

Texas Register

Volume 14, Number 18, March 10, 1989

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Texas Register

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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Withdrawn Sections—sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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 3 (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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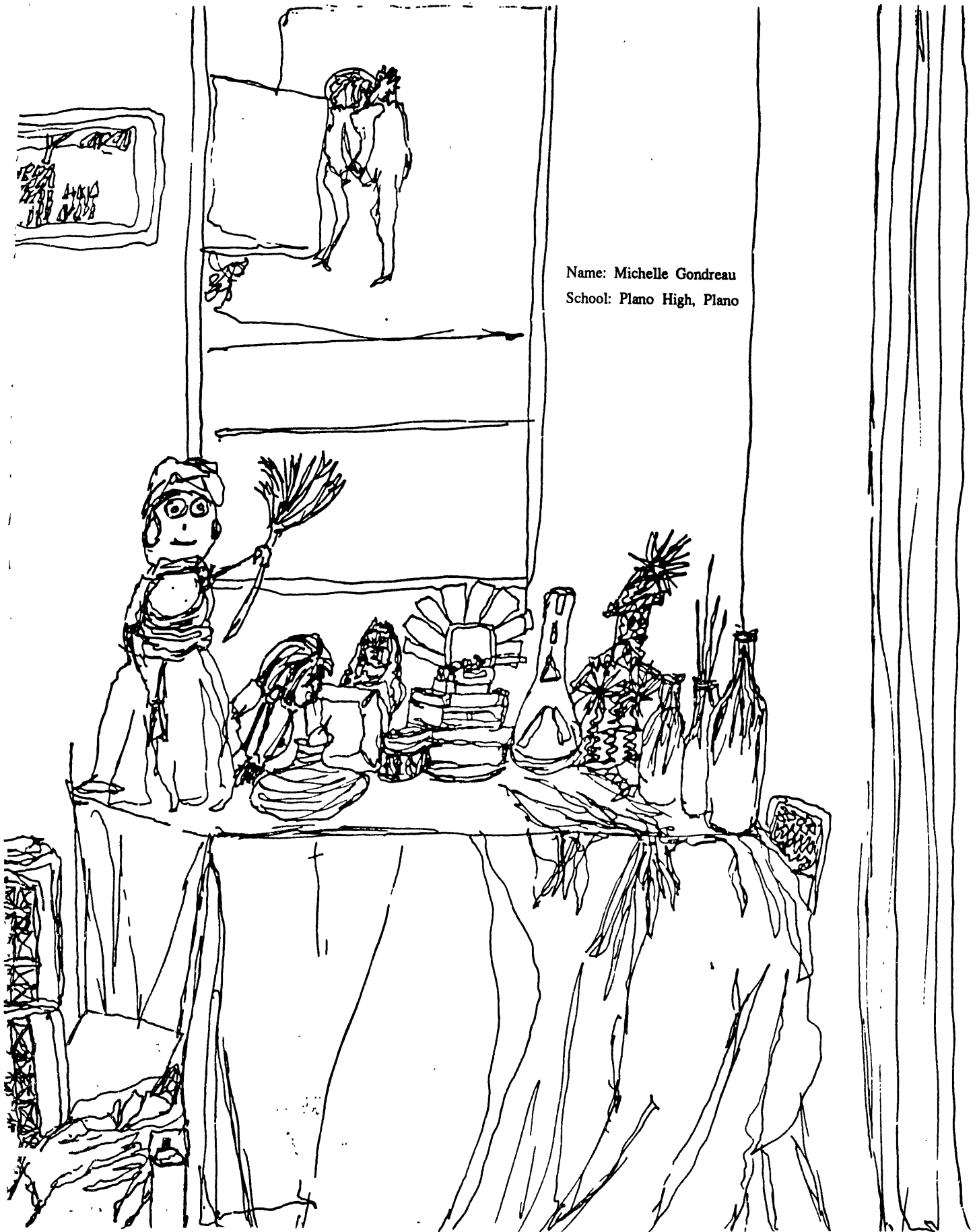
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Name: Michelle Gondreau
School: Plano High, Plano

TAC Titles Affected

TAC Titles Affected—March

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 §11.2—1073

TITLE 7. BANKING AND SECURITIES

Part VI. Credit Union Department

7 TAC §91.802—1073

TITLE 13. CULTURAL RESOURCES

Part VII. State Preservation Board

13 TAC §111.20—1277

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

16 TAC §5.91, §5.93—1159

16 TAC §11.221—

Part II. Public Utility Commission of Texas

16 TAC §23.15—1079

TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

19 TAC §21.254—

TITLE 22. EXAMINING BOARDS

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22 TAC §77.5—1151

22 TAC §78.1—1151

Part IV. Texas Cosmetology Commission

22 TAC §81.1—1159

22 TAC §81.2—1159

22 TAC §81.3—1160

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22 TAC §87.34—1169

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22 TAC §109.173—1079

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22 TAC §501.48—1277

22 TAC §505.1—1278

22 TAC §511.26—1079

22 TAC §511.27—1080

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22 TAC §621.24—1278

22 TAC §621.26—1278

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22 TAC §535.92—1080

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25 TAC §621.34—1279

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28 TAC §3.408—1151, 1169

28 TAC §7.10—1279

28 TAC §7.57—1151

28 TAC §7.73—1153, 1170

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31 TAC §§13.30-13.36—1291

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31 TAC §53.22, §53.23—1074

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34 TAC §3.549—1291

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37 TAC §17.2—1083

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37 TAC §119.01—1075

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40 TAC §§10.4301-10.4306, 10.4308, 10.4311-10.4316—1083

40 TAC §§10.6001-10.6005—1083

40 TAC §15.100—1075

40 TAC §15.100, §15.105—1084

40 TAC §§15.200, 15.201, 15.205, 15.210, 15.215—1088

40 TAC §§15.300, 15.301, 15.305, 15.310, 15.320, 15.325—1089

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40 TAC §§15.600, 15.605, 15.610, 15.615, 15.620—1100

40 TAC §§15.700, 15.701, 15.705, 15.710, 15.715,
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40 TAC §§15.901-15.903—1103

40 TAC §15.2001—1103

40 TAC §15.2101—1103

40 TAC §§15.2201-15.2203—1103

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40 TAC §§15.3201-15.3206, 15.3209-15.3211, 15.3214-
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40 TAC §§15.3301-15.3323—1104

40 TAC §§15.3401-15.3404, 15.3408-15.3418—1104

40 TAC §15.5002—1104

40 TAC §§15.5101+15.5106—1104

40 TAC §§15.5201-15.5216—1104

40 TAC §§15.5301-15.5305—1104

40 TAC §§15.5401, 15.5403-15.5417—1104

40 TAC §§15.5501-15.5513—1105

40 TAC §§15.5802-15.5806—1105

40 TAC §§15.8901-15.8904—1105

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40 TAC §16.3505—1292, 1293

40 TAC §48.3904—1269

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40 TAC §53.501, §53.502—1293

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40 TAC §175.17—1294

40 TAC §175.18—1157, 1269

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40 TAC §327.9—1294

TITLE 43. TRANSPORTATION

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43 TAC §25.1—1294

43 TAC §25.91—1294

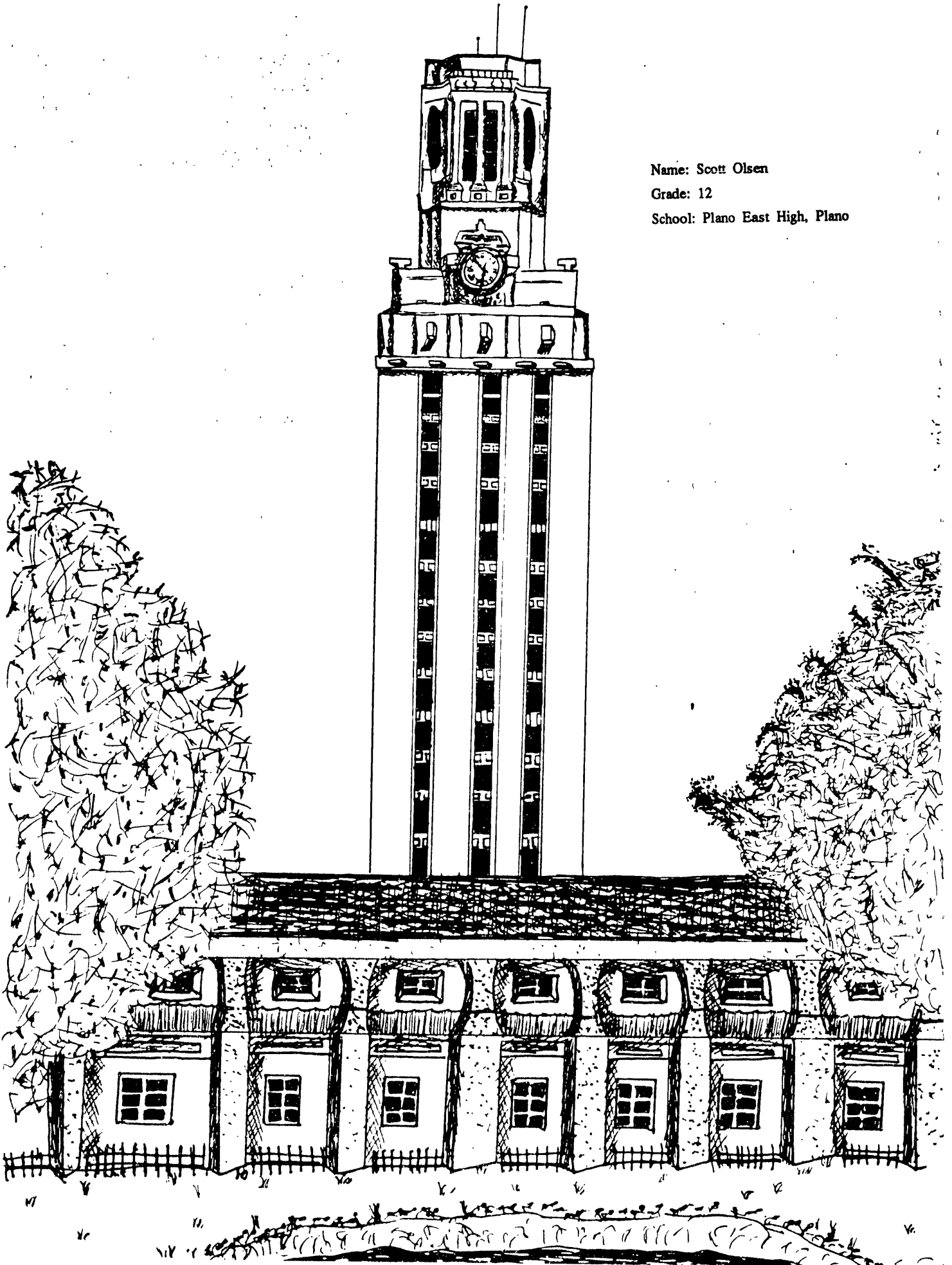
43 TAC §25.301-25.309—



Name: Scott Olsen

Grade: 12

School: Plano East High, Plano



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.

Executive Order

WPC 89 4

Whereas, the Texas Department of Corrections has notified the Texas Attorney General in writing that the inmate population of the Texas Department of Corrections has reached 95% of capacity, as defined by statute and as imposed by the agreed order in *Ruiz v. McCotter*; and

Whereas, the Attorney General has certified, in writing, that the inmate population has reached 95% of the capacity, as defined above, of the Texas Department of Corrections; and

Whereas, after such certification the Governor certified that an emergency overcrowding situation existed and has subsequently on four separate occasions ordered the Director of the Texas Department of Corrections to credit to all eligible inmates awards of administrative good conduct time; and

Whereas, the Attorney General has determined and certified to the Governor that the prison overcrowding crisis has not been resolved and is continuing; and

Whereas, by Senate Bill 215, 70th Legislature, Regular Session, amending the Texas Prison Management Act, Article 6184a, Texas Revised Civil Statutes, the Legislature has required that under these circumstances the Governor shall take certain actions to resolve the certified overcrowding condition.

Now, therefore, I, William P. Clements, Jr., Governor of Texas, under the authority vested in me, do hereby order the Director of the Texas Department of Corrections to credit to all eligible inmates, as defined by Senate Bill 215, 30 total days of administrative good conduct time.

This Executive Order shall be effective immediately and shall apply to all inmates in the Texas Department of Corrections population as of the midnight population count on Wednesday, March 1, 1989, and shall be binding as authorized by law. This Executive Order may be modified or amended from time to time, as required to carry out the intent of the Legislature, until the emergency overcrowding condition no longer exists.

This executive order shall be effective immediately and shall remain in full force and effect until modified, amended, or rescinded by me.

Issued in Austin, Texas on January 9, 1988.

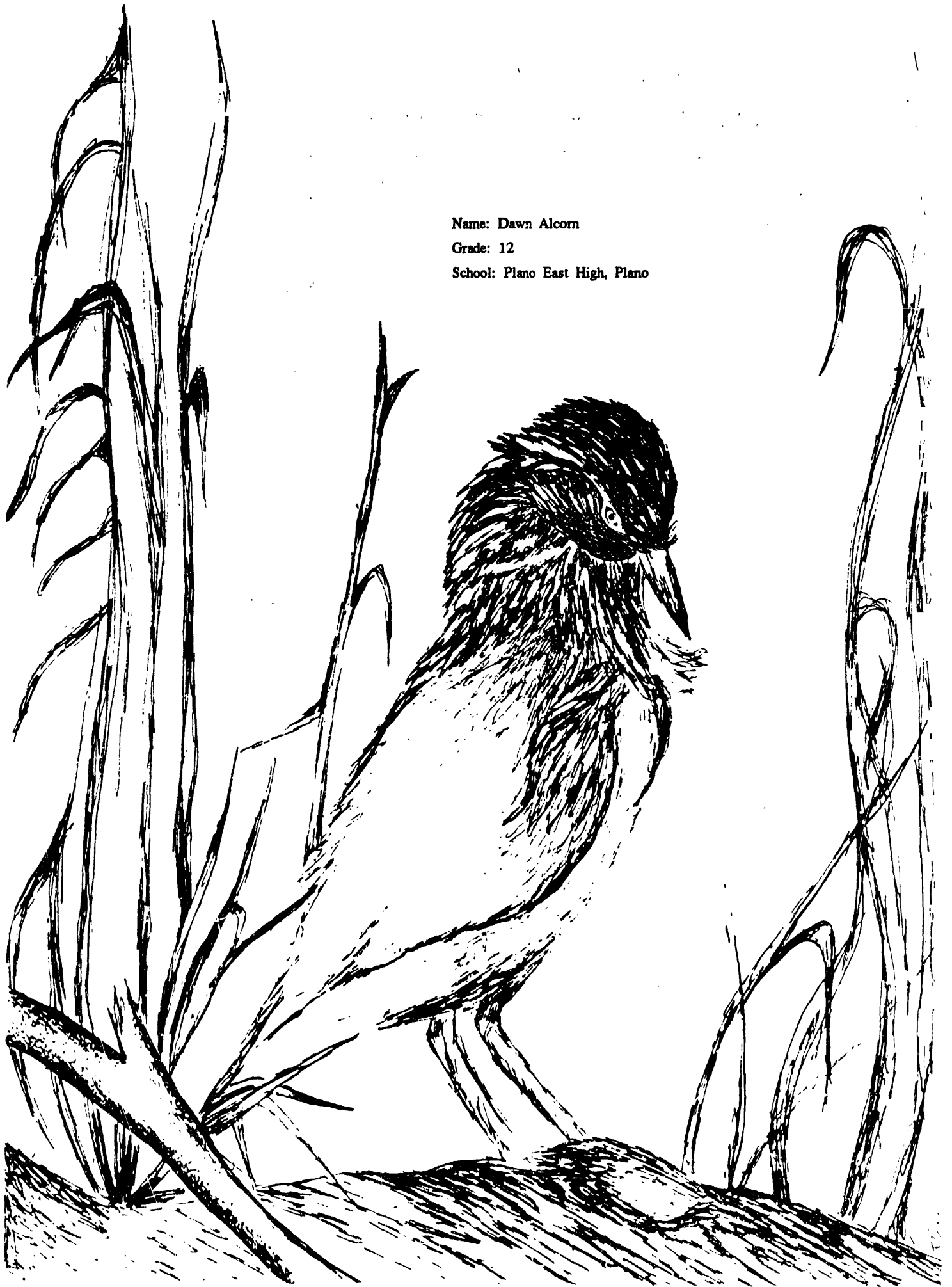
TRD-8902024 William P. Clements, Jr.
Governor of Texas



Name: Dawn Alcorn

Grade: 12

School: Plano East High, Plano



Appointments Made March 1, 1989

To be a member of the **Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons**, for a term to expire January 31, 1991: Mr. Marion Truitt, 2826 Stonecrest, Abilene, Texas 79606. Mr. Truitt is being reappointed.

To be a member of the **Dairy Advisory Board**, for a term to expire December 31, 1990: Mr. Foster Brewer, Route 2, Box 356, Troup, Texas 75789. Mr. Brewer is being reappointed.

To be a member of the **Advisory Council on Community Affairs**, for a term to expire January 31, 1991: Mr. Larry Steven May, P.O. Box 355, Sweetwater, Texas 79556. Mr. May is being reappointed.

To be a member of the **Texas Agricultural Finance Authority, Board of Directors**, for a term to expire January 1, 1991: Mr. John W. Jones, 1106 West 12th, Brady, Texas 76825. Mr. Jones is being reappointed.

To be a member of the **Texas Board of Health**, for a term to expire February 1, 1995: Robert E. Bonham, M.D., 5628 Bent Tree, Dallas, Texas 75248. Dr. Bonham will be replacing Dr. Arthur L. Raines of Cleburne, whose term expired.

To be a member of the **Texas Board of Health** for a term to expire February 1, 1995: Joan Wood Biggerstaff, 2502 Rockbrook, Plano, Texas 75074. Mrs. Biggerstaff will be replacing R. Jack Ayres, Jr. of Dallas whose term expired.

To be a member of the **Texas Board of Health** for a term to expire February 1, 1995: Bennett Lloyd Gill Harber, D.D.S., 1041 East Blanco Road, Boerne, Texas 78006. Dr. Harber will be replacing Dr. Barry D. Cunningham of Austin whose term expired.

To be a member of the **Governing Board of the Texas School for the Blind**, for a term to expire January 31, 1995: Crispin E. Sanchez, 101 West Del Mar Boulevard, Apartment 7A, Laredo, Texas 78041. Mr. Sanchez is being reappointed.

To be a member of the **Texas Housing Agency Board of Directors** for a term to expire January 31, 1995: Gary Allen Hammond, 5321 Seascape, Plano, Texas 75075. Mr. Hammond will be replacing Fred E. Rizk of Houston whose term expired.

To be a member of the **Credit Union Commission** for a term to expire February 15, 1995: Gerald W. Gurney, 2632 Dalgreen, Plano, Texas 75075. Mr. Gurney will be replacing Jerry A. Deering of Fort Worth whose term expired.

To be a member of the **Battleship Texas Advisory Board**, for a term to expire February 1, 1995: Richard Burton (Burt) Ballanfant, 3123 Amherst, Houston, Texas 77005. Mr. Ballanfant will be replacing Denny G. Hair of Houston, whose term expired.

To be a member of the **Texas Committee for the Humanities** for a term to expire December 31, 1990: Ann Jennings Willeford, 1404 Gaston Avenue, Austin, Texas 78703. Mrs. Willeford will be replacing Carol McKay of Fort worth whose term expired.

Issued in Austin, Texas on January 9, 1988.

TRD-8901992

William P. Clements, Jr.
Governor of Texas





Ingebrigten 7/6 1988

Name: Ate Ingebrigten

Grade: 11

School: Plano East 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.

Open Records Decisions

ORD-520 (RQ-1514). Request from W. Roger Wilson, Matthews & Branscomb, San Antonio, concerning whether the Tax Code, §151.027, in conjunction with the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, protects from public disclosure the sales tax status of a municipal utility's commercial and industrial rate payers.

Summary of Decision. The tax status of a municipal utility customer is not exempt from public disclosure under the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, §3(a)(4) or §3(a)(1), or under the Act, in conjunction with the Tax Code, §151.027(a) or (b). TRD-8901994

Requests for Opinions

(RQ-1661). Request from Robert T. Jarvis, County Attorney of Grayson County, Grayson County Justice Center, Sherman, concerning costs for medical examinations of rape victims under Texas Civil Statutes, Article 4447m.

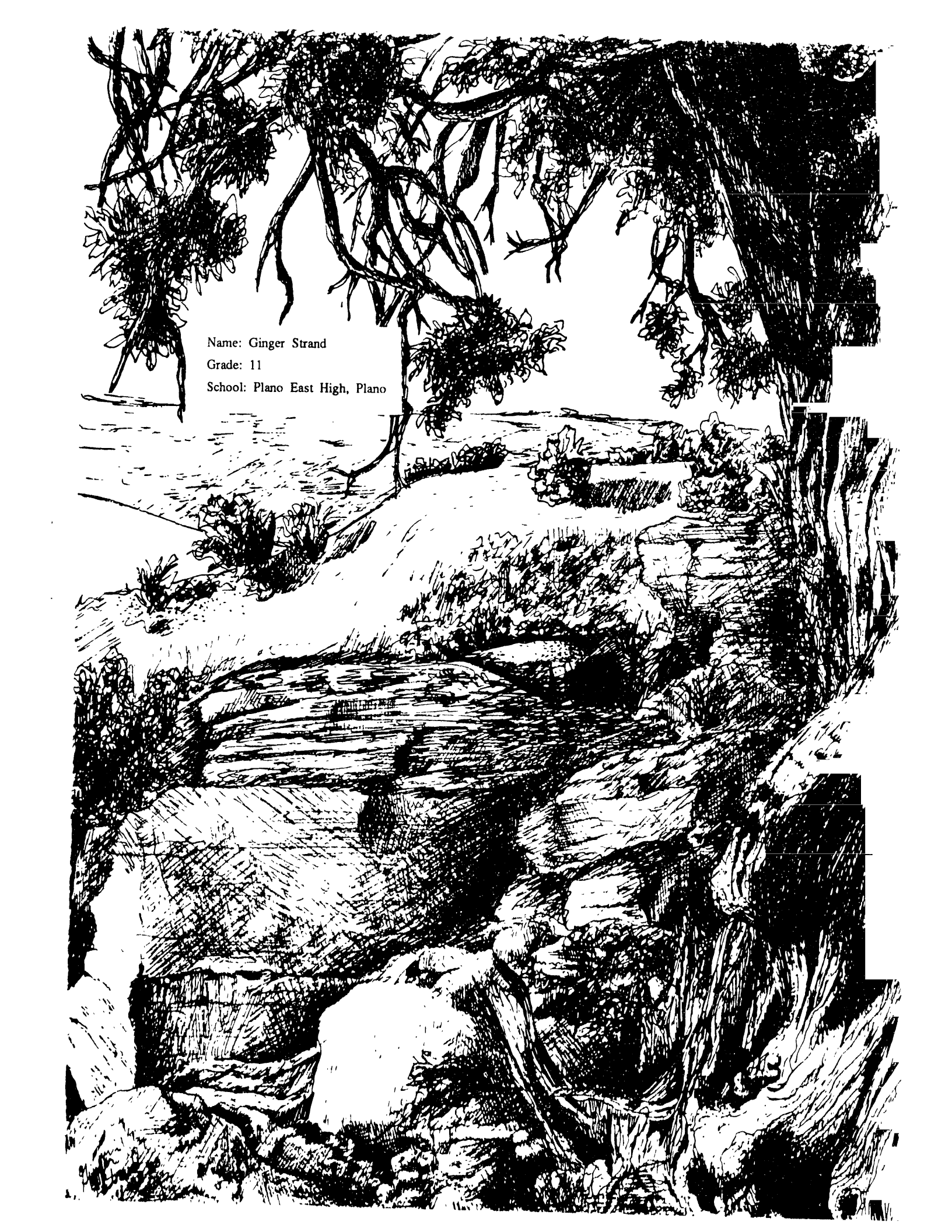
(RQ-1662). Request from Dan Morales, Chairman, Ways and Means, Criminal Jurisprudence, Texas House of Representatives, Austin, concerning whether the State may restrict its waiver of immunity.

(RQ-1663). Request from William M. Hale, Executive Director, Texas Commission on Human Rights, Austin, concerning whether the Texas Commission on Human Rights Act, Texas Civil Statutes, Article 8, §8.02(a) of Article 5221k, protects certain

investigative files from public disclosure and related questions.

(RQ-1664). Request from Pamela K. McKay, county Attorney, County of Kendall, Boerne, concerning whether the Government Code, §232.001, requires that a tract owner whose only purpose is to subdivide must prepare a plat.

(RQ-1665). Request from Yvonne Kohutek, Board Chairman, Texas State Board of Examiners of Professional Counselors, Austin, concerning whether a licensee of the Board of Examiners of Professional Counselors must comply with Texas Civil Statutes, Article 4512g, when he is working in a position which is exempt under the Act, §3. TRD-8901993



Name: Ginger Strand
Grade: 11
School: Plano East High, Plano

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 22. EXAMINING BOARDS

Part III. Texas Board of Chiropractic Examiners

Chapter 77. Advertising and Public Communications

• 22 TAC §77.5

The Texas Board of Chiropractic Examiners adopts on an emergency basis new §77.5, concerning licensee's charges. The reason for emergency action on this section is that the board feels there is imminent peril to the public health and welfare because individuals are not being told what they are charged for services rendered by chiropractors; and therefore the individual feels that a fraudulent act has occurred and has filed a complaint with the board. Approximately 60-75% of the complaints filed with this agency are related to charges.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 4512b, and Senate Bill 109, Acts of the 67th Legislature, 1981, §5, which provides the Texas Board of Chiropractic Examiners with the authority to promulgate procedural rules as deemed necessary.

§77.5. Miscellaneous. Except as provided herein, a licensee shall, prior to or on the date of providing goods or services to a patient, disclose to the patient in writing the full amount of the licensee's charges. This requirement shall not apply to goods or services for which payment is or will be paid for by worker's compensation insurance, a health maintenance organization, or preferred provider organization. Compliance with this rule may be in any written form reasonably calculated to notify the patient of the actual charges for the goods or services provided.

Issued in Austin, Texas, on March 1, 1989.

TRD-8901996 Jennie Smetana
Executive Director
Texas Board of
Chiropractic Examiners

Effective date: March 2, 1989

Expiration date: June 30, 1989

For further information, please call: (512)
343-1895

Chapter 78. Chiropractic Radiologic Technologist

• 22 TAC §78.1

The Texas Board of Chiropractic Examiners adopts on an emergency basis an amendment to §78.1, concerning registration of chiropractic radiologic technologists. The reason for emergency action on this section is that the board feels there is imminent peril to the public health and welfare because nonqualified individuals may be performing this procedure, thereby exposing the patient to dangerous amounts of radiation.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 4512b, and Senate Bill 109, Acts of the 67th Legislature, 1981, §5, which provides the Texas Board of Chiropractic Examiners with the authority to promulgate procedural rules as deemed necessary.

§78.1. Registration of Chiropractic Radio- logic Technologists.

(a)-(g) (No change.)

(h) Any nonstatic procedure has the potential to be more dangerous and hazardous and by definition, may only be performed by a practitioner or a certified radiologist.

Issued in Austin, Texas, on March 1, 1989.

TRD-8901995 Jennie Smetana
Executive Director
Texas Board of
Chiropractic Examiners

Effective date: March 2, 1989

Expiration date: June 30, 1989

For further information, please call: (512)
343-1895

TITLE 28. INSURANCE Part I. State Board of Insurance

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

Subchapter E. Group Life and/or Group Accident and Health Insurance

Policies and Certificates

• 28 TAC §3.408

The State Board of Insurance is renewing the effectiveness of the emergency adoption of new §3.408, for a 60-day period effective March 2, 1989. The text of new §3.408 was originally published in the November 11, 1988, issue of the *Texas Register* (13 TexReg 5689).

Issued in Austin, Texas on February 28, 1989.

TRD-8901945 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: March 2, 1989

Expiration date: May 1, 1989

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

Chapter 7. Corporate and Financial

Subchapter A. Examination and Corporate Custodian and Tax

• 28 TAC §7.57

The State Board of Insurance adopts on an emergency basis new §7.57, concerning corporate and financial regulation. Section 7.57 concerns forms and instructions for the preparation and filing of tax returns for insurers and other entities required to file tax returns with the State Board of Insurance for the 1988 calendar year or required to file quarterly premium tax returns with the board during the 1989 calendar year. This new section is necessary to provide forms and instructions which will facilitate compliance with statutory requirements for reporting and payment of taxes to the State Board of Insurance. The annual gross premium tax return is required by statute to be filed either on or before March 1, 1989, or the date the annual

statement for the carrier is required to be filed with the board. Quarterly tax returns are required to be filed four times per year: the first quarter is due and payable March 1, 1989, (or the date the annual statement for such carrier is required to be filed with the State Board of Insurance); the second quarter is due and payable May 15, 1989; the third quarter is due and payable August 15, 1989; and the fourth quarter is due and payable November 15, 1989. The forms and instructions include requirements for information respecting gross premium taxes, maintenance taxes, other taxes, certain incidental fees, and provide a form to be used in determining and reporting the amount owed. It is the board's opinion and the board finds that an imminent peril to the public welfare requires that §7.57 be adopted on an emergency basis in order to continue the proper functioning of administrative regulation of the business of insurance in Texas. An imminent peril to the public welfare requires adoption of this new section on an emergency basis in order to enable the board to provide insurers and other entities with forms and instructions in sufficient time for affected entities to file tax returns on or before the statutory due date. Timely and accurate payment of the taxes is necessary for support of regulatory functions of the State Board of Insurance. Adoption of this section on an emergency basis includes adoption by reference of forms and instructions. The board has filed copies of these forms and instructions with the Secretary of State's Office, Texas Register Division. Persons desiring copies of the forms and instructions can obtain copies from the Tax Collection Section of the Administrative Services Division of the State Board of Insurance, Three Republic Plaza, Room 284, 333 Guadalupe, Austin.

The section is adopted on an emergency basis under the Texas Insurance Code, Articles 1.04, 1.10, §9, 4.07, 4.10, 4.11, 4.11A, 5.12, 5.24, 5.49, 5.68, 9.46, 9.59, 21.07-5, and 23.08; the Texas Health Maintenance Organization Act, §22 and §33; and Texas Civil Statutes, Article 6252-13a, §4, and Article 8306, §28. The Insurance Code, Article 1.04, places original jurisdiction for the adoption of rules in the State Board of Insurance. Article 1.10, §9, requires the board to furnish, to companies required to report to the board, statement blanks for the statements required. Article 4.07 specifies the charges for certain fees. The Insurance Code, Articles 4.10, 4.11, and 9.59; Texas Civil Statutes, Article 8306, §28; and the Texas Health Maintenance Organization Act, §33, requires the payment of taxes on gross premiums by entities regulated by the board or on gross amounts of similar revenue by health maintenance organizations. The Insurance Code, Article 4.11A, requires the payment of taxes on the gross amount of administrative or service fees received by an insurance carrier. The Insurance Code, Articles 5.12, 5.24, 5.49, 5.68, 9.46, 21.07-5, and 23.08, requires the payment of maintenance taxes by certain entities regulated by the board. The Insurance Code, Articles 4.10, 4.11, and 4.11A, gives the board rulemaking authority. The Texas Health Maintenance Organization Act, §22 gives the board rulemaking authority. Texas Civil Statutes, Article 6252-13a, §4, require and authorize the board to adopt rules of practice setting forth the nature and requirements of all procedures available.

§7.57. Preparation of 1988 Tax Returns. Forms and instructions for the preparation of tax returns and certain fees for insurance companies and other principals for the 1988 calendar year are adopted by reference. These instructions and forms are published by the State Board of Insurance and may be obtained from the Tax Collection Section of the Administrative Services Division of the State Board of Insurance, Three Republic Plaza, Room 284, 333 Guadalupe, Austin, Texas 78701. Each insurer or other entity shall follow such instructions and use and report on such forms as appropriate to its operation. The instructions and forms are more particularly identified as follows:

(1) a form identified as the 1988 General Instructions for Filing Texas Annual Tax Returns for All Texas Licensed Insurance Carriers;

(2) a form identified as the 1988 Specific Instructions for Completing the Texas Annual Tax Return, for Domestic, Foreign, and Alien Life, Health, and Accident Carriers;

(3) a form identified as the 1988 Texas Annual Tax Return for Domestic, Foreign, and Alien Life, Health, and Accident Companies Doing Business in the State of Texas;

(4) a form identified as the 1988 Specific Instructions for Completing the Texas Annual Tax Return for Domestic, Foreign, and Alien Companies transacting Fire and/or Casualty Business in Texas;

(5) a form identified as the 1988 Texas Annual Tax Return for Domestic, Foreign, and Alien Companies, Lloyds, Reciprocal, and Miscellaneous Organizations;

(6) a form identified as the 1988 Texas Specific Instructions for Completing the Texas Annual Tax Return for Health Maintenance Organizations;

(7) a form identified as the 1988 Texas Annual Tax Return for Health Maintenance Organizations;

(8) a form identified as the 1988 Texas Annual Tax Return, including instructions, for Nonprofit Prepaid Legal Services Corporations;

(9) a form identified as the 1988 Texas Annual Tax Return, including instructions, for Local Mutual Aid Associations;

(10) a form identified as the 1989 Specific Instructions for Preparing and Filing Texas Quarterly Premium Tax Return for Life, Health, and Accident Business;

(11) a form identified as the 1989 Texas Quarterly Premium Tax Return for Life, Health, and Accident Business;

(12) a form identified as the 1989 Specific Instructions for Preparing and

Filing Texas Quarterly Premium Tax Return for Fire and Casualty Business;

(13) a form identified as the 1989 Texas Quarterly Premium Tax Return for Fire and Casualty Business;

(14) a form identified as the 1989 Specific Instructions for Preparing and Filing Texas Quarterly Premium Tax Return for Health Maintenance Organizations;

(15) a form identified as the 1989 Texas Quarterly Premium Tax Return for Health Maintenance Organizations;

(16) a form identified as the 1989 Specific Instructions for Preparing and Filing Texas Quarterly Premium Tax Return for Title Business;

(17) a form identified as the 1989 Texas Quarterly Premium Tax Return for Title Business;

(18) a form identified as the 1989 General Instructions for Completing Texas Annual Tax Return, for companies under the provisions of the Texas Insurance Code, Articles 3.25 and 3.59;

(19) a form identified as the 1988 Texas Annual Tax Return, for companies under the provisions of the Texas Insurance Code, Articles 3.25 and 3.59;

(20) a form identified as the 1988 General Instructions for Filing the 1988 Maintenance Tax Returns for Third Party Administrators;

(21) a form identified as the 1988 Annual Texas Maintenance Tax Return for Third Party Administrators;

(22) a form identified as the 1989 Specific Instructions for Preparing and Filing the Texas Quarterly Administrative Services Tax Return;

(23) a form identified as the 1989 Quarterly Texas Tax Return for Administrative Services;

(24) a form identified as the Specific Instructions for Completing the 1988 Texas Annual Tax Return for Administrative Services;

(25) a form identified as the General Instructions for Filing the 1988 Administrative Services Tax Return;

(26) a form identified as the 1988 Annual Texas Tax Return for Administrative Services;

(27) a form identified as the Specific Instructions for Completing the 1988 Texas Annual Tax Return for Title Business; and

(28) a form identified as the 1988 Texas Annual Tax Return for Domestic and Foreign Title Companies.

Issued in Austin, Texas, on February 27, 1989.

TRD-8901952

Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: February 28, 1989

Expiration date: June 28, 1989

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

• 28 TAC §7.73

The State Board of Insurance adopts on an emergency basis new §7.73, concerning annual statement diskette filing requirements for financial activities by insurance companies and other entities regulated by the board. An imminent peril to the public welfare requires adoption of the new section on an emergency basis to facilitate appropriate reporting by affected entities and to provide for timely and reliable review of financial data from each entity's annual statement. Rapid and reliable review can produce fast action when necessary to maintain a regulated entity in sound financial condition that will protect policyholders and other consumers. The new section requires that, in 1989, regulated entities must provide the board with machine-readable diskettes containing financial information concerning activities during the 1988 calendar year. This new section requires some reporting by diskette to the National Association of Insurance Commissioners also. The new section also refers regulated entities to manuals which specify the form and content of computerized data that the regulated entities must provide on the diskettes. The manuals require information concerning the financial condition and business operations of the regulated entities. The board has filed, with the Office of the Secretary of State, Texas Register Division, copies of the manuals and specifications proposed for adoption by reference. Other copies of these manuals and specifications as proposed are available for inspection at the Office of the Chief Clerk in Room 406 of the State Insurance Building at 1110 San Jacinto Boulevard in Austin.

The new section is proposed under the Insurance Code, Articles 1.04, 1.11, 3.07, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 11.06, 11.19, 15.15, 15.16, 17.22, 17.25, 18.12, 19.08, 20.02, 21.21, 21.43, 21.54, 22.06, and 22.18, and Texas Civil Statutes, Article 6252-13a, §4 and §5. The Insurance Code, Article 1.04, authorizes the State Board of Insurance to determine policy and rules. Article 1.11 authorizes the board to make such changes in the forms of annual statements as shall seem to it best adapted to elicit a true exhibit of the condition and methods of transacting business of regulated entities, and also requires certain entities to file with the National Association of Insurance Commissioners. Article 21.21 prohibits any person engaged in the business of insurance from filing with any public official any false statement of financial condition of an insurer with intent to deceive. Article 21.43 requires that the provisions of the Insurance Code are conditions on which foreign insurance corporations are permitted to do business in this state. The Insurance Code, Articles 3.07, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 11.06, 11.19, 15.15, 15.16, 17.22, 17.25, 18.12, 19.08, 20.02, 21.54, 22.06, and 22.18, requires the filing of annual state-

ments, annual reports, and other information by certain entities regulated by the board, applies particular statutory law respecting reports to those entities, and specifies particular rule-making authority relating to those entities. Texas Civil Statutes, Article 6252-13a, §4, authorize and require each state administrative agency to adopt rules of practice setting forth the nature and requirements of available procedures. Section 5 prescribes the procedures for adoption of rules by any state administrative agency.

§7.73. Requirements for Annual Statement Diskette Filing in 1989 Concerning Financial Activities During 1988.

(a) This section applies to the following entities:

- (1) stock life companies;
- (2) mutual life companies;
- (3) group hospital service corporations;
- (4) stipulated premium companies;
- (5) stock fire companies;
- (6) stock casualty companies;
- (7) stock fire and casualty companies;
- (8) mutual fire companies;
- (9) mutual casualty companies;
- (10) mutual fire and casualty companies;
- (11) county mutual companies;
- (12) Lloyds;
- (13) reciprocals; and
- (14) risk retention groups.

(b) Concerning activities during calendar year 1988, each and every stock life company, mutual life company, group hospital service corporation, and stipulated premium company shall provide the State Board of Insurance, and the National Association of Insurance Commissioners, with machine-readable diskettes containing computerized financial data. In 1989, each of these entities shall file the diskettes in addition to and at the time of filing its Form 1 annual statement with the board and the National Association of Insurance Commissioners. The data on the diskettes shall be in the form and content specified in the current annual statement diskette filing specifications for life, accident, and health for the year ended December 31, 1988, which the board adopts by reference under this subsection. These specifications are published by the State Board of Insurance and may be obtained from the Publications Division, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

(c) Concerning activities during calendar year 1988, each and every stock fire company, stock casualty company, stock fire and casualty company, mutual

fire company, mutual casualty company, mutual fire and casualty company, county mutual company, Lloyds, reciprocal, and risk retention group shall provide the State Board of Insurance, and the National Association of Insurance Commissioners, with machine-readable diskettes containing computerized financial data. In 1989, each of these entities shall file the diskettes in addition to and at the time of filing its Form 2 annual statement with the board and the National Association of Insurance Commissioners. The data on the diskettes shall be in the form and content specified in the current annual statement diskette filing specifications for fire and casualty for the year ended December 31, 1988, which the board adopts by reference under this subsection. These specifications are published by the State Board of Insurance and may be obtained from the Publications Division, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

Issued in Austin, Texas, on February 27, 1989.

TRD-8901942 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: February 28, 1989

Expiration date: June 28, 1989

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

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter O. Franchise Tax

• 34 TAC §3.415

The Comptroller of Public Accounts adopts on an emergency basis new §3.415, concerning methods for estimating oil and gas reserves. The new section sets out four methods approved by the comptroller's department for use in estimating oil and gas reserves. The volume of oil and gas reserves is used in amortizing intangible drilling costs under the successful efforts or full cost methods of accounting required by §3.405, concerning surplus.

The new section is adopted on an emergency basis in order to be in effect by the 1989 franchise tax report due date.

The amendment 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.

§3.415. Methods for Estimating Oil and Gas Reserves.

(a) Corporations with \$1 million or more in surplus must choose one of the

following four methods for estimating the volume of oil and gas reserves to be used in amortizing intangible drilling costs for franchise tax reports originally due on or after January 1, 1988.

(1) Reserves per Securities Exchange Commission reporting. The estimates of reserves used by the corporation in complying with Securities Exchange Commission (SEC) Regulation SX 210.4-10, or a subsequent regulation which supersedes this regulation.

(2) Evaluation by registered engineer. An evaluation of the volume of reserves performed by a person who is an engineer registered with the State Board of Registration for Professional Engineers under Texas Civil Statutes, Article 3271a, or under a comparable law of the jurisdiction in which the property being evaluated is located, and who is proficient in petroleum engineering.

(3) Volume per ad valorem valuation:

(A) the volume of reserves calculated for ad valorem tax purposes by the central appraisal district for the Texas county in which the property being evaluated is located;

(B) the volume of reserves calculated for ad valorem tax purposes by a property taxing jurisdiction outside of Texas in which the property being evaluated is located, provided:

(i) the out-of-state jurisdiction's law requires a complete and full evaluation of reserves that is reasonably comparable to that required by Texas law; and

(ii) the other jurisdiction provides corporations a convenient opportunity to contest such evaluations prior to formal suit in a court of law and in a manner reasonably comparable to that provided under Texas law.

(4) Volume per standard industry reserve estimating equations. An evaluation performed by the corporation using the following standard industry reserve estimating equations, with the following qualifications.

(A) For oil wells.

(i) Wells under 10 years old. For wells that have been producing for less than 10 years, the corporation shall calculate oil reserves attributable to the corporation's property using the industry standard exponential decline equation.

(ii) Wells over 10 years old. For wells that have been producing for over 10 years, the corporation may have the option of using the industry standard exponential decline equation as in clause (i) of

this subparagraph, or calculating oil reserves attributable to the corporation's property using the industry standard hyperbolic decline equation.

(iii) All wells.

(I) Calculations using the exponential and hyperbolic decline equations shall be based on production data submitted to the Texas Railroad Commission under Texas law, or on data comparable to that submitted to the Texas Railroad Commission but submitted to another jurisdiction under that jurisdiction's law, where applicable.

(II) Production data and estimated decline rates used to calculate reserves for ad valorem tax purposes by a central appraisal district for the Texas county in which a property is located are acceptable substitutes for such data obtained directly from the Texas Railroad Commission. The corporation may obtain comparable data used to calculate reserves for ad valorem tax purposes by a property taxing jurisdiction outside of Texas in which the property being evaluated is located, provided:

(-a-) the out-of-state jurisdiction's law requires a complete and full evaluation of reserves that is reasonably comparable to that required by Texas law; and

(-b-) the other jurisdiction provides corporations a convenient opportunity to contest such evaluations prior to formal suit in a court of law and in a manner reasonably comparable to that provided under Texas law.

(III) All corporations opting to perform their own evaluations using the exponential or hyperbolic decline equations shall use an abandonment flow rate of 1.5 barrels per day per well. Corporations using a higher abandonment flow rate are required to justify such deviations based on regional, economic, or well-specific criteria. The burden of proof in supporting such deviations shall rest with the corporation.

(B) For gas wells.

(i) Exponential decline method. For gas wells, the corporation may calculate gas reserves attributable to the corporation's property using the industry standard exponential decline equation. All corporations electing to use this method must use a reasonable abandonment flow rate based on regional, economic, or well-specific criteria. The burden of proof in supporting the abandonment flow rate shall rest with the corporation.

(ii) P/Z reserves method. As an alternative to using the exponential

decline equation in clause (i) of this subparagraph, the corporation may calculate gas reserves attributable to the corporation's property by using the industry standard equation for curve fitting the decline of reservoir pressure versus cumulative production. Abandonment pressures must be reasonably related to the local pipeline pressures. A graph of p/z versus cumulative production shall be extrapolated to the abandonment pressure point. Using this method, reserves equal the cumulative production at abandonment minus the cumulative production to date.

(iii) Rules applicable to either method.

(I) Calculations using the exponential decline or the p/z reserves methods shall be based on production data submitted to the Texas Railroad Commission under Texas law, or on data comparable to that submitted to the Texas Railroad Commission but submitted to another jurisdiction under that jurisdiction's laws, where applicable.

(II) Production data and estimated decline rates used to calculate reserves for ad valorem tax purposes by the central appraisal district for the Texas county in which a property is located are acceptable substitutes for data obtained directly from the Texas Railroad Commission. The corporation may obtain comparable data used to calculate reserves for ad valorem tax purposes by a property taxing jurisdiction outside of Texas in which the property being evaluated is located, provided:

(-a-) the out-of-state jurisdiction's law requires a complete and full evaluation of reserves that is reasonably comparable to that required by Texas law; and

(-b-) the other jurisdiction provides taxpayers a convenient opportunity to contest such evaluations prior to formal suit in a court of law and in a manner reasonably comparable to that provided under Texas law.

(b) Corporations that used an interim amortization method on their 1988 annual report must file an amended 1988 report that uses one of the four methods listed in subsection (a) of this section. The amended 1988 report must be filed no later than June 15, 1989.

(c) The method chosen to calculate the volume of reserves must be used to amortize intangible drilling costs under the successful efforts or full-cost methods of accounting, as described in SEC Regulation SX 210.4-10.

(d) A corporation must use the same method for estimating oil and gas reserves for all properties located within a single county (or other similar jurisdiction

in another state).

(e) Requests made to central appraisal districts, for oil and gas reserve volume calculated for ad valorem purposes, should be made on the form set out in Exhibit A as follows. It is the responsibility of each corporation to correctly identify the property on which a reserve volume is requested. Appraisal districts will only provide an aggregate volume for a property. Each corporation must break out their fractional interest in the reserve volume provided by the appraisal district.

EXHIBIT "A"

**Open Records Request for Mineral Reserve Volume
for State Franchise Tax**

Please print or type in completing this form. The appraisal district will provide the most current data from the prior certified January 1 appraisal roll for the total oil or gas lease (as applicable). The district will not provide data for fractional interests in an oil or gas lease.

To be completed by company	Date of Request: _____
	To: _____ County Appraisal District
	Address: _____ _____ _____
	From: _____ (Company Name)
	Address: _____ _____ _____
	Contact Person: _____ Phone No.: () _____
	Check One: ___ Oil Lease ___ Gas Lease
	Lease Name: _____ Field (Reservoir) Name: _____
	Railroad Commission District No.: _____ Railroad Commission Lease No.: _____
	Special Remarks: _____ _____
To be completed by appraisal district	Mineral Reserve Volume _____ Gas (MCF) on 1/1/____ : _____ Liquid (Barrels)
	Open Records Request Charge: \$ _____
	Date Request Received: ____/____/____ Date Payment Received: ____/____/____ Date Processed/Mailed: ____/____/____
	By: _____

Issued in Austin, Texas, on March 1, 1989.

TRD-8901984

Bob Bullock
Comptroller of Public
Accounts

Effective date: March 2, 1989

Expiration date: June 30, 1989

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

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**TITLE 40. SOCIAL
SERVICE AND
ASSISTANCE**

**Part V. Veterans Land
Board**

**Chapter 175. General Rules of
the Veterans Land Board**

• **40 TAC §175.18**

The Veterans Land Board adopts on an emergency basis an amendment to §175.18, concerning the resale of forfeited land. The Veterans Land Board currently has a back log in its inventory of forfeited but unsold tracts of

land. The emergency status is necessary to provide added flexibility to the staff of the board in disposing of the large number of forfeited tracts of land which the Veterans Land Board has in its inventory, and to prevent imminent loss of funds by delay of sale. This amendment will authorize the continued use of local real estate agents in the disposal of these tracts of land.

The amendment is adopted on an emergency basis under the Natural Resources Code, §161.061 and §161.063, which authorizes the commissioner to adopt rules that it considers necessary or advisable to ensure the proper administration of the Veterans Land Program.

§175.18. Resale of Forfeited Land.

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

(c) Sale of forfeited tracts.

(1) Qualified purchasers.

(A) (No change.)

(B) Any type I tract not awarded by the board on the bid deadline date shall be immediately reclassified as

Type II land. Type II tracts may be offered for sale or lease to both nonveterans and eligible veterans. Bids on Type II tracts may be reviewed by the chairman who may, in his or her sole discretion, award any Type II tract to the highest bidder; provided, however, the provisions of this section, concerning Type II land, insofar as the use of local real estate professionals to market tracts through the program is authorized, shall expire automatically at midnight, August 31, 1989 [February 28, 1989], unless extended by the board.

(2)-(7) (No change.)

(d) (No change.)

Issued in Austin, Texas, on February 27, 1989.

TRD-8901961

Garry Mauro
Chairman
Veterans Land Board

Effective date: March 1, 1989

Expiration date: June 29, 1989

For further information, please call: (512)
463-5009

◆ ◆ ◆

Name: Jim Stewart

Grade: 12

School: Plano East High, Plano



Jim Stewart

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 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter F. Bills of Lading and Waybills

• 16 TAC §5.91, §5.93

The Railroad Commission of Texas proposes amendments to §5.91 and §5.93, concerning the issuance of bills of lading and waybills by motor carriers. The amendments, proposed by the Texas Tank Truck Carriers Association, Inc., would allow motor carriers to issue a uniform hazardous waste manifest in lieu of a bill of lading or waybill for movements of materials required to be transported under a manifest

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

Gary W. Elkins, hearings examiner, also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the section will be to eliminate carrier documents that contain repetitious information. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Gary W. Elkins, Hearings Examiner, Legal Division, and Raymond A. Bennett, Director, Transportation/Gas Utilities Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendments are proposed under the Texas Motor Carrier Act, Texas Civil Statutes, Article 911b, which authorizes the commission to regulate motor carriers in all matters.

§5.91. Bills of Lading to be Issued.

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

(d) When transporting materials required to be moved under a uniform hazardous waste manifest, a motor carrier may issue a manifest in lieu of a bill

of lading, and the manifest shall serve as the bill of lading for all purposes.

§5.93. Issuance of Waybills.

(a) Each motor carrier shall issue a waybill covering each shipment transported or service performed. A combination waybill and freight or expense bill or invoice or combination bill of lading and waybill may be issued if it shows all of the information required in §5.94 of this title (relating to Contents of Waybills).

(b) When transporting materials required to be moved under a uniform hazardous waste manifest, a motor carrier may issue a manifest in lieu of a waybill, and the manifest shall serve as the waybill for all purposes.

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 February 27, 1989.

TRD-8901965

Cril Payne
Assistant Director, Legal
Division
Railroad Commission of
Texas

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-7152

TITLE 22. EXAMINING BOARDS

Part IV. Texas Cosmetology Commission

Chapter 81. Curriculum

• 22 TAC §81.1

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

The Texas Cosmetology Commission proposes the repeal of §81.1, concerning the curriculum for vocational beauty schools. The repeal is being proposed because this section no longer serves the purpose for which it was originally intended. The effect of this repeal

will be to eliminate unnecessary regulation.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Fiebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§81.1. Vocational Beauty Schools.

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 March 7, 1989.

TRD-8902050

Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

• 22 TAC §81.2

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

The Texas Cosmetology Commission proposes the repeal of §81.2, concerning private beauty schools curriculum. The repeal is being proposed because this section no longer serves the purpose for which it was originally intended. The effect of this repeal will be to eliminate unnecessary regulation.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there

will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§81.2. Private Beauty Schools.

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 March 7, 1989.

TRD-8902051 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

• 22 TAC §81.3

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

The Texas Cosmetology Commission proposes the repeal of §81.3, concerning hairweaving (curriculum). The repeal is being proposed because this section no longer serves the purpose for which it was originally intended. The effect of this repeal will be to eliminate unnecessary regulation.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the au-

thority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare

§81.3. Hairweaving.

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 March 7, 1989.

TRD-8902052 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

• 22 TAC §81.4

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

The Texas Cosmetology Commission proposes the repeal of §81.4, concerning facial specialists (curriculum). The repeal is being proposed because this section no longer serves the purpose for which it was originally intended. The effect of this repeal will be to eliminate unnecessary regulation.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§81.4. Facial Specialists.

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 March 7, 1989.

TRD-8902053 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

• 22 TAC §81.5

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

The Texas Cosmetology Commission proposes the repeal of §81.5, concerning manicurists (curriculum). The repeal is being proposed because this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulation.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§81.5. Manicurists.

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 March 7, 1989.

TRD-8902054 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

• 22 TAC §81.6

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

The Texas Cosmetology Commission proposes the repeal of §81.6, concerning shampoo technicians (curriculum). The repeal is being proposed because this section no longer serves the purpose for which it was origi-

nally intended. The effect will be to eliminate unnecessary regulation.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§81.6. Curriculum.

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 March 7, 1989.

TRD-8902055 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

• 22 TAC §81.7

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

The Texas Cosmetology Commission proposes the repeal of §81.7, concerning wig student instructor training program (curriculum). The repeal is being proposed because this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulation.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted

to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§81.7. Wig Instructor Training Program.

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

Issued in Austin, Texas, on March 7, 1989.

TRD-8902055 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

• 22 TAC §81.8

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

The Texas Cosmetology Commission proposes the repeal of §81.8, concerning student instructors (curriculum). The repeal is being proposed because this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulation.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§81.8. Student Instructor.

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 March 7, 1989.

TRD-8902057

Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

Chapter 83. Sanitary Rules

• 22 TAC §83.15

The Texas Cosmetology Commission proposes an amendment to §83.15, concerning sanitizing of salon implements which are used on salon patrons. This amendment is proposed in order to clarify the intent of the section. The effect of the amendment will be to save confusion due to misinterpretation of the language in the section.

Ms. Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Ms. Alspaugh also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to save confusion due to misinterpretation of the language in this section. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Janis Rebold, 1111 Rio Grande, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§83.15. Implements.

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

(c) After sanitizing, all sanitized implements shall be kept in a drawer or cabinet containing adequate sterilization. Sanitized implements stored other than in drawers and/or cabinets shall be individually wrapped in cellophane envelopes. [combs must be kept in a sterilizer apart from other items. Sanitized implements shall be individually wrapped in cellophane envelopes in a cabinet sanitizer or in ultraviolet ray cabinets until ready for use.]

(d) (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 March 7, 1989.

TRD-8902049 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

Chapter 85. Salon Requirements

• 22 TAC §85.1

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

The Texas Cosmetology Commission proposes the repeal of §85.1, concerning one-operator beauty salon (beauty salon requirements). The repeal is being proposed due to the fact that this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulation.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§85.1. One-Operator Beauty Salon.

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 March 7, 1989.

TRD-8902058 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

• 22 TAC §85.2

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Cosmetology Commission or in the Texas Register office, Room 245, James Earl Rudder

Building, 1019 Brazos Street, Austin.)

The Texas Cosmetology Commission proposes the repeal of §85.2, concerning multiple-operator beauty salon (beauty salon requirements). The repeal is being proposed due to the fact that this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulation.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§85.2. Multiple-Operator Beauty Salon.

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 March 7, 1989.

TRD-8902059 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

• 22 TAC §85.3

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

The Texas Cosmetology Commission proposes the repeal of §85.3, concerning all beauty salon (beauty salon requirements). The repeal is being proposed due to the fact that this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulation.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is

in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§85.3. All Beauty Salons.

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 March 7, 1989.

TRD-8902060 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

• 22 TAC §85.11

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

The Texas Cosmetology Commission proposes the repeal of §85.11, concerning one-operator hairweaving salon (hairweaving salon requirements). The repeal is being proposed due to the fact that this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulation.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§85.11. One-Operator Hairweaving Salon.

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 March 7, 1989

TRD-8902061 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

◆ ◆ ◆
• 22 TAC §85.12

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

The Texas Cosmetology Commission proposes the repeal of §85.12, concerning multiple-operator hairweaving salon (hairweaving salon requirements). The repeal is being proposed due to the fact that this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulation.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

◆ ◆ ◆
§85.12. Multiple-Operator Hairweaving Salon.

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 March 7, 1989.

TRD-8902062 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

• 22 TAC §85.13

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

The Texas Cosmetology Commission proposes the repeal of §85.13, concerning hairweaving speciality salons (hairweaving salon requirements). The repeal is being proposed due to the fact that this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulation.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

◆ ◆ ◆
§85.13. Hairweaving Speciality Salons.

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 March 7, 1989.

TRD-8902063 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

◆ ◆ ◆
• 22 TAC §85.21

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

The Texas Cosmetology Commission proposes the repeal of §85.21, concerning one-operator manicuring salon (manicuring salon requirements). The repeal is being proposed due to the fact that this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulation.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

◆ ◆ ◆
§85.21. One-Operator Manicuring Salon.

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 March 7, 1989.

TRD-8902064 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

◆ ◆ ◆
• 22 TAC §85.22

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

The Texas Cosmetology Commission proposes the repeal of §85.22, concerning multiple-operator manicuring salon (manicuring salon requirements). The repeal is being proposed due to the fact that this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulation.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant,

1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provides the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§85.22. Multiple-Operator Manicuring Salon.

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 March 7, 1989.

TRD-8902065 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

◆ ◆ ◆
• 22 TAC §85.23

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

The Texas Cosmetology Commission proposes the repeal of §85.23, concerning all specialty salons (manicuring salon requirements). The repeal is being proposed due to the fact that this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulation.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provides the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§85.23. All Specialty Salons.

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 March 7, 1989.

TRD-8902066 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

◆ ◆ ◆
• 22 TAC §85.31

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

The Texas Cosmetology Commission proposes the repeal of §85.31, concerning one-operator facial salon (facial salon requirements). The repeal is being proposed due to the fact that this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulation.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provides the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§85.31. One-Operator Facial Salon.

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 March 7, 1989.

TRD-8902067 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

◆ ◆ ◆
• 22 TAC §85.32

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Cosmetology Commission or in the Texas

Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Cosmetology Commission proposes the repeal of §85.32, concerning multiple-operator facial salon (facial salon requirements). The repeal is being proposed due to the fact that this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulation.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provides the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§85.32. Multiple-Operator Facial Salon.

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 March 7, 1989.

TRD-8902068 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

◆ ◆ ◆
• 22 TAC §85.33

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

The Texas Cosmetology Commission proposes the repeal of §85.33, concerning all specialty salon (facial salon requirements). The repeal is being proposed due to the fact that this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulation.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for

each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§85.33. All Specialty Salons.

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 March 7, 1989.

TRD-8902069 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

• 22 TAC §85.41

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

The Texas Cosmetology Commission proposes the repeal of §85.41, concerning required floor space (for wig salons). The repeal is proposed due to the fact that this section no longer serves the purpose for which it was intended. The effect will be to eliminate unnecessary regulations.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§85.41. Required Floor Space.

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 March 7, 1989.

TRD-8902070 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

Chapter 87. Schools

• 22 TAC §87.1

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

The Texas Cosmetology Commission proposes the repeal of §87.1, concerning building (in private beauty culture schools). The repeal is proposed due to the fact that this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulations.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§87.1. Building.

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 March 7, 1989.

TRD 8902071 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

• 22 TAC §87.2

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

The Texas Cosmetology Commission proposes the repeal of §87.2, concerning classrooms (in private beauty culture schools). The repeal is being proposed due to the fact that this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulations.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§87.2. Classroom.

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 March 7, 1989.

TRD-8902072 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

• 22 TAC §87.3

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

The Texas Cosmetology Commission proposes the repeal of §87.3, concerning school equipment list (for private beauty culture school). The repeal is being proposed due to the fact that this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulations.

Delores L. Alspaugh, interim executive direc-

tor, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§87.3. School Equipment List.

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 March 7, 1989

TRD-8902073 Dolores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

• 22 TAC §87.4

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

The Texas Cosmetology Commission proposes the repeal of §87.4, concerning junior department (for private beauty culture schools). The repeal is being proposed due to the fact that this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulations.

Dolores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§87.4. Junior Department.

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

Issued in Austin, Texas, on March 7, 1989

TRD-8902074 Dolores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

• 22 TAC §87.5

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

The Texas Cosmetology Commission proposes the repeal of §87.5, concerning senior department (for private beauty culture schools). The repeal is being proposed due to the fact that this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulations.

Dolores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§87.5. Senior Department.

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

Issued in Austin, Texas, on March 7, 1989.

TRD-8902075 Dolores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

• 22 TAC §87.6

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

The Texas Cosmetology Commission proposes the repeal of §87.6, concerning dispensary (for private beauty culture schools). The repeal is being proposed due to the fact that this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulations.

Dolores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§87.6. Dispensary.

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 March 7, 1989.

TRD-8902076 Dolores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

• 22 TAC §87.7

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

The Texas Cosmetology Commission proposes the repeal of §87.7, concerning notification of change of equipment (for private

beauty culture schools). The repeal is being proposed because this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulations.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§87.7. Notification of Change of Equipment.

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 March 7, 1989.

TRD-8902077 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

• 22 TAC §87.8

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

The Texas Cosmetology Commission proposes the repeal of §87.8, concerning original license fee (for private beauty culture schools). The repeal is being proposed due to the fact that this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulations.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is

no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§87.8. Original License Fee.

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

Issued in Austin, Texas, on March 7, 1989.

TRD-8902078 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

• 22 TAC §87.9

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

The Texas Cosmetology Commission proposes the repeal of §87.9, concerning inspection (for private beauty culture schools). The repeal is being proposed because this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulations.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§87.9. Inspection.

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 March 7, 1989.

TRD-8902079 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

• 22 TAC §87.10

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

The Texas Cosmetology Commission proposes the repeal of §87.10, concerning minimum student kit for all private beauty schools for each student. The repeal is being proposed because this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulations.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§87.10. Minimum Student Kit for All Private Beauty Schools for Each Student.

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 March 7, 1989.

TRD-8902080 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

• 22 TAC §87.21

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

The Texas Cosmetology Commission proposes the repeal of §87.21, concerning facilities (for a vocational beauty culture schools). The repeal is being proposed because this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulations.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§87.21. Facilities.

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 March 7, 1989.

TRD-8902081 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

• 22 TAC §87.22

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

The Texas Cosmetology Commission proposes the repeal of §87.22, concerning equipment list (for vocational beauty culture schools). The repeal is being proposed due to the fact that this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulations.

Delores L. Alspaugh, interim executive direc-

tor, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§87.22. Equipment List.

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 March 7, 1989.

TRD-8902082 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

• 22 TAC §87.31

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

The Texas Cosmetology Commission proposes the repeal of §87.31, concerning required floor space (for wig schools). The repeal is being proposed due to the fact that this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulations.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil

Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§87.31. Required Floor Space.

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 March 7, 1989

TRD-8902083 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

• 22 TAC §87.32

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

The Texas Cosmetology Commission proposes the repeal of §87.32, concerning required equipment (for wig schools). The repeal is being proposed due to the fact that this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulations.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

§87.32. Required Equipment.

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 March 7, 1989.

TRD-8902084 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

♦ ♦ ♦
• 22 TAC §87.33

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

The Texas Cosmetology Commission proposes the repeal of §87.33, concerning additional requirements (for wig schools). The repeal is being proposed because this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulations.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

♦ ♦ ♦
§87.33. *Additional Requirements.*

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 March 7, 1989.

TRD-8902085 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

♦ ♦ ♦
• 22 TAC §87.34

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

The Texas Cosmetology Commission proposes the repeal of §87.34, concerning inspection (for wig schools). The repeal is

being proposed due to the fact that this section no longer serves the purpose for which it was originally intended. The effect will be to eliminate unnecessary regulation.

Delores L. Alspaugh, interim executive director, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Ms. Alspaugh also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of an unnecessary regulation. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Janis Rebold, Administrative Assistant, 1111 Rio Grande, Austin, Texas, 78701.

The repeal is proposed under Texas Civil Statutes, Article 8451a, §4, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

♦ ♦ ♦
§87.34. *Inspections.*

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 March 7, 1989.

TRD-8902086 Delores L. Alspaugh
Interim Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5542

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TITLE 28. INSURANCE
Part I. State Board of
Insurance

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

Subchapter E. Group Life,
and/or Group Accident and
Health Insurance Policies
and Certificates

♦ ♦ ♦
• 28 TAC §3.408

The State Board of Insurance proposes new §3.408, concerning mandatory policy provisions for group policies of accident and sickness insurance. Section 3.408 was adopted on an emergency basis and became effective on November 2, 1988. Notice of the emergency adoption appeared in the November 11, 1988, issue of the *Texas Register* (13 TexReg 5669). The new section is necessary to implement the provisions of the Insurance Code, Article 3.76, which provides that each individual or group policy of accident and

sickness insurance that is delivered, issued for delivery, or renewed in Texas shall provide for payment of benefits on behalf of children to the Texas Department of Human Services (the department) under appropriate circumstances. The new section specifies the language which an insurance policy must use to require payment to the department, and specifies the circumstances under which benefits must be paid to the department.

Kay Simonton, deputy insurance commissioner for life insurance, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. For small businesses, the cost of compliance with the proposed section will be the same as the anticipated economic cost to all person who are required to comply with the section. On the basis of cost per hour of labor, there is no anticipated difference in cost of compliance between small and large businesses.

Ms. Simonton also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be more effective payment to the Texas Department of Human Services of accident and health insurance benefits for dependent children. The anticipated economic cost to person who are required to comply with the section is the cost of amending or endorsing existing policy forms. That cost should be less than \$5.00 per policy.

Comments on the proposal may be submitted to Kay Simonton, Deputy Insurance Commissioner for life insurance, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The new section is proposed under the Insurance Code, Article 3.76, §3, which authorizes the State Board of Insurance to prescribe uniform policy provisions, riders, and endorsements for the policy requirements under the Article.

♦ ♦ ♦
§3.408. *Mandatory Policy Provisions.*

(a) Each group policy of accident and sickness insurance that is delivered, issued for delivery, or renewed in Texas on or after January 1, 1988, including a policy issued by a company subject to the Insurance Code, Chapter 20, must contain a benefit provision which states, "All benefits paid 1988, including a policy issued by a company subject to the Insurance Code, Chapter 20, must contain a benefit provision which states, "All benefits paid on behalf of the child or children under the policy must be paid to the Texas Department of Human Services" whenever:

(1) the Texas Department of Human Services is paying benefits under the Human Resources Code, Chapter 31 or Chapter 32, i.e., financial and medical assistance service programs administered pursuant to the Human Resources Code; and

(2) the parent who is covered by the group policy has possession or access to the child pursuant to a court order, or is not

entitled to access or possession of the child and is required by the court to pay child support.

(b) The insurer or group nonprofit hospital service company must receive, at its home office, written notice affixed to the insurance claim when the claim is first submitted, and the notice must state that all benefits paid pursuant to this section must be paid directly to the Texas Department of Human Services.

(c) With respect to any policy forms approved by the State Board of Insurance prior to the effective date of this section, an insurer is authorized to achieve compliance with this section by the use of endorsements or riders, provided such endorsements or riders are approved by the State Board of Insurance as being in compliance with this section and the provisions of the Insurance Code.

(d) All policies issued or renewed on and after January 1, 1988, will be considered in compliance with this section if they contain the language prescribed within subsection (a) of this section.

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 March 6, 1989.

TRD-8902102 Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: April 10, 1989

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

Chapter 7. Corporate and Financial

Subchapter A. Examination and Corporate Custodian and Tax

• 28 TAC §7.73

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

The State Board of Insurance proposes new §7.73, concerning annual statement diskette filing requirements for financial activities by insurance companies and other entities regulated by the board. Notification of adoption of

this section on an emergency basis appears elsewhere in this issue of the *Texas Register*. This new section is necessary to facilitate appropriate reporting by affected entities and to provide for timely and reliable review of financial data from each entity's annual statement. Rapid and reliable review can produce fast action when necessary to maintain a regulated entity in sound financial condition that will protect policyholders and other consumers. This new section requires that, in 1989, regulated entities must provide the board with machine-readable diskettes containing financial information concerning activities during the 1988 calendar year. This new section also requires some reporting by diskette to the National Association of Insurance Commissioners. The new section also refers regulated entities to manuals which specify the form and content of computerized data that the regulated entities must provide on the diskettes. The manuals require information concerning the financial condition and business operations of the regulated entities. The board has filed with the Office of the Secretary of State, Texas Register Division, copies of the manuals and specifications proposed for adoption by reference. Other copies of these manuals and specifications as proposed are available for inspection at the office of the Chief Clerk in Room 406 of the State Insurance Building at 1110 San Jacinto Boulevard in Austin.

Scott Nance, director of corporate activities, 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. The anticipated economic cost to small businesses and other persons who are required to comply with the proposed section depends on the method of compliance that a regulated entity selects. If a regulated entity elects to purchase electronic data processing equipment and to prepare diskettes internally, the anticipated maximum cost of compliance would be \$7,500 for the first year, and \$1,200 for each of the next four years. If the regulated entity chooses to use an independent consultant or vendor to prepare a diskette adequate to comply with the requirements of this section, the anticipated possible economic cost of compliance would be between \$500 and \$2,000 for each year of the first five years that the proposed section will be in effect, with the exact cost depending on the fee schedule of the independent consultant or vendor whom the regulated entity chooses to utilize. On the basis of cost per hour of labor, there is no expected difference in cost of compliance between small businesses and larger businesses affected by the section.

Mr. Nance also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the adoption of requirements and instructions to facilitate appropriate reporting by regulated entities and

to facilitate review by the board of reported information. The anticipated economic cost to persons who are required to comply with the proposed section will be the same as that described previously as the cost to small businesses.

Comments of the proposal may be submitted to Nicholas Murphy, Division Code 0110, Chief Clerk, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998

The new section is proposed under the Insurance Code, Articles 1.04, 1.11, 3.07, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 11.06, 11.19, 15.15, 15.16, 17.22, 17.25, 18.12, 19.08, 20.02, 21.21, 21.43, 21.54, 22.06, and 22.18 and Texas Civil Statutes, Article 6252-13a, §4 and §5. The Insurance Code, Article 1.04, authorizes the State Board of Insurance to determine policy and rules. Article 1.11 authorizes the board to make such changes in the forms of annual statements as shall seem to it best adapted to elicit a true exhibit of the condition and methods of transacting business of regulated entities, and also requires certain entities to file with the National Association of Insurance Commissioners. Article 21.21 prohibits any person engaged in the business of insurance from filing with any public official any false statement of financial condition of an insurer with intent to deceive. Article 21.43 requires that the provisions of the Insurance Code are conditions on which foreign insurance corporations are permitted to do business in this state. The Insurance Code, Articles 3.07, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 11.06, 11.19, 15.15, 15.16, 17.22, 17.25, 18.12, 19.08, 20.02, 21.54, 22.06, and 22.18, requires the filing of annual statements, annual reports, and other information by certain entities regulated by the board, applies particular statutory law respecting reports to those entities, and specifies particular rule-making authority relating to those entities. Texas Civil Statutes, Article 6252-13a, §4, authorize and require each state administrative agency to adopt rules of practice setting forth the nature and requirements of available procedures. Section 5 prescribes the procedures for adoption of rules by any state administrative agency.

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 February 27, 1989.

TRD-8901943 Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: April 10, 1989

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 305. Consolidated Permits

Subchapter N. Memorandum of Understanding

• 31 TAC §305.521

The Texas Water Commission (TWC) proposes new §305.521, concerning the adoption by reference of memoranda of understanding (MOU) between the Texas Water Commission and other state agencies. The adoption of a MOU requires rule making as set forth in the Texas Water Code, §5.104. The first MOU referenced is between the Texas Department of Health (TDH), the Texas Air Control Board (TACB), and the Texas Water Commission. This memorandum is being proposed to foster interagency cooperation, to avoid duplication of effort, to avoid placing the burden of dual regulation on owners and operators, to apprise the public of state agencies' activities, to establish an enforceable compliance-monitoring regimen, and to provide for the coordination of activities of agencies relating to the management of sewage sludge.

Section 305.521 was previously proposed by TWC in the July 29, 1988, issue of the *Texas Register* (10 TexReg 3736), and was automatically withdrawn and is now being replaced because of substantive changes which have been made as a result of public comments and because the Texas Water Development Board is no longer a participant and signatory in the MOU, proposed in §305.521.

The second MOU listed in the new proposed §305.521 is between TDH and TWC. The purpose of this MOU is to institute an integrated approach for the licensing and permitting of the management of non-hazardous wastewater that contains radioactive constituents, to implement and coordinate the regulatory requirements of the agencies, and to provide a constituent approach to licensing and permitting in order to avoid duplication of efforts.

Under the Texas Water Code, §5.104, the TWC shall adopt by reference any memorandum of understanding between TWC and any other state agency. Copies of the proposed memoranda are available upon request from TWC, Legal Division, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8087. The TACB and TDH are also proposing the memoranda of understanding for inclusion in their rules, as appropriate.

Roger G. Bourdeau, chief fiscal officer, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Bourdeau also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a

result of enforcing the section will be that the regulated community and the public at large will know the exact responsibilities of each agency involved in the MOUs and therefore know who to contact to ask questions, voice concerns, or submit compliance. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Kevin McCalla, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087. Comments will be received for 30 days following the date of this publication.

The new section is proposed under the Texas Water Code, §5.104 and §26.011, which gives the commission the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The sections is also proposed under the Texas Solid Waste Act, Texas Civil Statutes, Article 4477-7, 3, and 4, which gives the commission the authority to regulate industrial solid wastes and hazardous municipal solid wastes and to adopt rules and promulgate rules consistent with the general intent and purposes of the Act.

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

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

(2) the memorandum of understanding between the Texas Department of Health and the Texas Water Commission, which concerns the regulation and management of non-hazardous wastewater that contains radioactive constituents.

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 February 28, 1989

TRD-8901951

Jim Haley
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: April 10, 1989

For further information, please call. (512) 463-8087

Chapter 334. Underground Storage Tanks

Subchapter A. General Provisions

(Editor's Note: For reprints of these sections, concerning underground storage tanks, please send \$4.00 per copy to: *Texas Register*, P.O. Box 13824, Austin, Tx 78711-3824. Please indicate subject matter, chapter, and date of *Texas Register* Phone: (512) 463-5561.)

The Texas Water Commission proposes new §§334.1-334.13, 334.41-334.55, 334.71-334.85, and 334.91-334.109, concerning the underground storage tank regulatory program, and the repeal of §§334.1-334.5 which are being replaced by new Subchapter A. The Texas Water Commission is required under the Texas Water Code, §§26.341-26.359, as amended by Senate Bill 779, 70th Legislature, 1987, to establish a program to regulate underground storage tanks; to establish standards for the operation, inspection, testing, and closure of underground tanks; to develop procedures for remedial action in response to releases from underground tanks; and to establish a system of fee assessments to support the state's cost of administration of such a program. The sections proposed at this time, including the financial responsibility requirements of Subchapter E, are intended to implement the general provisions of the Texas Water Code.

The Environmental Protection Agency (EPA) has adopted rules pertaining to underground storage tanks (40 Code of Federal Regulations (CFR) Parts 280 and 281) on technical requirements and state program approval effective December 22, 1988, and rules on financial responsibility effective January 24, 1989. The Texas Water Commission has attempted to track the federal rules where possible and has adopted new sections where there is no federal rule or where the federal rule is not adequate to address the commission's concern.

The sections proposed at this time define pertinent terms, specify who is subject to regulation, and which tanks are exempted under these sections. The proposed sections also contain registration requirements, technical standards, release reporting and corrective action requirements, and financial responsibility requirements. Subchapter B, §§334.21-334.23, which sets up the fee system concerning underground storage tanks, remains in effect with no changes.

New Subchapter A, §§334.1-334.13, concerning general provisions, is proposed as new, although some of the regulations have been in effect in §§334.1-334.5. New §334.1, concerning purpose and applicability, is a general policy statement as to the purpose of the proposed sections, and defines which underground storage tanks are to be regulated by these proposed sections.

New §334.2, concerning definitions, lists significant terms with particular meanings in the proposed sections. An attempt was made to follow the definitions promulgated by the EPA at 40 Code of Federal Regulations §280.12. However, certain definitions do differ from the federal definitions. The proposed definition of heating oil differs from the federal definition in that it clarifies that fuels such as kerosene or

diesel are considered heating oils only when they are being used for heating purposes as a substitute for the listed fuel oils or residual fuel oil derivatives

A definition of farm is proposed which clarifies what is and what is not to be considered a farm. The federal rules define farm within the definition of farm tank.

A definition of petroleum substance is proposed which differs from the federal rule in that a list of petroleum substances is included in the definition in order to specifically delineate what a petroleum substance includes.

The proposed rules use the term "corrosion technician" in place of the federal definition of cathodic protection tester. A corrosion technician, as defined, would by training and experience have broader knowledge of corrosion in general, instead of specific knowledge relating to cathodic protection as the term "cathodic protection tester" is defined in the federal rules. A corrosion technician is also subject to accreditation by the National Association of Corrosion Engineers unlike cathodic protection testers.

The proposed definition of operator differs from the federal rule in that not only are those persons who are in control of, or have responsibility for, the daily operation of the underground storage tank system considered operators, but also those persons who previously had control of, or responsibility for, the daily operation of the underground storage tank system are considered operators.

The proposed definition of owner differs from the federal rule in that the proposed definition specifically states that the fee simple owner of the surface estate where the underground storage tank is located is considered the owner of the underground storage tank absent proof to the contrary. The proposed definition also differs from the federal definition in that all persons who previously held legal possession or ownership of a total or partial interest in the underground storage tank system are considered owners regardless of when the underground storage tank system was taken out of service.

New §334.3, concerning statutory exemptions, lists those tanks which are completely exempt from regulation pursuant to the Texas Water Code, §26.344. These include farm or residential tanks of 1,100 gallons or less storing motor fuel for noncommercial use, tanks storing heating oil for on-site use, septic tanks, surface impoundments, certain wastewater collection facilities, some process tanks, tanks associated with certain oil and gas activities, and certain pipelines. A partial exemption is provided in this section for in-ground hydraulic lifts using a compressed air/hydraulic fluid system and holding less than 100 gallons of hydraulic oil.

New §334.4, concerning commission exclusions, lists those tanks which are not listed in the statutory exemption but are nevertheless completely excluded from regulation. These include any underground storage tank system containing a hazardous waste listed or identified under the federal Solid Waste Disposal Act, Subtitle C; or a mixture of such hazardous waste and other regulated substances; any underground storage tank system containing wastewater (including oil-water separators) where such system is located at and is an integral part of a wastewater treatment

facility regulated under the Clean Water Act (33 United States Code §1251, et seq.); electrical equipment and other equipment or machinery which operates in a manner whereby a release of regulated substance is evidenced by the faulty operation of such equipment or machinery; sumps with a capacity of less than 110 gallons; emergency spill protection or emergency overflow containment tanks; and underground storage tanks containing regulated substances at low concentration levels.

Partial exclusions are also included in this section. Those tanks which are partially excluded include underground storage tanks containing wastewater where such system is not an integral part of a wastewater treatment facility, any underground storage tank that contains radioactive substances, and any underground storage tank that contains fuel used solely to power an emergency electrical generator system at a nuclear power generation facility.

In-ground hydraulic lifts that use a compressed air/hydraulic fluid system and which hold 100 gallons or more of hydraulic oil are exempted from all requirements except for release reporting and corrective action requirements of proposed §§334.71-334.85.

New §334.5, concerning to general prohibitions, requires that on or after September 1, 1987, no person shall install or have installed an underground storage tank for the purpose of storing a regulated substance unless the tank will prevent releases due to corrosion or structural failure; is either cathodically protected, constructed of noncorrosive material, clad with a noncorrosive material, or otherwise designed to prevent releases; and is constructed or lined with a material which is compatible with the regulated substance.

Also contained in this section is the requirement that, on or after the effective date of these rules, no person shall deposit or have deposited any regulated substance into an underground storage tank unless such tank is registered, and prior to depositing any regulated substance into an underground storage tank the owner must provide evidence of registration of such tank to the person responsible for delivery.

This section also establishes requirements for registration of regulated tanks with the commission, and notice requirements for the installation, replacement, removal or abandonment of tanks.

New §334.6, concerning construction notification, requires that any person who intends either to install a new or replacement underground storage tank; to perform any improvement, addition, or repair to an underground storage tank system; to remove an underground storage tank from the ground (temporarily or permanently); to conduct a change-in-service for an underground storage tank; or to permanently abandon an underground storage tank in place, shall file a written notice on an authorized form with the commission at least 30 days prior to initiating the activity.

The 30-day construction notification requirements may be waived for good cause including the discovery of evidence indicating that a release or suspected release has occurred or could occur.

New §334.7, concerning registration, requires all underground storage tanks in existence on or after September 1, 1987, to be registered on an authorized form unless such tank is completely exempt from regulation as specified in §334.3 and §334.4, was properly registered with the commission prior to the effective date of this subchapter under the provisions of the federal Solid Waste Disposal Act, or the underground storage tank has been permanently removed from service by either being removed from the ground before May 8, 1966, or was emptied and cleaned in accordance with accepted industry practices and filled with a solid inert material on or before January 1, 1974.

The owner of an underground storage tank is also required by this section to provide written notice to the executive director of any changes or additional information concerning the underground storage tank system. Such changes include a change in ownership, change in operational status of each tank system, change in type of stored regulated substance, the installation of additional tanks and ancillary equipment at an existing facility, changes in types of piping, change or addition of the type of internal or external corrosion protection, the addition or change in the type of spill and overfill prevention equipment, the addition of or change in the type of release detection equipment, the change in the location of documents and records for the facility, the change of financial assurance information related to the facility, or any other change which is necessary to accurately describe the status of the underground storage tank system at the facility.

New §334.8, concerning certification, requires that owners and operators assure that all applicable parts of the construction certification section of the commission's authorized tank registration form are completed, and further certify by signature that the installation meets the technical standards for new underground storage tank systems of proposed §334.45 and the installation standards for new underground storage tank systems of proposed §334.46, that the corrosion protection system meets the corrosion protection standards of proposed §334.49, and that the release detection system meets the release detection standards of proposed §334.50. This section requires any installer who is employed or otherwise engaged by an underground storage tank owner or operator to certify by signature that the installation methods are in compliance with the installation standards for new underground storage tank systems of proposed §334.46.

This section also requires that beginning January 24, 1989, all owners and operators of new and existing underground storage tank systems to ensure that all applicable parts of the financial responsibility section of the commission authorized tank registration form are completed.

New §334.9, concerning seller's disclosure, requires that after October 24, 1988, any person who sells or otherwise legally conveys a tank or tank system which is designed or intended to be used as an underground storage tank provide the purchaser with written notification of the tank owner's obligations relative to the tank registration provisions of §334.7 and construction notification requirements of §334.6.

The specific requirements for reporting and recordkeeping are in new §334.10. Owners and operators of underground storage tank systems will be responsible for developing and maintaining all required records and make them available to the operator and staff of the Texas Water Commission. If records cannot be maintained in a secure location on the premises of the UST facility, then an alternate site can be used if the conditions specified in this section are met. The facility owner can, under certain circumstances, submit the appropriate records to the executive director of the Texas Water Commission for safekeeping.

New §334.11, concerning enforcement, describes the options which the commission may pursue for the owner or operator's failure to install, operate, maintain, or otherwise comply with the applicable requirements of these rules.

New §334.12, concerning other general provisions, states that owners and operators are not relieved of the responsibility of complying with other applicable regulations. This section requires that owners and operators furnish information relating to the tank, conduct monitoring or testing, and permit designated agents or employees of the commission to have access to and copies of all records relating to the tank. This section further requires that the commission's designated agents or employees be allowed to enter, at reasonable times, a place in which an underground storage tank is located, inspect and obtain samples of regulated substances contained in the tank, and conduct monitoring or testing of the tank and associated equipment, contents, or surrounding soils, air, surface water, or groundwater.

New §334.13, concerning joint and several liability, states that past and present owners and/or past and present operators may be considered jointly and severally liable for any corrective action requirements pursuant to §26.351 of the Texas Water Code and §§334.71-334.85 of these proposed rules. This section has no federal rule equivalent.

New Subchapter C, §§334.41-334.55, concerning technical standards, is a new subchapter which explains in detail the requirements for installing, operating, testing, repairing, leak monitoring, and closure of underground storage tank systems. The commission's proposed rules in Subchapter C on technical standards for underground storage tanks are similar to the federal rules in most areas. In order to protect the sensitive hydrogeologic areas in the state and provide further environmental protection from releases from underground storage tanks, some sections contained in Subchapter C have requirements that are more stringent than the federal rules, other sections elaborate on the federal requirements to allow more clarity and precision.

New §334.41, concerning applicability, states that the proposed rules on underground storage tanks for technical standard requirements in this subchapter apply to all underground storage tanks unless the tank is either an in-ground hydraulic lift which uses a compressed air/hydraulic fluid system or another underground storage tank which is partially exempted in accordance with §334.4, such tank shall only be required to meet the minimum design and operation requirements con-

tained in §334.5(a).

In general, all components of any new or existing underground storage tank shall help prevent releases and shall be compatible with the substances they come in direct contact with. It is the owner's or operator's responsibility to make sure an underground storage tank system is designed, installed, and operated in accordance with these proposed rules and in accordance with the accepted codes or standards of practice in the industry. These requirements are included in §334.42.

New §334.43, concerning variances and alternative procedures, allows the Texas Water Commission to establish acceptable variances or alternative procedures to the technical standards. When and how variances or alternative procedures are considered are in this section. These provisions require sufficient information be provided to the executive director which demonstrates that equivalent protection of human health, safety, and the environment is provided by the proposed variance or alternative procedure.

New §334.44, concerning implementation schedules, provides schedules for complying with technical standards, corrosion protection, and release detection requirements in §§334.45-334.47 and §§334.49-334.51.

The technical standards for new underground storage tank systems are outlined in new §334.45. These requirements, as proposed, include design, construction, and corrosion protection standards for new tanks, spill and overfill prevention equipment, release detection, and other tank component standards for new tanks; secondary containment for hazardous substance tanks and piping; and other technical standards for other new or replacement tank equipment. These standards are in general agreement with the federal regulations, but with additional explanation and clarity.

The installation standards for new underground storage tanks are discussed in new §334.46. Installation procedures will utilize published standards, skilled installers, adequate excavation, and backfill. The acceptable standards on installing anchoring devices, piping systems, and external liners are in this section. Also, air tests, tank tightness tests, and piping testing are part of the installation process for new tanks. The installation requirements for cathodic protection systems and secondary containment systems are included here.

The technical standards for existing underground storage tank systems are addressed in new §334.47. Tanks installed prior to December 22, 1988, shall either meet the technical standards for new underground tank systems or meet the minimum upgrading requirements discussed in this section. Upgrading requirements include tank integrity assessments combined with cathodic protection, spill and overfill prevention equipment, and release detection equipment.

New §334.48, concerning general operating and management requirements, states that owners and operators of all new and existing underground storage tank systems shall ensure that all systems, components, and equipment are operated, maintained, and managed in order to prevent releases and in accordance with accepted industry practice.

The requirements for corrosion protection and the acceptable methods of providing corrosion protection are outlined in new §334.49. As proposed, these rules will apply to all components of an underground storage tank system which stores a regulated substance. Cathodically protecting or electrically isolating the component from the corrosive elements of the surrounding soil, backfill, and groundwater are acceptable methods of corrosion protection in these proposed rules. Other acceptable methods of corrosion protection are listed. Information on the type of records that need to be kept for cathodic protection systems are also included in this section.

New §334.50, concerning release detection, contains the specific requirements on the ability to detect leaks from tanks, piping, and other ancillary equipment. Any existing underground storage tank system that cannot be equipped or monitored in accordance with this section will need to be permanently removed from service. The installment schedules and the performance requirements for release detection are in this section. Also included are the additional requirements for release detection on hazardous substance UST systems. Owners and operators will be required to maintain records that demonstrate compliance with this section. This section is similar to the federal requirements at 40 Code of Federal Regulations, §§280.40-280.45.

New §334.51, concerning spill and overfill prevention and control, contains the specific requirements on the prevention and control of spills and overfills of regulated substances being transferred into or from an underground storage tank system. The schedule for compliance and the necessary equipment are included. The design and installation of spill and overfill prevention equipment are explained here as well.

Proposed requirements for the repair and relining of underground storage tanks are in new §334.52. This section discusses how and when tanks can be placed back in to service after being repaired or relined. A precision tank tightness test shall be conducted on any tank that has been repaired or relined, or on any repaired piping system prior to being placed back in operation. Whenever a release occurs in the piping, valves, or fittings, repairs will not be allowed and new replacements, meeting the applicable requirements for new piping systems in §334.45(c) will be necessary. Metal piping systems without cathodic protection systems that have undergone repair will need to be coated with a suitable dielectric coating, electrically isolated by dielectric fittings, and retrofitted with a field-installed cathodic protection system.

New §334.53, concerning the reuse of used tanks, explains the requirements for installing or re-installing used tanks. The tanks shall meet the requirements for new tank installations. The tank material shall be compatible with the substance to be stored in the tank. Repairs and relining of a used tank shall be in accordance with §334.52. If a used steel tank is retrofitted with a fiberglass-reinforced plastic exterior coating, the tank must be prepared for the coating in accordance with the requirements listed in this section. Detailed records on the installation of any used tank will be maintained as long as the tank remains in operation.

New §334.54, concerning the temporary re-

removal of an underground storage tank system, describes the conditions that must be maintained while the system remains out of service. Once a system has been temporarily put out of service for three months, all vent lines shall remain open and all piping or other ancillary equipment shall be capped or secured to prevent access, tampering, or vandalism. Underground storage tank systems can remain out of service indefinitely so long as the system is adequately protected from corrosion in accordance with the corrosion protection requirements in §334.49, and so long as the system is monitored for releases in accordance with the release detection requirements in §334.50 if the tank has not been emptied of all regulated substances. Otherwise, the tank system can be out of service for no more than 12 months before the system must be either: permanently removed from service, upgraded with corrosion protection and release monitoring devices; or brought back into service by performing a tank tightness test, a piping tightness test, and satisfying any applicable requirements for corrosion protection and release detection under §334.49 and §334.50. While temporarily out of service, the owner or operator is still responsible for the requirements for Subchapter D, registration requirements of §334.7, requirements for reporting and recordkeeping in §334.10, and payment of underground storage tank fees pursuant to existing Subchapter B.

New §334.55, concerning permanent removals from service lists the requirements for emptying and cleaning tanks storing regulated substances. This section also includes the requirements for assessing the tank site for possible releases from the tank system. Tanks can be permanently removed from service by removing the tank from the ground, abandoning in-place, or by conducting a change-in-service. The requirements for these procedures are in this section.

Subchapter D, §§334.71-334.85, concerning release reporting and corrective action, is a new subchapter which very closely follows the federal rules found in 40 Code of Federal Regulation, §§280.50-280.67.

New §334.71, concerning applicability, states that all provisions are applicable to owners and operators unless they have been excluded in Subchapter A.

New §334.72, concerning reporting of suspected releases, requires owners and operators of underground storage tank systems to report to the executive director within 24 hours of discovery by owners, operators, or others of a released regulated substance at the site or in the surrounding area, unusual operating conditions of underground storage tank equipment, or monitoring results which indicate a release may have occurred. This new section is similar to the federal rule at 40 Code of Federal Regulations §280.50, except this new section requires that notice be given for underground storage tanks whenever monitoring or observation indicates a breach in either the primary or secondary barrier of a double-well tank system or a system employing another form of secondary containment.

New §334.73, concerning investigation due to off-site impact, requires owners and operators, when required by the executive director, to determine if their underground storage tank system is the source of off-site impacts. This

new section is similar to the federal rule at 40 Code of Federal Regulations §280.51.

New §334.74, concerning release investigation and confirmation steps, requires owners and operators to investigate and confirm all suspected releases of regulated substances within seven days by either doing a system test to determine whether a leak exists, or a site check which requires measuring for the presence of a release where contamination is most likely to be present at the underground storage tank site. Any discovery that a release has occurred will require the owner or operator to repair the underground storage tank system and begin corrective action at the site. This new section is similar to the federal rule at 40 Code of Federal Regulations §280.52, except this section requires that owners or operators file a report containing a detailed description of the investigation procedures followed in addressing the requirements of this section if no evidence of a release is found. The report is to be filed with the executive director not later than 15 days after indications of a suspected leak. The owner or operator must also include a notarized statement in this report which certifies that the requirements of this section have been complied with.

New §334.75, concerning reporting and cleanup of surface spills and overfills, requires owners and operators of underground storage tank systems to contain and clean up spills or overfills as well as report within 24 hours and begin corrective action if the spill or overfill of petroleum exceeds 25 gallons or causes a sheen on nearby surface water, or if a spill or overfill of a hazardous substance results in a release to the environment which equals or exceeds its reportable quantity under CERCLA, (40 Code of Federal Regulations Part 302), or 25 gallons, whichever is smaller.

This section requires that owners and operators contain and immediately clean up spills and overfills of petroleum which have a volume of less than 25 gallons, and a spill or overfill of a hazardous substance, which has a volume less than the reportable quantity or equal to 25 gallons, whichever is smaller. If clean up cannot be accomplished within 24 hours, owners and operators are required to notify the executive director. This new section is similar to the federal rule at 40 Code of Federal Regulations §280.53 with the exception that 25 gallons becomes the minimum reportable quantity for those substances which have a higher reportable quantity in CERCLA.

New §334.76, concerning initial response to releases, requires owners and operators, upon confirmation of a release or identifying a release by any other manner, report the release to the executive director within 24 hours, and take immediate action to prevent further release of regulated substances into the environment, including shutting down the leaking underground storage tank system and mitigate fire, explosion, and vapor hazards. This new section is similar to the federal rule at 40 Code of Federal Regulations §280.61, except the new rule has the requirement of shutting down the underground storage tank system to prevent further release of regulated substances into the environment.

New §334.77, concerning initial abatement measures and site check, requires owners

and operators to do the following abatement measures unless directed to do otherwise by the executive director: remove regulated substances from the underground storage tank system as needed to prevent further release to the environment, inspect aboveground and exposed below ground releases, prevent further migration of the released substances, monitor and mitigate fire and safety hazards posed by vapors or free product, remedy hazards posed by contaminated soils, measure for the presence of a release where contamination is most likely to be present at the site, and investigate to determine possible presence of free product. A report must be submitted within 20 days after release confirmation summarizing the initial abatement steps which were taken. This schedule may be changed by the executive director. This new section is similar to the federal rule at 40 Code of Federal Regulation §280.62.

New §334.78, concerning initial site characterization, requires owners and operators to assemble information about the site and the nature of the release. This information is to be submitted to the executive director within 45 days of release confirmation or according to a schedule required by the executive director. This new section is similar to the federal rule at 40 Code of Federal Regulations §280.63.

New §334.79, concerning free product removal, requires that free product that has been released or spilled at an underground storage tank site be removed to the maximum extent practicable as determined by the executive director. Free product removal must be conducted in a manner that minimizes the spread of the contamination and prevents fires, explosions, or other health hazards. Owners and operators are to submit a free product removal report to the executive director within 45 days of confirmation of a release or according to a schedule required by the executive director. This new section is similar to the federal rule at 40 Code of Federal Regulations §280.64.

New §334.80, concerning investigation for soil and groundwater cleanup, requires owners and operators to investigate the extent of soil and groundwater contamination at an underground storage tank release site when the initial site investigation shows that contaminated soil remains at the site, when the required soil removal shows that the released product or product from contaminated soil may have reached groundwater, or as otherwise directed by the executive director. Owners and operators are to submit this information as soon as practicable or in accordance with a schedule established by the executive director. This new section is similar to the federal rule at 40 Code of Federal Regulations §280.65.

New §334.81, concerning corrective action plan, requires owners and operators to submit a corrective action plan when required by the executive director. If a plan is required by the executive director, it shall be submitted according to a schedule established by the executive director. Alternatively, owners and operators who have experienced a release or overfill may choose to submit a corrective action plan for responding to contaminated soil and groundwater. The executive director will approve such plan after ensuring that implementation of the plan will adequately

protect human health, safety, and the environment. Upon approval of the corrective action plan or as directed by the executive director, owners and operators must implement the plan as modified by the executive director. Owners and operators are also required to monitor, evaluate, and report the results of the implemented plan in accordance with a schedule established by the executive director. This new section is similar to the federal rule at 40 Code of Federal Regulations §280.66 except a provision in the proposed rule requires a notarized statement be issued by the owner or operator that all requirements of the corrective action plan have been accomplished.

New §334.82, concerning public participation, requires that for each confirmed release that requires a corrective action plan, the executive director provide notice to the public directly affected by the release and the planned corrective action. This new section differs somewhat from the federal rule at 40 Code of Federal Regulation §280.67 in that the proposed rule allows the executive director to require the owner or operator to perform or implement the public notice provisions and to verify that such activity has been satisfactorily completed. Further, the proposed rule does not include the provision found in the federal rule which authorizes the implementing agency to hold public meetings. This rule is unnecessary since the agency has this authority.

New §334.83, concerning emergency orders, establishes that the executive director may issue emergency orders to owners or operators of an underground storage tank if there is an actual or threatened release of a regulated substance from an underground storage tank

and the executive director determines that more expeditious corrective action than is otherwise provided under the rules is necessary to protect public health and safety or the environment. There is no corresponding federal rule addressing this.

New §334.84, concerning corrective action by the commission, establishes that the commission may undertake corrective action in response to a release or threatened release if the owner or operator of the underground storage tank is unwilling to take appropriate corrective action, the owner or operator cannot be found, the owner or operator in the opinion of the executive director is unable to take the necessary corrective action, or if the executive director determines that more expeditious corrective action is necessary. There is no corresponding federal rule addressing this.

New §334.85, concerning management of wastes, requires that the management and disposition of wastes generated as a result of a release of regulated substances associated with an underground storage tank be in accordance with all applicable federal and state requirements and in a manner that will not result in impact to human health and safety and the environment.

New Subchapter E, §§334.91-334.109, concerning financial responsibility is proposed as new requirements for owners and operators of underground storage tanks containing petroleum substances. These rules establish requirements for demonstrating financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of underground storage tanks containing petroleum.

The commission's rules follow financial responsibility requirements promulgated by the EPA on October 26, 1988, (53 FedReg 43322) effective January 24, 1989.

Roger G. Bourdeau, chief fiscal officer, has determined that for the first five-year period the sections are in effect, there will be fiscal implications for state and local government and small businesses as a result of enforcing or administering the sections. The proposed subchapters A, C, and D of this chapter will essentially incorporate existing federal EPA regulations regarding underground storage tanks (with some modifications) into the commission's regulatory authority under the Texas Water Code, §§26.341-26.359. The costs related to compliance with and administration of these proposed sections are consistent with those identified by EPA in its analysis of regulatory impact. Estimates of the cost associated with entities in the state of Texas are provided to characterize the regulatory impact of the federal action at the state level.

These impacts will be incurred, however, whether or not these proposed sections are incorporated into state regulation. A portion of the annual costs to state government (\$146,853) are incremental costs related to the administration and enforcement of these sections.

The total costs statewide, to all owners and/or operators of underground storage tanks subject to these (and EPA) provisions would be approximately \$3.74 billion distributed over a 30-year period (or \$115.8 million annually), under the assessment methodology used by EPA in its analysis of impact. This annual cost may be further characterized as:

Tank repair, replacement, upgrading and	
leak detection	\$43.17 million
Corrective action for leaking tanks	\$68.81 million
Financial Assurance	\$3.82 million
Total	\$115.80 million

These fiscal implications, on an average annual basis, may be further described as follows.

The effect on state government for the first five-year period the sections are in effect will be an estimated additional cost of \$1,004,023 for each fiscal year from 1989-1993. No reduction in cost is anticipated, and there will be no loss or increase in revenue.

The effect on local government for the first five-year period the sections will be in effect will be an estimated additional cost of \$4,565,680 for each fiscal year from 1989-1993. No reduction in cost is anticipated, and there will be no loss or increase in revenue.

The cost of compliance with these sections for small businesses will be approximately \$42.9 million annually if averaged over a 30-year period. This estimate is based on an average annual cost per regulated tank of \$1,052. Generally, the cost of compliance for

small businesses will be greater than the cost for the largest businesses affected by these sections due to varying ability to satisfy financial assurance requirements. Those large concerns capable of demonstrating financial responsibility, through self-insurance or existing liability coverage, will have lower incremental costs of compliance related to this proposal. The actual cost differential associated with insurance coverage cannot be determined until such time as the market for such coverage has become more fully developed in response to these regulatory measures. EPA has reported that an average annual premium of \$2,000 per facility is representative of the presently limited insurance market for underground storage tanks. This may be considered as an estimate of the cost differential between small concerns and the largest businesses affected by the proposed regulations.

The costs presented here are average annual costs and attempt to reflect the potential long-

term obligations of the community of regulated owners/operators in compliance with the developing underground storage tank regulation. It is important to recognize, however, that for many facilities, these costs may be accelerated, posing a more substantial cost burden in the first few years of implementation. The costs associated with facility repair, upgrading and testing are routine, periodic costs related to the regulated maintenance of underground storage tanks. With the implementation of both technical and financial assurance requirements, however, the initial and short-term maintenance costs will be more substantial. To comply with the financial responsibility requirements, many firms that cannot self-insure will have to demonstrate the integrity of tank facilities and compliance with technical standards in order to qualify for insurance coverage.

Mr. Bourdeau also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit

anticipated as a result of enforcing the sections will be improvements in: regulation of underground storage tank facilities, including the establishment of technical standards of operation and maintenance; protection of the quality of the state's groundwater resources; assurance of financial capability for corrective action in the event of a release of a regulated substance; and enforcement of the provisions of the Water Code and the regulations of the Texas Water Commission. There are no anticipated economic cost to individuals who are required to comply with the sections as proposed other than those costs which were previously identified under the effect on small business. Many of the small businesses in the affected group of underground storage tank owner/operators are presumed to be sole proprietors.

The Texas Water Commission staff has scheduled a public hearing to receive such comments at 1 p.m., April 5, 1989, Room 118, Stephen F. Austin State Office Building, 1700 North Congress Avenue, Austin.

Comments on the proposal may be submitted to William W. Thompson III, Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069. Comments will be accepted until 5 p.m., 30 days following publication of the proposal in the March 10, 1989, issue of the *Texas Register*. Persons participating in the public hearing are encouraged to summarize their testimony in written presentations.

• 31 TAC §§334.1-334.5

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

The repeals are proposed under the Texas Water Code, §§26.341-26.359, as amended by Senate Bill 779, 70th Legislature, 1987, which provides the Texas Water Commission with the authority to establish a program to regulate underground storage tanks and §5.103 and §5.105, which provide the Texas Water Commission with the authority to adopt any sections 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.

§334.1. Definitions.

§334.2. Regulated Substances.

§334.3. Exemptions.

§334.4. Registration and Construction Notification.

§334.5. Interim Prohibition.

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 March 1, 1989.

TRD-8901980

Jim Haley
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: March 30, 1989

For further information, please call: (512) 463-8087

• 31 TAC §§334.1-334.13

The new sections are proposed under the Texas Water Code, §§26.341-26.359, as amended by Senate Bill 779, 70th Legislature, 1987, which provides the Texas Water Commission with the authority to establish a program to regulate underground storage tanks and §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any sections 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.

§334.1. Purpose and Applicability.

(a) Purpose. The purposes of this chapter are to:

(1) provide a comprehensive regulatory program for underground storage tanks storing hazardous, toxic, or other harmful substances, as prescribed by Chapter 26, Subchapter I (§§26.341-26.359) of the Texas Water Code;

(2) establish minimum standards and procedures to reasonably protect and maintain the quality of the state's groundwater and surface water resources from environmental contamination that could result from any releases of harmful substances stored in such tanks; and

(3) generally provide for the protection of human health and safety, as well as the protection of the overall environment of the state.

(b) Applicability.

(1) An underground storage tank shall be subject to all or part of the regulations in this chapter only when such tank:

(A) meets the definition of underground storage tank under §334.2 of this title (relating to Definitions);

(B) contains, has contained, or will contain a regulated substance as defined under §334.2 of this title (relating to Definitions);

(C) is not completely exempted from regulation, under §334.3(a) of this title (relating to Statutory Exemptions); and

(D) is not completely ex-

cluded from regulation under §334.4(a) of this title (relating to Commission Exclusions).

(2) The requirements and provisions in this chapter shall apply to regulated underground storage tanks (as described in paragraph (1) of this subsection), and to the registration, design, construction, installation, operation, testing, maintenance, upgrading, recordkeeping, reporting, removal from service, release monitoring, release reporting and corrective action, fee assessment, financial assurance, and other requirements associated with such tanks, as more fully described in this chapter.

(3) The requirements and provisions in this chapter shall apply equally to all owners and operators of regulated underground storage tanks (as described in paragraph (1) of this subsection), including individuals, trusts, firms, joint-stock companies, corporations, governmental corporations, partnerships, associations (including non-profit and charity organizations), states, municipalities, commissions, political subdivisions of a state, interstate bodies, consortiums, joint ventures, commercial and non-commercial entities, and the United States Government (including all of its departments), except as otherwise provided in this chapter.

(4) The following types of storage tanks shall be subject to all or parts of the regulations in this chapter if they meet the general qualifications for an underground storage tank in paragraph (1) of this subsection:

(A) compartmental tanks, when at least one of the compartments is used to store regulated substances; and

(B) dual-use or multiple-use tanks which alternately store two or more substances, when at least one of the stored substances is a regulated substance.

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

Abandonment in-place—A method of permanent removal of an underground storage tank from service where the tank is left in the ground after appropriate preparation and filling with an acceptable solid inert material.

Aboveground release—Any release to the surface of the land or to surface water, including, but not limited to, releases from the aboveground portion of an underground storage tank system and releases associated with overfills and transfer operations during the dispensing, delivering, or removal of regulated substances into or out of an underground storage tank system.

Accidental release—Any sudden or nonsudden release of a petroleum substance from an underground storage tank that

results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.

ACT—Association of Composite Tanks.

Ancillary equipment—Any devices that are used to distribute, meter, or control the flow of petroleum substances or hazardous substances into or out of an underground storage tank, including, but not limited to, piping, fittings, flanges, valves, and pumps.

ANSI—American National Standards Institute.

API—American Petroleum Institute.

Appropriate district office—The commission's district field office which has jurisdiction for conducting authorized commission regulatory activities in the area where a particular UST system is located.

ASTM—American Society of Testing and Materials.

Below-ground release—Any release to the subsurface of the land or to groundwater, including, but not limited to, releases from the below ground portions of an underground storage tank system and releases associated with overfills and transfer operations during the dispensing, delivering, or removal of regulated substances into or out of an underground storage tank system.

Beneath the surface of the ground—Beneath the ground surface or otherwise covered with materials so that visual inspection is precluded.

Bodily injury—The meaning given to this term by applicable Texas law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

Bulk storage tank—An underground storage tank having a capacity of 20,000 gallons or more.

Cathodic protection—A technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell, normally by means of either the attachment of galvanic anodes or the application of impressed current.

CERCLA—The federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

Change-in-service—The permanent conversion of a regulated underground storage tank to a tank which is not regulated under this chapter, where all regulated substances are properly removed by emptying and cleaning, and the tank is left in the ground for the storage of materials other than regulated substances.

Commission—Texas Water Commission.

Composite tank—A single-wall or double-wall steel tank, to which an external fiberglass-reinforced plastic laminate or cladding has been factory-applied.

Consumptive use—(With respect to

heating oil) the utilization and consumption of heating oil on the premises where stored.

Controlling interest—Direct ownership of at least 50 percent of the voting stock of another entity.

Corrosion specialist—A person who is qualified by professional education and related practical experience to engage in the practice of corrosion control on buried or submerged metal tanks and metal piping systems, and who either is accredited as a corrosion specialist by the National Association of Corrosion Engineers (NACE) or is licensed as a professional engineer by the Texas State Board of Registration for Professional Engineers.

Corrosion technician—A person who is qualified by appropriate training and experience to engage in the practice of inspection and testing for corrosion protection and control on buried or submerged metal tanks and metal piping systems, including the inspection and testing of all common types of cathodic protection systems; and who either is accredited by the National Association of Corrosion Engineers (NACE) as a corrosion technician, corrosion technologist, or senior corrosion technologist, or can otherwise demonstrate at least an equivalent level of proficiency, training, and experience as required to achieve NACE corrosion technician accreditation.

Dielectric material—A material that does not conduct direct electrical current, as related to coatings, bushings, and other equipment and materials used with underground storage tank systems.

Electrical equipment—Underground equipment which contains dielectric fluid which is necessary for the operation of equipment such as transformers and buried electrical cable.

EPA—The federal Environmental Protection Agency.

Excavation zone—The space containing the underground storage tank system and backfill material, which is bounded by the ground surface and the walls and floor of the pits and trenches into which the underground storage tank system is placed at the time of installation.

Executive director—The executive director of the commission.

Existing UST system—An underground storage tank system which is used or designed to contain an accumulation of regulated substances for which installation either has commenced prior to December 22, 1988, or has been completed on or prior to December 22, 1988, and which is not a new UST system. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction at the site or installation of the tank system, and if either a continuous on-site physical construction or installation program has begun or the owner or operator has entered into

contractual obligations (which cannot be cancelled or modified without substantial loss) which require that the physical construction at the site or installation of the tank system is to be completed within a reasonable time.

External release detection—A method of release detection which includes equipment or procedures designed to effectively monitor or measure for the presence of regulated substances in the excavation zone, soil, or other media outside of a single-wall or double-wall underground storage tank system.

Facility—The site, tract, or other defined area where one or more underground storage tank systems are located, and which includes all adjoining contiguous land and associated improvements.

Facility owner—Any person who currently holds or has previously held legal possession or ownership of a total or partial interest in an underground storage tank facility. The facility owner and the owner associated with an underground storage tank system may be the same person or may be different persons, depending on the specific arrangements at the facility.

Farm—A tract or tracts of land (including all associated structures and improvements) which are principally devoted to the raising of agricultural or other types of animals, or fish for the production of food, fiber, or other products or for other useful purposes, including fish hatcheries, rangeland, and plant nurseries with growing operations, but not including timber-growing land and operations dedicated primarily to recreational, aesthetic, or other nonagricultural activities (e.g. golf courses and parks).

Farm tank—A tank located on a farm where the stored regulated substance is or will be utilized directly in the farm activities.

Field-constructed tank—A tank which is principally constructed, fabricated, or assembled at the facility where the tank is to be placed into service.

Financial reporting year—The latest consecutive 12 month period for which any of the following reports used to support a financial test is prepared:

(A) a 10-K report submitted to the federal Securities and Exchange Commission;

(B) an annual report of tangible net worth submitted to Dun and Bradstreet; or

(C) annual reports submitted to the Energy Information Administration or the Rural Electrification Administration. Thus, this term may comprise a fiscal or a calendar year period.

Flow-through process tank—A tank

through which regulated substances flow in a steady, variable, recurring, or intermittent manner during, and as an integral part of, a production process (such as petroleum refining, chemical production, and industrial manufacturing), but specifically not including any tank used for the static storage of regulated substances prior to their introduction into the production process and any tank used for the static storage of regulated substances which are products or by-products of the production process.

Free-product—A regulated substance in its free-flowing non-aqueous liquid phase at standard conditions of temperature and pressure (e.g., liquid not dissolved in water).

Gathering lines—Any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

Hazardous substance—Any substance defined or listed in the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), §101(14) (42 United States Code §9601, et seq.), and which is not regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code §6921, et seq.).

Hazardous substance UST system—An underground storage tank system that contains an accumulation of either a hazardous substance, a mixture of two or more hazardous substances, or a mixture of one or more petroleum substances with one or more hazardous substances; and which does not meet the definition of a petroleum UST system in this section.

Heating oil—A petroleum substance which is typically used in the operation of heating, boiler, or furnace equipment and which either is one of the following seven technical grades of fuel oil: Number 1, Number 2, Number 4-light, Number 4-heavy, Number 5-light, Number 5-heavy, and Number 6; is a residual fuel oil derivative of the refining process (such as Navy Special and Bunker C residual fuel oils); or is another fuel (such as kerosene or diesel) used for heating purposes as a substitute for one of the above fuel oils or residual fuel oil derivatives.

Hydraulic lift tank—A tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air and hydraulic fluid to operate lifts, elevators, and other similar devices.

Impressed current system—A method of cathodic protection where a rectifier is used to convert alternating current to direct current, where the current then flows in a controlled electrically-connected circuit to non-sacrificial anodes, then through the surrounding soil or backfill to the protected metallic structure or component, and back to the rectifier.

In operation—The description of an in-service underground storage tank which is currently being used on a regular basis

for its originally intended purpose.

In service—The status of an underground storage tank beginning at the time that regulated substances are first placed into the tank and continuing until the tank is permanently removed from service by means of either removal from the ground, abandonment in-place, or change-in-service. (An in-service UST may or may not contain regulated substances, and may be either in operation or out of operation at any specific time.)

Inventory control—Techniques used to identify a loss of product that are based on volumetric measurements in the tank and reconciliation of those measurements with product delivery and withdrawal records.

Legal defense cost—Any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought;

(A) by EPA or the state to require corrective action or to recover the costs of corrective action;

(B) by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or

(C) by any person to enforce the terms of a financial assurance mechanism.

Liquid trap—A collection device such as a sump, well cellar, and other trap which is used in association with oil and gas production, gathering, and extraction operations (including gas production plants) for the purpose of collecting oil, water, and other liquids, and which either may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

Maintenance—The normal and routine operational upkeep of underground storage tank systems necessary for the prevention of releases of stored regulated substances.

Motor fuel—A petroleum substance which is typically used for the operation of internal combustion engines (including stationary engines and engines used in transportation vehicles), and which is one of the following types of fuels: leaded or unleaded gasoline, aviation gasoline, Number 1 diesel fuel, Number 2 diesel fuel, and any grades of gasohol.

NACE—National Association of Corrosion Engineers.

New UST system—An underground storage tank system which is used or designed to contain an accumulation of regulated substances for which installation has commenced after December 22, 1988; or an underground storage system which is converted from the storage of materials other than regulated substances to the storage of regulated substances after December 22, 1988.

NFPA—National Fire Protection Association.

Non-commercial purposes—(With respect to motor fuel) all purposes except resale.

Noncorrodible material—A material used in the construction, maintenance, or upgrading of any component of an underground storage tank system which is designed to retain its physical and chemical properties without significant deterioration or failure for the operational life of the UST system when placed in contact with (and subjected to the resulting electrical and chemical forces associated with) any surrounding soil, backfill, or groundwater, any connected components constructed of dissimilar material, or the stored regulated substance.

Occurrence—An accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank. This definition is intended to assist in the understanding of the financial responsibility regulations in Subchapter E of this title (relating to Financial Responsibility), and is not intended either to limit the meaning of occurrence in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of occurrence.

On the premises where stored—(With respect to heating oil) refers to the consumptive use of heating oil on the same property or site where the heating oil is stored.

Operational life—The actual or anticipated service life of an underground storage tank system, which begins when regulated substances are first placed into the tank system and which continues until the tank system is permanently removed from service by means of either removal from the ground, abandonment in-place, or change-in-service.

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

Out of operation—The description of an in-service underground storage tank which is not currently being used on a regular basis for its originally intended purpose.

Overfill—A release that occurs when an underground storage tank system is filled beyond its capacity, thereby resulting in a discharge of a regulated substance to the surface or subsurface environment.

Owner—Any person who currently holds or previously has held legal possession or ownership of a total or partial interest in the underground storage tank system. For the purposes of this chapter, where the actual ownership of an UST system is either uncertain, unknown, or in dispute, the fee simple owner of the surface

estate where the UST is located shall be considered the UST system owner, unless the owner of the surface estate can demonstrate by appropriate documentation (deed reservation, invoice, bill of sale, etc.) or by other legally acceptable means that the UST system is owned by others.

PEI-Petroleum Equipment Institute.

Permanent removal from service-The termination of the use and the operational life of an underground storage tank by means of either removal from the ground, abandonment in place, or change-in-service.

Person-An individual, trust, firm, joint-stock company, corporation, government corporation, partnership, association, state, municipality, commission, political subdivision of a state, an interstate body, a consortium, joint venture, commercial entity, or the United States Government.

Petroleum marketing facilities-All facilities at which a petroleum substance is produced or refined and all facilities from which a petroleum substance is sold or transferred to other petroleum substance marketers or to the public.

Petroleum marketing firms-All firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firm.

Petroleum substance-A crude oil or any refined or unrefined fraction or derivative of crude oil which is liquid at standard conditions of temperature and pressure. For the purposes of this chapter, a petroleum substance shall be limited to one or a combination of the substances or mixtures in the following list except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code §6921, et seq.):

(A) basic petroleum substances-crude oils, crude oil fractions, petroleum feedstocks, and petroleum fractions;

(B) motor fuels- (see definition for motor fuel in this section);

(C) aviation gasolines-Grade 80, Grade 100, and Grade 100-LL;

(D) aviation jet fuels-Jet A, Jet A-1, Jet B, JP-4, JP-5, and JP-8;

(E) distillate fuel oils-Number 1-D, Number 1, No. 2-D, and Number 2;

(F) residual fuel oils-Number 4-D, Number 4-light, Number 4, Number 5-light, Number 5-heavy, and Number 6;

(G) gas-turbine fuel oils-Grade 0-GT, Grade 1-GT, Grade 2-GT, Grade 3-GT, and Grade 4-GT.

(H) illuminating oils-kerosene, mineral seal oil, long-time burning oils, 300 oil, and mineral colza oil;

(I) solvents-stoddard solvent, petroleum spirits, mineral spirits, petroleum ether, kerosene, lamp oil, and painters naphthas, petroleum extender oils, and commercial hexane;

(J) lubricants-automotive and industrial lubricants;

(K) building materials-liquid asphalt and dust-laying oils;

(L) insulating and waterproofing materials-transformer oils and cable oils;

(M) used oils-(see definition for used oil in this section);

(N) any other petroleum-based material having physical and chemical properties similar to the above materials and receiving approval by the executive director for designation as a petroleum substance.

Petroleum UST system-An underground storage tank system that contains a petroleum substance (as defined in this section), a mixture of two or more petroleum substances, or a mixture of one or more petroleum substances with very small amounts of one or more hazardous substances. In order for a tank system containing a mixture of petroleum substances with small amounts of hazardous substances to be classified as a petroleum UST system, the hazardous substance shall be at such a dilute concentration that the overall release detectability, effectiveness of corrective action, and toxicity of the basic petroleum substance is not altered to any significant degree.

Pipeline facilities (including gathering lines)-New and existing pipeline rights-of-way, including any equipment, facilities, or buildings therein which are used in the transportation or associated treatment (during transportation) of gas or hazardous liquids (which include petroleum and other liquids as designated by the secretary of the United States Department of Transportation), and which are regulated under the federal Natural Gas Pipeline Safety Act of 1968 (49 United States Code App. 1671, et seq.); the federal Hazardous Liquid Pipeline Safety Act of 1979 (49 United States Code App. 2001, et seq.); or (for intrastate pipeline facilities) the Texas Natural Resources Code, Chapters 111 or

117, or Texas Civil Statutes, Articles 6053-1 and 6053-2.

Piping-All underground pipes and fill tubes including valves, elbows, joints, flanges, flexible connectors, and other fittings attached to a tank system through which regulated substances flow or in which regulated substances are contained or stored.

Piping trench-The portion of the excavation line of an underground storage tank facility which contains the piping system and associated backfill materials.

Pressurized piping-product or delivery piping is an underground storage tank system which typically operates at greater than atmospheric pressure.

Property damage-The meaning given this term by applicable Texas law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

Provider of financial assurance-An entity that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in subchapter E of this title (relating to Financial Responsibility).

Radioactive materials-Radioactive substances or radioactive waste materials (e.g. high-level radioactive wastes and low-level radioactive cooling waters) which are classified as hazardous substances under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), §101(14), 42 United States Code §9601, et seq., except for radioactive materials regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C, 42 United States Code § 6921, et seq.

Regulated substance-An element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health, welfare, or the environment. For the purposes of this chapter, a regulated substance shall be limited to any hazardous substance (as defined in this section), any petroleum substance (as defined in this section), any mixture of two or more hazardous substances and/or petroleum substances, and any other substance designated by the executive director or the commission to be regulated under the provisions of this chapter.

Release-Any spilling, including overfills, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank system into groundwater, surface water, or subsurface soils.

Release detection-The process of determining whether a release of a regulated substance has occurred from an underground storage tank system.

Repair-The restoration, renovation,

or mending of a damaged or malfunctioning tank or UST system component.

Residential tank—A tank located on property used primarily for dwelling purposes.

SARA—Superfund Amendments and Reauthorization Act of 1986.

Secondary containment—A containment method by which a secondary wall or barrier is installed around the primary storage vessel (e.g. tank or piping) in a manner designed to prevent a release from migrating beyond the secondary wall or barrier before the release can be detected. Secondary containment systems include, but are not limited to, impervious liners or vaults surrounding a primary (single-wall) tank and/or piping system, and double-wall tank and/or piping systems.

Septic tank—A water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer.

Spill—A release of a regulated substance which results from careless or improper practices during the filling or placement of regulated substances into a UST system or during the dispensing or removal of regulated substances from a UST system.

Standard conditions of temperature and pressure—A temperature of 60 degrees Fahrenheit and an atmospheric pressure of 14.7 pounds per square inch absolute.

STI—Steel Tank Institute.

Stormwater collection system—The piping, pumps, conduits, and any other equipment necessary to collect and transport surface water runoff resulting from precipitation to and from retention areas and into natural or man-made drainage channels.

Substantial business relationship—The extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued incident to that relationship if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

Suction piping—Product or delivery piping in an underground storage tank system which typically operates at or below atmospheric pressure.

Sump—Any man-made pit or reservoir that meets the definition of a tank (including any connected troughs or trenches) that serves to temporarily collect regulated substances.

Surface impoundment—A natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (but possibly lined with man-made materials) that is designed to hold an accumulation of regulated substances.

Tangible net worth—The tangible assets that remain after deducting liabilities; such assets do not include intangibles such

as goodwill and rights to patents or royalties. For purposes of this definition, assets means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

Tank—A stationary device (generally exclusive of any associated ancillary equipment) designed to contain an accumulation of regulated substances which is constructed of a non-earthen material (e.g. concrete, steel, or plastic) that provides structural support.

Tank hole—The portion of the excavation zone at an underground storage tank facility which contains the tanks and associated backfill materials.

Tank system—An underground storage tank system.

Temporary removal from service—The procedure by which a UST system may be temporarily kept out of operation without being required to be permanently removed from service.

Tightness test (or tightness testing)—A procedure for testing and analyzing the ability of a tank or piping system to contain the stored substance, to prevent any inadvertent release of a stored substance into the environment, and to prevent the intrusion of groundwater into a tank or piping system.

TWC—Texas Water Commission, or commission as referenced in this chapter.

UL—Underwriters Laboratories.

Underground area—An underground room, basement, cellar, shaft, or vault, which provides enough space for physical inspection of the exterior of a tank or tank system situated on or above the surface of the floor.

Underground release—Any release to an area below the surface of the ground or into groundwater.

Underground storage tank—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 system—An underground storage tank, all associated piping and ancillary equipment, spill and overfill prevention equipment, release detection equipment, corrosion protection system, secondary containment equipment (as applicable), and all other related systems and equipment.

Unsaturated zone—The subsurface zone containing water under pressure less than that of the atmosphere (including water held by capillary forces within the soil) and containing air or gases generally under atmospheric pressure. This zone is bounded at the top by the ground surface and at the bottom by the upper surface of the zone of saturation (i.e., the water table).

Upgrading—The addition, improvement, retrofitting, or renovation of an existing UST system with equipment or

components as required to meet the corrosion protection, spill and overfill prevention, and release detection requirements of this chapter.

Used oil—Any oil or similar petroleum substance that has been refined from crude oil, used for its designed or intended purposes, and contaminated as a result of such use by physical or chemical impurities; and including spent motor vehicle and aircraft lubricating oils (e.g. car and truck engine oil, transmission fluid, and brake fluid), spent industrial oils (e.g., compressor, turbine, bearing, hydraulic, metalworking, gear, electrical, and refrigerator oils), and spent industrial process oils.

UST—An underground storage tank (as defined in this section).

UST system—An underground storage tank system (as defined in this section).

Vent lines—All pipes including valves, elbows, joints, flanges, flexible connectors, and other fittings attached to a tank system, which are intended to convey the vapors emitted from a regulated substance stored in an underground storage tank to the atmosphere.

Wastewater collection system—The piping, pumps, conduits, and any other equipment necessary to collect and transport domestic, commercial, or industrial wastewater to and from any facilities or areas where treatment of such wastewater is designated to occur.

Wastewater treatment tank—A tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

§334.3. Statutory Exemptions.

(a) Complete exemption. The following underground tanks and containment devices (including any connected piping) are completely exempt from regulation under this chapter, as provided under the Texas Water Code, §26.344:

(1) farm or residential tanks with a capacity of 1,100 gallons or less used for storing motor fuel for noncommercial purposes;

(2) tanks used for storing heating oil for consumptive use on the premises where stored;

(3) septic tanks;

(4) surface impoundments, pits, ponds, or lagoons;

(5) stormwater or wastewater collection systems;

(6) flow-through process tanks;

(7) tanks, liquid traps, gathering lines, or other facilities used in connection with an activity associated with the exploration, development, or production of oil, gas, or geothermal resources, or any other activity regulated by the Railroad Commission

of Texas pursuant to the Natural Resource Code, §91. 101;

(8) storage tanks located in an underground area including a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is located on or above the surface of the floor;

(9) pipeline facilities, including gathering lines, if such facilities are regulated under:

(A) the Natural Gas Pipeline Safety Act of 1968 (49 United States Code, §1671, et seq.); or

(B) the Hazardous Liquid Pipeline Safety Act of 1979 (49 United States Code, §2001, et seq.).

(10) intrastate pipeline facilities if such facilities are regulated under one of the following state laws:

(A) the Natural Resources Code, Chapter 111;

(B) the Natural Resources Code, Chapter 117; or

(C) Texas Civil Statutes, Articles 6053-1 and 6053-2.

(b) Partial exemption. As provided under the Texas Water Code, §26.344(d), in-ground hydraulic lifts that use a compressed air/hydraulic fluid system and which hold less than 100 gallons of hydraulic oil are exempt from regulation under this chapter, except that such lifts shall remain subject to the release reporting and corrective action requirements under the Texas Water Code, §26.351 and Subchapter D of this title (relating to Release Reporting and Corrective Action).

§334.4. Commission Exclusions.

(a) Complete exclusions. In addition to the tanks exempted from regulation under §334.3 of this title (relating to Statutory Exemptions), the following underground storage tanks are completely excluded from regulation under this chapter by commission directive:

(1) any underground storage tank system containing a hazardous waste listed or identified under the federal Solid Waste Disposal Act, Subtitle C, (42 United States Code §6921, et seq.), or containing a mixture of such hazardous waste and other regulated substances, where such system is already subject to regulation under the federal Solid Waste Disposal Act, Subtitle C;

(2) Any wastewater treatment tank (including oil-water separators), where such tank is located at and is an integral part of a wastewater treatment facility regulated under the federal Clean Water Act,

either §402 or §307(b) (33 United States Code §1251, et seq.);

(3) electrical equipment and other equipment or machinery (but not including hydraulic lifts) which operates in a manner whereby a release or loss of regulated substances is readily evidenced by the faulty operation of such equipment or machinery;

(4) sumps which have a capacity of less than 110 gallons;

(5) emergency spill protection or emergency overflow containment tanks, including certain sumps and secondary containment systems, which are used solely for the temporary storage or containment of regulated substances resulting from a leak, spill, overflow, or other unplanned release, and where the regulated substances are routinely removed within 48 hours of the occurrence or discovery of the release;

(6) underground storage tank systems which contain regulated substances at such dilute concentrations that any release would not pose any significant threat to human health and safety or the environment.

(b) Partial exclusions. The following underground storage tanks are subject to all provisions of this chapter, except for Subchapter C of this title (relating to Technical Standards), in Subchapter E of this title (relating to Financial Responsibility), and the certification requirements of §334.8 of this title (relating to Certification):

(1) any wastewater treatment tank (including oil-water separators), where such tank is not located at or is not an integral part of a wastewater treatment facility regulated under the federal Clean Water Act, either §402 or §307(b) (33 United States Code §1151, et seq.);

(2) any underground storage tank system that contains radioactive substances, where such system is regulated by the federal Nuclear Regulatory Commission (or its successor) under the provisions of the Atomic Energy Act of 1954 (42 United States Code, §2011, et seq.);

(3) any underground storage tank system that contains fuel used solely to power an emergency electrical generator system at a nuclear power generation facility regulated by the federal Nuclear Regulatory Commission (or its successor) under the provisions of the Code of Federal Regulations, Title 10, Part 50, Appendix A.

(c) Other exclusion. In addition to the partial exemption for hydraulic lifts covered under §334.3(b) of this title (relating to Statutory Exemptions), all other in-ground hydraulic lifts that use a compressed air/hydraulic fluid system and which hold 100 gallons or more of hydraulic oil are similarly excluded from regulation under this chapter, except that such lifts shall remain subject to the release reporting and

corrective action requirements under Subchapter D of this title (relating to Release Reporting and Corrective Action).

§334.5. General Prohibitions.

(a) Design. On or after September 1, 1987, no person shall install or have installed an underground storage tank system for the purpose of storing or otherwise containing regulated substances unless such underground storage tank system, whether of single-wall or double wall construction, meets the following standards:

(1) The underground storage tank system shall prevent releases due to corrosion or structural failure for the operational life of the underground storage tank system.

(2) All components of the underground storage tank system shall be either cathodically protected against corrosion, constructed of noncorrodible material, constructed of a steel material which has been clad with a noncorrodible material, or shall be otherwise designed and constructed in a manner that shall prevent the release or threatened release of any stored substances.

(3) The underground storage tank system shall be constructed of or lined with a material that is compatible with the stored substance.

(b) Delivery. No person shall deposit or have deposited any regulated substance into an underground storage tank system unless such system is registered with the commission under §334.7 of this title (relating to Registration). Prior to the deposit of any regulated substance into an underground storage tank, the owner or operator shall provide evidence of registration to the person responsible for the delivery.

(c) Notification. After December 22, 1988, no person shall perform any installation, replacement, removal, change-in-service, abandonment in-place, or any other substantial improvement, addition, or repair of an underground storage tank system unless and until the commission has been provided prior notification of such activity in accordance with §334.6 of this title (relating to Construction Notification).

(d) Registration. On or after September 1, 1987, no person shall own or operate an underground storage tank which contains or has contained a regulated substance unless such underground storage tank has been properly registered with the commission in accordance with §334.7 of this title (relating to Registration), except for:

(1) underground storage tanks specifically exempted from regulation under §334.3(a) of this title (relating to Statutory Exemptions);

(2) underground storage tanks specifically excluded from regulation under §334.4(a) of this title (relating to Commis-

sion Exclusions); and

(3) underground storage tanks which are permanently out of service and which either:

(A) were removed from the ground before May 8, 1986; or

(B) remain in the ground, but were emptied and cleaned in accordance with accepted industry practices, and were filled with a solid inert material on or before January 1, 1974.

§334.6. Construction Notification.

(a) General requirements.

(1) Beginning December 22, 1988, any person who intends either to install a new or replacement underground storage tank; to perform any substantial improvement, addition, or repair to an underground storage tank system; to remove an underground storage tank from the ground (temporarily or permanently); to conduct a change-in-service for an underground storage tank; or to conduct a permanent abandonment in-place of an underground storage tank shall comply with the notification requirements of this section prior to initiating such activity.

(2) In addition to the construction notification requirements of this section, the owner or operator of an existing or proposed underground storage tank system that is located or will be located in the designated recharge zone or transition zone of the Edwards Aquifer shall also secure the requisite approval from the executive director prior to conducting certain regulated underground storage tank activities, as prescribed under Chapter 313 of this title (relating to Edwards Aquifer).

(3) Any underground storage tank construction activity performed or completed pursuant to a notification submitted under the provisions of this section shall meet the applicable technical standards and procedural requirements under Subchapter C of this title (relating to Technical Standards).

(4) In situations where a proposed underground storage tank construction activity is necessitated by a suspected or confirmed release of regulated substances, or where the activity contributes to or causes such a release, the owner or operator shall comply with the release reporting, investigation, and corrective action requirements of Subchapter D of this title (relating to Release Reporting and Corrective Action).

(5) Construction notifications required under this section may be provided to the commission's central office in Austin or to the commission's appropriate district office in the area of the activity, unless otherwise specified in this section. The offi-

cial date of notification shall be the date on which the notification is first received in a commission office.

(6) Construction notification required under this section shall be provided by the owner or operator, an authorized agent or representative of the owner or operator, or the contractor or consultant retained for such construction activity. Construction notifications filed by unauthorized persons shall be null and void.

(b) Notification for major construction activities.

(1) Applicable activities. For the purposes of this section, a major underground storage tank construction activity shall include any of the following:

(A) installation of new or previously-used tank systems at a new facility, and the addition or replacement of tanks at an existing facility;

(B) removal of existing tank systems from the ground (either temporarily or permanently);

(C) permanent abandonment in-place or change-in-service of existing tank systems;

(D) tank repairs, including interior and exterior relining or recoating;

(E) installation of new or replacement piping for existing tanks;

(F) installation of new flexible connectors in the piping system at an existing facility;

(G) addition of new piping (or extension of existing piping) for additional or relocated dispensers;

(H) tank and piping relocations;

(I) addition or replacement of any of the following items at new and existing facilities:

(i) cathodic protection systems;

(ii) release detection systems;

(iii) spill and overfill prevention equipment;

(iv) monitoring wells; and

(v) submersible or suction pumping systems;

(J) addition of secondary containment equipment for new or existing

tank or piping systems;

(K) any tank integrity assessment or other activities requiring the entrance of any persons into a tank; and

(L) any other activity determined by the executive director to potentially be of major significance from the standpoint of protecting human health and safety and the environment.

(2) Filing requirements. Except as provided under subsection (c) of this section, any person who intends to perform a major underground storage tank construction activity as described in paragraph (1) of this subsection shall file a written notification with the executive director at least 30 days prior to initiating the activity.

(A) Such notification should be submitted on the commission's authorized form, as described in paragraph (6) of this subsection.

(B) When requested by the executive director, any person who intends to perform a major underground storage tank construction activity shall also submit additional supporting information to assure that the construction activity is in compliance with the requirements of this chapter. Supporting information which may be requested by the executive director includes, but shall not be limited to, the following items:

(i) detailed design plans and specifications (drawn to scale);

(ii) installation standards and operating instructions for major system components;

(iii) quality assurance plans;

(iv) compatibility data related to the stored substances and the materials of construction;

(v) specific geological, hydrological, and environmental site information;

(vi) qualifications and experience records of consultants, equipment installers, and contractors;

(vii) formal plan or procedures for tank removals, change-in-service, and abandonments in-place;

(viii) disposal procedures for removed tanks;

(ix) general contingency plan for release abatement and the clean up and disposal of any residual regulated substances, contaminated soils, or contaminated water (including wash water, groundwater or surface water); and

(x) basis and description

for any proposed change-in-service.

(C) Between 24 and 72 hours prior to the scheduled time of initiation of the proposed activity, the owner shall contact the commission's appropriate district office in the area of the activity to confirm the time of the initiation of the proposed activity. Any revisions to the proposed construction start date shall be in accordance with paragraph (3) of this subsection.

(3) Rescheduling. If after the submittal of the initial construction notification, the owner determines that a revision to the previously-reported scope or start date for the construction is necessary, the owner shall immediately report the revised construction information to the commission's appropriate district office in the area of the activity.

(A) If an earlier start date is proposed, and if this date is less than 30 days from the original notification date, then the owner shall comply with the requirements of paragraph (4) of this subsection.

(B) An owner may revise the proposed construction start to a later date as necessary, provided that the commission's appropriate district office is notified, and provided that original written notifications are properly renewed upon expiration in accordance with paragraph (5) of this subsection.

(4) Waiver requests. Normally a notification period of at least 30 days shall be required prior to the initiation of any major underground storage tank construction activity. However, if after the submittal of the construction notification, the owner has good cause for an accelerated construction schedule, then the owner may request approval of an earlier construction start date. Such request shall be made directly to the commission's appropriate district office in the area of the activity. The district manager (or the managers designated representative) shall have the authority to approve or deny such requests, and such decision shall be based on the following criteria:

(A) good cause shown by the owner for an earlier construction start date; and

(B) the ability of commission personnel to arrange and schedule an adequate inspection of the activity.

(5) Expiration. A written construction notification for a major underground storage tank construction activity shall be valid for only 120 days after the original notification date or 90 days after the originally anticipated construction start

date, whichever is earlier. If the proposed construction has not commenced within this period, the original notification shall expire. If the owner still plans to perform the construction after the expiration of this period, a new and updated construction notification form shall be filed.

(6) Notification form.

(A) Any person who intends to perform a major underground storage tank construction activity (as described in paragraph (1) of this subsection) shall provide all the applicable construction notification information indicated on the commission's authorized construction notification form.

(B) The construction notification form shall be filled out as completely and accurately as possible. Upon completion, the form shall be dated and signed by the owner or the owner's designated representative, and shall be timely filed with an appropriate commission office.

(c) Alternative notification procedures.

(1) Only for underground storage tank construction activities involving situations described under paragraph (2) of this subsection, the owner may comply with the following alternative notification and reporting procedures in lieu of the normal notification requirements of subsection (b) of this section.

(A) The owner shall provide verbal or written notification to the commission as soon as possible prior to initiating the construction activity. Such justification shall be submitted directly to the commission's appropriate district office in the area of the activity.

(B) After providing the construction notification prescribed under subparagraph (A) of this paragraph, the owner may proceed with the construction activity, as directed by the district manager (or the manager's designated representative). The owner shall maintain detailed records of the construction. No later than 30 days after completion of the construction, the owner shall submit to the commission a detailed report describing the activity. If the commission determines that the information in such report is insufficient to assure compliance with the applicable requirements of this chapter, then the owner may be required to submit additional information to demonstrate such compliance.

(2) The alternative notification procedures of paragraph (1) of this subsection may be used only when the following situations occur:

(A) when an owner of an un-

derground storage tank can demonstrate that a release or suspected release of a regulated substance has occurred or is likely to occur as a result of the operation of the underground storage tank, when such release is considered an immediate threat to human health or safety or the environment, and when the owner can demonstrate that the expeditious initiation and completion of the proposed construction activity is necessary to prevent or abate such release;

(B) when an out-of-operation underground storage tank system is discovered during unrelated construction activities (e.g. the construction of building excavations, streets, highways, utilities, etc.), when the property owner can reasonably demonstrate no prior knowledge of the existence of the tank, when the expeditious removal or abandonment in place of the tank is considered necessary or advisable for the completion of the unrelated construction activity, and where any delays in completion of the tank removal or abandonment in-place would cause unreasonable financial hardship due to contract schedules and completion times;

(C) when any duly authorized public official (e.g. any federal, state, or local fire or safety officer, health or environmental official, law officer, etc.) orders the immediate removal or repair of all or portions of an underground storage tank system which poses an immediate threat to human health, safety, or the environment;

(D) in any other case, where the executive director determines that compliance with the notification provisions of subsection (b) of this section would be unreasonable or impractical, or could increase the threat to human health or safety or the environment.

§334.7. Registration.

(a) General provisions.

(1) All underground storage tanks in existence on or after September 1, 1987, shall be registered with the commission on authorized commission forms, except for those tanks which:

(A) are completely exempt from regulation under §334.3(a) of this title (relating to Statutory Exemptions);

(B) are completely excluded from regulation under §334.4(a) of this title (relating to Commission Exclusions);

(C) were properly registered with the commission prior to the effective date of this subchapter under the provisions of the federal Solid Waste Disposal Act,

§9002 (42 United States Code, §6921, et seq.), provided that the owner has submitted notice of all changes and additional information in accordance with the provisions of subsection (d) of this section;

(D) have been permanently removed from service and which either:

(i) were permanently removed from the ground before May 8, 1986; or

(ii) remain in the ground, but were emptied and cleaned in accordance with accepted industry practices, and were filled with a solid inert material on or before January 1, 1974.

(2) The owner of an underground storage tank facility shall be responsible for compliance with the tank registration requirements of this section. An owner may designate an authorized representative to complete and submit the required registration information. However, the owner shall be held responsible for compliance with the provisions of this section by such representatives.

(3) All underground storage tanks subject to the registration requirements of this section shall also be subject to the fee provisions of subchapter B of this title (relating to Underground Storage Tank Fees). The failure by a tank owner to properly register any tanks shall not exempt the owner from such fee assessment and payment provisions.

(b) Existing tanks. Any person who owns an underground storage tank that was in existence on September 1, 1987, shall register such tank with the commission not later than September 1, 1987, on an authorized commission form, except for those tanks exempted and excluded under subsection (a)(1)(A) (a)(1)(D) of this section.

(c) New or replacement tanks. Any person who owns a new or replacement underground storage tank that is placed into service on or after September 1, 1987, must register the tank with the executive director on an authorized commission form within 30 days after the date any regulated substance is placed into the tank, except for those tanks exempted or excluded under subsection (a) (1)(A)-(a)(1)(D) of this section.

(d) Changes or additional information.

(1) The owner of an underground storage tank system shall provide written notice to the executive director of any changes or additional information concerning such system. Types of changes or additional information subject to this requirement shall include, but shall not necessarily be limited to, the following:

(A) change in ownership, or change in ownership information (e.g. mail-

ing address and/or telephone number);

(B) change in the operational status of each tank system (e.g. in service, temporarily out of service, removed from the ground, or permanently abandoned in-place);

(C) change in the type of stored regulated substance, or change-in-service to provide for the storage of a substance other than a regulated substance;

(D) installation of additional tanks and ancillary equipment at an existing facility;

(E) change in the type of piping for an existing tank;

(F) the addition of, or a change in the type of, internal or external corrosion protection for the tanks, piping, and/or ancillary equipment;

(G) the addition of, or a change in the type of, spill and overflow prevention equipment for the tanks;

(H) the addition of, or a change in the type of, release detection equipment or methods for the tanks and/or piping;

(I) change in the location of documents and records for the facility;

(J) change in financial responsibility information related to the facility; and

(K) any other change, addition, revision, update, or correction to the previous registration information filed with the commission that is necessary to accurately describe the status of the underground storage tank systems at the facility.

(2) Notice of any change or additional information shall be submitted on an authorized commission registration form which has been completed in accordance with subsection (e) of this section. The commission's underground storage tank facility number for the facility shall be included in the appropriate space on the registration form.

(3) Notice of any change or additional information shall be filed with the executive director within 30 days from the date of the occurrence of the change or addition, or within 30 days from the date on which the owner or operator first became aware of the change or addition, as applicable.

(e) Registration form.

(1) Any tank owner required to submit tank registration information under subsections (a)-(d) of this section shall provide all the information indicated on the commission's authorized registration form for each regulated tank owned.

(2) The tank registration form shall be filled out as completely and accurately as possible. Upon completion the form shall be dated and signed by the owner or the owner's designated representative, and shall be filed with the executive director within the specified time frames.

(3) All tank owners required to submit tank registration information under subsections (a)-(d) of this section shall provide the registration information for all tanks located at a particular facility on the same registration form.

(4) Tank owners who own tanks located at more than one facility shall complete and file a separate registration form for each facility.

(5) If additional information, drawings, or other documents are submitted with new or revised registration data, specific facility identification information (including the facility identification number, if known) shall be conspicuously indicated on each document and all such documents should be attached to and filed with the registration form.

(f) Inadequate information. When any of the required tank registration information submitted to the commission is determined to be inaccurate, unclear, illegible, incomplete, or otherwise inadequate, the executive director may require the owner to submit additional information. An owner shall submit any such required additional information within 30 days of receipt of such request.

§334.8. Certification.

(a) Installation certifications.

(1) Owner or operator certifications. Any owner or operator who installs a new or replacement underground storage tank system after December 22, 1988, shall assure that all applicable parts of the construction certification section of the commission's authorized tank registration form are completed. The owner or operator shall further certify by signature that:

(A) the installation meets the requirements of §334.45 of this title (relating to Technical Standards for New UST Systems), and §334.46 of this title (relating to Installation Standards for New UST Systems);

(B) the corrosion protection system meets the requirements of §334.49 of this title (relating to Corrosion Protection); and

(C) the release detection equipment or procedures meet the requirements of §334.50 of this title (relating to Release Detection).

(2) Certification by installer. After December 22, 1988, any installer who is employed or otherwise engaged by an underground storage tank owner or operator to install or replace an underground storage tank system shall also certify by signature that the installation methods are in compliance with §334.46 of this title (relating to Installation Standards for New UST Systems). The tank owner or operator shall be responsible for assuring that the installer has provided the certification required in this paragraph.

(3) Filing requirements. The installation or replacement certification information required under paragraphs (1) and (2) of this subsection shall be included in the appropriate sections of the commission's authorized tank registration form, and shall be filed with the commission in accordance with the applicable tank registration time limits prescribed under §334.7 of this title (relating to Registration).

(b) Financial responsibility certification.

(1) Beginning January 24, 1989, all owners and operators of new and existing underground storage tank systems shall assure that the applicable parts of the financial responsibility section of the commission's authorized tank registration form are completed, and shall certify by signature that the financial responsibility requirements under Subchapter E of this title (relating to Financial Responsibility) have been met.

(2) The required financial responsibility information shall be included in the appropriate section of the commission's authorized tank registration form, and shall be filed with the commission in accordance with the applicable tank registration time limits prescribed under §334.7 of this title (relating to Registration), or shall be otherwise filed in accordance with the applicable requirements in §334.104 of this title (relating to Reporting by Owner or Operator).

§334.9. Seller's Disclosure. Effective on and after October 24, 1988, any person who sells or otherwise legally conveys a tank (or tank system) which is designed or intended to be used as an underground storage tank shall provide the purchaser (or grantee) with written notification of a tank owner's obligations relative to the commission's tank registration and construction notification provisions under §334.7 of this title (relating to Registration) and §334.6 of this title (relating to Construction Notification).

(1) The written notification shall include the names and addresses of the

seller (or grantor) and the purchaser (or grantee), the number of tanks involved, a description of each tank (capacity, tank material, and product stored, if applicable), and the commission's designated facility identification number (if the entire facility is being conveyed).

(2) This notification requirement shall apply to any transfers or conveyances of a new or used tank from one person to another person, and shall also apply to the sales of real property where underground storage tanks are located.

(3) The written notification shall be provided by the seller (or grantor) to the purchaser (or grantee) prior to the actual conveyance of the tanks, or prior to the time of the real property closing, as applicable. No later than 30 days after the date of the conveyance or sale of the tanks, the seller shall submit a copy of the written notification to the executive director.

§334.10. Reporting and Recordkeeping.

(a) Reporting. Owners and operators of UST systems shall assure that all reporting and filing requirements in this chapter are met, including the following (as applicable):

(1) construction notification, in accordance with §334.6 of this title (relating to Construction Notification);

(2) application for approval of any proposed UST system in the Edwards Aquifer recharge or transition zones, in accordance with §334.6(a)(2) of this title (relating to Construction Notification) and Chapter 313 of this title (relating to Edwards Aquifer);

(3) registration of UST systems and changes in information, in accordance with §334.7 of this title (relating to Registration);

(4) certification of installations and financial responsibility, in accordance with §334.8 of this title (relating to Certification);

(5) notification to UST purchaser, in accordance with §334.9 of this title (relating to Seller's Disclosure);

(6) request for approval of any variance or alternative procedure, in accordance with §334.43 of this title (relating to Variances and Alternative Procedures);

(7) request for extension of time for a UST system that is temporarily out of service, in accordance with §334.54(d)(2) of this title (relating to Temporary Removal from Service);

(8) documentation of release determination or site assessment conducted when an UST system is permanently removed from service, in accordance with §334.55(a)(6) of this title (relating to Permanent Removal from Service);

(9) facility owner's authorization for abandonment in-place of an UST system, in accordance with §334.55(c)(2) of this title (relating to Permanent Removal from Service);

(10) payment of underground storage tank fees, in accordance with Subchapter B of this title (relating to Underground Storage Tank Fees);

(11) reports, plans, and certifications related to suspected and confirmed releases of regulated substances, including:

(A) release reports and notifications, in accordance with §334.72 of this title (relating to Reporting of Suspected Releases), §334.75 of this title (relating to Reporting and Cleanup of Surface Spills and Overfills) and §334.76 of this title (relating to Initial Response to Releases);

(B) report and certification of site check methods, in accordance with §334.74(c) of this title (relating to Release Investigation and Confirmation Steps);

(C) initial abatement report, in accordance with §334.77(b) of this title (relating to Initial Abatement Measures and Site Check);

(D) initial site characterization report, in accordance with §334.78(b) of this title (relating to Initial Site Characterization);

(E) free product removal report, in accordance with §334.79(d) of this title (relating to Free Product Removal);

(F) soil and groundwater contamination information, in accordance with §334.80(b) of this title (relating to Investigation for Soil and Groundwater Cleanup);

(G) corrective action plan, in accordance with §334.81 of this title (relating to Corrective Action Plan);

(H) notification of cleanup initiation, in accordance with §334.81(e) of this title (relating to Corrective Action Plan);

(I) certification of compliance with corrective action plan, in accordance with §334.81(g) of this title (relating to Corrective Action Plan), and

(J) public notices related to corrective action plans, in accordance with §334.82(b) of this title (relating to Public Participation);

(12) notifications and reports re-

lating to financial responsibility requirements, including:

(A) reports of financial condition, in accordance with §334.95(f) of this title (relating to Financial Test of Self-Insurance);

(B) notification of failure to secure alternate financial assurance, in accordance with §334.95(g) of this title (relating to Financial Test of Self-Insurance), §334.103(b) of this title (relating to Cancellation or Nonrenewal by a Provider of Financial Assurance), and §334.108(c) of this title (relating to Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance);

(C) request for release of excess guaranteed funds, in accordance with §334.100(d)-(f) of this title (relating to Trust Fund);

(D) forms and reports evidencing financial responsibility, in accordance with §334.104 of this title (relating to Reporting by Owner or Operator); and

(E) notification of related bankruptcy proceedings, in accordance with §334.108(a) of this title (relating to Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance); and

(13) any other reports, filings, notifications, or other submittals required by this chapter, or otherwise required by the executive director or commission to demonstrate compliance with the provisions of this chapter.

(b) Recordkeeping

(1) General recordkeeping requirements.

(A) Owners and operators of UST systems shall be responsible for developing and maintaining all records required by the provisions of this chapter.

(B) Except as provided in subparagraphs (C) and (D) of this paragraph, legible copies of all required records pertaining to a UST system shall be maintained in a secure location on the premises of the UST facility, shall be immediately accessible for reference and use by the UST system operator, and shall be immediately available for inspection upon request by commission personnel.

(C) In the event that copies of the required records cannot reasonably be maintained in a secure location on the premises of the UST facility, then such records may be maintained at a readily-

accessible alternate site, provided that the following conditions are met.

(i) If the UST system is in operation, the records shall be readily accessible for reference and use by the UST system operator.

(ii) The records shall be readily accessible and available for inspection upon request by commission personnel.

(iii) The owner or operator shall provide the following information (in writing) to the executive director and to the commission's appropriate district office:

(I) the specific location where the required records are maintained;

(II) the name, address, and telephone number of the authorized custodian of such records; and

(III) the specific reason that such records cannot be maintained on the premises of the UST facility.

(iv) The filing of the written information required in clause (iii) of this subparagraph shall be accomplished no later than 30 days after the effective date of this chapter, 30 days after a UST installation or replacement has been completed, or 30 days after the UST records are moved to an alternate site, whichever is later or applicable.

(D) For UST systems which have been permanently removed from service in accordance with the applicable provisions of §334.55 of this title (relating to Permanent Removal from Service), the facility owner may submit the appropriate records required by this chapter to the executive director in lieu of maintaining the records on the premises or at an alternative site, provided that the following conditions are met:

(i) the facility is no longer operated in a manner that requires the underground storage of regulated substances, and all UST systems at the facility have been permanently removed from service;

(ii) the facility owner shall provide written justification adequate to explain why such records cannot be maintained on the premises of the UST facility or at a readily-accessible alternative site; and

(iii) the records shall be submitted at one time in one package for each UST facility, and the records shall be appropriately labeled with the UST facility location information and the UST facility identification number.

(2) Required records and documents. Owners and operators of UST sys-

tems shall assure that all recordkeeping requirements in this chapter are met, including the following records and documentation (as applicable).

(A) Legible copies of the following general records shall be maintained for the operational life of the UST system:

(i) construction notification documents, in accordance with §334.6 of this title (relating to Construction Notifications);

(ii) original and amended registration documents, in accordance with §337.7 of this title (relating to Registration);

(iii) original and amended certifications for UST installations and financial responsibility, in accordance with §334.8 of this title (relating to Certification);

(iv) notification to UST purchaser, in accordance with §334.9 of this title (relating to Seller's Disclosure);

(v) application documents and executive director's letter approving an UST system in the Edwards Aquifer recharge or transition zone, in accordance with §334.6(a)(2) of this title (relating to Construction Notification) and Chapter 313 of this title (relating to Edwards Aquifer); and

(vi) cancelled checks or receipts evidencing payment of underground storage tank fees, in accordance with §§334.21-334.23 of this title (relating to Fee Assessment; Failure to Make Payment; and Disposition of Fees, Interest, and Penalties).

(B) Legible copies of applicable records and documents related to technical standards for UST systems shall be maintained in accordance with the following provisions:

(i) application documents and executive director's approval letter for any variances or alternative procedures, in accordance with §334.43 of this title (relating to Variances and Alternative Procedures);

(ii) records demonstrating compliance with technical standards and installation standards for new UST systems, in accordance with §334.45(f) of this title (relating to Technical Standards for New UST Systems); and §334.46(i) of this title (relating to Installation Standards for New UST Systems);

(iii) records demonstrating compliance with the minimum upgrading requirements for existing UST systems, in accordance with §334.47(d) of this title (relating to Technical Standards for Existing UST Systems);

(iv) operation and maintenance records, in accordance with §334.

48(g) of this title (relating to General Operating and Management Requirements);

(v) corrosion protection records, in accordance with §334.49(e) of this title (relating to Corrosion Protection);

(vi) release detection records, in accordance with §334.50(e) of this title (relating to Release Detection);

(vii) spill and overflow control records, in accordance with §334.51(e) of this title (relating to Spill and Overflow Prevention and Control);

(viii) records for repairs and relining, of a UST system, in accordance with §334.52(d) of this title (relating to UST System Repairs and Relining);

(ix) records for reuse of used tanks, in accordance with §334.53(c) of this title (relating to Reuse of Used Tanks);

(x) records for temporary removal of UST systems from service, in accordance with §334.54(f)(4) of this title (relating to Temporary Removal from Service);

(xi) records for permanent removal of UST systems from service, in accordance with §334.55(f) of this title (relating to Permanent Removal from Service).

(C) Legible copies of the following records and documents related to release reporting and corrective action shall be maintained for at least five years:

(i) release reports and notifications, in accordance with §334.72 of this title (relating to Reporting of Suspected Releases), §334.75 of this title (relating to Reporting and Cleanup of Surface Spills and Overfills), and §334.76 of this title (relating to Initial Response to Releases);

(ii) report and certification of site check methods, in accordance with §334.74(c) of this title (relating to Release Investigation and Confirmation Steps);

(iii) initial abatement report, in accordance with §334.77(b) of this title (relating to Initial Abatement Measures and Site Check);

(iv) initial site characterization report, in accordance with §334.78(b) of this title (relating to Initial Site Characterization);

(v) free product removal report, in accordance with §334.79(d) of this title (relating to Free Product Removal);

(vi) soil and groundwater contamination information, in accordance with §334.80(b) of this title (relating to Investigation for Soil and Groundwater Cleanup);

(vii) corrective action plan, in accordance with §334.81 of this title (relating to Corrective Action Plan);

(viii) notification of cleanup initiation, in accordance with §334.81(e) of this title (relating to Corrective Action Plan);

(ix) certification of compliance with corrective action plan, in accordance with §334.81(g) of this title (relating to Corrective Action Plan);

(x) public notices related to corrective action plans, in accordance with §334.82(b) of this title (relating to Public Participation);

(xi) all correspondence, directives, and orders from the executive director related to the release incident and corrective action.

(D) Legible copies of all required financial assurance records shall be maintained in accordance with the applicable provisions of §334.105 of this title (relating to Financial Assurance Recordkeeping).

§334.11. Enforcement.

(a) Further Action. If an investigation, review, or inspection by commission personnel does not sufficiently demonstrate that the installation, operation, maintenance, corrective action, or any other activities related to a UST system are in accordance with the applicable requirements of this chapter, the executive director may take one or more of the following actions.

(1) The executive director may require the owner to submit additional documentation and data to adequately demonstrate compliance with the applicable provisions of this chapter.

(2) The executive director may require the owner to conduct additional activities to achieve compliance with this chapter, including additions, revisions, or modifications to the system, monitoring and testing for releases, and corrective action.

(3) The executive director may initiate formal enforcement action and may seek administrative penalties, as prescribed under Chapter 337 of this title (relating to Enforcement).

(b) Commission Orders. The commission may issue orders to enforce the provisions of this chapter in accordance with the procedures applicable to orders issued under the Texas Water Code, §26.019.

§334.12. Other General Provisions.

(a) Other regulations. Compliance with the provisions of this chapter by an owner or operator of an underground storage tank system shall not relieve such

owner or operator from the responsibility of compliance with any other regulations directly and/or indirectly affecting such tanks and the stored regulated substances, including, but not necessarily limited to, all applicable regulations legally promulgated by the United States Environmental Protection Agency, United States Occupational Safety and Health Administration, United States Department of Transportation, United States Nuclear Regulatory Commission, U.S. Department of Energy, 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 any other federal, state, and local governmental agencies or entities having appropriate jurisdiction.

(b) Owner responsibility. The owners and operators of underground storage tank systems subject to the provisions of this chapter shall be responsible for ensuring compliance with all applicable provisions of this chapter. Owners and operators are responsible for any violations or noncompliant activities resulting from the actions or inactions by any installer, contractor, operator, or other person who is employed or otherwise engaged by an underground storage tank owner to be principally in charge of any activities or procedures required under this chapter.

(c) Inspections, monitoring, and testing.

(1) For the purposes of developing or assisting in the development of any regulation, conducting any study, or enforcing this chapter, an owner and/or operator of an underground storage tank, on the request of the commission or the executive director, shall:

(A) furnish information relating to the tank, including tank equipment and contents;

(B) conduct monitoring or testing; and

(C) permit a designated agent or employee of the commission at all reasonable times to have access to and to copy all records relating to the tanks.

(2) For the purposes of developing or assisting in the development of a regulation, conducting a study, or enforcing the provisions of this chapter, the commission, its designated agent, or employee may:

(A) enter at reasonable times an establishment or place in which an underground storage tank is located;

(B) inspect and obtain samples of a regulated substance contained in the tank from any person; and

(C) conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water, or groundwater.

(3) Each inspection made under this section must be begun and completed with reasonable promptness. Before a designated agent or employee of the commission enters private property having management in residence to carry out a function authorized under this section, the agent or employee must give reasonable notice and exhibit proper identification to the manager or owner of the property or to another appropriate person. The commission's designated agent or employee must observe the regulations of the establishment being inspected, including regulations regarding safety, internal security, and fire protection.

§334.13. Joint and Several Liability. Past and present owners and/or past and present operators of underground storage tanks may be considered jointly and severally liable for corrective action purposes under the Texas Water Code, §26.351, and Subchapter D of this title (relating to Release Reporting and Corrective Action).

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 February 27, 1989.

TRD-8901905 Jim Haley
Director
Texas Water Commission

Earliest possible date of adoption March 30, 1989

For further information, please call: (512) 463-8087

Subchapter C. Technical Standards

• 31 TAC §§334.41-334.55

These new sections are proposed under the Texas Water Code, §§26.341-26.359, as amended by Senate Bill 779, 70th Legislature, 1987, which provides the Texas Water Commission with the authority to establish a program to regulate underground storage tanks and §§5.103 and §5.105, which provide the Texas Water Commission with the authority to adopt any sections 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.

§334.41. Applicability.

(a) Except as provided under subsection (b) of this section, an underground storage tank shall be subject to all provisions of this subchapter if such tank meets the general applicability requirements of §334.1(b) of this title (relating to Purpose and Applicability).

(b) The provisions of this subchapter shall not apply to any of the following types of underground storage tank systems:

(1) in-ground hydraulic lifts which use a compressed air/hydraulic fluid system (regardless of size); and

(2) any underground storage tank system which is covered under the partial exclusion provisions of §334.4(b) of this title (relating to Commission Exclusions).

(c) Any underground storage tank which is specifically excluded or exempted from the provisions of §334.41(b) of this title (relating to Applicability), but which is otherwise subject to any of the remaining provisions of this chapter, shall conform with the minimum design and operation requirements of §334.5(a) of this title (relating to General Prohibitions).

§334.42. General Standards.

(a) All components of any new or existing underground storage tank system subject to the provisions of this subchapter shall be designed, installed, and operated in a manner that will prevent releases of regulated substances due to structural failure or corrosion for as long as the underground storage tank system is used to store regulated substances.

(b) For all components of any new or existing underground storage tank system subject to the provisions of this subchapter which are used to contain or store a regulated substance, the surfaces of such components which are in direct contact with the regulated substance shall be constructed of or lined with materials that are compatible with the substance stored in such components. Any compatibility determination or analysis shall be in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory.

(c) The owners and operators of underground storage tank systems subject to the provisions of this subchapter shall be responsible for ensuring that their underground storage tank systems are designed, installed, and operated in accordance with the provisions of this subchapter, as provided under §334.12(b) of this title (relating to Other General Provisions).

(d) When provisions of this subchapter require compliance with a specific code or standard of practice developed

by a nationally recognized association or independent testing laboratory, the most recent version of the referenced code in effect at the time of the regulated underground storage tank activity shall be applicable.

(e) Compliance with the provisions of this subchapter shall not relieve an owner or operator of an underground storage tank system from compliance with other applicable regulations legally developed by other governmental entities. This requirement is more fully discussed in §334.12(a) of this title (relating to Other General Provisions).

(f) Unless a variance or alternative procedure is approved by the executive director in accordance with §334.43 of this title (relating to Variances and Alternative Procedures), the requirements of this subchapter shall take precedence if and when such requirements are determined to be in conflict with any provisions contained in the following:

(1) any code or standard of practice developed by a nationally recognized association or independent testing laboratory; and

(2) the manufacturers' specifications and instructions for installation and operation of underground storage tank equipment.

(g) Except for a composite tank or a tank clad with a factory-installed fiberglass-reinforced plastic coating which meets the requirements of §334.45(b)(1)(D) of this title (relating to Technical Standards for New UST Systems), any underground metallic component of an underground storage tank system installed on or after December 22, 1988, which does, or could convey, contain, or store a regulated substance shall either:

(1) be equipped with a factory-installed cathodic protection system which meets the requirements of §334.49(c)(1) of this title (relating to Corrosion Protection);

(2) be equipped with a field-installed cathodic protection system which meets the requirements of §334.49(c)(2) of this title (relating to Corrosion Protection); or

(3) be completely isolated from the backfill material, groundwater, and other metallic components of the system as provided under §334.49(b)(2) or (3) of this title (relating to Corrosion Protection).

§334.43. Variances and Alternative Procedures.

(a) Prior to initiating any activity or procedure which is at variance with or which is not specifically authorized under this subchapter, the owner or operator of an underground storage tank system shall secure commission approval of the variance or alternative procedure in accordance with this section.

(b) The executive director shall have authority to review and approve requests for variances and alternative procedures as relate to the provisions of this subchapter. The executive director shall approve such requests only if the owner or operator can reasonably demonstrate that the proposed variance or alternative procedure will result in an underground storage tank system that is no less protective of human health and safety and the environment than a system meeting the requirements of this subchapter.

(c) An owner or operator may submit a request for approval of a variance or alternative procedure when one or more of the following situations is applicable:

(1) when conformance with the requirements of this subchapter is considered either not practicable or not reasonable due to the type, design, capacity, material stored, or use of the underground storage tank system (e.g., bulk storage tanks, field-constructed tanks, and airport hydrant fuel distribution systems); or

(2) when new or alternative products, equipment, methods, and/or procedures appropriate for use with underground storage tank systems are not specifically authorized by the provisions of this subchapter.

(d) Any request to the executive director for approval of a variance or alternative procedure shall be made in writing, shall be signed and dated by the owner or operator, and shall be accompanied by the following additional documentation:

(1) written concurrence by the site or facility owner, if different from the tank owner;

(2) complete project identification, including:

(A) facility name, location, and UST facility identification number (if known);

(B) owner's name, address, and telephone number;

(C) name, address, and telephone number of owner's authorized representatives, (e.g. operator, contractor, or consultant); and

(D) proposed date for implementation of variance or alternative procedure;

(3) sufficient planning materials to describe or illustrate the variance or alternative procedure, such as:

(A) plans, drawings, and detail sheets (drawn to scale);

(B) design and construction specifications; and

(C) equipment manufacturers' specifications, operating instructions, and warranty information;

(4) sufficient documentation and supporting data to justify the reliability of the variance or proposed procedure, such as:

(A) results of tests or studies conducted by an equipment manufacturer, independent consultant, or nationally recognized association or independent testing laboratory; and

(B) results of previous experience involving the use of the alternative procedure or equipment;

(5) complete explanation of the reasons why the requested variance or proposed procedure is considered preferable to the methods or procedures specified in this subchapter, or why the methods or procedures specified in this subchapter are considered unreasonable or impracticable; and

(6) adequate documentation to demonstrate that the proposed variance or alternative procedure will result in an underground storage tank system that is no less protective of human health and safety and the environment than a system meeting the requirements of this subchapter.

(e) Owners and operators shall maintain complete records of any requests for approval of any variances or alternative procedures, and documentation of the executive director's approval of such requests, for the operational life of the UST system, in accordance with §334.10(h) of this title (relating to Reporting and Recordkeeping).

§334.44. Implementation Schedules.

(a) New UST systems.

(1) Requirements for all new UST systems. All new UST systems installed after December 22, 1988, which are used to store any regulated substances, shall be in compliance with the following requirements from the time of installation through the operational life of the system.

(A) Such systems shall be designed, constructed, and installed in accordance with the provisions of §334.45 of this title (relating to Technical Standards for New UST Systems) and §334.46 of this title (relating to Installation Standards for New UST Systems).

(B) Such systems shall be properly protected from corrosion or equipped with appropriate corrosion protection equipment, as provided in §334.49 of this title (relating to Corrosion Protection).

(C) Such systems shall be monitored for releases as provided in §334.50 of this title (relating to Release Detection).

(D) The tanks in such systems shall be protected from spills and overfills, as provided in §334.51 of this title (relating to Spill and Overfill Prevention and Control).

(2) Additional requirements for new hazardous substance UST systems. In addition to the requirements applicable to all new UST systems in paragraph (1) of this subsection, all new hazardous substance UST systems installed after December 22, 1988, shall also be in compliance with the following requirements from the time of installation through the operational life of the system.

(A) Such systems shall be properly constructed or equipped with a secondary containment system which shall be designed, constructed, and installed in accordance with the provisions of §334.45(d) of this title (relating to Technical Standards for New UST Systems) and §334.46(f) of this title (relating to Installation Standards for New UST Systems).

(B) Such systems shall be properly constructed or equipped with a release detection system capable of monitoring either the interstitial spaces between the primary and secondary walls of any double-wall UST components, or the spaces between the primary UST component walls and all secondary containment barriers, as applicable, in accordance with the provisions in §334.50(c) of this title (relating to Release Detection).

(b) Existing UST systems.

(1) Requirements for all existing UST systems. All existing UST systems (i.e., UST systems for which installation has commenced or has been completed on or prior to December 22, 1988) which are used to store any regulated substances shall meet the applicable requirements of §334.47 of this title (relating to Technical Standards for Existing UST Systems) in accordance with the following schedule.

(A) Tank integrity assessment and cathodic protection. No later than December 22, 1998, all existing UST systems shall be brought into compliance with the applicable tank integrity assessment and cathodic protection requirements of §334.47(b)(1) of this title (relating to Technical Standards for Existing UST Systems).

(B) Spill and overfill prevention. No later than December 22, 1994, all tanks in an existing UST system shall be

brought into compliance with the applicable spill and overflow prevention equipment requirements of §334.51(b) of this title (relating to Spill and Overflow Prevention).

(C) Release detection for existing UST system piping.

(i) Release detection for pressurized piping. No later than December 22, 1990, all piping in an existing UST system that routinely conveys regulated substances under pressure (i.e., which operates at greater than atmospheric pressure) shall be brought into compliance with the pressurized piping release detection requirements in §334.50(b)(2)(A) of this title (relating to Release Detection).

(ii) Release detection for suction piping and gravity-flow piping. All piping in an existing UST system that routinely conveys regulated substances either by gravity flow or under suction (i.e., which operates at less than atmospheric pressure) shall be brought into compliance with the suction and gravity-flow piping release detection requirements in §334.50(b)(2)(B) of this title (relating to Release Detection) no later than the date on which release detection is required for the tank to which such piping is connected, as prescribed in subparagraph (D) of this paragraph.

(D) Release detection for existing tanks. All tanks in an existing UST system shall be brought into compliance with the tank release detection requirements in §334.50(b)(1) of this title (relating to Release Detection) no later than the date specified in the following clauses for the time of installation applicable to such tanks:

(i) December 22, 1989, for tanks where the installation dates are undetermined or unknown;

(ii) December 22, 1989, for tanks installed during 1964 or prior years;

(iii) December 22, 1990, for tanks installed during the years 1965-1969, inclusive;

(iv) December 22, 1991, for tanks installed during the years 1970-1974, inclusive;

(v) December 22, 1992, for tanks installed during the years 1975-1979, inclusive;

(vi) December 22, 1993, for tanks installed during the years 1980-1987, inclusive; and

(vii) December 22, 1993, for tanks installed between January 1, 1988, and December 21, 1988, inclusive.

(2) Additional requirements for existing hazardous substance UST systems. In addition to the requirements applicable to all existing UST systems in paragraph (1) of this subsection, all existing hazardous

substance UST systems shall also be brought into compliance with additional secondary containment and release detector standards in accordance with the following schedule.

(A) No later than December 22, 1998, all existing hazardous substance UST systems shall be equipped with a secondary containment system meeting the design, construction, and installation requirements in §334.45(d) of this title (relating to Technical Standards for New UST Systems) and of §334.46(f) of this title (relating to Installation Standards for New UST Systems).

(B) No later than December 22, 1998, all existing hazardous substance UST systems shall be equipped with a release detection system capable of monitoring either the interstitial spaces between the primary and secondary walls of any double-walled UST components, or the spaces between the primary UST component walls and any secondary containment barriers, as applicable, in accordance with the provisions in §334.50(c) of this title (relating to Release Detection).

§334.45. *Technical Standards for New UST Systems.*

(a) General requirements.

(1) Any new UST system installed after December 22, 1988, shall be in compliance with the provisions of this section during the entire operational life of the UST system.

(2) Any new UST system shall be designed, installed, and operated in a manner that will prevent releases due to structural failure or corrosion for the operational life of the UST system.

(3) The surfaces of all components of the UST system which are in direct contact with a regulated substance shall be constructed of or lined with materials that are compatible with such regulated substances.

(4) All components of the UST system which convey, contain, or store regulated substances shall be properly protected from corrosion in accordance with the applicable provisions in §334.49 of this title (relating to Corrosion Protection).

(5) All tanks, piping, and other ancillary equipment in a new UST system shall be installed in accordance with the requirements of §334.46 of this title (relating to Installation Standards for New UST Systems).

(b) Technical standards for new tanks.

(1) Tank design and construction. Each new tank shall be properly designed, constructed, and protected from

corrosion in accordance with one or more of the methods listed in subparagraphs (A)-(E) of this paragraph and in accordance with specific codes and standards of practice developed by nationally recognized associations and independent testing laboratories, as referenced in the following subparagraphs.

(A) The tank may be constructed of fiberglass-reinforced plastic. Tanks constructed under this method shall meet the following standards:

(i) UL Standard 1316, "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products"; and

(ii) ASTM Standard D 4021, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks."

(B) The tank may be constructed of coated steel and equipped with a factory-installed cathodic corrosion protection system. Any tank constructed under this method shall be thoroughly coated with a suitable dielectric material, shall be equipped with a factory-installed cathodic corrosion protection system meeting the appropriate design and operational requirements in §334.49(c)(1) of this title (relating to Corrosion Protection), and shall meet the following standards:

(i) UL Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids"; and

(ii) Part I of UL Standard 1746, "Corrosion Protection Systems for Steel Underground Storage Tanks", or STI Standard, "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks."

(C) The tank may be constructed of coated steel and equipped with a field-installed cathodic corrosion protection system. Any tank constructed under this method shall be thoroughly coated with a suitable dielectric material, shall be equipped with a field-installed cathodic protection system meeting the appropriate design and operational requirements in §334.49(c)(2) of this title (relating to Corrosion Protection), and shall meet the following standards:

(i) UL Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids"; and

(ii) NACE Standard RP-02, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems."

(D) The tank may be factory-constructed either as a steel/fiberglass-reinforced plastic composite tank, or as a

steel tank with a bonded fiberglass-reinforced plastic external cladding. Any tank constructed under this method is not required to be equipped with a cathodic protection system, provided that the tank meets the following requirements.

(i) The tank shall be equipped with a factory-applied external cladding or laminate which has a total dry film thickness of 100 mils minimum and 125 mils nominal.

(ii) The tank shall be operated and maintained in accordance with the applicable requirements of §334.49 of this title (relating to Corrosion Protection).

(iii) The tank shall be designed and fabricated in accordance with one or more of the following standards:

(I) Part II of UL Standard 1746, "Corrosion Protection Systems for Steel Underground Storage Tanks;"

(II) ACT Specification ACT-100, "Fabrication of FRP Clad/Composite Underground Storage Tanks;" or

(III) any other UL standard applicable to composite underground storage tanks.

(E) The tank may be designed, constructed, and protected from corrosion by an alternate method which has been reviewed and determined by the executive director to control corrosion and prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and safety and the environment than the methods described in subparagraphs (A)-(D) of this paragraph, in accordance with the procedures in §334.43 of this title (relating to Variances and Alternative Procedures).

(2) Spill and overflow prevention equipment. All new tanks shall be equipped with spill and overflow prevention equipment, in accordance with §334.51(b) of this title (relating to Spill and Overflow Prevention and Control).

(3) Release detection for new tanks. All new tanks shall be monitored for releases of regulated substances in accordance with §334.50 of this title (relating to Release Detection).

(4) Other tank components.

(A) Fittings. All metallic tank fittings (e.g., bung hole plugs) shall be protected from corrosion and shall be either:

(i) isolated from the backfill material and groundwater;

(ii) thoroughly coated with a suitable dielectric material, in ac-

cordance with the tank manufacturer's specifications; or

(iii) cathodically protected in accordance with the applicable provisions in §334.49(c) of this title (relating to Corrosion Protection).

(B) Striker plates. Factory-installed striker plates shall be located on the interior bottom surface of each tank under all fill and gauge openings.

(C) Dielectric bushings or fittings. All coated steel tanks equipped with either a factory-installed cathodic protection system or a factory-applied fiberglass-reinforced plastic laminate cladding shall also be fitted with dielectric bushings or fittings at each tank opening to provide electrical isolation from other metal components.

(c) Technical standards for new piping.

(1) Piping design and construction. All new underground piping (including associated valves, fittings, and connectors) in an underground storage tank system shall be properly designed, constructed, and protected from corrosion in accordance with one of the methods listed in subparagraphs (A)-(C) of this paragraph and in accordance with specific codes and standards of practice developed by nationally recognized associations and independent testing laboratories, as referenced in the following subparagraphs.

(A) The piping may be constructed of fiber-glass-reinforced plastic. Piping constructed under this method shall meet the following standards:

(i) UL Standard 971, "UL Listed Non-Metal Pipe"; and

(ii) UL Standard 567, "Pipe Connectors for Flammable and Combustible and LP Gas".

(B) The piping may be constructed of coated steel. Piping constructed under this method shall be thoroughly coated with a suitable dielectric material, shall be cathodically protected with a field-installed cathodic protection system meeting the appropriate design and operational requirements in §334.49(c) of this title (relating to Corrosion Protection), and shall meet the applicable provisions of the following standards:

(i) NFPA Standard 30, "Flammable and Combustible Liquids Code";

(ii) API Publication 1615, "Installation of Underground Petroleum Storage Systems";

(iii) API Publication 1632, "Cathodic Protection of Underground

Storage Tanks and Piping Systems"; and

(iv) NACE Standard RP-01, "Control of External Corrosion on Submerged Metallic Piping Systems".

(C) The piping may be designed, constructed, and protected from corrosion by an alternate method which has been reviewed and determined by the executive director to prevent the release of any stored regulated substance in a manner that is no less protective of human health and the environment than the methods described in subparagraphs (A) and (B) of this paragraph. Any alternate methods must be submitted and approved in accordance with the procedures in §334.43 of this title (relating to Variances and Alternative Procedures).

(2) Release detection for new piping. All new piping shall be monitored for releases of regulated substances in accordance with §334.50(b)(2) of this title (relating to Release Detection).

(3) Other piping components.

(A) For piping systems in which regulated substances are conveyed under pressure to an above-ground dispensing unit, a UL-listed emergency shutoff valve (also called a shear or impact valve) shall be installed in each pressurized delivery or product line and shall be securely anchored at the base of the dispenser. This shutoff valve shall include a fusible link, and shall be designed to provide a positive shutoff of product flow in the event that a fire, collision, or other emergency occurs at the dispenser end of the pressurized line.

(B) UL-listed flexible connectors shall be installed at both ends of each product or delivery line to provide flexibility and to allow for vertical and horizontal movement in the piping. The use of metal swing joints in an underground storage tank piping system is specifically prohibited.

(C) If buried and in contact with soil and backfill materials, all metallic pipe, valves, and fittings (including flexible connectors) shall be equipped with a cathodic protection system meeting the applicable requirements in §334.49(c) of this title (relating to Corrosion Protection).

(d) Secondary containment for UST systems.

(1) Applicability.

(A) A secondary containment system meeting the requirements of this subsection shall be installed as part of any hazardous substance UST system, in accordance with the applicable schedules in §334.44(a)(2) and (b)(2) of this title (relating to Implementation Schedules).

(B) A double-wall tank and piping system (or approved alternative) meeting the applicable requirements of this subchapter shall be installed for any UST system situated in the Edwards Aquifer recharge or transition zones, in accordance with Chapter 313 of this title (relating to Edwards Aquifer).

(C) The commission or the executive director may specifically require the installation of a secondary containment system meeting the requirements of this subsection at other times when necessary for the protection of human health or safety or the environment.

(2) General performance standards. All secondary containment systems installed as part of a UST system shall be:

(A) designed, installed, and operated in a manner that will prevent the release of regulated substances from such secondary containment system into the surrounding soil, backfill, groundwater, or surface water during the operational life of the UST system;

(B) capable of collecting and containing releases of regulated substances from any portion of the primary containment vessels (e.g., tanks and piping) until such released substances are removed;

(C) constructed of or lined with materials which are compatible with the stored regulated substance;

(D) constructed of materials having sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrological forces), physical contact with the stored regulated substance (and any other substance to which they may normally be exposed), climatic conditions, the stresses of installation, and the stresses of daily operation (including stresses from nearby vehicular traffic); and

(E) installed on a properly designed and properly placed bedding or backfill material which is capable of providing adequate support for the secondary containment system, capable of providing adequate resistance to any pressure gradients above and below the system, and capable of preventing failure due to settlement, compression, or uplift.

(3) Secondary containment for tanks. One or more of the following methods may be used to provide secondary containment for tanks.

(A) Double-wall tanks. Double-wall tanks may be used to comply

with the secondary containment requirements of this subchapter, provided that such tanks shall meet the following additional provisions.

(i) The secondary wall of such double-wall tanks shall be structurally designed to contain and support the full-load capacity of the primary tank without failure.

(ii) The double-wall tank (including both the primary and secondary tank walls) shall be protected from corrosion in accordance with one or more of the allowable methods included in §334.49 of this title (relating to Corrosion Protection).

(iii) The double-wall tank shall be designed, installed, and operated in accordance with one of the applicable codes or standards of practice listed below.

(I) For fiberglass-reinforced plastic tanks: UL Standard 1316, "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products" and ASTM Standard D 4021, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks".

(II) For steel tanks: STI Standard, "Standard for Dual Wall Underground Steel Storage Tanks", UL Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids", and other applicable UL standards for double-wall steel tanks.

(III) The double-wall tank system shall be installed in accordance with the requirements in §334.46(f)(2) of this title (relating to Installation Standards for New UST Systems).

(B) External liners. Tank excavation liners may be used to comply with the secondary containment requirements of this paragraph, provided that such liners shall meet the following additional provisions.

(i) The tank excavation liner shall consist of an artificially-constructed material that is of sufficient strength, thickness, puncture-resistance, and impermeability (i.e., allow permeation at a rate of no more than 0.25 ounces per square foot per 24 hours for the stored regulated substance) in order to permit the collection and containment of any releases from the underground storage tank system. The criteria for evaluation of the liner for compliance with this clause shall be in accordance with accepted industry practices for materials testing. Types of liners which may be used include certain reinforced and unreinforced flexible membrane liners, rigid fiberglass-reinforced plastic liners, and reinforced concrete vaults.

(ii) The liner shall be protected from corrosion in accordance with one or more of the allowable methods included in §334.49 of this title (relating to Corrosion Protection).

(iii) The liner shall be sufficiently compatible with the stored regulated substance, so that any regulated substance collected in the liner system shall not cause any substantial deterioration of the liner that would allow the regulated substances to be released into the environment.

(iv) The liner shall be designed to contain at least 100% of the full capacity of the largest tank within its containment area.

(v) The liner shall be installed in accordance with the requirements in §334.46(f)(4) of this title (relating to Installation Standards for New UST Systems).

(4) Secondary containment for piping. One or more of the following methods shall be used to provide secondary containment for piping.

(A) Double-wall piping. Double-wall piping systems may be used to comply with the secondary containment requirements of this subchapter, provided that such piping systems meet the following additional provisions.

(i) The double-wall piping system shall be designed to contain a release from any portion of the primary piping within the secondary piping walls.

(ii) The double-wall piping system (including both the primary and secondary piping) shall be protected from corrosion in accordance with one or more of the allowable methods included in §334.49 of this title (relating to Corrosion Protection).

(iii) The double-wall piping system shall be designed, installed, and operated in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory.

(iv) The double-wall piping system shall be installed in accordance with the requirements in §334.46(f)(3) of this title (relating to Installation Standards for New UST Systems).

(B) External liners. External piping trench liners may be used to comply with the secondary containment requirements of this paragraph, provided that such liners meet the additional provisions in paragraph (3)(B) of this subsection.

(e) Technical standards for other new UST system equipment.

(1) Vent lines. All underground portions of the vent lines (including all associated underground valves, fittings, and

connectors) shall be designed and constructed in accordance with the piping requirements in subsection (c)(1) of this section, shall be properly protected from corrosion in accordance with one of the allowable methods in §334.49 of this title (relating to Corrosion Protection), and shall be installed in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory.

(2) Fill pipes. All fill pipes (including any connected fittings) shall be:

(A) designed and constructed in accordance with the piping requirements in subsection (c)(1) of this section;

(B) properly protected from corrosion in accordance with one of the allowable methods in §334.49 of this title (relating to Corrosion Protection);

(C) properly enclosed in or equipped with spill and overflow prevention equipment as required in §334.51(b) of this title (relating to Spill and Overflow Prevention and Control); and

(D) equipped with a factory-constructed drop tube which shall extend to within 12 inches of the tank bottom.

(3) Release detection equipment. All release detection equipment shall be designed and constructed in accordance with the requirements for the particular type of equipment, as described in the applicable provisions in §334.50 of this title (relating to Release Detection).

(4) Monitoring wells. All monitoring wells shall be designed and constructed in accordance with the requirements in this paragraph.

(A) All monitoring wells shall be installed in accordance with the requirements in §334.46(g) of this title (relating to Installation Standards for New UST Systems).

(B) All monitoring well casings shall be designed in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory.

(C) All monitoring well casings shall have a minimum inside diameter of 4 inches.

(D) The slotted or screened portion of the monitoring well casing shall be designed and sized to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substances floating on or dissolved in the groundwater

into the well under both high and low groundwater conditions.

(E) All monitoring wells shall meet the applicable design and construction standards in Chapter 287 of this title (relating to Water Well Drillers) and the Water Well Drillers Act, Article 7621e (Vernon's Water Auxiliary Laws).

(f) Records for technical standards for new UST systems. Owners and operators of new UST systems shall maintain adequate records to demonstrate compliance with the applicable provisions in this section, which at a minimum, shall include all records required in §334.46(i) of this title (relating to Installation Standards for New UST Systems). All records shall be maintained in accordance with §334.10(b) of this title (relating to Reporting and Recordkeeping).

§334.46. Installation Standards for New UST Systems.

(a) General installation procedures.

(1) Standards. All tanks, piping, and associated equipment shall be installed in accordance with at least one of the following standards, as applicable:

(A) PEI Publication RP-100, "Recommended Practices for Installation of Underground Liquid Storage Systems";

(B) API Publication 1615, "Installation of Underground Petroleum Storage Systems"; or

(C) ANSI Standard B31.3, "Petroleum Refinery Piping" and ANSI Standard B31.4, "Liquid Petroleum Transportation Systems".

(2) Installation personnel. All tanks, piping, and associated equipment shall be installed by personnel possessing the appropriate skills, experience, and competence to complete the installation in accordance with recognized industry practices and this chapter, and in a manner designed to minimize the possibility of UST system failures and the releases of regulated substances.

(3) Damages.

(A) All reasonable precautions shall be taken to prevent improper handling and damaging of the tanks and piping during the unloading and installation processes.

(B) Tanks and piping shall be physically inspected by the installer prior to installation.

(C) Any damage shall be re-

paired in accordance with the manufacturer's specifications; otherwise, damaged tanks and/or piping shall be replaced.

(4) Excavation.

(A) The tank excavation zone and piping trenches shall provide adequate vertical and horizontal space for the tanks, piping, and associated equipment, for the proper placement and compaction of bedding and backfill materials (particularly under the lower quadrant of the tank's circumference), and for adequate cover and paving to accommodate anticipated traffic loads.

(B) Tank excavation shall be performed in a manner that will avoid the undermining of foundations and other existing structures, and shall be constructed not less than three feet from the base of adjacent structures (unless specifically approved by a registered professional engineer) and not less than three feet from any underground utility easements and property lines.

(5) Bedding and backfill.

(A) The bedding and backfill shall consist of clean, washed, suitably-graded, and noncorrosive sand, crushed rock, or pea gravel.

(B) The bedding and backfill material shall be selected and placed in accordance with the tank and piping manufacturers' specifications, and shall be placed and compacted in uniform lifts to assure proper support and protection of the tank and piping after installation.

(C) Minimum bedding and backfill requirements shall be in accordance with the applicable industry standard for the construction, as prescribed in this subsection.

(D) The placement of tanks or piping directly on native soils, concrete pads or saddles, or any other underlayment except the bedding materials listed in this paragraph is specifically prohibited.

(b) Anchoring systems. Unless otherwise approved by the executive director in accordance with §334.43 of this title (relating to Variances and Alternative Procedures), all underground storage tanks located in areas subject to high water tables or flooding shall be protected from any floatation or movement which could jeopardize the integrity of the underground storage tank system.

(1) Methods to prevent tank floatation shall be in accordance with the tank manufacturer's specifications and shall be one (or a combination) of the following methods:

(A) the provision of ample backfill and/or paving on top of the tank to offset the buoyancy forces;

(B) the installation of a properly-designed deadman anchoring system, where the concrete beams shall be placed outside the vertical extension of the tank diameter and where the length of the beams shall extend at least one foot beyond the ends of the tank; or

(C) the installation of a properly-designed concrete hold-down pad anchoring system beneath the tank, where the pad's width and length shall extend at least one foot beyond the tank sides and ends in all directions.

(2) The installation of anchoring straps or cables shall be in accordance with the tank manufacturer's specifications. All parts of the straps, cables, and hardware shall be of corrosion-resistant material or, if metallic, shall be thoroughly coated and cathodically protected.

(c) Piping system installation.

(1) The piping layout shall be designed in a manner that will minimize the crossing of other lines and conduits, and the crossing of tanks and other underground storage tank system components. Where such crossing is unavoidable, adequate clearance shall be provided to prevent contact.

(2) Traps, sumps, or sags in the lines shall be avoided, and all piping shall slope at least one-eighth inch per foot in the direction of the tank.

(3) All piping joints shall be accurately cut, deburred, cleaned, and sealed with appropriate piping sealant in accordance with the piping manufacturer's specifications to provide liquid-tight connections.

(d) Installation testing for new tanks and piping.

(1) Air testing of new tanks shall be conducted in accordance with the tank manufacturer's specifications. New tanks shall be air tested before they are installed.

(A) Air testing for single-wall tanks shall include the soaping of all surfaces, seams, and fittings, pressurizing and gauging with three to five psig air pressure for at least one hour, monitoring the gauge for pressure drops, and inspecting for bubbles.

(B) Air testing for double-wall tanks shall be in accordance with §334.46(f)(2)(B) of this title (relating to Installation Standards for New UST Systems).

(C) Gauges used in air testing procedures shall have a maximum range

not exceeding 15 psig. All tanks undergoing air pressure testing shall be equipped with a pressure relief device capable of relieving the total output of the compressed-air source at a pressure of not more than six psig.

(2) Air testing of new piping, fittings, and valves shall be conducted in accordance with the manufacturer's specifications. New piping shall be tested before being covered and placed into use. Air testing of piping shall include the soaping of all joints, pressurizing with compressed air to 150% of the maximum piping operating pressure, or a minimum of 50 psig for at least one hour, and inspecting for bubbles. Air testing for secondary containment piping shall be in accordance with subsection (1)(3)(B) of this section.

(3) In addition to the air tests, a tank tightness test and a piping tightness test meeting the requirements of §334.50(d)(1)(A) and (b)(2)(A)(ii) (1), respectively, of this title (relating to Release Detection) shall be performed after the backfill has been placed but prior to bringing the underground storage tank system into operation.

(e) Installation of cathodic protection systems. The installation of any field-installed cathodic protection system in a new or existing underground storage tank system shall be in accordance with the applicable requirements of §334.49(c)(2) of this title (relating to Corrosion Protection).

(f) Installation of secondary containment systems.

(1) Secondary containment. Any secondary containment system shall meet the technical standards of §334.45(d) of this title (relating to Technical Standards for New UST Systems).

(2) Installation of double-wall tanks.

(A) The installation of double-wall tanks shall be in compliance with the manufacturer's specifications and the applicable tank installation procedures in this section.

(B) Air testing for double-wall tanks shall be in accordance with the manufacturer's specifications and the following procedures.

(i) The primary tank shall be pressurized and gauged with three to five psig of air pressure. The primary tank shall be pressurized for at least one hour, and the gauge pressure shall be periodically monitored for any pressure drops.

(ii) After disconnecting the outside air pressure source, the interstitial area between the tank walls shall be pressurized with air pressure from the primary tank. A second gauge shall be used to measure the pressure in the interstitial

space.

(iii) The exterior of the tank shall be soaped, and the integrity of the system shall be inspected by monitoring the gauges and inspecting for air bubbles for at least one hour prior to releasing the pressure.

(iv) Gauges used in air testing procedures shall have a maximum range not exceeding 15 psig. All tanks undergoing air testing shall be equipped with a pressure relief device capable of relieving the total output of the compressed-air source at a pressure of not more than six psig.

(3) Installation of double-wall piping.

(A) The installation of double-wall piping shall be in compliance with the manufacturer's specifications and the applicable piping installation procedures in this section.

(B) After successful air testing of the completed primary piping system (in accordance with subsection (d)(2) of this section), the secondary containment piping shall be air tested in accordance with the manufacturer's specifications and the following procedures.

(i) The secondary containment piping shall be pressurized and gauged with three to five psig of air pressure.

(ii) The exterior of the secondary containment piping shall be soaped and the integrity of the system shall be inspected by monitoring for air bubbles for at least one hour.

(iii) The secondary containment piping system shall remain pressurized, and the gauges shall be periodically monitored for pressure losses, until the entire UST system installation is complete in order to monitor for damages during the remaining construction activities.

(4) Installation of external liners.

(A) External liners shall be installed in accordance with the manufacturer's specifications, and in accordance with the requirements in this paragraph.

(B) The installation, field-seaming, and field-repair of any liners shall be performed only by qualified personnel who have been properly trained and certified by the liner manufacturer.

(C) The liner shall be protected from puncture, abrasion, or any other damage during placement and during installation of other UST system components. A protective layer of puncture-resistant filter

fabric shall be required when the liner is placed in an excavation area where the presence of sharp paving, rocks, or other debris presents a threat to the liner integrity.

(D) The liner shall be installed in a manner that will allow sufficient enclosure of the secondarily-protected component to prevent lateral and vertical migration of any collected regulated substances.

(E) For underground storage tank systems which are equipped with cathodic protection equipment, the liner shall be installed so as not to jeopardize or inhibit the proper operation of such cathodic protection equipment.

(F) The liner installation shall include the provision of an appropriate number of recessed collection/detection points, and all portions of the liner shall be sloped toward such points to permit the detection of any releases from the primary storage component.

(G) The installation of the liner shall be performed in a manner that will ensure that groundwater, soil moisture, and stormwater runoff will not adversely affect the liner's ability to collect and contain regulated substances or the ability of the selected release detection methods to operate effectively.

(H) The liner shall be designed and installed to ensure that it will always be situated above the highest groundwater level and outside the 25-year flood plain, unless the liner and the release detection system are properly designed for use under such conditions. The owner or operator may be required to provide documentation of the methods used to determine groundwater and floodplain information.

(I) After completion of the liner installation, but prior to placing the UST system into service, the liner shall be properly tested in accordance with the manufacturer's specifications.

(g) Installation of monitoring wells. All monitoring wells installed in an underground storage tank system shall be constructed and installed in accordance with the requirements of this paragraph.

(1) All monitoring wells shall meet the technical standards shown in §334.45(e)(4) of this title (relating to Technical Standards for New UST Systems).

(2) All monitoring wells constructed pursuant to the requirements of this subsection shall be installed within the underground storage tank system excavation zone, and shall be completed to a depth of at least two feet below the lowest part of the excavation zone.

(3) All monitoring wells shall be constructed by qualified personnel and in accordance with the applicable requirements of Chapter 287 of this title (relating to Water Well Drillers) and the Water Well Drillers Act, Article 7621e, (Vernon's Water Auxiliary Laws).

(4) When installed for the purpose of compliance with one or more of the release detection methods in §334.50(d) of this title (relating to Release Detection), the specific number and positioning of the monitoring wells shall be based on the results of an assessment of the underground areas within and immediately below the UST system excavation zone. Such assessment shall be performed by qualified personnel familiar with the groundwater, soil, and geologic conditions at the site.

(5) All monitoring wells shall be properly sealed from the ground surface to the top of the filter pack with appropriate sealing materials.

(6) Upon completion, all monitoring wells shall be properly capped, labeled, and secured to prevent unauthorized access, tampering, and the depositing of unauthorized substances.

(7) Regardless of which method of release detection is used, each separate tank hole in a new UST system shall include, at a minimum, the number of monitoring wells specified in the following subparagraphs:

(A) for a tank hole containing only one tank, a minimum of one monitoring well shall be required; and

(B) for a tank hole containing two or more tanks, a minimum of two monitoring wells shall be required.

(h) Certification of installation.

(1) All owners and operators of new underground storage tank systems installed on or after December 22, 1988, shall ensure that:

(A) the installation was completed in accordance with the provisions of this section; and

(B) at least one of the following certification criteria is applicable to the installation:

(i) the installer of the UST system has been properly certified by the tank, piping, and equipment manufacturers;

(ii) the installation has been inspected and certified by a registered professional engineer with appropriate training and experience in UST system installation procedures;

(iii) all construction and

installation activities listed in the equipment manufacturers' checklists have been properly completed; or

(iv) the installation activities have been reviewed and determined by the executive director to prevent releases in a manner that is no less protective of human health and the environment than the methods described in clauses (i)-(iii) of this subparagraph. Any alternative methods must be submitted and approved in accordance with the procedures in §334.43 of this title (relating to Variances and Alternative Procedures).

(2) The owner and the installer of the UST system shall complete the installation certification section of the commission's authorized tank registration form, and shall certify by signature that the installation methods are in compliance with the provisions of this section, as required by §334.8(a) of this title (relating to Certification).

(i) Installation records.

(1) Owners and operators shall maintain all installation records required in accordance with the requirements in §334.10(b) of this title (relating to Reporting and Recordkeeping).

(2) Owners and operators shall maintain the following records for the operational life of the UST system:

(A) general information relating to the installation activity, including:

(i) date of installation activity;

(ii) names, addresses, and telephone numbers of the persons conducting the installation and performing any associated inspections or testing; and

(iii) copies of all related notifications or reports filed with the commission or others, including:

(I) construction notifications, as required by §334.6 of this title (relating to Construction Notification);

(II) registration information, as required by §334.7 of this title (relating to Registration); and

(III) installation certification information, as required by §334.8(a) of this title (relating to Certification).

(B) as-built drawings (or plans), which have been drawn to scale and in sufficient detail to accurately depict and describe the sizes, dimensions, and locations of the following:

(i) all pertinent site features, including property boundaries, street

and road rights-of-ways, easements, and utility lines, buildings and other structures, driveways, slabs, and any natural features;

(ii) all pertinent UST system components, including tanks, piping, vent piping, pumps, dispensers, excavation zone (including tank hole and piping trench), monitoring wells, spill and overflow prevention equipment, release detection system components (including monitoring and testing locations), cathodic protection system components (including test stations), secondary containment systems, anchoring systems, and any other pertinent UST system components; and

(iii) any site features or UST system components which have been added, revised, changed, modified, or removed subsequent to the preparation of the original drawings or plans;

(C) equipment information for all UST system components including:

(i) manufacturers' specifications, installation instructions, operating instruction, warranty information, recommended test procedures, and inspection and maintenance schedules; and

(ii) names, addresses, and telephone numbers of the manufacturers' representatives and local authorized service technicians.

(3) Owners and operators shall maintain the results of all equipment tests, including the air tests and the tightness tests conducted on the tanks and piping at the time of installation, for at least five years after the date of installation.

§334.47. *Technical Standards for Existing UST Systems.*

(a) General requirements.

(1) Alternatives for existing UST systems. No later than the implementation dates specified in §334.44(b) of this title (relating to Implementation Schedules), all applicable components of any existing UST system (i.e., UST system for which installation has commenced or has been completed on or prior to December 22, 1988) shall be either installed, upgraded, improved, or replaced with equipment or components which meet or exceed either of the following requirements:

(A) the requirements for technical standards and installation of new underground storage tank systems in §334.45 of this title (relating to Technical Standards for New UST Systems) and in §334.46 of this title (relating to Installation Standards for New UST Systems); or

(B) the minimum upgrading requirements for existing UST systems in subsection (b) of this section.

(2) If any applicable component of an existing UST system is not brought into timely compliance with the requirements of paragraph (1) of this subsection, the UST system shall be permanently removed from service no later than 60 days after the prescribed implementation date. The permanent removal from service shall be conducted in accordance with the applicable provisions of §334.55 of this title (relating to Permanent Removal From Service).

(b) Minimum upgrading requirements for all existing UST systems.

(1) Tank integrity assessment and cathodic protection. No later than December 22, 1998, all underground metallic components of any existing UST system shall be assessed for tank integrity and shall be equipped with a cathodic protection system, as provided in the following subparagraphs.

(A) Tank integrity assessment. The tank shall be assessed for structural integrity and for the presence of corrosion holes by one or more of the following methods.

(i) The tank may be equipped with one or more of the external release detection systems meeting the applicable requirements of §334.56(d)(4)-(d)(8) of this title (relating to Release Detection). Such release detection system(s) shall have been in operation for at least 60 days prior to the date of the cathodic protection system installation, and at least one of the systems shall remain in operation for the remaining operational life of the tank.

(ii) The tank may be tested by conducting at least two tank tightness tests meeting the requirements of §334.50(d)(1)(A) of this title (relating to Release Detection). The first tightness test shall be conducted prior to installing the cathodic protection system, and the second test shall be conducted between three and six months after the cathodic protection system was placed into operation.

(iii) Prior to the installation of the cathodic protection system, a site assessment or release determination may be conducted in accordance with the provisions of §334.55(e) of this title (relating to Permanent Removal From Service). Subsequent to the release determination, the tank shall be retrofitted with an interior liner in accordance with the applicable provisions of §334.52(b) of this title (relating to UST System Repairs and Relining).

(iv) Prior to the installation of the cathodic protection system, the tank may be internally inspected and assessed to assure that the tank is structurally sound and free of corrosion holes, provided that such internal inspection shall be:

(1) conducted in ac-

cordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory; and

(ii) performed by personnel possessing the requisite training, experience, and competence to assure that any corrosion holes or structurally unsound areas are located.

(v) Prior to the installation of the cathodic protection system, the tank may be assessed for structural integrity and the presence of corrosion holes by an alternate method which has been reviewed and determined by the executive director to prevent releases in a manner that is no less protective of human health and the environment than the methods described in clauses (i) (iv) of this subparagraph, in accordance with the provisions of §334.43 of this title (relating to Variances and Alternative Procedures).

(B) Repairs or corrective action. If the results of the tank integrity assessment (required by subparagraph (A) of this paragraph) indicate that the existing tank is not structurally sound and/or that a release of regulated substances has occurred, then the owner and operator shall:

(i) comply with the applicable release reporting, investigation, and corrective action requirements of Subchapter D of this title (relating to Release Reporting and Corrective Action); and

(ii) conduct one of the following activities, as applicable:

(I) perform appropriate repairs or relining of the tank, in accordance with the applicable requirements of §334.52 of this title (relating to UST System Repairs and Relining), as necessary to restore the structural integrity of the tank; or

(II) permanently remove the tank from service in accordance with the applicable provisions in §334.55 of this title (relating to Permanent Removal from Service).

(C) After confirmation or restoration of the structural integrity of the tank, all underground metal components of the underground storage tank system, which are not isolated from the surrounding soil, backfill, and groundwater, and which either do or could convey, contain, or store regulated substances, shall be equipped with a field-installed cathodic protection system meeting the requirements of §334.49(c)(2) of this title (relating to Corrosion Protection).

(2) Adding spill and overflow prevention equipment. No later than De-

ember 22, 1994, all existing underground storage tanks shall be equipped with appropriate spill and overflow prevention equipment, in accordance with the provisions in §334.51(b) of this title (relating to Spill and Overflow Prevention and Control).

(3) Adding release detection for UST system piping.

(A) Release detection for pressurized piping, later than December 22, 1990, all piping in an existing UST system that routinely conveys regulated substances under pressure (i.e., which operates at greater than atmospheric pressure) shall be brought into compliance with the pressurized piping release detection requirements in §334.50(b)(2)(A) of this title (relating to Release Detection).

(B) Release detection for suction piping and gravity-flow piping. All piping in an existing UST system that routinely conveys regulated substances either under suction (i.e., which operates at less than atmospheric pressure) or by gravity-flow shall be brought into compliance with the applicable release detection requirements in §334.50(b)(2)(B) of this title (relating to Release Detection) no later than the date on which release detection is required for the tank to which such piping is connected, as prescribed in paragraph (4) of this subsection.

(4) Adding release detection for tanks.

(A) All tanks at an existing UST system shall be brought into compliance with the tank release detection requirements in §334.50(b)(1) of this title (relating to Release Detection) no later than the date specified in the following clauses for the time of installation applicable to such tanks:

(i) December 22, 1989, for tanks where the installation dates are undetermined or unknown;

(ii) December 22, 1989, for tanks installed during 1964 or prior years;

(iii) December 22, 1990, for tanks installed during the years 1965-1969, inclusive;

(iv) December 22, 1991, for tanks installed during the years 1970-1974, inclusive;

(v) December 22, 1992, for tanks installed during the years 1975-1979, inclusive;

(vi) December 22, 1993, for tanks installed during the years 1980-1987, inclusive; and

(vii) December 22, 1993, for tanks installed between January 1, 1988, and December 22, 1988, inclusive.

(B) When two or more existing tanks are located in a common tank hole, all such tanks shall be brought into compliance with the applicable release detection requirements of this paragraph no later than the date specified for the oldest tank in such common tank hole.

(c) Additional upgrading requirements for existing hazardous substance UST systems. In addition to the upgrading requirements applicable to all existing UST systems in subsections (a) and (b) of this section, all existing hazardous substance UST systems (i.e., UST system for which installation has commenced or has been completed on or prior to December 22, 1988) shall be equipped or retrofitted with a secondary containment system and an associated release detection system in accordance with the following provisions.

(1) No later than December 22, 1998, all existing hazardous substance UST systems shall be equipped with a secondary containment system meeting the design, construction, and installation requirements in §334.45(d) of this title (relating to Technical Standards for New UST Systems) and §334.46(f) of this title (relating to Installation Standards for New UST Systems).

(2) No later than December 22, 1998, all existing hazardous substance UST systems shall be equipped with a release detection system capable of monitoring either the interstitial spaces between the primary and secondary walls of any double-walled UST component, or the spaces between the primary UST component walls of any double-walled UST component walls and any external liners, as applicable, in accordance with the provisions in §334.50(c) of this title (relating to Release Detection).

(d) Records for upgrading of existing UST systems.

(1) Owners and operators shall maintain all records related to the upgrading of existing UST systems required in this subsection in accordance with the requirements in §334.10(b) of this title (relating to Reporting and Recordkeeping).

(2) Owners and operators shall maintain the following records for the operational life of the UST system:

(A) general information related to the tank integrity assessment and cathodic protection requirements in subsection (b) of this section, including:

(i) dates of the tank integrity assessment and cathodic protection installation activities;

(ii) names, addresses, and telephone numbers of the persons conducting the tank integrity assessment and cathodic protection installation activities; and

(iii) copies of all related notifications or reports filed with the Com-

mission or others, including:

(I) construction notifications, as required by §334.6 of this title (relating to Construction Notification);

(II) registration information, as required by §334.7 of this title (relating to Registration); and

(III) installation certification information, as required by §334.8(a) of this title (relating to Certification).

(B) as built drawings (or plans), which shall be completed no later than December 22, 1993, and which have been drawn to scale and in sufficient detail to accurately depict and describe the sizes, dimensions, and locations of the following:

(i) all pertinent size features, including property boundaries, street and road rights-of-way, easements and utility lines, buildings and other structures, driveways, slabs, and any pertinent natural features;

(ii) all pertinent UST system components, including tanks, piping, vent piping, pumps, dispensers, excavation zone (including tank hole and piping trench), monitoring wells, spill and overflow prevention equipment, release detection system components (including monitoring and testing locations), cathodic protection system components (including test stations), secondary containment systems, anchoring systems, and any other pertinent UST system components, and

(iii) any site features or UST system components which have been added, revised, changed, modified, or removed subsequent to the preparation of the original drawings or plans,

(C) equipment information for any UST system components or equipment added or installed on or after December 22, 1988, for the purpose of compliance with the upgrading requirements of this section, including:

(i) manufacturers' specifications, installation instructions, operating instructions, warranty information, recommended test procedures, and inspection and maintenance schedules; and

(ii) names, addresses, and telephone numbers of the manufacturers' representatives and local authorized service technicians.

(3) Owners and operators shall maintain the results of all equipment tests and tank integrity tests required in this section including internal inspections, tank and piping tightness tests, and site assessments, for at least five years after the date of

installation.

§334.48. General Operating and Management Requirements.

(a) **Prevention of Releases.** All owners and operators of UST systems shall ensure that the systems are operated, maintained, and managed in a manner that will prevent releases of regulated substances from such systems.

(b) **UST System Management.** UST systems shall be operated, maintained, and managed in accordance with accepted industry practices.

(c) **Inventory Control.** Regardless of which method of release detection is used for compliance with §334.50 of this title (relating to Release Detection), effective inventory control procedures shall be conducted for all UST systems storing regulated substances after December 22, 1988, in accordance with API Publication 1621, "Bulk Liquid Stock Control at Retail Outlets". Complete and accurate inventory records shall be maintained in accordance with §334.10 of this title (relating to Reporting and Recordkeeping).

(d) **Spill and overflow control.** All owners and operators shall ensure that spills and overfills of regulated substances do not occur and that all spill and overflow prevention equipment is properly operated and maintained in accordance with §334.51 of this title (relating to Spill and Overflow Prevention and Control).

(e) **Operational requirements for release detection equipment.** Owners and operators of all new and existing underground storage tank systems shall ensure that all release detection equipment installed as part of an UST system pursuant to §334.50 of this title (relating to Release Detection) is maintained in good operating condition. The owner or operator shall also assure that such equipment is routinely inspected and serviced in accordance with the manufacturer's specifications and in a manner that will assure the proper performance, operability, and running condition of the equipment. Where periodic testing and/or monitoring activities are required as part of a specific release detection method under §334.50 of this title (relating to Release Detection), such tests and/or monitoring activities shall be performed at the prescribed times and/or frequencies.

(f) **Operation requirements for corrosion protection systems.** All owners and operators of UST systems shall assure that all required system components are continuously protected from corrosion, and that all corrosion protection systems are inspected and tested, in accordance with the applicable provisions of §334.49 of this title (relating to Corrosion Protection).

(g) **Operation and maintenance records.** Owners and operators shall maintain records relating to the operation and main-

tenance of an UST system (including records related to inspection, servicing, testing, and inventory control) as prescribed in this section for at least five years, and such records shall be maintained in accordance with §334.10(b) of this title (relating to Reporting and Recordkeeping).

§334.49. Corrosion Protection.

(a) **General requirements.**

(1) **Owners and operators of UST systems (or UST system components)** which are required to be protected from corrosion shall comply with the requirements in this section to ensure that releases due to corrosion are prevented for as long as the underground storage tank system is used to store regulated substances.

(2) **All corrosion protection systems** shall be designed, installed, operated, and maintained in a manner that will ensure that corrosion protection will be continuously provided to all components of the underground storage tank system for as long as the components are used to store regulated substances.

(3) **Any alternative methods for corrosion protection or variances from the requirements of this section** are prohibited, except when reviewed and approved by the executive director in accordance with §334.43 of this title (relating to Variances and Alternative Procedures).

(4) **Corrosion protection in accordance with the provisions of this section** shall be provided to all components of an UST system which are designed or used to convey, contain, or store regulated substances, including, but not necessarily limited to, the tanks, piping (including valves, fittings, flexible connectors, and swing joints in existing UST systems), secondary containment devices, manways, manholes, fill pipes, vent lines, submersible pump housings, spill containers, riser pipes, and impact/shear valves.

(5) **For internal corrosion protection,** the interior bottom surface of new metal tanks installed on or after December 22, 1988, shall be fitted with a striker plate under all fill, gauge, and monitoring openings.

(b) **Allowable corrosion protection methods.** All components of an UST system which are designed to convey, contain, or store regulated substances shall be protected from corrosion by one or more of the following methods.

(1) **The component may be constructed of a noncorrodible material** which is compatible with the stored regulated substance(s).

(2) **The component may be electrically isolated from the corrosive elements of the surrounding soil, backfill, and groundwater** by installing the component in an open area (e.g., manway, sump, vault,

pit, etc.) where periodic visual inspection of all parts of the component for the presence of corrosion or released substances is practicable.

(3) **The component may be electrically isolated from the corrosive elements of the surrounding soil, backfill, and groundwater** by completely enclosing the component in a secondary containment device (e.g., wall, jacket, or liner), provided that.

(A) **The secondary containment device is designed and installed in accordance with the applicable technical and installation standards:** in §334.45(d) of this title (relating to Technical Standards for New UST Systems), and §334.46(f) of this title (relating to Installation Standards for New UST Systems); and in accordance with an applicable code or standard of practice developed by a nationally recognized association or independent testing laboratory, and is either:

(i) **constructed of a non-corrodible material** which is compatible with the stored regulated substance;

(ii) **electrically isolated from the protected component and other metallic components;** or

(iii) **cathodically protected by either a factory-installed or field-installed cathodic protection system meeting the applicable requirements of subsection (c) of this section.**

(B) **The interstitial space between the protected component and the secondary containment device shall be free of any soil, backfill material, groundwater, or other substances;** and shall be regularly monitored for the presence of water and released regulated substances in accordance with either §334.50(d)(6) or (d)(7) of this title (relating to Release Detection), as applicable.

(4) **Tanks (only) may be factory-constructed either as a steel/fiberglass-reinforced plastic composite tank, or as a steel tank with a bonded fiberglass-reinforced plastic external cladding or laminate,** in accordance with the requirements in §334.45(b)(1)(D) of this title (relating to Technical Standards for New UST Systems).

(5) **The component may be coated with a suitable dielectric material, equipped with appropriate dielectric fittings for electrical isolation, and equipped with either:**

(A) **a factory-installed cathodic protection system meeting the requirements of subsection (c)(1) of this section;** or

(B) **a field-installed cathodic**

protection system meeting the requirements of subsection (c)(2) of this section.

(c) Cathodic protection systems.

(1) Factory-installed cathodic protection systems.

(A) A factory-installed cathodic protection system on any underground storage tank component shall be designed, fabricated, installed, operated, and maintained in accordance with applicable codes or standards of practice developed for such cathodic protection method by a nationally recognized association or independent testing laboratory.

(B) At a minimum, the factory-installed cathodic protection system shall include the following components:

(i) a suitable dielectric external coating or laminate, which shall thoroughly cover all exterior surfaces exposed to the soil, backfill, or groundwater, and which shall consist of materials which are compatible with the stored regulated substances;

(ii) dielectric isolation bushings, connections, or fittings, which shall be installed at all locations where the protected component connects to other metallic system components, and which shall be constructed of materials which are compatible with the stored regulated substances;

(iii) sacrificial anodes which are firmly attached and electrically-connected to the protected components and which are positioned and sized to provide complete cathodic protection for all parts of the protected component, and

(iv) appropriate connections, lead wires, and/or test stations as necessary to allow for the periodic testing of the cathodic protection system.

(2) Field-installed cathodic protection systems.

(A) A field-installed cathodic protection system on any UST system component shall be designed by a qualified corrosion specialist, and shall be designed, installed, operated, and maintained in accordance with applicable codes or standards of practice developed for such cathodic protection systems by a nationally recognized association or independent testing laboratory.

(B) Impressed current cathodic protection systems shall be designed and equipped with appropriate equipment or devices capable of indicating the operational status of the system at all times.

(C) In addition to the standard inspection and testing requirements for all cathodic protection systems required in

paragraph (3) of this subsection, all impressed current cathodic protection systems shall be regularly inspected by the owner or operator (or the owner's designated representative) to ensure that the rectifier and other system components are operating properly. Such inspections shall be performed at least once every 60 days.

(3) Inspection and testing requirements for all cathodic protection systems.

(A) Except as provided in subsection (d)(2) of this section, all cathodic protection systems which are used to provide corrosion protection for any component of an UST system shall be inspected and tested (to determine the adequacy of the cathodic protection) by a qualified corrosion specialist or corrosion technician in accordance with the requirements in this paragraph.

(B) The inspection and testing criteria used to determine the adequacy of the cathodic protection shall be in accordance with a code of practice or standard developed by a nationally recognized corrosion association or independent testing laboratory.

(C) All cathodic protection systems shall be inspected and tested for operability and adequacy of protection within three to six months after installation and at a subsequent frequency of at least once every three years.

(d) Requirements for other corrosion protection methods.

(1) Electrically-isolated components.

(A) Any metal component of an underground storage tank system which is protected from corrosion by one of the electrical isolation methods described in subsection (b)(2), (3), and (4) of this section, and which is not equipped with a cathodic protection system, shall be periodically inspected and tested by a qualified corrosion technician or by a qualified corrosion specialist to ensure that the metal component remains electrically isolated from the surrounding soil, backfill, groundwater, and other metal components.

(B) The tests required in subparagraph (A) of this paragraph shall be conducted by taking structure to soil voltage readings no later than one year after installation of the metal component, and then once every five years thereafter for the remaining operational life of the UST system.

(C) The tests required in subparagraph (A) of this paragraph shall be

in accordance with the procedures established by a code or standard of practice developed by a nationally recognized association or independent testing laboratory.

(D) If the tests required in subparagraph (A) of this paragraph indicate that the metal component is no longer electrically isolated from the surrounding soil, backfill, ground-water, or other metal components, a qualified corrosion specialist shall review the test results and thoroughly inspect the area of the metal component to ascertain the extent of electrical isolation and corrosion protection for the component.

(E) If the qualified corrosion specialist determines that the metal component is no longer adequately protected from corrosion, the owner or operator shall install a field-installed cathodic protection system meeting the requirements of subsection (c)(2) of this section within 60 days of the date of such determination.

(2) Dual-protected tanks. If a steel/fiberglass-reinforced plastic composite tank, or a steel tank with a bonded fiberglass-reinforced plastic external cladding or laminate, is also equipped with a factory-installed cathodic protection system, then the normal inspection and testing requirements for cathodic protection systems in subsection (c)(3) of this section may be waived, provided that the system shall be otherwise inspected and tested in accordance with the provisions for electrically-isolated components in paragraph (1) of this subsection (i.e., one year after installation and once every five years thereafter). This paragraph shall be applicable only to tanks meeting the design and construction requirements in §334.45(b)(1)(D) of this title (relating to Technical Standards for New UST Systems), and when such tanks are fitted with factory-installed cathodic protection system meeting the requirements of subsection (c)(1) of this section.

(e) Corrosion protection records.

(1) Owners and operators shall maintain all corrosion protection records required in this subsection in accordance with the requirements in §334.10(b) of this title (relating to Reporting and Recordkeeping).

(2) Owners and operators shall maintain records adequate to demonstrate compliance with the corrosion protection requirements in this section, and in accordance with the following minimum requirements.

(A) All appropriate installation records related to the corrosion protection system, as listed in §334.46(i) of this title (relating to Installation Standards for New UST Systems), shall be maintained for as long as the corrosion protection system is used, including:

(i) the name, address,

telephone number, and corrosion-protection credentials of either the company which designed the factory-installed cathodic protection system or the corrosion specialist who designed the field-installed cathodic protection system, as applicable;

(ii) drawings or plans depicting the locations of all cathodic protection system components, including the locations of all test stations; and

(iii) operating instructions and warranty information, maintenance schedules, and testing procedures for all operational components of the cathodic protection systems.

(B) The following corrosion protection records shall be maintained for at least five years after the applicable test or inspection is conducted:

(i) results of all tests and inspections of any impressed current cathodic protection system conducted in accordance with subsection (c)(2)(C) of this section;

(ii) results of all tests and inspections of the adequacy of any cathodic protection system conducted in accordance with subsection (c)(5) of this section; and

(iii) results of all tests and inspections to assure corrosion protection for dual-protected tanks in accordance with subsection (d)(2) of this section, and other electrically-isolated components in accordance with subsection (d)(1) of this section.

§334.50. Release Detection.

(a) General requirements.

(1) Owners and operators of all new and existing UST systems shall provide a method, or combination of methods, of release detection which shall be:

(A) capable of detecting a release from any portion of the underground storage tank system including the tanks, piping, and other ancillary equipment;

(B) installed, calibrated, operated, and maintained in accordance with the manufacturer's specifications and instructions, and by personnel possessing the necessary experience, training, and competence to accomplish such requirements; and

(C) capable of meeting the particular performance requirements of such method (or methods) as specifically prescribed in this section, based on the performance claims by the equipment manufacturer or installer, provided that the following additional requirements shall also be met:

(i) Any performance claims, together with their bases or methods

of determination, shall be obtained from the equipment manufacturer or installer and shall be in writing.

(ii) When any of the following release detection methods are used on or after December 22, 1990 (except for methods permanently installed and in operation prior to that date), such method shall be capable of detecting the particular release rate or quantity specified for that method such that the probability of detection shall be at least 95% and the probability of false alarm shall be no greater than 5%:

(I) manual tank gauging, as prescribed in subsection (d)(2) of this section;

(II) tank tightness testing, as prescribed in subsection (d)(1)(A) of this section;

(III) automatic tank gauging, as prescribed in subsection (d)(3) of this section;

(IV) automatic line leak detectors for piping, as prescribed in subsection (b)(2)(A)(i) of this section; and

(V) piping tightness testing, as prescribed in subsection (b)(2)(A)(ii) (I) of this section.

(2) When a release detection method operated in accordance with the particular performance standards for that method indicates that a release either has or may have occurred, the owners and operators shall comply with the applicable release reporting, investigation, and corrective action requirements in Subchapter D of this title (relating to Release Reporting and Corrective Action).

(3) Owners and operators of all UST systems shall comply with the release detection requirements of this section in accordance with the applicable schedules in §334.44 of this title (relating to Implementation Schedules).

(4) Any existing UST system that cannot be equipped or monitored with a method of release detection that meets the requirements of this section shall be permanently removed from service in accordance with the applicable procedures in §334.55 of this title (relating to Permanent Removal from Service) by the date on which release detection is required by the applicable schedules in §334.44 of this title (relating to Implementation Schedules).

(5) Any owner or operator who plans to install a release detection method for an UST system shall comply with the applicable construction notification requirements in §334.46 of this title (relating to Construction Notification); and upon com-

pletion of the installation of such method shall also comply with the applicable registration and certification requirements of §334.7 of this title (relating to Registration) and §334.8 of this title (relating to Certification).

(6) Any equipment installed or used for conducting release detection for an UST system shall be specifically listed or approved by a nationally-recognized association or independent testing laboratory (e.g., UL) for such installation or use.

(b) Release detection requirements for all UST systems. Owners and operators of all UST systems shall ensure that release detection equipment or procedures are provided in accordance with the following requirements:

(1) Release detection requirements for tanks.

(A) Except as provided in subparagraphs (B) and (C) of this paragraph, all tanks shall be monitored for releases at a frequency of at least once every 30 days by using one or more of the release detection methods described in subsection (d)(3)-(d)(8) of this section.

(B) A combination of tank tightness testing and inventory control in accordance with subsection (d)(1) of this section may be used as an acceptable release detection method for tanks only until December 22, 1998, and the required frequency of the tank tightness test shall be based on the following criteria.

(i) A tank tightness test shall be conducted at least once each year for any tank in an existing UST system which is not being operated in violation of the upgrading or replacement schedule in §334.44(b) of this title (relating to Implementation Schedules), but has not yet been either:

(I) replaced with an UST system meeting the applicable technical and installation standards in §334.45 of this title (relating to Technical Standards for New UST Systems) and §334.46 of this title (relating to Installation Standards for New UST Systems); or

(II) retrofitted or equipped in accordance with the minimum upgrading requirements applicable to existing UST systems in §334.47 of this title (relating to Technical Standards for Existing UST Systems).

(ii) A tank tightness test shall be conducted at least once every five years for any tank in an UST system which has been either:

(I) installed in accordance with the applicable technical stan-

dards for new UST systems in §334.45 of this title (relating to Technical Standards for New UST Systems) and §334.46 of this title (relating to Installation Standards for New UST Systems); or

(II) retrofitted or equipped in accordance with the minimum upgrading requirements applicable to existing UST systems in §334.47 of this title (relating to Technical Standards for Existing UST Systems).

(C) The manual tank gauging method of release detection, as prescribed in subsection (d)(2) of this section, may be used as the sole release detection system only for a petroleum substance tank with a nominal capacity of 550 gallons or less.

(D) In addition to the requirements in subparagraphs (A)-(C) of this paragraph, any tank in a hazardous substance UST system shall also be equipped with a secondary containment system and related release detection equipment, as prescribed in subsection (c) of this section.

(2) Release detection for piping. Piping in an underground storage tank system shall be monitored in a manner designed to detect a release from any portion of the piping system, and in accordance with the following requirements:

(A) Requirements for pressurized piping. Underground storage tank system piping that conveys regulated substances under pressure shall be in compliance with the following requirements.

(i) Each separate pressurized line shall be equipped with an automatic line leak detector meeting the following requirements:

(I) The line leak detector shall be capable of detecting any release from the piping system which equals or exceeds three gallons per hour when the piping pressure is at 10 pounds per square inch.

(II) The line leak detector shall be capable of alerting the UST system operator of any release within one hour of occurrence either by shutting off the flow of regulated substances, by substantially restricting the flow of regulated substances, or by emitting or triggering audible and visible alarms.

(III) The line leak detector shall be tested at least once per year for performance and operational reliability and shall be properly calibrated and maintained, in accordance with the manufacturer's specifications and recommended procedures.

(ii) In addition to the required line leak detector prescribed in clause (i) of this subparagraph, each pressurized line shall also be tested or monitored for releases in accordance with at least one of the following methods.

(I) The piping may be tested at least once per year by means of a piping tightness test conducted in accordance with a code or standard of practice developed by a nationally recognized association or testing laboratory. Any such piping tightness test shall be capable of detecting any release from the piping system which equals or exceeds a rate of 0.1 gallons per hour when the piping pressure is at 150% of normal operating pressure.

(II) The piping may be monitored for releases at least once every 30 days by using one or more of the release detection methods prescribed in subsection (d)(4)-(8) of this section.

(B) Requirements for suction piping and gravity flow piping.

(i) Except as provided in clause (ii) of this subparagraph, each separate line in a UST piping system that conveys regulated substances either under suction or by gravity flow shall meet at least one of the following requirements.

(I) Each separate line may be tested at least once every three years by means of a piping tightness test conducted in accordance with a code or standard of practice developed by a nationally recognized association or testing laboratory. Any such piping test shall be capable of detecting any release from the piping system which equals or exceeds a rate of 0.1 gallon per hour when the piping pressure is at 150% of normal operating pressure.

(II) Each line may be monitored for releases at least once every 30 days by using one or more of the release detection methods prescribed in subsection (d)(4)-(8) of this section.

(ii) No release detection methods are required to be installed or applied for any piping system that conveys regulated substances under suction when such suction piping system is designed and constructed in accordance with the following standards.

(I) The below-grade piping operates at less than atmospheric pressure.

(II) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if

the suction is released.

(III) Only one check valve is included in each suction line.

(IV) The check valve is located directly below and as close as practical to the suction pump.

(V) A method is incorporated into the system design that will allow verification that the requirements under subclauses (I)-(IV) of this clause have been met.

(C) Monitoring secondary containment. In addition to the requirements in subparagraphs (A) and (B) of this paragraph, all piping in a hazardous substance UST system shall also be equipped with a secondary containment system and related release detection equipment, as prescribed in subsection (c) of this section.

(c) Additional release detection requirements for hazardous substance UST systems. In addition to the release detection requirements for all UST systems prescribed in subsections (a) and (b) of this section, owners and operators of all hazardous substance UST systems shall also assure compliance with the following additional requirements.

(1) All new hazardous substance UST systems shall be in compliance with the requirements of paragraph (3) of this subsection for the entire operational life of the system.

(2) All existing hazardous substance UST systems shall be brought into compliance with the requirements of paragraph (3) of this subsection no later than December 22, 1998.

(3) Secondary containment and monitoring.

(A) All hazardous substance UST systems (including tanks and piping) shall be equipped with a secondary containment system which shall be designed, constructed, and installed in accordance with §334.45(d) of this title (relating to Technical Standards for New UST Systems) and §334.46(f) of this title (relating to Installation Standards for New UST Systems).

(B) All hazardous substance UST systems (including tanks and piping) shall include one or more of the release detection methods or equipment prescribed in subsection (d)(6), (7), or (8) of this section, which shall be capable of monitoring the space between the primary tank and piping walls and the secondary containment wall or barrier.

(d) Allowable methods of release detection. Tanks in an UST system may be

monitored for releases using one or more of the methods included in paragraphs (1)-(8) of this subsection. Piping in an UST system may be monitored for releases using one or more of the methods included in paragraphs (4)-(8) of this subsection. Any method of release detection for tanks and/or piping in this section shall be allowable only when installed (or applied), operated, calibrated, and maintained in accordance with the particular requirements specified for such method in this subsection.

(1) Tank tightness testing and inventory control. A combination of tank tightness testing and inventory control may be used as a tank release detection method only until December 22, 1998, subject to the following conditions and requirements.

(A) Tank tightness test. Any tank tightness test shall be conducted in conformance with the following standards.

(i) The tank tightness test shall be conducted in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory.

(ii) The tank tightness test shall be performed by personnel who possess the requisite experience, training, and competence to conduct the test properly, who are present throughout the entire testing procedure, and who have been certified by the manufacturer or developer of the testing equipment as being qualified to perform the test.

(iii) The tank tightness test shall be capable of detecting a release which equals or exceeds a rate of 0.1 gallon per hour from any portion of the tank.

(iv) The tank tightness test shall be performed in a manner that will account for the effects of vapor pockets, thermal expansion or contraction of the stored substance, temperature of the stored substance, temperature stratification, evaporation or condensation, groundwater elevation, pressure variations within the system, tank end deflection, tank deformation, operator errors, and any other factors that could affect the accuracy of the test procedures.

(B) Inventory control. All inventory control procedures shall be in conformance with the following requirements.

(i) All inventory control procedures shall be in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory.

(ii) Reconciliation of detailed inventory control records shall be conducted at least once each month, and shall be sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the previous month plus 130 gallons.

(iii) The operator shall assure that the following additional procedures and requirements are followed.

(I) Inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank shall be recorded each operating day.

(II) The equipment used shall be capable of measuring the level of stored substance over the full range of the tank's height to the nearest one-eighth of an inch.

(III) Substance dispensing shall be metered and recorded within the local standards for meter calibration or within an accuracy of six cubic inches for every five gallons of product withdrawn.

(IV) The measurement of any water level in the bottom of the tank shall be made to the nearest one-eighth of an inch at least once a month, and appropriate adjustments to the inventory records shall be made.

(iv) For tanks with a nominal capacity of 2,000 gallons or less, the owner or operator may use the manual tank gauging method (in accordance with paragraph (2) of this subsection) as a substitute for the inventory control procedures prescribed in this subsection.

(2) Manual tank gauging. Manual tank gauging may be used as a tank release detection method, subject to the following limitations and requirements.

(A) Manual tank gauging in accordance with this subparagraph may be used as the sole method of tank release detection only for petroleum substance tanks having a nominal capacity of 550 gallons or less.

(B) When used in conjunction with tank tightness testing performed in accordance with paragraph (1)(A) of this subsection, manual tank gauging may be used in lieu of the normal inventory control procedures in paragraph (1)(B) of this subsection as a tank release detection method for any tanks having a nominal capacity of 2000 gallons or less.

(C) The use of manual tank gauging shall not be considered an acceptable method for meeting the release detection requirements of this section for any tanks with a nominal capacity greater than 2,000 gallons.

(D) When used for compliance with the release detection requirements

of this section, the procedures and requirements in the following clauses shall be applicable.

(i) For purposes of this subparagraph only, the following definitions are applicable.

(I) Level measurement—The average of two consecutive liquid level readings from a tank gauge, measuring stick, or other measuring equipment.

(II) Gauging period—A weekly period of at least 36 hours during which no substance is added to or removed from the tank.

(III) Weekly deviation—The variation between the level measurements taken at the beginning and the end of one gauging period, converted to and expressed as gallons.

(IV) Monthly deviation—The arithmetic average of four consecutive weekly deviations, expressed as gallons.

(ii) Any measuring equipment shall be capable of measuring the level of stored substance over the full range of the tank's height to the nearest one-eighth of an inch;

(iii) Separate liquid level measurements in the tank shall be taken weekly at the beginning and the ending of the gauging period, and the weekly deviation shall be determined from such level measurements.

(iv) Once each month, after four consecutive weekly deviations are determined, a monthly deviation shall be calculated.

(v) For the purposes of the manual tank gauging method of release detection, a release shall be indicated when either the weekly deviation or the monthly deviation exceeds the maximum allowable standards indicated in the following subclauses:

(I) for a tank with a capacity of 550 gallons or less: weekly standard= 10 gallons; monthly standard=five gallons;

(II) for a tank with a capacity of 551 gallons to 1,000 gallons: weekly standard=13 gallons; monthly standard=seven gallons; and

(III) for a tank with a capacity of 1,000 gallons to 2,000 gallons: weekly standard=26 gallons; monthly standard=13 gallons.

(vi) When either the weekly standard or the monthly standard is exceeded and a suspected release is thereby indicated, the owner or operator shall comply with the applicable release reporting, investigation, and corrective action requirements of Subchapter D of this title (relating to Release Reporting and Corrective Action).

(3) Automatic tank gauging and inventory control. A combination of automatic tank gauging and inventory control may be used as a tank release detection method, subject to the following requirements.

(A) Inventory control procedures shall be in compliance with paragraph (1) (B) of this subsection.

(B) The automatic tank gauging equipment shall be capable of:

(i) automatically monitoring the in-tank liquid levels, conducting automatic tests for substance loss, and collecting data for inventory control purposes; and

(ii) performing an automatic test for substance loss that can detect a release which equals or exceeds a rate of 0.2 gallon per hour from any portion of the tank.

(4) Vapor monitoring. Equipment and procedures designed to test or monitor for the presence of vapors from the regulated substance (or from a related tracer substance) in the soil gas of the backfilled excavation zone may be used, subject to the following limitations and requirements.

(A) The bedding and backfill materials in the excavation zone shall be sufficiently porous to allow vapors from any released regulated substance (or related tracer substance) to rapidly diffuse through the excavation zone (e.g., gravel, sand, crushed rock).

(B) The stored regulated substance, or any tracer substance placed in the tank system, shall be sufficiently volatile so that, in the event of a substance release from the UST system, vapors will develop to a level that can be readily detected by the monitoring devices located in the excavation zone.

(C) The capability of the monitoring device to detect vapors from the stored regulated substance shall not be adversely affected by the presence of any groundwater, rainfall, and/or soil moisture in a manner that would allow a release to remain undetected for more than 30 days.

(D) Any pre-existing background contamination in the excavation

zone shall not interfere with the capability of the vapor monitoring equipment to detect releases from the UST system.

(E) The vapor monitoring equipment shall be designed to detect vapors from either the stored regulated substance, a component or components of the stored substance, or a tracer substance placed in the UST system, and shall be capable of detecting any significant increase in vapor concentration above pre-existing background levels.

(F) Prior to installation of any vapor monitoring equipment, the site of the UST system (within the excavation zone) shall be assessed by qualified personnel to:

(i) ensure that the requirements in subparagraphs (A)-(D) of this paragraph have been met; and

(ii) determine the appropriate number and positioning of any monitor wells, so that releases into the excavation zone from any part of the UST system can be detected within 30 days of the release.

(G) All monitor wells shall be designed and installed in accordance with the requirements in §334.45(e)(4) of this title (relating to Technical Standards for New UST Systems) and §334.46(g) of this title (relating to Installation Standards for New UST Systems).

(5) Groundwater monitoring. Equipment or procedures designed to test or monitor for the presence of regulated substances floating on or dissolved in the groundwater in the excavation zone may be used, subject to the following limitations and requirements.

(A) The stored regulated substance shall be immiscible in water and shall have a specific gravity of less than one.

(B) The natural groundwater level shall never be more than 20 feet (vertically) from the ground surface, and the hydraulic conductivity of the soils or backfill between all parts of the UST system and the monitoring points shall not be less than 0.01 centimeters per second (i.e., the soils or backfill shall consist of gravels, coarse to medium sands, or other similarly permeable material).

(C) Any automatic monitoring devices or manual monitoring methods that are employed shall be capable of detecting either the presence of a sheen of stored regulated substance on the groundwater surface in the monitoring well or the presence of dissolved constituents in the

groundwater.

(D) Prior to installation of any groundwater monitoring equipment, the site of the UST system (within and immediately below the excavation zone) shall be assessed by qualified personnel to:

(i) ensure compliance with the requirements of subparagraphs (A) and (B) of this paragraph; and

(ii) determine the appropriate number and positioning of any monitor wells, so that releases from any part of the UST system can be detected within 30 days of the release.

(E) All monitor wells shall be designed and installed in accordance with the requirements in §334.45(e)(4) of this title (relating to Technical Standards for New UST Systems) and §334.46(g) of this title (relating to Installation Standards for New UST Systems).

(6) Interstitial monitoring for double-wall UST systems. Equipment designed to test or monitor for the presence of regulated substance vapors or liquids in the interstitial space between the inner (primary) and outer (secondary) walls of a double-wall underground storage tank system may be used, subject to the following conditions and requirements.

(A) Any double-wall UST system using this method of release detection shall be designed, constructed, and installed in accordance with the applicable technical and installation requirements in §334.45(d) of this title (relating to Technical Standards for New UST Systems) and §334.46(f) of this title (relating to Installation Standards for New UST Systems).

(B) The sampling, testing, or monitoring method shall be capable of detecting any release of stored regulated substances from any portion of the primary tank or piping within 30 days of the release.

(C) The sampling, testing, or monitoring method shall be capable of detecting a breach or failure in either the primary wall or the secondary wall of the double-wall tank or piping system within 30 days of such breach or failure (whether or not a stored regulated substance has been released into the environment).

(7) Monitoring of UST systems with secondary containment barriers. Equipment designed to test or monitor for the presence of regulated substances (liquids or vapors) in the excavation zone between the UST system and an impermeable secondary containment barrier immediately around the UST system may be used, subject to the following conditions and requirements.

(A) Any secondary containment barrier or liner system at a UST system using this method of release detection shall be designed, constructed, and installed in accordance with the applicable technical and installation requirements in §334.45(d) of this title (relating to Technical Standards for New UST Systems) and §334.46(f) of this title (relating to Installation Standards for New UST Systems).

(B) The sampling, testing, or monitoring method shall be capable of detecting any release of stored regulated substance from any portion of the UST system into the excavation zone between the UST system and the secondary containment barrier within 30 days of the release.

(C) The sampling, testing, or monitoring method shall be designed and installed in a manner that will ensure that groundwater, soil moisture, and rainfall will not render the method inoperative where a release could remain undetected for more than 30 days.

(D) Prior to installation of any secondary containment release monitoring equipment, the site of the UST system shall be assessed by qualified personnel to:

(i) ensure that the secondary containment barrier will be positioned above the groundwater level and outside the designated 25-year flood plain, unless the barrier and the monitoring equipment are designed for use under such conditions; and

(ii) determine the appropriate number and positioning of any monitoring wells.

(E) All monitoring wells shall be designed and installed in accordance with the requirements in §334.45(e)(4) of this title (relating to Technical Standards for New UST Systems) and §334.46(g) of this title (relating to Installation Standards for New UST Systems).

(8) Any other release detection method, or combination of methods, may be used if such method has been reviewed and determined by the executive director to be capable of detecting a release from any portion of the UST system in a manner that is no less protective of human health and safety and the environment than the methods described in paragraphs (1)-(7) of this subsection, in accordance with the provisions of §334.43 of this title (relating to Variances and Alternative Procedures).

(e) Release detection records.

(1) Owners and operators shall maintain the release detection records required in this subsection in accordance with the requirements in §334.10(b) of this title (relating to Reporting and Recordkeeping).

(2) Owners and operators shall

maintain records adequate to demonstrate compliance with the release detection requirements in this section, and in accordance with the following minimum requirements.

(A) All appropriate installation records related to the release detection system, as listed in of §334.46(i) of this title (relating to Installation Standards for New UST Systems), shall be maintained for as long as the release detection system is used.

(B) All written performance claims pertaining to any release detection system used, and documentation of the manner in which such claims have been justified or tested by the equipment manufacturer or installer, shall be maintained for as long as the release detection system is used.

(C) Records of the results of all manual and/or automatic methods of sampling, testing, or monitoring for releases (including tank tightness tests) shall be maintained for at least five years after the sampling, testing, or monitoring is conducted.

(D) Records and calculations related to inventory control reconciliation shall be maintained for at least five years from the date of reconciliation.

(E) Written documentation of all service, calibration, maintenance, and repair of release detection equipment permanently located onsite shall be maintained for at least five years after the work is completed. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer shall be retained for as long as the release detection system is used.

§334.51. Spill and Overfill Prevention and Control.

(a) General spill and overfill control requirements.

(1) Owners and operators of all new and existing underground storage tank systems shall ensure that releases of regulated substances due to spills and overfills do not occur.

(2) Prior to regulated substances being transferred and deposited into an UST system, the owner or operator shall ensure that the available volume in the tank is greater than the volume of regulated substances to be transferred into the tank.

(3) During the entire time that regulated substances are being transferred into an UST system, the owner or operator shall ensure that the entire transfer operation is continuously monitored by the person conducting the transfer. Except as

provided in paragraph (4) of this subsection, such monitoring may be accomplished by either of the following methods.

(A) The person conducting the transfer shall be physically present at or near the transfer point at all times during the transfer operation, and shall have an unobstructed view of the transfer point to observe the transfer and to abate any spill or overfill.

(B) The person conducting the transfer shall be physically present at the facility at all times during the transfer operation, and shall monitor the transfer operation using a central monitoring station which is electronically connected to remote sensing equipment at each transfer point, where such equipment is designed to detect and prevent any spills or overfills.

(4) When underground storage tanks are equipped with ball float valves in the vent openings (or with other similar flow restrictors) for the purposes of compliance with the overfill prevention equipment requirements of subsection (b) (2)(C) of this section, and when regulated substances are transferred into such tanks under pressure, the following requirements shall be met during the time that regulated substances are being transferred into the tank.

(A) The person conducting the transfer shall be physically present at or near the transfer point at all times during the transfer operation, and shall have an unobstructed view of the transfer point to observe the transfer and to abate any spill or overfill.

(B) The transfer hose connection shall be equipped with an appropriate back-pressure sensor that will automatically shut-off flow into the tank when the pressure in the tank reaches the tank's allowable design pressure (typically five psig).

(5) The owners or operators shall assure that the installation and maintenance of all required spill and overfill prevention equipment, as well as the procedures used for the transfers of regulated substances to or from an underground storage tank system, are in accordance with codes or standards of practice developed by a nationally recognized association or independent testing laboratory.

(6) The owner or operator shall assure that all spill and overfill prevention devices installed pursuant to subsection (b) of this section are maintained in good operating condition, and that such devices are inspected and serviced in accordance with the manufacturers' specifications.

(7) In the event a release of regulated substance(s) occurs due to a spill or overfill, the owner or operator shall comply

with the release reporting, investigation, and corrective action requirements in Subchapter D of this title (relating to Release Reporting and Corrective Action).

(b) Spill and overflow prevention equipment. Except as provided in paragraph (4) of this subsection, all underground storage tank systems shall be equipped with spill and overflow prevention equipment which shall be designed, installed, and maintained in a manner that will prevent any spilling or overflowing of regulated substances resulting from transfers to such systems, as provided in this subsection.

(1) Compliance schedule.

(A) New UST systems installed after December 22, 1988, shall be in compliance with the equipment provisions of this subsection from the time of installation through the entire operational life of the system.

(B) Existing UST systems (i.e., UST systems for which installation has commenced or has been completed on or prior to December 22, 1988) shall be in compliance with the equipment provisions of this subsection beginning no later than December 22, 1994, and continuing for the remainder of the operational life of the system.

(2) Equipment required. UST systems shall be equipped with each of the following spill and overflow prevention equipment or devices.

(A) Tight-fill fitting. The fill pipe of the tank shall be equipped with a tight-fill fitting, adapter, or similar device which shall provide a liquid-tight seal during the transfer of regulated substances into the tank.

(B) Spill containment equipment. The fill tube of the tank either shall be equipped with an attached spill container or catchment basin, or shall be enclosed in a liquid-tight manway, riser, or sump, and such equipment shall meet the following requirements.

(i) The spill containment device shall be designed to prevent the release of regulated substances to the environment when the transfer hose or line is detached from the fill pipe.

(ii) The spill containment device shall be equipped with a substance-compatible drain tube or hose assembly designed to allow any accumulated regulated substances to be safely drained into the tank; and

(iii) The spill containment device shall be equipped with a liquid-tight lid or cover designed to minimize the entrance of any surface water, groundwater, or other foreign substances into the container.

(C) Overflow prevention equipment. Each tank shall be equipped with a valve or other appropriate overflow prevention device that shall be designed to either:

(i) automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level which shall be no higher than the 95% capacity level for the tank; or

(ii) automatically restrict the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level which shall be no higher than the 90% capacity level for the tank, provided that such flow restricting device shall also alert the person responsible for the delivery when such preset level is reached.

(3) Design and installation requirements.

(A) All spill and overflow prevention equipment shall be installed in accordance with the manufacturer's instructions and a code or standard of practice developed by a nationally-recognized association or independent testing laboratory.

(B) All underground components of the spill and overflow prevention equipment which are designed to contain regulated substances shall be properly protected from corrosion in accordance with the applicable provisions in §334.49 of this title (relating to Corrosion Protection).

(C) The surfaces of all spill and overflow prevention equipment which are in direct contact with regulated substances shall be constructed of or lined with materials that are compatible with such regulated substances.

(D) When installing the overflow prevention equipment specified in paragraph (2) (C) of this subsection, appropriate extension devices shall be utilized as necessary to assure that the shut-off or restriction of flow into the tank is achieved at the specified preset levels, which shall be based on the manufacturer's capacity charts for the size, dimensions, and shape of the tank.

(4) Exceptions. UST systems are not required to be equipped with the spill and overflow prevention equipment prescribed in this subsection if one or more of the following conditions are applicable to such system.

(A) The transfers of regulated substances into the underground storage tank system do not exceed 25 gallons

per occurrence.

(B) The underground storage tank system is equipped with alternative equipment which has been reviewed and determined by the executive director to prevent spills and overfills of regulated substances in a manner that is no less protective of human health and the environment than the equipment prescribed in this subsection, as provided in §334.43 of this title (relating to Variances and Alternative Procedures).

(C) The installation of the spill and overflow prevention equipment prescribed in this subsection has been reviewed and determined by the executive director to be impracticable or unreasonable due to the type, design, or use of the underground storage tank system, as provided in §334.43 of this title (relating to Variances and Alternative Procedures).

(c) Spill and overflow control records.

(1) Owners and operators shall maintain the spill and overflow control records required in this subsection in accordance with the requirements in §334.10(b) of this title (relating to Reporting and Recordkeeping).

(2) Owners and operators shall maintain records adequate to demonstrate compliance with the spill and overflow prevention and control requirements in this section, and in accordance with the following minimum requirements.

(A) All appropriate installation records related to the installation of any spill and overflow prevention equipment, as listed in §334.46(i) of this title (relating to Installation Standards for New UST Systems), shall be maintained for as long as the spill and overflow prevention equipment is used.

(B) Records of any servicing, calibration, maintenance, and repair of any spill and overflow prevention equipment shall be maintained for at least five years after such work is completed.

(3) If an owner or operator claims an exemption from the spill and overflow equipment requirements under the provisions of subsection (b)(4)(A) of this section (i.e., transfers of 25 gallons or less), such owner or operator shall maintain appropriate transfer or inventory records for at least five years to document the basis for such exemption.

§334.52. UST System Repairs and Relining.

(a) General requirements.

(1) Owners and operators shall ensure that any repair or relining of an

underground storage tank system will prevent releases due to structural failure or corrosion for the remaining operational life of the system.

(2) Any repairs or relining shall be conducted by personnel possessing the appropriate skills, experience, and competence to complete the work in accordance with the provisions of this subsection.

(3) Any repairs or relining shall be properly conducted in accordance with a standard or code of practice developed by a nationally recognized association or independent testing laboratory.

(4) After completion of any repairs or relining of an underground storage tank system, the owner or operator shall obtain detailed written records of the repairs or relining from the person who performed the work.

(5) The requirements of this section shall not be applicable to routine and minor maintenance activities related to the tank and piping systems, such as tightening loose fittings and joints, adjusting and calibrating equipment, and conducting routine inspections and tests. Tank and piping systems may be placed back into operation immediately after the satisfactory completion of such minor maintenance activities.

(6) If any release of regulated substances is discovered or suspected during the UST system repair or relining activity, the owner or operator shall comply with the applicable release reporting, investigation, and corrective action requirements in Subchapter D of this title (relating to Release Reporting and Corrective Action).

(7) The performance of any repairs or relining of an existing underground storage tank shall not relieve the owner or operator from timely compliance with the technical standards for such tanks, as required in §334.47 of this title (relating to Technical Standards for Existing UST Systems).

(b) Tank repairs and relining.

(1) The provisions of this subsection shall be applicable to the in-place repairs or relining of existing tanks. Tanks that are removed from the ground prior to repair or relining shall be considered used tanks and shall be brought into compliance with all provisions of §334.53 of this title (relating to Reuse of Used Tanks) prior to being placed back in operation.

(2) A previously-used tank may be repaired or relined and placed back in operation, provided that the repair or relining is conducted in accordance with the provisions of this subsection and in a manner that will prevent releases of regulated substances due to structural failure or corrosion for the remaining operational life of the tank.

(3) Repairs or relining of fiberglass-reinforced plastic tanks shall be

made only by either:

(A) an authorized representative of the tank manufacturer; or

(B) any other person possessing the requisite experience and qualifications to perform the repairs, provided that such repairs shall be performed in accordance with a standard or code of practice developed by a nationally recognized association or independent testing laboratory.

(4) Additional requirements for relining.

(A) Interior lining material(s) used in the repair or reconditioning of an underground storage tank shall be compatible with the stored regulated substance, and shall be applied to a minimum thickness of 100 mils.

(B) The entire lining process, including the tank preparation, lining application, inspection, and testing shall be in accordance with a standard or code of practice developed by a nationally recognized association or independent testing laboratory.

(5) Prior to placing the tank back into operation, any repaired or relined tank shall be tested by means of a tank tightness test meeting the requirements in §334.50(d)(1)(A) of this title (relating to Release Detection).

(6) Not later than December 22, 1998, the entire UST system shall be equipped with a cathodic protection system. Such system shall be designed by a qualified corrosion specialist and shall be operated and maintained in accordance with the applicable cathodic protection requirements of §334.49(c) of this title (relating to Corrosion Protection).

(c) Piping repairs and maintenance.

(1) When a release of a regulated substance has occurred as a result of holes, damage, or corrosion in the piping, valves, or fittings, the repair of the affected piping, valves, or fittings shall not be allowed. Any damaged, corroded, or defective piping sections, valves, or fittings shall be replaced with materials or components meeting the applicable requirements for new piping systems in §334.45(c) of this title (relating to Technical Standards for New UST Systems).

(2) The installation or reinstallation of previously-used piping, valves, or fittings in any underground storage tank system is specifically prohibited, regardless of the source or previous use of such previously-used components.

(3) Prior to placing the piping system back into operation, any repaired piping system shall be tested by means of a

piping tightness test meeting the requirements of §334.50(b)(2)(A)(ii)(F) of this title (relating to Release Detection).

(4) If a repaired metal piping system has not already been equipped with an acceptable cathodic protection system, then the following minimum requirements shall be met prior to placing the piping system back in operation.

(A) The repaired piping sections and fittings shall be thoroughly coated with a suitable dielectric coating and shall be electrically isolated from the remaining piping system by dielectric fittings.

(B) The repaired piping sections and fittings shall be retrofitted with a field-installed cathodic protection system. Such cathodic protection system shall be designed by a qualified corrosion specialist and shall be operated and maintained in accordance with the applicable cathodic protection requirements in §334.49(c) of this title (relating to Corrosion Protection). The remaining portion of the piping system shall be brought into compliance with the minimum upgrading requirements for existing UST systems in accordance with the procedures and schedules in §334.47 of this title (relating to Technical Standards for Existing UST Systems).

(d) Records for repairs and relining.

(1) Owners and operators shall maintain the repair and relining records required in this subsection in accordance with the requirements in §334.10(b) of this title (relating to Reporting and Recordkeeping).

(2) Owners and operators shall maintain records adequate to demonstrate compliance with the applicable repairs and relining requirements in this section, and in accordance with the following minimum requirements.

(A) General information related to the repairs or relining shall be maintained for the remaining operational life of the UST system, including:

(i) date and description of the repairs or relining;

(ii) names, addresses, and telephone numbers of the persons who conducted the repairs or relining; and

(iii) copies of all related construction notification, registration, and certification documents filed with the commission.

(B) Results of all inspections, tests, and maintenance activities required in this section shall be maintained for at least five years.

(C) Materials specifications, warranty information, recommended test

procedures, and inspection and maintenance schedules applicable to the relining of any tank shall be maintained for the remaining operational life of the UST system.

§334.53. Reuse of Used Tanks.

(a) General requirements.

(1) A used tank may be installed or re-installed and may be returned to service in accordance with the provisions of this section, provided that the tank is designed and constructed in a manner that will prevent releases of regulated substances due to structural failure or corrosion for the remaining operational life of the tank.

(2) Any required repairs or relining of a used tank shall be in accordance with the provisions of §334.52 of this title (relating to UST System Repairs and Relining).

(3) The tank material, and any interior or exterior lining material, shall be compatible with the stored regulated substance.

(4) The installation or re-installation of a used tank shall be in accordance with all requirements applicable to a tank installation in a new UST system, as provided in the following subparagraphs:

(A) The installation shall be conducted in accordance with the applicable provisions of §334.46 of this title (relating to Installation Standards for New UST Systems).

(B) The tank shall be equipped with appropriate spill and overflow prevention equipment, in accordance with §334.51 of this title (relating to Spill and Overflow Prevention and Control).

(C) A used steel tank (including steel tanks with an exterior fiberglass-reinforced plastic cladding or laminate) shall be equipped with a factory-installed or field-installed cathodic protection system in accordance with §334.49(c) of this title (relating to Corrosion Protection).

(D) The tank shall be equipped with appropriate release detection equipment in accordance with §334.50 of this title (relating to Release Detection).

(E) The tank shall also be equipped with other tank components which shall be constructed in accordance with §334.45(b)(4) of this title (relating to Technical Standards for New UST Systems).

(b) Exterior fiberglass-reinforced plastic coatings. The retrofitting of a used steel tank with an exterior coating, cladding, or laminate consisting of fiberglass-reinforced plastic shall be conducted in ac-

cordance with a code of practice or standard developed by a nationally recognized association or independent testing laboratory and, at a minimum, shall meet the following additional conditions.

(1) The steel tank shall be sandblasted or otherwise cleaned to bare white metal, and all residual corrosion, oxidation, and coating materials shall be thoroughly removed.

(2) The cleaned tank shall be protected from further corrosion or other damage during the period between the tank cleaning and the application of the exterior coating.

(3) The bonding materials used to bond the fiberglass materials to the tank wall shall be compatible with the stored substance and shall be designed to remain bonded for the operational life of the tank. The fiberglass-reinforced plastic coating shall be applied to a minimum thickness of 100 mils, and shall be thoroughly tested by appropriate means to confirm compliance with such thickness requirements.

(4) The tank shall be retrofitted with a cathodic protection system in accordance with the provisions of §334.49(c) of this title (relating to Corrosion Protection).

(c) Recordkeeping. Detailed records of the used tank installation shall be maintained in accordance with §334.10 of this title (relating to Reporting and Recordkeeping). Such records shall include the date the used tank was placed in service, the name, address, and telephone number of the persons who installed and tested the tank, and the results of all inspection and tank tightness tests required by this section. Such records shall be maintained for as long as the tank remains in operation.

§334.54. Temporary Removal from Service.

(a) Applicability. An UST system shall be considered to be temporarily out of service, regardless of whether or not regulated substances remain in the UST system, when the following conditions apply.

(1) The normal operation and use of the UST system is deliberately, but temporarily, discontinued for any reason.

(2) The infrequent use of the UST system cannot be adequately justified as part of its purpose.

(3) The operation, maintenance, and/or release detection procedures are determined to be inadequate or otherwise inconsistent with the monitoring procedures normally associated with in-service systems of similar type and purpose.

(b) All UST systems. Beginning no later than the date on which any UST system has been out of service for a continuous period of three months, regardless of whether or not regulated substances remain in the UST system, the owner or operator

shall assure that the UST system is maintained in compliance with the following requirements for the balance of time that the UST system remains temporarily out of service.

(1) All vent lines shall be kept open and functioning.

(2) All other piping, pumps, manways, and ancillary equipment shall be capped, plugged, locked, and/or otherwise secured to prevent access, tampering, or vandalism by unauthorized persons.

(c) Protected and monitored systems. Any UST system may remain out of service indefinitely so long as the following requirements are met during the period that the UST system remains temporarily out of service.

(1) The UST system shall be adequately protected from corrosion in accordance with the applicable requirements of §334.49 of this title (relating to Corrosion Protection).

(2) Unless the UST system has been emptied of all regulated substances (as described under subsection (e) of this section) at the time it is temporarily removed from service, the UST system shall be monitored for releases in accordance with the applicable requirements of §334.50 of this title (relating to Release Detection).

(3) The UST system shall be operated and maintained in accordance with the requirements of subsection (b) of this section.

(d) Unprotected and unmonitored systems.

(1) Time limitation. If due to the phase-in of upgrades and improvements as allowed under §334.47 of this title (relating to Technical Standards for Existing UST Systems), any existing UST system is not yet adequately protected from corrosion (as provided under subsection (c)(1) of this section) and any existing nonempty UST system is not yet adequately monitored for releases (as provided under subsection (c)(2) of this section), such UST systems cannot remain out of service indefinitely and must meet the following requirements.

(A) The UST system shall be operated and maintained in accordance with the provisions of subsection (b) of this section during the time the system is temporarily out of service, which shall not exceed 12 months.

(B) Beginning no later than the date on which the UST system has been out of service for a continuous period of 10 months, regardless of whether or not regulated substances remain in the system, the owner or operator shall initiate appropriate activities or procedures to assure that no later than the date on which the system has been out of service for a continuous period

of 12 months, the UST system is either:

(i) permanently removed from service (by disposal in place or removal from the ground), in accordance with the applicable provisions of §334.55 of this title (relating to Permanent Removal from Service);

(ii) brought back into service in conformance with the requirements in paragraph (3) of this subsection; or

(iii) appropriately upgraded such that the UST system is adequately protected from corrosion and adequately monitored for releases of regulated substances in a manner that will allow the system to remain temporarily out of service under the provisions of subsection (c) of this section.

(2) Extension of time. For UST systems which are temporarily out of service, and for which the owner or operator determines that conformance with the schedule under paragraph (1)(B) of this subsection would be impractical or unreasonable, the owner or operator must secure prior approval from the executive director for an extension of time subject to the following conditions.

(A) Any request for extension of time shall be in conformance with §334.43 of this title (relating to Variances and Alternative Procedures).

(B) Any request for extension of time shall be accompanied by written documentation adequate to justify the requested extension and the results of a site assessment conducted in accordance with §334.55(e) of this title (relating to Permanent Removal from Service).

(3) Returning UST system to service. When an unprotected and unmonitored UST system that has been temporarily out of service for longer than six months is placed back into service, the owner or operator shall:

(A) ensure the integrity of the system by the performance of a tank tightness test and piping tightness test that meet the requirements of §334.50(d)(1)(A) and (b)(2)(A)(ii)(I), respectively, of this title (relating to Release Detection) prior to bringing the system back into operation; and

(B) ensure that the UST system is brought into compliance with all applicable corrosion protection, release detection, and spill and overfill prevention requirements of §334.49 of this title (relating to Corrosion Protection), §334.50 of this title (relating to Release Detection), and §334.51 of this title (relating to Spill and Overfill Prevention and Control) in accordance with the applicable schedules in

§334.44 of this title (relating to Implementation Schedules).

(e) Empty system. For the purposes of this section only, and specifically for the purpose of exempting certain UST systems (when temporarily out of service) from the release detection requirements of this chapter, an underground storage tank system shall be considered empty when the following provisions have been met:

(1) all regulated substances have been removed as completely as possible by the use of commonly-employed and accepted industry procedures;

(2) any residue from stored regulated substances which remains in the system (after the completion of the substance removal procedures under paragraph (1) of this subsection) shall not exceed a depth of 2.5 centimeters at the deepest point and shall not exceed 0.3 percent by weight of the system at full capacity; and

(3) the volume or concentration of regulated substances remaining in the system would not pose an unreasonable risk to human health and safety or to the environment if a release occurs during the period when the system is temporarily out of service.

(f) Other requirements.

(1) Releases. If a release of a regulated substance is suspected or confirmed, the owner or operator of an underground storage tank system which is temporarily out of service shall comply with all release reporting, investigation, and corrective action requirements in Subchapter D of this title (relating to Release Reporting and Corrective Action).

(2) Registration. At the time an underground storage tank system is temporarily taken out of service and at the time an UST system is brought back into service, the owner shall comply with the applicable tank registration requirements in §334.7 of this title (relating to Registration).

(3) Fees. An underground storage tank which is temporarily out of service in accordance with this section shall remain subject to the commission's underground storage tank fees in Subchapter B of this title (relating to Underground Storage Tank Fees).

(4) Recordkeeping for temporary removal from service.

(A) Owners and operators shall maintain records adequate to demonstrate compliance with the requirements in this section, in accordance with §334.10(b) of this title (relating to Reporting and Recordkeeping).

(B) At a minimum, the following records shall be maintained for at least five years after the UST system is

temporarily removed from service:

(i) date that the UST system was temporarily removed from service;

(ii) name, address, and telephone number of the person who prepared the UST system for the period of non use;

(iii) documentation of the procedures used to prepare and empty the UST system;

(iv) copies of all documentation relative to any requests and approvals of extensions of time;

(v) name, address, and telephone number of the person who conducted the tank and piping tightness tests, prior to returning the UST system to service;

(vi) results of any tank and piping tightness tests; and

(vii) date that the UST system was returned to service.

§334.55. Permanent Removal from Service.

(a) General provisions.

(1) Any owner or operator who intends to permanently remove an underground storage tank from service (by either removing the tank from the ground, abandoning the tank in place, or conducting a permanent change-in-service) shall provide prior notice of this activity to the executive director in accordance with §334.6 of this title (relating to Construction Notification).

(2) The procedures used in permanently removing the underground storage tank from service shall conform with accepted industry practices, and shall be in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory.

(3) The permanent removal from service shall be conducted by personnel possessing the appropriate skills, experience, and competence to complete the activity in accordance with the provisions of this section and in a manner designed to minimize the possibility of any threats to human health and safety or the environment.

(4) All underground storage tanks that are intended for permanent removal from service shall be emptied of all regulated substances and accumulated sludges or residues, and shall be purged of all residual vapors in accordance with accepted industry procedures commonly employed for the stored regulated substance.

(5) The handling, transportation, and disposal of any regulated substances removed from an underground storage tank system, and any contaminated soils, backfill material, groundwater, wash water, or other similar materials removed from the system

or facility, shall be conducted in a safe and environmentally sound manner, and shall be in accordance with all applicable federal, state, and local regulations in effect for the type, volume, contaminant concentration, and classification of the removed material.

(6) As part of the required procedure for the permanent removal of any underground storage tank system from service, the owner or operator shall determine whether or not any prior release of a stored regulated substance has occurred from the system.

(A) This determination shall be performed subsequent to the submittal of notification to the executive director as prescribed in §334.6 of this title (relating to Construction Notification), but prior to completion of the permanent removal from service.

(B) This determination shall be made by visual inspection of the area in and immediately surrounding the excavation zone for any above-ground releases and for any exposed below-ground releases, and by using one or both of the following methods or procedures:

(i) the continual operation (through the time that the stored regulated substances are removed from the underground storage tank system) of one or more of the external release monitoring and detection methods operating in accordance with §334.50(d)(4)-(8) of this title (relating to Release Detection); or

(ii) the performance of a comprehensive site assessment in accordance with the requirements of subsection (e) of this section.

(C) Any methods or procedures used to make this determination shall be capable of detecting any prior release of stored regulated substances from any portion of the underground storage tank system.

(D) Upon completion of this determination, the owner or operator shall:

(i) report any confirmed or suspected releases to the executive director and comply with all applicable release investigation and corrective action requirements, as prescribed in Subchapter D of this title (relating to Release Reporting and Corrective Action);

(ii) prepare or assemble the detailed written records of this determination, which shall include the methods, procedures, results, and names, addresses, and telephone numbers of the persons involved in conducting such determination. Such records shall be maintained in accordance with the applicable provisions in subsection (f) of this section, and a copy of

such records shall be filed with the commission in conjunction with the applicable tank registration requirements of §334.7 of this title (relating to Registration).

(7) For an underground storage tank to be considered permanently out of service, the owner or operator shall either remove the tank from the ground in accordance with subsection (b) of this section, abandon in-place and fill the tank with an acceptable solid inert material in accordance with subsection (c) of this section, or conduct a permanent change-in-service in accordance with subsection (d) of this section. Unused tanks (e.g., tanks at facilities which are closed or out of business) shall be considered temporarily out of service, and shall be subject to the provision of §334.54 of this title (relating to Temporary Removal from Service), unless they have been permanently removed from service in accordance with this section.

(8) The requirements in this section are applicable to all underground storage tanks which are permanently removed from service on or after December 22, 1988.

(9) For an underground storage tank permanently removed from service prior to December 22, 1988, where the methods previously used for the release determination or the removal from service are unknown or are determined to have been inadequate, the executive director may require the owner or operator to conduct any or all of the following additional activities as appropriate:

(A) proper removal of the UST system from service, in accordance with the applicable provisions of this section;

(B) completion of a comprehensive site assessment, in accordance with the requirements of subsection (e) of this section;

(C) release reporting and corrective action if a release of a regulated substance has occurred, in accordance with Subchapter D of this title (relating to Release Reporting and Corrective Action); and/or

(D) any other activities necessary to prevent any adverse impacts on human health and safety and the environment.

(b) Removal from the ground. In addition to the requirements of subsection (a) of this section, the following requirements shall be applicable for the removal of underground storage tanks from the ground.

(1) Except as provided under paragraph (2) of this subsection, tanks shall be properly emptied, cleaned, and purged of

vapors prior to removal from the ground, in accordance with accepted industry procedures commonly employed for the stored regulated substance.

(2) When an owner or operator can demonstrate good cause for removal of a tank from the ground prior to emptying, cleaning, or purging the vapors, the owner or operator shall obtain approval from the manager of the appropriate district office (or the manager's designated representative) prior to proceeding with the removal. In this situation, the tank removal shall be accomplished only under the direct supervision of commission personnel and/or local fire officials, and all conditions and requirements imposed by such supervisory officials shall be strictly followed.

(3) Prior to removing the tank from the ground, all connecting piping and other ancillary equipment shall be emptied, disconnected, and properly plugged, capped, or removed.

(4) Storage of removed tanks.

(A) After removal, a tank shall be transported from the site within 24 hours of removal, unless prior approval of a longer onsite storage period is obtained from the manager of the appropriate district office (or the manager's designated representative).

(B) The onsite storage of tanks for a period of 24 hours or less shall be in a designated temporary storage area which shall be an adequate distance from known ignition sources and which shall be clearly identified with appropriate barriers and warning signs to restrict access by unauthorized persons.

(C) Onsite storage of removed tanks for more than 24 hours (when approved by the district manager), and off-site storage for any period, shall only be allowed in locked, securely fenced, or similarly restricted areas where unauthorized persons will not have access.

(D) No later than 24 hours after removal, all removed tanks (regardless of condition) shall be legibly and permanently labeled (in letters at least two-inches high) with the name of the former contents, a flammability warning (if applicable), and a warning that the tank is unsuitable for the storage of drinking water or the storage of human or animal food products.

(E) The residual vapor levels in any removed tank which is stored at the UST facility shall be maintained at non-explosive and non-ignitable levels for the entire time that the tank remains at the facility.

(F) Regardless of where the tank is stored, not later than ten days after the tank has been removed from the ground, any residual liquids or vapors shall be permanently removed to render the tank non-ignitable and non-explosive.

(5) Transportation and disposal of removed tanks.

(A) The methods and procedures used for the handling, transporting, and disposing of any removed underground storage tanks (and parts of such tanks) shall be protective of human health and safety and the environment, and shall be in accordance with all applicable federal, state, and local regulations.

(B) Removed tanks (and any parts of such tanks) which have been emptied, thoroughly cleaned of all remaining substances and any remaining residues, and permanently purged of vapors may be appropriately disposed by scrapping, junking, or reusing for purposes unrelated to the storage of regulated substances.

(C) Prior to transporting any removed tank from the UST facility, the following minimum preparation procedures shall be followed.

(i) The remaining regulated substances shall be removed, and visible residues or sediments shall be cleaned from the tank as completely as possible, in accordance with commonly-used and accepted industry practices.

(ii) Residual vapor levels in the tank shall be reduced to non-explosive and nonignitable levels, and shall be maintained at such levels during the entire period of transportation.

(iii) All holes and openings shall be properly plugged or capped, except for one 1/8-inch diameter vent hole positioned at the top of the tank during transportation.

(D) The subsequent reuse of any removed tanks for the underground storage of regulated substances (whether onsite or offsite) shall only be allowed under the provisions of §334.53 of this title (relating to Reuse of Used Tanks).

(6) The tank owner shall develop and maintain a permanent record of the prior location of the removed tank, the date of removal, the substance previously stored, the method of conditioning the tank for removal, the methods of handling, transportation, storing, and disposing of the tank, the names, addresses, and telephone numbers of the person conducting the activities, and any information regarding any known releases from such tank. If the facility owner is not the same person as the tank owner, the tank owner shall provide a copy

of such information to the site or facility owner within 30 days after the date of removal.

(c) Abandonment in-place. In addition to the requirements of subsection (a) of this section, the following requirements shall be applicable for the abandonment in-place of underground storage tanks.

(1) An underground storage tank may be removed from service by abandonment in-place in lieu of actual removal from the ground only under the following conditions:

(A) adjacent buildings, structures, or equipment would potentially be damaged or weakened by the removal of the tank, or removal of the tank is otherwise impossible or impracticable; and

(B) the owner or operator receives prior written approval by the manager of the commission's appropriate district office.

(2) When the underground storage tank owner is not the owner of the site or facility where such tank is located, the tank owner is prohibited from abandoning such tank in-place unless the following conditions are met.

(A) The tank owner shall secure written authorization from the owner of the site or facility for the abandonment in-place prior to initiating the activity.

(B) The tank owner shall file a legible copy of the site/facility owner's authorization for the abandonment in-place with the commission as part of the construction notification requirements under §334.6 of this title (relating to Construction Notification).

(C) After completion of the abandonment in-place, the tank owner shall provide to the site or facility owner a legible copy of the permanent record of the abandonment, as described in paragraph (4) of this subsection.

(3) Any tank that is abandoned in place shall be filled with a solid inert material as prescribed in this paragraph.

(A) Only solid inert materials which are free of any harmful contaminants or pollutants shall be used to fill the tank. Acceptable materials include sand, fine gravel, sand and gravel mixtures, and cement/concrete-based slurries. Other materials such as native soils, drilling muds, and commercially-marketed fill materials shall not be used for filling the tank unless the material and filling procedures have been reviewed and approved by the executive director in accordance with §334.43 of this title (relating to Variances and Alternative

Procedures).

(B) Adequate access openings shall be made in the top of the tank, and the tank shall be filled as completely as possible. Voids and air pockets shall be eliminated.

(C) The fill material and filling procedures shall be adequate to assure that:

(i) the filled tank will not surface after completion of the filling operation;

(ii) any settling or instability of the ground surface subsequent to the abandonment in-place is minimized or eliminated;

(iii) the fill materials will form a permanent solid inert filler that can be expected to remain structurally stable in the ground to prevent cave-ins, even after the subsequent deterioration of the tank walls; and

(iv) the filled tank and associated piping are disconnected and capped or sealed so as to preclude their future use for any storage or disposal purposes.

(4) The tank owner shall develop and maintain a permanent record of the name and address of the tank owner (and site or facility owner, if different), the abandoned tank location, the date of abandonment, the substance previously stored, the method of conditioning the tank for abandonment, release assessment results, the names, addresses, and telephone numbers of the persons conducting the activities, and information regarding the extent of any confirmed releases and any resulting remediation activities.

(A) When the tank owner is not the owner of the facility where the tank is located, the tank owner shall provide to the current facility owner a legible copy of the permanent record of the abandonment in-place. Such information shall be provided no later than 30 days after completion of the abandonment in-place.

(B) The facility owner shall maintain a permanent record of the tank abandonment in-place in accordance with subsection (f) of this section.

(C) Prior to the sale or conveyance of the facility where an abandoned underground storage tank is located, the facility owner shall provide written documentation of the tank abandonment information to the succeeding property owner.

(d) Change-in-service. In addition to the requirements of subsection (a) of this section, the following requirements shall be

applicable for any change-in-service where a UST system storing regulated substances is converted to a system storing materials other than regulated substances.

(1) Prior to refilling with materials other than regulated substances, the underground storage tank shall be properly emptied, cleaned, and purged of vapors in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory for the stored regulated substance. The procedures for emptying, cleaning, and purging the underground storage tank shall be designed to remove as much as possible of the previously stored regulated substances, including all liquids, vapors, sludges, and residues, in a manner that is protective of human health and safety or the environment.

(2) A change-in-service where an underground storage tank storing regulated substances is to be converted for the storage of either drinking water or food products intended for human consumption is specifically prohibited.

(3) Any change-in-service shall be in accordance with all applicable federal, state, and local regulations.

(4) The owner shall develop and maintain a permanent record of the location of the underground storage tank, the date of the change-in-service, the regulated substance previously stored, the method of conditioning the tank for the change-in-service, the names, addresses, and telephone numbers of the persons conducting the activities, and any information regarding any known releases of regulated substances from such tank. If the facility owner is not the same person as the UST owner, the UST owner shall provide a copy of such information to the facility owner within 30 days after the date of the change in-service.

(e) Site assessment.

(1) A comprehensive site assessment meeting the requirements of this subsection shall be performed by the owner or operator of an UST system in the following situations to determine whether or not a release has occurred:

(A) when the site assessment is selected as the method to achieve compliance with the release determination requirements of subsection (a)(6) of this section for an underground storage tank which is permanently removed from service on or after December 22, 1988;

(B) When an owner or operator requests an extension of time to allow an underground storage tank system to remain temporarily out of service beyond the prescribed time limits, as provided in §334.54(d)(2)(B) of this title (relating to Temporary Removal from Service);

(C) when the executive director determines that a comprehensive site assessment is necessary at a site or facility where an underground storage tank was permanently removed from service prior to December 22, 1988, and where the site assessment or release determination at the time of removal from service was determined to be either nonexistent or inadequate; or

(D) when the executive director or the commission determines that a comprehensive site assessment is necessary at any site or facility where a release or suspected release may pose a current or potential threat to human health or safety or the environment.

(2) The site assessment shall be conducted by personnel possessing the appropriate skills, experience, and competence to perform the assessment in accordance with recognized industry practices and the provisions of this section, and in a manner designed to determine with a high degree of confidence whether or not a release of regulated substances has occurred.

(3) Any procedures used for the site assessment must be capable of measuring for the presence of a release from any part of the UST system and, at a minimum, must include measurements for releases at locations where contamination is most likely to be present at the site.

(4) The owner or operator shall assure that in selecting the sampling or measurement methods, the sample types, and the sampling or measurement locations, the persons conducting the assessment take into consideration the following factors to ensure that the presence of any released regulated substances is detected and quantified:

(A) the specific method of removing the underground storage tank system from service;

(B) the nature and composition of the stored regulated substance;

(C) the type and characteristics of the backfill material;

(D) the presence of groundwater, and its depth with relation to the UST system and the surface of the ground; and

(E) any other factors that may affect the reliability or effectiveness of the site assessment procedures or techniques.

(5) One or more of the following methods may be used for conducting the site assessment and release determination required under this section, provided

that such methods are in compliance with the performance standards in paragraphs (2), (3) and (4) of this subsection:

(A) collection and analysis of soil samples secured from unsaturated sections of the UST system excavation zone, where such samples shall be analyzed for major constituents and/or indicator parameters of the stored regulated substance(s);

(B) collection and analysis of groundwater samples secured from the UST system excavation zone, where such samples shall be analyzed for all major constituents or indicator parameters of the stored regulated substance(s); and/or

(C) any other site assessment or release determination method or procedure which has been reviewed and determined by the executive director to detect prior releases of the stored regulated substance(s) in a manner that is no less protective of human health and the environment than the methods described in subparagraphs (A) and (B), of this paragraph, as provided under §334.43 of this title (relating to Variances and Alternative Procedures).

(f) Records for permanent removal from service.

(1) Owners and operators shall maintain records adequate to demonstrate compliance with the requirements of this section, in accordance with §334.10(b) of this title (relating to Reporting and Recordkeeping).

(2) At a minimum, the following records shall be maintained for as long as any underground storage tank remains in service at the facility, or for five years after the UST system is permanently removed from service, whichever is longer:

(A) records of the release determination or site assessment, in accordance with the requirements in clause (a)(6)(D)(ii) of this section;

(B) records related to the tank removal procedures (as applicable), in accordance with the requirements in subsection (b)(6) of this section;

(C) records related to the abandonment in-place of an UST system (as applicable), in accordance with the requirements in subsection (c)(4) of this section; and

(D) records related to the change-in-service of an UST system (as applicable), in accordance with the requirement in subsection (d)(4) of this section.

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

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Jim Haley
Legal Director
Texas Water Commission

Earliest possible date of adoption April 10, 1989

For further information, please call: (512) 463 8087

Subchapter D. Release Reporting and Corrective Action

31 TAC §§334.71-334.85

The new sections are proposed under the Texas Water Code, §§26.341-26.359, as amended by Senate Bill 779, 70th Legislature, 1987, which provides the Texas Water Commission with the authority to establish a program to regulate underground storage tanks and §§ 103 and § 105, which provide the Texas Water Commission with the authority to adopt any sections 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.

§334.71. Applicability. The provisions of this subchapter are applicable to owners and operators of all underground storage tanks unless otherwise specified in Subchapter A of this chapter.

§334.72 Reporting of Suspected Releases. Owners and operators of underground storage tank systems must report to the executive director within 24 hours, and follow the procedures in §334.74 of this title (relating to Release Investigation and Confirmation Steps) for any of the following conditions:

(1) the discovery by owners and operators or others of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water);

(2) unusual operating conditions observed by owners and operators (such as the erratic behavior of product dispensing equipment; the sudden loss of product from the underground storage tank system; or an unexplained presence of water in the tank), unless the system equipment is found to be defective but not leaking;

(3) monitoring results from a release detection method required under §334.50 of this title (relating to Release Detection) or other method that indicates a release may have occurred unless:

(A) the monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result; or

(B) in the case of inventory control, a second month of data does not confirm the initial result; and

(4) for UST systems which are required to be of double-wall construction or secondarily contained and for UST systems in which interstitial monitoring is being employed for compliance with the requirements of §334.50 of this title (relating to Release Detection) whenever monitoring or observation indicates a breach in either the primary wall or secondary barrier (whether or not a release of regulated substance into the environment has occurred).

§334.73. Investigation Due to Off-Site Impacts. When required by the executive director, owners and operators of UST systems must follow the procedures in §334.74 of this title (relating to Release Investigation and Confirmation Steps), to determine if the UST system is the source of off-site impacts. These impacts include the discovery of regulated substances (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that have been observed by the commission or brought to its attention by another party.

§334.74. Release Investigation and Confirmation Steps. Unless corrective action is initiated in accordance with §334.76-334.81 of this title (relating to Initial Response to Releases; Initial Abatement Measures and Site Check; Initial Site Characterization; Free Product Removal; Investigation for Soil and Groundwater Cleanup; and Corrective Action Plan), owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under §334.72 of this title (relating to Reporting of Suspected Releases) within seven days, using either the following steps or another procedure and schedule approved or required by the executive director.

(1) System test. Owners or operators must conduct tests (according to the requirements for tightness testing in §334.50 of this title (relating to Release Detection)) that determine whether a leak exists in that portion of the tank that routinely contains product, or the attached delivery piping, or both.

(A) Owners and operators must repair, replace, or upgrade the UST system, and begin corrective action in accordance with §§334.76-334.81 of this title (relating to Initial Response to Releases; Initial Abatement Measures and Site Check; Initial Site Characterization; Free Product

Removal; Investigation for Soil and Groundwater Cleanup; and Corrective Action Plan) if the test results for the system, tank, or delivery piping indicate that a leak exists.

(B) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if environmental contamination is not the basis for suspecting a release.

(C) Owners and operators must conduct a site check as described in paragraph (2) of this section if the test results for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release.

(2) Site check. Owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release.

(A) If the test results for the excavation zone or the UST site indicate that a release has occurred, owners and operators must begin corrective action in accordance with §§334.76-334.81 of this title (relating to Initial Response to Releases; Initial Abatement Measures and Site Check; Initial Site Characterization; Free Product Removal; Investigation for Soil and Groundwater Cleanup; and Corrective Action Plan).

(B) If the test results for the excavation zone or the UST site do not indicate that a release has occurred, further investigation is not required.

(3) In the event there is no evidence of a release after performing the tests required in paragraphs (1) and (2) of this section, the owner or operator must file a report which contains a detailed description of the investigative procedures followed in addressing the requirements of this section and which includes the results of all tests or monitoring performed. This report must be filed with the executive director not later than 15 days after the first observation of the suspected release. The owner or operator shall include with this report a notarized statement which has been signed by the owner or operator and which certifies that the requirements of this section have been met.

§334.75. Reporting and Cleanup of Surface Spills and Overfills.

(a) Owners and operators of UST systems must contain and immediately cleanup a spill or overfill and report to the commission within 24 hours and begin corrective action in accordance with §§334.76-334.81 of this title (relating to Initial Response to Releases; Initial Abatement Measures and Site Check; Initial Site Characterization; Free Product Removal; Investigation for Soil and Groundwater Cleanup; and Corrective Action Plan) in the following cases:

(1) spill or overfill of petroleum that results in a release to the environment that exceeds 25 gallons, or that causes a sheen on nearby surface water; and

(2) spill or overfill of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under CERCLA (40 Code of Federal Regulations Part 302) or 25 gallons, whichever is smaller.

(b) Owners and operators of UST systems must contain and immediately clean up a spill or overfill of petroleum that is less than 25 gallons, and a spill or overfill of a hazardous substance that is less than the reportable quantity under CERCLA (40 Code of Federal Regulations Part 302) or 25 gallons, whichever is smaller. If cleanup cannot be accomplished within 24 hours, owners and operators must immediately notify the executive director.

§334.76. Initial Response to Releases. Upon confirmation of a release in accordance with §334.74 of this title (relating to Release Investigation and Confirmation Steps) or after a release from the UST system is identified in any other manner, owners and operators must perform the following initial response actions within 24 hours of a release:

(1) report the release to the executive director (e.g., by telephone or electronic mail);

(2) take immediate action to prevent any further release of the regulated substance into the environment, including shutting down the leaking UST system; and

(3) identify and mitigate fire, explosion, and vapor hazards.

§334.77. Initial Abatement Measures and Site Check.

(a) Unless directed to do otherwise by the executive director, owners and operators must perform the following abatement measures:

(1) remove as much of the regulated substance from the UST system as is necessary to prevent further release to the environment;

(2) visually inspect any above-ground releases or exposed below ground releases and prevent further migration of the released substance into surrounding soils and groundwater;

(3) continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);

(4) remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, the owner and operator must comply with applicable state and local requirements;

(5) measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with the site check required by §334.74 of this title (relating to Release Investigation and Confirmation Steps) or the closure site assessment of §334.55(e) of this title (relating to Permanent Removal from Service). In selecting sample types, sample locations, and measurement methods, the owner and operator must consider the nature of the stored substance, the type of backfill, depth to groundwater, and other factors as appropriate for identifying the presence and source of the release; and

(6) investigate to determine the possible presence of free product and begin free product removal as soon as practicable and in accordance with §334.79 of this title (relating to Free Product Removal).

(b) Unless directed to do otherwise by the executive director, within 20 days after release confirmation, owners and operators must submit a report to the executive director summarizing the initial abatement steps taken under subsection (a) of this section and any resulting information or data.

§334.78. Initial Site Characterization.

(a) Unless directed to do otherwise by the executive director, owners and operators must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in §334.75 and §334.76 of this title (relating to Reporting and Cleanup of Surface Spills and Overfills; and Initial Response to Releases). This information must include, but is not necessarily limited to the following:

(1) data on the nature, cause, and estimated quantity of release;

(2) data from available sources and/or site investigations concerning the following factors: surrounding populations,

water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions, and land use;

(3) results of the site check required under §334.77 of this title (relating to Initial Abatement Measures and Site Check);

(4) results of the free product investigations required under §334.77 of this title (relating to Initial Abatement Measures and Site Check), to be used by owners and operators to determine whether free product must be recovered under §334.79 of this title (relating to Free Product Removal); and

(5) any other related information requested by the executive director.

(b) Within 45 days of release confirmation, owners and operators must submit the information collected in compliance with subsection (a) of this section to the executive director in a manner that demonstrates its applicability and technical adequacy, or in a format and according to the schedule required by the executive director.

§334.79. Free Product Removal. At sites where investigations under §334.77 of this title (relating to Initial Abatement Measures and Site Check) or by other means, indicate the presence of free product, owners and operators must remove free product to the maximum extent practicable as determined by the executive director while continuing, as necessary, any actions required under §334.80 and §334.81 of this title (relating to Investigations for Soil and Groundwater Cleanup; and Corrective Action Plan). In meeting the requirements of this section, owners and operators must:

(1) conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges, or disposes of recovery byproducts in compliance with applicable local, state, and federal regulations;

(2) use abatement of free product migration as a minimum objective for the design of the free product removal system;

(3) handle any regulated substances in a safe and competent manner to prevent fires, explosions, or other health hazards; and

(4) unless directed to do otherwise, prepare and submit to the executive director, within 45 days after confirming a release, a free product removal report that provides at least the following information:

(A) the name of the per-

son(s) responsible for implementing the free product removal measures;

(B) the estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;

(C) detailed information pertaining to the type of free product recovery system used;

(D) whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;

(E) the type of treatment applied to, and the effluent quality expected from any discharge;

(F) the steps that have been, or are being taken to obtain necessary permits or other authorizations for any discharge;

(G) the disposition of the recovered free product; and

(H) any other related information requested by the executive director.

§334.80. Investigation for Soil and Groundwater Cleanup.

(a) In order to determine the full extent and location of soils contaminated by the release, and the presence and concentrations of dissolved regulated substance contamination in the groundwater, owners and operators must conduct investigations of the release, the release site, and the surrounding area (including adjacent areas not under ownership by the owner or operator) possibly affected by the release if any of the following conditions exist:

(1) there is evidence that groundwater wells have been affected by the release (e.g., as found during release confirmation or previous corrective action measures);

(2) free product is found to need recovery in compliance with §334.79 of this title (relating to Free Product Removal);

(3) there is evidence that contaminated soils may be in contact with groundwater (e.g., as found during conduct of the initial response measures or investigations required under §§334.75-334.79 of this title (relating to Reporting and Cleanup of Surface Spills and Overfills; Initial Response to Releases; Initial Abatement Measures and Site Check; Initial Site Characterization; and Free Product Removal); or

(4) the executive director re-

quests an investigation, based on the potential effects of contaminated soil or groundwater on nearby surface water or groundwater resources.

(b) Owners and operators must submit the information collected under subsection (a) of this section as soon as practicable, or in accordance with a schedule established by the executive director.

§334.81. Corrective Action Plan.

(a) At any point after reviewing the information submitted in compliance with §§334.76-334.78 of this title (relating to Initial Response to Releases; Initial Abatement Measures and Site Check; and Initial Site Characterization), the executive director may require owners or operators to submit additional information or to develop and submit a corrective action plan for responding to contaminated soils and groundwater. If a plan is required, owners and operators must submit the plan according to a schedule and format established by the executive director. Alternatively, owners and operators may, after fulfilling the requirements of §§334.76-334.78 of this title (relating to Initial Response to Releases; Initial Abatement Measures and Site Check; and Initial Site Characterization), choose to submit a corrective action plan for responding to contaminated soil and groundwater. In either case, owners and operators are responsible for submitting a plan that provides for adequate protection of human health, safety, and the environment as determined by the executive director, and must modify their plan as necessary to meet this standard.

(b) The executive director will approve the corrective action plan after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the executive director will consider the following factors as deemed appropriate:

(1) the physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;

(2) the hydrogeologic characteristics of the facility and the surrounding area;

(3) the proximity, quality, and current and future uses of nearby surface water and groundwater;

(4) the potential effects of residual contamination on nearby surface water and groundwater;

(5) an exposure assessment; and

(6) any information assembled in compliance with this subchapter.

(c) Owners and operators shall submit information pertaining to the items in subsection (b) of this section upon request

of the executive director.

(d) Upon approval of the corrective action plan or as directed by the executive director, owners and operators must implement the plan, including modifications to the plan made by the executive director. They must monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and in a format established by the executive director.

(e) Owners and operators may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and groundwater before the corrective action is approved provided that they:

(1) notify the executive director of their intention to begin cleanup;

(2) comply with any conditions imposed by the executive director, including halting cleanup or mitigating adverse consequences from cleanup activities;

(3) incorporate these self-initiated cleanup measures in the corrective action plan that is submitted to the executive director for approval; and

(4) prior to discharge of any waste, obtain necessary authorization from the commission.

(f) In order to verify the effectiveness of corrective action taken by the owner or operator, the executive director may require continued monitoring of soil, vapors, groundwater, and/or surface water.

(g) Upon completion of corrective action taken in response to the requirements of this section, the owner or operator shall submit a notarized statement signed by the owner or operator which certifies that the requirements of this section and the procedures in the approved corrective action plan have been accomplished.

§334.82. Public Participation.

(a) For each confirmed release that requires a corrective action plan, the executive director shall provide notice to the public by means designated to reach those members of the public directly affected by the release and the planned corrective action. This notice may include, but is not limited to, public notice in local newspapers, block advertisements, publication in a state register, letters to individual households, or personal contacts by field staff.

(b) The executive director may require the owner or operator to perform or implement the public notices in this section and to verify that such activity has been satisfactorily completed.

(c) The executive director shall give public notice that complies with subsection (a) of this section if implementation of an approved corrective plan does not achieve the established cleanup levels in the plan and termination of that plan is under

consideration by the executive director.

§334.83. Emergency Orders.

(a) Notwithstanding any other provision of this subchapter, the executive director may issue orders under this section to the owner or operator of an underground storage tank, if it appears that:

(1) there is an actual or threatened release of a regulated substance from an underground storage tank; and

(2) the executive director determines that more expeditious corrective action than is otherwise provided for under this subchapter is necessary to protect the public health and safety or the environment.

(b) An order issued under subsection (a) of this section may prohibit a person from allowing or continuing the release or the threatened release and require the person to take the actions necessary to eliminate the release or threatened release.

(c) An emergency order issued under this section shall be:

(1) mailed by certified mail, return receipt requested, to each person identified in the order; or

(2) hand delivered to each person identified in the order; or

(3) on failure of service by certified mail or hand delivery, service by publication one time in the Texas Register and one time in a newspaper with general circulation in each county in which any of the persons identified in the order had a last known address.

(d) An emergency order issued under this section does not require notice or an adjudicative hearing before its issuance. If the executive director issues an order under this section, the commission shall fix a time and place for a hearing to affirm, modify, or set aside the emergency order issued by the executive director. The hearing before the commission shall be held as soon as practicable after the issuance of the emergency order.

§334.84. Corrective Action by the Commission.

(a) The commission may undertake corrective action in response to a release or a threatened release if:

(1) the owner or operator of the underground storage tank is unwilling to take appropriate corrective action;

(2) the owner or operator of the underground storage tank cannot be found;

(3) the owner or operator of the underground storage tank, in the opinion of the executive director, is unable to take the corrective action necessary to protect the public health and safety and/or the environment; or

(4) notwithstanding any other provision of this subchapter, the executive director determines that more expeditious corrective action than is provided by this subchapter is necessary to protect the public health and safety or the environment.

(b) The commission may retain agents to perform corrective action it considers necessary to carry out the provisions of this subchapter. The agents shall operate under the direction of the executive director. Any expenses arising from corrective action taken by the commission or the executive director may be paid from the underground storage tank fund.

§334.85. *Management of Wastes.* The management and disposition of waste generated as a result of a release of regulated substances associated with an underground storage tank must be in accordance with all applicable federal and state requirements and in a manner that will not result in impacts to human health and safety and the environment.

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 February 27, 1989

TRD-8901906 Jim Haley
Director
Texas Water Commission

Earliest possible date of adoption, March 20, 1989

For further information, please call (512) 463-8087

Subchapter E. Financial Responsibility

• 31 TAC §§334.91-334.109

The new sections are proposed under the Texas Water Code, §§26.341-26.359, as amended by Senate Bill 779, 70th Legislature, 1987, which provides the Texas Water Commission with the authority to establish a program to regulate underground storage tanks and §5 103 and §5 105, which provides the Texas Water Commission with the authority to adopt any sections 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

§334.91. Applicability.

(a) This subchapter applies to owners and operators of all petroleum UST systems except as otherwise provided in this section.

(b) Owners and operators of petroleum UST systems are subject to the re-

quirements of this subchapter if they are in operation on or after the date for compliance established in §334.92 of this title (relating to Compliance Dates).

(c) State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this subchapter.

(d) The requirements of this subchapter do not apply to owners and operators of any UST system described in §334.3 of this title (relating to Commission Exclusions) and §334.4 of this title (relating to Statutory Exemptions).

(e) If the owner and operator of a petroleum underground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance. Regardless of which party complies, the date set for compliance at a particular facility is determined by the characteristics of the UST owner as set forth in §334.92 of this title (relating to Compliance Dates).

§334.92. *Compliance Dates.* Owners of petroleum underground storage tanks are required to comply with the requirements of this subchapter by the following dates:

(1) all petroleum marketing firms owning 1,000 or more USTs within the United States and all other UST owners that report a tangible net worth of \$20 million or more to the United States Securities and Exchange Commission (SEC), Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration; January 24, 1989;

(2) all petroleum marketing firms owning 100-999 USTs within the United States; October 26, 1989;

(3) all petroleum marketing firms owning 13-99 USTs at more than one facility within the United States; April 26, 1990;

(4) all petroleum UST owners not described in paragraphs (1), (2), or (3) of this section, including all local government entities; October 26, 1990.

§334.93. Amount and Scope of Required Financial Responsibility.

(a) Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following per-occurrence amounts:

(1) for owners or operators of petroleum underground storage tanks that are located at petroleum marketing facili-

ties, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year; \$1 million;

(2) for all other owners or operators of petroleum underground storage tanks; \$500,000.

(b) Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:

(1) for owners or operators of 1 to 100 petroleum underground storage tanks within the United States, \$1 million; and

(2) for owners or operators of 101 or more petroleum underground storage tanks within the United States, \$2 million.

(c) For the purpose of subsections (b) and (f) of this section only, the term "petroleum underground storage tank" means a single containment unit and does not mean combinations of single containment units.

(d) Except as provided in subsection (e) of this section, if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

(1) taking corrective action;

(2) compensating third parties for bodily injury and property damage caused by sudden accidental releases; or

(3) compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in subsections (a) and (b) of this section.

(e) If owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.

(f) Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum underground storage tanks are acquired or installed. If the number of petroleum underground storage tanks within the United States for which assurance must be provided exceeds 100, the owner or operator shall demonstrate financial responsibility in the amount of a least \$2 million of annual aggregate assurance by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated

by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2 million of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

(g) The amounts of assurance required under this section exclude legal defense costs.

(h) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

§334.94. Allowable Mechanisms and Combinations of Mechanisms.

(a) Subject to the limitations of subsections (b) and (c) of this section, an owner or operator may use any one or combination of the mechanisms listed in §§334.95-334.101 of this title (relating to Financial Test of Self Insurance; Guarantee; Insurance and Risk Retention Group Coverage; Surety Bond; Letter of Credit; Trust Fund; and Standby Trust Fund) to demonstrate financial responsibility under this subchapter for one or more underground storage tanks.

(b) An owner or operator may use a guarantee or surety bond to establish financial responsibility only if the attorney general of Texas has submitted a written statement to the commission that a guarantee or surety bond executed as described in this section is a legally valid and enforceable obligation in the state.

(c) An owner or operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this section, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.

§334.95. Financial Test of Self-Insurance.

(a) An owner or operator, and/or guarantor, may satisfy the requirements of §334.93 of this title (relating to Amount and Scope of Required Financial Responsibility) by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator, and/or guarantor must meet the criteria of subsections (b) or (g) of this section based on year-end financial statements for the latest completed fiscal year.

(b) The owner or operator, and/or guarantor, must have a tangible net worth of at least 10 times:

(1) the total of the applicable aggregate amount required by §334.93 of this title (relating to Amount and Scope of Required Financial Responsibility) based on the number of underground storage tanks for which a financial test is used to demon-

strate financial responsibility to the commission under this section;

(2) the sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to the commission under Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste);

(3) the sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to the commission under §331.46 of this title (relating to Plugging and Abandonment).

(c) The owner or operator, and/or guarantor, must have a tangible net worth of at least \$10 million.

(d) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer worded as specified in subsection (1) of this section.

(e) The owner or operator, and/or guarantor, must either:

(1) file financial statements annually with the United States Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or

(2) report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of (e)(1) or (k)(1)

(f) The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a going concern qualification.

(g) The owner or operator, and/or guarantor must meet the financial test requirements of 40 Code of Federal Regulation §264.147 (f)(1) as adopted by §335.152(a)(6) of this title (relating to Standards), substituting the appropriate amounts specified in §334.93(b)(1) and (b) (2) of this title (relating to Amount and Scope of Required Financial Responsibility) for the amount of liability coverage each time specified in that section.

(h) The fiscal year-end financial statements of the owner or operator, and/or guarantor, must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

(i) The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a going concern qualification.

(j) The owner or operator, and/or guarantor, must have a letter signed by the chief financial officer, worded as specified in subsection (1) of this section.

(k) If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the United States Securities and Exchange Commission, the Energy Information Administration or the Rural Electrification Administration, the owner or operator, and/or guarantor, must obtain a special report by an independent certified public accountant stating that:

(1) he has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, and/or guarantor, with the amounts in such financial statements; and

(2) in connection with that comparison, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(l) To demonstrate that it meets the financial test under subsections (b) or (g) of this section, the chief financial officer of the owner or operator, and/or guarantor, must sign, within 120 days of the close of each financial reporting year, a defined by the 12 month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance," and/or "guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test by this [insert: "owner or operator," and/or guarantor]: [List for each facility: the name and address of the facility where tanks assured by this financial test are located. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the registration information submitted pursuant to §334.7 of Title 31, Texas Administrative Code.

A [insert: "financial test," and/or "guarantee"] is also used by this [insert: "owner or operator," or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other commission regulations.

Amount

Texas Water Commission Regulations:

Closure (§335.152(a)(6) and §335.112(a)(7)).....	\$ _____
Post-Closure Care (§335.152(a)(6) and §335.112(a)(7))	\$ _____
Liability Coverage (§335.152(a)(6) and §335.112(a)(7)	\$ _____
Corrective Action (§335.167 and §305.401.....)	\$ _____
Plugging and Abandonment (§331.46).....	\$ _____

This [insert: "owner or operator," or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his/her financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of §334.95(b) of Title 31, Texas Administrative Code are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of §334.95(g) of this title (relating to Financial Test of Self-Insurance) are being used to demonstrate compliance with the financial test requirements.]

ALTERNATIVE I

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee \$ _____
2. Amount of corrective action, closure and post-closure care costs, liability

coverage, and plugging and abandonment costs covered by a financial test, and/or

- guarantee \$ _____
3. Sum of lines 1 and 2 \$ _____
4. Total tangible assets \$ _____
5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] \$ _____
6. Tangible net worth [subtract line 5 from line 4] \$ _____

- | | Yes | No |
|--|-------|-------|
| 7. Is line 6 at least \$10 million? | _____ | _____ |
| 8. Is line 6 at least 10 times line 3? | _____ | _____ |
| 9. Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission? | _____ | _____ |
| 10. Have financial statements for the latest fiscal year been filed with the Energy Information Administration? | _____ | _____ |
| 11. Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration? | _____ | _____ |
| 12. Has financial information been provided to | | |

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Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of (e)(1) or (k)(1)? [Answer "Yes only if both criteria have been met.] _____

ALTERNATIVE II

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee _____
2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee _____
3. Sum of lines 1 and 2 _____
4. Total tangible assets _____
5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] ... _____
6. Tangible net worth [subtract line 5 from line 4] _____
7. Total assets in the U.S. [required only if less than 90 percent of assets are located in the U.S.] _____
8. Is line 6 at least \$10 million? _____
9. Is line 6 at least 6 times line 3? _____

10. Are at least 90 percent of assets located
in the U.S.? [If "No," complete line 11.]... _____
11. Is line 7 at least 6 times line 3? _____
- [Fill in either lines 12-15 or lines 16-18:]
12. Current assets..... _____
13. Current liabilities _____
14. Net working capital [subtract line 13
from 12] _____
15. Is line 14 at least 6 times lines 3? _____
16. Current bond rating of most recent bond
issue _____
17. Name of rating service _____
18. Date of maturity or bond _____
19. Have financial statements from the latest
fiscal year been filed with the SEC, the
Energy Information Administration, or the
Rural Electrification Administration? _____

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

[For both Alternative I and Alternative II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in §334.95 of Title 31, Texas Administrative Code as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

(m) If an owner or operator using the test to provide financial assurance finds that he or she no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator must obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

(n) The executive director may require reports of financial condition at any time from the owner or operator, and/or guarantor. If the executive director finds, on the basis of such reports or other information, that the owner or operator, and/or guarantor, no longer meets the financial test requirements of §334.95(b) or (g) and (1) of this title (relating to Financial Test of Self-Insurance), the owner or operator must obtain alternative coverage within 30 days after notification of such a finding.

(o) If the owner or operator fails to obtain alternate assurance within 150 days of finding that he or she no longer meets the requirements of the financial test based on the year-end financial statements, or within 30 days of notification by the executive director that he or she no longer meets the requirements of the financial test, the owner or operator must notify the executive director of such failure within 10 days.

§334.96. Guarantee.

(a) An owner or operator may satisfy the requirements of §334.93 of this title (relating to Amount and Scope of Required Financial Responsibility) by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be:

(1) a firm that:

(A) possesses a controlling interest in the owner or operator;

(B) possesses a controlling interest in a firm described under subsection (a)(1)(A) of this section;

(C) is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or

(2) a firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.

(b) Within 120 days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of §334.95 of this title (relating to Financial Test of Self-Insurance) based

on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in §334.95(1) of this title (relating to Financial Test of Self-Insurance) and must deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. If the executive director notifies the guarantor that he or she no longer meets the requirements of the financial test of §334.95(b) or (g) and (1) of this title (relating to Financial Test of Self-Insurance) the guarantor must notify the owner or operator within 10 days of receiving such notification from the executive director. In the event the guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternate coverage as specified in §334.108(c) of this title (relating to Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance).

(c) The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

return receipt. The owner or operator must obtain alternate coverage as specified in §334.108(c) of this title (relating to Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance).

- (c) The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted;

GUARANTEE

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [name of state], herein referred to as guarantor, to the Texas Water Commission and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

Recitals

- (1) Guarantor meets or exceeds the financial test criteria of §334.95(b) or (g) and (1) of Title 31, Texas Administrative Code and agrees to comply with the requirements for guarantors as specified in §334.96(b) of Title 31, Texas Administrative Code.
- (2) [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the names(s) and address(es) of the

facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the registration information submitted pursuant to §334.7 of Title 31, Texas Administrative Code, and the name and address of the facility.] This guarantee satisfies Subchapter E of Chapter 334 of Title 31, Texas Administrative Code requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "nonsudden accidental releases" or "accidental release"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

- (3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our

affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the Texas Water Commission and to any and all third parties that:

In the event that [owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Executive Director of the Texas Water Commission has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the Executive Director of the Texas Water Commission, shall fund a standby trust fund in accordance with the provisions of §334.106 of Title 31, Texas Administrative Code, in an amount not to exceed the coverage limits specified above.

In the event that the Executive Director of the Texas Water Commission determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the

above-identified tank(s) in accordance with Subchapter D of Chapter 334 of Title 31, Texas Administrative Code, the guarantor upon written instructions from the executive director of the Texas Water Commission shall fund a standby trust in accordance with the provisions of §334.106 of Title 31, Texas Administrative Code, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the Executive Director of the Texas Water Commission, shall fund a standby trust in accordance with the provisions of §334.106 of Title 31, Texas Administrative Code to satisfy such judgement(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

- (4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of §334.95(b) or (g) and (l) of Title 31, Texas Administrative Code, guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.
- (5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.
- (6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to Chapter 334 of Title 31, Texas Administrative Code.
- (7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of Subchapter E of Chapter 334 of Title 31, Texas Administrative Code for the above-identified tank(s), except that guarantor

may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

- (8) The guarantor's obligation does not apply to any of the following:
- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
 - (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
 - (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
 - (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
 - (e) Bodily damage or property damage for which [insert owner or operator] is obligated to

pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of §334.93 of Title 31, Texas Administrative Code.

- (9) Guarantor expressly waived notice of acceptance of this guarantee by the Texas Water Commission, by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in subsection (c) of §334.96 of Title 31, Texas Administrative Code as such regulations were constituted on the effective date shown immediately below.

Effective date: _____

[Name of Guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: _____

(d) An owner or operator who uses a guarantee to satisfy the requirements of §334.93 of this title (relating to Amount and Scope of Required Financial Responsibility) must establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the executive director under §334.106 of this title (relating to Drawing on Financial As-

urance Mechanisms). This standby trust fund must meet the requirements specified in §334.101 of this title (relating to Standby Trust Fund).

§334.97. Insurance and Risk Retention Group Coverage.

(a) An owner or operator may satisfy the requirements of §334.93 of this title (relating to Amount and Scope of Required Financial Responsibility) by obtaining liability insurance that conforms to the re-

quirements of this section from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

(b) Each insurance policy must be amended by an endorsement worded as specified in subsection (b)(1) of this section or evidenced by a certificate of insurance worded as specified in subsection (b)(2) of this section, except that instructions in brackets must be replaced with the relevant information and the brackets deleted.

(1) Endorsement.

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number: _____

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

Name of Insured: _____

Address of Insured: _____

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

[List the number of tanks at each facility and the names(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the registration information submitted pursuant to §334.7 of Title 31, Texas Administrative Code, and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified in this paragraph.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the

amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each undergrounds storage tank or location], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (e) of paragraph 2 are hereby amended to conform with these subsections (a) through (e):

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combina-

tion of mechanisms as specified in §§334.95 through 334.100 of this title (relating to Financial Test of Self-Insurance; Guarantee; Insurance and Risk Retention Group Coverage; Surety Bond; Letter of Credit; and Trust Fund) of Title 31, Texas Administrative Code.

- c. Whenever requested by the Executive Director of the Texas Water Commission, the ["Insurer" or "Group"] agrees to furnish to the executive director of the Texas Water Commission a signed duplicate original of the policy and all endorsements.
- d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"] will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

- e. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or termination of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in §334.97(b)(1) of Title 31, Texas Administrative Code and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states"].

[Signature of authorized representative of Insurer or Risk Retention Group]

[Name of person signing]

[Title of person signing], Authorized Representative of

[Name of Insurer or Risk Retention Group]

[Address of Representative]

(2) Certificate of Insurance.

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number: _____

Endorsement (if applicable): _____

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

Name of Insured:

Address of Insured:

Certification:

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the registration information submitted pursuant to §334.7 of Title 31, Texas Administrative Code, and the name and address of the facility.]

for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non sudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in paragraph (1):
 - a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this certificate applies.

- b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in §§334.95 through 334.100 of this title (relating to Financial Test of Self-Insurance; Guarantee; Insurance and Risk Retention Group Coverage; Surety Bond; Letter of Credit; and Trust Fund) of Title 31, Texas Administrative Code.
- c. Whenever requested by the Executive Director of the Texas Water Commission, the ["Insurer" or "Group"] agrees to furnish to the Executive Director of the Texas Water Commission a signed duplicate original of the policy and all endorsements.
- d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"] will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

- e. The insurance covers claims for any occurrence that commenced during the term of the policy that is discovered and reported to the ["Insurer" or "Group"] within six months of the effective date of the cancellation or termination of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in §334.97(b)(2) of Title 31, Texas Administrative Code and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states"].

[Signature of authorized representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer
or Risk Retention Group]

[Address of Representative]

- (c) Each insurance policy must be issued by an insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

(c) Each insurance policy must be issued by an insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

§334.98. Surety Bond.

(a) An owner or operator may satisfy the requirements of §334.93 of this title (relating to Amount and Scope of Required Financial Responsibility) by obtaining a surety bond that conforms to the require-

ments of this section. The surety company issuing the bond must be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the United States Department of the Treasury

(b) The surety bond must be worded as follows, except that instructions in brackets must be replaced with the relevant information and the brackets deleted.

PERFORMANCE BOND

Date bond executed: _____

Period of coverage: _____

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation (if applicable): _____

Surety(ies): [name(s) and business address(es)]

Scope of Coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this

instrument, list the tank identification number provided in the registration information submitted pursuant to §334.7 of title 31, Texas Administrative Code, and the name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" "arising from operating the underground storage tank"].

Penal sums of bond: Per occurrence \$ _____

Annual aggregate \$ _____

Surety's bond number: _____

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to [the implementing agency], in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such

sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under Subchapter I of Chapter 26, Texas Water Code, as amended, to provide financial assurance for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take corrective action, in accordance with Subchapter D of Chapter 334 of Title 31, Texas Administrative Code and the Executive Director of the Texas Water Commission's instructions for, "and/or "compensate injured third parties for bodily injury and property damage caused by either "sudden" or "nonsudden" or "sudden and nonsudden"] accidental releases arising from operating the

tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in subchapter E of Chapter 334 of Title 31, Texas Administrative Code, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of §334.93 of Title 31, Texas Administrative Code.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Executive Director of the Texas Water Commission that the principal has failed to ["take corrective action, in accordance with subchapter D of Chapter 334 of Title 31, Texas Administrative Code and the Executive Director of the Texas Water Commission's instructions," and/or "compensate injured third parties"] as guaranteed by this bond, the Surety(ies) shall either perform ["corrective action in accordance with subchapter D of Chapter 334 of Title 31, Texas Administrative Code and the Executive Director of the Texas Water Commission's instructions," and/or "third-party liability compensation"] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the Executive Director

of the Texas Water Commission under §334.106 of Title 31, Texas Administrative Code.

Upon notification by the Executive Director of the Texas Water Commission that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the Executive Director of the Texas Water Commission has determined or suspects that a release has occurred, the Surety(ies) suspects that a release occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the Executive Director of the Texas Water Commission under §334.106 of Title 31, Texas Administrative Code.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond,

but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in §334.98(b) of Title 31, Texas Administrative Code as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

CORPORATE SURETY(IES)

[Name and address]

State of Incorporation: _____

Liability limit: \$ _____

[Signature(s)]

[Name(s) and titles(s)]

[Corporate seal]

[For every co-surety, provide signature(s),
corporate seal, and other information in the same
manner as for Surety above.]

Bond premium: \$ _____

(c) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

(d) The owner or operator who uses a surety bond to satisfy the requirements of §334.93 of this title (relating to Amount and Scope of Required Financial Responsibility) must establish a standby trust fund when the surety bond is acquired. Under the terms

of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the executive director under §334.106 of this title (relating to Drawing on Financial Assurance Mechanisms). This standby trust fund must meet the requirements specified in §334.101 of this title (relating to Standby Trust Fund).

§334.99. Letter of Credit.

(a) An owner or operator may satisfy the requirements of §334.93 of this title (relating to Amount and Scope of Required

Financial Responsibility) by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution must be an entity that has the authority to issue letters of credit in each state where used and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(b) The letter of credit must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

[Name and address of issuing institution]

[Name and address of Executive Director of the Texas
Water Commission]

Dear Sir or Madam: We hereby establish our
Irrevocable Standby Letter of Credit No. _____ in your

favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars (\$[insert dollar amount]), available upon presentation of:

- (1) your sight draft, bearing reference to this letter of credit, No. _____; and
- (2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of Subchapter I of Chapter 26, Texas Water Code, as amended".

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] \$[insert dollar amount] per occurrence and [in words] \$[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the registration

information submitted pursuant to §334.7 of Title 31, Texas Administrative Code, and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other

than a contract or agreement entered into to meet the requirements of §334.93 of Title 31, Texas Administrative Code.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended from a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event the [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to use, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in §334.99(b) of Title 31, Texas Administrative Code as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]
[Date]

This credit is subject to [insert " the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(c) An owner or operator who uses a letter of credit to satisfy the requirements of §334.93 of this title (relating to Amount and Scope of Required Financial Responsibility) must also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the executive director will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the executive director under §334.106 of this title (relating to Drawing on Financial Assurance Mechanisms). This standby trust fund must meet the requirements specified in §334.101 of this title (relating to Standby Trust Fund).

(d) The letter of credit must be irrevocable with a term specified by the issuing institution. The letter of credit must provide that credit be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.

§334.100. Trust Fund.

(a) An owner or operator may satisfy the requirements of §334.93 of this title (relating to Amount and Scope of Remedial Financial Responsibility) by establishing trust fund that conform to the requirements of this section. The trustee must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

(b) The wording of the trust agreement must be identical to the wording specified in §334.101(b) of this title (relating to Standby Trust Fund), and must be accompanied by a formal certification of acknowledgement as specified in §334.101(c) of this title (relating to Standby Trust Fund).

(c) The trust fund, when established, must be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.

(d) If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the executive director for release of the excess.

(e) If other financial assurance as specified in this subpart is substituted for all or part of the trust fund, the owner or operator may submit a written request to the executive director for release of the excess.

(f) Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsections (d) or (e) of this section, the executive director will instruct the trustee to release to the owner or operator such funds as the executive director specifies in writing.

§334.101. Standby Trust Fund.

(a) An owner or operator using any one of the mechanisms authorized by §334.96 of this title (relating to Guarantee), or §334.99 of this title (relating to Letter of Credit) must establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

(b) The standby trust agreement or trust agreement must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

TRUST AGREEMENT

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of _____" or "a national bank"], the "Trustee."

Whereas, the Texas Water Commission has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank

shall provide assurance that funds will be available when needed or corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. The attached subchapter A lists the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located that are covered by the standby trust agreement;

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefor, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

- (a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.
- (b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.
- (c) The term "Executive Director" means the Executive Director of the Texas Water Commission.

Section 2. Identification of the Financial Assurance Mechanism. This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Texas Water Commission. The Grantor and the

Trustee intend that no third party have access to the Fund except as herein provided. [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the Executive Director's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the Texas Water Commission.

Section 4. Payment for ["Corrective Action" and/or "Third-Party Liability Claims"]. The Trustee shall make payments from the Fund as the Executive Director shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of §334.93 of Title 31, Texas Administrative Code.

The Trustee shall reimburse the Grantor, or other persons as specified by the Executive Director, from the Fund for corrective action expenditures and/or third-party liability claims in such amounts as the Executive Director

specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (a) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C.

80A-2(a), shall not be acquired or held, unless

they are securities or other obligations of the federal or a state government;

- (b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and
- (c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even through, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited

therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentally thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor Trustee and this successor accepts the appointment. The successor Trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor Trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of successor Trustee or for instructions. The successor Trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes

effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Executive Director, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Executive Director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Executive Director, except as provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the Executive Director if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the Executive Director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Executive Director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the state of Texas, or the Comptroller of the Currency in the case of National Association banks.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in §334.101(b) of Title 31, Texas Administrative Code as such regulations were constituted on the date written above.

[Signature of Grantor]

[Name of the Grantor]

[Title]

Attest:

[Signature of Trustee]

[Name of the Trustee]

[Title]

[Seal]

Attest:

[Signature of Witness]

[Name of Witness]

[Title]

[Seal]

(c) The standby trust agreement or trust agreement must be accompanied by formal certification of acknowledgement similar to the following.

State of _____
County of _____

On this (date), before me personally came (owner or operator) to me known, who, being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

(Signature of Notary Public)

(Name of Notary Public)

(d) The executive director will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the executive director determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

(e) An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this section.

§334.102. Substitution of Financial Assurance Mechanisms by Owner or Operator.

(a) An owner or operator may substitute any alternate financial assurance mechanisms as specified in this subchapter provided that at all times he or she maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of §334.93 of this title (relating to Amount and Scope of Required Financial Responsibility).

(b) After obtaining alternate financial assurance as specified in this subchapter, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

§334.103. Cancellation or Nonrenewal by a Provider of Financial Assurance.

(a) Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.

(b) Termination of a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

receipt.

(c) Termination of insurance, risk retention group coverage, or state-funded assurance may not occur until 60 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(d) If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in §334.104 of this title (relating to Reporting by Owner or Operator), the owner or operator must obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator must notify the executive director of such failure and submit:

(1) the name and address of the provider of financial assurance;

(2) the effective date of termination; and

(3) the evidence of the financial assurance mechanism subject to the termination maintained in accordance with §334.105(b) of this title (relating to Financial Assurance Recordkeeping).

§334.104. Reporting by Owner or Operator.

(a) An owner or operator must submit the appropriate forms listed in §334.105(b) of this title (relating to Financial Assurance Recordkeeping) documenting current evidence of financial responsibility to the executive director:

(1) within 30 days after the owner or operator identifies a release from an underground storage tank required to be reported under Subchapter D of this chapter (relating to Release Reporting and Corrective Action);

(2) if the owner or operator fails

to obtain alternate coverage as required by this subchapter, within 30 days after the owner or operator receives notice of:

(A) commencement of a voluntary or involuntary proceeding under the United States Code, Title 11 (Bankruptcy), naming a provider of financial assurance as a debtor;

(B) suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism;

(C) failure of a guarantor to meet the requirements of the financial test;

(D) other incapacity of provider of financial assurance; or

(3) as required by §334.95(o) of this title (relating to Financial Test of Self Insurance) and §334.103(d) of this title (relating to Cancellation of Nonrenewal by a Provider of Financial Assurance).

(b) An owner or operator must certify compliance with the financial responsibility requirements of this subchapter as specified in the new tank registration form when notifying the executive director of the installation of a new underground storage tank.

(c) Upon request of the executive director, an owner or operator submit evidence of financial assurance as described in §334.105(b) of this title (relating to Financial Assurance Recordkeeping) or other information relevant to compliance with this subchapter.

§334.105. Financial Assurance Recordkeeping.

(a) Owners or operators must maintain evidence of all financial assurance

mechanisms used to demonstrate financial responsibility under this subchapter for an underground storage tank until released from the requirements of this subchapter under §334.107 of this title (relating to Release From the Requirements). An owner or operator must maintain such evidence at the underground storage tank site or the owner's or operator's place of business. Records maintained off-site must be made available upon request of the executive director.

(b) An owner or operator must maintain the following types of evidence of financial responsibility.

(1) An owner or operator using an assurance mechanism specified in §§334.95-334.99 of this title (relating to Financial Test of Self-Insurance; Guarantee;

Insurance and Risk Retention Group Coverage; Surety Bond; and Letter of Credit) or §334.100 of this title (relating to Trust Fund) must maintain a copy of the instrument worded as specified.

(2) An owner or operator using a financial test or guarantee must maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence must be on file no later than 120 days after the close of the financial reporting year.

(3) An owner or operator using a guarantee, surety bond, or letter of credit must maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

(4) An owner or operator using an insurance policy or risk retention group coverage must maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

(5) An owner or operator using an assurance mechanism specified in §§334.95-334.100 of this title (relating to Financial Test of Self-Insurance; Guarantee; Insurance and Risk Retention Group Coverage; Surety Bond; Letter of Credit; and Trust Fund) must maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

CERTIFICATION OF FINANCIAL RESPONSIBILITY

[Owner or operator] hereby certifies that it is in compliance with the requirements of subchapter E of Chapter 334 of Title 31, Texas Administrative Code.

The financial assurance mechanism[s] used to demonstrate financial responsibility under Subchapter E of Chapter 334 of Title 31, Texas Administrative Code is[are] as follows:

[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers "taking corrective action" and/or "compensating third parties for bodily injury

and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases."]

[Signature of owner or operator]

[Name of owner or operator]

[Title]

[Date]

[Signature of witness or notary]

[Name of witness or notary]

[Date]

(c) The owner or operator must update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

§334.106. Drawing on Financial Assurance Mechanisms.

(a) The executive director shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the executive director, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

(1) the owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of

cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and

(2) the executive director determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the executive director pursuant to Subchapter D of this chapter (relating to Release Reporting and Corrective Action) of a release from an underground storage tank covered by the mechanism; or

(3) the conditions of subsection (b)(1), (b)(2)(A), or (b)(2)(B) of this section are satisfied.

(b) The executive director may draw on a standby trust fund when:

(1) the executive director makes a final determination that a release has occurred

and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under Subchapter D of this chapter (relating to Release Reporting and Corrective Action);

(2) the executive director has received either:

(A) certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that the third-party liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

CERTIFICATION OF VALID CLAIM

The undersigned, as principals and as legal representatives of {insert owner or operator} and {insert name and address of third-party claimant}, hereby certify that the claim of bodily injury {and/or} property damage caused by an accidental release arising from operating {owner's or operator's} underground storage tank should be paid in the amount of \$[_____].

{Signatures}	{Signature(s)}
Owner or Operator	Claimant(s)
Attorney for	Attorney(s) for
Owner or Operator	Claimant(s)

{Notary}	Date	{Notary}	Date
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required to maintain financial responsibility under this subchapter for an underground storage tank after the tank has been properly closed or, if corrective action is required, after corrective action has been completed and the tank has been properly closed in accordance with the requirements of this chapter.

§334.108. Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance.

(a) Within 10 days after commencement of a voluntary or involuntary proceeding under the United States Code, Title 11 (Bankruptcy), naming an owner or operator debtor, the owner or operator must notify the executive director by certified mail of such commencement and submit the appropriate forms listed in subsection §334.105 of this title (relating to Financial Assurance Recordkeeping) documenting current financial responsibility.

(b) Within 10 days after commencement of a voluntary or involuntary proceeding under the United States Code, Title 11 (Bankruptcy), naming a guarantor providing financial assurance as debtor, such guarantor must notify the owner or

operator by certified mail of such commencement a required under §334.96 of this title (relating to Guarantee).

(c) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, letter of credit, or state-required mechanism. The owner or operator must obtain alternate financial assurance as specified in this subchapter within 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within 30 days after such notification, he or she must notify the executive director.

§334.109. Replenishment of Guarantees, Letters of Credit, or Surety Bonds.

(a) If at any time after a standby trust is funded upon the instruction of the executive director with funds drawn from a guarantee, letter of credit, or surety bond,

(B) a valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under this subchapter and the executive director determines that the owner or operator has not satisfied the judgment.

(c) If the executive director determines that the amount of corrective action costs and third-party liability claims eligible for payment under subsection (b) of this section may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The executive director shall pay third-party liability claims in the order in which the executive director receives certifications under subsection (b)(2)(A) of this section and valid court orders under subsection (b)(2)(B) of this section.

§334.107. Release from the Requirements. An owner or operator is no longer

and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

(1) replenish the value of financial assurance to equal the full amount of coverage required; or

(2) acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

(b) For purposes of this section, the full amount of coverage required is the amount of coverage specified in §334.93 of this title (Relating to Amount and Scope of Required Financial Responsibility). If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

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 February 27, 1989.

TRD-8901911 Jim Haley
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: March 30, 1989

For further information, please call. (512) 463-8087

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 48. Community Care for Aged and Disabled

Case Management

• 40 TAC §48.3904

The Texas Department of Human Services proposes an amendment to §48.3904, concerning a rate increase, in its Community Care for Aged and Disabled chapter. The section is proposed to increase the daily adult foster care unit rate from \$8.35 to \$9.27.

Burton F. Raiford, deputy commissioner for support operations, has determined that for the first five-year period the proposed section is in effect there will be fiscal implications for state government as a result of enforcing or administering the section. The anticipated estimated cost to state government will be \$93,359 for fiscal year (FY) 1989; \$190,777 for FY 1990; \$198,895 for FY 1991; \$207,520 for FY 1992; and \$216,653 for FY 1993. There will be no fiscal implications for local government or small businesses as a result of enforcing or administering the section.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the department will be able to keep experienced, tenured providers who offer adult foster care services. There are no anticipated costs to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-067, Texas Department of Human Services 222-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

The following amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§48.3904. Special Casework Procedures for Adult Foster Care.

(a) To receive payment, each adult foster care provider must send a completed purchase voucher for adult foster care providers form to DHS for each month the foster care client lives in the home. Effective March 1989, the daily rate paid to adult foster care providers is \$9.27.

(b)-(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 March 1, 1989.

TRD-8901957 Charles Stevenson
Acting Commissioner
Texas Department of
Human Services

Proposed date of adoption: May 1, 1989.

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

Chapter 50. Day Activity and Health Services

Provider Eligibility

• 40 TAC §50.2902

The Texas Department of Human Services proposes an amendment to §50.2902, concerning a rate increase, in its Day Activity and Health Services chapter. This section is proposed to increase the day activity and health services unit rate from \$9.70 to \$10.40.

Burton F. Raiford, deputy commissioner for support operations, has determined that for the first five-year period the proposed section is in effect there will be fiscal implications for state government as a result of enforcing or administering the section. The anticipated estimated costs to state government will be \$90,843 for fiscal year (FY) 1989; \$183,673 for FY 1990; \$190,519 for FY 1991; \$197,164 for FY 1992; and \$208,063 for FY 1993. There will be no fiscal implications for local government or small businesses as a result of enforcing or administering the section.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that more day activity and health services facilities will be able to remain in operation and continue providing services to the department's clients. There are no anticipated costs to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-068, Texas Department of Human Services 222-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§50.2902. Rates. Provider agencies receive reimbursement monthly. The rate of reimbursement is determined by the Texas Board of Human Services [Resources]. The reimbursement rate [and] for March 1989 [December 1984] and the following months is \$10.40 [\$9.70] per half-day unit of service. The provider agency may claim reimbursement for one unit of service if three hours or more of service are provided. The provider agency must agree to accept the fee as full payment for units of service it provides.

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 March 1, 1989.

TRD-8901958 Charles Stevenson
Acting Commissioner
Texas Department of
Human Services

Proposed date of adoption: May 1, 1989.

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

Part V. Veterans Land Board

Chapter 175. General Rules of the Veterans Land Board

• 40 TAC §175.18

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

The Veterans Land Board proposes an amendment to §175.18, concerning the resale of forfeited land. The proposed amendment provides that until August 31, 1989, local real estate professionals may assist with the sale of forfeited by unsold tracts of land. Identical emergency action is being submitted for simultaneous publication.

Mr. David Gloier, deputy commissioner for the Veterans Land Board, has determined

that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Gloier also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section involves the ability of persons who are interested in purchasing a forfeited tract of land to work through an approved local real estate professional. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jim Phillips, General Counsel, Legal Services, 1700 North Congress Avenue, Austin, Texas 78701.

The amendment is proposed under the Natural Resources Code, §161.061 and §161.063, which provides the Veterans Land Board with the authority to adopt rules that it considers necessary or advisable to ensure the proper administration of the Veterans Land Program.

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

Issued in Austin, Texas, on February 27, 1989.

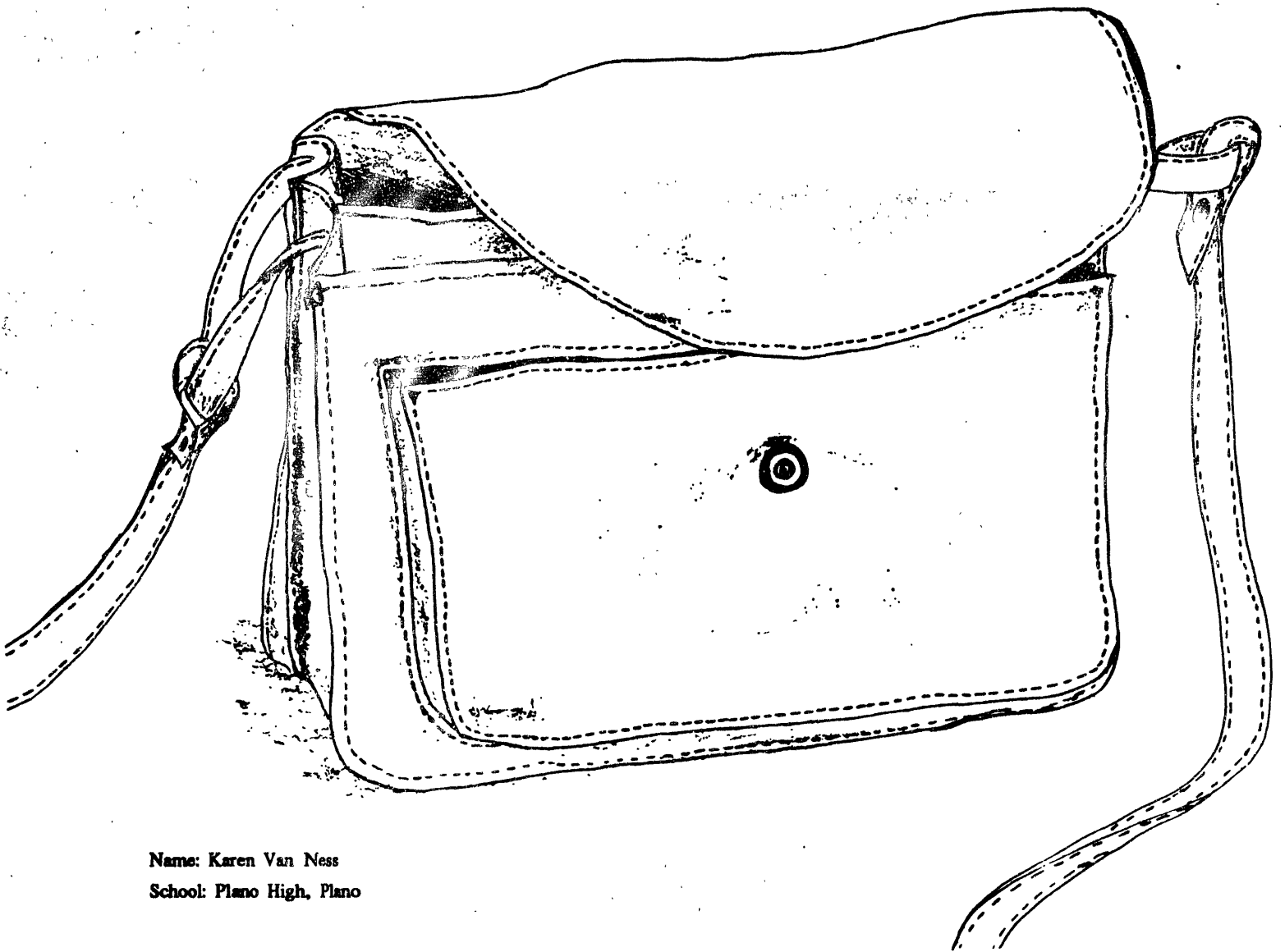
TRD-8901984

Gary Mauro
Chairman
Veterans Land Board

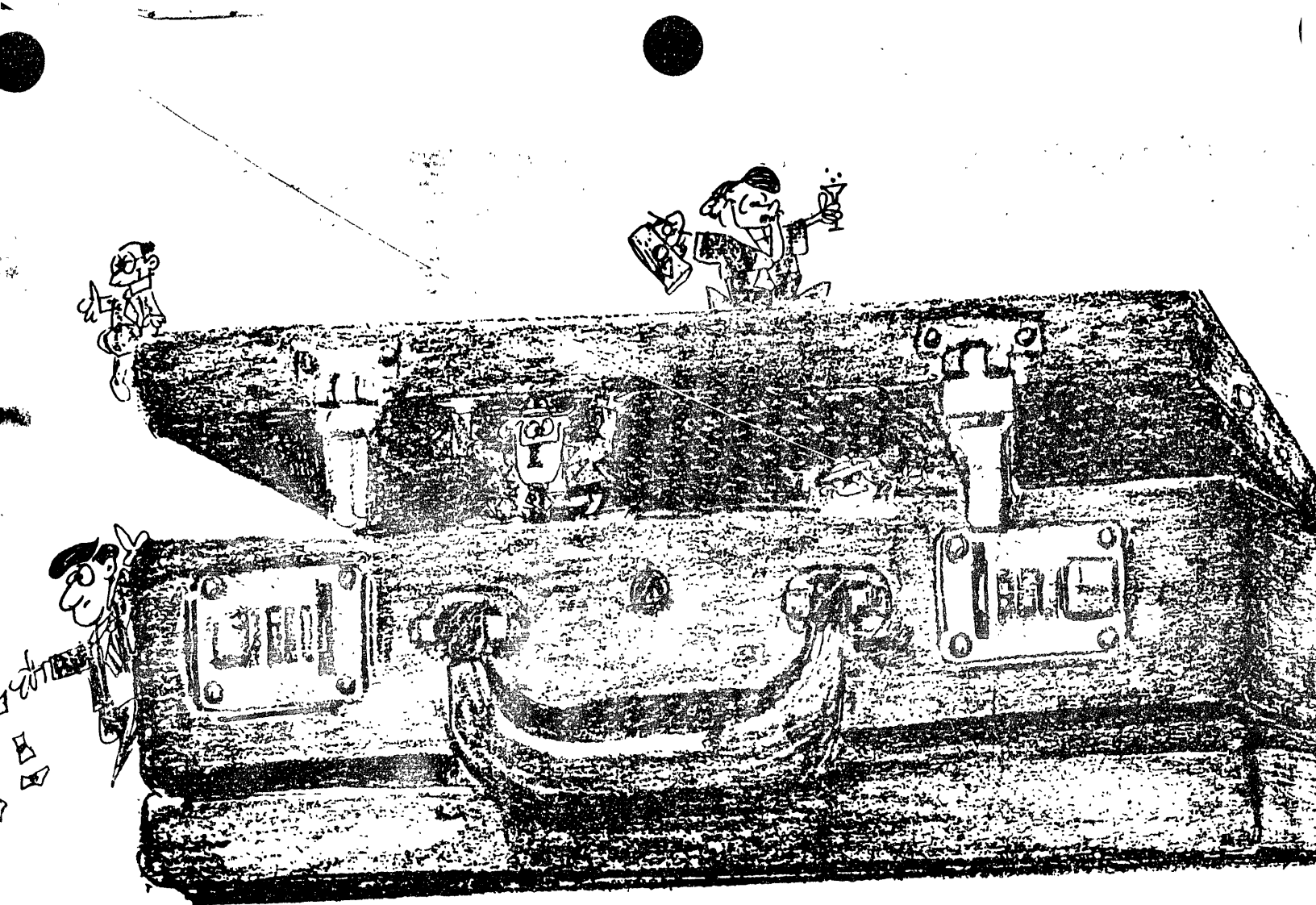
Earliest possible date of adoption: April 10, 1989

For further information, please call: (512) 463-5009





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School: Plano High, Plano



Name: Alan Springate
School: Plano High, Plano



Name: Paul Booker
School: Plano High, Plano



Name: Carlos Marin
School: Plano High, Plano

Withdrawn Sections

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

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 11. Surface Mining and Reclamation Division

Subchapter D. Coal Mining

• 16 TAC §11.221

Pursuant to Texas Civil Statutes, Article 6252-13, §5(b), and 1 TAC §91.24(b), the proposed amendment to §11.221, submitted by the Railroad Commission of Texas has been automatically withdrawn, effective March 1, 1989. The amendment as proposed appeared in the August 30, 1988, issue of the *Texas Register* (13 TexReg 4290).

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.

TRD-8901953

Filed: March 1, 1989

TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 21. Student Services

Subchapter J. The Physician Student Loan Repayment Program

• 19 TAC §21.254

Pursuant to Texas Civil Statutes, Article 6252-13, §5(b) and 1 TAC §91.24(b), the proposed amendment to §21.254, submitted by the Texas Higher Education Coordinating Board has been automatically withdrawn, effective March 3, 1989. The amendment as proposed appeared in the September 2, 1988, issue of the *Texas Register* (13 TexReg 4370).

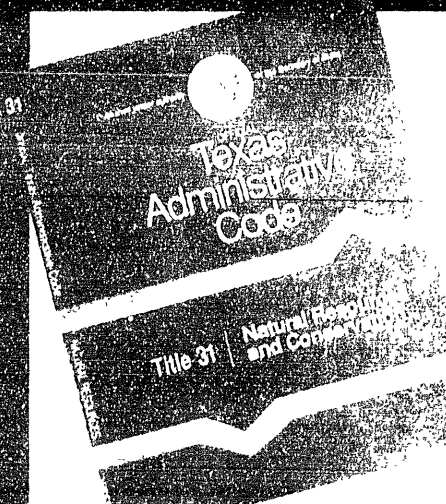
This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

TRD-8902104

Filed: March 3, 1989

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