580	Bromonaphthalene
200	Allyl alcohol	590	Butadiene
210	Allyl chloride	592	1-butene
220	Aminobenzoic acid	600	n-butyl acetate
230	Aminoethylethanolamine	630	n-butyl acrylate
235	p-Aminophenol	640	n-butyl alcohol
240	Amyl acetates	650	s-butyl alcohol
250	Amyl alcohols	660	t-butyl alcohol
260	Amyl amine	670	n-butylamine
270	Amyl chloride	680	s-butylamine
280	Amyl mercaptans	690	t-butylamine
290	Amyl phenol	700	p-tert-butyl benzoic acid
300	Aniline	710	1,3-butylene glycol
310	Aniline hydrochloride	750	n-butyraldehyde
320	Anisidine	760	Butyric acid
330	Anisole	770	Butyric anhydride
340	Anthranilic acid	780	Butyronitrile
350	Anthraquinone	785	Caprolactam
360	Benzaldehyde	790	Carbon disulfide
370	Benzamide		

TABLE I.
SYNTHETIC ORGANIC CHEMICALS

OCPDB No.*	Chemical	OCPDB No.*	Chemical
800	Carbon tetrabromide	1110	Cyanuric chloride
810	Carbon tetrachloride	1120	Cyclohexane
820	Cellulose acetate	1130	Cyclohexanol
840	Chloroacetic acid	1140	Cyclohexanone
850	m-chloroaniline	1150	Cyclohexene
860	o-chloroaniline	1160	Cyclohexylamine
870	p-chloroaniline	1170	Cyclooctadiene
880	Chlorobenzaldehyde	1180	Decanol
890	Chlorobenzene	1190	Diacetone alcohol
900	Chlorobenzoic acid	1200	Diaminobenzoic acid
905	Chlorobenzotrichloride	1210	Dichloroaniline
910	Chlorobenzoyl chloride	1215	m-dichlorobenzene
920	Chlorodifluoroethane	1216	o-dichlorobenzene
921	Chlorodifluoromethane	1220	p-dichlorobenzene
930	Chloroform	1221	Dichlorodifluoromethane
940	Chloronaphthalene	1240	Dichloroethyl ether
950	o-chloronitrobenzene	1244	1,2-dichloroethane (EDC)
951	p-chloronitrobenzene	1250	Dichlorohydrin
960	Chlorophenols	1270	Dichloropropene
964	Chloroprene	1280	Dicyclohexylamine
965	Chlorosulfonic acid	1290	Diethylamine
970	m-chlorotoluene	1300	Diethylene glycol
980	o-chlorotoluene	1304	Diethylene glycol diethyl ether
990	p-chlorotoluene	1305	Diethylene glycol dimethyl ether
992	Chlorotrifluoromethane	1310	Diethylene glycol monobutyl ether
1000	m-cresol	1320	Diethylene glycol monobutyl ether acetate
1010	o-cresol	1330	Diethylene glycol monoethyl ether
1020	p-cresol	1340	Diethylene glycol monoethyl ether acetate
1021	Mixed cresols	1360	Diethylene glycol monomethyl ether
1030	Cresylic acid	1420	Diethyl sulfite
1040	Crotonaldehyde		
1050	Crotonic acid		
1060	Cumene		
1070	Cumene hydroperoxide		
1080	Cyanoacetic acid		
1090	Cyanogen chloride		
1100	Cyanuric acid		

TABLE I.
SYNTHETIC ORGANIC CHEMICALS

OCPDB No.*	Chemical	OCPDB No.*	Chemical
1430	Difluoroethane	1760	Ethylcyanoacetate
1440	Diisobutylene	1770	Ethylene
1442	Diisodecyl phthalate	1780	Ethylene carbonate
1444	Diisooctyl phthalate	1790	Ethylene chlorohydrin
1450	Dikethene	1800	Ethylenediamine
1460	Dimethylamine	1810	Ethylene dibromide
1470	N,N-dimethylaniline	1830	Ethylene glycol
1480	N,N-dimethyl ether	1840	Ethylene glycol diacetate
1490	N,N-dimethylformamide	1870	Ethylene glycol dimethyl ether
1495	Dimethylhydrazine	1890	Ethylene glycol monobutyl ether
1500	Dimethyl sulfate	1900	Ethylene glycol monobutyl ether acetate
1510	Dimethyl sulfide	1910	Ethylene glycol monoethyl ether
1520	Dimethyl sulfoxide	1920	Ethylene glycol monoethyl ether acetate
1530	Dimethyl terephthalate	1930	Ethylene glycol mono-methyl ether
1540	3,5-dinitrobenzoic acid	1940	Ethylene glycol mono-methyl ether acetate
1545	Dinitrophenol	1960	Ethylene glycol mono-phenyl ether
1550	Dinitrotoluene	1970	Ethylene glycol mono-propyl ether
1560	Dioxane	1980	Ethylene oxide
1570	Dioxolane	1990	Ethyl ether
1580	Diphenylamine	2000	2-ethylhexanol
1590	Diphenyl oxide	2010	Ethyl orthoformate
1600	Diphenyl thiourea	2020	Ethyl oxalate
1610	Dipropylene glycol	2030	Ethyl sodium oxalacetate
1620	Dodecene	2040	Formaldehyde
1630	Dodecylaniline	2050	Formamide
1640	Dodecylphenol	2060	Formic acid
1650	Epichlorohydrin	2070	Fumaric acid
1660	Ethanol	2073	Furfural
1661	Ethanolamines	2090	Glycerol (Synthetic)
1670	Ethyl acetate		
1680	Ethyl acetoacetate		
1690	Ethyl acrylate		
1700	Ethylamine		
1710	Ethylbenzene		
1720	Ethyl bromide		
1730	Ethylcellulose		
1740	Ethyl chloride		
1750	Ethyl chloroacetate		

TABLE I.
SYNTHETIC ORGANIC CHEMICALS

OCFDB No.*	Chemical	OCFDB No.*	Chemical
2091	Glycerol dichlorohydrin	2490	Methallyl chloride
2100	Glycerol triether	2500	Methanol
2110	Glycine	2510	Methyl acetate
2120	Glyoxal	2520	Methyl acetoacetate
2145	Hexachlorobenzene	2530	Methylamine
2150	Hexachloroethane	2540	n-methylaniline
2160	Hexadecyl alcohol	2545	Methyl bromide
2165	Hexamethylenediamine	2550	Methyl butynol
2170	Hexamethylene glycol	2560	Methyl chloride
2180	Hexamethylenetetramine	2570	Methyl cyclohexane
2190	Hydrogen cyanide	2590	Methyl cyclohexanone
2200	Hydroquinone	2620	Methylene chloride
2210	p-hydroxybenzoic acid	2630	Methylene dianiline
2240	Isoamylene	2635	Methylene diphenyl diisocyanate
2250	Isobutanol	2640	Methyl ethyl ketone
2260	Isobutyl acetate	2645	Methyl formate
2261	Isobutylene	2650	Methyl isobutyl carbinol
2270	Isobutyraldehyde	2660	Methyl isobutyl ketone
2280	Isobutyric acid	2665	Methyl methacrylate
2300	Isodecanol	2670	Methyl pentynol
2320	Isooctyl alcohol	2690	a-methylstyrene
2321	Isopentane	2700	Morpholine
2330	Isophorone	2710	a-naphthalene sulfonic acid
2340	Isophthalic acid	2720	B-naphthalene sulfonic acid
2350	Isoprene	2730	a-naphthol
2360	Isopropanol	2740	B-naphthol
2370	Isopropyl acetate	2750	Neopentanoic acid
2380	Isopropylamine	2756	o-nitroaniline
2390	Isopropyl chloride	2757	p-nitroaniline
2400	Isopropylphenol	2760	o-nitroanisole
2410	Ketene	2762	p-nitroanisole
2414	Linear alkyl sulfonate	2770	Nitrobenzene
2417	Linear alkylbenzene	2780	Nitrobenzoic acid (o,m, and p)
2420	Maleic acid	2790	Nitroethane
2430	Maleic anhydride		
2440	Malic acid		
2450	Mesityl oxide		
2455	Metanilic acid		
2460	Methacrylic acid		

TABLE I.
SYNTHETIC ORGANIC CHEMICALS

OCFDB No.*	Chemical	OCFDB No.*	Chemical
2791	Nitromethane	3140	Quinone
2792	Nitrophenol	3150	Resorcinol
2795	Nitropropane	3160	Resorcylic acid
2800	Nitrotoluene	3170	Salicylic acid
2810	Nonene	3180	Sodium acetate
2820	Nonyl phenol	3181	Sodium benzoate
2830	Octyl phenol	3190	Sodium carboxymethyl cellulose
2840	Paraldehyde	3191	Sodium chloracetate
2850	Pentaerythritol	3200	Sodium formate
2851	n-pentane	3210	Sodium phenate
2855	1-pentene	3220	Sorbic acid
2860	Perchloroethylene	3230	Styrene
2882	Perchloromethyl mercaptan	3240	Succinic acid
2890	o-phenetidine	3250	Succinonitrile
2900	p-phenetidine	3251	Sulfanilic acid
2910	Phenol	3260	Sulfolane
2920	Phenolsulfonic acids	3270	Tannic acid
2930	Phenyl anthranilic acid	3280	Terephthalic acid
2940	Phenylenediamine	3290	
2950	Phosgene		and
2960	Phthalic anhydride	3291	Tetrachloroethanes
2970	Phthalimide	3300	Tetrachlorophthalic anhydride
2973	B-picoline	3310	Tetraethyllead
2976	Piperazine	3320	Tetrahydronaphthalene
3000	Polybutenes	3330	Tetrahydrophthalic anhydride
3010	Polyethylene glycol	3335	Tetramethyllead
3025	Polypropylene glycol	3340	Tetramethylenediamine
3063	Propionaldehyde	3341	Tetramethylethylene- diamine
3066	Propionic acid	3349	Toluene
3070	n-propyl alcohol	3350	Toluene-2,4-diamine
3075	Propylamine	3354	Toluene-2,4-diisocyanate
3080	Propyl chloride	3355	Toluene diisocyanates (mixture)
3090	Propylene	3360	Toluene sulfonamide
3100	Propylene chlorohydrin		
3110	Propylene dichloride		
3111	Propylene glycol		
3120	Propylene oxide		
3130	Pyridine		

TABLE I.
SYNTHETIC ORGANIC CHEMICALS

OCPDB No.*	Chemical	OCPDB No.*	Chemical
3370	Toluene sulfonic acids		
3380	Toluene sulfonyl chloride		
3381	Toluidines		
3390, 3391, and			
3393	Trichlorobenzenes		
3395	1,1,1-trichloroethane		
3400	1,1,2-trichloroethane		
3410	Trichloroethylene		
3411	Trichlorofluoromethane		
3420	1,2,3-trichloropropane		
3430	1,1,2-trichloro-1,2,2- trifluoroethane		
3450	Triethylamine		
3460	Triethylene glycol		
3470	Triethylene glycol dimethyl ether		
3480	Triisobutylene		
3490	Trimethylamine		
3500	Urea		
3510	Vinyl acetate		
3520	Vinyl chloride		
3530	Vinylidene chloride		
3540	Vinyl toluene		
3541	Xylenes (mixed)		
3560	o-xylene		
3570	p-xylene		
3580	Xylenol		
3590	Xylidine		

*The OCPDB Numbers are reference indices assigned to the various chemicals in the Organic Chemical Producers Data Base developed by EPA.

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

Issued in Austin, Texas, on January 26, 1990.

TRD-9000976 Allen Eli Bell
Executive Director
Texas Air Control Board

Effective date: February 19, 1990

Proposal publication date: July 28, 1989

For further information, please call: (512) 451-5711, ext.354

Subchapter B. General Volatile Organic Compound Sources Storage of Volatile Organic Compounds

• 31 TAC §§115.112-115.117, 115.119

The Texas Air Control Board (TACB) adopts new §§115.112-115.117 and 115.119. Section 115.115 is adopted with changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3633). Sections 115.112-115.114, 115.116, 115.117, and 115.119 are adopted without changes and will not be republished.

The new §115.112, concerning control requirements, defines the types of controls or technologies required to achieve necessary emission reductions. The new §115.113, concerning alternate control requirements, enables the TACB executive director to approve substantially equivalent control technologies under specific conditions. The new §115.114, concerning inspection requirements, identifies the components needing inspection and the frequency of inspections. The new §115.115, concerning testing requirements, identifies the test methods which must be used to determine compliance and enables the TACB executive director to approve minor modifications to the methods. The new §115.116, concerning recordkeeping requirements, describes the information which must be maintained by affected facilities in order to ensure continuous compliance and improve the effectiveness of enforcement. The new §115.117, concerning exemptions, specifies the conditions necessary to qualify for exemption from certain control requirements. The new §115.119, concerning counties and compliance schedules, establishes the final compliance dates for applicable controls in specified counties. These sections are part of a series of additions to Chapter 115 proposed primarily to satisfy United States Environmental Protection Agency (EPA) requirements for Phase I of the Post-1987 State Implementation Plan (SIP) revisions for ozone. The TACB also has adopted a comprehensive restructuring of Chapter 115 to promote greater clarity and to eliminate inconsistencies resulting from numerous independent revisions over the past several years.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal; a commenter who agreed with the

proposal in its entirety is classified as being for the proposal. Eight commenters opposed the proposal, while no one testified in support.

Two commenters, the Sierra Club and one individual, recommended numerous changes to require more stringent controls on volatile organic compound (VOC) storage tanks. These requirements would include: submerged fill pipes for all tanks with capacity below 1,000 gallons; vapor recovery systems on tanks with capacity between 1,000 and 25,000 gallons; double seal floating roofs and vapor recovery systems on tanks with capacity between 25,000 and 40,000 gallons; submerged fill pipes and vapor recovery systems on tanks which store VOC with vapor pressures greater than 11.0 pounds per square inch absolute (psia); vapor recovery systems on all rim vents and bleeder vents; and reduction of VOC emissions to at least 0.5 psia for all vapor recovery systems. The control measures specified in these sections are consistent with EPA guidelines which define reasonably available control technology for VOC storage facilities. Requiring supplemental or multiple controls on storage tanks is beyond the intended scope of this rulemaking. However, additional controls may be considered in subsequent rulemaking in conjunction with Phase II of the Post-1987 SIP revisions.

One commenter, Kelly Air Force Base, requested that TACB staff specify if foam or liquid filled seals, similar to those specified in 40 Code of Federal Regulations Subpart Kb, §60.112b, are required for storage tanks in counties other than nonattainment counties. Floating roof tanks requiring seals are only specified for tanks with capacity greater than 25,000 gallons and vapor pressures less than 11.0 psia. The type of seal required is not specified but must conform to accepted engineering practice.

Two commenters, EPA and one individual, suggested that visual inspections of secondary seals be performed biannually, with the actual measurement of seal gap required annually. Annual visual inspection and measurement of secondary seals is consistent with EPA guidance documents regarding storage facilities. More frequent visual inspections would represent a significant additional requirement on affected sources with uncertain emission reduction benefits.

One commenter, Occidental Chemical Corporation (Occidental), requested clarification that the specified test methods are for compliance purposes only and are not required for use by the operators of the affected facilities. Compliance will be established by the test methods specified in the regulation. Affected facilities will be

required to use these approved methods for self-monitoring and reporting purposes which may impact the issuance of a notice of violation. The TACB does not regulate test methods used only for internal management or process control purposes and which will not influence compliance. Clarification within the regulation does not appear necessary.

One individual suggested that facilities be required to keep records for each tank containing VOCs with a true vapor pressure of 0.5 psia, rather than 1.0 psia. Controls are required for all storage tanks containing VOCs with a true vapor pressure greater than 1.5 psia. The requirement that records be kept for all tanks which exceed 1.0 psia is intended to provide sufficient information to determine the applicability of the exemption level for each tank. A reduction to 0.5 psia is not expected to improve the TACB staff's ability to confirm an exemption for sources which store materials that fluctuate around the control limit of 1.5 psia.

Three commenters, Texas Chemical Council, Occidental, and Rohm and Haas Texas Incorporated, suggested alternative means of determining and recording the proper functioning of vapor recovery systems used to demonstrate compliance. Recommendations included: monitoring the temperature of an incinerator's firebox or a chiller's coolant, rather than of the inlet and outlet gas stream; monitoring only the outlet temperature of a chiller; maintaining less specific records on all control devices; and measuring applicable parameters monthly, rather than daily, to determine compliance. Measuring the outlet temperature of a direct-flame incinerator and comparing it against compliance sampling results is a simple and direct means of determining if the device is operating to minimum design specification previously verified during compliance demonstrations. A comparison of the inlet and outlet temperatures is necessary to make a similar determination for both chillers and catalytic incinerators since the temperature change, rather than the absolute temperature, is more indicative of effectiveness. While other alternative monitoring and recordkeeping measures may be appropriate, insufficient information was provided in the testimony to warrant changes to the proposal. However, additional information may be considered for future rulemaking or as an alternate means of control. Compliance is required on a daily basis, therefore, recordkeeping must also reflect daily operations. Monthly monitoring could not effectively ensure daily compliance. While continuous monitoring of VOC emissions would be unwarranted in most circumstances, daily recording of operation parameters remains reasonable.

One commenter, Texas Mid-Continent Oil and Gas Association, recommended allowing an exemption from slotted gauge poles on floating roof storage tanks. TACB rules previously included an exemption for slotted sampling and gauge poles. However, EPA recently determined that such an exemption was inconsistent with federal requirements and directed the TACB to delete it for all counties included in the SIP.

Two commenters, the Sierra Club and one individual, opposed certain exemptions included in these sections. Exemptions for VOC storage facilities were established based on federal guidelines or at a minimum level of significance determined by the TACB staff and coordinated with the EPA. While controls for smaller sources may be considered in future planning, changes to these exemptions are beyond the scope of this rulemaking.

The new sections are adopted under the Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to make rules consistent with the policy and purposes of the TCAA.

§115.115. Testing Requirements. For the counties referenced in §115.119(a) of this title (relating to Counties and Compliance Schedules), compliance with §115.112(a) of this title (concerning Control Requirements) shall be determined by applying the following test methods, as appropriate:

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

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

(3) Test Method 22 (40 Code of Federal Regulations 60, Appendix A) for visual determination of fugitive emissions from material sources and smoke emissions from flares;

(4) Test Method 25 (40 Code of Federal Regulations 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

(5) Test Methods 25A or 25B (Code of Federal Regulations 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis;

(6) test method described in 40 Code of Federal Regulations 60.13(a)(ii) for measurement of storage tank seal gap;

(7) 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 actual storage temperature in accordance with the API Publication 2517, Third Edition, 1989; or

(8) minor modifications to these test methods approved by the executive director.

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

Issued in Austin, Texas, on January 26, 1990.

TRD-9000978 Allen Eli Bell
Executive Director
Texas Air Control Board

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For further information, please call: (512) 451-5711, ext.354

Vent Gas Control

• 31 TAC §§115.121-115.123, 115.125-115.127, 115.129

The Texas Air Control Board (TACB) adopts new §§115.121-115.123, 115.125-115.127, and 115.129. Sections 115.123, 115.125, and 115.129 are adopted with changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3640). Sections 115.121, 115.122, 115.126, and 115.127 are adopted without changes and will not be republished.

The new §115.121, concerning emission specifications, establishes the maximum level of acceptable emissions from specified sources. The new §115.122, concerning control requirements, defines the type of control or technologies required to achieve necessary emission reductions. The new §115.123, concerning alternate control requirements, enables the TACB executive director to approve substantially equivalent control technologies under specific conditions. The new §115.125, concerning testing requirements, identifies the test methods which must be used to determine compliance and enables the TACB executive director to approve minor modifications to the methods. The new §115.126, concerning recordkeeping requirements, describes the information which must be maintained by affected facilities in order to ensure continuous compliance and improve the effectiveness of enforcement. The new §115.127, concerning exemptions, specifies the conditions necessary to qualify for exemption from certain control requirements. The new §115.129, concerning counties and compliance schedules, establishes the final compliance dates for applicable controls in specified counties. These sections are part of a series of additions to Chapter 115 proposed primarily to satisfy United States Environmental Protection Agency (EPA) requirements for Phase I of the Post-1987 State Implementation Plan (SIP) revisions for ozone. The TACB also has adopted a comprehensive restructuring of Chapter 115 to promote greater clarity and to eliminate inconsistencies resulting from numerous independent revisions over the past several years.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal; a commenter who agreed with the proposal in its entirety is classified as being

for the proposal. Eleven commenters opposed the proposal, while no one testified in support.

Three commenters, the City of Dallas, the City of Fort Worth (Fort Worth), and Rohm and Haas Texas Incorporated (Rohm & Haas); recommended simplifying the rule, while one additional commenter, Ethyl Corporation (Ethyl), indicated that the proposed revision changed the intent and broadened the scope of impact of the existing regulation.

In developing these revisions, the staff adopted existing language whenever possible, making changes only when necessary to conform to the revised organizational format. Except for the administrative provisions necessary to satisfy EPA requirements, no new control measures were added or expanded. The commenters provided no specific suggestions regarding improvements.

One commenter, EPA, suggested that all provisions of this rule should apply to all volatile organic compounds (VOC). During the initial planning effort for certain rural nonattainment counties, fewer emission reductions were required to demonstrate attainment than in the major urban areas which have undergone subsequent plan development. Therefore, not all VOCs were originally required to be controlled by the vent gas rule. Significant additional reductions may be possible in these rural areas by expanding the controls to include all VOC's, and will be evaluated during future rulemaking for all nonattainment counties.

Two commenters, Dow Chemical Company and Ethyl, opposed the control limits of 20 parts per million or 98% destruction efficiency for air oxidation synthetic organic chemical processes, while one individual recommended that the more stringent of the two limitations should be required in specific circumstances. The control measures which address air oxidation processes at synthetic organic chemical manufacturing facilities were established based on a control techniques guideline (CTG) published by EPA for that industry and adopted by the TACB as SIP revisions. Federal SIP criteria require the states to adopt rules based on each CTG published by EPA. The CTG provided sources the choice of the two emission limits because 98% destruction of a very dilute vent gas stream is economically unreasonable and achieves insignificant air quality benefits below 20 ppm.

Two commenters, Occidental Chemical Corporation (Occidental) and Rohm & Haas, indicated that recordkeeping requirements are too broad and ambiguous and recommended that the regulation include less specific or only clearly defined monitoring parameters. The recordkeeping requirements for vent gas controls are required to be "sufficient to demonstrate the proper functioning of applicable control equipment to design specifications." While the criteria specifically identified in the regulation may satisfy this requirement, additional or different information may also be necessary for other types of control devices not specifically anticipated by the regulation. Other information may be considered or required by the TACB staff if it is necessary to provide at least a daily indicator of continuous compliance.

One commenter, EPA, suggested that the proper functioning of control equipment be based on compliance tests, as well as design specifications. Compliance tests will be conducted to ensure that design specifications satisfying control requirements have been achieved. Operational parameters indicative of the proper functioning of the equipment may also be established during the testing. However, it is unreasonable to require a source to comply with emission rates achieved during the testing of new equipment which may exceed the control limits in the rule.

Six commenters Occidental, Rohm & Haas, Fort Worth, Chevron Chemical Company, Mobil Chemical Company, and Quantum Chemical Company, objected to the daily recordkeeping requirements for exempted sources in order to document continuous satisfaction of exemption criteria. Several of these commenters recommended that revised emission information be provided to TACB staff only following a process change or that alternate methods of calculating applicable emission characteristics be allowed. One commenter suggested that an average daily emission rate be calculated from the annual emission rate. Exemption criteria are based on daily emissions rates and concentrations from each vent gas stream. Therefore, these criteria must be documented on a daily basis in order to effectively assess compliance. Provisions have been developed to alleviate the burden of this recordkeeping for sources with emissions of less than 50% of the exemption criteria. However, records are necessary for exempted sources above this level to ensure that emissions do not periodically fluctuate above exemption limits. Continuous emissions monitoring is not required. However, sources must be able to adequately demonstrate appropriate calculations to the satisfaction of the TACB staff. Averaging of annual emissions may allow fluctuations above the daily exemption limit.

One commenter, Occidental, recommended including a provision for a minimum emission limit of 100 pounds per 24 hours to define "major upset" which would exempt sources from reporting associated resulting emissions. The vent gas rule addresses only normal process emissions. Upset or maintenance emissions should be reported under the general rules, §101.6 and §101.7.

One individual objected to the 100 pound per 24-hour and the 0.44 pounds per square inch actual (psia) true partial pressure exemption for vent gas streams in some nonattainment areas and recommended an alternate concentration limit of 0.15 psia (10,000 ppm). Exemption limits for nonattainment areas have been established based on the emission reduction requirements in the SIP. While in the major urban nonattainment areas lower exemption levels for vent gas streams have been adopted to achieve needed emission reduction credits, no additional reduction requirements have yet been identified for other areas. More stringent controls will be considered in future rulemaking.

The new sections are adopted under the Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to make rules consistent with the policy and purposes of the TCAA.

§115.123. Alternate Control Requirements.

(a) For all persons in the counties referenced in §115.129(a) of this title (relating to Counties and Compliance Schedules), alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this section may be approved by the executive director in accordance with §115.910 of this title (relating to Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent. Direct-flame incineration specified for vent gas control in this undesignated head (concerning vent gas control) is not intended as an exclusive emission control method for volatile organic compounds (VOC). In no event shall a vent gas stream be direct-flame incinerated without heat recovery if the incineration will have no practical effect in reducing the emission of air contaminants or will result in an actual degradation of air quality. Alternate vapor recovery systems which achieve the percent reduction efficiencies equivalent to direct-flame incinerators, as stated in §115.122 of this title (relating to Control Requirements), do not require executive director approval.

(b) For all persons in the counties referenced in §115.129(b) of this title (relating to Counties and Compliance Schedules), alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this section may be approved by the executive director in accordance with §115.910 of this title (relating to Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent. Direct-flame incineration specified for vent gas control in this undesignated head (concerning vent gas control) is not intended as an exclusive emission control method for VOC. In no event shall a vent gas stream be direct-flame incinerated without heat recovery if the incineration will have no practical effect in reducing the emission of air contaminants or will result in an actual degradation of air quality. Alternate vapor recovery systems which achieve the percent reduction efficiencies equivalent to direct-flame incinerators, as stated in §115.122 of this title (relating to Control Requirements), do not require executive director approval.

§115.125. Testing Requirements. For the counties referenced in §115.129(a) of this title (relating to Counties and Compliance Schedules), compliance with §115.121(a) of this title (relating to Emission Specifications) shall be determined by applying the following test methods, as appropriate:

(1) Test Method 22 (40 Code of Federal Regulations 60, Appendix A) for visual determination of fugitive emissions

from material sources and smoke emissions from flares;

(2) additional test method requirements for flares described in 40 Code of Federal Regulations 60.18(F);

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

(4) Test Method 18 (40 Code of Federal Regulations 60, Appendix A) for determining gaseous organic compound emissions by gas chromatography;

(5) Test Method 25 (40 Code of Federal Regulations 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

(6) Test Methods 25A or 25B (40 Code of Federal Regulations 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis; or

(7) minor modifications to these test methods approved by the executive director.

§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 (concerning vent gas control) in accordance with the following schedules:

(1) all compliance schedules which have expired prior to February 1, 1990, in accordance with §115.930 of this title (relating to Compliance Dates); and

(2) the following additional compliance schedules.

(A) All persons in Harris County affected by the provisions of §115.121(a)(3) of this title (relating to Emission Specifications) shall be in compliance with this section as soon as practicable but no later than January 27, 1990.

(B) All persons affected by the provisions of §115.126(a) of this title (relating to Recordkeeping) shall be in compliance:

(i) in Dallas and Tarrant Counties as soon as practicable but no later than August 31, 1990; and

(ii) in Brazoria, El Paso, Galveston, Harris, Jefferson, and Orange Counties as soon as practicable but no later than December 31, 1990.

(b) All affected persons in Aransas, Bexar, Calhoun, Hardin, Matagorda, Montgomery, San Patricio, and Travis

Counties shall be in compliance with this undesignated head (concerning vent gas control) in accordance with all compliance schedules which have expired prior to February 1, 1990, in accordance with §115.930 of this title (relating to Compliance Dates).

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 January 26, 1990.

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Allen Eli Bell
Executive Director
Texas Air Control Board

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For further information, please call: (512) 451-5711, ext. 354

Water Separation

• 31 TAC §§115.131-115.133, 115.135-115.137, 115.139

The Texas Air Control Board (TACB) adopts new §§115.131-115.133, 115.135-115.137, and 115.139. Sections 115.131, 115.135, and 115.139 are adopted with changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3643). Sections 115.132-115.133 and 115.136-115.137 are adopted without changes and will not be republished.

The new §115.131, concerning emission specifications, establishes the maximum level of acceptable emissions from specified sources. The new §115.132, concerning control requirements, defines the type of control or technologies required to achieve necessary emission reductions. The new §115.133, concerning alternate control requirements, enables the TACB executive director to approve substantially equivalent control technologies under specific conditions. The new §115.135, concerning testing requirements, identifies the test methods which must be used to determine compliance and enables the TACB executive director to approve minor modifications to the methods. The new §115.136, concerning recordkeeping requirements, describes the information which must be maintained by affected facilities in order to ensure continuous compliance and improve the effectiveness of enforcement. The new §115.137, concerning exemptions, specifies the conditions necessary to qualify for exemption from certain control requirements. The new §115.139, concerning counties and compliance schedules, establishes the final compliance dates for applicable controls in specified counties. These sections are part of a series of additions to Chapter 115 proposed primarily to satisfy United States Environmental Protection Agency (EPA) requirements for Phase I of the Post-1987 State Implementation Plan (SIP) revisions for ozone. The TACB also has adopted a comprehensive restructuring of Chapter 115 to promote greater clarity and to eliminate inconsistencies resulting from numerous independent revisions over the past several years.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal; a commenter who agreed with the proposal in its entirety is classified as being for the proposal. Five commenters opposed the proposal, while no one testified in support.

Three commenters, Texas Chemical Council, Rohm and Haas Texas Incorporated, and Texas Mid-Continent Oil and Gas Association, objected to the proposed vapor pressure exemption and the associated requirement to maintain records on the names and vapor pressures of all materials which may enter an exempted volatile organic compound (VOC)/water separator. Alternative suggestions included the determination of the aggregate vapor pressure of all materials processed by the separator or the annual testing or calculation of the vapor pressure of materials "typically" processed. An exemption is provided for VOC/water separators which separate "materials having a true vapor pressure of VOC less than 1.5 pounds per square inch absolute (psia)...." This limit applies to any material which enters the separator, not the aggregate or annual average vapor pressure for those materials. This requirement is necessary to prevent any large fluctuations in the type of materials being processed by an exempt separator throughout the year. Appropriate records of all materials at the facility should be readily available and should not pose a significant burden for affected industries.

One individual suggested that non-exempted facilities should also be required to maintain records but did not specify the types of records which should be maintained. The control requirements for VOC/water separators merely specify that affected separators must be covered or otherwise controlled to reduce evaporative losses. No quantifiable emission limits are included, therefore, no records appear appropriate.

One individual recommended that the exemption level of 1.5 psia vapor pressure for facilities other than petroleum refineries be reduced to establish all exemption and control limits in the rule at 0.5 psia vapor pressure. This commenter also suggested removing the 200 gallon per day throughput exemption. An additional commenter, EPA, indicated that clarification is needed to resolve an apparent conflict regarding the exemption level which applies in Dallas and Tarrant Counties. Exemption levels for various types of industrial sources are based on EPA guidelines to determine reasonably available control technology. The exemption levels for VOC/water separators have been lowered in Dallas and Tarrant Counties in recent SIP revisions. Similar reductions for other areas will be considered in future rulemaking.

One commenter, EPA, noted that the reference in §115.139(a)(2) incorrectly cited §115.131(a)(2) in the emission specifications, rather than §115.131(a)(3) which imposes additional controls on smaller sources in Dallas and Tarrant Counties after August 31, 1990. This correction is appropriate.

The new sections are adopted under the Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to make rules consistent with the policy and purposes of the TCAA.

§115.131. Emission Specifications.

(a) For all persons in the counties referenced in §115.139(a) of this title (relating to Counties and Compliance Schedules) any volatile organic compound (VOC) water separator equipped with a vapor recovery system in order to comply with §115.132(a) of this title (relating to Control Requirements) shall reduce emissions such that the VOC in vent gases to the atmosphere will not exceed:

(1) a true partial pressure of 0.5 psia (3.4 kPa) at petroleum refineries;

(2) a true partial pressure of 1.5 psia (10.3 kPa) at facilities other than petroleum refineries, except as required by paragraph (3) of this subsection; or

(3) for the counties referenced in §115.139(a)(2) of this title (relating to Counties and Compliance Schedules), a true partial pressure of 0.5 psia (3.4 kPa) at facilities other than petroleum refineries.

(b) For all persons in the counties referenced in §115.139(b) of this title (relating to Counties and Compliance Schedules), any VOC water separator equipped with a vapor recovery system in order to comply with §115.132(b) of this title (relating to Control Requirements) shall reduce emissions such that the true partial pressure of the VOC in vent gases to the atmosphere will not exceed a level of 1.5 psia (10.3 kPa).

§115.135. Testing Requirements. For the counties referenced in 115.139(a) of this title (relating to Counties and Compliance Schedules), compliance with §115.132(a) shall be determined by applying the following test methods, as appropriate:

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

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

(3) Test Method 25 (40 Code of Federal Regulations 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

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

(5) determination of true vapor pressure using the American Society of Testing and Materials Test Method D323-

82 for the measurement of Reid vapor pressure, adjusted for actual storage temperature in accordance with API Publication 2517, Third Edition, 1989; or

(6) minor modifications to these test methods approved by the executive director.

§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 concerning 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 February 1, 1990, in accordance with §115.930 of this title (relating to Compliance Dates).

(2) All persons in Dallas and Tarrant Counties affected by the provisions of §15.131(a)(3) of this title (relating to Emission Specifications) shall be in compliance with this section as soon as practicable but no later than August 31, 1990.

(3) All persons in Dallas and Tarrant Counties required to implement controls as a result of the removal of the exemptions specified in §115.137(a) (3) of this title (relating to Exemptions) shall be in compliance as soon as practicable but no later than August 31, 1990.

(4) All persons affected by the provisions of §115.136 of this title (relating to Recordkeeping) shall be in compliance:

(A) in Dallas and Tarrant Counties as soon as practicable but no later than August 31, 1990; and

(B) in Brazoria, El Paso, Galveston, Harris, Jefferson, and Orange Counties as soon as practicable but no later than December 31, 1990.

(b) All affected persons in Aransas, Bexar, Calhoun, Hardin, Matagorda, Montgomery, San Patricio, and Travis Counties shall be in compliance with this undesignated head (concerning water separation) in accordance with all compliance schedules which have expired prior to February 1, 1990, in accordance with §115.930 of this title (relating to Compliance Dates).

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

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For further information, please call: (512) 451-5711, ext.354

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Subchapter C. Volatile Organic Compound Marketing Operations

Loading and Unloading of Volatile Organic Compounds

• **31 TAC §§115.211-115.217, 115.219**

The Texas Air Control Board (TACB) adopts new §§115.211-115.217 and §115.219. Sections 115.212, 115.214, 115.215, and 115.219 are adopted with changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3646). Sections 115.211, 115.213, 115.216, and 115.217 are adopted without changes and will not be republished.

The new §115.211, concerning emission specifications, establishes the maximum level of acceptable emissions from specified sources. The new §115.212, concerning control requirements, defines the type of control or technologies required to achieve necessary emission reductions. The new §115.213, concerning alternate control requirements, enables the TACB executive director to approve substantially equivalent control technologies under specific conditions. The new §115.214, concerning inspection requirements, identifies the components needing inspection and the frequency they are to be inspected. The new §115.215, concerning testing requirements, identifies the test methods which must be used to determine compliance and enables the TACB executive director to approve minor modifications to the methods. The new §115.216, concerning recordkeeping requirements, describes the information which must be maintained by affected facilities in order to ensure continuous compliance and improve the effectiveness of enforcement. The new §115.217, concerning exemptions, specifies the conditions necessary to qualify for exemption from certain control requirements. The new §115.219, concerning counties and compliance schedules, establishes the final compliance dates for applicable controls in specified counties. These sections are part of a series of additions to Chapter 115 proposed primarily to satisfy United States Environmental Protection Agency (EPA) requirements for Phase I of the Post-1987 State Implementation Plan (SIP) revisions for ozone. The TACB also has adopted a comprehensive restructuring of Chapter 115 to promote greater clarity and to eliminate inconsistencies resulting from numerous independent revisions over the past several years.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal; a commenter who agreed with the

proposal in its entirety is classified as being for the proposal. Twelve commenters opposed the proposal, while no one testified in support.

Six commenters; Galveston-Houston Association for Smog Prevention and five individuals; recommended control of volatile organic compound (VOC) emissions from ship and barge loading and unloading operations. The TACB staff recognizes that the loading and unloading of ships and barges represents a significant source of uncontrolled VOC emissions. In addition, the staff recently participated in a national committee which examined cost-effectiveness and safety issues related to such controls and determined that ship and barge emission controls could be reasonable and cost-effective in certain situations. While potential controls on these operations will certainly be considered in the development of Post-1987 SIP strategies, certain technical and legal issues must first be resolved. These include: determining situations in which it is technically and economically reasonable to retrofit existing ships and barges with necessary equipment; the potential for imposing unacceptable restrictions on interstate and international trade; and coordinating the limits of jurisdiction which the coast guard currently exercises in all ship and barge activities. Also, there are indications that EPA may elect to preempt states, authority to enact potentially dissimilar programs in different areas of the country.

One individual suggested that the exemption for "gauging" not allow operators to open the hatches of tank-trucks which have dropped a full load. Since these trucks may be assumed to be empty, there is no apparent need for any measurement. While the gauging of empty tank-trucks does appear to be unnecessary in most cases, visual verification of the delivery may sometimes be required. Emissions from the hatch of a tank-truck during gauging are relatively small as long as the actual transfer of product has been discontinued.

One individual recommended that provisions which prohibit leaks during VOC transfer operations should include both liquid and gaseous leaks and that no allowance for avoidable leaks should be provided. The rule, as proposed, already prohibits any gaseous or liquid leaks or leaks from all liquid or vapor lines. No additional clarification appears warranted. While the avoidability of leaks will be critically considered in any enforcement action associated with this rule, it is unreasonable not to recognize the potential for truly unavoidable circumstances.

One individual suggested that storage tank pressure relief valves be vented to a control device and that the pressure settings for all such valves should be specified in the rule. The potential emission reductions from the control of pressure relief valves on storage tanks at loading operations have not been estimated. This recommendation, as well as other potential controls on vents at VOC loading facilities, may be considered in subsequent rulemaking. However, establishing appropriate settings for pressure relief valves may be a reasonable means of minimizing emissions from these devices at this time.

Two commenters, the Sierra Club and one individual, recommended a limit of 1,000 parts per million (ppm) for the determination of a leak at gasoline terminals, rather than the current limit of 100% of the lower explosive limit (LEL). The recognized definition of a VOC leak is 10,000 ppm; well above the level recommended by the commenters. The LEL of gasoline is approximately 14,000 ppm. Revising the requirement to specify the currently recognized by 10,000 ppm definition would adequately satisfy both safety and emission control concerns. Most leaks during loading or unloading will be detected by sight, sound, or smell and are required to be repaired before product transfer is continued.

One commenter, EPA, suggested that annual monitoring of vapor balance systems be conducted. The annual leak testing of gasoline tank-trucks is required by §115.234, concerning control of volatile organic compounds leaks from gasoline tank-trucks, in accordance with EPA Test Method 27 (40 Code of Federal Regulations (CFR) 60, Appendix A). The method specifies testing of both the tank-truck tank and its associated vapor transfer lines and connectors to ensure that adequate emission control is achieved using a vapor balance or vapor recovery system. Repeating the requirement in the rule appears to be redundant.

Two commenters, the Sierra Club and one individual, questioned the effectiveness of inspection requirements that are to be performed routinely by facility operators or tank-truck drivers. Many of the TACB rules contain self-monitoring and recordkeeping requirements by facility personnel. The requirement notifies the facility of the responsibility for the detection and repair of leaks, and the TACB enforcement personnel may periodically observe the operations to confirm compliance. The inspection for leaks at unmanned facilities would be the sole responsibility of the tank-truck driver.

One commenter, EPA, indicated that leak detection and repair requirements should apply at all VOC loading and unloading facilities, not just gasoline terminals and bulk plants. Specified leaks are prohibited at all loading and unloading facilities and inspections should already be conducted, at least informally, to ensure compliance. Clarification of this requirement in the rule appears reasonable.

One commenter, El Paso City-County Health District, suggested requiring leak check certification information be painted on the tanker and that the driver carry documentation of the test results. A sticker indicating annual leak test certification is already required to be placed on the tank-truck near the Department of Transportation sticker. No additional evidence of the leak check appears warranted.

One commenter, Texas Chemical Council, objected to the requirement for daily recording of total VOC throughput at a loading facility and recommended monthly or annual records instead. The requirement for daily recording of total throughput is primarily intended to document the eligibility of specific sources for certain exemptions. However, enforcement personnel must also be able to calculate emissions from controlled sources based on daily operations in order to determine compliance.

One commenter, Rohm and Haas Texas Inc., indicated that less specific records may be adequate to demonstrate the proper functioning of applicable direct-flame incinerators, chillers, or catalytic incinerators. Measuring the outlet temperature of a direct-flame incinerator and comparing it against design parameters is a simple and direct means of determining if the device is operating to design specification. A comparison of the inlet and outlet temperatures is necessary to make a similar determination for both chillers and catalytic incinerators since the temperature change, rather than the absolute temperature, is more indicative of effectiveness. While other alternative monitoring and recordkeeping measures may be appropriate, insufficient information was provided in the testimony to warrant changes to the proposal. However, additional information may be considered for future rulemaking or as an alternate means of control.

One commenter, the City of Fort Worth, suggested combining paragraphs describing the recordkeeping requirements of gasoline terminals and bulk plants since the provisions were identical. These requirements were separated to be consistent with existing requirements and to allow for the revision of specific requirements in the future for one type of source without affecting the other, if warranted.

One individual objected to all proposed exemptions for loading and unloading operations. The exemptions in this proposed rule correspond directly with existing exemptions and primarily serve to define the various types of affected facilities as established in control guidelines published by EPA.

The new sections are adopted under the Texas Clean Air Act (TCAA) §382.017, which provides the TACB with the authority to make rules consistent with the policy and purposes of the TCAA.

§115.212. 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) No person shall permit the loading or unloading of volatile organic compounds (VOC) to or from any facility other than gasoline terminals unless the vapors are processed by a vapor recovery system as defined in §115.010 of this title (relating to Definitions).

(2) When loading or unloading is effected through the hatches of a tank-truck or trailer or railroad tank car with a loading arm equipped with a vapor collection adapter, then pneumatic, hydraulic, or other mechanical means shall be provided to force a vapor-tight seal between the adapter and the hatch. A means shall be provided to prevent liquid drainage from the loading device when it is removed from the hatch of any tank-truck, trailer, or railroad tank car, or to accomplish complete drainage before such removal. When

loading or unloading is effected through means other than hatches, all loading and vapor lines shall be:

(A) equipped with fittings which make vapor-tight connections and which close automatically when disconnected; or

(B) equipped to permit residual VOC in the loading line to discharge into a recovery or disposal system after loading is complete. All gauging and sampling devices shall be vapor-tight except for necessary gauging and sampling.

(3) Vapor recovery systems and loading equipment at gasoline terminals must be designed and operated to meet the following conditions.

(A) Gauge pressure must not exceed 18 inches of water (4.5 kPa) and vacuum must not exceed six inches of water (1.5 kPa) in the gasoline tank-truck.

(B) No VOC leaks, as defined in §115.010 of this title (relating to Definitions), shall be allowed from any potential leak source when measured with a portable combustible gas detector.

(C) No avoidable liquid or gaseous leaks, as detected by sight, sound, or smell, shall exist during loading and unloading operations.

(4) No person in Harris County shall permit the transfer of gasoline from a transport vessel into a gasoline bulk plant storage tank unless the following requirements are met:

(A) a vapor return line is installed from the storage tank to the transport vessel;

(B) there are no leaks, as detected by sight, sound, or smell, in the transfer system; which includes liquid lines, vapor lines, hatch covers, and pumps, or in the transport vessel's pressure-vacuum relief valves resulting from emergency situations when pressures exceed the specifications in paragraph (5)(D) of this subsection;

(C) the only atmospheric emission during gasoline transfer is through the storage tank's pressure-vacuum relief valve resulting from emergency situations when pressures exceed the specifications in paragraph (5)(D) of this subsection;

(D) all gauging and sampling devices are vapor-tight except during necessary gauging and sampling; and

(E) the transport vessel is kept vapor-tight at all times (except when gauging) until the captured vapors are discharged properly during the transport vessel's next refill.

(5) No person in Harris County shall permit the transfer of gasoline from a gasoline bulk plant into a delivery tank-truck tank unless the following requirements are met:

(A) the tank-truck tank, if equipped for top loading, has a submerged fill pipe;

(B) there are no gasoline leaks, as detected by sight, sound, or smell, between the storage tank connections and the delivery truck;

(C) a vapor return line is installed from the delivery truck to the storage tank;

(D) gauge pressure does not exceed 18 inches of water (4.5 kPa) and vacuum does not exceed six inches of water (1.5 kPa) in the gasoline tank-truck tank;

(E) there are no vapor leaks, as detected by sight, sound, or smell, in the transfer system, which includes liquid lines, vapor lines, hatch covers, and pumps or in the delivery truck's pressure-vacuum relief valves;

(F) the only atmospheric emission during gasoline transfer is through the storage tank pressure-vacuum relief valves resulting from emergency situations when pressures exceed the specification in subparagraph (D) of this paragraph; and

(G) all gauging and sampling devices are vapor-tight except during gauging or sampling.

(b) For all persons in the counties referenced in §115.219(b) of this title (relating to Counties and Compliance Schedules), the following requirements shall apply.

(1) No person shall permit the loading or unloading to or from any loading facility of VOC unless such facility is equipped with a vapor recovery system as defined in Subchapter A of this chapter (relating to Definitions).

(2) When loading or unloading is effected through the hatches of a tank-truck or trailer or railroad tank car with a loading arm equipped with a vapor collecting adapter, then pneumatic, hydraulic, or other mechanical means shall be provided to force a vapor-tight seal between the adapter and the hatch. A means shall be provided to prevent liquid drainage

from the loading device when it is removed from the hatch of any tank-truck, trailer, or railroad tank car, or to accomplish complete drainage before such removal.

(3) When loading or unloading is effected through means other than hatches, all loading and vapor lines shall be equipped with fittings which make vapor-tight connections and which close automatically when disconnected or shall be equipped to permit residual VOC in the loading line to discharge into a recovery or disposal system after loading is complete.

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

§115.214. Inspection Requirements. For all persons in the counties referenced in §115.219(a) of this title (relating to Counties and Compliance Schedules), the following inspection requirements shall apply.

(1) Inspection for visible liquid leaks, visible fumes, or significant odors resulting from volatile organic compound (VOC) dispensing operations shall be conducted during each transfer by the owner or operator of the VOC loading and unloading facility or the owner or operator of the tank-truck.

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

(3) Gasoline tank-truck tanks being loaded in Dallas, El Paso, Harris, and Tarrant Counties must have been leak tested within one year, in accordance with the requirements of the undesignated head of this subchapter (relating to Control of Volatile Organic Compound Leaks From Gasoline Tank-Trucks), as evidenced by prominently displayed certification, affixed near the Department of Transportation certification plate.

§115.215. Testing Requirements. For the counties referenced in §115.219(a) of this title (relating to Counties and Compliance Schedules), compliance with §115.212(a) of this title (relating to Control Requirements) shall be determined by applying the following test methods, as appropriate:

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

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

(3) Test Method 25 (40 Code of Federal Regulations 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

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

(5) additional test procedures described in 40 Code of Federal Regulations 60.503 c, d, e, and f;

(6) Test Method 21 (40 Code of Federal Regulations 60, Appendix A) for determining volatile organic compound leaks;

(7) determination of true vapor pressure using the American Society of Testing and Materials Test Method D323-82 for the measurement of Reid vapor pressure, adjusted for actual storage temperature in accordance with *API Publication 2517, Third Edition, 1989*; or

(8) minor modifications to these test methods approved by the executive director.

§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 concerning loading and unloading of volatile organic compounds in accordance with the following schedules:

(1) all compliance schedules which have expired prior to February 1, 1990, in accordance with §115.930 of this title (relating to Compliance Dates);

(2) the following additional compliance schedules.

(A) All persons affected by the provisions of §115.216(a)(1) and (3) of this title (relating to Recordkeeping Requirements) shall be in compliance with this section:

(i) in Dallas and Tarrant Counties as soon as practicable but no later than August 31, 1990; and

(ii) in Brazoria, El Paso, Galveston, Harris, Jefferson, and Orange Counties as soon as practicable but no later than December 31, 1990.

(B) All persons in Harris County affected by the provisions of §115.216(a)(1), (2), and (4) of this title (relating to Recordkeeping Requirements) shall be in compliance with this section no later than December 31, 1990.

(b) All affected persons in Aransas, Bexar, Calhoun, Hardin, Matagorda, Montgomery, San Patricio, and Travis Counties shall be in compliance with this undesignated head concerning loading and

unloading of volatile organic compounds in accordance with all compliance schedules which have expired prior to February 1, 1990, in accordance with §115.930 of this title (relating to Compliance Dates).

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 January 26, 1990.

TRD-9000974 Allen Eli Bell
Executive Director
Texas Air Control Board

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Proposal publication date: July 28, 1990

For further information, please call: (512) 451-5711, ext.354

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

• 31 TAC §§115.221-115.227, 115.229

The Texas Air Control Board (TACB) adopts new §§115.221-115.227 and §115.229. Sections 115.222, 115.225, and 115.229 are adopted with changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3649). Sections 115.221, 115.223, 115.224, 115.226, and 115.227 are adopted without changes and will not be republished.

The new §115.221, concerning emission specifications, establishes the maximum level of acceptable emissions from specified sources. The new §115.222, concerning control requirements, clarifies that leaks specified in paragraph (3) are to be "detected by sight, sound, or smell" and redefines leak in paragraph (8) to conform to the definition in §115.010, rather than 100% of the lower explosive limit (LEL). The new §115.223, concerning alternate control requirements, enables the TACB executive director to approve substantially equivalent control technologies under specific conditions. The new §115.224, concerning inspection requirements, identifies the components needing inspection and the frequency they are to be inspected. The new §115.225, concerning testing requirements, specifies that only minor modifications to test methods may be approved by the executive director. The new §115.226, concerning recordkeeping requirements, describes the information which must be maintained by affected facilities in order to ensure continuous compliance and improve the effectiveness of enforcement. The new §115.227, concerning exemptions, specifies the conditions necessary to qualify for exemption from certain control requirements. The new §115.229, concerning counties and compliance schedules, to identify the effective date of revisions. These sections are part of a series of additions to Chapter 115 proposed primarily to satisfy United States Environmental Protection Agency (EPA) requirements for Phase I of the Post-1987 State Implementation Plan revisions for

ozone. The TACB also has adopted a comprehensive restructuring of Chapter 115 to promote greater clarity and to eliminate inconsistencies resulting from numerous independent revisions over the past several years.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal; a commenter who agreed with the proposal in its entirety is classified as being for the proposal. Five commenters opposed the proposal while no one testified in support.

One commenter, Southwestern Bell, suggested using Texas Water Commission data regarding underground storage tanks to document the presence of Stage I vapor recovery systems at affected facilities. While information regarding the presence of required control equipment is important in determining the effectiveness of Stage I controls, compliance with the rule is dependent on the proper and conscientious use of this equipment. Records required by another agency which include applicable information specified in these rules may be used to satisfy the proposed recordkeeping requirements.

One individual suggested that inspections during each transfer include checks for both liquid and vapor gasoline leaks. The rule, as proposed, already prohibits any gaseous or liquid leaks in the liquid transfer or vapor balance systems. Furthermore, requirements call for inspection for liquid leaks, visible vapors, or odor. No additional clarification appears warranted.

One individual objected to allowing the opening of tank-truck hatches for the purpose of gauging. Emissions from the hatch of a tank-truck during gauging are relatively small as long as the actual transfer of product has been discontinued. No practical alternative to visual gauging currently exists.

One individual suggested that a concentration limit be established to define a leak within the context of this rule, rather than the current limit of 100% of the LEL. The recognized definition of a volatile organic compound leak is 10,000 parts per million (ppm); well above the level recommended by the commenters. The LEL of gasoline is approximately 14,000 ppm. Revising the requirement to specify the recognized 10,000 ppm definition would adequately satisfy both safety and emission control concerns. Most leaks during loading or unloading will be detected by sight, sound, or smell and are required to be repaired before product transfer is continued.

One individual questioned the effectiveness of inspection requirements that are to be performed routinely by the tank-truck driver during delivery and recommended that the owner or operator of the station receiving the gasoline be responsible for ensuring compliance. Three commenters; El Paso City-County Health District (EPCCHD), the Sierra Club, and one individual; further suggested that a leak check certification displayed on the tank-truck must be verified before delivery is made and the tank-truck driver provide documentation of the leak test

results, upon request. Many of the TACB rules contain self-monitoring and recordkeeping requirements by facility personnel. The requirement notifies the tank-truck company of its responsibility for the detection and repair of leaks, and TACB enforcement personnel may periodically observe the operations to confirm compliance. Since the personnel at many dispensing facilities are unqualified to perform leak detection inspections or would be unable to leave other duties unattended during delivery, the only practical means of achieving any degree of oversight requires tank-truck drivers to perform this function. A leak test certification sticker must be displayed on the truck and can be readily observed by enforcement personnel.

One commenter, Southwestern Bell, objected to proposed provisions which require the verification and recordkeeping of leak test certification and the dates of gasoline deliveries in conjunction with delivery of gasoline to motor vehicle fuel dispensing facilities because the same information is already required for compliance with regulations for loading and unloading operations in 31 TAC 334.48(c). Documentation of compliance must be ensured throughout the entire gasoline marketing distribution system, therefore, some requirements may appear to be duplicative. However, much of the same information may be used to comply with a number of similar rules. For example, only one leak test certification is needed for each tank-truck each year to satisfy all associated requirements in Regulation V. Records required by another agency which include applicable information specified in these rules may be used to satisfy the proposed recordkeeping requirements.

One individual recommended requiring records on the results of each visual inspection for leaks during delivery operations. Often the personnel attending fuel dispensing facilities are not capable, authorized, or available to maintain accurate records regarding leak inspections. While a log could be maintained by the tank-truck driver, it would be difficult to ensure or verify the completeness or accuracy of the information recorded. Furthermore, most leaks detected during transfers will most likely be corrected by minor adjustments such as reseating delivery lines onto connectors.

One commenter, EPA, recommended that the size exemption for storage tanks at fuel dispensing facilities built after January 1, 1979, be lowered to 250 gallons in order to satisfy EPA guidelines for reasonably available control technology. The TACB staff has determined that the current exemption of 1,000 gallons represents a minimum level of significance for emissions from these sources and can find no specific reference to a 250 gallon size limitation for this type of facility in published EPA guidelines. However, EPA guidelines do recognize an acceptable exemption based on a total throughput of 120,000 gallons per year. During recent discussions, EPA has agreed that the 1,000 gallon exemption is consistent with the annual throughput exemption since a tank of this size, under normal operations, would not be expected to market more than this volume of gasoline.

Two commenters, EPA and one individual, opposed the exemption for containers used exclusively for fueling of agricultural implements and suggested exempting only tanks with a 550 gallon capacity equipped with a submerged fill pipe. Containers used exclusively for fueling of agricultural implements represent an insignificant contribution to emissions from fuel dispensing facilities.

One individual opposed the exemption for floating roof tanks at fuel dispensing facilities. While floating roof tanks are rarely used at fuel dispensing facilities, the technology represents a more stringent level of control than the specified vapor balance systems. Consideration of such controls was beyond the scope of the current rulemaking effort.

Two commenters, EPCCHD and one individual, suggested removing or lowering the exemption based on a throughput of less than 120,000 gallons per year. The throughput exemption is included in EPA guidelines for Stage I vapor controls and represents a minimum level of significance. Potential reduction of the exemption level may be considered in subsequent rulemaking.

The new sections are adopted under the Texas Clean Air Act (TCAA) §382.017, which provides the TACB with the authority to make rules consistent with the policy and purposes 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) the container is equipped with a submerged fill pipe;
- (2) a vapor-tight return line is connected before gasoline can be transferred into the storage container;
- (3) no avoidable gasoline leaks, as detected by sight, sound, or smell, exist anywhere in the liquid transfer or vapor balance systems;
- (4) the vapor return line's cross-sectional area is at least one-half of the product drop line's cross-sectional area;
- (5) the only atmospheric emission during gasoline transfer into the storage container is through a storage container vent line equipped either with an orifice no greater than 3/4 inch (1.9 cm) internal diameter or a pressure-vacuum relief valve set to open at a pressure of no less than eight ounces per square inch (3.4 kPa);
- (6) the delivery vessel is kept vapor-tight at all times (except when gauging) until the captured vapors are discharged to a loading facility with vapor recovery equipment, if the delivery vessel is refilled in one of the counties listed in

§115.229 of this title (relating to Counties and Compliance Schedules);

(7) in Dallas, El Paso, Harris, and Tarrant Counties, 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); and

(8) in Dallas, El Paso, Harris, and Tarrant Counties, 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.

§115.225. Testing Requirements. For all affected persons in the counties referenced in §115.229 of this title (relating to Counties and Compliance Schedules) compliance with §115.221 of this title (relating to Emission Specifications) or §115.222 of this title (relating to Control Requirements) shall be determined by applying the following test methods, as appropriate:

- (1) Test Methods 1-4 (40 Code of Federal Regulations 60, Appendix A) for determining flow rate, as necessary;
- (2) Test Method 18 (40 Code of Federal Regulations 60, Appendix A) for determining gaseous organic compound emissions by gas chromatography;
- (3) Test Method 25 (40 Code of Federal Regulations 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;
- (4) Test Methods 25A or 25B (40 Code of Federal Regulations 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis;
- (5) Test Method 21 (40 Code of Federal Regulations 60, Appendix A) for determining volatile organic compound leaks; or
- (6) minor modification of these test methods approved by the executive director.

§115.229. Counties and Compliance Schedules. All affected persons in Brazoria, Dallas, El Paso, Galveston, Harris, and Tarrant Counties shall be in compliance with this undesignated head concerning filling of gasoline storage vessels (Stage I), for motor vehicle fuel dispensing facilities in accordance with the following schedules:

- (1) all compliance schedules which have expired prior to February 1, 1990, in accordance with §115.930 of this title (relating to Compliance Dates); and
- (2) all persons affected by the provisions of §115.226 of this title (relating to Recordkeeping Requirements) shall be in compliance:

(A) in Dallas and Tarrant Counties as soon as practicable but no later than August 31, 1990; and

(B) in Brazoria, El Paso, Galveston, and Harris Counties as soon as practicable but no later than December 31, 1990.

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

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Allen Eli Bell
Executive Director
Texas Air Control Board

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For further information, please call: (512) 451-5711, ext.354

Control of Volatile Organic Compound Leaks from Gasoline Tank-Trucks

• 31 TAC §§115.234-115.236, 115.239

The Texas Air Control Board (TACB) adopts new §§115.234-115.236 and §115.239. Sections 115.235 and 115.239 are adopted with changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3650). Sections 115.234 and 115.236 are adopted without changes and will not be republished.

The new §115.234, concerning inspection requirements, identifies the components needing inspection and the frequency they are to be inspected. The new §115.235, concerning testing requirements, identifies the test methods which must be used to determine compliance and enables the TACB executive director to approve minor modifications to the methods. The new §115.236, concerning recordkeeping requirements, describes the information which must be maintained by affected facilities in order to ensure continuous compliance and improve the effectiveness of enforcement. The new §115.239, concerning counties and compliance schedules, establishes the final compliance dates for applicable controls in specified counties. These sections are part of a series of additions to Chapter 115 proposed primarily to satisfy United States Environmental Protection Agency requirements for Phase I of the Post-1987 State Implementation Plan revisions for ozone. TACB also has adopted a comprehensive restructuring of Chapter 115 to promote greater clarity and to eliminate inconsistencies resulting from numerous independent revisions over the past several years.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in

the proposal is categorized as against the proposal; a commenter who agreed with the proposal in its entirety is classified as being for the proposal. Two commenters opposed the proposal, while no one testified in support.

One individual questioned who would be responsible for verifying that appropriate leak testing had been performed prior to gasoline transfers at convenience stores and unmanned terminals. A comprehensive list of the leak test certification numbers for all tank-trucks which service a store or unmanned terminal shall be maintained by the owner or operator of the facility. While the presence of the sticker will not be verified prior to every transfer, the responsibility for a failure to comply with the requirement to use only leak tested trucks clearly rests with the owner or operator of the facility.

One commenter, El Paso City-County Health District, suggested that the inspection certification information be painted on the tanker and that the tank-truck driver provide documentation of the leak test results, upon request. A leak test certification sticker must be displayed on the truck and can be readily observed by enforcement personnel.

The new sections are adopted under the Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to make rules consistent with the policy and purposes of the TCAA.

§115.235. Testing Requirements. For all affected persons in the counties referenced in §115.239 of this title (relating to Counties and Compliance Schedules), the following testing requirements shall apply.

(1) The owner or operator of any gasoline tank-truck which loads or unloads at any gasoline terminal, gasoline bulk plant, or motor vehicle fuel dispensing facility shall cause each such tank-truck tank to be tested annually to insure that the tank is vapor-tight.

(2) Any tank failing to meet the testing criteria of paragraph (1) of, this section shall be repaired and retested within 15 days.

(3) Testing required in paragraph (1) of this section shall be conducted in accordance with the following test methods, as appropriate:

(A) Test Method 27 (40 Code of Federal Regulations 60, Appendix A) for determining vapor tightness of gasoline delivery tank using pressure-vacuum test such that the pressure in the tank must change no more than three inches of water (0.75 kPa) in five minutes when pressurized to a gauge pressure of 18 inches of water (4.5 kPa) and when evacuated to a vacuum of six inches of water (1.5 kPa); or

(B) minor modifications to these test methods approved by the executive director.

§115.239. Counties and Compliance Schedules. All affected persons in Dallas, El Paso, Harris, and Tarrant Counties shall be in compliance with this undesignated head concerning control of volatile organic compound leaks from gasoline tank-trucks in accordance with all compliance schedules which have expired prior to February 1, 1990, in accordance with §115.930 of this title (relating to Compliance Dates).

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 January 26, 1990.

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Allen Eli Bell
Executive Director
Texas Air Control Board

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For further information, please call: (512) 451-5711, ext. 354

Control of Reid Vapor Pressure of Gasoline

• 31 TAC §§115.242, 115.243, 115.245-115.247, 115.249

The Texas Air Control Board (TACB) adopts new §115.242, §115.243, §§115.245-115.247, and §115.249. Sections 115.242 and 115.245 are adopted with changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3652). Sections 115.243, 115.246, 115.247, and 115.249 are adopted without changes and will not be republished.

The new §115.242, concerning control requirements, defines the type of control or technologies required to achieve necessary emission reductions. The new §115.243, concerning alternate control requirements, enables the TACB executive director to approve substantially equivalent control technologies under specific conditions. The new §115.245, concerning testing requirements, identifies the test methods which must be used to determine compliance. The new §115.246, concerning recordkeeping requirements, describes the information which must be maintained by affected facilities in order to ensure continuous compliance and improve the effectiveness of enforcement. The new §115.247, concerning exemptions, specifies the conditions necessary to qualify for exemption from certain control requirements. The new §115.249, concerning counties and compliance schedules, establishes the final compliance dates for applicable controls in specified counties. These sections are part of a series of additions to Chapter 115 proposed primarily to satisfy United States Environmental Protection Agency (EPA) requirements for Phase I of the Post-1987 State Implementation Plan (SIP) revisions for ozone. The TACB also has adopted a comprehensive restructuring of Chapter 115 to promote greater clarity and to eliminate inconsistencies resulting from numerous independent revisions over the past several years.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal; a commenter who agreed with the proposal in its entirety is classified as being for the proposal. Ten commenters opposed the proposal, while no one testified in support.

While two commenters, North Central Texas Council of Governments and the City of Fort Worth, expressed general support for the proposed controls on the volatility, or the Reid vapor pressure (RVP), of gasoline in the Dallas/Fort Worth consolidated metropolitan statistical area (CMSA), three additional commenters; Exxon Company, U.S.A. (Exxon), Texas Oil Marketers Association (TOMA), and Texas Mid-Continent Oil and Gas Association (TMOGA); recommended either that statewide controls be implemented or that controls be deferred until EPA promulgates the second phase of the Federal Volatility Program. The Federal Clean Air Act precludes a state from adopting regulations which are different from EPA regulations except when necessary to demonstrate attainment of a national ambient air quality standard. Since the majority of the state is not classified as nonattainment, RVP controls cannot be justified. While the second phase of the Federal RVP Program is expected to be more stringent than the proposed state controls, it is not scheduled for implementation until at least 1992. The Post-1982 SIP revisions for Dallas and Tarrant Counties, however, depend on a reduction in the RVP of gasoline to 9.0 pounds per square inch absolute (psia) by the year 1990. Therefore, delaying implementation of RVP controls until the federal program becomes effective may be considered a failure to implement a commitment in the SIP.

One commenter, EPA, stated that the TACB must submit to EPA a demonstration that justifies the necessity for more stringent controls than provided in the federal program for RVP controls in the Dallas/Fort Worth CMSA. This demonstration must include documentation showing that no more cost-effective controls are available. A regulatory preemption request and the associated demonstration is being prepared by the TACB staff and will be submitted to EPA as soon as possible.

Three commenters; Exxon, TOMA, and TMOGA; stated that further reductions in gasoline volatility in an isolated geographic area are not cost-effective and may be disruptive and costly to the consumer. The commenters indicated that more lead time is necessary to provide for significant refinery modifications, that a shortage in gasoline supplies of up to 2,500 barrels per day (BPD) may occur in the Dallas/Fort Worth area, and that administrative uncertainties will be created similar to those caused by the division of the state at the 99th meridian in the federal program.

While some additional cost, disruption, and confusion may result from the implementation of the proposed RVP controls in the Dallas/Fort Worth CMSA, no serious technical or economic problems are apparent. Lower RVP gasoline is produced by blending

less butane into gasoline prior to distribution. The TACB staff recognizes that the large scale reduction of butane in gasoline resulting from EPA's Phase I requirements is placing demands on the refining industry's ability to produce enough gasoline with sufficient octane since butane is an octane enhancer. However, reblending of gasoline required for the state program is expected to have only minimal impact due to the limited size of the affected market and the small amount of butane to be removed in decreasing volatility from EPA's 9.5 psia to the proposed 9.0 psia. Distribution costs may be increased if a truly unique blend of gasoline is supplied to the Dallas/Fort Worth CMSA. However, distribution cost and potential confusion may be overcome if lower RVP gasoline is supplied more uniformly around the state, even where not specifically required. The commenters did not provide estimates of the potential increase in the cost per gallon of gasoline to the consumer but did suggest that a short age of gasoline supplies of 2,500 BPD is possible. This shortage appears to be insignificant since approximately 95,000 BPD of gasoline are marketed in Dallas and Tarrant Counties alone.

One commenter, TMOGA, suggested maintaining the current federal RVP standard and requiring enhanced vehicle charcoal canisters to reduce evaporative losses. The use of on-board control of evaporative losses from vehicles may be an important consideration in the development of future federal vehicle controls. However, on-board controls cannot be viewed as a substitute for gasoline volatility controls since they can be jointly implemented to further reduce emissions. Furthermore, on-board evaporative controls on new vehicles must be incorporated into the federal motor vehicle control program and cannot be adopted as state regulations.

One individual suggested lowering the proposed RVP limit to 7.8 psia while two other commenters, Exxon and TMOGA, recommended clarification to the rule to ensure that a maximum of 9.0 psia gasoline would be allowed. The Post-1982 SIP revisions assumed emission reductions from limiting RVP at 9.0 psia. Reduction below that limit is not necessary at this time to demonstrate attainment. Clarification of the rule language to reflect a maximum allowable RVP of 9.0 psia appears reasonable.

One commenter, EPA recommended deletion of the restriction on the "holding" of noncompliant gasoline since some companies may choose to stockpile higher RVP gasoline for use in winter months. The commenter also suggested replacing the words "transfer or allow the transfer" with the words "sell, offer for sale, dispense, supply, offer to supply, or transport" to more specifically define the intended use of the gasoline in the marketing system. In addition, clarification of the affected sources to more clearly correspond to federal controls was also stipulated. The sampling and testing of gasoline directly from storage tanks is a direct and relatively easy method of determining compliance and indicating the volatility of the gasoline being provided throughout the marketing system. The affected industry is provided sufficient opportunity prior to the beginning of each control period to change or reblend the contents of tanks.

Restrictions on the transfer of gasoline is intentionally broad to include all the activities suggested by the commenter, but does not require investigators to determine the intention to distribute before enforcement action can be pursued. Furthermore, the proposed controls are directed at the types of activities to be regulated, rather than the specific source types specified in the federal rule. However, the types of sources do appear to be consistent between state and federal rules.

One commenter, EPA, indicated that specific sampling and test methods for determining compliance with RVP controls were recently published and should be incorporated into state regulations. These include 40 Code of Federal Regulations, Part 80, Appendix D and Appendix E, Methods I-2. Two commenters, Exxon and TMOGA, suggested that the testing tolerances and variations consistent with the precision of the methods used to determine compliance be allowed. The TACB staff has reviewed these methods and procedures and has determined that incorporation by reference into the proposal is appropriate. EPA has further indicated that the proposed American Society of Testing and Materials Method D323 cannot be used and that not even minor variations from the acceptable methods will be allowed without full federal review and approval. While the TACB staff recognizes EPA authority to require such oversight, more experience with these methods is necessary before the number and type of modifications which may be required can be estimated. Compliance determinations can reasonably consider the accuracy and precision of the methodologies employed.

Three commenters; Exxon, EPA, and TMOGA; offered recommendations to: change the proposed control requirements section to clarify which counties will be affected by the RVP controls; reference the seasonal control period more prominently in the regulation, and correct a semantic inconsistency in §115.247. The suggested changes appear to be unnecessary.

Two commenters, EPA and one individual, questioned the justification for the proposed exemptions to the RVP controls, specifically regarding fuels used exclusively for agricultural implements, and tanks with a capacity of less than 500 gallons. The types of facilities identified in this section are exempted from other regulations regarding gasoline marketing operations, do not represent a significant contribution to emissions in the area, and would be difficult to enforce. Agricultural use of gasoline is a relatively insignificant source of volatile organic compound emissions in the Dallas/Fort Worth CMSA. In addition, storage in these small tanks may be long-term and not subject to the frequent turnovers necessary to ensure compliance during the control period. Motor vehicle fuel dispensing facilities cannot be expected to maintain records of the RVP of gasoline sold, however, maintenance of purchase records which indicate gasoline suppliers is reasonable.

Four commenters; the Sierra Club, El Paso City-County Health District, and two individuals; recommended applying the proposed RVP controls in the Houston/Galveston CMSA and the El Paso

metropolitan statistical area. The second phase of the federal RVP program may be promulgated in the near future, precluding the need for any additional state administered volatility measures. Alternatively, controls similar to those finally adopted for the Dallas/Fort Worth CMSA may be considered for other parts of the state in subsequent rulemaking if needed for a demonstration of attainment and if federal requirements related to a preemption demonstration relative to the federal program can be satisfied.

The new sections are adopted under the Texas Clean Air Act (TCAA) §382.017, which provides the TACB with the authority to make rules consistent with the policy and purposes of the TCAA.

§115.242. Control Requirements. For the counties referenced in §115.249 of this title (relating to Counties and Compliance Schedules), the following control requirements shall apply.

(1) No person shall place, store, or hold in any stationary tank, reservoir, or other container any gasoline with a Reid vapor pressure greater than 9.0 pounds per square inch absolute (psia) (62.0 kPa) which may ultimately be used in a motor vehicle.

(2) No person shall transfer or allow the transfer of gasoline with a Reid vapor pressure greater than 9.0 psia (62.0 kPa) to or from any storage vessel or tank-truck tank at any gasoline terminal, bulk plant, or motor vehicle fuel dispensing facility.

(3) All adjustments in the operation of affected facilities and all transfers or alterations of noncompliant gasoline must be completed as necessary to conform with the provisions of this rule during the following periods of each calendar year:

(A) for motor vehicle fuel dispensing facilities from June 1-September 16 of each year; and

(B) for all other affected facilities from May 1-September 16 of each year.

§115.245. Testing Requirements. For the counties referenced in §115.249 of this title (relating to Counties and Compliance Schedules), the following testing requirements shall apply:

(1) sampling procedures for fuel volatility (40 Code of Federal Regulations, Part 80, Appendix D); and

(2) tests for determining Reid vapor pressure of gasoline and gasoline-oxygenate blends (40 Code of Federal Regulations, Part 80, Appendix E).

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

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Allen Eli Bell
Executive Director
Texas Air Control Board

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For further information, please call: (512)
451-5711, ext. 354

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**Subchapter D. Petroleum
Refining and Petrochemical
Processes**

**Process Unit Turnaround and
Vacuum-Producing Systems
in Petroleum Refineries.**

• **31 TAC §§115.311-115.313,
115.315-115.317, 115.319**

The Texas Air Control Board (TACB) adopts new §§115.311-115.313, 115.315-115.317, and 115.319. Sections 115.315 and 115.319 are adopted with changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3653). Sections 115.311-115.313, 115.316, and 115.317 are adopted without changes and will not be republished.

The new §115.311, concerning emission specifications, establishes the maximum level of acceptable emissions from specified sources. The new §115.312, concerning control requirements, defines the type of control or technologies required to achieve necessary emission reductions. The new §115.313, concerning alternate control requirements, enables the TACB executive director to approve substantially equivalent control technologies under specific conditions. The new §115.315, concerning testing requirements, identifies the test methods which must be used to determine compliance and enables the TACB executive director to approve minor modifications to the methods. The new §115.316, concerning recordkeeping requirements, describes the information which must be maintained by affected facilities in order to ensure continuous compliance and improve the effectiveness of enforcement. The new §115.317, concerning exemptions, specifies the conditions necessary to qualify for exemption from certain control requirements. The new §115.319, concerning counties and compliance schedules, establishes the final compliance dates for applicable controls in specified counties. These sections are part of a series of additions to Chapter 115 proposed primarily to satisfy United States Environmental Protection Agency (EPA) requirements for Phase I of the Post-1987 State Implementation Plan revisions for ozone. TACB also has adopted a comprehensive restructuring of Chapter 115 to promote greater clarity and to eliminate inconsistencies resulting from numerous independent revisions over the past several years.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in

the proposal is categorized as against the proposal; a commenter who agreed with the proposal in its entirety is classified as being for the proposal. Three commenters opposed the proposal, while no one testified in support.

One individual suggested that accumulators should be controlled under rules for vacuum-producing systems. Accumulators are the collection devices associated with contact condensing process units, similar to hotwells, and therefore are already controlled by this section.

One individual recommended that specified control devices be required to achieve at least 95% efficiency while another commenter, Texas Chemical Council, objected to requiring a flare efficiency of 90%. The minimum control efficiency of devices required for vacuum-producing systems was established by guidelines published by EPA to allow the use of various control options, including catalytic incineration. While a catalytic incinerator may demonstrate very high initial reductions, catalyst efficiencies decline to approximately 90% before regeneration is necessary. Affected facilities which utilize a flare as a control device must only ensure smokeless operation. While no minimum efficiency is specified for flares, a smokeless flare is generally accepted to achieve greater than 90% destruction.

One individual recommended annual stack testing to ensure control efficiency is maintained. An initial compliance test will be required whenever new controls are implemented. Documenting the continued performance of the control equipment to design specifications, including records of critical operation parameters, should adequately ensure continued compliance. Stack testing may be required by the TACB staff at any time to confirm compliance.

Two commenters, EPA and one individual, indicated that the exemption for systems emitting less than 100 pounds per day should be deleted in order to comply with published EPA guidance documents. The proposed exemption is consistent with the existing exemptions for general vent gas streams within Regulation V. However, the removal of this exemption will be evaluated and may be considered in subsequent rulemaking.

The new sections are adopted under the Texas Clean Air Act (TCAA) §382.017, which provides the TACB with the authority to make rules consistent with the policy and purposes of the TCAA.

§115.315. Testing Requirements. For all affected persons in the counties referenced in §115.319 of this title (relating to Counties and Compliance Schedules), compliance with §115.311 of this title (relating to Emission Specifications) and §115.312 of this title (relating to Control Requirements) shall be determined by applying the following test methods, as appropriate:

(1) Test Method 22 (40 Code of Federal Regulations 60, Appendix A) for visual determination of fugitive emissions from material sources and smoke emissions from flares;

(2) additional control device requirements for flares described in 40 Code of Federal Regulations 60.18(F);

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

(4) Test Method 18 (40 Code of Federal Regulations 60, Appendix A) for determining gaseous organic compound emissions by gas chromatography;

(5) Test Method 25 (40 Code of Federal Regulations 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

(6) Test Methods 25A or 25B (40 Code of Federal Regulations 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis; or

(7) minor modifications to these test methods approved by the executive director.

§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 concerning 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 February 1, 1990, 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 of this title (relating to Recordkeeping Requirements) shall be in compliance with this section as soon as practicable but no later than December 31, 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 January 26, 1990.

TRD-9000970

Allen Eli Bell
Executive Director
Texas Air Control Board

Effective date: February 19, 1990

Proposal publication date: July 28, 1990

For further information, please call: (512)
451-5711, ext.354

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**Fugitive Emission Control in
Petroleum Refineries**

• **31 TAC §§115.322-115.327,
115.329**

The Texas Air Control Board (TACB) adopts new §§115.322-115.327 and §115.329.

Sections 115.322, 115.324, 115.325, and 115.329 are adopted with changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3654). Sections 115.323, 115.326, and 115.327 are adopted without changes and will not be republished.

The new §115.322, concerning control requirements, defines the type of control or technologies required to achieve necessary emission reductions. The new §115.323, concerning alternate control requirements, enables the TACB executive director to approve substantially equivalent control technologies under specific conditions. The new §115.324, concerning inspection requirements, identifies the components needing inspection and the frequency they are to be inspected. The new §115.325, concerning testing requirements, identifies the test methods which must be used to determine compliance and enables the TACB executive director to approve minor modifications to the methods. The new §115.326, concerning recordkeeping requirements, describes the information which must be maintained by affected facilities in order to ensure continuous compliance and improve the effectiveness of enforcement. The new §115.327, concerning exemptions, specifies the conditions necessary to qualify for exemption from certain control requirements. The new §115.329, concerning counties and compliance schedules, establishes the final compliance dates for applicable controls in specified counties. These sections are part of a series of additions to Chapter 115 proposed primarily to satisfy United States Environmental Protection Agency (EPA) requirements for Phase I of the Post-1987 State Implementation Plan revisions for ozone. TACB also has adopted a comprehensive restructuring of Chapter 115 to promote greater clarity and to eliminate inconsistencies resulting from numerous independent revisions over the past several years.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal; a commenter who agreed with the proposal in its entirety is classified as being for the proposal. Five commenters opposed the proposal, while no one testified in support.

Two commenters, the Sierra Club and one individual, recommended quarterly inspections of components currently examined on an annual basis such as pump seals, pipeline valves in liquid service, process drains, and elevated valves. The control technique guidelines (CTG) for fugitive emissions monitoring at petroleum refineries published by EPA establishes an annual leak inspection schedule for these components. However, more recently published guidelines concerning fugitive emissions monitoring programs for other types of sources provide for quarterly inspections of all of these components, except elevated valves. While these subsequent guidelines may be viewed as an improvement in the EPA recommended approach for fugitive monitoring, no specific

additional requirements or guidance has been released which would warrant a change in programs at petroleum refineries at this time. Additional control options will be evaluated in the future and may be considered in subsequent rulemaking, if appropriate.

One commenter, EPA, indicated that any component, not just pump seals, which has any observed leaks as detected by sight, sound, or smell must be monitored. However, only those leaks determined to have emissions greater than 10,000 parts per million (ppm) must be repaired. A requirement to monitor for a volatile organic compound (VOC) leak from any component whenever a potential leak is detected by sight, sound, or smell appears reasonable except for components currently exempted because they contact process fluids containing less than 10% VOC by weight or with a true vapor pressure of 0.147 pounds per square inch absolute (psia) or less. Repairs are already required for any leak exceeding 10,000 ppm.

One individual suggested that modifications to the monitoring schedule for a facility be approved only if a leak rate of no more than 3.0% of all valves monitored can be maintained. Guidelines for justifying modifications of the monitoring schedule for a facility are specified in §115.324(B) and require that no more than 2.0% of the monitored valves are found to be leaking.

Two commenters, Texas Chemical Council and Texas Mid-Continent Oil and Gas Association, suggested adding exemptions for certain types of valves, pumps, and compressors. The CTG for fugitive emissions monitoring at petroleum refineries published by EPA does not specifically provide exemptions for these components. However, the more recently published CTG for natural gas/gasoline processing operations does include exemptions for the types of components specified by the commenters. While these subsequent guidelines may be viewed as an improvement in the EPA recommended approach for fugitive monitoring, no specific additional requirements or guidance has been released which would warrant a change in programs at petroleum refineries at this time. Additional control options will be evaluated in the future and may be considered in subsequent rulemaking, if appropriate.

One individual recommended that exemptions based on the percent VOC in the process stream and vapor pressure be deleted. The exemption for the percent VOC in the process stream is consistent with current new source performance standard requirements for petroleum refineries. The vapor pressure exemption level was established to be consistent with the definition for leak as defined in the CTG. Subsequent rulemaking may consider whether more stringent limits should be applied.

Two commenters, EPA and one individual, opposed exempting two-inch valves from monitoring requirements. This exemption may be approved for a specific facility if emissions from these small valves represent less than 5.0% of the total emissions from all monitored components at a facility. EPA has indicated that while such an exemption may be allowed for an entire source category

based on the 5.0% demonstration, the exemption cannot be approved for individual facilities. The TACB staff believes that the exemption for two-inch valves could be justified for the entire petroleum refinery source category. This change, therefore, would represent a significantly less stringent control requirement, since all small valves would be exempt even where they constituted a large part of the emissions from an individual source. Relatively few requests for the two-inch valve exemption have been received by the TACB staff. Each request must be evaluated on a case-by-case basis, with the burden of proof on the facility to document satisfaction of the 5.0% criteria. This exemption is intentionally very limited, establishing very narrow criteria and applying only to fugitive emissions monitoring programs. No stated or implied provision exists which would provide for a general exemption for an individual facility in another source category.

Two commenters, EPA and one individual, suggested removal or modification to the exemption for liquids with a true vapor pressure of 0.147 psia at 68 Degrees Fahrenheit. EPA indicated that the vapor pressure limit should be lowered to 0.044 psia to satisfy EPA guidelines for reasonably available control technology. The vapor pressure limit of 0.147 psia at 68 Degrees Fahrenheit represents a concentration of 10,000 ppm corresponding to the definition of a leak for purposes of fugitive emissions monitoring. In recent discussions with EPA, they indicated that lowering the true vapor pressure limit to 0.044 psia was recommended to compensate for operating temperatures above 68 Degrees Fahrenheit which would result in VOC concentrations well above the 10,000 ppm limit for a leak. While the rationale for this recommendation is legitimate, reducing the limit by 70% appears unnecessary. Revising the exemption to include only materials with a true vapor pressure of 0.147 psia at actual operating temperature would directly address EPA's concern and may be a reasonable alternative. This option will be evaluated in the future and may be considered in subsequent rulemaking, if appropriate.

One individual objected to the exemption for process units in a temporary non-operating status. The exemption is provided in the CTG for fugitive emissions control programs for petroleum refineries because it is unreasonable to require monitoring of components which contain no process liquids or vapors and, therefore, have no potential for leaks.

The new sections are adopted under the Texas Clean Air Act (TCAA) §382.017, which provides the TACB with the authority to make rules consistent with the policy and purposes of the TCAA.

§115.322. Control Requirements. For the counties referenced in §115.329 of this title (relating to Counties and Compliance Schedules), no person shall operate a petroleum refinery, as defined in §115.010 of this title (relating to Definitions), without complying with the following requirements.

(1) No component shall be allowed to have a volatile organic

compound (VOC) leak as defined in §115.010 of this title (relating to Definitions).

(2) All technically feasible repairs to a leaking a component, as specified in paragraph (1) of this section, shall be made within 15 days after the leak is found. If the repair of a component would require a unit shutdown which would create more emissions than the repair would eliminate, the repair may be delayed until the next scheduled shutdown.

(3) All leaking components, as defined in paragraph (1) of this section, which cannot be repaired until the unit is shut down for turnaround shall be identified for such repair by tagging. The executive director at his discretion may require early unit turnaround or other appropriate action based on the number and severity of tagged leaks awaiting turnaround.

(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.

(5) Pipeline valves and pressure relief valves in gaseous VOC service shall be marked in some manner that will be readily obvious to monitoring personnel.

§115.324. Inspection Requirements. For the counties referenced in §115.329 of this title (relating to Counties and Compliance Schedules), the owner or operator of a petroleum refinery shall conduct a monitoring program consistent with the following provisions:

(1) measure yearly (with a hydrocarbon gas analyzer) the emissions from all:

(A) pump seals;

(B) pipeline valves in liquid service;

(C) process drains; and

(D) all valves elevated more than two meters above any permanent structure;

(2) measure quarterly (with a hydrocarbon gas analyzer) the emissions from all:

(A) compressor seals;

(B) pipeline valves in gaseous service; and

(C) pressure relief valves in gaseous service;

(3) visually inspect, weekly, all pump seals;

(4) measure (with a hydrocarbon gas analyzer) the emissions from any component, except those exempted by §115.327(2)-(3) of this title (relating to Exemptions), whenever a potential leak is detected by sight, sound, or smell;

(5) measure (with a hydrocarbon gas analyzer) emissions from any relief valve which has vented to the atmosphere within 24 hours;

(6) measure (with a hydrocarbon gas analyzer) immediately after repair, the emissions from any component found leaking;

(7) upon the detection of a leaking component, 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; and

(8) the monitoring schedule of paragraphs (1)-(3) of this section may be modified as follows.

(A) After completion of the required annual and quarterly inspections for a period of at least two years, the operator of a refinery may request in writing to the Texas Air Control Board that the monitoring schedule be revised based on the percent of valves leaking. The percent of valves leaking shall be determined by dividing the sum of valves leaking during current monitoring and valves for which repair has been delayed by the total number of valves subject to the requirements. This request shall include all data that have been developed to justify the following modifications in the monitoring schedule.

(i) After two consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0%, an owner or operator may begin to skip one of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.

(ii) After five consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0%, an owner or operator may begin to skip three of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.

(B) If the executive director of the Texas Air Control Board determines that there is an excessive number of leaks in any given process area, he may require an increase in the frequency of monitoring for that process area of the refinery.

§115.325. Testing Requirements. For all affected persons in the counties referenced

in §115.329 of this title (relating to Counties and Compliance Schedules), compliance with this undesignated head concerning fugitive emission control in petroleum refineries shall be determined by applying the following test methods, as appropriate:

(1) Test Method 21 (40 Code of Federal Regulations 60, Appendix A) for determining volatile organic compound leaks. The leak detection equipment can be calibrated with methane, propane, or hexane, but the meter readout must be as parts per million by volume (ppmv) hexane;

(2) determination of true vapor pressure using the American Society of Testing and Materials Test Method D323-82 for the measurement of Reid vapor pressure, adjusted for actual operating temperature in accordance with *API Publication 2517, Third Edition, 1989*; or

(3) minor modifications to these test methods approved by the executive director.

§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 concerning fugitive emission control in petroleum refineries in accordance with all compliance schedules which have expired prior to February 1, 1990, in accordance with §115.930 of this title (relating to Compliance Dates).

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 January 26, 1990.

TRD-9000969

Allen Eli Bell
Executive Director
Texas Air Control Board

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Proposal publication date: July 28, 1989

For further information, please call: (512) 451-5711, ext. 354

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**Fugitive Emission Control in
Synthetic Organic Chemical,
Polymer, and Resin
Manufacturing Processes**

• 31 TAC §§115.332-115.337,
115.339

The Texas Air Control Board (TACB) adopts new §§115.332-115.337 and 115.339. Sections 115.332, 115.334, 115.335, 115.337, and 115.339 are adopted with changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3657). Sections 115.333 and 115.336 are adopted without changes and will not be republished.

The new §115.332, concerning control requirements, defines the type of control or technologies required to achieve necessary emission reductions. The new §115.333, concerning alternate control requirements, enables the TACB executive director to approve substantially equivalent control technologies under specific conditions. The new §115.334, concerning inspection requirements, identifies the components needing inspection and the frequency they are to be inspected. The new §115.335, concerning testing requirements, identifies the test methods which must be used to determine compliance and enables the TACB executive director to approve minor modifications to the methods. The new §115.336, concerning recordkeeping requirements, describes the information which must be maintained by affected facilities in order to ensure continuous compliance and improve the effectiveness of enforcement. The new §115.337, concerning exemptions, specifies the conditions necessary to qualify for exemption from certain control requirements. The new §115.339, concerning counties and compliance schedules, establishes the final compliance dates for applicable controls in specified counties. These sections are part of a series of additions to Chapter 115 proposed primarily to satisfy United States Environmental Protection Agency (EPA) requirements for Phase I of the Post-1987 State Implementation Plan revisions for ozone. TACB also has adopted a comprehensive restructuring of Chapter 115 to promote greater clarity and to eliminate inconsistencies resulting from numerous independent revisions over the past several years.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal; a commenter who agreed with the proposal in its entirety is classified as being for the proposal. Five commenters opposed the proposal, while no one testified in support.

Two commenters, Occidental Chemical Corporation and Rohm and Haas Texas Incorporated, objected to the addition of any new inspection requirements indicating they are costly and burdensome and that additional time must be provided to facilitate implementation. The proposed revisions to the monitoring schedules for the synthetic organic chemical manufacturing industry (SOCMI) would increase the frequency of inspections for pipeline valves in gaseous service and all pump seals from annually to quarterly. These changes are necessary to provide requirements consistent with published control techniques guidelines (CTG) documents as required by EPA. We recognize that a revision of current monitoring plans and a reallocation of resources may be necessary in order to comply with these additional inspection requirements. While affected facilities may not be able to be in compliance immediately, new inspection procedures should be phased into current quarterly monitoring schedules.

One commenter, EPA, indicated that any component, not just pump seals, must be

monitored using a hydrocarbon gas analyzer whenever a potential leak is detected by sight, sound, or smell. A requirement to monitor for a volatile organic compound (VOC) leak from any component whenever a potential leak is detected by sight, sound, or smell appears reasonable, except for components currently exempted because they contact process fluids containing less than 10% VOC by weight. Repairs are already required for any leak exceeding 10,000 parts per million (ppm).

One commenter, EPA, suggested that a tag be affixed to a component whenever a potential leak is detected by sight, sound, or smell. The tagging requirement of the fugitive control programs is intended to identify only those components which need to be repaired. Therefore, only those components which have been measured at greater than 10,000 ppm should be tagged.

Two commenters, EPA and one individual, opposed exempting two-inch valves from monitoring requirements. This exemption may be approved for a specific facility if emissions from these small valves represent less than 5.0% of the total emissions from all monitored components at a facility. EPA has indicated that while such an exemption may be allowed for an entire source category based on the 5.0% demonstration, the exemption cannot be approved for individual facilities. The TACB staff believes that the exemption for two-inch valves could be justified for the entire SOCMI source category. This change, therefore, would represent a significantly less stringent requirement, since all small valves would be exempt even where they constituted a large part of the emissions from an individual source. Relatively few requests for the two-inch valve exemption have been received by the TACB staff. Each request must be evaluated on a case-by-case basis, with the burden of proof on the facility to document satisfaction of the 5.0% criteria. This exemption is intentionally very limited, establishing very narrow criteria and applying only to fugitive emissions monitoring programs. No stated or implied provision exists which would provide for a general exemption for an individual facility in another source category.

One commenter, EPA, suggested modification to the exemption for liquids with a true vapor pressure of 1.013 kPa at 20 Degree Centigrade to lower the limit to 0.3 kPa to satisfy EPA guidelines for reasonably available control technology. The vapor pressure limit of 1.013 kPa at 20 Degree Centigrade represents a concentration of 10,000 ppm corresponding to the definition of a leak for purposes of fugitive emissions monitoring. In recent discussions with EPA, they indicated that lowering the true vapor pressure limit to 0.3 kPa was recommended to compensate for operating temperatures above 20 Degree Centigrade which would result in VOC concentrations well above the 10,000 ppm limit for a leak. While the rationale for this recommendation is legitimate, reducing the limit by 70% appears unnecessary. Revising the exemption to include only materials with a true vapor pressure of 1.013 kPa at actual operating temperature would directly address EPA's concern and may be a reasonable alternative. This option will be evaluated in the future and

may be considered in subsequent rulemaking, if appropriate.

One commenter, EPA, suggested revising the requirements for the start-up of a process unit in temporary nonoperating status to conform to the provisions established for petroleum refineries.

These changes would require: the submission of a compliance plan one month prior to start-up, rather than six months after start-up; and final compliance within three months after start-up, rather than within one year after start-up. These provisions do not require the installation of additional control equipment nor the need for extensive development time. Therefore, the recommended three-month period for implementation of a monitoring schedule appears reasonable.

Two commenters, EPA and one individual, suggested that specified exemptions for pumps and compressors apply only to pumps with mechanical seals and compressors with fluid barriers specified in the published CTG. The proposed exemptions include pumps with dual pump seals and barrier fluid systems, and both pumps and compressors with seal degassing vents and vent control systems. These types of controls are more effective in reducing emissions than those strictly exempted in the CTG. Therefore, exempting these additional components appears to be consistent with the intent of the CTG. This exemption may be clarified to include pumps with mechanical seals and compressors with fluid barrier systems.

One commenter, Texas Mid-Continent Oil and Gas Association, suggested adding a clause to the definition of "Synthetic Organic Chemical Manufacturing Process" to indicate that related requirements are not applicable to petroleum refineries. The addition of the suggested language may be incorrectly interpreted as exempting certain processes just because they are physically located within a petroleum refinery. The controls are intended to apply to the type of process as defined, regardless of location. Therefore, this change would be misleading and inappropriate.

The new sections are adopted under the Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to make rules consistent with the policy and purposes 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, or resin manufacturing process, as defined in §115.010 of this title (relating to Definitions), without complying with the following requirements.

(1) No component shall be allowed to have a volatile organic compound (VOC) leak, as defined in §115.010 of this title (relating to Definitions).

(2) All technically feasible repairs to a leaking component, as specified in paragraph (1) of this section, shall be

made within 15 days after the leak is found. If the repair of a component would require a unit shutdown which would create more emissions than the repair would eliminate, the repair may be delayed until the next scheduled shutdown.

(3) All leaking components, as defined in paragraph (1) of this section, which cannot be repaired until the unit is shut down for turnaround shall be identified for such repair by tagging. The executive director at his discretion may require early unit turnaround or other appropriate action based on the number and severity of tagged leaks awaiting turnaround.

(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.

(5) Pipeline valves and pressure relief valves in gaseous VOC service shall be marked in some manner that will be readily obvious to monitoring personnel.

§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, or resin manufacturing process shall conduct a monitoring program consistent with the following provisions:

(A) measure yearly (with a hydrocarbon gas analyzer) the emissions from all valves elevated more than two meters above any permanent structure;

(B) measure quarterly (with a hydrocarbon gas analyzer) the emissions from all:

- (i) compressor seals;
- (ii) pipeline valves;
- (iii) pressure relief valves in gaseous service; and
- (iv) pump seals;

(C) visually inspect, weekly, all pump seals;

(D) measure (with a hydrocarbon gas analyzer) the emissions from any component, except those exempted by §115.337(2) and (3) of this title (relating to Exemptions), whenever a potential leak is detected by sight, sound, or smell;

(E) measure (with a hydrocarbon gas analyzer) emissions from any relief valve which has vented to the atmosphere within 24 hours; and

(F) measure (with a hydrocarbon gas analyzer) immediately after repair the emissions from any component that was found leaking.

(2) The owner or operator of a synthetic organic chemical, polymer, or resin manufacturing process upon the detection of a leaking component 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) The monitoring schedule of paragraph (1)(A)-(C) of this section may be modified as follows.

(A) After completion of the required annual and quarterly inspections for a period of at least two years, the operator of a synthetic organic chemical, polymer, or resin manufacturing facility may request in writing to the Texas Air Control Board that the monitoring schedule be revised based on the percent of valves leaking. The percent of valves leaking shall be determined by dividing the sum of valves leaking during current monitoring and valves for which repair has been delayed by the total number of valves subject to the requirements. This request shall include all data that have been developed to justify the following modifications in the monitoring schedule.

(i) After two consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0%, an owner or operator may begin to skip one of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.

(ii) After five consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0%, an owner or operator may begin to skip three of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.

(B) If the executive director of the Texas Air Control Board determines that there is an excessive number of leaks in any given process, he may require an increase in the frequency of monitoring for that process.

§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, concerning fugitive emission control in synthetic organic chemical, polymer, and resin manufacturing

processes, shall be determined by applying the following test methods, as appropriate:

(1) Test Method 21 (40 Code of Federal Regulations 60, Appendix A) for determining volatile organic compound leaks. The leak detection equipment can be calibrated with methane, propane, or hexane, but the meter readout must be as parts per million by volume (ppmv) hexane;

(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 actual operating temperature in accordance with API Publication 2517, Third Edition, 1989; or

(3) minor modifications to these test methods approved by the executive director.

§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) Valves with a nominal size of two inches (5.0 cm) or less are exempt from the requirements of this undesignated head, concerning fugitive emission control in synthetic organic chemical, polymer, and resin manufacturing processes, provided allowable emissions at any plant from sources affected by these sections after controls are applied with exemptions, will not exceed by more than 5.0% such allowable emissions with no exemptions. Any person claiming an exemption for valves two inches (5.0 cm) nominal size or smaller under this section shall at the time he provides his control plan also provide the following information:

(A) identification of valves or classes of valves to be exempted;

(B) an estimate of uncontrolled emissions from exempted valves and an estimate of emissions if controls were applied, plus an explanation of how the estimates were derived; and

(C) an estimate of the total volatile organic compound (VOC) emissions within the process from sources affected by this undesignated head, concerning fugitive emission control in synthetic organic chemical, polymer, and resin manufacturing processes, after controls are applied and assuming no exemptions for small valves, plus an explanation of how the estimate was derived.

(2) Components which contact a process fluid that contains less than 10% VOC by weight are exempt from the requirements of this undesignated head, concerning fugitive emission control in synthetic organic chemical, polymer, and resin manufacturing processes.

(3) Components which contact a process liquid containing VOC having a true vapor pressure equal to or less than 0.147 pounds per square inch absolute (1.013 kPa) at 68 Degrees Fahrenheit (20 Degrees Centigrade) are exempt from the requirements of this undesignated head, concerning fugitive emission control in synthetic organic chemical, polymer, and resin manufacturing processes, if the components are inspected visually according to the inspection schedules specified within these same sections.

(4) Synthetic organic chemical, polymer, and resin manufacturing process units in a temporary nonoperating status shall submit a plan for compliance with the provisions of this undesignated head, concerning fugitive emission control in synthetic organic chemical, polymer, and resin 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, and resin manufacturing processes affected by this paragraph 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.

(5) Processes at the same location but unrelated to the production of synthetic organic chemicals, polymers, and resins are exempt from the requirements of this undesignated head, concerning fugitive emission control in synthetic organic chemical, polymer, and resin manufacturing processes.

(6) The following items are exempt from the monitoring requirements of §115.334 of this title (relating to Inspection Requirements):

(A) pressure relief devices connected to an operating flare header, components in continuous vacuum service, and valves that are not externally regulated (such as in-line check valves);

(B) pressure relief valves that are downstream of a rupture disc which is intact;

(C) pumps in liquid service that are equipped with mechanical seals, dual pump seals, barrier fluid systems, seal degassing vents, and vent control systems kept in good working order; and

(D) compressors that are equipped with barrier fluid systems, degassing vents, and vent control systems kept in good working order.

§115.339. Counties and Compliance Schedules. All affected persons in Harris County shall be in compliance with this

undesignated head, concerning fugitive emission control in synthetic organic chemical, polymer, and resin manufacturing processes, in accordance with all compliance schedules which have expired prior to February 1, 1990, in accordance with §115.930 of this title (relating to Compliance Dates).

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 January 26, 1990.

TRD-9000968 Allen Eli Bell
Executive Director
Texas Air Control Board

Effective date: February 19, 1990

Proposal publication date: July 28, 1989

For further information, please call: (512) 451-5711, ext. 354

◆ ◆ ◆
**Fugitive Emission Control in
Natural Gas/Gasoline
Processing Operations**

◆ ◆ ◆
**• 31 TAC §§115.342-115.347,
115.349**

The Texas Air Control Board (TACB) adopts new §§115.342-115.347 and §115.349. Sections 115.342, 115.344, 115.345, and 115.349 are adopted with changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3659). Sections 115.343, 115.346, and 115.347 are adopted without changes and will not be republished.

The new §115.342, concerning control requirements, defines the type of control or technologies required to achieve necessary emission reductions. The new §115.343, concerning alternate control requirements, enables the TACB executive director to approve substantially equivalent control technologies under specific conditions. The new §115.344, concerning inspection requirements, identifies the components needing inspection and the frequency they are to be inspected. The new §115.345, concerning testing requirements, identifies the test methods which must be used to determine compliance and enables the TACB executive director to approve minor modifications to the methods. The new §115.346, concerning recordkeeping requirements, describes the information which must be maintained by affected facilities in order to ensure continuous compliance and improve the effectiveness of enforcement. The new §115.347, concerning exemptions, specifies the conditions necessary to qualify for exemption from certain control requirements. The new §115.349, concerning counties and compliance schedules, establishes the final compliance dates for applicable controls in specified counties. These sections are part of a series of additions to Chapter 115 proposed primarily to satisfy United States Environmental Protection Agency (EPA) requirements for Phase I of the Post-1987 State Implementation Plan revisions for ozone. The TACB also has adopted a

comprehensive restructuring of Chapter 115 to promote greater clarity and to eliminate inconsistencies resulting from numerous independent revisions over the past several years.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal; a commenter who agreed with the proposal in its entirety is classified as being for the proposal. Three commenters opposed the proposal, while no one testified in support.

One individual suggested that companies be required to demonstrate that all technically feasible repairs have been done to repair a leak within 15 days. The proposed rule includes all necessary requirements to provide for specified repairs to leaking components. A demonstration that all technically feasible repairs have been made may be requested at any time to verify and ensure enforceability of the rule. No revision to the rule appears warranted at this time, but more stringent requirements related to timing of repairs may be considered in future rulemaking.

One commenter, Texas Chemical Council, objected to the requirement for quarterly monitoring of pump seals and pipeline valves. The monitoring schedules in the proposed rule reflect the requirements included in the control techniques guidelines (CTG) published by EPA to define reasonably available control technology (RACT) for natural gas/gasoline processing operations.

One commenter, EPA, indicated that any component, not just pump seals, must be monitored using a hydrocarbon gas analyzer whenever a potential leak is detected by sight, sound, or smell. A requirement to monitor for a volatile organic compound (VOC) leak from any component whenever a potential leak is detected by sight, sound, or smell appears reasonable, except for components currently exempted because they contact process fluids containing less than 10% VOC by weight. Repairs are already required for any leak exceeding 10,000 parts per million (ppm).

One individual suggested that modifications to the monitoring schedule for a facility be approved only if a leak rate of no more than 3.0% of all valves monitored can be maintained. Guidelines for justifying modifications of the monitoring schedule for a facility are specified in §115.324(8) and require that no more than 2.0% of the monitored valves are found to be leaking.

Two commenters, EPA and one individual, opposed exempting two-inch valves from monitoring requirements. This exemption may be approved for a specific facility if emissions from these small valves represent less than 5.0% of the total emissions from all monitored components at a facility. EPA has indicated that while such an exemption may be allowed for an entire source category based on the 5.0% demonstration, the exemption cannot be approved for individual facilities. The TACB staff believes that the exemption for two-inch valves could be justified for the entire petroleum refinery

source category. This change, therefore, would represent a significantly less stringent requirement, since all small valves would be exempt even where they constituted a large part of the emissions from an individual source. Relatively few requests for the two-inch valve exemption have been received by the TACB staff. Each request must be evaluated on a case-by-case basis, with the burden of proof on the facility to document satisfaction of the 5.0% criteria. This exemption is intentionally very limited, establishing very narrow criteria and applying only to fugitive emissions monitoring programs. No stated or implied provision exists which would provide for a general exemption for an individual facility in another source category.

One individual objected to the exemption for components which contact a process fluid that contains less than 1.0% VOC by weight. This exemption is provided in the CTG for fugitive emissions monitoring programs for natural gas/gasoline processing operations because the fluids within the affected components do not contain enough VOC to be detected as a leak. These exempted streams are essentially the product gas which is normally more than 99% methane.

Two commenters, EPA and one individual, suggested modification to the exemption for liquids with a true vapor pressure of 1.013 kPa at 20 Degrees Centigrade to lower the limit to 0.3 kPa to satisfy EPA guidelines for RACT. The vapor pressure limit of 1.013 kPa at 20 Degrees Centigrade represents a concentration of 10,000 ppm corresponding to the definition of a leak for purposes of fugitive emissions monitoring. In recent discussions with EPA, they indicated that lowering the true vapor pressure limit to 0.3 kPa was recommended to compensate for operating temperatures above 20 Degrees Centigrade which would result in VOC concentrations well above the 10,000 ppm limit for a leak. While the rationale for this recommendation is legitimate, reducing the limit by 70% appears unnecessary. Revising the exemption to include only materials with a true vapor pressure of 1.013 kPa at actual operating temperature would directly address EPA's concern and may be a reasonable alternative. This option will be evaluated in the future and may be considered in subsequent rulemaking, if appropriate.

One individual opposed several proposed exemptions including: pressure relief valves downstream of an intact rupture disk; positive displacement pumps and pumps in liquid service equipped with specified control devices; and reciprocating compressors and compressors equipped with specified control devices. These exemptions are provided in the CTG for fugitive emissions monitoring programs for natural gas/gasoline processing operations because the affected components do not represent a significant source of VOC emissions.

The new sections are adopted under the Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to make rules consistent with the policy and purposes of the TCAA.

§115.342. *Control Requirements.* For the counties referenced in §115.349 of this title

(relating to Counties and Compliance Schedules), no person shall operate a natural gas/gasoline processing operation, as defined in §115.010 of this title (relating to Definitions), without complying with the following control requirements.

(1) No component shall be allowed to have a volatile organic compound (VOC) leak, as defined in §115.010 of this title (relating to Definitions).

(2) All technically feasible repairs to a leaking component, as specified in paragraph (1) of this section, shall be made within 15 days after the leak is found. If the repair of a component would require a unit shutdown which would create more emissions than the repair would eliminate, the repair may be delayed until the next scheduled shutdown.

(3) All leaking components, as defined in paragraph (1) of this section, which cannot be repaired until the unit is shut down for turnaround shall be identified for such repair by tagging. The executive director at his discretion may require early unit turnaround or other appropriate action based on the number and severity of tagged leaks awaiting turnaround.

(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.

(5) Valves and pressure relief valves in gaseous VOC service shall be marked in some manner that will be readily obvious to monitoring personnel.

§115.344. *Inspection Requirements.* For all affected persons in the counties referenced in §115.349 of this title (relating to Counties and Compliance Schedules), the following inspection requirements shall apply.

(1) The owner or operator of a natural gas/gasoline processing operation shall conduct a monitoring program consistent with the following provisions.

(A) measure yearly (with a hydrocarbon gas analyzer) the emissions from all valves elevated more than two meters above any permanent structure;

(B) measure quarterly (with a hydrocarbon gas analyzer) the emissions from all:

(i) compressor seals;

(ii) pipeline valves;

(iii) pressure relief valves in gaseous service; and

(iv) pump seals;

(C) visually inspect, weekly, all pump seals;

(D) measure (with a hydrocarbon gas analyzer) the emissions from any component, except those exempted by §115.347(2) and (3) of this title (relating to Exemptions), whenever a potential leak is detected by sight, sound, or smell.

(E) measure (with a hydrocarbon gas analyzer) emissions from any relief valve which has vented to the atmosphere within 24 hours at manned facilities or within 30 days at unmanned facilities;

(F) measure (with a hydrocarbon gas analyzer) immediately after repair the emissions from any component that was found leaking.

(2) The owner or operator of a natural gas/gasoline processing operation upon the detection of a leaking component 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) The monitoring schedule of paragraph (1)(A)-(C) of this section may be modified as follows.

(A) After completion of the required annual and quarterly inspections for a period of at least two years, the operator of a natural gas/gasoline processing facility may request in writing to the Texas Air Control Board that the monitoring schedule be revised based on the percent of valves leaking. The percent of valves leaking shall be determined by dividing the sum of valves leaking during current monitoring and valves for which repair has been delayed by the total number of valves subject to the requirements. This request shall include all data that have been developed to justify the following modifications in the monitoring schedule.

(i) After two consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0%, an owner or operator may begin to skip one of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.

(ii) After five consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0%, an owner or operator may begin to skip three of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.

(B) If the executive director of the Texas Air Control Board determines that there is an excessive number of leaks in any given process, he may require an increase in the frequency of monitoring for that process.

§115.345. Testing Requirements. For the counties referenced in §115.349 of this title (relating to Counties and Compliance Schedules), compliance with this undesignated head shall be determined by applying the following test methods, as appropriate:

(1) Test Method 21 (40 Code of Federal Regulations 60, Appendix A) for determining volatile organic compound leaks. The leak detection equipment can be calibrated with methane, propane, or hexane, but the meter readout must be as parts per million by volume (ppmv) hexane;

(2) determination of true vapor pressure using the American Society of Testing and Materials Test Method D323-82 for the measurement of Reid vapor pressure, adjusted for actual operating temperature in accordance with API Publication 2517, Third Edition, 1989; or

(3) minor modifications to these test methods approved by the executive director.

§5.349. Counties and Compliance Schedules. All affected persons in Harris County shall be in compliance with this undesignated head (concerning fugitive emission control in natural gas/gasoline processing operations) in accordance with all compliance schedules which have expired prior to February 1, 1990, in accordance with §115.930 of this title (relating to Compliance Dates).

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 January 26, 1990.

TRD-9000967 Allen Eli Bell
Executive Director
Texas Air Control Board

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Proposal publication date: July 28, 1989

For further information, please call: (512) 451-5711, ext. 354

◆ ◆ ◆
Subchapter E. Solvent-Using Processes

Degreasing Processes

• **31 TAC §§115.412, 115.413, 115.415-115.417, 115.419**

The Texas Air Control Board (TACB) adopts new §§115.412, 115.413, 115.415-115.417, and 115.419. Section 115.415 and §115.419,

are adopted with changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3662). Sections 115.412, 115.413, 115.416, and 115.417 are adopted without changes and will not be republished.

The new §115.412, concerning control requirements, defines the type of control or technologies required to achieve necessary emission reductions. The new §115.413, concerning alternate control requirements, enables the TACB executive director to approve substantially equivalent control technologies under specific conditions. The new §115.415, concerning testing requirements, identifies the test methods which must be used to determine compliance and enables the TACB executive director to approve minor modifications to the methods. The new §115.416, concerning recordkeeping requirements, describes the information which must be maintained by affected facilities in order to ensure continuous compliance and improve the effectiveness of enforcement. The new §115.417, concerning exemptions, specifies the conditions necessary to qualify for exemption from certain control requirements. The new §115.419, concerning counties and compliance schedules, establishes the final compliance dates for applicable controls in specified counties. These sections are part of a series of additions to Chapter 115 proposed primarily to satisfy United States Environmental Protection Agency (EPA) requirements for Phase I of the Post-1987 State Implementation Plan revisions for ozone. The TACB also has adopted a comprehensive restructuring of Chapter 115 to promote greater clarity and to eliminate inconsistencies resulting from numerous independent revisions over the past several years.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal; a commenter who agreed with the proposal in its entirety is classified as being for the proposal. Four commenters opposed the proposal, while no one testified in support.

One individual suggested the term "splashing", found in §115.412(1)(D), be defined as solvent breaking the vapor barrier at the lower freeboard limit. The proposed rule prohibits solvent from exceeding the acceptable freeboard limit. No additional clarification to this provision appears warranted.

One individual suggested that operators of cold cleaners be required to keep records of the amount of volatile organic compounds (VOC) used and emitted. Two individuals suggested removing all proposed exemptions for cold solvent degreasers. Recordkeeping requirements are intended to ensure compliance with applicable control requirements within a rule. No quantitative emission limitations are stipulated for cold solvent cleaners which would warrant actual emissions testing or recordkeeping. Since the control requirements are based on equipment specifications rather than specific emission limitations, records required concerning

maintenance of necessary control devices appear sufficient to document compliance. The exemptions are provided in the Control Technique Guidelines for cold solvent cleaning operations published by EPA because the affected operations do not represent a significant source of VOC emissions.

One individual questioned the exemption in §115.417(1) which allows external drainage systems for solvents with a vapor pressure under 0.6 pounds per square inch absolute (psia), while the control requirement in §115.412(1) (A)(i) requires a cover for cleaners using solvent with a vapor pressure of greater than 0.3 psia. The exemption in §115.417(1) for internal drainage systems is allowed for parts that are too large to fit within a degreaser with an internal drainage system or when using a solvent with a true vapor pressure no greater than 0.6 psia. While the product being cleaned may be allowed to air dry externally, the solvent must still be kept closed whenever parts are not being handled in the cleaner," in accordance with the control requirement. This is consistent with the requirements in §115.412(1)(A)(i) for solvents with a true vapor pressure of 0.3 psia.

One commenter, EPA, suggested revising the exemption specified in §115.417(3) to remove the 550 pound per day (lb/day) exemption for sources in El Paso County. Removal of the 550 lb/day exemption was not needed to demonstrate attainment in El Paso County. However, lower exemption levels for degreasing operations can be considered in subsequent rulemaking.

One commenter, the City of Fort Worth, suggested the phrase "relating to Vent Gas Control" found in §115.419 does not fit in this rule. The TACB staff concurs with the City of Fort Worth and will remove this typographical error.

The new sections are adopted under the Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to make rules consistent with the policy and purposes of the TCAA.

§115.415. Testing Requirements. For the counties referenced in §115.419 of this title (relating to Counties and Compliance Schedules), the following testing requirements shall apply.

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

(A) determination of true vapor pressure using American Society of Testing and Materials Test Method D323-82 for the measurement of Reid vapor pressure, adjusted for actual storage temperature in accordance with API Publication 2517, Third Edition, 1989; or

(B) minor modifications to these test methods and procedures approved by the executive director.

(2) Compliance with §115.412(2)(D)(iv) and (3) (A)(ii) of this title (relating to Control Requirements) and §115.413(2) of this title (relating to Alternate Control Requirements) shall be determined by applying the following test methods, as appropriate:

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

(B) Test Method 18 (40 Code of Federal Regulations 60, Appendix A) for determining gaseous organic compound emissions by gas chromatography;

(C) Test Method 25 (40 Code of Federal Regulations 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

(D) Test Methods 25A or 25B (40 Code of Federal Regulations 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis; or

(E) minor modifications to these test methods and procedures approved by the executive director.

§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 concerning 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 February 1, 1990, in accordance with §115.930 of this title (relating to Compliance Dates).

(2) All affected persons shall be in compliance with the provisions of §115.416 of this title (relating to Recordkeeping Requirements):

(A) in Dallas and Tarrant Counties as soon as practicable but no later than August 31, 1990; and

(B) in Brazoria, El Paso, Galveston, Harris, Jefferson, and Orange Counties as soon as practicable but no later than December 31, 1990.

(3) All affected persons in Dallas and Tarrant Counties required to implement controls as a result of the loss of the exemption as specified in §115.417(8) of this title (relating to Exemptions) shall be

in compliance as soon as practicable but no later than August 31, 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 January 26, 1990.

TRD-9000966

Allen Eli Bell
Executive Director
Texas Air Control Board

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Proposal publication date: July 28, 1989

For further information, please call: (512) 451-5711, ext.354

◆ ◆ ◆ Surface Coating Processes

• 31 TAC §§115.421-115.423, 115.425-115.427, 115.429

The Texas Air Control Board (TACB) adopts new §§115.421-115.423, §§115.425-115.427, and §115.429. Sections 115.425, 115.427, and 115.429 are adopted with changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3665). Sections 115.421-115.423 and 115.426 are adopted without changes and will not be republished.

The new §115.421, concerning emission specifications, establishes the maximum volatile organic compound (VOC) content for specified coatings. The new §115.422, concerning control requirements, defines the type of control or technologies required to achieve necessary emission reductions. The new §115.423, concerning alternate control requirements, enables the TACB executive director to approve substantially equivalent control technologies under specific conditions. The new §115.425, concerning testing requirements, identifies the test methods which must be used to determine compliance and enables the TACB executive director to approve minor modifications to the methods. The new §115.426, concerning recordkeeping requirements, describes the information which must be maintained by affected facilities in order to ensure continuous compliance and improve the effectiveness of enforcement. The new §115.427, concerning exemptions, specifies the conditions necessary to qualify for exemption from certain control requirements. The new §115.429, concerning counties and compliance schedules, establishes the final compliance dates for applicable controls in specified counties. These sections are part of a series of additions to Chapter 115 proposed primarily to satisfy United States Environmental Protection Agency (EPA) requirements for Phase I of the Post-1987 State Implementation Plan revisions for ozone. The TACB also has adopted a comprehensive restructuring of Chapter 115 to promote greater clarity and to eliminate inconsistencies resulting from numerous independent revisions over the past several years.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in

the proposal is categorized as against the proposal; a commenter who agreed with the proposal in its entirety is classified as being for the proposal. Five commenters opposed the proposal, while no one testified in support.

One commenter, EPA, stated that compliance with all applicable surface coating emission limits must be achieved on a line-by-line basis. EPA has advocated a very narrow concept for the definition of a line that includes only the apparatus necessary to apply coatings to a single product unit. The TACB staff has interpreted the definition of line in a broader way, to include all the apparatus at a facility used to produce similar products which are covered by the same coating limitation. This distinction is important when averaging emissions from compliant and non-compliant coatings at a single facility to demonstrate overall daily compliance with the rule. This broader interpretation provides for the emission reductions expected from the rule if all coatings used satisfied the applicable emission limits, while allowing a facility to use a limited amount of higher solvent coatings for specialty purposes. EPA's more limited interpretation severely limits or eliminates this flexibility with no significant air quality benefit.

Three commenters; EPA, General Motors Corporation (GM), and one individual; suggested that the amount of exempt solvents be subtracted during the calculation to determine compliance of a specific coating or, alternatively, that all emission limitations be established on a pounds per gallon of solids basis. The commenters also supported the requirement that all equivalency determinations be based on a solids basis. Subtracting exempt solvents from the proposed coating limitations, expressed in pounds of VOC per gallon of coating (minus water), would substantively change the control requirements of the rule and directly contradict previously approved board orders which depend on the substitution of exempt solvents. However, a complete conversion of the coating limitations to a solids basis would satisfy the commenters' concerns and would characterize actual VOC emissions more clearly. This option will be evaluated in the future and may be considered in subsequent rulemaking, if appropriate. Equivalency determination will continue to be computed on a solids basis.

One individual suggested that in situations where two limitations may apply, the most stringent, rather than the least stringent, should be required. Compliance determinations typically are based on the most stringent applicable control limitation for a specific facility or source category. However, higher VOC limits must be allowed for miscellaneous metal parts coating processes which utilize specialized application methods or must exhibit specialized qualities in order to satisfy their intended purposes. If the more stringent, lower solvent, coating limitation was required, these specialized coatings could no longer be used, and the desired or necessary product quality would suffer.

One commenter, EPA, indicated that organosols and plastisols cannot be considered as a vinyl coating and cannot be used in averaging emissions in order to

determine compliance. Organosols and plastisols are applied to vinyl surfaces in a manner and for purposes similar to other coatings. No information to support the distinction of these materials from other coatings was submitted in the testimony, therefore, no change appears warranted at this time.

One commenter, EPA, recommended that a test method entitled, "Protocol for Determining the Daily VOC Emission Rate of Automobile and Light-Duty Truck Topcoat Operations" be incorporated for the determination of compliance of the topcoat limitation. The recommended document is accepted by both EPA and industry as a standard methodology for determining applicable emissions. Incorporation of this method, therefore, appears reasonable.

One commenter, EPA, stated that General Rule §101.23 could not be federally approved since cross-line averaging must follow the emission trading policy published in the December 4, 1986 Federal Register (51 FR 43814). Revisions to §101.23 are beyond the scope of this rulemaking and cannot be considered at this time.

One commenter, EPA, suggested that capture efficiency testing be required when vapor capture and abatement equipment is utilized to comply with the surface coating rule in order to determine actual compliance with the overall control requirement of 80%. This commenter also suggested the TACB adopt the standard capture efficiency test method being developed by EPA once it is finalized. Another commenter, GM, suggested that a requirement for a capture efficiency of 80% was more consistent with the actual coating limitations. Capture efficiency testing may be appropriate during initial compliance testing and upon request by the TACB staff to confirm continued compliance. However, this determination of capture efficiency may be calculated using material measurements and mass balance computations and does not necessarily need to include physical monitoring of emissions. Methodologies published by EPA will be evaluated and considered for incorporation in the rule in the future. The requirements for add-on controls were intended to result in at least as stringent a control measure as the coating limitations in reducing emissions. These add-on controls may actually be more stringent and result in greater emission reductions.

One commenter, the City of Fort Worth (Fort Worth), suggested simplifying the rule and questioned if automobile refinishing or aircraft prime coating were exempt in Dallas and Tarrant Counties. Automobile refinishing and aircraft prime coating are specifically excluded from the exemption for surface coating operations and therefore, must comply with all applicable emission controls regardless of the size of the facility. While the commenters provided no specific suggestions regarding improvements, the TACB staff is committed to simplifying the rule and improving the understanding of the regulated community and enforcement personnel.

Three commenters; the Sierra Club, EPA, and one individual; recommended the removal or modification of exemptions for various types and sizes of surface coating operations. These commenters suggested

the exemption for small sources be dropped from the current 100-550 pound per day exemptions applicable in specified counties down to as low as the three pounds per hour or 15 pounds per day identified as reasonably available control technology by EPA. The conditional exemption in Dallas and Tarrant Counties which would not require a facility to install add-on control equipment if compliant coatings are unavailable, is no longer acceptable. Removal of the exemption for surface coating operations down to three pounds per hour or 15 pounds per day would potentially result in required controls for a large number of small operations. While these additional controls would pose no problem for most sources if appropriate compliant coatings are available, the TACB staff has provided information to EPA demonstrating that requiring add-on control equipment is not economically reasonable for facilities of this size. However, lower exemption levels for surface coating operations will be considered in subsequent rulemaking.

One individual objected to all of the exemptions provided for specific specialized coating operations. The exemptions for specialty coating operations were provided in the control technique guidelines for surface coating operations or were determined to represent a minimum level of significance. However, all areas of potential emission reductions will be considered in future control planning development, including certain specialty coatings or coating operations.

Three commenters; Fort Worth, EPA, and one individual; suggested the following changes in the definitions in §115.010 for terms which are directly applicable to surface coating operations.

Other unidentified coatings should be included in the definition of architectural coating. The proposed architectural coating rule only includes the major categories of coatings commonly used. Future rulemaking will examine other specialty coating categories to achieve additional emission reductions and provide for greater national consistency.

The exemption for flash rusting sealants should be moved to the definition of architectural coating or deleted. Flash rusting sealants are only exempted for automobile refinishing operation and are not applicable to the architectural coatings rule.

The definition for automobile refinishing should include small consumer-performed operations. Enforcement of the automobile refinishing rule at commercial operations will be challenging due to the small size of many of the affected operations and the difficulty in locating all of the commercial facilities in this industry. The control of individuals who may choose to paint their own vehicles is impractical at this time.

Paints and residential coatings should be added to the definition for consumer-solvent products. While many architectural coatings are directly purchased by the consumer, the format and subject matter of the architectural controls fit best into the surface coating rule.

The definition of pail should include containers of less than one gallon. The definition of pail is consistent with federal guidelines.

The definition of miscellaneous metal parts and products coating should apply to chemical milling maskants. Chemical milling maskants are not a permanent covering of a product for protection, decoration, or any other purpose and therefore, should not be considered a surface coating. Rather a maskant is a material temporarily applied to a portion of a product to prevent the covered surface from being subjected to acid etching or other manufacturing processes affecting the exposed surfaces. The maskant is then removed and discarded. While the control of VOC emissions from maskant application may be appropriate, such a rule should address related manufacturing processes rather than being associated with the surface coating operations.

One commenter, Fort Worth, questioned why the definition of paper coating mentioned fabric coating, even though there is a separate definition for fabric coating. The paper coating definition addresses pressure-sensitive tapes, "including paper, fabric, or plastic film," while the fabric coating definition addresses all other true fabric materials.

The new sections are adopted under the Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to make rules consistent with the policy and purposes of the TCAA.

§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) Compliance with §115.421 of this title (concerning Emission Specifications) shall be determined by applying the following test methods, as appropriate:

(A) Test Method 24 (40 Code of Federal Regulations 60, Appendix A) with a one-hour bake;

(B) American Society of Testing and Materials Test Methods D 1186-06.01, D 1200-06.01, D 3794-06.01, D 2832-69, D 1644-75, and D 3960-81;

(C) United States Environmental Protection Agency (EPA) guidelines series document "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink, and Other Coatings," EPA-450/3-84-011, as in effect December, 1984;

(D) additional test procedures described in 40 Code of Federal Regulations 60.446;

(E) Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations; or

(F) minor modifications to these test methods approved by the executive director.

(2) Compliance with §115.423(2) of this title (relating to Alternate Control Requirements) shall be determined by applying the following test methods, as appropriate:

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

(B) Test Method 25 (40 Code of Federal Regulations 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

(C) Test Methods 25A or 25B (40 Code of Federal Regulations 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis;

(D) additional performance test procedures described in 40 Code of Federal Regulations 60.444; or

(E) minor modifications to these test methods approved by the executive director.

§115.427. Exemptions. For the counties referenced in §115.429 of this title (relating to Counties and Compliance Schedules), the following exemptions shall apply.

(1) Surface coating operations located at an facility in Brazoria, El Paso, Galveston, Gregg, Jefferson, Nueces, Orange, or Victoria Counties which when uncontrolled will emit a combined weight of volatile organic compounds (VOC) less than 550 pounds (249.5 kg) in any continuous 24-hour period are exempt from the provisions of §115.421 of this title (relating to Emission Specifications).

(2) Surface coating operations located at any facility in Harris County which when uncontrolled will emit a combined weight of VOC less than 100 pounds (45.4 kg) in any continuous 24-hour period are exempt from the provisions of §115.421 of this title (relating to Emission Specifications).

(3) The following coating operations are exempt from the application of §115.421(9) of this title (relating to Emission Specifications):

(A) exterior of fully assembled aircraft except as required by §115.421(9)(A) (v) of this title (relating to Emission Specifications);

(B) automobile refinishing except in Dallas and Tarrant Counties as

required by §115.421(8)(B)-(C) of this title (relating to Emission Specifications);

(C) customized (decorative) top coating of automobiles and trucks, if production is less than 35 vehicles per day;

(D) exterior of fully assembled marine vessels; and

(E) exterior of fully assembled fixed offshore structures.

(4) The following coating operations are exempt from the application of §115.421(10) of this title (relating to Emission Specifications):

(A) the manufacture of exterior siding;

(B) tile board; or

(C) particle board used as a furniture component.

(5) Architectural coatings are exempt from the provisions of §115.421(11) of this title (relating to Emission Specifications) in Dallas and Tarrant Counties if manufactured before December 31, 1988.

(6) Surface coating operations located at any facility in Dallas and Tarrant Counties which when uncontrolled will emit a combined weight of VOC of less than 100 pounds (45.4 kg) per day, except aircraft exterior prime coating controlled by §115.421(9) (A)(v) of this title (relating to Emission Specifications) and automobile refinishing controlled by §115.421(8)(B)-(C) of this title (relating to Emission Specifications) shall be exempt from the provisions of §115.421 of this title (relating to Emission Specifications).

(7) In accordance with the schedule referenced in §115.429(2)(C) of this title (relating to Counties and Compliance Schedules), the following exemptions shall apply to surface coating operations in Dallas, El Paso, Harris, and Tarrant Counties, except for aircraft prime coating controlled by §115.421(9)(H)(v) of this title (relating to Emission Specifications) and automobile refinishing controlled by §115.421(8)(B)-(C) of this title (relating to Emission Specifications).

(A) Surface coating 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 of this title (relating to Emission Specifications) 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 of this title (relating to Emission Specifications) if documentation is provided to demonstrate that necessary coating performance criteria cannot be achieved with coatings which satisfy applicable emission specifications.

(C) 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 on §115.423 of this title (relating to Alternate Control Requirements).

(8) The following coatings are exempt from the application of this undesignated head (relating to Surface Coating Processes):

(A) paints sold in containers of one quart or less;

(B) paints used on roadways, pavement, swimming pools, and similar surfaces;

(C) concentrated color additives; and

(D) sealants applied over bare metal during automobile refinishing solely for the prevention of flash rusting.

§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) all compliance schedules which have expired prior to February 1, 1990, in accordance with §115.930 of this title (relating to Compliance Dates); and

(2) the following additional compliance schedules.

(A) All affected persons in Dallas and Tarrant Counties shall be in compliance with §115.421(8)(B)-(C) of this title (relating to Emission Specifications) as soon as practicable but no later than December 31, 1989.

(B) All affected persons in Dallas and Tarrant Counties shall be in compliance with §115.421(11) of this title (relating to Emission Specifications) as

soon as practicable but no later than December 31, 1989.

(C) All affected persons shall be in compliance with §115.426 of this title (relating to Recordkeeping Requirements) :

(i) in Dallas and Tarrant Counties as soon as practicable but no later than August 31, 1990; and

(ii) in Brazoria, El Paso, Galveston, Harris, Jefferson, and Orange Counties as soon as practicable but no later than December 31, 1990.

(D) All persons required to implement controls as a result of exceeding the exemption levels referenced in §115.427(6) of this title (relating to Exemptions) shall be in compliance with §115.421 of this title (relating to Emissions Specifications):

(i) in Dallas and Tarrant Counties as soon as practicable but no later than August 31, 1990; and

(ii) in El Paso and Harris Counties as soon as practicable but no later than December 31, 1990.

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

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Allen Eli Bell
Executive Director
Texas Air Control Board

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For further information, please call: (512) 451-5711, ext.354



Graphic Arts (Printing) by Rotogravure and Flexographic Processes

• 31 TAC §§115.432, 115.433, 15.435-115.437, 115.439

The Texas Air Control Board (TACB) adopts new §§115.432, 115.433, 115.435-115.437, and 115.439. Sections 115.435, 115.437, and 115.439 are adopted with changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3670). Sections 115.432, 115.433, and 115.436 are adopted without changes and will not be republished.

The new §115.432, concerning control requirements, defines the type of control or technologies required to achieve necessary emission reductions. The new §115.433, concerning alternate control requirements, enables the TACB executive director to approve substantially equivalent control technologies under specific conditions. The new §115.435, concerning testing requirements, identifies the test methods which must be used to determine compliance

and enables the TACB executive director to approve minor modifications to the methods. The new §115.436, concerning recordkeeping requirements, describes the information which must be maintained by affected facilities in order to ensure continuous compliance and improve the effectiveness of enforcement. The new §115.437, concerning exemptions, specifies the conditions necessary to qualify for exemption from certain control requirements. The new §115.439, concerning counties and compliance schedules, establishes the final compliance dates for applicable controls in specified counties. These sections are part of a series of additions to Chapter 115 proposed primarily to satisfy United States Environmental Protection Agency (EPA) requirements for Phase I of the Post-1987 State Implementation Plan (SIP) revisions for ozone. The TACB also has adopted a comprehensive restructuring of Chapter 115 to promote greater clarity and to eliminate inconsistencies resulting from numerous independent revisions over the past several years.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal; a commenter who agreed with the proposal in its entirety is classified as being for the proposal. Four commenters opposed the proposal, while no one testified in support.

Two commenters, EPA and one individual, indicated that compliance with §115.432 should be achieved on a line-by-line basis. EPA has advocated a very narrow concept of the definition of a line that includes only the equipment necessary to produce a single product unit. In practice this has ranged from an individual press to a single solvent in a press using many different inks. The TACB staff defines a line in a broader way, including equipment at a facility used to produce all similar products which are covered by the same limitation. This broader interpretation provides for the emission reductions expected from the rule if all inks used satisfied the applicable emission limits, while potentially allowing a facility to use a limited daily amount of higher solvent inks for specialty purposes. EPA's more limited interpretation severely limits or eliminates this flexibility with no significant air quality benefit.

One individual suggested that exempt solvents should be treated as water in the calculations used to determine compliance with applicable control requirements. The proposed control requirements for graphic arts provide for use of either low solvent or high solids inks, as well as add-on control equipment. The limitations for both low solvent and high solids inks clearly indicate that water and exempt solvents are to be addressed in the same manner. Therefore, no revision to the proposal appears warranted.

One commenter, the City of Fort Worth, questioned which exemptions apply in Dallas and Tarrant Counties. The TACB staff intended the 100 tons per year (tpy) exemption to apply in all counties listed in §115.439 except Dallas and Tarrant

Counties. The TACB staff intended the 50 tpy exemption to apply only in Dallas and Tarrant counties. Since there appears to be some question as to which counties are affected by these exemptions, clarification of the rule may be warranted.

One commenter, EPA, suggested that the 100 tpy exemption cutoff be based on a maximum potential to emit assuming operations 8,760 hours per year, or on actual emissions only if production is restricted through a federally enforceable permit. The TACB control plans and the associated emission reduction calculations are based on actual emissions of volatile organic compounds as reported in the emission inventory, in accordance with EPA guidelines for development of SIP revisions. The inconsistent use of actual and potential emissions confuses control efforts and planning activities which are based on measurable emission quantities and not hypothetical emissions. However, if actual emissions from an exempted source exceed the specified exemption limits, enforcement action may be taken to impose penalties and/or require implementation of an enforceable board order to restrict production, as necessary. These board orders may be submitted as SIP revisions, as appropriate, to ensure federal enforceability. Therefore, the use of theoretical potential emissions should never be required to qualify for or ensure compliance with an exemption.

One individual opposed the 100 tpy exemption and the 50 tpy exemption in Dallas and Tarrant Counties. The Sierra Club suggested that a 10 tpy exemption limit be used instead. The 100 tpy exemption was established when the rule was first implemented in response to the publication of applicable control techniques guidelines by EPA. At that time, only major sources were required to implement these controls. The exemption level in Dallas and Tarrant Counties was reduced to achieve additional emission reductions necessary to demonstrate attainment. Phase II of the Post-1987 SIP revision for all of the major urban nonattainment areas in Texas is expected to include the implementation of all of the most stringent controls currently enforced in the state, in addition to controls on smaller sources. Additional control options will be evaluated in the future and may be considered in subsequent rulemaking, if appropriate.

The new sections are adopted under the Texas Clean Air Act (TCAA) §382.017, which provides the TACB with the authority to make 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) Test Methods 1-4 (40 Code of Federal Regulations 60, Appendix A) for determining flow rates, as necessary;

(2) Test Method 24 (40 Code of Federal Regulations 60, Appendix A) for determining the volatile organic compound content and density of printing inks and related coatings;

(3) Test Method 25 (40 Code of Federal Regulations 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

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

(5) United States Environmental Protection Agency (EPA) guidelines series document "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink, and Other Coatings," EPA-450/3-84-011, as in effect December, 1984; or

(6) minor modifications to these test methods and procedures approved by the executive director.

§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) Any rotogravure or flexographic facility, except those specified in paragraph (2) of this section, which when uncontrolled emits 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) is exempt from the requirements of §115.432 of this title (relating to Control Requirements).

(2) In the counties referenced in §115.439(2) of this title (relating to Counties and Compliance Schedules), any rotogravure and flexographic printing facility which when uncontrolled emits a combined weight of VOC less than 50 tons in one year (based on historical ink and solvent usage) is 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 concerning 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 February 1, 1990, in accordance with §115.930 of this title (relating to Compliance Dates).

(2) All persons required to implement controls as a result of the lowering of the exemption level as specified in §115.437(2) of this title (relating to Exemptions) in Dallas and Tarrant Counties shall be in compliance as soon as practicable but no later than December 31, 1989.

(3) All affected persons shall be in compliance with the provisions of §115.436 of this title (relating to Record Keeping Requirements):

(A) in Dallas and Tarrant Counties as soon as practicable but no later than August 31, 1990; and

(B) in Brazoria, El Paso, Galveston, Harris, Jefferson, and Orange Counties as soon as practicable but no later than December 31, 1990.

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

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Executive Director
Texas Air Control Board

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For further information, please call: (512) 451-5711, ext.354

◆ ◆ ◆
Subchapter F. Miscellaneous
Industrial Sources
Cutback Asphalt

• 31 TAC §§115.512, 115.513,
115.515-115.517, 115.519

The Texas Air Control Board (TACB) adopts new §§115.512, 115.513, 115.515-115.517, and 115.519. Section 115.515 and §115.519 are adopted with changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3671). Sections 115.512, 115.513, 115.516, and 115.517 are adopted without changes and will not be republished.

The new §115.512, concerning control requirements, defines the type of control or technologies required to achieve necessary emission reductions. The new §115.513, concerning alternate control requirements, enables the TACB executive director to approve substantially equivalent control technologies under specific conditions. The new §115.515, concerning testing requirements, identifies the test methods which must be used to determine compliance and enables the TACB executive director to approve minor modifications to the methods. The new §115.516, concerning recordkeeping requirements, describes the information which must be maintained by affected facilities in order to ensure continuous compliance and improve the effectiveness of enforcement. The new

§115.517, concerning exemptions, specifies the conditions necessary to qualify for exemption from certain control requirements. The new §115.519, concerning counties and compliance schedules, establishes the final compliance dates for applicable controls in specified counties. These sections are part of a series of additions to Chapter 115 proposed primarily to satisfy United States Environmental Protection Agency (EPA) requirements for Phase I of the Post-1987 State Implementation Plan revisions for ozone. The TACB also has adopted a comprehensive restructuring of Chapter 11 to promote greater clarity and to eliminate inconsistencies resulting from numerous independent revisions over the past several years.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal; a commenter who agreed with the proposal in its entirety is classified as being for the proposal. Three commenters opposed the proposal, while no one testified in support.

Two commenters, the Sierra Club and one individual suggested cutback asphalt be more tightly controlled including a ban on the use of cutback asphalt by private companies and public agencies. Another commenter, EPA, suggested that the summertime ban on the use of cutback asphalt should apply to Brazoria, El Paso, Galveston, Harris, Jefferson, and Orange Counties. The control on cutback asphalt in all counties except Dallas and Tarrant Counties is primarily directed at the use or contract for use of cutback asphalt by governmental agencies. The TACB staff believes that this accounts for the majority of cutback asphalt used in the affected urban areas. The control strategy for Dallas and Tarrant Counties further prohibits the sale of cutback asphalt during the control period, effectively restricting the availability of the material to all potential users. Extending this additional control of cutback asphalt into additional counties would require additional rulemaking. This control option will be studied in the future and may be incorporated into control strategies for these areas, if appropriate.

The new sections are adopted under the Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to make rules consistent with the policy and purposes of the TCAA.

§115.515. Testing Requirements. For the counties referenced in 115.519 of this title (relating to Counties and Compliance Schedules), compliance with §115.512(4) of this title (relating to Control Requirements) shall be determined by applying the following test methods, as appropriate:

(1) American Society of Testing and Materials Test Method D 244 for determining volatile organic compound content of asphalt emulsions; or

(2) minor modifications to these test methods approved by the executive director.

§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 concerning cutback asphalt, in accordance with all compliance schedules which have expired prior to February 1, 1990, in accordance with §115.930 of this title (relating to Compliance Dates).

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

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Allen Eli Bell
Executive Director
Texas Air Control Board

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For further information, please call: (512) 451-5711, ext.354

◆ ◆ ◆ Perchloroethylene Dry Cleaning Systems

• 31 TAC §§115.521-115.527, 115.529

The Texas Air Control Board (TACB) adopts new §§115.521-115.527 and 115.529. Sections 115.522, 115.525, and 115.529 are adopted with changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3673). Sections 115.521, 115.523, 115.524, 115.526, and 115.527 are adopted without changes and will not be republished.

The new §115.521, concerning emission specifications, establishes the maximum level of acceptable emissions from specified sources. The new §115.522, concerning control requirements, defines the type of control or technologies required to achieve necessary emission reductions. The new §115.523, concerning alternate control requirements, enables the TACB executive director to approve substantially equivalent control technologies under specific conditions. The new §115.524, concerning inspection requirements, identifies the components needing inspection and the frequency they are to be inspected. The new §115.525, concerning testing requirements, identifies the test methods which must be used to determine compliance and enables the TACB executive director to approve minor modifications to the methods. The new §115.526, concerning recordkeeping requirements, describes the information which must be maintained by affected facilities in order to ensure continuous compliance and improve the effectiveness of enforcement. The new §115.527, concerning exemptions, specifies the conditions necessary to qualify for exemption from certain control requirements. The new §115.529, concerning counties and compliance schedules, establishes the final compliance dates for applicable controls in specified counties. These sections are part of

a series of additions to Chapter 115 proposed primarily to satisfy United States Environmental Protection Agency requirements for Phase I of the Post-1987 State Implementation Plan revisions for ozone. The TACB also has adopted a comprehensive restructuring of Chapter 115 to a promote greater clarity and to eliminate inconsistencies resulting from numerous independent revisions over the past several years.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal; a commenter who agreed with the proposal in its entirety is classified as being for the proposal. Three commenters opposed the proposal, while no one testified in support.

One individual suggested that §115.522(3) require all filtration cartridges be drained and then stored in air-tight containers prior to disposal. He also suggested inspections include the use of vapor monitors for leak detection. The proposed §115.522(2) requires waste material be stored in vapor-tight containers before disposal with the intent that this apply to all waste material including spent filters. To clarify this intent and to ensure proper handling of all waste material, a paragraph (4) may be added to stipulate more clearly that all solvent contaminated waste material must be stored in vapor-tight containers prior to proper disposal. Monitoring for fugitive leaks is not a control techniques guideline requirement for this source category.

One commenter, El Paso City-County Health District, supports the addition of inspection, testing, and recordkeeping requirements in El Paso County. They also suggested removing the exemptions in §115.527(2) for El Paso. The Sierra Club and an individual also opposed the 550 pound per day exemption and suggested a 10 tons per year or less exemption in its place. The additional requirements and revisions to exemption criteria suggested are beyond the scope of the current rulemaking, but may be considered in subsequent rulemaking.

The new sections are adopted under the Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to make rules consistent with the policy and purposes of the TCAA.

§115.522. Control Requirements. For the counties referenced in §115.529 of this title (relating to Counties and Compliance Schedules), the owner or operator of a dry cleaning facility using perchloroethylene shall apply the following control requirements:

(1) cook or treat all diatomaceous earth filters so that the residue contains 25% by weight or less of volatile organic compounds (VOC);

(2) reduce the VOC from all solvent stills to 60 weight percent or less of wet waste material;

(3) drain all filtration cartridges in the filter housing for at least 24 hours before removing and discarding the cartridges and, when possible, dry all drained cartridges in the dryer tumbler or elsewhere without emitting VOC to the atmosphere; and

(4) store all solvent-contaminated waste materials in vapor-tight containers prior to proper disposal.

§115.525. Testing Requirements. For the counties referenced in §115.529 of this title (relating to Counties and Compliance Schedules), compliance with §115.521 of this title (relating to Emission Specifications) shall be determined by applying the following test methods, as appropriate:

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

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

(3) Test Method 25 (40 Code of Federal Regulations 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

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

(5) minor modifications to these test methods approved by the executive director.

§115.529. 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 concerning Perchloroethylene dry cleaning systems, in accordance with the following schedules:

(1) all compliance schedules which have expired prior to February 1, 1990, 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 §115.526 of this title (relating to Recordkeeping Requirements) shall be in compliance as soon as practicable but no later than August 31, 1990; and

(3) all persons required to implement controls as a result of the removal of the exemptions previously granted for inadequate space or insufficient steam capacity shall be in compliance as

soon as practicable but no later than August 31, 1990.

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

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For further information, please call: (512) 451-5711, ext.354

◆ ◆ ◆ Pharmaceutical Manufacturing Facilities

• 31 TAC §§115.531-115.537, 115.539

The Texas Air Control Board (TACB) adopts new §§115.531-115.537 and 115.539. Sections 115.535 and 115.539 are adopted with changes in the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3674). Sections 115.531-115.534, 115.536, and 115.537 are adopted without changes and will not be republished.

The new §115.531, concerning emission specifications, establishes the maximum level of acceptable emissions from specified sources. The new §115.532, concerning control requirements, defines the type of control or technologies required to achieve necessary emission reductions. The new §115.533, concerning alternate control requirements, enables the TACB executive director to approve substantially equivalent control technologies under specific conditions. The new §115.534, concerning inspection requirements, identifies the components needing inspection and the frequency they are to be inspected. The new §115.535, concerning testing requirements, identifies the test methods which must be used to determine compliance and enables the TACB executive director to approve minor modifications to the methods. The new §115.536, concerning recordkeeping requirements, describes the information which must be maintained by affected facilities in order to ensure continuous compliance and improve the effectiveness of enforcement. The new §115.537, concerning exemptions, specifies the conditions necessary to qualify for exemption from certain control requirements. The new §115.539, concerning counties and compliance schedules, establishes the final compliance dates for applicable controls in specified counties. These sections are part of a series of additions to Chapter 115 proposed primarily to satisfy United States Environmental Protection Agency (EPA) requirements for Phase I of the Post-1987 State Implementation Plan (SIP) revisions for ozone. The TACB also has adopted a comprehensive restructuring of Chapter 115 to promote greater clarity and to eliminate inconsistencies resulting from numerous independent revisions over the past several years.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal; a commenter who agreed with the proposal in its entirety is classified as being for the proposal. Three commenters opposed the proposal, while no one testified in support.

One individual suggested controls and inspection requirements for loading and unloading emissions from ships and barges be required for pharmaceutical manufacturing facilities. TACB review of all affected sources has shown that no loading or unloading from ships and barges currently exists at any pharmaceutical manufacturing facility in Texas.

One individual also suggested applying control requirements for storage, vent gas streams, and loading operations consistent with other applicable sections of Regulation V. Generic controls regarding storage facilities, vent gas streams, and loading operations apply to all sources regardless of other control requirements for specific source categories.

Two commenters, the Sierra Club and one individual suggested a 500 gallon exemption instead of the proposed 2,000 gallon exemption for storage tanks at loading facilities. The individual also suggested the vapor pressure limits for exemptions for all storage facilities be lowered to 0.5 pounds per square inch absolute. These additional control options will be studied in the future and may be considered in subsequent rulemaking, if appropriate.

Two commenters, the United States Environmental Protection Agency (EPA) and one individual opposed the proposed general 550 pounds per day (lb/day) exemption for pharmaceutical manufacturing facilities. EPA suggested adoption of a 15 lb/day exemption consistent with the exemption level in Harris County. When controls for pharmaceutical sources covered by the control technique guideline were implemented, they were intended to apply only to major sources which are set at 100 tons per year or 550 lb/day. Subsequent SIP revisions have resulted in lower exemption levels where additional emission reductions have been required to demonstrate attainment. The TACB staff will be proposing additional rulemaking to comply with EPA requirements for reasonably available control technology exemption levels.

The sections are adopted under the Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to make rules consistent with the policy and purposes of the TCAA.

§115.535. Testing Requirements. For the counties referenced in §115.539 of this title (relating to Counties and Compliance Schedules), compliance with this undesignated head concerning pharmaceutical manufacturing facilities, shall be determined by applying the following test methods, as appropriate:

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

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

(3) Test Method 25 (40 Code of Federal Regulations 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

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

(5) determination of true vapor pressure using American Society of Testing and Materials Test Method D323-82 for the measurement of Reid vapor pressure, adjusted for actual storage temperature in accordance with API Publication 2517, Third Edition, 1989; or

(6) minor modifications to these test methods approved by the executive director.

§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 concerning pharmaceutical manufacturing facilities in accordance with the following schedules.

(1) All compliance schedules which have expired prior to February 1, 1990, 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 §115.536 of this title (relating to Recordkeeping Requirements) shall be in compliance with this section as soon as practicable but no later than December 31, 1990.

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

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Executive Director
Texas Air Control Board

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For further information, please call: (512) 451-5711, ext.354

Subchapter G. Consumer-Related Sources

Consumer-Solvent Products

• 31 TAC §§115.612, 115.613, 115.615, 115.617, 115.619

The Texas Air Control Board (TACB) adopts new §§115.612, 115.613, 115.615, 115.617, and 115.619. Section 115.615 is adopted with changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3676). Sections 115.612, 115.613, 115.617, and 115.619 are adopted without changes and will not be republished.

The new §115.612, concerning control requirements, defines the type of control or technologies required to achieve necessary emission reductions. The new §115.613, concerning alternate control requirements, enables the TACB executive director to approve substantially equivalent control technologies under specific conditions. The new §115.615, concerning testing requirements, identifies the test methods which must be used to determine compliance and enables the TACB executive director to approve minor modifications to the methods. The new §115.617, concerning exemptions, specifies the conditions necessary to qualify for exemption from certain control requirements. The new §115.619, concerning counties and compliance schedules, establishes the final compliance dates for applicable controls in specified counties. These sections are part of a series of additions to Chapter 115 proposed primarily to satisfy United States Environmental Protection Agency requirements for Phase I of the Post-1987 State Implementation Plan revisions for ozone.

The TACB also has adopted a comprehensive restructuring of Chapter 115 to promote greater clarity and to eliminate inconsistencies resulting from numerous independent revisions over the past several years.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal; a commenter who agreed with the proposal in its entirety is classified as being for the proposal. One commenter opposed the proposal, while no one testified in support.

One commenter, El Paso City-County Health District, suggested adding El Paso County to those already covered by the consumer solvent product control requirements. This additional control option will be studied in the future and may be considered in subsequent rulemaking, if appropriate.

These amendments are adopted under the Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to make rules consistent with the policy and purposes of the TCAA.

§115.615. Testing Requirements. For the counties referenced in §115.619 of this title (relating to Counties and Compliance Schedules), compliance with §115.612 of

this title (relating to Control Requirements) shall be determined by applying the following test methods, as appropriate:

(1) Test Method 24A (40 Code of Federal Regulations 60, Appendix A) for the determination of volatile matter content and density of printing inks and related coatings; or

(2) minor modifications to these test methods approved by the executive director.

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

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For further information, please call: (512) 451-5711, ext.354

Subchapter J. Administrative Provisions

Alternate Means of Control

• 31 TAC §115.910

The Texas Air Control Board (TACB) adopts new §115.910, with changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3677).

The new §115.910, concerning procedure, provides a mechanism for certain source categories to utilize alternate technologies in their control plans, under specific conditions. This section is part of a series of additions to Chapter 115 proposed primarily to satisfy United States Environmental Protection Agency (EPA) requirements for Phase I of the Post-1987 State Implementation Plan (SIP) revisions for ozone. The TACB also has adopted a comprehensive restructuring of Chapter 115 to promote greater clarity and to eliminate inconsistencies resulting from numerous independent revisions over the past several years.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal; a commenter who agreed with the proposal in its entirety is classified as being for the proposal. Five commenters opposed the proposal, while no one testified in support.

One commenter, EPA, supported the language in §115.910 stating that TACB approval does not constitute federal approval, but suggested the section should indicate which modifications require EPA approval and how a company is to be notified. Another commenter, General Motors Corporation (GM), however, stated that federal case law has held that the current alternate means of control (AMOC) rule does not require federal

approval. One commenter, Texas Chemical Council, also indicated that the TACB staff should work with EPA to coordinate approvals where necessary. GM is correct that the present AMOC rule does not require federal approval, however, the proposed revisions would change the regulation to require EPA approval in some cases. EPA has indicated that the Post-1987 SIP revision will not be approvable unless that requirement is made clear in the regulation. During recent negotiations, EPA indicated that federal review and approval of alternate control methods would be required only when specific equivalency criteria are not clearly indicated in appropriate rules. The TACB staff believes that facilitating EPA approval, when that approval is necessary, is appropriate.

One individual requested that the term "substantially equivalent" be defined while another recommended that equivalency be established as within 5.0% of emissions when controlled. He also suggested the term "significant contribution" in subsection (b) be defined in tons per year. Using 5.0% of controlled emissions as a guideline for defining "substantially equivalent" may be useful in the evaluation of many AMOC requests. However, a determination of equivalency must be made on a case-by-case basis for each AMOC in response to individual circumstances. Similarly, "significant contribution" may vary depending on the type of source, the compounds emitted, and the potential for air quality degradation in the specific area.

One commenter, EPA, suggested that any exemptions in §115.423(4) and §115.123(a) be submitted to the EPA for approval. These sections provide mechanisms for certain source categories to utilize alternate technologies under specific conditions. The language in §115.123(a) may be clarified to eliminate any confusion regarding the exemption of insignificant sources where such sources have been identified in other sections of the rule. However, it is important that while incineration is specified as the primary control technique, the use of other vapor recovery systems with similar reduction efficiencies should be allowed without an AMOC demonstration or approval. The use of a vapor recovery system satisfying the conditions of §115.423(3) is directly provided for in the rule and, therefore, should not require an AMOC demonstration or approval. However, alternative control options approved under paragraph (4), which allows use of controls different than those specified in §115.421(9), concerning emissions specifications for miscellaneous metal parts and products coatings, based on technological and economic reasonableness, may result in less stringent emission controls. Therefore, submittal of TACB approval of these control measures as SIP revisions is appropriate.

The new section is adopted under the Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to make rules consistent with the policy and purposes of the TCAA.

§115.910. Procedure.

(a) Any person affected by any control requirement of this chapter may

request the executive director to approve alternate methods of control. The executive director shall approve such alternate methods of control if it can be demonstrated that such control will result in substantially equivalent emission reductions as the methods of control specified in this regulation. 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.

(b) For persons in Aransas, Bexar, Calhoun, Hardin, Matagorda, Montgomery, San Patricio, and Travis Counties, the executive director, after consultation with appropriate local governmental agencies, may exempt a specific compound or a specific vent gas stream from the application of this chapter (Regulation V) if it can be demonstrated that the emissions from the compound or specific vent gas stream will not make a significant contribution to air contaminants in the atmosphere.

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 January 26, 1990.

TRD-9000956 Allen Eli Bell
Executive Director
Texas Air Control Board

Effective date: February 19, 1990

Proposal publication date: July 28, 1989

For further information, please call: (512) 451-5711, ext. 354

Compliance and Control Plan Requirements

• 31 TAC §§115.930, 115.932, 115.934, 115.936

The Texas Air Control Board (TACB) adopts new §§115.930, 115.932, 115.934, and 115.936. Section 115.934 is adopted with changes to the proposed text as published in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3678). Sections 115.930, 115.932, and 115.936 are adopted without changes and will not be republished.

The new §115.930, concerning compliance dates, contains the information necessary to determine the compliance date for all requirements in Regulation V. The new §115.932, concerning control plan procedure, contains the requirements and schedules necessary to develop a control plan for compliance. The new §115.934, concerning control plan deviation, contains the steps necessary to apply for a change in the terms of a control plan including compliance dates. The new §115.936, concerning reporting procedure, contains the requirements and schedules for reporting the completion of each step of the control plan. These sections

are part of a series of additions to Chapter 115 proposed primarily to satisfy United States Environmental Protection Agency (EPA) requirements for Phase I of the Post-1987 State Implementation Plan (SIP) revisions for ozone. The TACB also has adopted a comprehensive restructuring of Chapter 115 to promote greater clarity and to eliminate inconsistencies resulting from numerous independent revisions over the past several years.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(c)(1), requires categorization of comments as being for or against a proposal. A commenter who suggested any changes in the proposal is categorized as against the proposal; a commenter who agreed with the proposal in its entirety is classified as being for the proposal. Two commenters opposed the proposal, while no one testified in support.

Two commenters, EPA and one individual, supported the requirements for compliance and control plan schedules but indicated that compliance date extensions approved by the executive director must be submitted to EPA as SIP revisions. Any extension to compliance deadlines included in the SIP must be proposed as a delayed compliance order (DCO) and adopted by the board. All board orders which have previously adopted a DCO have been submitted to EPA as SIP revisions. While no change in this policy is anticipated, clarification that board approval does not eliminate the need for federal approval may be appropriate.

The new sections are adopted under the Texas Clean Air Act (TCAA), §382.017, which provides the TACB with the authority to make rules consistent with the policy and purposes of the TCAA.

§115.934. Control Plan Deviation. No persons affected by §115.932 of this title (relating to Control Plan Procedure) shall deviate from the terms of the control plans including the date for final compliance and the dates for accomplishing the required steps in such plans. The executive director may, upon application of any person affected, change the date for accomplishing the required steps in a plan. Any control plan that specifies a final compliance date subsequent to the date specified by any sections of this regulation must be approved by the Texas Air Control Board (TACB). Approval of a delayed compliance order by the TACB does not constitute satisfaction of all federal requirements nor eliminate the need for approval by the United States Environmental Protection Agency.

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

Issued in Austin, Texas, on January 26, 1990.

TRD-9000957 Allen Eli Bell
Executive Director
Texas Air Control Board

Effective date: February 19, 1990

Proposal publication date: July 28, 1989

For further information, please call: (512) 451-5711, ext. 354

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter Y. Controlled Substances Tax

• 34 TAC §3.681

The Comptroller of Public Accounts adopts new §3.681, with changes to the proposed text as published in the November 24, 1989, issue of the *Texas Register* (14 TexReg 6163).

The changes occur in subsection (b)(1) and (2) and reflect the recent recodification of the Texas Controlled Substances Act, placing the Act in the Health and Safety Code.

This new section defines the substances to which the tax applies and sets out the tax rates.

No comments were received regarding adoption of the new section.

The new section is adopted 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.

§3.681. Imposition and Rate of Tax.

(a) A tax is imposed on the purchase, acquisition, importation, manufacture, or production by a dealer of a taxable substance on which tax previously has not been paid under the Tax Code, Chapter 159.

(b) A taxable substance is a substance consisting of or containing any of the following:

(1) a controlled substance, a counterfeit substance, or marihuana, as those terms are defined by the Health and Safety Code, Chapter 481, Texas Controlled Substances Act, §481.002;

(2) a simulated controlled substance as defined by the Health and Safety Code, §482.001; or

(3) a mixture that contains any of these substances.

(c) A dealer is a person who, in violation of the laws of this state, imports into this state or manufactures, produces, acquires, or possesses in this state:

(1) seven grams or more of a taxable substance other than marihuana; or

(2) four ounces or more of a taxable substance consisting of or containing marihuana.

(d) The tax becomes due at the time a dealer imports a taxable substance into this state or manufactures, produces, acquires, or possesses a taxable substance in this state.

(e) The rate of the tax is:

(1) for taxable substances other than marihuana, and for taxable substances containing both marihuana and another taxable substance, \$200 per gram or part of a gram; and

(2) for marihuana, \$3.50 per gram or part of a gram.

(f) Dealers must obtain tax payment certificates from the comptroller before the tax becomes due, and must securely affix the certificate to the substance as proof that the tax has been paid. For information on tax payment certificates, see §3.682 of this title (relating to Tax Payment Certificates).

(g) Possession of a taxable substance without the possession of the requisite number or amount of tax payment certificates is prima facie evidence that tax has not been paid on that substance as required by the Tax Code, Chapter 159.

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 January 23, 1990.

TRD-9000921 Bob Bullock
Comptroller of Public
Accounts

Effective date: February 16, 1989

Proposal publication date: November 24, 1989

For further information, please call: (512) 463-4004

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● **34 TAC §3.682**

The Comptroller of Public Accounts adopts new §3.682, without changes to the proposed text as published in the November 24, 1989, issue of the *Texas Register* (14 TexReg 6163).

The new section explains the procedures to be followed for the purchase and use of tax payment certificates.

No comments were received regarding adoption of the new section.

The new section is adopted 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.

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 January 23, 1990.

TRD-9000920 Bob Bullock
Comptroller of Public
Accounts

Effective date: February 16, 1990

Proposal publication date: November 24, 1989

For further information, please call: (512) 463-4004

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● **34 TAC §3.683**

The Comptroller of Public Accounts adopts new §3.683, with changes to the proposed text as published in the November 24, 1989, issue of the *Texas Register* (14 TexReg 6164).

The changes occur in subsections (a), (d), and (e) and replace the reference to Federal Drug Enforcement Agency with Federal Drug Enforcement Administration.

The new section describes procedures to be followed in issuing assessments when the tax has not been properly paid.

No comments were received regarding adoption of the new section.

The new section is adopted 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.

§3.683. Jeopardy Determinations.

(a) A prosecuting attorney or federal drug enforcement administration official who wishes to refer a violation of the Tax Code, Chapter 159, to the comptroller may file an official report with the comptroller's office. Such official report shall state that to the best of the duly authorized official's information and belief the tax required to be paid to the state under that chapter has not been paid by a dealer. Upon receipt of such official report from a duly authorized official and after determination that the collection of the tax is jeopardized by delay, the comptroller shall issue a determination stating the amount and that the collection is in jeopardy. The amount determined is due and payable immediately.

(b) A determination made under this section becomes final on the expiration of 20 days after the day on which the notice of the determination was served by personal service or by mail unless a petition for a redetermination is filed before the determination becomes final. Mail notice of the determination may be served on the dealer at the address provided in his arrest report or at the place of his incarceration.

(c) The term "prosecuting attorney" used in this section shall be defined as any licensed attorney prosecuting criminal cases in this state on behalf of the United States of America, on behalf of the state, or on behalf of any county or municipality located in this state.

(d) The term "federal drug enforcement administration official" used in this section shall mean any employee of the

United States Drug Enforcement Administration who is authorized by that agency to make official reports to the comptroller of a violation of the Tax Code, Chapter 159.

(e) The term "duly authorized official" used in this section shall mean prosecuting attorneys and federal drug enforcement administration officials as defined by this section.

(f) The term "official report" used in this section shall be defined as a written report of a violation of the Tax Code, Chapter 159, made by a duly authorized official on a form prescribed and published by the comptroller for this purpose. A duly authorized official may make such official report only with regard to persons arrested or taxable substances seized within his jurisdiction for violation of federal or state laws prohibiting the possession, purchase, acquisition, importation, manufacture, or production of narcotics, marihuana, controlled substances or counterfeit substances, as those terms may be defined by the relevant criminal statutes.

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 January 23, 1990.

TRD-9000918 Bob Bullock
Comptroller of Public
Accounts

Effective date: February 16, 1990

Proposal publication date: November 24, 1989

For further information, please call: (512) 463-4004

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Subchapter Y. Controlled
Substances Tax

● **34 TAC §3.684**

The Comptroller of Public Accounts adopts new §3.684, without changes to the proposed text as published in the November 24, 1989, issue of the *Texas Register* (14 TexReg 6165).

This new section describes the records required to be kept, and the confidentiality standards which will be followed by the comptroller.

No comments were received regarding adoption of the new section.

The new section is adopted 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.

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 January 23, 1990.

Effective date: February 16, 1990

Proposal publication date: November 24,
1989For further information, please call: (512)
463-4004

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 3. Income Assistance Services

Subchapter KK. Support Documents

• 40 TAC §3. 3702

The Texas Department of Human Services (DHS) adopts an amendment to §3. 3702 concerning the food stamp basis of issuance tables. This section adopts by reference the federal regulations that establish the basis of issuance tables for the Food Stamp Program. Changes to these regulations, issued by the United States Department of Agriculture (USDA), appear in *Federal Register* Document No. 90-552, with a federally mandated effective date of October 1, 1989. These regulations update the maximum allotment amount of food stamps which participating households receive, the limits on gross and net income which certain households may have and still be eligible for food stamps, and the standard deduction and the maximum amounts for the excess shelter expense deduction available to certain households. These adjustments, required by law, take into account changes in the cost of living and statutory adjustments.

The justification for the section is to comply with federal regulations. The section, will function as DHS' rule governing the food stamp basis of issuance tables.

The amendment is adopted under the Human Resources Code, Title 2, Chapter 33, which provides the department with the authority to administer public assistance programs. The amendment is adopted under federal requirements effective October 1, 1989.

§3.3702. Food Stamp Basis of Issuance Tables. The Department of Human Services adopts by reference the food stamp rules and tables contained in *Federal Register* Document 90-552, Volume 55, No. 7, Page 887, which amends 7 Code of Federal Regulations Part 272 and Part 273.

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 January 26, 1990.

Effective date: October 1, 1989

Proposal publication date: N/A

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

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Chapter 16. Intermediate Care Facilities/Skilled Nursing Facilities (ICF/SNF)

Rehabilitation Services/Goal- directed Therapy i

• 40 TAC §16.3504

The Texas Department of Human Services (DHS) adopts an amendment to §16. 3504, without changes to the proposed text as published in the December 1, 1989, issue of the *Texas Register* (14 TexReg 6243).

The amendment is justified to give Medicaid recipients access to the services of more Title-XVIII-certified physical therapists.

The amendment will function by permitting DHS to directly reimburse Title-XVIII-certified physical therapists when they provide physical therapy to Medicaid recipients in nursing facilities. The amendment implements Senate Bill 487, §4, as passed by the 71st Texas Legislature.

The department received one anonymous written comment on the proposed amendment during the public comment period. A summary of the comment and the department's response follows.

The commenter recommended that the department directly reimburse not only physical therapists, but occupational and speech therapists as well. This recommendation goes beyond the scope of the legislative action that the amendment is intended to implement. Senate Bill 487, §4, does not include occupational and speech therapists as providers of service that qualify for direct reimbursement. It only includes physical therapists. Accordingly, the department is not revising the amendment in response to this comment.

The amendment is 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 January 26, 1990.

Effective date: March 1, 1990.

Proposal publication date: December 1, 1989.

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

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Medical Records

The Texas Department of Human Services (DHS) adopts amendments to §16. 3903 and §16.6102, without changes to the proposed text as published in the December 12, 1989, issue of the *Texas Register* (14 TexReg 6472).

The justification for the amendments is to comply with legislation passed by the 71st Texas Legislature, which provides for directives for withholding or withdrawal of life-sustaining procedures and the durable power of attorney for health care.

The amendments will function by establishing clients' rights to execute directives addressing the withholding or withdrawing of life-sustaining procedures and to designate agents with durable power of attorney for health care.

No comments were received regarding adoption of the amendments.

• 40 TAC §16.3903

The amendment is 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 January 26, 1990.

Effective date: March 1, 1990.

Proposal publication date: December 12,
1989.For further information, please call: (512)
450-3765

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Recipient Rights;

• 40 TAC §16.6102

The amendment is 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 January 26, 1990.

Effective date: March 1, 1990.

Proposal publication date: December 12, 1989.

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

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Chapter 49. Child Protective Services

Subchapter Q. Purchased Protective Services

• **40 TAC §49.1764**

The Texas Department of Human Services (DHS) adopts new §49.1764, without changes to the proposed text as published in the December 12, 1989, issue of the *Texas Register* (14 Tex Reg 6485).

The justification for the new section is to provide children in foster care a larger number of placement options. Also, since child care expenses will be reduced, the retention rate for foster parents may increase. Moreover, foster children with delayed development will receive therapeutic day care.

The new section will function by establishing eligibility and priorities for day care services for DHS foster children whose foster parents are working or whose development is delayed.

No comments were received regarding adoption of the new section.

The new section is adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

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

Issued in Austin, Texas, on January 26, 1990.

TRD-9000946

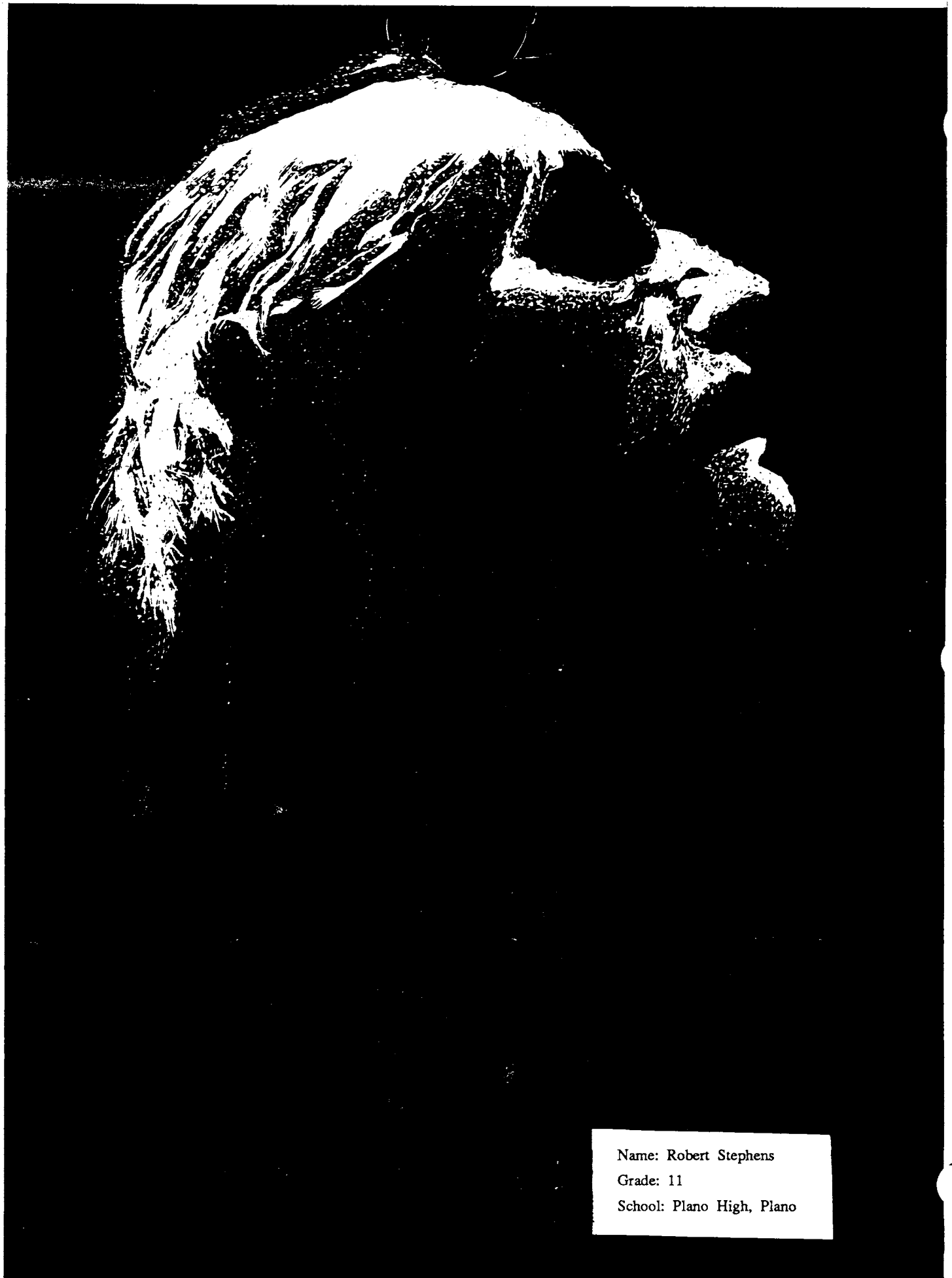
Cathy Rossberg
Agency Liaison, Policy
Communication
Services
Texas Department of
Human Services

Effective date: March 1, 1990.

Proposal publication date: December 12, 1989.

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

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Name: Robert Stephens

Grade: 11

School: Plano High, Plano

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 on Aging

Tuesday, February 6, 1990, 10 a.m. The Executive Committee, White House Conference on Aging of the Texas Department on Aging will meet in the Third Floor Conference Room, 1949 South IH 35, Austin. According to the agenda, the committee will discuss the Texas White House Conference on Aging, date and location; membership of steering committee; delegate selection committee; issues/forums committee; conference committee; public information committee; budget; future meeting dates.

Contact: Paula Johnson, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: January 26, 1990, 9:34 a.m.

TRD-9000906

Texas Department of Agriculture

Tuesday, February 6, 1990, 7 p.m. The Southern Rolling Plains Cotton Producers Board of the Texas Department of Agriculture will meet at the Miles Cooperative Gin, Board Room, 1 1/2 miles northwest of Miles on FM 1692. According to the agenda summary, the board will discuss reading and approval of minutes; treasurer's report; report of activities; committee reports; old and new business.

Contact: Kenneth Gully, San Angelo Route, Eola, Texas 76937, (915) 469-3638.

Filed: January 26, 1990, 2:44 p.m.

TRD-9000930

Texas Council on Alzheimer's Disease and Related Disorders

Monday, February 5, 1990, 8:30 a.m. The Executive Committee of the Texas Council on Alzheimer's Disease and Related Disorders will meet in Room T-709, Texas Department of Health, 1100 West 49th Street, Austin. According to the agenda

summary, the committee will discuss time frames for developing the biennial report for 1990; review of projects and activities for 1989; identification of projects and activities which have been worked on that are incomplete; committee chairman input: research, education, direct services.

Contact: Morris H. Craig, 1100 West 49th Street, Austin, Texas 78746, (512) 458-7534.

Filed: January 25, 1990, 10:56 a.m.

TRD-9000872

State Bar of Texas

Thursday, January 25, 1990, 1 p.m. The Executive Committee of the State Bar of Texas met at the Texas Law Center, Room 206-207, 1414 Colorado Street, Austin. According to the emergency revised agenda, the committee considered recommendations of grant review committee regarding grant to Bar Foundation from committee on representation of those on death row. The emergency status was necessary because deadline for submitting grant application to foundation was Monday, deadline not known previously.

Contact: Paula Welch, 1414 Colorado Street, Austin, Texas 78711, (512) 463-1451.

Filed: January 25, 1990, 10:48 a.m.

TRD-9000866

Texas Commission for the Blind

Monday, February 12, 1990, 10 a.m. The Board of the Texas Commission for the Blind will meet at The Lighthouse of Houston Community Service Center, 3602 West Dallas, Houston. According to the agenda, the board will discuss approval of minutes; recognition awards; committee reports; executive director's quarterly report on agency activities; proposal and adoption of resolution to create a sick leave pool for

certain agency employees who suffer catastrophic illness or injury; discussion of draft memorandum of agreement between agencies on transition planning; discussion of 1992-1993 legislative appropriations request; executive session pursuant to Article 5252-17, §§2(e), and 2(g), Texas Civil Statutes to discuss personnel and pending legal matters.

Contact: Jean Wakefield, P.O. Box 12866, Austin, Texas 78711, (512) 459-2600.

Filed: January 29, 1990, 2:19 p.m.

TRD-9001005

State Cogeneration Council

Friday, February 16, 1990, 10 a.m. The State Cogeneration Council will meet at the Central Services Building, Room 402, 1711 San Jacinto Street, Austin. According to the agenda summary, the council will introduce a new board member, approve the minutes, elect a chairman, hear status report on current and future state agency projects, hear a status report on previously proposed legislative amendment, discuss and consider for approval cogeneration projects at UT-Dallas and UT-San Antonio, hear public comment on cogeneration projects at UT-Dallas and UT-San Antonio, discuss agenda, time, and location of next meeting.

Contact: Carol Stuewe, P.O. Box 12428, Austin, Texas 78711, (512) 463-1931.

Filed: January 29, 1990, 10:47 a.m.

TRD-9000985

Interagency Council on Early Childhood Intervention

Thursday, February 8, 1990, 9 a.m. The Interagency Council on Early Childhood Intervention will meet in Room M-653, Texas Department of Health, 1100 West 49th Street, Austin. According to the agenda summary, the council will discuss and/or approve minutes for January 16, 1990; proposed rules designed to ensure compliance with P. L. 99-457; contracts to

develop respite services; high priority infant tracking projects in Dallas and Fort Worth; service priorities for fiscal year 1992-1993.

Contact: Mary Elder, 1100 West 49th Street, Austin, Texas 78756, (512) 465-2671.

Filed: January 29, 1990, 10:45 a.m.

TRD-9001004

Texas Education Agency

Monday, February 5, 1990, 9 a.m. The School Facilities Advisory Committee of the Texas Education Agency will meet at 1701 North Congress Avenue, William B. Travis Building, Room 8-101, Austin. According to the agenda, the committee will discuss approval of minutes of the January 18, 1990 meeting; policy options documents; review and discuss educational planning consultants materials; preliminary recommendations to the board; determination of future meeting date(s).

Contact: Joe Wisnoski, 1701 North Congress, Room 3-101, Austin, Texas, 78711, (512) 463-9704.

Filed: January 26, 1990, 4:09 p.m.

TRD-9000941

Friday, February 9, 1990, 10 a.m. The Committee on Students of the Texas Education Agency (TEA) will meet in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the committee will hold a public hearing on new 19 TAC §75.174. Identification and Remediation of Students with Dyslexia and Related Disorders. Anyone wishing to testify should register by calling Bonnie Garrington at (512) 475-3403 by 5 p.m. on February 7. If testifiers have written testimony they should ensure that 25 copies of the testimony are received at the agency by the same deadline, and should include the name of the testifier on each cover sheet. These should be mailed to: TEA, Division of Exemplary Programs, Room 5-102A, 1701 North Congress Avenue, Austin, Texas 78701. Testifiers are asked to limit testimony to three minutes. Individuals not registered in advance should bring 25 copies of their testimony for distribution at the hearing. Testimony will be on the first come, first serve basis. The schedule may have to be adjusted to assure the board receives a balance of viewpoints concerning the proposed rule. Anyone who wishes may submit their testimony in writing for the board to review.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: January 30, 1990, 9:21 a.m.

TRD-9001028

Friday, February 9, 1990, 1:30 p.m. The Committee of the Whole of the Texas

Education Agency will meet in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the committee will hold public hearing on Proclamation 67 of the SBOE. Testimony is limited to residents of Texas and non-residents who are official representatives of publishing companies. The deadline for written requests to appear at the hearing is 5 p.m. on January 31, 1990. Persons interested in testifying are aware of the January 31 deadline because this was discussed during the January 1990 meetings of the SBOE and its committees.

Contact: Ira Nell Turman, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: January 30, 1990, 9:21 a.m.

TRD-9001030

Friday, February 9, 1990, 1:30 p.m. The Committee of the Whole of the Texas Education Agency will meet in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the committee will hold public hearing on the proposed state plan for federal vocational education funding, fiscal years 1991-1992. Individuals who wish to speak at the hearing shall register by calling Paul Myers at (512) 463-9311, and testifiers shall limit their comments to four minutes. This limit may be reduced depending on the number of individuals wishing to speak. Individuals wishing to testify shall ensure that 25 written copies of their testimony are received by 5 p.m. on February 8, 1990. Copies should be mailed to Paul Myers, Division of Vocational Education Funding and Compliance, Room 6-117, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Copies of the proposed plan are available upon request.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: January 30, 1990, 9:21 a.m.

TRD-9001029

Texas Council on Vocational Education

Friday, February 9, 1990, 10 a.m. The Texas Council on Vocational Education will meet at the Hyatt Regency Hotel, Board Room, 208 Barton Springs Road, Austin. According to the agenda summary, the council will receive a presentation by the National Council on Vocational Education regarding national vocational education initiatives, receive a presentation from the Texas Education Agency on the State Plan for Vocational Education, receive a presentation from TEA and the coordinating board on vocational education program improvement projects; receive an update on State Board of Education actions

at its January 12-13 meeting; receive an update on actions of the Texas Higher Education Coordinating Board at its January 25-26 meeting; receive an update on work conducted on addressing the evaluation topics assigned the council by the State Board of Education; receive an update on the status of revising advisory committee materials; hear a report on actions of the Texas Literacy Council; receive an update on the council's appointments process and conduct other business.

Contact: Val Blaschke, P.O. Box 1886, Austin, Texas 78701, (512) 463-5490.

Filed: January 25, 1990, 10:56 a.m.

TRD-9000871

Texas Employment Commission

Tuesday, January 30, 1990, 8:30 a.m. The Texas Employment Commission met in Room 644, TEC Building, 101 East 15th Street, Austin. According to the emergency revised agenda, the commission added discussion of Adele S. Perlmutter and Perlmutter Company, Realtors v. Texas Employment Commission to executive session. The emergency status was necessary to consider settlement offer. Trial date was imminent.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: January 29, 1990, 12:46 p.m.

TRD-9001003

Monday, February 5, 1990, 1:30 p.m. The Texas Employment Commission will meet in Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda summary, the commission will discuss prior meeting notes; internal procedures of commission appeals; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on commission docket 6; and set date of next meeting.

Contact: Courtenay Browning, 101 East 15th Street, Austin, Texas 78778, (512) 463-2226.

Filed: January 26, 1990, 12:04 p.m.

TRD-9000923

Office of the Governor-Criminal Justice Division

Thursday-Friday, February 1-2, 1990, at 1 p.m. and 8 a.m. respectively. The Texas Crime Stoppers Advisory Council of the Office of the Governor-Criminal Justice Division met at 4140 Governor's Row, Wyndham South Park, Austin. According to the agenda, the council will discuss approval of minutes; election of secretary;

budget (Rider Scott); grant approval process (Rider Scott); goals and objectives for 1990-1991; define role of council members and staff; establish list of priorities for staff; define and establish need and direction of training; set tentative schedule for future council meeting; standing committee and assignments; media certification; update on Senate Bill 1451/ fund #663; executive session on personnel matters as permitted under Article 6252-17, Section A, Texas Civil Statutes.

Contact: David M. Cobos, P.O. Box 12428, Austin, Texas 78711, (512) 463-1784, (800) 252-8477.

Filed: January 26, 1990, 3:27 p.m.

TRD-9000932

Texas Department of Health

Friday, February 9, 1990, 10 a.m. The Hospital Patient Transfer Advisory Committee of the Texas Department of Health will meet in Room M-653, 1100 West 49th Street, Austin. According to the agenda summary, the committee will elect a chair; discuss working draft of rules to implement House Bill 18 relating to hospital patient transfer agreements.

Contact: Maurice B. Shaw, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7538.

Filed: January 26, 1990, 2:03 p.m.

TRD-9000929

Wednesday, February 14, 1990, 1:30 p.m. The Ad Hoc Abortion Facility Committee of the Texas Department of Health will meet in Room T-507, 1100 West 49th Street, Austin. According to the agenda summary, the committee will review and approve draft of proposed licensing regulations for compliance with Attorney General's Opinion (JM-1076) and statute; announcement and discussion without Ad Hoc Committee's action.

Contact: Nance Kerrigan, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7245.

Filed: January 29, 1990, 11:40 a.m.

TRD-9000986

Tuesday, February 20, 1990, 1:30 p.m. The Home Health Services Advisory Council of the Texas Department of Health will meet in Room T-507, 1100 West 49th Street, Austin. According to the agenda summary, the council will approve minutes; discuss and take possible action concerning rules and curriculum relating to home health aides for class A and B agencies and Omnibus Budget Reconciliation Act (OBRA) regulations; announcement and discuss without council action.

Contact: Nance Kerrigan, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7245.

Filed: January 29, 1990, 11:40 a.m.

TRD-9000987

Texas Health and Human Services Coordinating Council

Wednesday, February 7, 1990, 9 a.m. The Commission on Children, Youth and Family Treatment and Care Workshop of the Texas Health and Human Services Coordinating Council will meet in the Senate Reception Room, Second Floor, State Capitol, Austin. According to the agenda, the commission will discuss legislation and workgroup responsibilities; update on the levels of care system, common application implementation, interagency monitoring process, and on-going analysis and implementation of the system; 1988 child care facility cost report analysis discussion of reporting process for 1990 and update on database; discussion of treatment and care workplan, standard contract, outcome evaluation and other responsibilities; old and new business.

Contact: Tom Olsen, 311-A East 14th Street, Austin, Texas 78701, (512) 463-2195.

Filed: January 26, 1990, 4:45 p.m.

TRD-9000951

Wednesday, February 7, 1990, 1 p.m. The Commission on Children, Youth, and Family Services Prevention and Intervention Work Group of the Texas Health and Human Services Coordinating Council will meet at 8140 Mopac Boulevard, Building 4, Suite 200, Austin. According to the agenda, the commission will review and comment on: draft definitions; children's bill of rights; development of priority status on issues; report on §71.011: Dysfunctional Families Memorandum of Understanding; report on §71.012: Family-based Programs Memorandum of Understanding; report on child adolescent service systems project.

Contact: Tom Olsen, 311-A East 14th Street, Austin, Texas 78701, (512) 463-2195.

Filed: January 26, 1990, 4:44 p.m.

TRD-9000953

Thursday, February 8, 1990, 10 a.m. The Commission on Children, Youth and Family Services Policy Planning Work Group of the Texas Health and Human Services Coordinating Council will meet at 333 North Washington, Dallas. According to the agenda, the commission will discuss responsibility of policy planning work group; review legislation, other assignments, previous work of the council's children and youth projects, and related legislative activity; establish work plans; organize work group into sub-committees.

Contact: Tom Olsen, 311-A East 14th Street, Austin, Texas 78701, (512) 463-2195.

Filed: January 26, 1990, 4:45 p.m.

TRD-9000952

State Department of Highways and Public Transportation

Tuesday, January 30, 1990, 9:30 a.m. The State Highway and Public Transportation Commission of the State Department of Highways and Public Transportation met at the Dewitt C. Greer State Highway Building, 11th and Brazos Streets, Auditorium, Room 101 and Room 101-A, First Floor, Austin. According to the emergency revised agenda summary, the commission met in the boardroom at 300 Barton Springs Road, tentatively scheduled between 12:30 p.m. and 2 p.m. in order to discuss the strategies mobility plan and projected construction needs. Immediately following item 14 the meeting convened at Dewitt C. Greer State Highway Building, 11th and Brazos Streets, Room 101-A, First Floor. The emergency status was necessary because immediate and unforeseeable situation required discussion and action by the commission regarding the assessment of future transportation needs including the Texas Trunk System.

Contact: Myrna Klipple, Room 203, Dewitt C. Greer State Highway Building, 11th and Brazos Streets, Austin, Texas 78701, (512) 463-8616.

Filed: January 25, 1990, 10:54 a.m.

TRD-9000867

Tuesday, January 30, 1990, 9:30 a.m. The State Highway and Public Transportation Commission of the State Department of Highways and Public Transportation met at the Dewitt C. Greer State Highway Building, 11th and Brazos Streets, Auditorium, Room 101 and Room 101-A, First Floor, Austin. According to the emergency revised agenda summary, the commission discussed approval of a settlement offer proposed by the Attorney General in the case of cause number 418,388, John P. Nieman vs. State Department of Highways and Public Transportation in the 345th Judicial District Court in Travis County. The emergency status was necessary because the Attorney General had recommended this settlement be approved so as to accept an advantageous settlement offer and to finalize all right of way acquisition.

Contact: Myrna Klipple, Dewitt C. Greer State Highway Building, Room 203, 11th and Brazos Streets, Austin, Texas 78701, (512) 463-8616.

Filed: January 29, 1990, 10:37 a.m.

TRD-9000980

Texas Historical Commission

Thursday, February 8, 1990, 7 p.m. The Archeological Planning and Review Department of the Texas Historical Commission will meet in the Pressler Auditorium, The Witte Museum, 3801 Broadway, San Antonio. According to the agenda, the Texas Historical Commission, San Antonio Conservation Society, and Southern Texas Archeological Association are hosting a public information meeting (as called for in federal regulations 36 Code of Federal Regulations 800. 5.e.2) to solicit public input and comments about cultural resources that may be affected by the construction of proposed Applewhite Reservoir in Bexar County.

Contact: Nancy Kenmotsu, P.O. Box 12276, Austin, Texas 78711, (512) 463-6096.

Filed: January 25, 1990, 4:06 p.m.

TRD-9000885

Texas Department of Human Services

Thursday-Friday, February 8-9, 1990, 1 p.m. The Family Violence Advisory Committee of the Texas Department of Human Services will meet at the Driskill Hotel, 604 Brazos Street, Citadel Room, Austin. According to the agenda, the committee will discuss minutes; announcements; training video; subcommittee meeting; reports; old and new business.

Contact: Anne Heiligenstein, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3365.

Filed: January 29, 1990, 3:51 p.m.

TRD-9001017

State Board of Insurance

Monday, January 29, 1990, 9:30 a.m. The State Board of Insurance held an emergency meeting in Room 414, State Insurance Building, 1110 San Jacinto, Austin. According to the agenda, the board conducted a public hearing to consider motion for stay of revocations of agent's licenses pending appeal by Robert Golden Wilson of commissioner's order 89-1628. The emergency status was necessary to provide licensee with as rapid action as possible on motion to stay revocations of licenses.

Contact: Pat Wagner, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6328.

Filed: January 26, 1990, 3:25 p.m.

TRD-9000937

Monday, February 5, 1990, 1 p.m. The State Board of Insurance will meet in Room

460, State Insurance Building, 1110 San Jacinto, Austin. According to the agenda summary, the board will discuss decision on rates and other matters concerning private passenger automobile insurance under docket numbers 1703 and 1704. Amendments to the Texas Automobile Manual and the Standard Provision for Automobile Insurance Policies. Proposed action on amendments to 28 TAC §5.4001. Board orders on several different matters as itemized on the complete agenda. Motion for dismissal in the appeal of Donald Thompson from action of the Texas Catastrophe Property Insurance Association. Proposal for decision in the appeal of Horace C. LaFrage from action of the Texas Catastrophe Property Insurance Association. Personnel matters. Litigation. Solvency matters.

Contact: Pat Wagner, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6328.

Filed: January 26, 1990, 3:25 p.m.

TRD-9000936

Wednesday, February 7, 1990, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 353, Austin. According to the agenda, the hearing section will conduct a public hearing to consider the application of Jamie Allen Finn, Houston, for a group I, legal reserve life insurance agent's license. Docket Number 10684.

Contact: Earl Corbitt, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: January 29, 1990, 2:02 p.m.

TRD-9001006

Wednesday, February 7, 1990, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 342, Austin. According to the agenda, the hearing section will conduct a public hearing in Docket Number 10690 to consider the application of Kathy Nan Allen, Stratford, for a local recording agent's license to be issued by the board.

Contact: O. A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: January 29, 1990, 2:01 p.m.

TRD-9001007

Wednesday, February 7, 1990, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 342, Austin. According to the agenda, the hearing section will conduct a public hearing in Docket Number 10693 to consider whether disciplinary action should be taken against Dennis Paul Fritschle, San Antonio, who holds a group I, legal reserve life insurance agent's license issued by the board; and to consider the application of Dennis Paul

Fritschle for a temporary local recording agent's license.

Contact: Earl Corbitt, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: January 29, 1990, 2:01 p.m.

TRD-9001008

Thursday, February 8, 1990, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 460, Austin. According to the agenda, the hearing section will conduct a public hearing in Docket Number 10692 to consider the application of Cumis Life Insurance, Inc. to acquire control of Members Life Insurance Company.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: January 29, 1990, 2:01 p.m.

TRD-9001009

Thursday, February 8, 1990, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 353, Austin. According to the agenda, the hearing section will conduct a public hearing in Docket Number 10695 to consider whether disciplinary action should be taken against Stanley Morris Tullos, Trinity, who holds a group I, legal reserve life insurance agent's license and a local recording agent's license issued by the board.

Contact: Earl Corbitt, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: January 29, 1990, 2:01 p.m.

TRD-9001010

Monday, February 12, 1990, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Room 353, Austin. According to the agenda, the hearing section will conduct a public hearing in Docket Number 10691 to consider the application of Walter Denny Russ, Houston, for a risk manager's license.

Contact: Wendy L. Ingham, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: January 29, 1990, 2:01 p.m.

TRD-9001011

Texas Department of Mental Health Mental Retardation

Thursday, February 1, 1990, 3:45 p.m. The Board Business and Asset Management Committee of the Texas Department of Mental Health Mental Retardation met at the Central Office, Auditorium, 909 West 45th Street, Austin. According to the

emergency revised agenda, the committee discussed approval of selection of architects and engineers for construction projects; approval of memorandum of understanding and finance agreement with TFFA; approved construction projects to be funded from fiscal year 1988-1989 general revenue construction appropriation; approval of paving allocation and selection of engineers for projects funded by state highway fund number 006; approval of projects for construction of community facilities for difficult-to-place persons with mental retardation; fiscal year 1990 operating budget adjustments; memorandum of agreement with GLO concerning the land development process; approval of a lease for the West 38th Street PUD; master plan part I/facility assessment. The emergency status was necessary because of unforeseen emergency conflict in committee chairman's schedule necessitated time change of meetings.

Contact: Dennis R. Jones, 909 West 45th Street, Austin, Texas 78756, (512) 454-3761.

Filed: January 25, 1990, 3:03 p.m.

TRD-9000878

Friday, February 2, 1990, 8:30 a.m. The Board Personnel Committee of the Texas Department of Mental Health Mental Retardation will meet at the Central Office, 909 West 45th Street, Austin. According to the emergency revised agenda, the committee will consider approval of appointment of superintendent at Richmond State School. The emergency status was necessary because unforeseen, emergency conflict in committee chairman's schedule necessitates time change of meeting.

Contact: Dennis R. Jones, 909 West 45th Street, Austin, Texas 78756, (512) 454-3761.

Filed: January 25, 1990, 3:04 p.m.

TRD-9000877

Interagency Council on Sex Offender Treatment

Friday, February 2, 1990, 9 a.m. The Interagency Council on Sex Offender Treatment will meet in the TYC Conference Room, Brown Heatly Building, 4900 North Lamar Boulevard, Austin. According to the agenda, the selection committee will recommend candidates for the council to consider for the position of administrative director.

Contact: Jan DeLipsey, or Linda Christofilis, P.O. Box 12068, Austin, Texas 78711, (512) 463-0360.

Filed: January 26, 1990, 12:38 p.m.

TRD-9000924

Sex Offender Treatment Council

Friday, February 2, 1990, 9 a.m. The Board of Sex Offender Treatment Council will meet at the Brown-Heatly Building, 4900 North Lamar Boulevard, Austin. According to the agenda, the board will consider selection of administrative director and chair person.

Contact: Dr. Elise Orman, 4900 North Lamar Boulevard, Austin, Texas 78711, (512) 483-5152.

Filed: January 25, 1990, 4:55 p.m.

TRD-9000894

Texas Department of Criminal Justice Board of Pardons and Paroles

Monday-Friday, February 5-9, 1990, 10 a.m. The Texas Department of Criminal Justice Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, a panel (composed of three board members) will receive, review and consider information and reports concerning prisoners/inmates and administrative releases subject to the board's jurisdiction and initiate and carry through with appropriate action.

Contact: Karin Armstrong, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2713.

Filed: January 26, 1990, 9:11 a.m.

TRD-9000905

Texas Parks and Wildlife Department

Friday, February 2, 1990, 9 a.m. The Texas Parks and Wildlife Commission of the Texas Parks and Wildlife Department will meet at the Page Avjet Corporation, 4209 Airport Boulevard, Austin. According to the agenda summary, the commission will discuss selection process relating to the executive director's position.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: January 25, 1990, 4:39 p.m.

TRD-9000893

Public Utility Commission of Texas

Wednesday, January 31, 1990, 9 a.m. The Public Utility Commission of Texas met at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the emergency revised

agenda, the commission considered in addition to a previously submitted agenda, the appeal of examiners' order number 73 in docket numbers 8585 and 8218-inquiry of the general counsel into the reasonableness of the rates and services of Southwestern Bell Telephone Company and inquiry of the general counsel in to the WATS prorate credit. The emergency status was necessary because prompt commission action was necessary to preserve jurisdiction over the subject matter of the appeal.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 25, 1990, 3:44 p.m.

TRD-9000892

Thursday, February 22, 1990, 1 p.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the agenda summary, the division will hold a prehearing conference on docket number 9301

Southwestern Bell Telephone Company statement of intent and application under Public Utility Commission substantive rule 23.27 requesting the service market for central office local area network (C.O. Lan) service to be declared subject to significant competition and to use customer specific pricing.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas, 78757, (512) 458-0100.

Filed: January 25, 1990, 3:44 p.m.

TRD-9000886

Texas Racing Commission

Monday, February 5, 1990, 9 a.m. The Texas Racing Commission will meet at the John H. Reagan Building, Room 101, 105 West 15th Street, Austin. According to the agenda summary, the commission will discuss approval of the December 11, 1989 formal meeting minutes, consideration, discussion and action of commission rules and regulations for horse racing and greyhound racing chapters 305 and 309. Discussion of contract with Deloitte and Touche, presentation by Susan Baittie Beech, DVM, acting executive secretary. Proceedings on occupational licensees, vote on ratification of agreed order regarding appeal by Anthony Bandiero. Proceedings on racetrack licensees; presentation regarding status of preparations for racing- John T. Williams, director of enforcement; presentation by Manor Downs, Inc.; consideration of and votes on agreed orders regarding opening dates and 1990 race dates for class 2 and class 3 licensees; consideration of and votes on matters relating to Galveston County greyhound

racetrack license. Discussion of matters regarding Bandera Downs and vote. Old business and new business.

Contact: Paula Cochran Carter, P.O. Box 12080, Austin, Texas 78711, (512) 476-7223.

Filed: January 26, 1990, 3:44 p.m.

TRD-9000938

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Railroad Commission of Texas

Monday, January 29, 1990, 9 a.m. The Railroad Commission of Texas met in Room 12-126, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the emergency revised agenda, the commission considered Transportation Docket Number 029298ZZT; consideration of whether the commission should enter an interim order authorizing an adjustment to rates in SWTA tariff 3 series to reflect fuel cost changes, as requested by the Southwest Warehouse and Transfer Association, Inc. The emergency status was necessary because an urgent public necessity existed due to the recent dramatic fuel cost increases experienced by the motor carriers. Such a reasonably unforeseeable situation required immediate action by the commission.

Contact: Harold Bartz, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-7104.

Filed: January 26, 1990, 10:42 a.m.

TRD-9000917

Monday, February 5, 1990, 9 a.m. The Railroad Commission of Texas will meet in Room 12-126, 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. Agendas follow.

According to the agenda summary, the commission will consider various matters within the jurisdiction of the commission. In addition the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various action, including but not limited to scheduling an item in its entirety or for particular action at a future time or date. The commission may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received. The commission will meet in executive session to receive legal advice regarding pending and/or contemplated litigation.

Contact: Cue D. Boykin, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6921.

Filed: January 26, 1990, 10:46 a.m.

TRD-9000908

According to the complete agenda, the commission will consider and act on the investigation division director's report on division administration, investigations, budget, and personnel matters.

Contact: Mary Anne Wiley, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-2967.

Filed: January 26, 1990, 10:45 a.m.

TRD-9000909

According to the complete agenda, the commission will consider and act on the administrative services division director's report on division administration, budget, procedures, and personnel matters. Discussion of the development of a natural gas clearinghouse that would match companies that need gas to fuel new plants with producers that have gas to sell-possible action.

Contact: Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7257.

Filed: January 26, 1990, 10:45 a.m.

TRD-9000910

According to the complete agenda, the commission will consider and act on the automatic data processing division director's report on division administration, budget, procedures, equipment acquisitions and personnel matters.

Contact: Bob Kmetz, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7251.

Filed: January 26, 1990, 10:44 a.m.

TRD-9000911

According to the complete agenda, the commission will consider category determinations under §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108 of the Natural Gas Policy Act of 1978.

Contact: Margie Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755.

Filed: January 26, 1990, 10:44 a.m.

TRD-9000912

According to the complete agenda, the commission will consider and act on the personnel division director's report on division administration, budget, procedures, and personnel matters. The commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel.

Contact: Mark Bogan, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7257.

Filed: January 26, 1990, 10:44 a.m.

TRD-9000913

According to the complete agenda, the commission will consider and act on the office of the executive director's report on commission budget and fiscal matters,

administrative and procedural matters, personnel and staffing, state and federal legislation, and contracts and grants. Consider reorganization of various commission divisions; consolidation of positions; and appointment, reassignment and/or termination of various positions, including division directors. Consideration of reorganization of the well plugging program. The commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel.

Contact: Cril Payne, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-7274.

Filed: January 26, 1990, 10:43 a.m.

TRD-9000914

According to the complete agenda, the commission will consider and act on the OIS director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6710.

Filed: January 26, 1990, 10:43

TRD-9000915

Tuesday, February 20, 1990, 10 a.m. The Railroad Commission of Texas will meet at the William B. Travis Building, 12th Floor Conference Room, 1701 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a statewide hearing on oil and gas.

Contact: Paula Middleton, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6729.

Filed: January 26, 1990, 10:43

TRD-9000916

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Texas Real Estate Commission

Monday, February 5, 1990, 8:30 a.m. The Texas Real Estate Appraiser Certification Committee of the Texas Real Estate Commission will meet in the Conference Room, TREC Headquarters, 1101 Camino La Costa, Austin. According to the agenda summary, the committee will discuss the minutes of January 8, 1990 committee meeting; update on Title XI, real estate appraisal reform amendments of 1989; discussion and possible action to respond to proposed amendments to uniform standards of professional appraisal practice of the appraisal standards board of the appraisal foundation; discussion and possible action to respond to proposed guidelines for state certification and licensing of real estate appraisers by the appraisal subcommittee of the federal financial institutions examination council; discussion and possible action to approve

recommendations as to experience, education or examination required for appraiser certification; discussion of proposed application forms and draft rules concerning certification of appraisers; discussion of business valuation practices; selection of date and place of subsequent meetings.

Contact: Mark A. Moseley, 1101 Camino La Costa, Austin, Texas 78711, (512) 465-3960.

Filed: January 25, 1990, 1:55 p.m.

TRD-9000880

School Land Board

Tuesday, February 6, 1990, 10 a.m. The School Land Board will meet in the General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Room 831, Austin. According to the agenda, the board will discuss approval of the minutes of the previous board meeting; pooling applications, Cowtrap (Miocene 6100 and 6250), Brazoria and Matagorda Counties; Edgewood Northeast Field, Van Zandt and Rains Counties; excess acreage applications, Eastland/Erath Counties; Kimble County; good faith claimant application, Houston County; policy statement update report; discussion of Maragorda Island; report on excess acreage; coastal public lands-structure permit renewal requests, Kenedy, Brazoria and Kleberg Counties; easement application, Nueces Bay, Nueces County; executive session-report on El Paso County; executive session-ranch acquisitions; executive session-pending and proposed litigation.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78711, (512) 463-5016.

Filed: January 29, 1990, 4:01 p.m.

TRD-9001022

University Interscholastic League

Wednesday, January 31, 1990, 1:30 p.m. The Waiver Review Board of the University Interscholastic League held an emergency meeting at the Hyatt Regency Hotel, Ballroom, Austin. According to the agenda summary, the board heard appeal of student eligibility and waiver of UIL Four Year Rule for student a Central High School. The emergency status was necessary because the notification of appeal had just been received.

Contact: Bob Young, P.O. Box 8028, Austin, Texas 78713-8028, (512) 471-5883.

Filed: January 30, 1990, 8:45 a.m.

TRD-9001026

Texas Water Commission

Wednesday, January 31, 1990, 2 p.m. The Texas Water Commission met at 1700 North Congress Avenue, Stephen F. Austin Building, Room 118, Austin. According to the agenda summary, the commission considered various matters within the regulatory jurisdiction of the commission. In addition, the commission considered items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission took various actions, including but not limited to scheduling an item in the entirety or for particular action at a future date or time. The emergency status was necessary because of imminent threat to public health and safety.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

Filed: January 29, 1990, 10:46 a.m.

TRD-9000989

Wednesday, February 14, 1990, 2 p.m. The Texas Water Commission will meet at 1700 North Congress, Stephen F. Austin Building, Room 118, Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in the entirety or for particular action at a future date to time.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

Filed: January 29, 1990, 10:47 a.m.

TRD-9000988

Wednesday, March 14, 1990, 9 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin State Office Building, 1700 North Congress Avenue, Austin. According to the notice, the commission discuss application by J. R. and Helen Grimshaw, application number 5274, to divert and use not to exceed 25 acre-feet of water per annum from an exempt dam and reservoir on Rough Branch, tributary of Leon River, tributary of Little River, tributary of Brazos River, Brazos River Basin for irrigation of 35 acres, approximately 13.5 miles southeast of Eastland, Texas.

Contact: Terry Slade, P.O. Box 13087, Austin, Texas, 78711, (512) 371-6386.

Filed: January 25, 1990, 10:30 a.m.

TRD-9000876

Wednesday, March 28, 1990, 10 a.m. The Office of Hearings Examiner of the Texas

Water Commission will meet at the Tyler City Hall, Council Room Second Floor, 212 North Bonner Avenue, Tyler. According to the agenda summary, the hearings examiner will consider application by Tommy Johnson for proposed permit number 13491-01 authorizing discharge of treated domestic wastewater effluent to Bog Creek; thence to Clear Creek; thence to Little Cypress Creek in segment number 0409 of the Cypress Creek Basin.

Contact: James Murphy, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 26, 1990, 3:30 p.m.

TRD-9000933

Regional Meetings

Meetings Filed January 25, 1990

The Atascosa County Appraisal District Agricultural Advisory Board will meet at 1010 Zanderson, Jourdanton, February 5, 1990, at 8 a.m. Information may be obtained from Vernon A. Warren, 1010 Zanderson, Jourdanton, Texas 78026, (512) 769-2730.

The Edwards County Appraisal District Board of Directors will meet in the New County Annex Building, Rocksprings, February 2, 1990, at 10 a.m. Information may be obtained from Natalie McNealy, Box 378, Rocksprings, Texas 78880, (512) 683-4189.

The Lavaca County Central Appraisal District Board of Directors will meet at 113 North Main, Hallettsville, February 8, 1990, at 4 p.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396.

The Lower Colorado River Authority Board of Directors will meet at the Buchanan Dam Administration Building, Highway 29, twelve miles West of Burnet, Burnet, February 3, 1990, at 9 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3250.

TRD-9000865

Meetings Filed January 26, 1990

The Austin Transportation Study Planning Process Subcommittee met at the Austin Central Library, Fourth Floor Auditorium, 800 Guadalupe, Austin, January 31, 1990, at 2 p.m. Information may be obtained from Joseph P. Gieselman, 800 Barton Springs Road, Suite 700, Austin, Texas 78019, (512) 472-7483.

The Bosque Central Appraisal District Board of Directors met at 104 West Morgan Street, Meridan, January 31, 1990, at 8 p.m.

Information may be obtained from Don Whitney, 104 West Morgan Street, Meridian, Texas 76665, (817) 435-2304.

The Central Texas Economic Development District Executive Committee will meet at TSTI Food Service Technology Building, Avenue D, TSTI Campus, Waco, February 8, 1990, at 2 p.m. Information may be obtained from Bruce Gaines, P.O. Box 4408, Waco, Texas 76715, (817) 799-0258.

The Dallas Area Rapid Transit Procurement Ad Hoc Committee met at 601 Pacific Avenue, Dallas, January 30, 1990, at noon. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dallas Area Rapid Transit Arts Committee met at 601 Pacific Avenue, Dallas, January 30, 1990, at noon. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dallas Area Rapid Transit Committee-of-the-Whole met at 601 Pacific Avenue, Dallas, January 30, 1990, at 5 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dallas Area Rapid Transit Committee-of-the-Whole met at 601 Pacific Avenue, Dallas, January 30, 1990, at 5 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Hale County Appraisal District Board of Directors will meet at 302 West 8th Street, Plainview, February 1, 1990, at 7 p.m. Information may be obtained from Linda Jaynes, 302 West 8th Street, Plainview, Texas 79072, (806) 293-4226.

The Martin County Appraisal District Board of Directors will meet at 708 West St. Anna, Stanton, February 6, 1990, at 7 p.m. Information may be obtained from Elaine Stanley, P.O. Box 1349, Stanton, Texas 79782, (915) 756-2823.

TRD-9000895

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Meetings Filed January 29,
1990

The Bexar-Medina-Atascosa Counties Water Control 7 Improvement District Number 1 Board of Directors will meet in the District Office, Highway 81, Natalia, February 5, 1990, at 10 a.m. Information may be obtained from C. A. Mueller, P.O. Box 170, Natalia, Texas 78059, (512) 663-2132.

The Brazos Valley Development Council Criminal Justice Planning Advisory Committee will meet at 3006 East 29th Street, Suite 2, Bryan, February 8, 1990, at 10:30 a.m. Information may be obtained from Jill Hyde, 3006 East 29th Street, Bryan, Texas 77805, (409)-776-2277.

The Central Counties Center for Mental Health Mental Retardation Board of Trustees had an emergency meeting at the Killeen MHMR Center, 100 East Avenue A, Killeen, January 30, 1990, at 7 p.m.. The emergency status was necessary because of an addendum to agenda. Information may be obtained from Michael K. Muegge, 304 South 22nd, Temple, Texas 76501, (817) 778-4841.

The Ellis County Appraisal District met at 406 Sycamore Street, Waxahachie, February 1, 1990, at 6:30 p.m. Information may be obtained from Russell A. Garrison, P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552.

The Jack County Appraisal District Board of Directors will meet at the Los Creek Office Building, 216-D South Main Street, Jacksboro, February 2, 1990, at 7 p.m. Information may be obtained from Gary L. Zeidler or Donna Hartzell, 216-D South Main Street, Jacksboro, Texas 76056.

The Kendall County Appraisal District Appraisal Review Board will meet at 207 East San Antonio Street, Boerne, February 5, 1990, at 9 a.m. Information may be obtained from Sue R. Wiedenfeld, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012.

The Leon County Central Appraisal District Board of Directors met at the Leon County Central Appraisal District Office, Centerville, February 1, 1990, at 6 p.m. Information may be obtained from Robert M. Winn, P.O. Box 536, Centerville, Texas 75833, (214) 536-2252.

The Region VII Education Service Center Board of Directors will meet at the Days Inn, Highway 259 S, Henderson, February 15, 1990, at 7 p.m. Information may be obtained from Don J. Peters, 818 East Main, Kilgore, Texas, (214) 984-3071.

The Region 18 Education Service Center Board of Directors will meet at 2811 LaForce Boulevard, Midland, February 8, 1990, at 7:30 p.m. Information may be obtained from Vernon Stokes, P.O. Box 60580, Midland, Texas 79711, (915) 563-2380.

The Trinity River Authority of Texas Executive Committee will meet at 5300 South Collins, Arlington, February 2, 1990, at 10:30 a.m. Information may be obtained from Jack C. Worsham, 5300 South Collins, Arlington, Texas 76004, (817) 467-4343.

TRD-9000954

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In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture Request for Proposals

The Texas Agriculture Finance Authority and the Texas Department of Agriculture are requesting proposals from interested individuals and firms to act as the board's bond counsel on all items of financing necessary to the day to day operations of loan programs and the issuance of bonds under the Agriculture Code, Chapter 58, and from time to time other programs the board deems necessary and appropriate.

The bond counsel's responsibilities will include, but are not limited to, advice to the board and staff on the legal ramifications and constraints of proposed changes to investment policy; the legality of new loan policy proposals and legal aspects of anticipated impacts on investments and loan policy; the legality of proposed debt restructuring techniques; and real or anticipated changes in state and federal law, regulations, or public policy and the potential or real impact on existing or anticipated bond issues, investment policy, and loan policy.

With respect to new bond issues, bond counsel, in consultation with staff, will prepare all legal documents required by the board, comptroller of public accounts, state treasurer, attorney general, or outside parties; request and obtain approval of the bond issue from the attorney general, governor, and other required authorities; and review all financial models and render opinions on the legality and relevant tax position of the proposed scenario.

The last date on which proposals will be accepted is February 5, 1990.

Additional information may be obtained from Brian Muller, Program Manager, Texas Department of Agriculture, 1700 North Congress Avenue, Austin, Texas 79701.

Final selection of the bond counsel will be based on prior experience; organization, size, and structure of firm; qualifications of staff; responsiveness of written proposals to the purpose and scope of services; and costs.

Issued in Austin, Texas, on January 24, 1990.

TRD-9000926 Brian Muller
Program Manager
Texas Agricultural Finance Authority

Filed: January 26, 1990

For further information, please call: (512) 463-7583

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The Texas Agricultural Finance Authority (authority) and the Texas Department of Agriculture are requesting proposals from interested individuals and firms to act on the board's financial advisor on all items of financing necessary to the day to day operations of loan programs and the issuance of bonds under the Agriculture Code, Chapter 58, and, from time to time, other programs the board deems necessary and appropriate.

The financial advisor's responsibilities will include, but are not limited to, all the normal duties associated with advising the authority on bond issuance, investment policy, and loan policy, including: assisting the authority and bond counsel in preparation of bond orders authorizing the issuance of general obligation bonds and/or revenue bonds; assisting the authority in presentations to the major ratings agencies to obtain the best ratings possible for each class of bonds; advising the authority of current and projected loan markets conditions and the impact on short- and long-term authority investment and loan policy; advising the authority of any real or anticipated changes in state and federal law which will impact the future bond issues, investment policy, and loan policy; advising the authority on loan program design and structure to ascertain that the criteria desired by the authority meets and abides by rules of state and federal regulations; assisting the authority in the development of credit criteria and the design and management of a loan application review process; assisting the authority and bond counsel in preparation of loan and other financial agreements, review and/or preparation of resolutions of participating business, certificates, and such other documents as may be deemed necessary or appropriate for loan closings; assisting in the preparation of the preliminary official statements and the final official statements; assisting the authority in the design and management of revolving loan funds including arbitrage management, refunding, rebaring, debt service analysis, and any other program analysis that might be necessary for continued program operation, including recommendations and training for appropriate computer software; assisting the authority and bond counsel in preparation of such documents necessary to obtain approval from the attorney general and the Bond Review Board; and assisting the authority in the preparation of any other documents as are customary and necessary in issuance of the bonds and operations of the loan program.

The last date on which proposals will be accepted is February 16, 1990.

Additional information may be obtained from Brian Muller, Program Manager, Texas Department of Agriculture, 1700 North Congress Avenue, Austin, Texas 78701.

Final selection of the financial advisor will be based on experience, qualifications, adequacy of resources, responsiveness of proposal to scope of program, and costs.

Issued in Austin, Texas, on January 24, 1990.

TRD-9000927 Brian Muller
Program Manager
Texas Agricultural Finance Authority

Filed: January 26, 1990

For further information, please call: (512) 463-7583

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Request for Qualifications

The Texas Agricultural Finance Authority (authority) and the Texas Department of Agriculture are requesting a statement of qualifications from interested individuals and firms to act as the board's senior managing underwriter on all items of financing necessary to the day to day operations of loan programs and the issuance of bonds under the Agriculture Code, Chapter 58, and, from time to time, other programs the board deems necessary and appropriate.

The senior managing underwriter's responsibilities will include, but are not limited to, performing all the normal duties associated with the underwriting and sale of bonds, including: assistance in structuring the bond issues; advising the authority on the structure of the loan agreement with participating businesses; assistance in development of credit criteria and design and management of a loan application review process; advice concerning market conditions and the timing of the sale; assistance in the credit rating process; procurement of an underwriter's counsel (subject to the approval of the authority); assistance in the preparation of necessary documents related to the issue; development of a sale strategy and marketing plan; managing the syndicate prior to, during, and after the bond sale; conducting pre-sale briefings and information sessions; conducting the bond sale including "running the books" and, if necessary, underwriting; providing normal administrative services such as procurement of CUSIP number, establishment of account with DTC, etc.; and preparing a summary analysis of sale.

The last date on which responses will be accepted is

February 16, 1990.

Additional information may be obtained from Brian Muller, Program Manager, Texas Department of Agriculture, 1700 North Congress Avenue, Austin, Texas 78701.

Final selection of the senior managing underwriter will be based on experience, qualifications, adequacy of resources, responsiveness of proposal to scope of program, and costs.

Issued in Austin, Texas, on January 24, 1990.

TRD-9000925 Brian Muller
Program Manager
Texas Agricultural Finance Authority

Filed: January 26, 1990

For further information, please call: (512) 463-7583

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State Aircraft Pooling Board Notification of Rates for Aircraft Use

The following rates, indicated in bold type, are now in effect for the various types of aircraft operated by the State Aircraft Pooling Board. These rates have been established and are herein published in accordance with procedures developed by the Legislative Budget Board.

Also listed are approximate charges for a round trip flight to various cities in Texas. The charges have been calculated based on estimated flying times, and may differ from actual flight times due to weather condition or alternate routing by traffic controllers.

Round trip: Austin to and return	Waco	Hunts- ville	Del Rio	Wichita Falls	Amarillo
Type of Aircraft	196	260	408	516	824
Rate	Miles	Miles	Miles	Miles	Miles
Capacity*					
King Air 200 \$495/hr. 7 to 10	\$495.00	\$693.00	\$891.00	\$1,089.00	\$1,683.00
King Air 90 \$430/hr. 5 to 8	\$430.00	\$602.00	\$860.00	\$1,118.00	\$1,634.00
Cessna 425 \$395/hr. 5 to 7	\$395.00	\$553.00	\$790.00	\$948.00	\$1,422.00

Cessna 421 \$325/hr. 5 to 6	\$390.00	\$520.00	\$715.00	\$910.00	\$1,365.00
Cessna 402 \$250/hr. 4 to 5	\$350.00	\$400.00	\$600.00	\$750.00	\$1,150.00
Barron 58 \$245/hr. 3 to 4	\$343.00	\$392.00	\$588.00	\$735.00	\$1,127.00
Cessna 310 \$235/hr. 3 to 4	\$329.00	\$423.00	\$658.00	\$799.00	\$1,222.00

* The higher capacity for passengers allows minimal luggage and requires the use of the co-pilot's seat, and/or jump seat(s).

Issued in Austin, Texas, on January 26, 1990.

TRD-9000928 Bob DuLaney
Executive Director
State Aircraft Pooling Board

Filed: January 26, 1990

For further information, please call: (512) 477-8900

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Office of the State Auditor
Consultant Proposal Request

Notice of Invitation for Proposal: Pursuant to Texas Civil Statutes, Article 6252-11c, and Senate Bill Number 417, §11.913, Acts of the 71st Texas Legislature, (1989), the Office of the State Auditor invites offers from management firms for the purpose of obtaining a comprehensive performance audit of the Central Education Agency (CEA). The CEA is responsible for carrying out educational functions assigned by the legislature, and consists of the State Board of Education, the State Board of Vocational Education, the commissioner of education,

and the State Department of Education. The CEA carries out the following major educational functions: exercises general control of the system of public education at the state level; serves as the primary policy-making body for public education and directs the public school system as required by law; periodically reviews the educational needs of the state, establishes goals for the public school system, and adopts and promotes four-year plans for meeting these needs and goals; formulates budgets for the Foundation School Program and the CEA, and establishes procedures for budgetary control, expending, auditing, and reporting on expenditures within the budgets adopted; has responsibility for promoting efficiency and improvement in the public school system; advises school officials on the best methods of administering the public schools; issues teacher and administrator certificates; and establishes regulations for accreditation of schools and conducts accreditation reviews.

Description of Project: The performance audit is intended to provide a comprehensive analysis of the management processes and operating systems of the CEA. The objectives of the performance audit include: to review and analyze the organization and operations of the CEA;

to determine the adequacy and appropriateness of the current functions and administrative structure of the CEA; to identify barriers to the efficient and effective management of the CEA; to evaluate the adequacy and appropriateness of current methods used by the CEA to assess the effectiveness and efficiency of the public school system; and where advisable, recommend improvements in the CEA's current functions, management process, and organizational structure to ensure that the educational goals set forth by the legislature and the Board of Education are achieved in an effective and efficient manner.

Contact Person/RFP Instructions: The Office of the State Auditor will provide contract management for the audit. Detailed specifications concerning this project will be made available in proposal preparation instructions, which may be obtained on or after February 9, 1990, by submitting a written request to CEA Project, Office of the State Auditor, P. O. Box 12067, Austin, Texas, 78711-2067, attn: Dennis Ludwig. In order to ensure that all offerors have the same information and instructions concerning the preparation of proposals, all communication between offerors and the Office of the State Auditor prior to the submission of proposals shall be in writing.

Closing Date for Receipt of Offers: Written proposals offering to provide the requested consulting services may be hand-delivered between the hours of 8 a.m. and 5 p.m., Monday-Friday, or sent by certified mail to Dennis Ludwig, Assistant State Auditor, at the address specified previously. Proposals must be received by the Office of the State Auditor no later than 5 p.m. on March 9, 1990, except that proposals postmarked on or before March 7, 1990 and received subsequent to the closing date will also be considered.

Selection Process: An advisory committee composed of the chairman of the State Board of Education, the state auditor, and a member of the Legislative Education Board will review proposals submitted by offerors and recommend a firm to the Legislative Audit Committee for approval. In developing its recommendation to the Legislative Audit Committee, the advisory committee will consider: the demonstrated competence, knowledge, and qualifications of each individual who will work on the project, and of the management firm as a whole; the extent to which the proposed performance audit accomplishes the purpose and specifications of the RFP; the reasonableness of the proposed fee for the proposed performance audit; and when other considerations are equal, a management firm whose principal place of business is within the State of Texas, or who will manage the engagement wholly from one of its offices within the State of Texas, will be given preference. Final selection will be made by the Legislative Audit Committee in its sole discretion.

Project Timing and Cost: Contingent upon the negotiation of a contract with the offeror selected, the period of performance for the audit is anticipated to be April 16, 1990-October 1, 1990. The management firm selected to conduct the audit will be required to submit periodic progress reports to the advisory committee, according to a schedule and format to be specified by contract.

Offers in excess of \$400,000 in professional fees and expenses will not be considered.

General Information: The Office of the State Auditor reserves the right to accept or reject any (or all) proposals submitted. The information contained in this proposal request is intended to serve only as a general description of the services desired. Additional terms and conditions

relating to this proposal request will be provided in the proposal preparation instructions. The Office of the State Auditor intends to use responses hereto as a basis for further negotiation of specific project details with offerors, subject to the review of the advisory committee and the approval of the Legislative Audit Committee. Issuance of this consultant proposal request creates no obligation to award a contract or to pay any costs incurred in the preparation of a proposal.

Issued in Austin, Texas, on January 26, 1990.

TRD-9000943 Lawrence F. Alwin, CPA
State Auditor

Filed: January 26, 1990

For further information, please call: (512) 479-4900

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Texas Department of Aviation Correction of Error

The Texas Department of Aviation submitted proposed repealed and new sections under Chapter 63 Air Carrier Regulations, which contained substantive editorial errors in the preambles as published in the January 23, 1990, issue of the *Texas Register* (15 TexReg 335).

In the preambles to the proposed repeals and proposed new section the estimated savings should be \$18,000 not \$18 million as printed.

The paragraph should read as follows.

C. A. (Clay) Wilkins, executive director of the Texas Department of Aviation, has determined that for the first five-year period the section is in effect there will be no fiscal implications as a result of enforcing and administering the section, except an annual savings to the state government of the cost of 50% of one employee's salary and related administrative expenses, together estimated to total \$18,000 per year.

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Texas Department of Banking Notice of Application

Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a state bank to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the commissioner.

On January 19, 1990, the banking commissioner received an application to acquire control of IB Bancshares, Inc., Plano, thereby acquiring control of Independence Bank, Plano, by Ronald Samuels, Parker; Carl Eatherly, Plano; Dianna W. Skeeters, Radcliff, Kentucky; Jerry Dwight, Richardson; and James W. Parker, Plano.

Additional information may be obtained from: William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas, on January 24, 1990.

TRD-9000879 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: January 25, 1990

For further information, please call: (512) 479-1200

Notice of Hearing

The hearing officer of the State Banking Board will conduct a hearing on March 8, 1990, at 9 a.m., at 2601 North Lamar Boulevard, Austin on the change of domicile application for Prime Guaranty Trust Company, Dallas.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas, on January 23, 1990.

TRD-9000870 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: January 25, 1990

For further information, please call: (512) 479-1200

Comptroller of Public Accounts Correction of Error

The Comptroller of Public Accounts submitted an emergency §3.199, concerning Unregulated mixtures, which contained an error as published in the January 23, 1990, issue of the *Texas Register* (15 TexReg 305).

The effective date of the emergency adoption should read January 10, 1990.

Office of Consumer Credit Commissioner

Notice of Rate Bracket Adjustment

Pursuant to the provisions of House Bill 1228, 67th Legislature of Texas, 1981, the Consumer Credit Commissioner of Texas has ascertained the following dollar amounts of the brackets and ceilings in Texas Civil Statutes, Article 5069, by use of the formula and method

described in Revised Civil Statutes of Texas, as amended, Article 2.08, Title 79 (Texas Civil Statutes, Article 5069-2.08).

The ceiling amount in Article 3.01(1) is changes to \$9,000.

The amounts of the brackets in Article 3.15(1) are changes to \$1,080 and \$9,000, respectively.

The ceiling amount in Article 3.16(6) is changed to \$360.

The amounts of the brackets in Article 6.02(9)(a) are changes to \$1,800 and \$3,600, respectively.

The amount of the bracket in Article 6.03(3) is changes to \$1,800.

The ceiling amount in Article 51.12 is changed to \$9,000.

The amounts of the brackets in Article 51.12 are changed to \$108, \$360, and \$1,080, respectively.

The preceding dollar amounts of the brackets and ceilings shall govern all applicable credit transactions and loans made on or after July 1, 1990, and extending through June 30, 1991.

Computation method: The Reference Base Index (the Index for December, 1967) = 101.6. The December, 1989 Index = 371.1. The percentage of change is 365%. This equates to an increase of 360% after disregarding the percentage of change in excess of multiples of 10%.

Issued in Austin, Texas, on January 22, 1990.

TRD-9000846 Al Endsley
Consumer Credit Commissioner

Filed: January 24, 1990

For further information, please call: (512) 479-1280

Notice of Rate Ceilings

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

Type of Rate Ceilings	Effective Period (Dates are Inclusive)	Consumer ⁽³⁾ /Agri- cultural/Commercial ⁽⁴⁾ thru \$250,000	Commercial ⁽⁴⁾ over \$250,000
Indicated (Weekly) Rate - Art. 1.04(a)(1)	01/29/90-02/04/90	18.00%	18.00%
Monthly Rate ⁽¹⁾ Art. 1.04(c)	01/01/90-01/31/90	18.00%	18.00%
Standard Quarterly Rate - Art. 1.04(a)(2)	01/01/90-03/31/90	18.00%	18.00%

Retail Credit Card Quarterly Rate - Art. 1.11 ⁽³⁾	01/01/90-03/31/90	18.00%	N.A.
Lender Credit Card Quar- terly Rate - Art. 15.02(d) ⁽³⁾	01/01/90-03/31/90	15.19%	N.A.
Standard Annual Rate - Art. 1.04(a) ⁽²⁾	01/01/90-03/31/90	18.00%	18.00%
Retail Credit Card Annual Rate - Art. 1.11 ⁽³⁾	01/01/90-03/31/90	18.00%	N.A.
Annual Rate Applicable to Pre-July 1, 1983 Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from:	01/01/90-03/31/90	18.00%	N.A.
Judgment Rate - Art. 1.05, Section 2	02/01/90-02/28/90	10.00%	10.00%

- (1) For variable rate commercial transactions only.
- (2) Only for open-end credit as defined in Art. 5069-1.01(f) V.T.C.S.
- (3) Credit for personal, family or household use.
- (4) Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on January 22, 1990.

TRD-9000845 Al Endsley
Consumer Credit Commissioner

Filed: January 24, 1990

For further information, please call: (512) 479-1280



Texas Education Agency

Extension of Deadline for Request for Application

The Texas Education Agency is extending the deadline for submitting applications (RFA #701-90-035) from school districts which have incurred capital expenditures since July 1, 1985, or which will incur capital expenditures in providing equitable Chapter 1 services to eligible children in private, religiously-oriented schools under the ESEA Chapter 1 Regulations, §200.57. The deadline for submitting applications is 5 p.m., Friday, February 16, 1990.

Funds awarded under the capital expenses provision of Chapter 1 may be used to provide services to public or private school children depending upon how the capital expenditures were funded during the period July 1, 1985-June 30, 1989, or to purchase capital expenses items: i.e., purchase, lease, and renovation of real and personal property; insurance and maintenance costs; transportation; and other comparable goods and services. They do not include the purchase or lease of instructional equipment such as computers.

Payments under capital expenses will be made to those school districts that apply on the basis of need. The total amount of funds available for Texas under the capital expense provision for 1989-1990 is \$537,764.

Due to the limited amount of funds available, grants will be made on a competitive-need basis.

To obtain a copy of the request for application, call (512) 463-9304 or write the Document Control Center, 1701 North Congress Avenue, Austin, Texas 78701-1494. Applications may be delivered by mail or in person to the Document Control Center, Room 6-108, Texas Education Agency. To be considered for funding, applications must

be received no later than 5 p.m., Friday, February 16, 1990.

The request for applications originally appeared in the December 15, 1989, issue of the *Texas Register* (14 TexReg 6570).

Issued in Austin, Texas, on January 26, 1990.

TRD-9000942 W. N. Kirby
Commissioner of Education

Filed: January 26, 1990

For further information, please call: (512) 463-9701

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Employees Retirement System of Texas

**Employees Retirement System of
Texas—Consultant Contract
Award—Texas Employees Uniform
Group Insurance Program**

**Annual Audit of the Insurance Carrier's
Claims Operation**

The award of this contract for audit consultant services is filed under the provisions of Texas Civil Statutes, Article 6252-11c. The Employees Retirement System of Texas (ERS) published a request for proposal in the October 27, 1989, issue of the *Texas Register* at (14 TexReg 5750) to conduct the annual audit of the insurance carrier's operations under the Texas Employees Uniform Group Insurance Program.

The proposal selected was that of Coopers and Lybrand, 600 Congress Avenue, 1800 One American Center, Austin, Texas 78701.

The contract will have a beginning date of January 19, 1990, and an ending date of April 19, 1990, for a total value of \$33,000.

The final report prepared by Coopers and Lybrand will be presented to the ERS within 90 days of the effective date of the contract.

Issued in Austin, Texas, on January 25, 1990.

TRD-9000858 Clayton T. Garrison
Executive Director
Employees Retirement System of Texas

Filed: January 24, 1990

For further information, please call: (512) 476-6431, ext. 213

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**Employees Retirement System of
Texas—Texas Employee Uniform Group
Insurance Program—Implementation of
the Strategic Plan**

Pursuant to Texas Civil Statutes, Article 6252-11c, the Employees Retirement System of Texas (ERS) announces a request for proposals (RFP) to implement the Strategic Plan for the Texas Employees Uniform Group Insurance Program. Such engagement shall include, but not be limited to, assistance to the ERS staff in the implementation of each element of the strategic plan, periodic monitoring of the strategic plan implementation results with the ERS staff, development of a recommendation for each identified implementation element, and communication of the findings, recommendations and action plan to the ERS Board of

Trustees.

Firms wishing to respond to the request should have superior recognized expertise and specialization in the review and planning of employee benefit programs, State of Texas policies and procedures, plan and benefit design, and insurance administration.

The RFP instructions which detail information regarding the project are available upon request from the Employees Retirement System of Texas.

The deadline for receipt of the proposals in response to this request will be 5 p.m. on March 1, 1990.

ERS reserves the right to reject any or all proposals submitted. ERS is under no legal requirement to execute a resulting contract on the basis of this request.

ERS intends to use responses as a basis for further negotiations of specific project details. ERS will base its choice on cost, demonstrated competence, superior qualifications, and evidence of conformance with the RFP criteria.

This RFP does not commit ERS to pay any costs incurred prior to execution of the contract. Issuance of this material in no way obligates ERS to award a contract or to pay any costs incurred in the preparation of a response. ERS specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where ERS deems it to be in the best interest of the State of Texas.

For further information regarding this notice, or to obtain copies of the RFP instructions, please contact James W. Sarver, Employees Retirement System of Texas, Group Insurance Division, 18th and Brazos, P.O. Box 13207, Austin, Texas 78711-3207, (512) 476-6431, extension 217.

Issued in Austin, Texas, on January 26, 1990.

TRD-9000955 Clayton T. Garrison
Executive Director
Employees Retirement System of Texas

Filed: January 29, 1990

For further information, please call: (512) 476-6431, ext. 213

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**Office of the Governor, Criminal
Justice Division**

**Texas Narcotics Control Program, 1990
Grant Program Announcement**

Under the provisions of the Anti-Drug Abuse Act of 1988 (Public Law 100-690), Texas will receive a grant in the amount of \$23.9 million (federal fiscal year 1990 appropriation) to provide funding for the Texas Narcotics Control Program (TNCP). The governor has designated the Criminal Justice Division, Office of the Governor, to administer the program in the form of grants to units of government, as authorized by the Act. The Criminal Justice Division (CJD) is now accepting grant applications for eligible projects from state agencies and local units of government.

Programs will focus on drug law enforcement, with emphasis on persons who violate state and local laws relating to the production, possession, and transfer of controlled substances. The funds may be used to support projects which improve the apprehension, prosecution, adjudication, or identification of drug offenders for rehabilitation at the time of detention.

Eligible projects. Only those projects designed for the purpose of enforcing state and local laws that establish offenses similar to offenses established in the Controlled Substances Act (21 United States Code 801, et. seq.), and improve the functioning of the criminal justice system with emphasis on violent crime and serious offenders are eligible for grant funding. Such projects must conform to the authorized program areas as specified in the TNCP 1990 application kit and prioritized by the *Statewide Strategy for Drug and Violent Crime Control*, (January 1990), available from CJD. Additionally, to be eligible, each project must be operated by a state agency, local unit of government, or by a combination thereof; each project must demonstrate that it will carry out congressional intent, which is to ensure that the federal assistance provided is coordinated and integrated with state and local drug enforcement efforts, and that the maximum impact on the drug trafficking problem in the state is achieved; and each project must be funded by 75% federal funds and 25% non-federal funds. A 25% local cash match is required.

Significant Restrictions and Special Requirements. Grantee must comply with numerous state and federal certifications and special conditions, as detailed in the 1990 application kit, which govern use of this formula grant. Total capital expenditures cannot exceed 20% of the total amount of an individual grant. Required cash match can be provided by generated program income. The grant project period for any projects funded by this available block of funds will commence June 1, 1990, for a 12-month period.

Alcohol-related programs may not be funded under the TNCP, as the Controlled Substances Act expressly states that distilled spirits are not considered a controlled substance. Funds may not be used to replace federal, state, or local funds that would have been available for narcotics control programs in the absence of Anti-Drug Abuse Act funding. All applications must comply with the program criteria and applicable rules of CJD, and must be submitted in the form prescribed by CJD. CJD reserves the right to negotiate modifications to improve the quality and cost effectiveness of any proposed project and to recommend to the governor the acceptance, the acceptance with modification, or rejection of any grant application. This announcement in no way obligates CJD to award grant funds or to pay any costs incurred by applicants as a result of responding to this announcement.

Submission Deadline. Applications must be received by CJD no later than 5 p.m. on Thursday, March 15, 1990. Applicants must submit copies of applications to the state single point of contact or the regional review agency for review as required under the Texas Review and Comment System (TRACS).

Application Materials. Application kits, forms, and all materials necessary to complete a grant application for this program are available through the CJD or the regional councils of governments. The Criminal Justice Division will conduct a technical assistance workshop for prospective grant applicants on Thursday, February 8, 1990, from 9 a.m. until 4 p.m. The location is the Austin Marriott at the Capitol, 701 East 11th Street, Austin, (512) 478-1111. No pre-registration or fee is required for the workshop.

Issued in Austin, Texas, on January 26, 1990.

TRD-9000979

David R. Millard, III
Deputy General Counsel
Office of the Governor, Criminal Justice
Division

Filed: January 29, 1990

For further information, please call: (512) 463-1919

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Texas Department of Health Request for Proposals

Background. In May 1985, the 69th Legislature of the State of Texas enacted into law The Texas Primary Health Care Services Act, Texas Civil Statutes, Article 4438d. This law provides for the delivery of primary health care services to eligible low income individuals who are not eligible for other programs. The Texas Department of Health was given the responsibility for implementing this Act.

During the 71st Legislature, new program funding of \$500,000 for Fiscal Year 1991 was appropriated to expand program efforts to rural counties with no hospitals, troubled hospitals or closed hospitals. Senate Concurrent Resolution 54 directs the department to target these areas for new primary care projects that improve access to primary care services for the medically indigent and stabilize local health care delivery systems. It is expected that only two to three projects will be funded in Fiscal Year 1991.

General Information. Application packets will be available March 1, 1990. Completed proposals from eligible counties must be received by the Texas Department of Health, aSsociateship for Personal Health Services, Primary Health Care Program, 1100 West 49th Street, Austin, Texas 78756, the local Council of Governments, and the Texas Department of Health Regional Office at the close of the business day on April 16, 1990. Submission of four copies to the Texas Department of Health Central Office and one copy each to the local Council of Governments and the Texas Department of Health Regional Office will be required.

Length of Funding. The initial funding will be for 12 months starting September 1, 1990, with subsequent funding for 12 month periods following the state fiscal year and satisfactory performance of program objectives. Additionally, funding beyond FY 1991 will be dependent upon legislative action. Applicants approved for funding will be notified no later than July 1, 1990. After the awards have been granted, a contract will be negotiated between the Texas Department of Health and the selected providers.

Qualification of Applicant. Potential contractors must serve specified counties and ensure that they have the capability, facilities and all required special resources readily available within the community to meet and to satisfactorily perform the services identified in their proposal. All contractors must provide documentation of the contractor's ability to establish a comprehensive health care system which will ensure both the provision of and access to (at the least) the six initial service priorities to include: diagnosis and treatment; emergency services; family planning services; preventative health services, including immunizations; health education; and laboratory, x-ray, nuclear medicine, or other appropriate diagnostic services.

Application Procedure. More detailed information may be obtained from the program.

The contact person is John Dombroski, Director of the Primary Care Program, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7771.

Review of Applicant's Proposal. Each application will be evaluated independently on the following proposal sections: project summary; needs assessment; solution; plan of operation; service delivery; evaluation and monitoring.

Review of proposals will be completed by staff at the area Council of Governments, the Texas Department of Health Public Health Regional Office, the Texas Department of Health and the State Primary Care Advisory Committee. This committee will forward its final recommendations to the department for final project selection.

Issued in Austin, Texas, on January 24, 1990.

TRD-9000868 Robert A. MacLean, M.D.
Deputy Commissioner of Professional
Services
Texas Department of Health

Filed: January 25, 1990

For further information, please call: (512) 458-7236



Requests For Proposals (Amendment)

The period of time for responding to the Request For Proposal entitled Massage Therapy Written and Practical Examination Administration has been extended to no later than 5 p.m. on Friday, February 2, 1990. The request for proposal was originally published in the January 12, 1990, issue of the *Texas Register* (15 TexReg 234). Entities interested in submitting a proposal shall contact Mr. James J. Zukowski, Assistant Director, Professional Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 458-7539 or (512) 458-7636 (Fax) for information regarding the full proposal.

Issued in Austin, Texas, on January 25, 1990

TRD-9000904 Robert A. MacLean, M.D.
Deputy Commissioner for Professional
Services
Texas Department of Health

Filed: January 26, 1990

For further information, please call: (512) 458-7539



Texas Department of Human Services Invitation to Bid

The Texas Department of Human Services (TDHS) announces an invitation to bid (ITB) for purchased food stamp issuance services. TDHS uses a competitive procurement process to ensure and document that services are of the highest quality, lowest price, and best meet the needs of the clients served.

Description of services. Over-the-counter food stamp issuance is the exchange of food coupon booklets for authorization to participate (ATP) forms. ATP forms will specify client name, case number, ID and issuance numbers, total benefit amount, number of each denomination booklets to be issued, and month valid. Food stamp clients will present issuance agent with ATPs and ID cards. Issuance agent will check to see that the ID card serial number matches the corresponding number on the ATP form. If they match and the ATP is valid for the current month, the client will sign the ATP form in the presence of the issuance agent, who will then exchange the indicated number of each denomination of booklets for the signed ATP form. The issuance agent will write the issuance verification code (from the ID card) on the ATP

form, date stamp the ATP form and later batch it for daily delivery to TDHS. To contract with TDHS the contractor must comply with applicable federal and state laws, regulations and policies; TDHS standards applicable to the service being purchased; accounting principles and procedures recognized by the American Institute of Certified Public Accountants; and contractual terms such as those relating to sufficient operating capital, an all-risk insurance policy naming TDHS as the guaranteed loss payee, assumption of liability for redemption errors, losses and audit exceptions, and contract termination. TDHS will procure over-the-counter food stamp issuance services in Hidalgo County.

Terms of contract. The contract will be for one 12 month period. TDHS has the option to renew the contract on a non-competitive basis for a limited number of additional periods. The contractor will be paid on a fee-per-transaction basis for each eligible ATP form processed.

Procedures for awarding contract. Only proposals meeting the requirements of the procurement will be considered for contract award. A contract will be awarded to the lowest bidder whose proposal meets the specified requirements.

Contact person. To request an ITB package or additional information, contact Margarete Kaylor, Client Self-support Services Administrative Management (785-W), Texas Department of Human Services, 701 West 51st Street, P.O. Box 149030, Austin, Texas 78714-9030; (512) 450-3467.

Closing date. Sealed bids must be received by Margarete Kaylor no later than 3 p.m., March 15, 1990.

Issued in Austin, Texas, on January 29, 1990.

TRD-9000961 Cathy Rossberg
Agency liaison, Policy Communication
Services
Texas Department of Human Services

Filed: January 29, 1990

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



Notice of Correction

The Texas Department of Human Services (TDHS) filed a public notice of intent to procure family violence services in the January 26, 1990, issue of the *Texas Register* (15 TexReg 465). The following sentence was omitted from the notice before the listing of the shelters: TDHS intends to contract with the following family violence shelters in Fiscal Year 1991 (September 1-August 31):

Issued in Austin, Texas, on January 29, 1990.

TRD-9000960 Cathy Rossberg
Agency liaison, Policy Communication
Services
Texas Department of Human Services

Filed: January 29, 1990

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



Notice of Public Hearing

The Texas Department of Human Services (DHS) will conduct a hearing to accept comments on proposed amendments to 40 TAC §49.1501 and §49.1502, concerning discipline of children in the department's managing conservatorship. The proposed amendments

establish a uniform policy regarding discipline of children who are in placement with nonrelatives. The policy is intended to promote uniformity in the treatment of children in the department's managing conservatorship and reduce the likelihood of physically abusive discipline. The proposed amendments were published in the January 23, 1990, issue of the *Texas Register* (15 TexReg 325). The hearing will begin at 9 a.m. Monday, February 12, 1990, in the department's public hearing room, First Floor, East Tower, 701 West 51st Street, Austin.

Issued in Austin, Texas, on January 26, 1990.

TRD-09000949 Cathy Rossberg
Agency Liaison, Policy Communication
Services
Texas Department of Human Services

Filed: January 26, 1990.

For further information, please call: 450-3765

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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 incorporation in Texas of Insurance Service Center, Inc., a domestic third party administrator. The home office is in San Antonio.
2. Application for incorporation in Texas of Lindsey and Lindsey, Inc., a domestic third party administrator. The home office is in Beaumont.
3. Application for admission to do business in Texas of National Premium and Benefit Administration Company, a foreign third party administrator. The home office is in Dover Delaware.

Issued in Austin, Texas, on January 24, 1990.

TRD-9000935

Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: January 26, 1990

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

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Texas Medical Disclosure Panel
Texas Medical Disclosure Panel Medical
Treatment and Surgical Procedures

The Medical Liability and Insurance Improvement Act, Texas Civil Statutes, Article 4590i, §6.04, requires the Texas Medical Disclosure Panel (panel) to prepare separate lists of medical treatments and surgical procedures that do and do not require disclosure of the possible risks and hazards by physicians and health care providers to patients or persons authorized to consent for the patients. Section 6.04 also requires the panel to establish the degree of disclosure required and the form for disclosure. In compliance with the Act, the panel has prepared List A (covering treatments and procedures which require full disclosure), List B (treatments and procedures which do not require disclosure), and a disclosure and consent form. List A, List B, and the form are adopted by reference in 25 TAC §§601.1, 601.2, and 601.3 respectively.

Article 4590i, §6.04, further requires the panel to publish the lists and amendments to them in the *Texas Register*. In the adopted rule section of this issue of the *Texas Register*, the panel now adopts an amendment to §601.1, concerning List A, an amendment to §601.3, concerning the disclosure and consent form, and adopts new §601.4, concerning a radiation therapy disclosure and consent form. The text of the amendments to the list in §601.1, and the form in new §6.04 are published as follows. Further information about the adopted amendments and new section is contained in the adopted rule section.

601.1. **Procedures Requiring Full Disclosure (List A).** The following treatments and procedures require full disclosure by the physician or health care provider to the patient or person authorized to consent for the patient.

1. - 17. (No change.)

18. **RADIATION THERAPY**

(A child is defined for the purpose of this subsection as an individual who is not physiologically mature as determined by the physician using the appropriate medical parameters.)

1. **HEAD AND NECK**

1. Early Reactions

1. Reduced and sticky saliva, loss of taste and appetite, altered sense of smell, nausea.
2. Sore throat, difficulty swallowing, weight loss, fatigue.
3. Skin changes: redness, irritation, scaliness, blistering or ulceration, color change, thickening, hair loss.
4. Hoarseness, cough, loss of voice, and swelling of airway.
5. Blockage and crusting of nasal passages.
6. Inflammation of ear canal, feeling of "stopped up" ear, hearing loss, dizziness.
7. Dry and irritable eye(s).
8. In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.
9. In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

2. Late Reactions

1. Dry mouth and altered sense, or loss, of taste.
2. Tooth decay and gum changes.
3. Bone damage, especially in jaws.
4. Stiffness and limitation of jaw movement.
5. Changes in skin texture and/or coloration, permanent hair loss, and scarring of skin.

6. Swelling of tissues, particularly under the chin.
7. Throat damage causing hoarseness, pain or difficulty breathing or swallowing.
8. Eye damage causing dry eye(s), cataract, loss of vision, or loss of eye(s).
9. Ear damage causing dryness of ear canal, fluid collection in middle ear, hearing loss.
10. Brain, spinal cord or nerve damage causing alteration of thinking ability or memory, and /or loss of strength, feeling or coordination in any part of the body.
11. Pituitary or thyroid gland damage requiring long-term hormone replacement therapy.
12. In children, there may be additional late reactions as follows:
 1. Disturbances of bone and tissue growth.
 2. Bone damage to face causing abnormal development.
 3. Brain damage causing a loss of intellectual ability, learning capacity, and reduced intelligence quotient (I.Q.).
 4. Second cancers developing in the irradiated area.

2. CENTRAL NERVOUS SYSTEM

1. Early Reactions

1. Skin and scalp reaction with redness, irritation, scaliness, blistering, ulceration, change in color, thickening, hair loss.
2. Nausea, vomiting, headaches.
3. Fatigue, drowsiness.
4. Altered sense of taste or smell.
5. Inflammation of ear canal, feeling of "stopped-up" ear, hearing loss, dizziness.
6. Depression of blood count leading to increased risk of infection and/or bleeding.
7. In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.
8. In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

2. Late Reactions

1. Permanent hair loss of variable degrees, altered regrowth, texture and color of hair.
2. Persistent drowsiness and tiredness.
3. Brain damage causing a loss of some degree of thinking ability or memory, or personality changes.
4. Scarring of skin.
5. Spinal cord or nerve damage causing loss of strength, feeling or coordination in any part of the body.
6. Damage to eye(s), or optic nerve(s) causing loss of vision.
7. Ear damage causing dryness of ear canal, fluid collection in middle ear, hearing loss.
8. Pituitary gland damage requiring long-term hormone replacement therapy.
9. In children, there may be additional late reactions as follows:
 1. Disturbances of bone and tissue growth.
 2. Bone damage to spine, causing stunting of growth, curvature and/or reduction in height.
 3. Bone damage to face, or pelvis causing stunting of bone growth and/or abnormal development.
 4. Brain damage causing a loss of intellectual ability, learning capacity, and reduced intelligence quotient (I.Q.).
 5. Second cancers developing in the irradiated area.

3. THORAX

1. Early Reactions

1. Skin changes: redness, irritation, scaliness, ulceration, change in color, thickening, hair loss.
2. Inflammation of esophagus causing pain on swallowing, heartburn, or sense of obstruction.
3. Loss of appetite, nausea, vomiting.

4. Weight loss, weakness, vomiting.
5. Inflammation of the lung with pain, fever and cough.
6. Inflammation of the heart sac with chest pain and palpitations.
7. Bleeding or creation of a fistula resulting from tumor destruction.
8. Depression of blood count leading to increased risk of infection and/or bleeding.
9. Intermittent electric shock-like feelings in the lower spine or legs on bending the neck.
10. In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.
11. In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

2. Late Reactions

1. Changes in skin texture and/or coloration, permanent hair loss and scarring of skin.
2. Lung scarring or shrinkage causing shortness of breath.
3. Narrowing of esophagus causing swallowing problems.
4. Constriction of heart sac which may require surgical correction.
5. Damage to heart muscle or arteries leading to heart failure.
6. Fracture of ribs.
7. Nerve damage causing pain, loss of strength or feeling in arms.
8. Spinal cord damage causing loss of strength or feeling in arms and legs, and/or loss of control of bladder and rectum.
9. In children, there may be additional late reactions as follows:
 1. Disturbances of bone and tissue growth.
 2. Bone damage to spine, causing stunting of growth, curvature and/or reduction in height.
 3. Underdevelopment or absence of development of female breast.
 4. Second cancers developing in the irradiated area.

4. BREAST

1. Early Reactions

1. Skin changes: redness, irritation, scaliness, blistering, ulceration, coloration, thickening, and hair loss.
2. Breast changes including swelling, tightness, or tenderness.
3. Inflammation of the esophagus causing pain on swallowing, heartburn, or sense of obstruction.
4. Lung inflammation with cough.
5. Inflammation of heart sac with chest pain and palpitations.

2. Late Reactions

1. Changes in skin texture and/or coloration, permanent hair loss, scarring of skin.
2. Breast changes including thickening, firmness, tenderness, shrinkage.
3. Swelling of arm.
4. Stiffness and discomfort in shoulder joint.
5. Rib or lung damage causing pain, fracture, cough, shortness of breath.
6. Nerve damage causing pain, loss of strength or feeling in arm.
7. Damage to heart muscle or arteries or heart sac leading to heart failure.

5. ABDOMEN

1. Early Reactions

1. Skin changes: redness, irritation, scaliness, ulceration, coloration, thickening, hair loss.
2. Loss of appetite, nausea, vomiting.
3. Weight loss, weakness, fatigue.
4. Inflammation of stomach causing indigestion, heartburn, and ulcers.
5. Inflammation of bowel causing cramping and diarrhea.

6. Depression of blood count leading to increased risk of infections and/or bleeding.
7. In children, these reactions are likely to be intensified by chemotherapy before, during and after radiation therapy.
8. In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

2. Late Reactions

1. Changes in skin texture and/or coloration, permanent hair loss, scarring of skin.
2. Stomach damage causing persistent indigestion, pain, and bleeding.
3. Bowel damage causing narrowing or adhesions of bowel with obstruction, ulceration, or bleeding which may require surgical correction, chronic diarrhea, or poor absorption of food elements.
4. Kidney damage leading to kidney failure and/or high blood pressure.
5. Liver damage leading to liver failure.
6. Spinal cord or nerve damage causing loss of strength or feeling in legs and/or loss of control of bladder and/or rectum.
7. In children, there may be additional late reactions as follows:
 1. Disturbances of bone and tissue growth.
 2. Bone damage to spine causing stunting of growth, curvature and/or reduction in height.
 3. Bone damage to pelvis causing stunting of bone growth and/or abnormal development.
 4. Second cancers developing in the irradiated area.

6. FEMALE PELVIS

1. Early Reactions

1. Inflammation of bowel causing cramping and diarrhea.
2. Inflammation of rectum and anus causing pain, spasm, discharge, bleeding.
3. Bladder inflammation causing burning, frequency, spasm, pain, bleeding.

4. Skin changes: redness, irritation, scaliness, blistering or ulceration, coloration, thickening, hair loss.
5. Disturbance of menstrual cycle.
6. Vaginal discharge, pain, irritation, bleeding.
7. Depression of blood count leading to increased risk of infection and/or bleeding.
8. In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.
9. In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

2. Late Reactions

1. Bowel damage causing narrowing or adhesions of the bowel with obstruction, ulceration, bleeding, chronic diarrhea, or poor absorption of food elements and may require surgical correction or colostomy.
2. Bladder damage with loss of capacity, frequency of urination, blood in urine, recurrent urinary infections, pain, or spasm which may require urinary diversion and/or removal of bladder.
3. Changes in skin texture and/or coloration, permanent hair loss, scarring of skin.
4. Bone damage leading to fractures.
5. Ovarian damage causing infertility, sterility, or premature menopause.
6. Vaginal damage leading to dryness, shrinkage, pain, bleeding, or sexual dysfunction.
7. Swelling of the genitalia or legs.
8. Nerve damage causing pain, loss of strength or feeling in legs, and/or loss of control of bladder or rectum.
9. Fistula between the bladder and/or bowel and/or vagina.
10. In children, there may be additional late reactions as follows:
 1. Disturbances of bone and tissue growth.
 2. Bone damage to pelvis and hips causing stunting of bone growth and/or abnormal development.
 3. Second cancers developing in the irradiated area.

7. MALE PELVIS

1. Early Reactions

1. Inflammation of bowel causing cramping and diarrhea.
2. Inflammation of rectum and anus causing pain, spasm, discharge, bleeding.
3. Bladder inflammation causing burning, frequency, spasm, pain, and/or bleeding.
4. Skin changes: redness, irritation, scaliness, blistering or ulceration, coloration, thickening, hair loss.
5. Depression of blood count leading to increased risk of infection and/or bleeding.
6. In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.
7. In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

2. Late Reactions

1. Bowel damage causing narrowing or adhesions of the bowel with obstruction, ulceration, bleeding, chronic diarrhea, or poor absorption of food elements and may require surgical correction or colostomy.
2. Bladder damage with loss of capacity, frequency of urination, blood in urine, recurrent urinary infections, pain, or spasm which may require urinary diversion and/or removal of bladder.
3. Changes in skin texture and/or coloration, permanent hair loss, scarring of skin.
4. Bone damage leading to fractures.
5. Testicular damage causing reduced sperm counts, infertility, sterility, or risk of birth defects.
6. Impotence (loss of erection), or sexual dysfunction.
7. Swelling of the genitalia or legs.
8. Nerve damage causing pain, loss of strength or feeling in legs, and/or loss of control of bladder or rectum.
9. Fistula between the bowel and other organs.

10. In children, there may be additional late reactions as follows:
 1. Disturbances of bone and tissue growth.
 2. Bone damage to pelvis and hips causing stunting of bone growth and/or abnormal development.
 3. Second cancers developing in the irradiated area.

8. SKIN

1. Early Reaction

1. Redness, irritation, or soreness.
2. Scaliness, ulceration, crusting, oozing, discharge.
3. Hair loss.
4. These reactions are likely to be intensified by chemotherapy.

2. Late Reactions

1. Changes in skin texture causing scaly or shiny smooth skin, thickening with contraction, puckering, scarring of skin.
2. Changes in skin color.
3. Prominent dilated small blood vessels.
4. Permanent hair loss.
5. Chronic or recurrent ulcerations.
6. Damage to adjacent tissues including underlying bone or cartilage.
7. In children, second cancers may develop in the irradiated area.

9. EXTREMITIES

1. Early Reactions

1. Skin changes: redness, irritation, scaliness, ulceration, coloration, thickening, hair loss.
2. Inflammation of soft tissues causing tenderness, swelling, and interference with movement.
3. Inflammation of joints causing pain, swelling and limitation of joint motion.

4. In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.
5. In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

2. Late Reactions

1. Changes in skin reaction and/or coloration, permanent hair loss and scarring of the skin.
2. Scarring or shrinkage of soft tissues and muscle causing loss of flexibility and movement, swelling of the limb.
3. Nerve damage causing loss of strength, feeling or coordination.
4. Bone damage causing fracture.
5. Joint damage causing permanent stiffness, pains and arthritis.
6. Swelling of limb below the area treated.
7. In children, there may be additional late reactions as follows:
 1. Disturbances of bone and tissue growth.
 2. Bone damage to limbs causing stunting of bone growth and/or abnormal development.
 3. Second cancers developing in the irradiated area.

10. TOTAL BODY IRRADIATION

1. Early Reactions

1. Loss of appetite, nausea, vomiting.
2. Diarrhea.
3. Reduced and sticky saliva, swelling of the salivary gland(s), loss of taste.
4. Hair loss.
5. Sore mouth and throat, difficulty swallowing.
6. Permanent destruction of bone marrow leading to infection, bleeding, and possible death.
7. Inflammation of the lung with fever, dry cough and difficulty breathing with possible fatal lung failure.

8. Damage to liver with possible fatal liver failure.
9. In children, these reactions are likely to be intensified by chemotherapy before, during or after radiation therapy.
10. In children, depression of blood count leading to increased risk of infection and/or bleeding is more common.

2. Late Reactions

1. Lung scarring causing shortness of breath, infection, and fatal lung failure.
2. Cataract formation in the eyes, possible loss of vision.
3. Testicular damage in males causing sterility.
4. Ovarian damage in females causing premature menopause and sterility.
5. Increased risk of second cancer.

604.4. Radiation Therapy Disclosure and Consent Form. The following form will be used by the physicians or health care provider to inform the patient or person authorized to consent for the patient of the possible risks and hazards involved in the radiation therapy named in the form.

Disclosure and Consent For Radiation Therapy

As a patient, you have the right to be informed about your condition and the recommended radiation therapy procedure to be used to treat your condition. This disclosure is not meant to alarm you; however, there are certain risks which are associated with radiation therapy. This explanation is intended to inform you of those risks so that you may give or withhold your consent to the recommended procedure on an informed basis. Please carefully review the following and if you choose to proceed with this treatment, sign this consent in the space below:

I hereby voluntarily request and authorize Dr. _____ as my physician, and such associates, technicians and the health care providers as they may deem necessary to treat my condition which has been explained to me as:

I understand that my condition may be treated with external beam radiation therapy alone, with internal radiation implant alone or with both or in planned combination with surgery and/or chemotherapy.

I understand that the following radiation therapy procedure(s) are planned for me and I consent to and authorize these procedure(s) (specify technique and site):

I further authorize the taking of photographs or placing of tattoo or skin marks necessary for treatment.

ALL FEMALES MUST COMPLETE: I understand that radiation can be harmful to the unborn child.

I am, I could be, I am not pregnant.

I understand that there may be side-effects or complications from radiation therapy, either during or shortly after the course of treatment ("early reactions"), or some time later ("late reactions"). Any of the side-effects or complications may be temporary or permanent.

Disclosure and Consent For Radiation Therapy

These reactions may be worsened by chemotherapy or surgery before, during or after radiation therapy or by previous radiation therapy to the same area.

Early and late reactions which could occur as a result of the procedure(s) are listed below. With few exceptions, these reactions affect only the areas actually receiving radiation therapy.

[Place list(s) for specific region or regions of the body receiving radiation therapy here. A single form may be used for multiple regions or a separate form may be used for each separate region.]

The nature and purpose of the proposed procedure, the alternative methods of treatment, and the risks and hazards if treatment is withheld have been explained to me by my physician. I have had an opportunity to discuss these matters with my physician and to ask questions about my condition, alternative methods of treatment and the proposed procedure(s). I understand that no warranty or guarantee has been made to me as to result or cure.

Patient/Other Legally Responsible Person (Signature)

Date: _____

Time: _____

A.M.
P.M.

Witness

Address

Issued in Austin, Texas, on January 26, 1990.

TRD-9000940 James H. Duke, Jr., M.D.
Chairman
Texas Medical Disclosure Panel

Filed: January 26, 1990

For further information, please call: (512) 458-7245

◆ ◆ ◆
Board of Vocational Nurse Examiners
Correction of Error

The Board of Vocational Nurse Examiners submitted proposed rules which contained errors as submitted by the board and as published in the January 23, 1990 issue of the *Texas Register* (15 TexReg 309).

In §231.90, subsection (e) was omitted and (f) was mislabeled as (e). Subsection (e) should read as follows. "(e) The final decision or order must be rendered within 60 days after the date the hearing is finally closed."

In §233.64, the brackets around the last sentence indicating the language to be deleted should be omitted. The sentence is not proposed for deletion.

In §233.82, the (4) in the first sentence should read "[4)]."

◆ ◆ ◆
Public Utility Commission of Texas
Notice of Application

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 11, 1990, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

Docket Title and Number: Application of Southwestern Electric Power Company to Amend Certificated Service Area Boundaries within Panola County, Docket Number 9304 before the Public Utility Commission of Texas.

The Application: In Docket Number 9304, Southwestern Electric Power Company requests approval of its application for a service area exception within Panola County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas on January 24, 1990.

TRD-9000887 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: January 25, 1990

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

◆ ◆ ◆
Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 5, 1990, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

Docket Title and Number: Application of Central Power and Light Company for a Boundary Change in Medina County, Docket Number 9299 before the Public Utility Commission of Texas.

The Application: In Docket Number 9299, Central Power and Light Company requests approval of its application to revise the current boundaries between the service are of Central Power and Light and that of Medina Electric Cooperative in Medina County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas on January 24, 1990.

TRD-9000888 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: January 25, 1990

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

◆ ◆ ◆
Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 8, 1990, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

Docket Title and Number: Application of West Texas Utilities for a Certificate of Convenience and Necessity for a Proposed Transmission Line within Jones County, Docket Number 9302 before the Public Utility Commission of Texas.

The Application: In Docket Number 9302, West Texas Utilities Company requests approval of its application to construct approximately 2.2 miles of 69kV transmission line in southeastern Jones County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas on January 24, 1990.

TRD-9000889 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: January 25, 1990

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

◆ ◆ ◆
Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 12, 1990, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

Docket Title and Number: Application of Central Power and Light for a Certificate of Convenience and Necessity for a Proposed 345KV Transmission Line in Nueces, San Patricio, Goliad, and Bee Counties, Docket Number 9305 before the Public Utility Commission of Texas.

Patricio, Goliad, and Bee Counties, Docket Number 9305 before the Public Utility Commission of Texas.

The Application: In Docket Number 9305, Central Power and Light requests approval of its application to construct approximately 69.85 miles of 345kV transmission line in Nueces, San Patricio, Bee, and Goliad Counties.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas on January 24, 1990.

TRD-9000890 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: January 25, 1990

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



Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 9, 1990, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

Docket Title and Number: Application of Southwestern Bell Telephone Company to Amend the Boundary in Southwestern Bell Telephone Company's Iraan Exchange within Crocket County, Docket Number 9303 before the Public Utility Commission of Texas.

The Application: In Docket Number 9303, Southwestern Bell Telephone Company requests approval of its application to revise existing service area boundaries to serve a single customer in Crocket County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas on January 24, 1990.

TRD-9000891 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: January 25, 1990

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



Texas Water Commission Enforcement Orders

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Llano Livestock Auction, on January 23, 1990, assessing \$8,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Wendall Corrigan, Staff Attorney,

Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on January 24, 1990.

TRD-9000875 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: January 25, 1990

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

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Pilgrim's Pride Corporation, Permit Number 03017 on January 23, 1990, assessing \$55,000 in administrative penalties, and imposing stipulated penalties.

Information concerning any aspect of this order may be obtained by contacting Wendall Corrigan, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on January 24, 1990.

TRD-9000874 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: January 25, 1990

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

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to the City of Mount Calm, Permit Number 11464-01 on January 23, 1990, imposing stipulated penalties.

Information concerning any aspect of this order may be obtained by contacting Sharon J. Smith, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on January 24, 1990.

TRD-9000873 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: January 25, 1990

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



Notice of Application For Waste Disposal Permit

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of January 22-January 26, 1990.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request

sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Capitol Station, Austin, Texas 78711, (512) 463-7905.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number, and type of application—new permit, amendment, or renewal.

City of Angleton; Oyster Creek Wastewater Treatment Facility; adjacent to and south of County Road 609 (Old Highway 35), approximately 1 1/2 miles southwest of the intersection of State Highway 35 and State Highway 227 in Brazoria County; 10548-01; renewal;

Aransas County Municipal Utility District Number 1; Rockport; reverse osmosis potable water treatment plant; on Eighth Street between Bois d'Arc and Park Road 13 near Goose Island State Park, approximately 10 miles northeast of the City of Rockport, Aransas County, 02691; renewal;

City of Bellville; wastewater treatment facility; north side of Hacienda Street, approximately one mile west of State Highway 36 in Austin County; 10385-02; renewal;

Randy Boone School DBA Promised Land Dairy; Floresville; a dairy approximately 2.5 miles southwest of the intersection of State Highway 97 and State Highway 181, Wilson County; 03141; new;

A Catholic High School for Austin, Inc.; Austin; a private school; on the east side of Barton Creek, approximately 2.5 miles east of State Highway 71 and approximately 1.8 miles south of FM Road 2244, Travis County; 12916-01; renewal;

Cedarwood Investors DBA Cedarwood Dairy; Hico; a dairy; approximately three miles northeast of the intersection of U.S. Highway 281 and FM Road 1824, and approximately 4.5 miles southeast of the intersection of U.S. Highway 281 and FM Road 913, Erath County; 03132; new;

Chevron U.S.A. Inc.; Port Arthur; integrated oil refinery; in the vicinity of the State Highway 87 crossing over Taylor Bayou which is southwest of the City of Port Arthur, Jefferson County; 00309; renewal;

Gulf States Asphalt Company, Inc.; South Houston; asphalt products manufacturing plant; 300 Christy Place in the City of South Houston, Harris County; 01058; amendment;

Harris County Municipal Utility District Number 77; Houston; Postwood North Subdivision Wastewater Treatment Facility; approximately 1,800 feet north of the intersection of Oaklynn Street and Cypresswood Drive, in the Postwood Subdivision, Harris County; 12022-01; renewal;

Harris County Water Control and Improvement District Number 21; Channelview; wastewater treatment facility; southeast corner of the intersection of Interstate Highway 10 and Cedar Lane in the City of Channelview, Harris County; 10105-01; renewal;

Harris County Water Control and Improvement District

Number 109; Houston; Greenwood Forest Wastewater Treatment Facility; approximately 17 miles northwest of Midtown Houston, about 4 1/2 miles west of IH 45 and 1.3 miles southwest of the intersection of Stuebner-Airline Road and Bammel-North Houston Road, at 13415 Bammel-North Houston Road, Harris County; 11026-01; renewal;

Mineral Research and Development Corporation; Freeport; zinc chloride purification and zinc carbonate manufacturing plant; 302 Midway Road in the City of Freeport, Brazoria County; 01878; amendment;

North Texas Municipal Water District; Wylie; Buffalo Creek Wastewater Treatment Plant; west side of Buffalo Creek and on the south side of FM Road 3097, approximately 1.5 miles northwest of the intersection of FM Roads 3097 and 549 in the City of Rockwall, Rockwall County; 12047-01 renewal;

City of Olton; wastewater treatment facility; approximately one mile south of the intersection of U.S. Highway 70 and FM Road 168 and 1/4 mile east of FM Road 168, Lamb County; 10357-01; amendment;

Park Ten Municipal Utility District; Houston; wastewater treatment facility; 16,500 Park Row in Park 10 Municipal Utility District, Harris County; 11455-01; renewal;

Quantum Chemical Corporation, USI Division; Cincinnati, Ohio; plastics compounding plant; approximately three miles north of the City of Crockett and west of U.S. Highway 287, Houston County; 02207; renewal;

City of Sealy; Allens Creek Wastewater Treatment Facility; approximately 1/2 mile southeast of the intersection of Interstate Highway 10 and State Highway 36 and adjacent to and on the east side of the Santa Fe Railroad tracks in Austin County; 10276-01; renewal;

City of Shamrock; wastewater treatment facility; approximately three miles south and 3/8 mile east of the intersection of U.S. Highway 66 and U.S. Highway 83 in Wheeler County; 10279-01; amendment;

Spencer Road Public Utility District; Houston; Wastewater Treatment Facility Number 2; 14310 Spencer Road (FM Road 529), approximately 2,000 feet east of the intersection of State Highway 6 and FM Road 529, Harris County; 11472-02; renewal;

Texas Parks and Wildlife Department; Austin; wastewater treatment facilities; Recreation Area 3, within the boundaries of Fairfield Lake State Park, approximately three miles east of Fairfield Lake State Recreation Area 2. Recreation Area 2, within the boundaries of Fairfield Lake State Park, at the southern extremity of Fairfield Lake, approximately two miles northeast of the intersection of FM Road 2570 and FM Road 3285, Freestone County; 11627-01 and 11627-02; renewals;

T.J. Thomas; Houston; Deertrail Mobile Home Park Wastewater Treatment Facility; 9800 block of Deertrail Drive, approximately one mile northwest of the intersection of FM Road 149 and Interstate Highway 45, Harris County; 12919-01; renewal;

City of Whitesboro; wastewater treatment facility; on Mineral Creek, approximately 1,000 feet east of U.S. Highway 377 and two miles north of the intersection of U.S. Highway 82 and 377 in the City of Whitesboro, Grayson County; 10464; renewal;

Champlin Refining and Chemicals, Inc.-East; Corpus Christi; hazardous waste storage, processing, and disposal facility; 1801 Nueces Bay Boulevard, Corpus Christi, Nueces County; HW-50160 (EPA Number TXD-051161990); amendment; 45-day notice.

Issued in Austin, Texas, on January 26, 1990.

TRD-9000934 Brenda W. Foster
Chief Clerk
Texas Water Commission

Filed: January 26, 1990

For further information, please call (512) 463-7906

◆ ◆ ◆
Texas Water Development Board
Request for Proposals

The Texas Water Development Board (board) requests, pursuant to 31 Texas Administrative Code (TAC) §355.13(a), the submission of regional planning proposals from political subdivisions leading to the possible award of a contract to evaluate and determine the most feasible pollution control alternatives to protect the quality of the proposed Lake Alan Henry, estimate the costs and effectiveness of each alternative, and prepare a recommended plan to implement the most feasible alternative. In order for a political subdivision to receive a grant, the applicant must have the authority to plan, implement, and operate water quality protection facilities or measures.

Description of Planning Objectives. The purpose of the project is to prepare a plan that documents and ranks pollution sources, develops a sampling program and system for evaluating sampling data, assesses potential pollution impacts, defines and evaluates alternative methods to reduce the effect of pollution sources, and recommends a water quality protection plan for implementation. A water conservation plan and a drought management plan will also be developed to ensure that the supply source to be protected is used efficiently. A preliminary environmental analysis will also be prepared for the recommended plan.

Discrete phases or steps to implement the recommended alternative will be identified. Cost estimates shall be made for each water quality protection component and respective implementation phase to determine the capital, operation, and maintenance requirements during a 50-year planning period. The planning period for the proposed work shall extend from 1990 through the year 2040 and shall include project implementation schedules by type of facility, measure, or activity for the respective phases.

Description of Funding Consideration. The board has determined that there is an urgent need for regional water quality protection planning in the watershed of proposed Lake Alan Henry. Fifty percent state funding for a state amount of up to \$95,000 has been authorized from the board's research and planning fund. In the event that no acceptable proposal is submitted, the board retains the right to make no award of contract funds as specified by provisions of 31 TAC §355.13(a)(3).

The selected proposer will have 90 days from board approval to enter into the contract and to demonstrate to the executive administrator that it has its matching share committed and available.

Deadlines and Contact Person for Additional Information. Ten copies of the full regional planning proposal must be filed with the board prior to 5 p. m., February 13, 1990. The application must be directed to G. E. Kretzschmar, Executive Administrator, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231.

Requests for information, regional planning objectives,

and applicable planning rules in accordance with 31 TAC §§355.10-355.19 may be directed to T. James Fries at the address in the preceding paragraph or by calling (512) 463-7926.

State of Contract Terms and Required Completion Date. Procedures for awarding contracts shall comply with the Texas Water Code, §15.406, and with 31 TAC §§355.10-355.19. Contractual agreements and associated funding will terminate on August 31, 1991. Completion date: August 31, 1991.

Issued in Austin, Texas, on January 24, 1990.

TRD-9000851 Suzanne Schwartz
General Counsel
Texas Water Development Board

Filed: January 24, 1990

For further information, please call: (512) 463-7850

The Texas Water Development Board (board) requests, pursuant to 31 Texas Administrative Code (TAC) §355.13(a), the submission of regional planning proposals from political subdivisions leading to the possible award of a contract to evaluate and determine the most feasible alternatives to meet water supply needs; estimate the costs, basis of payment, and environmental constraints associated with implementing feasible water supply alternatives; and identify institutional arrangements to provide water services for Nacogdoches County. In order for a political subdivision to receive a grant, the applicant must have the authority to plan, implement, and operate water supply facilities.

Description of Planning Objectives. The purpose of this project is to prepare a plan that documents service needs, identifies feasible alternatives to meet water supply needs and presents estimates of costs and schedules associated with providing water supply source, conveyance, treatment, and distribution system(s). A water conservation plan and a drought management plan will be developed to ensure that existing and future sources are used efficiently and as a basis for confirming demand projections of future need. An environmental analysis will also be prepared for the recommended plan.

Discrete phases to implement water supply facilities to meet projected needs will be identified. Cost estimates shall be made for each respective implementation phase to determine the capital, operation, and maintenance requirements during a 30-year planning period. Separate cost estimates shall be made for each supply system component, including the water conservation program. Cost estimates for facilities shall be divided into: water supply source(s); conveyance to treatment facilities; water treatment facilities; and storage and distribution facilities. The planning period for the proposed work shall extend from 1990 through the year 2020 and shall include project implementation schedules by service area and by type of service facility and activity for the respective phases.

Description of Funding Consideration. The board has determined that there is an urgent need for regional water supply planning in Nacogdoches County. Fifty percent state funding for a state amount of up to \$33,500 has been authorized from the board's research and planning fund. In the event that no acceptable proposal is submitted, the board retains the right to make no award of contract funds as specified by provisions of 31 TAC §355.13(a)(3).

The selected proposer will have 90 days from board approval to enter into the contract and to demonstrate to the executive administrator that it has its matching share committed and available.

Deadlines and Contact Person for Additional Information. Ten copies of the full regional planning proposal must be filed with the board prior to 5 p. m., February 15, 1990. The application must be directed to G. E. Kretzschmar, Executive Administrator, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231.

Requests for information, regional planning objectives, and applicable planning rules in accordance with 31 TAC §§355.10-355.19 may be directed to Bob Wear at the address in the preceding paragraph or by calling (512) 463-7987.

State of Contract Terms and Required Completion Date. Procedures for awarding contracts shall comply with the Texas Water Code, §15.406, and with 31 TAC §§355.10-355.19. Contractual agreements and associated funding will terminate on August 31, 1991. Completion date: August 31, 1991.

Issued in Austin, Texas, on January 24, 1990.

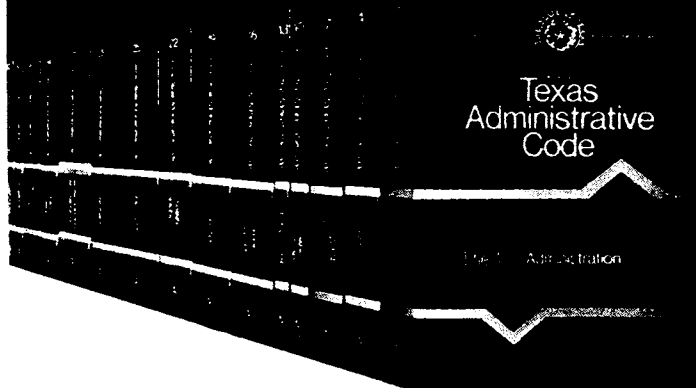
TRD-9000850 Suzanne Schwartz
 General Counsel
 Texas Water Development Board

Filed: January 24, 1990

For further information, please call: (512) 463-7850

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