Texas Register

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Texas Register

The *Texas Register* (ISN 0362-4781) is published twice each week 100 times a year except March 7, 1989, June 2, 1989, July 7, 1989, November 28, 1989, and December 29, 1989. Issues will be published by the Office of the Secretary of State.

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

Information Available: The eight sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor–appointments, executive orders, and proclamations

Attorney General–summaries of requests for opinions, opinions, and open records decisions

Emergency Sections–sections adopted by state agencies on an emergency basis

Proposed Sections–sections proposed for adoption

Withdrawn Sections–sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date

Adopted Sections–sections adopted following a 30-day public comment period

Open Meetings–notices of open meetings

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

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

How To Cite: Material published in the *Texas Register* is referenced by citing the volume in which a document appears, the words "TexReg," and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 6 (1981) is cited as follows: 6 TexReg 2402.

In order that readers may cite material more easily page numbers are now written as citations. Example: on page 2 in the lower left-hand corner of the page, would be written: "14 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 14 TexReg 3."

How To Research: The public is invited to research rules and information; of interest between 8 a.m. and 5 p.m. weekdays at the Texas Register office, Room 245, James Earl Rudder Building, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, sections number, or TRD number.

Texas Administrative Code

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

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

1 indicates the title under which the agency appears in the *Texas Administrative Code;*

TAC stands for the *Texas Administrative Code;*

§27.15 is the section number of rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

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The Governor

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

Appointments Made August 24, 1989

To be a member of the **Trinity River Authority of Texas Board of Directors,** for a term to expire March 15, 1995: Erma Chansler Johnson, 2362 Faett Court, Fort Worth, Texas 76119. Mrs. Johnson will be replacing Howard Brants, Jr. of Fort Worth, whose term expired.

To be a member of the **Trinity River Authority of Texas Board of Directors,** for a term to expire March 15, 1995: William D. Elliott, 7581 Benedict, Dallas, Texas 75214. Mr. Elliott will be replacing Donald R. Cutler of Duncanville, whose term expired.

To be a member of the **Texas Sabine River Compact Commission** for a term to expire July 12, 1995: David V. Cardner, 4616 Emerson Road, Orange, Texas 77630. Dr. Cardner will be replacing Jim Tom McMahon of Newton, whose term expired.

To be a member of the **On-Site Wastewater Treatment Research Council** for a term to expire September 1, 1991: Daniel Edward Beckett, 9607 Southward Cove, Austin, Texas 78733. Mr. Beckett is being reappointed.

To be a member of the **On-Site Wastewater Treatment Research Council** for a term to expire September 1, 1991: E. Boone Coy, 17602 Loring Lane, Spring, Texas 77388. Mr. Coy is being reappointed.

To be a member of the **Rio Grande Valley Municipal Water Authority Board of Directors** for a term to expire April 30, 1991: John Halm, Jr., Route 1, Box 126, Raymondville, Texas 78580. Mr. Halm will be replacing Russell F. Klostermann of Raymondville, whose term expired.

To be a member of the **Texas Structural Pest Control Board** for a term to expire February 1, 1995: Dr. Jimmy L. Horner, Route 1, Box 51-B, Decatur, Texas 76234. Dr. Horner is being appointed to a new position pursuant to House Bill 3167, 71st Legislature, Regular Session.

To be a member of the **Texas Structural Pest Control Board** for a term to expire February 1, 1993: Rayford G. Kay, 10015 Warwana, Houston, Texas 77080. Mr. Kay is being appointed to a new position pursuant to House Bill 3167, 71st Legislature, Regular Session.

To be a member of the **Texas Board of Land Surveying** for a term to expire January 31, 1995: Herman Hays Forbes, 1201 Canary Court, Round Rock, Texas 78681. Mr. Forbes will be replacing Byron L. Simpson of San Antonio, whose term expired.

To be a member of the **Texas State Technical Institute Board of Regents** for a term to expire August 31, 1995: Noe Fernandez, 101 Westway, McAllen, Texas 78501. Mr. Fernandez will be replacing Gerald Don Phariss of Garland, whose term expired.

To be a member of the **Texas Southern University Board of Regents** for a term to expire February 1,1995: Carroll W. Phillips, 401 Longwoods, Houston, Texas 77024. Mr. Phillips will be replacing J. Kent Friedman of Houston, whose term expired.

To be a member of the **Texas State University System Board of Regents** for a term to expire February 1,1995: Daniel S. Ouellette, 16 Windsor Drive, Beeville, Texas 78102. Mr. Ouellette will be replacing Katherine Lowry of Austin, whose term expired.

Appointments Made August 29, 1989

To be a member of the **Statewide Health Coordinating Council** for a term to expire September 1,1991: Damaso A.Oliva, M.D., 207 Chattington Court, San Antonio, Texas 78213. Dr. Oliva is being reappointed.

To be a member of the **Statewide Health Coordinating Council** for a term to expire September 1, 1991: Mary Margaret Newsome, 1130 Cottage Oak Lane, Houston, Texas 77091. Mrs. Newsome is being reappointed.

To be a member of the **Statewide Health Coordinating Council** for a term to expire September 1, 1991: Betty H.Himmelblau, 4609 Ridge Oak Drive, Austin, Texas 78731. Mrs. Himmelblau is being reappointed.

To be a member of the **Statewide Health Coordinating Council** for a term to expire September 1, 1991: Ernest J. Gerlach, 8 Burwood Lane, San Antonio, Texas 78216. Mr. Gerlach is being reappointed.

To be a member of the **Statewide Health Coordinating Council** for a term to expire September 1, 1991: Scott Moore Duncan, 3100 Weslayan, Suite 450, Houston, Texas 77027. Mr. Duncan is being reappointed.

To be a member of the **Statewide Health Coordinating Council** for a term to expire September 1, 1991: Larry Thomas Craig, 120 Survey Trails, Tyler, Texas 75705. Judge Craig is being reappointed.

To be a member of the **Statewide Health Coordinating Council** for a term to expire September 1, 1991: Lawrence J. Canfield, 4313 High Bluff Circle, Temple, Texas 76502. Mr. Canfield is being reappointed.

Issued in Austin, Texas on September 8, 1989.

TRD-8908352

William P. Clements, Jr.
Governor of Texas

♦ ♦ ♦

Executive Order

WPC 89-18

ESTABLISHING THE STATE COORDINATING COMMITTEE–NATIONAL COMMUNITY VOLUNTEER FIRE PREVENTION PROGRAM

WHEREAS, the Federal Fire Prevention and Control Act of 1974 (Public Law 93-498, as amended) makes funding available to the State of Texas to increase the effectiveness of local fire prevention efforts through the National Community Volunteer Fire Prevention Program; and,

WHEREAS, the Texas Department of Community Affairs is designated as the state agency to administer, conduct, or jointly sponsor educational and training programs for local governments in the State of Texas pursuant to state statute (art. 4413 (201) section 4, Texas Civil Statutes); and,

WHEREAS, the Federal Fire Prevention and Control Act of 1974, as aforementioned, contemplates the establishment of a state advisory committee to advise the state administering agency with respect to the development and implementation of the National Community Volunteer Fire Prevention Program in Texas; and,

WHEREAS, I have the authority to appoint special advisory committees to assist in basic policy formation for the Texas Department of Community Affairs pursuant to state statute (art. 4413 (201) section 7, Texas Civil Statutes);

NOW, THEREFORE, I, William P. Clements, Jr., Governor of Texas, under the authority vested in me, do hereby establish the State Coordinating Committee–National Community Volunteer Fire Prevention Program, hereinafter referred to as "Committee", which shall serve in an advisory capacity to the Texas Department of Community Affairs on matters relating to the National Community Volunteer Fire Prevention Program. The Committee shall serve solely in an advisory capacity and shall not assume any administrative authority or responsibility.

The Committee shall consist of no more than ten (10) members appointed by the Governor. Each member shall hold office at the pleasure of the Governor. Members of the Committee shall have special qualifications and sensitivity with respect to increasing the effectiveness of local fire prevention efforts.

The Committee shall meet at the call or request of the Executive Director of the Texas Department of Community Affairs. Committee members shall serve without compensation; provided that the Texas Department of Community Affairs may reimburse Committee members for actual and necessary expenses in attending the meetings of the Committee and in the performance of their other duties. Meetings of the Committee shall be held at least quarterly.

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 August 25, 1989.

TRD-8908201 William P. Clements, Jr.
Governor of Texas

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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 Decision

JM-527(RQ-1578). Request from Merrrill Hartman, Chairman, Court Reporters Certification Board, Austin, concerning whether the Court Reporters Certification Board is subject to the Texas Open Records Act, Texas Civil Statues, Article 6252-17a.

Summary of Decision. The Court Reporters Certification Board is subject to the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a. The board is not part of the judiciary within the meaning of Article 6252-17a, §2(1)(G), which exempts the judiciary from the Open Records Act.

The Texas Supreme Court's rule that purports to exempt virtually all of the board's records from public disclosure is invalid because it conflicts with the Open Records Act. The records at issue are public.

TRD-8908198

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Opinions

JM-1087(RQ-1675). Request from Rene Guerra, Criminal District Attorney, Hidalgo County Courthouse, Edinburg, concerning whether the common law doctrine of incompatibility may be overcome by a charter provision of a home rule city which specifically permits such dual office holding.

Summary of Opinion. Under the terms of the charter of the City of Alamo, the mayor may, in certain circumstances, simultaneously serve as city manager. The common law doctrine of incompatibility does not prevail over the charter provision.

TRD-8908199

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JM-1088(RQ-1756). Request from Steve Fischer, District and County Attorney, Willacy County Courthouse, Raymondville, and Eleazar Garcia, Jr. , Willacy County Auditor, First Floor, Courthouse, Raymondville, concerning whether a particular district judge is a member of a county juvenile board.

Summary of Opinion. The Juvenile Board of Willacy County consists of six members: the district judges for the 103rd, 107th, 138th, 197th, and 357th judicial districts and the county judge. All six members of the board are entitled to the compensation provided for in Article 5139MMMM, §5.

TRD-8908197

JM-1089(RQ-1749). Request from Pat D. Westbrook, Executive Director, Texas Commissin for the Blind, Austin, concerning enforcement of the support dog laws under the Human Resources, Chapter 121.

Summary of Opinion. The prosecutor at the county level the county attorney or in some cases the criminal district attorney or district attorney, has responsibility for prosecuting the offense described in the Human Resources Code,§121.004(a), relating to discrimination against vvisually handicapped persons using support dogs in public facilities. Where the offense is committed in a city having a municipal court of record with jurisdiction over such offense, the city attorney may also prosecute such offsnse in that court.

TRD-8908195

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Requests for Opinions

(RQ-1795). Request from William A. Meincke, Executive Secretary, Texas Racing Commission, Austin, concerning whether the Texas Racing Commission is authorized to pay breeders' awards for horses at the time of conception.

(RQ-1796). Request from Tom Neely, Wilbarger County Attorney, Third Floor, Wilbarger Courthouse, Vernon, concerning whether the City of Vernon may contract to buy water from the City of Altus, Oklahoma.

(RQ-1797). Request from Steven D. Wolens, Chairman, Business and Commerce, Texas House of Representatives, Austin, concerning obligation of a real estate licensee with regard to disclosure that a previous or current occupant of real property has or had AIDS or HIV infection.

(RQ-1798). Request from Bob McFarland, State Senator, Texas State Senate, Austin, concerning whether junior colleges are subject of House Bill 1498, which requires school districts to obtain criminal history record information from applicants for employment.

(RQ-1799). Request from Terral Smith, Chairman, Natural Resources, Texas House of Representatives, Austin, concerning whether the nepotism provisions of the Texas Water Code, Chapter 50, apply to the Barton Springs-Edwards Aquifer Conservation District.

(RQ-1800). Request from Robert Hill Trapp, County Attorney, San Jacinto County, Coldspring, concerning application of the Tax Code, §31.04(a), to tax bills which cannot be mailed because of an unknown address.

TRD-8908196

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Emergency Sections

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

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

TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 407. Internal Facilities management

Lease of TDMHMR Surplus Property

• 25 TAC §407.120

The Texas Department of Mental Health and Mental Retardation (TDMHMR)adopts on an emergency basis new §407.120, concerning lease of TDMHMR surplus property. Senate Bill 542 of the 71st Texas Legislature, which takes effect on August 28, 1989, establishes a procedure for the sale or lease of state land that applies unless state agency enabling legislation authorizes otherwise. The Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 5547-205, §5.03 establishes a procedure for TDMHMR to manage surplus property, including the lease, transfer, or disposal of surplus real property. The new section further provides that the Texas Board of Mental Health and Mental Retardation will adopt rules to protect the best interests of the State of Texas.

The purpose of the emergency adoption is to enact statutory intent that the department manage surplus property under the provisions of Texas Civil Statutes, Article 5547-205. The new section is contemporaneously proposed for public comment in this issue of the Texas Register.

The new section is adopted under Texas Civil Statutes, Article 5547-205, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers, and under the Administrative Procedures and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which provides state agencies the authority to adopt on an emergency basis rules required by state or federal law.

§407.120. Lease of TDMHMR Surplus Property.

(a) Commercial leases may only be executed for department property that the Texas Board of Mental Health and Mental Retardation has declared to be surplus property in accordance with Texas Civil Statutes,Article 5547-205, §5.03(a).

(b) Proposals to lease surplus property shall be made to the board by the department or by the General Land Office. All lease proposals shall be advertised at least once a week for four consecutive weeks in at least two newspapers, one of which shall be published in the city where the property is located, or in the nearest daily paper thereto, and the other in a paper with statewide circulation. The advertisement shall summarize the lease proposal, provide the name and address of a person to whom interested parties may submit bids for consideration by the department, and state where a copy of the proposal and the board's criteria for awarding the lease can be obtained.

(c) The department shall review any bids received based upon the adopted criteria, and may conduct a review of other factors which it deems to be appropriate on any or all bids.

(d) Prior to the award of any lease that will have a term exceeding five years, the board shall be apprised of all bids received.

(e) The department may reject any and all bids.

(f) Proceeds from a lease shall be used and held in accordance with Texas Civil Statutes, Article 5547-205, §5.03(b).

Issued in Austin, Texas on September 8, 1989.

TRD-8908325 Pattilou Dawkins
Chairman
Texas Department of
Mental Health and
Mental Retardation

Effective date: September 8, 1989

Expiration date: January 6, 1990

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

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TITLE 34. PUBLIC FINANCE

Part IV. Employees Retirement System of Texas

Chapter 65. Executive Director

• 34 TAC §65.9

The Employees Retirement System of Texas adopts on an emergency basis new §65.9, concerning executive director. This new section will provide that any right, power, or duty imposed on the executive director by law or rule may be exercised or performed by the deputy executive director. The new section also permits the deputy director for programs to serve as a nonvoting member of the Group Insurance Advisory Committee in place of the executive director.

The new section is adopted on an emergency basis under Texas Civil Statutes, Title 110B, §25.202, House Bill 1632, passed during the 71st Legislative Session, which provide the trustees of the Employees Retirement System of Texas with the authority to adopt this rule. The legislation amended Texas Civil Statutes, Title 110B, §25.202 to read as follows: "The Board of Trustees may specifically delegate any right, power, or duty imposed or conferred on the executive director by law to another employee of the retirement system. In addition, Texas Civil Statutes, Title 110B, §25.102, provide rule making authority to the trustees in the administration of the retirement system.

§65.9. Delegation of Authority.

(a) Any right, power, or duty imposed or conferred on the executive director bylaw or by rule may be exercised or performed by law or by rule may be exercised or performed by the deputy executive director.

(b) The deputy director for programs may serve as a nonvoting member of the Group Insurance Advisory Committee in place of the executive director.

Issued in Austin, Texas on September 7, 1989.

TRD-8908266 Clayton T. Garrison
Executive Director
Employees Retirement
System of Texas

Effective date: September 7, 1989

Expiration date: January 5, 1990

For further information, please call: (512) 476-6431, ext. 213

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Chapter 71. Creditable Service

• 34 TAC §§71.3, 71.7, 71.17

The Employees Retirement System of Texas adopts on an emergency basis amendments to §71.3 and 71.7, and new §71.17, concerning creditable service. Section 71.3 is amended to allow for establishment of dual credit in two classes of membership if such service is the result of a calendar year purchase. This amendment is required to implement provisions of State Bill 187, 71st Legislature. Section 71.7 is amended to remove the restriction of dual credit resulting

from calendar year purchase, but continues to prohibit multiple service credits for one month of service under the same class of membership. New §71.17 will provide credit for accumulated sick leave and will implement the requirements of House Bill 827, 71st Legislature.

The amendments are adopted on an emergency basis under Texas Civil Statutes, Title 110B, §25.102, which provide the trustees of the Employees Retirement System of Texas with the authority to promulgate rules, regulations, plans, procedures, and orders reasonably necessary to carry out the purposes of this Act.

§71.3. Service Credit for Members of the Elective Class.

(a) (No change.)

(b) To purchase service credit for a calendar year under the provisions of the Government Code, §813.402, Title 110B, [§23.402, Texas Civil Statutes,] a person must be a contributing member of the system. The service on which such contributions are based must be for a period of at least 30 days.

(c) A member of the elected class who on or after September 1, 1989 purchases and receives credit in the elected class for calendar year service and who during that same calendar year holds a position as an appointive officer or employee shall also receive credit in the employee class of membership [An elective state official member who purchases service credit in the elective class for an entire calendar year and who accepts a position during that calendar year in the employee class shall contribute to the system during the months of state employment. Service credit as an appointive officer or employee shall not be granted for months for which service credit as an elective state official has been established].

§71.7. Limitation on Service Credit. No more than one month's credit can be given under a class of membership for a month or fraction of a month of service rendered or established under that class [in the Employees Retirement System may be given for all service in the same month].

§71.17. Credit for Unused Accumulated Sick Leave.

(a) Unused accumulated sick leave is creditable only in the employee class of membership and only so long as the last day of employment occurs during the month in which the retirement becomes effective. Credit for unused accumulated sick leave cannot be used to establish length of service requirements for purposes of retirement or death benefit plan eligibility.

(b) Before the amount of service credit can be determined, an authorized state agency official must certify, on a form prescribed by the system, the amount of unused accumulated sick leave to the credit of the member on the last day of employment.

(c) Eligible sick leave credit will become effective as service credit only after retirement. Subject to that limitation, eligible sick leave credit will become effective as service credit in the month in which certification is received by the system, provided that such receipt is before the eleventh day of the month; otherwise, such credit will become effective the month following receipt of certification.

(d) The amount determined necessary to fund the benefit shall be calculated and certified by the system to the state comptroller or to the state agency head, when such state agency's operating budget is from local funds. If funding for the benefit is inadequate or cannot be made to the system, the additional benefit will not be paid.

(e) The reserve factor tables used to calculate the amount required to be paid by a state agency to fund sick leave credit are described in §73.21(e) of this title (relating to Reduction Factor for Age and Retirement Option).

(f) The percentage value of all service creditable in the employee class of membership shall not exceed 80%.

Issued in Austin, Texas on September 7, 1989.

TRD-8908265 Clayton T. Garrison
Executive Director
Employees Retirement System of Texas

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Expiration date: January 5, 1990

For further information, please call: (512) 476-6431, ext. 213

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Chapter 73. Benefits

• 34 TAC §§73.11, 73.21, 73.29

The Employees Retirement System of Texas adopts on an emergency basis amendments to §73.11 and §73.21, and new §73.29, concerning benefits. The amendment to §73.11 adopts new age reduction factors for retirement from the supplemental retirement program prior to age 50 as required by House Bill 1494 passed by the 71st Legislature. Section 73.21 is amended to adopt by reference new reserve factor tables for use in computing sick leave credit as required by House Bill 827, 71st Legislature. New §73.29 requires spousal consent for selection of a retirement annuity other than a joint and survivor annuity that pays benefits to the member's spouse on the death of the member. The amendments and new section are adopted to implement the requirements of Senate Bill 187, 71st Legislature.

The amendments and new section are adopted on an emergency basis under Texas Civil Statutes, Title 110B, §§25.102, 25.105, and 77.001, which provide the trustees of the Employees Retirement System of Texas with the authority to promulgate rules, regulations, plans, procedures, and orders reasonably necessary to carry out the purposes of this act.

§73.11. Supplemental Retirement Program.

(a) (No change.)

(b) Age reduction factors for retirement from the supplemental program prior to age 50 [55] are adopted by reference and are made a part of this section for all purposes. Copies of the factors may be obtained from the executive director of the Employees Retirement System at 18th and Brazos Streets, P.0. Box 13207, Austin, Texas 78711-3207 [78711].

(c)-(e) (No change.)

§73.21. Reduction Factor for Age and Retirement Option.

(a) Adoption of tables for calculation of benefits.

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

(4) Copies of these tables are available from the executive director of the Employees Retirement System of Texas at 18th and Brazos Streets, P. 0. Box 13207, Austin, Texas 78711-3207 [78711]. The GA-51 male mortality table, along with the adjustments described in paragraphs (1)-(3) of this subsection, is adopted by reference and made a part of this section for all purposes.

(b) Reduction factors for early retirement or death. The actuaries have developed reduction factors for early retirement or death in accordance with the mortality tables adopted by the board. Those tables are adopted by reference and made a part of this section for all purposes. They are available from the executive director of the Employees Retirement System at 18th and Brazos Streets, P. 0. Box 13207, Austin, Texas 78711-3207 [78711].

(c) Reduction factors for Options 1-5.

(1) Adoption of tables. The option factors adopted by reference effective September 21, 1981, are hereinafter called the 1981 factors and are retained for the purposes described in this section. New option factors, hereinafter called the 1984 factors, have been developed by the actuaries and are adopted by reference subject to the limitations of this subsection. Both sets of factors are available from the executive director of the Employees Retirement System at 18th and Brazos Streets, P. 0. Box 13207, Austin, Texas 78711-3207 [78711].

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

(d) (No change.)

(e) Reserve factor tables for use in computing sick leave credit. The reserve factor tables described in subsec-

tion (d) of the section are adopted by reference and made a part of this section for all purposes and shall be used to calculate the amount required to be paid by a state agency to fund sick leave credit. Copies of these tables are available from the executive director of the Employees Retirement System of Texas at 18th and Brazos Streets, P. O. Box 13207, Austin, Texas 78711-3207.

§73.29. Spousal Consent or Acknowledgment Requirements.

(a) The selection by a member of a service retirement annuity other than a joint and survivor annuity that pays benefits to the spouse of the member on the death of the member, is not effective unless the member's spouse consents to the selection or it is established to the satisfaction of the system that:

(1) there is no spouse;

(2) the spouse cannot be located; or

(3) the spouse and the member will have been married for less than one year as of the date the annuity first becomes payable.

(b) The selection by a member of a joint and survivor annuity that pays benefits to the spouse of the member on the death of the member should be acknowledged by the member's spouse unless one of the exceptions in subsections (a)(1)-(3) of this section is established to the satisfaction of the system.

(c) Should the spouse of the member be judicially declared incompetent, the consent or acknowledgment required by this section shall be given by the spouse's legal guardian. The consent or acknowledgment of a spouse who is incapable of giving his or her consent or acknowledgment as required by this section, may be given by a legal representative of the spouse only if the executive director or a person designated by the executive director determines:

(1) that the spouse is incapable of giving his or her consent or acknowledgment; and

(2) the person or persons qualify as the legal representative of the spouse.

(d) The consent or acknowledgment required by this section must be in writing on a form prescribed by the Employees Retirement System of Texas and acknowledged before a notary public.

(e) The provisions of this section apply only to service retirement annuities.

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

TRD-8909284 Clayton T. Garrison
Executive Director
Employees Retirement System of Texas

Effective date: September 1, 1989

Expiration date: December 30, 1989

For further information, please call: (512) 476-6431, ext. 213

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Chapter 74. Qualified Domestic Relations Orders

- **34 TAC §§74.1-74.3, 74.5, 74.7, 74.9, 74.11**

The Employees Retirement System of Texas adopts on an emergency basis new §§74.1, 74.3, 74.5, 74.7, 74.9 and 74.11 concerning domestic relations orders. The new sections will provide for uniform requirements and procedures for the processing of domestic relations orders received by the Employees Retirement System of Texas. The new sections will implement the requirements of State Bill 187, which was passed by the 71st Legislature.

The new chapter is adopted on an emergency basis under Texas Civil Statutes, Title 110B, §76.003 and §25.102, which provide the trustees of the Employees Retirement System of Texas with the authority to promulgate rules it deems necessary to implement, and authorize optional payments to alternate payees under a qualified domestic relations order.

§74.1. Purpose. This chapter describes the process and procedure for the implementation of a qualified domestic relations order.

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

Alternate payee–A spouse, former spouse, child, or other dependent of a member or retiree who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable by the system with respect to such member or retiree.

Benefits or benefits payable with respect to a member or retiree–Any annuity or return of contributions authorized by the program provisions.

Board of trustees–The board of trustees of the Employees Retirement System of Texas.

Domestic relations order–Any judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a member or retiree, and is made pursuant to a domestic relations law, including a community property law of the State of Texas or of another state.

Executive director–The executive director of the Employees Retirement System of Texas.

Program or program provisions–The program of payments of benefits, as defined in this section, and as established by the statutes, rules, procedures, and policies applicable to the system.

Qualified domestic relations order–A domestic relations order which creates or recognizes the existence of an alternate payee's right, or assigns to an alternate payee the right, to receive all or a portion of the benefits payable with respect to a member or retiree under the system, which directs the system to disburse benefits to the alternate payee, and which meets the requirements of Texas Civil Statutes, Title 110B, §76.003.

System–The Employees Retirement System of Texas, and the Judicial Retirement System of Texas Plan I and the Judicial Retirement System of Texas Plan II, administered by the board of trustees of the Employees Retirement System of Texas.

§74.5. Antialienation. The Government Code, Title 8, §§811. 005, 831.004, and 836.004, shall apply to the creation, assignment, recognition, or enforcement of a right to any benefit payable with respect to a member or retiree of the system to which the section applies pursuant to a domestic relations order unless the order is determined to be a qualified domestic relations order.

§74.7. Requirements. A domestic relations order is a qualified domestic relations order only if such order:

(1) clearly specifies the name, social security number, and last known mailing address, if any, of the member or retiree and the name, social security number, and mailing address of each alternate payee covered by the order;

(2) clearly specifies the amount or percentage of the member's or retiree's benefits to be paid by the system to each such alternate payee or the manner in which such amount or percentage is to be determined;

(3) clearly specifies the number of payments or the period to which such order applies;

(4) clearly specifies that such order applies to the system;

(5) does not require the system to provide any type or form of benefit or any option not otherwise provided under the program;

(6) does not require the system to provide increased benefits determined on the basis of actuarial value;

(7) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order;

(8) does not require the payment of benefits to an alternate payee before the retirement of a member, the distribution of a withdrawal of contributions to a member, or other distribution to a member required by law;

(9) provides for a proportional reduction of the amount awarded to an alternate payee in the event of the retirement of the member before normal retirement age;

(10) does not purport to require the designation of a particular person as the recipient of benefits in the event of a member's or annuitant's death;

(11) does not purport to require the selection of a particular benefit payment;

(12) provides clearly for each possible benefit distribution under program provisions;

(13) does not require any action on the part of the system contrary to its program provisions other than the direct payment of the benefit awarded to an alternate payee;

(14) does not make the award of an interest contingent on any condition other than those conditions resulting in the liability of the system for payments under its program provisions;

(15) does not purport to award any future benefit increases that are provided or required by the legislature; and

(16) provides for a proportional reduction of the amount awarded to an alternate payee in the event that benefits available to the retiree or member are reduced by law.

§74.9. Determination. Action on a domestic relations order shall be taken in accordance with the provisions of this section.

(1) The executive director or his designee has the exclusive authority to determine whether a domestic relations order is a qualified domestic relations order. Upon receipt of a certified copy of a domestic relations order, the executive director shall determine whether such order is a qualified domestic relations order and shall notify the member or retiree and each alternate payee of the determination. If the order is determined to be a qualified domestic relations order, benefits shall be paid in accordance with the order. If the order is determined not to be a qualified domestic relations order, the member or retiree or any alternate payee named in the order may appeal the determination of the executive director to a court of competent jurisdiction, and may petition the court which issued the order to amend the order so that it will be qualified.

(2) Appeals to the board of trustees of the determination of the executive director are not required.

(3) During any period in which issue of whether a domestic relations order is a qualified domestic relations order is being determined, the system shall separately account for the amounts, in this section referred to as the segregated amounts, which would have been payable to the alternate payee or alternate payees during such period if the order had been determined to be a qualified domestic relations order.

(4) If a domestic relations order is determined to be a qualified domestic relations order, then the system shall pay the segregated amounts without interest to the alternate payee or alternate payees entitled thereto and shall thereafter pay benefits pursuant to the order.

(5) If a domestic relations order is determined not to be a qualified domestic relations order or if within 18 months of the date a domestic relations order is received by the system the issue as to whether such order is a qualified domestic relations order is not resolved, then the system shall pay the segregated amounts without interest and shall thereafter pay benefits to the person or persons who would have been entitled to such amounts if there had been no order.

(6) Any determination that an order is a qualified domestic relations order which is made after the close of the 18-month period, shall be applied prospectively only.

§74.11. Alternate Payments. Optional payments for alternate payees pursuant to a qualified domestic relations order may be made as follows.

(1) In lieu of paying an alternate payee the interest awarded by a qualified domestic relations order, the system, at its sole discretion, may pay the alternate payee an amount that is the actuarial equivalent of the interest in the form of:

(A) an annuity payable in equal monthly installments for the life of the alternate payee; or

(B) a lump sum.

(2) If the alternate payee is paid pursuant to this section, the system shall be entitled to rely on a beneficiary designation or benefit option selection made or changed pursuant to its program provisions, without regard to any domestic relations order.

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TRD-8908262 Clayton T. Garrison
Executive Director
Employees Retirement
System of Texas

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For further information, please call: (512) 476-6431, ext. 213

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Chapter 77. Judicial Retirement

• 34 TAC §77.7

The Employees Retirement System of Texas adopts on an emergency basis new §77.7 concerning spousal consent or acknowledgement requirements. This new section relates to the Judicial Retirement System of Texas Plan I and the Judicial Retirement System of Texas Plan II. This new section is adopted to implement the requirements of Senate Bill 187, 71st Legislature and will require spousal consent for selection of a retirement annuity other than a joint and survivor that pays benefits to the member's spouse on the death of the member.

The new section is adopted on an emergency basis under Texas Civil Statutes, Title 110B, §25.102 and §77.001, which provide the trustees of the Employees Retirement System of Texas with the authority to adopt rules to require spousal consent for the selection of a service retirement annuity which pays benefits to the member's spouse on the death of the member, or for the selection of a death benefit plan that pays benefits in the form of an annuity to a person other than the member's spouse on the death of the member.

§77.7. Spousal Consent or Acknowledgement Requirements.

(a) The provisions of this section apply to the Judicial Retirement System of Texas Plan I and the Judicial Retirement System of Texas Plan II.

(1) The selection by a member of a service retirement annuity other than a joint and survivor annuity that pays benefits to the spouse of the member on the death of the member, is not effective unless the member's spouse consents to the selection or it is established to the satisfaction of the system that:

(A) there is no spouse;

(B) the spouse cannot be located; or

(C) the spouse and the member will have been married for less than one year as of the date the annuity first becomes payable.

(2) The selection by a member of a joint and survivor annuity that pays benefits to the spouse of the member on the death of the member, should be acknowledged by the member's spouse unless one of the exceptions in paragraph (1) (A)-(C) of this subsection is established to the satisfaction of the system.

(b) Should the spouse of the member be judicially declared incompetent, the consent or acknowledgement required by this section shall be given by the spouse's legal guardian. The consent or acknowledgement of a spouse who is incapable of giving his or her consent or acknowledgement as required by this section, may be

given by a legal representative of the spouse only if the executive director or a person designated by the executive director determines:

(1) that the spouse is incapable of giving his or her consent or acknowledgement; and

(2) the person or persons qualify as the legal representative of the spouse.

(c) The consent or acknowledgement required by this section must be in writing on a form prescribed by the Employees Retirement System of Texas and acknowledged before a notary public.

(d) The provisions of this section apply only to service retirement annuities.

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Executive Director
Employees Retirement
System of Texas

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For further information, please call: (512) 476-6431, ext. 213

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Chapter 81. Insurance

• 34 TAC §81.7

The Employees Retirement System of Texas adopts on an emergency basis an amendment to §81.7, concerning pre-existing condition limitation. This emergency amendment was made necessary by House Bill 2609 passed by the 71st Legislature which is effective September 1, 1989. This law requires that persons transferring from a state institution of higher education to state employment be allowed to enroll in the indemnity health plan without being subject to pre-existing conditions. This emergency amendment will set up procedures for the Employees Retirement System to implement the requirements of House Bill 2609.

The amendment is adopted on an emergency basis under the Texas Insurance Code, Article 3.50-2, §4, as amended, which provides the board of trustees with the authority to adopt rules as it shall deem necessary to insure the proper administration of the Texas Employees Uniform Group Insurance Program.

§81.7. Enrollment and Participation.

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

(g) Pre-existing condition limitation. For initial health insurance coverage on or after September 1, 1985-August 31, 1988, or health insurance coverage changes effective on or after September 1, 1985-August 31, 1988, the pre-existing condition exclusion shall apply to employees, retirees, and eligible dependents (including newly acquired dependents, but excluding newborns) who are enrolled in the insured health benefits plan. The exclusion limits benefit payments to $500 for a full 12 months from the effective date of coverage for a pre-existing condition, as defined in §81.1 of this title (relating to Definitions). For initial health insurance coverage on or after September 1, 1988, or health insurance coverage changes effective on or after September 1, 1988, the pre-existing condition exclusion shall apply to employees, retirees, and eligible dependents (including newly acquired dependents, but excluding newborns) who are enrolled in the insured health benefits plan. The exclusion limits benefit payments to $0 for a full 12 months from the effective date of coverage for a pre-existing condition, as defined in §81.1 of this title (relating to Definitions). The pre-existing condition exclusion will not apply to:

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

(3) an individual allowed to return to the insured health plan because he or she moves permanently out of an HMO service area except that, if the return to the insured plan occurs within 12 months of the initial date of coverage under the current term of employment, the exclusion will apply for the remainder of the 12-month period for any condition for which the participant received medical advice or was [was seen or] treated by a physician during the six-month [90-day] period immediately prior to the initial date of coverage under the current term of employment; or [or]

(4) an individual who enrolls in an HMO; or [.]

(5) an individual (including previously covered dependents) transferring employment with no break in service from a state institution of higher education (excluding public community junior colleges) to a state agency or department on or after September 1, 1989.

(h)-(i) (No change.)

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TRD-8908260 Clayton T. Garrison
Executive Director
Employees Retirement
System of Texas

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For further information, please call: (512) 476-6431, ext. 213

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Chapter 85. Flexible Benefits

• 34 TAC §§85.1, 85.3, 85.5

The Employees Retirement System of Texas adopts on an emergency basis amendments §§85.1, 85.3, and 85.5, concerning flexible benefits. The board of trustees of the Employees Retirement System of Texas adopted the emergency amendments on August 29, 1989.

The amendments are to comply with Senate Bill 815 (71st Legislature 1989) which amended the Texas Employees Uniform Group Insurance Benefits Act, Insurance Code, Article 3.50-2 §11(c) and §14(d).

The amendment to §85.3 will permit employees who execute an fiscal year 1990 plan year salary reduction agreement, enrolling in premium conversion, to automatically participate in subsequent plan years. The amendment to §85.1 and §85.5 authorize all optional term life insurance to be included in the premium conversion plan.

The amendments are adopted on an emergency basis under the Texas Insurance Code, Article 3.50-2, §4, as amended, which provides the board of trustees of the Employees Retirement System of Texas with the authority to adopt rules as it shall deem necessary to insure the proper administration of the Flexible Benefits (Cafeteria Plan) Program for state employees.

§85.1. Introduction and Definitions.

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

(c) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise, and wherever appropriate, the singular includes the plural, the plural includes the singular, and the use of any gender includes the other gender.

(1)-(22) (No change.)

(23) Insurance premium expenses–Any expenses incurred by a participant, or by a spouse or dependent of such participant, as payment for the amount of insurance premium expense that exceeds the state's contribution offered as an employee benefit by the employer. The types of insurance expense covered by the plan includes out-of-pocket expense for group-term life [of up to and including $50,000], health insurance (including HMO premiums), accidental death and dismemberment insurance, and long- and short-term disability insurance, but does not include out-of-pocket expense for dependent-term life insurance [and employee-term life insurance in excess of $50,000].

(24)-(37) (No change.)

§85.3. Eligibility and Participation.

(a) Premium conversion.

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

(3) Duration of participation.

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

(C) An employee who elects to participate in premium conversion shall be automatically re-enrolled for subsequent plan years unless the employee specifically declines participation in writing during the annual enrollment period or under the change in family status rules.

(D) An employee who elects not to participate in premium conversion must, to re-establish participation in subsequent plan years, execute a new salary reduction agreement during the annual enrollment period or under the change in the family status rules.

(4) (No change.)

(b) (No change.)

§85.5. Benefits.

(a) (No change.)

(b) Premium conversion plan.

(1) Pursuant to the premium conversion plan, a participant may elect to pay certain insurance premium expenses for health, disability, accidental death and dismemberment, and [some] group-term life insurance premiums with pre-tax rather than after-tax dollars. The plan is intended to be qualified under the Texas Insurance Code, §79 and §106, and is an optional benefit under the flexible benefits plan.

(2) (No change.)

(c)-(d) (No change.)

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TRD-8906259 Clayton T. Garrison
Executive Director
Employees Retirement
System of Texas

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Expiration date: January 5, 1990

For further information, please call: (512) 476-6431, ext. 213

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Proposed Sections

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

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

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 17. Marketing Division

Livestock Export Facilities

• **4 TAC §17.31**

The Texas Department of Agriculture proposes an amendment to §17.31, concerning the operation of livestock export facilities. The amendment increases the per head fees for slaughter sheep and goats; increases the charges for all animals handled for air shipment; and establishes individual stall charges for air shipment. A new unloading and document verification charge is also instituted by this amendment.

The increases in charges are proposed to bring the amounts collected closer to a level that will equal actual costs of operating the facilities, in accordance with the intent of the 71st Legislature, 1989.

Paul Lewis, director, international marketing, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. The effect on state government will be an estimated increase in revenue of $15,000 in 1989, and $45,000 in each year in 1990-1991. The effect on local government will be an estimated increase in revenue of $6, 000 in 1989, and $9,100 each year in 1990. Local governments receive 25% of collections, bringing increase to local revenue. Cost to United States exporters will increase by $10 per trailer or truckload. Cost to foreign buyers will be dependent upon number of head of livestock, type of livestock held at the facilities,and length of time held.

Pursuant to Senate Bill 612, Chapter 845, Mr. Lewis has determined that for each year of the first five years the section is in effect, there will be no local employment impact.

Mr. Lewis 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 more efficient use of facilities, and a bringing of the revenues generated from the use of the facilities closer to the actual costs of operation, in accordance with the intent of the 71st Legislature, 1989. The anticipated economic cost to individuals who are required to comply with the proposed section will be dependent upon number of head of livestock, type of livestock, and length of time held at facilities. For slaughter sheep and goats, an additional $.15 per head for the first 24 hours and an additional $.15 for each 24 hours thereafter. A new category of charges for air shipments will include $5.00 per head for each 24 hours for cattle, horses and mules and $2.50 per head for each 24 hours for sheep, hogs and goats. Stall prices for air shipments for all animals is increased to $20 per stall per 24 hour period.

Comments on the proposal may be submitted to Dolores Alvarado Hibbs, Director of Hearings, P.O.Box 12847, Austin, Texas 78711.

The amendment is proposed under the Texas Agriculture Code, §146.021, which provides the Texas Department of Agriculture with the authority to receive and hold for processing animals transported in international trade, and establish and collect reasonable fees for such holding and other expenses and the Appropriations Act, Senate Bill 1, 71st Regular Session, 1989.

§17.31. Operation of Livestock Facilities.

(a) (No change.)

(b) Procedures.

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

(5) The following schedule of fees includes necessary water, pen space, dip or spray for external parasites when required, and necessary labor for helping in conducting and carrying out any tests requested, and feeding of livestock. Bedding, hay and feed are not included in the fee schedule as follows:

For cattle, calves, horses and mules

Size of pens	First 24 hrs. or fraction thereof. per head	Each 24 hrs. thereafter. per head
Large pens	$ 2.00	$ 4.00
Stalls	$10.00	$10.00

For sheep and goats

Size of pens	First 24 hrs. or fraction thereof. per head	Each 24 hrs. thereafter. per head
Large pens	$ 1.00	$ 1.00
Stalls	$10.00	$10.00

For hogs

Size of pens	First 24 hrs. or fraction thereof. per head	Each 24 hrs. thereafter. per head
Large pens	$ 1.50	$ 1.50

Stalls	$10.00	$10.00
	For slaughter sheep and goats	
	First 24 hrs. or fraction thereof.	Each 24 hrs. thereafter.
Size of pens	per head	per head
Large pens	$.30 [$.15]	$.30 [$.15]
	Air Shipments (Houston)	
Type of Animal	First 24 hrs. or fraction thereof head	Each additional 24 hrs. per head
Cattle, horses and mules	$5.00	$5.00
Sheep, hogs and goats	$2.50	$2.50

Stalls are available for animals if required. The cost of stalls is $20.00 per head for the first 24 hours or fraction thereof and $20.00 per head for each additional 24 hours. Stall prices apply to any type of animal.

* Unloading and documentation verification charge - $10.00 per trailer load, to be paid by party delivering animals.

* No charges for suckling calves when accompanied by their dams.

** Senate Bill 1009, section 3 of the General Special Laws passed by the 62nd Legislature, 1971, states that livestock or other animals left by their owners in such facilities for longer than 30 calendar days may be sold at public auction to satisfy any unpaid fees or other indebtedness to the State of Texas and private suppliers.

(6)-(9) (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 September 7, 1989

TRD-8908262 Dolores Alvarado Hibbs
Director of Hearings
Texas Department of Agriculture

Earliest possible date of adoption: October 16, 1989

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

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TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Records and Reports

• 16 TAC §23.11

The Public Utility Commission of Texas proposes an amendment to §23.11, concerning the filing dates for certain reports, including earnings reports. The proposed amendment establishes a filing deadline for semi-annual and annual earnings reports. All utilities subject to the jurisdiction of the commission will be required to file earnings reports either on a semi-annual or annual basis, as defined in the proposed amendment to §23.12, concerning financial records and reports. Additionally, the proposed amendment specifies the commission's filing deadline for copies of reports filed with the Securities Exchange Commission.

The commission has determined that all utilities subject to its jurisdiction will file an earnings report. The commission is not interested in constructive comments to ensure that the proposed amendment is practical and efficient. Consequently, the commission encourages public comments that will assist in attaining this goal. Specifically, the commission is interested in estimated costs of providing the earnings reports given the proposed format and proposed methods of transmittal. Copies of the proposed reports can be obtained from Central Records of the commission.

Katherine K. Mudge, administrative law judge, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. The fiscal impact on small businesses such as electric or telephone cooperatives is unknown at this time. It is anticipated that public comments will provide cost estimates on providing the earnings reports.

Pursuant to Senate Bill 612, Chapter 845, Ms. Mudge has determined that, for each year of the first five years the section is in effect, there will be no local employment impact.

Ms. Mudge 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 enable the commission to monitor the earnings of regulated utilities on a periodic basis based on current financial data. The periodic monitoring will allow the commission to make more informed reviews of the current financial condition of utilities subject to its jurisdiction, and will allow the commission too take action, if necessary, based on its review of this information. The anticipated economic cost to individuals required to comply with the proposed section is unknown at this time. It is anticipated that public comment will provide estimates on filing the earnings reports. 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 Mary Ross McDonald, Secretary, Public Utility Commission of Texas, 7800 Shoal Creek, Boulevard, Suite 450N, Austin, Texas 78757, within 30 days after publication.

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

§23.11. General Reports.

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

(d) Due dates of reports. All periodic reports must be received by the commission on or before the following due dates unless otherwise specified in this section:

(1) monthly reports: 45 days after the end of the reported period;

(2) quarterly reports: 45 days after the end of the reported period;

(3) semi-annual and annual earnings reports: 60 days after the end of the reported period;

(4) [(3)] annual reports: 90 days after the end of the reported period;

(5) securities and exchange commission filings: simultaneous with the filing of the report with Securities Exchange Commission.

(6) [(4)]special or additional reports: as may be prescribed by the commission.

(e)-(n) (No change.)

(o) Semi-annual and annual earnings reports. Each utility shall report its semi-annual and annual earnings on forms prescribed by the commission as set out in §23.12 of this title (relating to Financial Records and Reports.)

(p) [(o)] Penalty for refusal to file on time. In addition to penalties prescribed by law, the commission may disallow for rate making purposes the costs related to the activities for which information was requested and not timely filed.

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 September 7, 1989.

TRD-8908341 Mary Ross McDonald
Secretary
Public Utility Commission of Texas

Earliest possible date of adoption: October 16, 1989

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

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• 16 TAC §23.12

The Public Utility Commission of Texas proposes an amendment to §23.12, concerning the filing requirements for certain reports, including earnings reports. The proposed amendment establishes filing requirements for semi-annual and annual earnings reports. All utilities subject to the jurisdiction of the commission will be required to file earnings reports either on a semi-annual or annual basis. The proposed amendment modifies the number of copies of certain reports that the utilities must file with the commission. Finally, the proposed amendment changes the classification of telephone utilities related to the uniform system of accounts in order to reflect the current definitions.

The commission has determined that all utilities subject to its jurisdiction will file an earnings report. The commission is now interested in constructive comments to ensure that the proposed amendment is practical and efficient. Consequently, the commission encourages public comments that will assist in attaining this goal. Specifically, the commission is interested in estimated costs of providing the earnings reports given the proposed format and proposed methods of transmittal. Copies of the proposed earnings reports can be obtained from central records of the commission.

Katherine K. Mudge, administrative law judge, has determined that for the first five-year period that the proposed section will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering this section. The fiscal impact on small businesses such as electric or telephone cooperatives is unknown at this time. It is anticipated that public comment will provide cost estimates on providing the earnings reports.

Pursuant to Senate Bill 612, Chapter 845, Ms. Mudge has determined that, for each year of the first five years the section is in effect, there will be no local employment impact.

Ms. Mudge 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 this section will be to enable the commission to monitor the earnings of regulated utilities on a periodic basis based on current financial data. The periodic monitoring will allow the commission to make

more informed reviews of the current financial condition of utilities subject to its jurisdiction, and will allow the commission to take action, if necessary, based on its review of this information. The anticipated economic costs to individuals required to comply with the proposed section is unknown at this time. It is anticipated that public comment will provide estimates of costs for filing the earnings reports.

Comments on the proposed amendment may be submitted to Mary Ross McDonald, Secretary, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, within 30 days after publication.

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

§23.12. Financial Records and Reports.

(a) Uniform system of accounts. Every public utility shall keep uniform accounts as prescribed by the commission of all business transacted. The classification of utilities, index of accounts, definitions, and general instructions pertaining to each uniform system of accounts as amended from time to time shall be adhered to at all times, unless provided otherwise by these rules, or specifically permitted by the commission.

(1) Classification. For the purposes of accounting and reporting to the commission, each public utility shall be classified with respect to its annual operating revenues as follows:

(A) Telephone utilities:

(i) Class A: annual operating revenues exceeding $1 million [$250,000];

(ii) Class B: annual operating revenues less than $1 million [exceeding $100,000 but not more than $250,000;].

[(iii) Class C: annual operating revenues exceeding $50,000 but not more than $100,000;

[(iv) Class D: annual operating revenues not exceeding $50,000.]

(B) (No change.)

(2) System of accounts. For the purpose of accounting and reporting to the commission, each public utility shall maintain its books and records in accordance with the following prescribed uniform system of accounts.

(A) Telephone utilities:

(i)-(ii) (No change.)

[(iii) Class C: uniform system of accounts as adopted and amended by the Federal Communications Commission for Class C utilities or other commission-approved system of accounts as will be adequately informative for all regulatory purposes;]

[(iv) Class D: uniform system of accounts as adopted and amended by the Federal Communications Commission for Class D utilities or other commission-approved system of accounts as will be adequately informative for all regulatory purposes.]

(B) Electric utilities:

(i) Class A: uniform system of accounts as adopted and amended by the Federal Energy Regulatory [Power] Commission for Class A utilities or other commission-approved system of accounts as will be adequately informative for all regulatory purposes;

(ii) Class B: uniform system of accounts as adopted and amended by the Federal Energy Regulatory [Power] Commission for Class B utilities or other commission-approved system of accounts as will be adequately informative for all regulatory purposes;

(iii) Class C: uniform system of accounts as adopted and amended by the Federal Energy Regulatory [Power] Commission for Class C utilities or other commission-approved system of accounts as will be adequately informative for all regulatory purposes;

(iv) Class D: uniform system of accounts as adopted and amended by the Federal Energy Regulatory [Power] Commission for Class D utilities or other commission-approved system of accounts as will be adequately informative for all regulatory purposes.

[(C) Radio-telephone utilities. Uniform system of accounts as prescribed or permitted by the commission.]

(C)[(D)] Other system of accounts. When a utility has adopted a uniform system of accounts as may be required by a state or federal agency other than those previously mentioned in this section (e.g. United States Department of Agriculture-Rural Electrification Administration), that system of accounts may be adopted by the utility after notification to the commission.

(D) [(E)] Merchandise accounting. Each utility shall keep separate accounts to show all revenues and expenses resulting from the sale or lease of appliances, fixtures, equipment, directory advertising, or other merchandise.

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

(b) Financial and operating reports. The following financial and operating reports shall be filed with the commission.

(1) Annual reports.

(A) Telephone utilities.

(i) (No change.)

[(ii) Each Class C and D telephone utility shall file with the commission the same annual report as is required of such utility by the United States Department of Agriculture-Rural Electrification Administration. Class C and D telephone utilities which are not required to file such report shall file with the commission an annual report on a form prescribed by the commission.]

(ii)[(iii)] All telephone utilities filing a consolidated system report with the Federal Communications Commission or operating in the State of Texas and other states, shall file a supplemental annual report on a form prescribed by the commission showing the total operation (interstate and intrastate combined) in Texas.

(B) Electric utilities.

(i) Each Class A and B electric utility shall file with the commission the same annual report required by the Federal Energy Regulatory Commission or United States Department of Agriculture-Rural Electrification Administration and a copy of all correspondence had with respect thereto. Such annual reports shall be filed with the commission on the same dates as [same are] required to be filed by the Federal Energy Regulatory Commission or United States Department of Agriculture-Rural Electrification Administration, whichever is applicable. Class A and B electric utilities which are not required to file such reports shall file with the commission an annual report on the form prescribed by the Federal Energy Regulatory Commission.

(ii) (No change.)

(C) Each utility shall submit to the commission three [two] copies of its annual report to shareholders, customers, or members. Each utility or utility holding company subject to annual reporting to the Securities and Exchange Commission, shall file three copies [a copy] of such annual report with the commission.

(2) Semi-annual and annual earnings reports. Each utility shall file with the commission earnings reports showing the information required by the commission to enable it to properly monitor telephone and electric utilities within the state. The semi-annual and annual reports shall be filed on a calendar year basis. Each utility shall file three copies of the commission-prescribed earnings report and shall electronically transmit one copy of the report no later than the dates prescribed in §23.11, of this title (relating to General Reports).

(A) Telephone utilities. Each telephone utility shall file earnings reports on a semi-annual and annual basis.

(B) Electric utilities.

(i) **Investor-owned utilities. Each investor-owned electric utility shall file earnings reports on a semi-annual and annual basis.**

(ii) **Cooperatives, generation and transmission cooperatives, and river authorities. All electric cooperatives, generation and transmission cooperatives, and river authorities shall file earnings reports on an annual basis.**

(3)[(2)] Quarterly reports. Each utility shall submit to the commission three [two] copies of its quarterly report to shareholders, customers, or members. Each utility or utility holding company subject to quarterly reporting to the Securities and Exchange Commission shall file **three copies** [a copy] of such report with the commission.

(4)[(3)] Other reports. Two copies [A copy] of all filings and related correspondence with the Securities and Exchange Commission shall be submitted to the commission at the time of such filings and correspondence. This would include, but not be limited to, registration statements for sale of new issues of equity or debt securities.

(5) [(4)] Duplicate information. A utility shall not be required to file with the commission forms or reports which duplicate information already on file with the commission.

(c)-(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 September 7, 1989.

TRD-8906340 Mary Ross McDonald
Secretary
Public Utility Commission of Texas

Earliest possible date of adoption: October 16, 1989

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

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TITLE 22. EXAMINING BOARDS

Part IX. State Board of Medical Examiners

Chapter 187. Procedure

Subchapter D. Post Hearing

• 22 TAC §187.35

The Texas State Board of Medical Examiners proposes an amendment to §187.35, concerning required notice of agency orders. The Administrative Procedure and Texas Register Act has been amended to allow the filing of a motion for rehearing within 20 days after a party is notified either in person or by mail. Further, the agency must promptly notify parties of its orders or decisions, the time period for filing motion for rehearing does not commence until a party is notified, and the party has 20 days within which to file a motion for rehearing after the party has received notice.

Florence Allen, business manager, and Jean Davis, Texas Register liaison, have determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Pursuant to Senate Bill 612, Chapter 845, Jean Davis, Texas Register liaison, has determined that, for each year of the first five years the section is in effect, there will be no local employment impact.

Ms. Davis 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 clarification of the required notice for agency orders. 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 Jean Davis, P.O. Box 13562, Austin, Texas 78711. A public hearing is expected to be held at a later date.

The amendment is proposed under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

§187.35. Motions for Rehearing.

(a) Filing times. A motion for rehearing must be filed within 20 [15] days after a party has been notified, either in person or by mail, [the date of rendition of a final decision or order. Replies to a motion for rehearing must be filed with the board within 25 days after the date of rendition] of the final decision or order of the board.

(b) (No change.)

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

Issued in Austin, Texas, on September 5, 1989.

TRD-8906200 G. V. Brindley, Jr., M.D.
Executive Director
Texas State Board of Medical Examiners

Earliest possible date of adoption: October 16, 1989

For further information, please call: (512) 452-1078

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TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 407. Internal Facilities Management

Lease of TDMHMR Surplus Property

• 25 TAC §407.120

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

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §407.120, concerning lease of TDMHMR property. Senate Bill 542 of the 71st Texas Legislature, which takes effect on August 28, 1989, establishes a procedure for the sale or lease of state land that applies unless state agency enabling legislation authorizes otherwise. The Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 5547-205, §5.03 establishes a procedure for TDMHMR to manage surplus property, including the lease, transfer, or disposal of surplus real property. The new section further provides that the Texas Board of Mental Health and Mental Retardation will adopt rules to protect the best interests of the State of Texas. The purpose of the proposal is to enact statutory intent that the department manage surplus property under the provisions of Article 5547-205.

Leilani Rose, director of Office of Budget and Fiscal Services, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Sue Dillard, director, Office of Standards and Quality Assurance, 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 promulgation of rules consistent with law. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Ken Johnson, director, Office of Legal Services, has determined that, for each year of the first five years the section will be in effect, there will be no local employment impact.

Comments on the proposal may be submitted to Linda Logan, Rules Coordinator, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

The section is proposed under Texas Civil Statutes, Article 5547-202, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

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

Issued in Austin, Texas on September 8, 1989.

TRD-8908324 Pattilou Dawkins
Chairman
Texas Board of Mental Health and Mental Retardation

Earliest possible date of adoption: October 16, 1989

For further information, please call: (512) 465-4650

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TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 7. Corporate and Financial Regulation

Subchapter A. Examination and Corporate Custodian and Tax

• **28 TAC §7.68**

The State Board of Insurance proposes new §7.68, concerning annual statement blanks, instructions, and other reporting forms to be used by insurers and certain other entities regulated by the board in reporting on their operations in the 1989 calendar year. This new section is necessary to provide forms and instructions that facilitate compliance with statutory requirements for insurance carriers and other regulated entities to report annually information concerning their operations and financial condition. The section would adopt by reference forms and instructions for reporting in 1990 on activities during 1989. The forms and instructions require information which relates to the financial condition and business operations of regulated entities. The board has filed with the office of the Secretary of State, Texas Register Division, copies of the forms and instructions proposed for adoption by reference. Other copies are available for inspection in the offices of the Corporate Activities Division of the State Board of Insurance at 1110 San Jacinto Boulevard in Austin.

Scott Nance, director, Financial Analysis Division, 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 section will be the administrative expense in completing the forms and following the instructions. This will be at least partially offset because an annual statement in some form is statutorily required in any case. 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.

Pursuant to Senate Bill 612, Chapter 845, Mr. Nance has determined that, for each year of the first five years the section is in effect, there will be no local employment impact.

Mr. Nance has also determined that, for each year of the first five years that the section is in effect, the public benefit anticipated as a result of enforcing the section will be the adoption of forms and instructions to facilitate appropriate reporting to the board by entities it regulates. The anticipated economic cost to individuals who are required to comply with the proposed section will be the administrative expense in completing the forms and following the instructions. This will be at least partially offset by the fact that insurers and certain other regulated entities are required by statute to complete some form of annual statement in any case. The cost will depend on a company's record keeping practices and type of operations.

Comments on the proposal may be submitted to Scott Nance, Director, Financial Analysis Division 015-3, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The new section is proposed under the Insurance Code, Articles 1.04, 1.10 §9; 1.11, 3.07, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 21.21, 21.43, 21.54, 22.06, 22.18, 23.02 and 23.26; the Texas Health Maintenance Organization Act, §10 and §22; and Texas Civil Statutes, Article 6252-13a, §4 and §5. The Insurance Code, Article 1.04, authorizes the State Board of Insurance to determine policies and rules. The Insurance Code, Article 1.10, §9, requires the board to furnish the blank forms for companies to complete necessary statements. The Insurance Code, Article 1.11, authorizes the board to change the forms of the annual statements, and requires certain entities to also file with the National Association of Insurance Commissioners. The Insurance Code, Article 21.21, requires that all statements made by persons in the business of insurance be truthful and not misleading. The Insurance Code, Article 21.43, requires foreign insurers to comply with the provisions of the Insurance Code. The Insurance Code, Articles 3.07, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 21.54, 22.06, 22.18, 23.02, and 23.26; and the Texas Health Maintenance Organization Act, §10 and §22, require the filing of annual reports and other information by certain specific entities regulated by the board, apply particular statutory law respecting reports to those entities, and specify particular rulemaking authority relating to those specific 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 procedure for adoption of rules by a state administrative agency.

§7.68. Annual Statement Blanks, Instructions, and Other Forms for 1989 Operations. The State Board of Insurance adopts by reference the annual statement blanks, instructions, and other forms specified in this section for reporting operations of the 1989 calendar year. These blanks, instructions, and forms are available from the Financial Analysis Division 015-3, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998. The insurer or other entity specified in each form or instruction shall properly report to the State Board of Insurance and the National Association of Insurance Commissioners, with applicable fees, using such blanks or forms and following such instructions as are appropriate to it. The adopted blanks or forms and instructions are as follows:

(1) a 1989 Texas annual statement blank (association edition) to be used by life and accident and health insurance companies (Form 1 and Form IA)), including instruction letters (L/FR/NP/89) and (STIPPREM/89);

(2) a book of instructions, entitled, "Annual Statement Instructions, Life, Accident, and Health," available through the National Association of Insurance Commissioners (NAIC), 120 West Twelfth Street, Suite 1100, Kansas City, Missouri 64105;

(3) a form designated as Supplemental and Balance Sheet Data from 1989 Annual Statement and further identified as TexSpec 46;

(4) a 1989 Texas annual statement blank (association edition) for life and accident and health insurance company separate accounts (Form 1-S);

(5) a 1989 Texas annual statement blank (association edition) to be used by fire and casualty companies (Form 2), including instruction letters (F&C/T/LI/R/RRG/CM/89), (S/89), and (MC/89);

(6) a book of instructions, entitled "Annual Statement Instructions, Property and Casualty," available through the NAIC, 120 West Twelfth Street, Suite 1100, Kansas City, Missouri 64105;

(7) a form designated as Texas Page 14TS and further identified as Page 14TS of Form 2;

(8) a form entitled Insurance Expense Exhibit-1989;

(9) a form entitled Products Liability Insurance Supplement-1989;

(10) a 1989 Texas annual statement blank (association edition) to be used by fraternal orders (Form 4) including instruction letter (L/FR/NP/89);

(11) a book of instructions, entitled "Annual Statement Instructions, Fraternal Orders," available through the NAIC, 120 West Twelfth Street, Suite 1100, Kansas City, Missouri 64105;

(12) a 1989 Texas annual statement blank (association edition) to be used by title insurance companies (Form 9), including instruction letter (F&C/T/LL/R/RRG/CM/89);

(13) a form entitled 1989 Instructions for Completing Title Insurance Annual Statement Blank;

(14) a form designated as Texas Page 41TS and further identified as Page 41TS of Form 9;

(15) a 1989 Texas annual statement blank (association edition) to be used by health maintenance organizations, including instruction letter (HMO/89);

(16) a form entitled General Information, Definitions, and Instructions for Filing Health Maintenance Organization Financial Report of Affairs and Conditions;

(17) a form identified as supplement pages 26-35 to the annual statement for health maintenance organizations;

(18) a form entitled Schedule SIS, Stockholder Information Supplement, and revised in 1985;

(19) a 1989 Texas annual statement blank, with instructions for the 1989 mutual assessment annual statement, to be used by statewide mutual assessment associations, local mutual aid associations, burial associations, and exempt associations, including instructional letters (MA/89) and (E/89);

(20) a 1989 Texas annual statement blank, with instructions for the 1989 farm mutual annual statement, to be used by farm mutual insurance companies, including instruction letter (FM/89);

(21) a 1989 Texas annual statement blank, with instructions to prepaid legal services corporations for completing annual statement blank, to be used by prepaid legal services corporations, including instruction letter (PPL/89);

(22) a form entitled Scheduled DM for bonds and preferred stocks owned as of December 31;

(23) a form entitled Schedule DS (Supplemental Schedule D) showing common stock of all subsidiaries owned December 31 of current year for which the equity in undistributed income of the subsidiary is included in net gain from operations;

(24) a form entitled CREDIT LIFE AND ACCIDENT AND HEALTH EXPERIENCE EXHIBIT;

(25) forms identified as Analysis of Surplus for use as supplements to NAIC Form 1, Form 1A, Form 2, Form 4, and Form 9;

(26) a form entitled Texas Overhead Assessment Form (for Texas domestic companies only);

(27) a form entitled Release of Contributions to be mailed to certain insurers and other entities; and

(28) a form entitled Supplemental A to Schedule T, exhibit of medical malpractice premiums written.

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 September 7, 1989.

TRD-8908232 Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: October 16, 1989

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

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Chapter 51. Award of the Board

• 28 TAC §§51.5, 51.7, 51.35, 51.40, 51.45, 51.50, 51.55, 51.60

The Industrial Accident Board proposes the repeal of §§51.5, 51.7, 51.35, 51.40, 51.45, 51.50, 51.55, and 51.60, concerning legal representation in workers' compensation claims. These sections are being repealed in order to contemporaneously propose new sections concerning the same issues.

Richard Fulcher, acting executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Pursuant to Senate Bill 612, Chapter 845, Mr. Fulcher has determined that for each year of the first five years the section is in effect, there will be no local employment impact.

Mr. Fulcher also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarity and improved compliance with statutory and regulatory requirements for legal representation. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

The board will hold a public hearing on September 18, 1989, for the purpose of taking public testimony on the proposed repeals, as well as proposed new §§64.5, 64.10, 64.15, 64.20, 64.25, and 64.30 (published elsewhere in this issue); proposed amendment of §55.35 (published elsewhere in this issue); and proposed internal procedures for reviewing claims for death benefits. The hearing will commence at 9 a.m. in Room 101, Reagan Building, 15th and Congress, Austin. Written comments on the proposed sections may be submitted to Richard Fulcher, Acting Director, Industrial Accident Board, 200 East Riverside Drive, First Floor, Austin, Texas 78704-1287. Comments will be accepted in writing for 20 days after publication of this proposal in the *Texas Register*.

The repeals are proposed under Texas Civil Statutes, Article 8307, §4(a), which authorize the board to adopt rules necessary to administer the worker's compensation laws.

§51.5. Power of Attorney.

§51.7. Representation in Fatal Cases.

§51.35. Unauthorized Attorney's Fees.

§51.40. Attorneys Not Licensed in Texas.

§51.45. Attorney's Fees and Expenses on Fatal Cases.

§51.50. Payments of Attorney's Fees.

§51.55. Attorney's Expenses.

§51.60. Deductible Expenses.

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 September 11, 1989.

TRD-8908361 Richard Fulcher
Acting Executive Director
Industrial Accident Board

Earliest possible date of adoption: October 16, 1989

For further information, please call: (512) 448-7962

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Chapter 55. Lump Sum Payments

• 28 TAC §55.35

The Industrial Accident Board proposes an amendment to §55.35, concerning stipulation of medical payments. The amendment will retitle the section, insert catch lines, and add a subsection restricting settlement of future medical benefits in uncontested workers, compensation claims.

Richard Fulcher, acting executive director, has determined that for each year of the first five years the proposed section will be in effect, any fiscal implications for insurers and insureds as a result of enforcing or administering the section will be neutralized by the following concomitant consequences: the proposal will permit carriers to pay for future medical treatment as and when it occurs, instead of estimating the need for such treatment, then quantifying the estimate as a time period and a dollar amount, as is current settlement practice; the proposal will prevent shifting post-settlement medical costs for compensable injuries to other providers of medical coverage, both public (e.g., Medicaid, Medicare, public hospitals) and private (e.g., group health carriers, other workers, compensation carriers); and the proposal will reduce presettlement over utilization of medical treatment, presently done in some cases to enhance the settlement value of claims.

Pursuant to Senate Bill 612, Chapter 845, Mr. Fulcher has determined that for each year of the first five years the section is in effect, there will be no local employment impact.

Mr. Fulcher has also determined that for each year of the first five years the proposed sections are in effect, the public benefits anticipated as a result of enforcing the proposed sections are two: injured workers will receive the medical care the law entitles them to, i.e., all treatment reasonably required at any time after the injury to cure and relieve from the effects naturally resulting from the injury, and the cost of such services will not be shifted to the general public or other, non-liable providers. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

The board will hold a public hearing on September 18, 1989 for the purpose of taking public testimony on the proposed section, as well as proposed new §§64. 5, 64.10, 64.15, 64.20, 64.25, and 64.30 (published elsewhere in this issue); proposed repeal of §§51.5, 51.7, 51.35, 51.40, 51.45, 51.50, 51.55, and 51.60 (published elsewhere in this issue); and proposed internal procedures for reviewing claims for death benefits. The hearing will commence at 9 a.m. in Room 101, Reagan Building, 15th and Congress, Austin, Texas. Written comments on the proposed sections may be submitted to Richard Fulcher, Acting Executive Director, Industrial Accident Board, 200 East Riverside Drive, First Floor, Austin, Texas 78704-1287. Comments will be accepted in writing for 20 days after publication of this proposal in the *Texas Register.*

The amendment is proposed under Texas Civil Statutes, Article 8307, §4(a), which authorize the board to adopt rules necessary to administer the workers, compensation laws.

§55.35. Settlement of Medical Benefits. [Stipulation of Medical Payments.]

(a) Accrued medical benefits. Where an insurance company agrees to pay accrued medical and hospital expenses in a compromise settlement agreement, any exceptions or special stipulations agreed upon by the parties must be clearly stated on the face of the compromise settlement agreement or on an attached affidavit.

(b) Future medical benefits. Parties may settle liability for future medical benefits if and only if the carrier has contested liability for the claim.

(c) When liability is contested. As used in this section, liability for a claim is contested if the carrier:

(1) has not paid income and medical benefits; or

(2) has filed a statement of controversion.

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 September 11, 1989.

TRD-8908359 Richard Fulcher
Acting Executive Director
Industrial Accident Board

Earliest possible date of adoption: October 16, 1989

For further information, please call: (512) 448-7962

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Chapter 64. Representing Claimants Before the Board

• 28 TAC §§64.5, 64.10, 64.15, 64.20, 64.25, 64.30

The Industrial Accident Board proposes new §§64.5, 64.10, 64.15, 64.20, 64.25, and 64.30, concerning legal representation of claimants before the board. The proposed sections, comprising new Chapter 64, establish procedures for contracting for representation; regulate fees and expenses; require attorneys to file disbursement statements with the board; establish procedures for attorney discharge; prohibit representing beneficiaries with conflicting claims; and require insurance carriers to report to the board settlement offers made to unrepresented claimants.

Richard Fulcher, acting executive director, has determined that for each year of the first five years the proposed sections will be in effect, there will be no fiscal implications for the state or local governments as a result of enforcing or administering the sections.

Regarding small businesses, the proposed sections will have fiscal impact on lawyers and law firms, by reducing the attorney fee in uncontested claims from 25% of the claimant's recovery to 15%, unless unusual circumstances are established. It is not possible to project actual loss in revenue, however, since there is no way to estimate the number of claims meeting the criteria for the lower fee, i.e., uncontested liability and no unusual circumstances; and the restriction is only applicable before the board, and may be circumvented by appealing to the courts. The fiscal impact for large law firms is estimated to be proportionately the same as that for the smallest firms or in- dividual practitioners.

Pursuant to Senate Bill 612, Chapter 845, Mr. Fulcher has determined that for each year of the first five years the section is in effect, there will be no local employment impact.

Mr. Fulcher also has determined that for each year of the first five years the proposed sections are in effect, the public benefits anticipated as a result of enforcing the proposed sections will include: requiring a standardized attorney contract and statement of expenses will clarify and ensure compliance with the statutory requirements for legal representation, resolve con- fusion about reimbursable expenses, and generally simplify claims handling, both for attorneys and the board; reducing the fee in uncontested claims will increase the injured worker's recovery; requiring the attorney to file a disbursement statement with the board will allow administrative oversight and ensure that the injured worker receives his or her proper share of benefits; requiring good cause as grounds for discharging an attorney will afford workers, compensation attorneys the same common law contractual rights available to attorneys practicing in other areas of the law. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

The board will hold a public hearing on September 18, 1989 for the purpose of taking public testimony on the proposed sections, as well as proposed repeal of §§51.5, 51.7, 51.35, 51.40, 51.45, 51.50, 51.55, and 51.60 (published elsewhere in this issue); proposed amendment of §55.35 (published elsewhere in this issue); and proposed internal procedures for reviewing claims for death benefits. The hearing will commence at 9 a.m. in Room 101, Reagan Building, 15th and Congress, Austin. Written comments on the proposed sections may be submitted to Richard Fulcher, Acting Executive Director, Industrial Accident Board, 200 East Riverside Drive, First Floor, Austin, Texas 78704-1287. Comments will be accepted in writing for 20 days after publica- tion of this proposal in the *Texas Register.*

The new sections are proposed under Texas Civil Statutes, Article 8307, §4(a), which authorize the board to adopt rules necessary to administer the workers, compensation laws.

§64.5. Requirement for Written Contract.

(a) An attorney who wishes to represent for a fee a claimant making a claim for benefits must have a written contract evidencing representation signed by both parties.

(b) The board shall prescribe the form and content of all written contracts used for this purpose.

(c) A copy of the written contract shall be filed with the board within 30 days of execution, or sooner if appropriate.

§64.10. Attorney Fees and Expenses.

(a) Approval of the board. All attorney fees and expenses are subject to the approval of the board and shall be paid from the claimant's recovery.

(b) Amount of fees.

(1) Attorney fees shall not total more than 25% of the claimant's recovery, less approved expenses.

(2) The board will not approve a percentage fee of more than 15% of the claimant's recovery, less approved expenses, when liability is not contested, unless the attorney establishes the existence of unusual circumstances.

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

(1) Claimant's recovery-All indemnity or death benefits recovered by the claimant, minus:

(A) benefits voluntarily paid by the carrier; and/or

(B) benefits offered to be paid by the carrier before the attorney filed notice of representation.

(2) Contested liability-Occurs when the carrier:

(A) has not paid income and medical benefits; or

(B) has filed a statement of controversion.

(d) Carrier must report settlement offer made to unrepresented claimant. No later than 10 days after tendering a settlement offer to an unrepresented claimant, the carrier shall report to the board on a form prescribed for that purpose:

(1) the amount of the offer;

(2) the date made; and

(3) the claimant's response, if any.

(e) Eligibility for attorney fee. An attorney fee may be paid only to an attorney who:

(1) holds a valid license to practice law in the State of Texas; and

(2) has filed an attorney contract, as provided in §64.5.

(f) Record of time. In the following cases, in order to be eligible for a fee, an attorney must prepare and present to the board a record of time expended on behalf of the claimant:

(1) when an attorney has been discharged from representation or undertakes representation for a claimant who has previously employed an attorney;

(2) in claims for fatal or lifetime benefits, when work is performed that results in a carrier admitting liability; or

(3) when work is performed that results in the Second Injury Fund accepting liability.

(g) Unusual circumstances. In cases where the normal fee is not to exceed 15% and an attorney requests a higher percentage fee based on unusual circumstances, the attorney must file with the request a record of time expended on behalf of the claimant.

§64.15. Expenses. The board, upon review, may approve reimbursement for expenses incurred in preparing and presenting the claim before the board to an attorney who, before the resolution of claim:

(1) has notified the board of representation, as provided in §64.5; and

(2) files a statement of expenses on a board-approved form.

§64.20. Disbursement Statement.

(a) No later than 10 days after disbursing the proceeds of a workers, compensation claim, the attorney shall file with the board a written disbursement statement setting out:

(1) the monetary amount received by the claimant(s); and

(2) the monetary amounts retained by the attorney, itemized by specific charge.

(b) The disbursement statement must be signed by the claimant(s) and the attorney.

§64.25. Discharged Attorney.

(a) A claimant may discharge an attorney at any time. The claimant shall notify the board in writing, and explain the reasons for the discharge.

(b) When a dispute arises between or among two or more attorneys employed by a claimant, the attorney presenting the earliest-executed attorney contract will be deemed the attorney or record unless the claimant or a subsequently-retained attorney establishes good cause for discharge.

§64.30. Adverse Representation in Claims for Death Benefits.

(a) An attorney may not represent two or more beneficiaries with adverse claims for death benefits, since such representation constitutes a conflict of interest.

(b) An attorney who violates this section will be ordered to withdraw entirely, and may be subjected to disciplinary 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 September 11, 1989.

TRD-8908360 Richard Fulcher
Acting Executive Director
Industrial Accident Board

Earliest possible date of adoption: October 16, 1989

For further information, please call: (512) 448-7962

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TITLE 34. PUBLIC FINANCE

Part IV. Employees Retirement System

Chapter 65. Executive Director

• 34 TAC §65.9

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

The Employees Retirement System of Texas proposes new section §65.9, concerning Delegation of Authority will allow the Executive Director to delegate certain rights, powers, or duties to another ERS employee pursuant to House Bill 1632.

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

Mr. Nail 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 increased flexibility in administration of the Employees Retirement System of Texas. 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 William S. Nail, General Counsel, the Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207.

The new section is proposed under Texas Civil Statutes, Title 110B, §25.102 and §25.202, which provides the trustees of the Employees Retirement System of Texas with the authority to delegate any right, power, or duty imposed or conferred on the executive director by law to another employee of the retirement system.

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 September 7, 1989.

TRD-8908258 Clayton T. Garrison
Executive Director
Employees Retirement System of Texas

Earliest possible date of adoption: October 16, 1989

For further information, please call: (512) 476-6431, ext. 213

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Chapter 71. Creditable Service

• 34 TAC §§71.3, 71.7, 71.17

(Editor's Note: The Employees Retirement System proposes for permanent adoption the amendment and new section it adopts on an emergency basis in this issue. The text of the amendment and new section is in the Emergency Rules section of this issue.)

The Employees Retirement System of Texas proposes amendments to §71.3 and §71.7, and new §71.17, concerning creditable service. The amendment to §71. 3 will allow for the establishment of dual credit in two classes of membership if such service is the result of a calendar year purchase. This amendment is required to implement provisions of Senate Bill 187, 71st Legislature. The amendment to §71.7 will remove the restriction of dual credit resulting from calendar year purchase, but continues to prohibit multiple service under the same class of membership. New §71.17 will provide credit for accumulated sick leave and to implement the requirements of House Bill 827, 71st Legislature.

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

a result of enforcing or administering the sections.

Mr. Nail also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the implementation of House Bill 827 and Senate Bill 187, 71st Legislature into the rules of this agency. 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 William S. Nail, General Counsel, the Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207.

The new section and amendments are proposed under Texas Civil Statutes, Title 110B, §25.102, which provide the trustees of the Employees Retirement System of Texas with the authority to promulgate rules, regulations, plans, procedures, and orders reasonably necessary to carry out the purposes of this Act.

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

Issued in Austin, Texas on September 7, 1989.

TRD-8908257 Clayton T. Garrison
Executive Director
Employees Retirement
System of Texas

Earliest possible date of adoption: October 16, 1989

For further information, please call: (512) 476-6431, ext. 213

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Chapter 73. Benefits

• 34 TAC §§73.11, 73.21, 73.29

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

The Employees Retirement System of Texas proposes amendments to §73.11 and §73.21, and new §73.29, concerning the amendment to §73.11 adopts new age reduction factors for retirement from the supplemental retirement program prior to age 50 as required by House Bill 1494, 71st Legislature. Section 73.21 is amended to adopt by reference new reserve factor tables for use in computing sick leave credit as required by House Bill 827, 71st Legislature. New §73.29 requires spousal consent for selection of a retirement annuity other than a joint and survivor annuity that pays benefits to the member's spouse on the death of the member. This new section is adopted pursuant to Senate Bill 187, 71st Legislature.

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

Pursuant to Senate Bill 612, Chapter 845, Mr. Nail has determined that, for each year of the first five years the sections will be in effect, there will be no local employment impact.

Mr. Nail also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the implementation of House Bills 1494 and 827, and Senate Bill 187, which were passed by the 71st Legislature. 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 William S. Nail, General Counsel, The Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 87711-3207.

The amendments are proposed under Texas Civil Statutes, Title 110B, §§25. 102, 25.105, and 77.001, which provide the trustees of the Employees Retirement System of Texas with the authority to promulgate rules, regulations, plans, procedures, and orders reasonably necessary to carry out the purposes of this Act.

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

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

TRD-8908256 Clayton T. Garrison
Executive Director
Employees Retirement
System of Texas

Earliest possible date of adoption: October 16, 1989

For further information, please call: (512) 476-6431, ext. 213.

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Chapter 74. Qualified Domestic Relations Orders

• 34 TAC §§74.1-74.3, 74.5, 75.7, 74.9, 74.11

(Editor's Note: The Employees Retirement System of Texas proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Employees Retirement System of Texas proposes new §§74.1, 74.3, 74.5, 74.7, 74.9, and 74.11, concerning domestic relations orders. The new sections will describe the process and procedure for implementation of a qualified domestic relations order pursuant to the provisions of Senate Bill 187, 71st Legislature.

William S. Nail, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. Pursuant to Senate Bill 612, Chapter 845, Mr. Nail has determined that, for each year of the first five years the sections will be in effect, there will be no local employment impact.

Mr. Nail also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be uniform requirements and procedures for the processing of domestic relations orders received by the ERS in order to protect the member and nonmember spouse. 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 William S. Nail, General Counsel, the Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207.

The new sections are proposed under Texas Civil Statutes, Title 110B, §§25. 102, 76.003(n), and 76.004(a), which provide the trustees of the Employees Retirement System of Texas with the authority to promulgate rules it deems necessary to implement, and to authorize optional payments to alternate payees under a qualified domestic relations order.

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 September 7, 1989

TRD-8908255 Clayton T. Garrison
Executive Director
Employees Retirement
System of Texas

Earliest possible date of adoption: October 16, 1989

For further information, please call: (512) 476-6431, ext. 213

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Chapter 77. Judicial Retirement

• 34 TAC §77.7

(Editor's Note: The Employees Retirement System of Texas proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Employees Retirement System of Texas proposes new §77.7, concerning spousal consent or acknowledgment requirements. The new section will set out requirements requesting spousal consent if the nonmember spouse selects an annuity other than a joint and survivor annuity.

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

Pursuant to Senate Bill 612, Chapter 845, Mr. Nail has determined that, for each year of the first five-years the section is in effect, there will be no local employment impact.

Mr. Nail 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 requirement of the nonemployee spouse to consent to the selection of certain retirement annuity adoptions which will allow the nonemployee spouse to protect any interests that he or she may have. 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 William S. Nail, General Counsel, The Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207.

The new section is proposed under Texas Civil Statutes, Title 110B, §77.001, which provide the trustees of the Employees Retirement System of Texas with the authority to adopt rules to require spousal consent for the selection of a service retirement annuity which pays benefits to the member's spouse on the death of the member, or for the selection of a death benefit plan that pays benefits in the form of an annuity to a person other than the member's spouse on the death of the member.

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 September 7, 1989.

TRD-8908254 Clayton T. Garrison
Executive Director
Employees Retirement
System of Texas

Earliest possible date of adoption: October 16, 1989.

For further information, please call: (512) 476-6431, ext. 213.

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Chapter 81. Insurance

• 34 TAC §81.7

(Editor's Note: The Employees Retirement System of Texas 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 Employees Retirement System of Texas proposes an amendment to §81.7, concerning preexisting condition limitation. The amendment will implement requirements of House Bill 2609 concerning transfer of health plan participants from institutions of higher education to the state without being subject to preexisting conditions.

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

Pursuant to Senate Bill 612, Chapter 845, Mr. Nail has determined that for each year of the first five years the section is in effect, there will be no local employment impact.

Mr. Nail 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 ability of employees of institutions of higher education, who transfer to state employment, to enroll in the Uniform Group Insurance Program and not be subject to preexisting conditions. 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 William S. Nail, General Counsel, The Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207.

The amendment is proposed under the Texas Insurance Code, §4, Article 3. 50-2, Article 3.50-5 which provides the trustees of the Employees Retirement System of Texas with the authority to promulgate rules, regulations, plans, procedures, and orders reasonably necessary to carry out the purposes of this Act.

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

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

TRD-8908253 Clayton T. Garrison
Executive Director
Employees Retirement
System of Texas

Earliest possible date of adoption: October 16, 1989

For further information, please call: (512) 476-6431, ext. 213.

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 1. Organization and Administration

Business Licenses and Permits

• 37 TAC §1.221

The Texas Department of Public Safety proposes an amendment to §1.221, concerning notices to applicants; processing times; appeals. Subsections (a)(2) and (c)(2) are deleted and the remaining paragraphs are renumbered. Effective September 1, 1989, the Commercial Driver Training School Program will be transferred to the Central Education Agency due to enactment of Senate Bill 417, Chapter 813, 71st Legislature, 1989.

Melvin C. Peeples, assistant chief of fiscal affairs, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Pursuant to Senate Bill 612, Chapter 845, Mr. Peeples has determined that, for each year of the first five years the section is in effect, there will be no local employment impact.

Sybil Simpson, manager of vehicle inspection/driver training records bureau, 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 make the public aware that commercial driver training school licenses will no longer be the responsibility of the Texas Department of Public Safety. 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 John C. West, Jr., Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0001, (512) 465-2000.

The amendment is proposed under the Texas Government Code, §411.006(4), which provides the Texas Department of Public Safety with the authority to adopt rules considered necessary for the control of the department.

§1.221. Notices to Applicants; Processing Times; Appeals.

(a) For each application for any license or other authorization listed in this subsection, the department shall issue a written notice informing each applicant either that the application is complete and accepted for filing, or that it is deficient. If the application is deficient, the notice shall set out the specific additional information that is required. The department shall issue the notice to the applicant within the period indicated for the following licenses or other authorizations granted by the department:

(1) (No change.)

[(2) commercial driver training school licenses–30 days];

(2)[(3)] vehicle inspection station licenses–30 days.

(b) (No change.)

(c) The department shall determine whether to deny or issue the license or other authorization within the following periods after a complete application has been filed:

(1) (No change.);

[(2) commercial driver training school licenses–90 days];

(2)[(3)] vehicle inspection station licenses–45 days.

(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 September 6, 1989.

TRD-8908237 Joe E. Milner
Director
Texas Department of
Public Safety

Earliest possible date of adoption: October 16, 1989

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

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Chapter 17. Commercial Driver Training School Regulations

• 37 TAC §§17.1-17.30

(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 Department of Public Safety or in the Texas Register office, Room 245, James Earl

Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Public Safety proposes the repeal of §§17.1-17.30, concerning commercial driver training school regulations. The department is proposing repeal of these sections due to enactment of Senate Bill 417, Chapter 813, 71st Legislature, which transfers the responsibility for this program to the Central Education Agency.

Melvin C. Peeples, assistant chief of fiscal affairs, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. Pursuant to Senate Bill 612, Chapter 845, Mr. Peeples has determined that, for each year of the first five years the repeals are in effect, there will be no local employment impact.

Sybil Simpson, manager of vehicle inspection/driver training records bureau, also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to make the public aware that the commercial driver training school program will no longer be the responsibility of the Texas Department of Public Safety. 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 John C. West, Jr., Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0001, (512) 465-2000.

The repeals are proposed under the Texas Government Code, §411.006(4), which provides the Texas Department of Public Safety with the authority to adopt rules necessary for the control of the department.

§17.1. Requirements of Applicants for a Commercial Driver Training School License.

§17.2. Schools and Instructors License Categories.

§17.3. Application Requirements for Commercial Driver Training Schools.

§17.4. Schools-Renewal Application.

§17.5. License Fees.

§17.6. Schools-Duplicate License.

§17.7. Refusal, Suspension.

§17.8. Surrender of License.

§17.9. Commercial Driver Training Schools-Branch Offices.

§17.10. Commercial Driver Training School Physical Facilities.

§17.11. Commercial Driver Training School Office Facilities.

§17.12. Commercial Driver training School Classroom Facilities.

§17.13. Inspection of School Facilities.

§17.14. Commmercial Driver Training School Names and Advertising.

§17.15. Commercial Driver Training School Responsibility for Employees.

§17.16. Contracts-Students

§17.17. Commercial Driver Training School Courses of Instruction.

§17.18. Commercial Driving School Motor Vehicles.

§17.19. Schools-Motor Vehicle Insurance Certificates.

§17.20. Driver Training School and Driver Training Instructor Records.

§17.21. Application Requirements for Commercial Driver Training Instructors-License Requirements.

§17.22. Instructor Application.

§17.23. Supervisory and Driver Instructor License Renewal.

§17.24. Prohibited Activities.

§17.25. Notices.

§17.26. Complaints.

§17.27. Waiver of Rule Requirements.

§17.28. Training Program for Qualifying Commercial Driver Training Instructors.

§17.29. Driver Education for Minors.

§17.30. Purchase of Department Materials.

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 September 6, 1989.

TRD-8908236 Joe E. Milner
Director
Texas Department of Public Safety

Earliest possible date of adoption: October 16, 1989

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

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Chapter 145. Parole

Revocation of Administrative Release (Parole, Mandatory Supervision, and Executive Clemency)

• **37 TAC §145.44**

The Board of Pardons and Paroles proposes an amendment to §145.44, concerning procedure after waiver of preliminary hearing. The amendment amends the language, concerning preliminary hearing, in order to comply with statutes.

Harry C. Green, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. Pursuant to Senate Bill 612, Chapter 845, Mr. Green has determined that, for each year of the first five years the section is in effect, there will be no local employment impact.

Mr. Green 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 not be applicable, as the public is relatively unaffected by this particular proposed 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 Harry C. Green, 8610 Shoal Creek, Boulevard, Austin, Texas 78758, or P.O. Box 13401, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 42.18, §15(a), which provide the Board of Pardons and Paroles with the authority to change the language pertaining to preliminary hearings.

§145.44. Procedure After Waiver of Preliminary Hearing.

(a) Upon receipt [of an admission of violation of the terms and conditions of administrative release and] of the waiver of the right to an administrative release [(revocation)] preliminary hearing, the releasee may be transferred by the sheriff to a secured facility for a term to be designated by the board, or the board panel shall review the case and make a final disposition by:

(1) continuing incarceration pending revocation hearing; or

(2) withdrawing the warrant (if any) and continuing the releasee under the same or modified conditions.

(b) (No change.)

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

Issued in Austin, Texas, on May 5, 1989.

TRD-8908235 William H. Brooks
Executive Director
Board of Pardons and Paroles

Earliest possible date of adoption: October 16, 1989

For further information, please call: (512) 459-2708

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 34. PUBLIC FINANCE

Part III. Teacher Retirement System of Texas

Chapter 47. Qualified Domestic Relations Orders

• 34 TAC §§47.11 and 47.12

The Teacher Retirement System of Texas has withdrawn from consideration for permanent adoption a proposed which appeared in the August 8, 1989, issue of the *Texas Register* (14 TexReg 3873). The effective date of this proposed is September 8, 1989.

Issued in Austin, Texas, on September 8, 1989

TRD-8908337 Charmain J. Rhodes
Attorney
Teacher Retirement System of Texas

Effective date: September 8, 1989

For further information, please call: (512) 397-6400

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Adopted Sections

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

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

TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 7. Corporate and Financial

Subchapter A. Examination and Corporate Custodian and Tax

• 28 TAC §7.73

The State Board of Insurance adopts new §7.73, without changes to the proposed text as published in the March 10, 1989, issue of the *Texas Register* (14 TexReg 1170).

Section 7.73 concerns annual statement diskette filing requirements for financial activities by insurance companies and other entities regulated by the board. This 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.

The new section records 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.

No comments were received regarding adoption of the new section.

The new section is adopted 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 rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on September 8, 1989.

TRD-8906342 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: September 29, 1989

Proposal publication date: March 10, 1989

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 1. Executive Administration

Fee Schedule

• 31 TAC §1.91

The General Land Office adopts an amendment to §1.91, without changes to the text as published in the June 9, 1989, issue of the *Texas Register* (14 TexReg 2774). The amendment is adopted in order to reorganize the administrative rules into a more accessible and logical structure.

The provision is currently included in §153.62 of this title (relating to Initiating the Leasing Process). As adopted, this provision will be included in the general fee rule.

Comments were received regarding adoption of the amendment.

The amendment is adopted under the Natural Resources Code, §31.064, which prpvides the commissioner of the General Land Office with the authority to set and collect fees for services performed by the General Land Office and the Texas Natural Resources Code, §31.051, which authorizes the commissioner to make and enforce rules consistent with the law.

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

Issued in Austin, Texas on September 7, 1989.

TRD-8908323 Garry Mauro
Commissioner
General Land Office

Effective date: September 29, 1989

Proposal publication date: June 9, 1989

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

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Chapter 2. Oil, Gas, and Mineral Lease Sales

Nomination

• 31 TAC §2.1, §2.2

The General Land Office adopts the repeal of §2.1 and §2.2, without changes to the text as published in the June 9, 1989, issue of the *Texas Register* (14 TexReg 2774).

The repeals are adopted in order to further the reorganization of the administrative rules into a more accessible and logical structure.

The subject matter of these repeals will be included in new Chapter 9 of this title (relating to Oil and Gas Exploration and Development).

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Natural Resources Code, §31.051, which provides the commissioner of the General Land Office with the authority to make and enforce rules consistent with the law.

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

Issued in Austin, Texas on September 7, 1989.

TRD-8908322 Garry Mauro
Commissioner
General Land Office

Effective date: September 29, 1989

Proposal publication date: June 9, 1989

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

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Chapter 3. Energy Resources

Payment of Royalties; Filing of Reports; Failure to Pay; Penalties and Forfeiture

• 31 TAC §§3.1-3.12, 3.14, 3.15

The General Land Office adopts the repeal of §§3.1-3.12, 3.14 and 3.15, without changes to the text as published in the June 13, 1989, issue of the *Texas Register* (14 TexReg 2942).

The General Land Office adopts the repeal of these sections in order to further its policy of reorganizing the administrative rules into a more accessible and logical structure.

The subject matter of these repeals will be included in new Chapter 9 of this title (relating to Oil and Gas Exploration and Development).

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Natural Resources Code, §31.051, which provides the commissioner of the General Land Office with the authority to make and enforce rules consistent with the law.

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

Issued in Austin, Texas on September 7, 1989.

TRD-8908321 Garry Mauro
Commissioner
General Land Office

Effective date: September 29, 1989

Proposal publication date: June 13, 1989

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

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Records to be Filed; Commingling of Production Requests

• 31 TAC §§3.21, 3.23-3.25

The General Land Office adopts the repeal of §§3.21, 3.23-3.25, without changes to the text as published in the June 13, 1989, issue of the *Texas Register* (14 TexReg 2942).

The General Land Office adopts the repeal of these sections in order to further its policy of reorganizing the administrative rules into a more accessible and logical structure.

The subject matter of these repeals will be included in new Chapter 9 of this title (relating to Oil and Gas Exploration and Development).

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Natural Resources Code, §31.051, which provides the commissioner of the General Land Office with the authority to make and enforce rules consistent with the law.

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

Issued in Austin, Texas on September 7, 1989.

TRD-8908320 Garry Mauro
Commissioner
General Land Office

Effective date: September 29, 1989

Proposal publication date: June 13, 1989

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

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Rentals; Minimum Royalties

• 31 TAC §§3.31-3.34

The General Land Office adopts the repeal of §§3.31-3.34, without changes to the text as published in the June 13, 1989, issue of the *Texas Register* (14 TexReg 2942).

The General Land Office adopts the repeal of these sections in order to further its policy of reorganizing the administrative rules into a more accessible and logical structure.

The subject matter of these repeals will be included in new Chapter 9 of this title (relating to Oil and Gas Exploration and Development).

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Natural Resources Code, §31.051, which provides the commissioner of the General Land Office with the authority to make and enforce rules consistent with the law.

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

Issued in Austin, Texas on September 7, 1989.

TRD-8908319 Garry Mauro
Commissioner
General Land Office

Effective date: September 29, 1989

Proposal publication date: June 13, 1989

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

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Prior Month's Adjustment; Credits

• 31 TAC §§3.41-3.43

The General Land Office adopts the repeal of §§3.41-3.43, without changes to the text as published in the June 13, 1989, issue of the *Texas Register* (14 TexReg 2943).

The General Land Office adopts the repeal of these sections in order to further its policy of reorganizing the administrative rules into a more accessible and logical structure.

The subject matter of these repeals will be included in new Chapter 9 of this title (relating to Oil and Gas Exploration and Development).

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Natural Resources Code, §31.051, which provides the commissioner of the General Land Office with the authority to make and enforce rules consistent with the law.

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

Issued in Austin, Texas on September 7, 1989.

TRD-8908318 Garry Mauro
Commissioner
General Land Office

Effective date: September 29, 1989

Proposal publication date: June 13, 1989

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

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Gas Contracts

• 31 TAC §3.51, §3.52

The General Land Office adopts the repeal of §3.51 and §3.52, without changes to the text as published in the June 13, 1989, issue of the *Texas Register* (14 TexReg 2943).

The General Land Office adopts the repeal of these sections in order to further its policy of reorganizing the administrative rules into a more accessible and logical structure.

The subject matter of these repeals will be included in new Chapter 9 of this title (relating to Oil and Gas Exploration and Development).

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Natural Resources Code, §31.051, which provides the commissioner of the General Land Office with the authority to make and enforce rules consistent with the law.

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

Issued in Austin, Texas on September 7, 1989.

TRD-8908317 Garry Mauro
Commissioner
General Land Office

Effective date: September 29, 1989

Proposal publication date: June 12, 1989

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

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Reporting Oil and Condensate Production

• 31 TAC §3.61

The General Land Office adopts the repeal of §3.61, without changes to the text as published in the June 13, 1989, issue of the *Texas Register* (14 TexReg 2943).

The General Land Office adopts the repeal of this section in order to further its policy of reorganizing the administrative rules into a more accessible and logical structure.

The subject matter of this repeal will be included in new Chapter 9 of this title (relating to Oil and Gas Exploration and Development).

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Natural Resources Code, §31.051, which provides the commissioner of the General Land Office with the authority to make and enforce rules consistent with the law.

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

Issued in Austin, Texas on September 7, 1989.

TRD-8908315 Garry Mauro
Commissioner
General Land Office

Effective date: September 29, 1989

Proposal publication date: June 13, 1989

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

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Reporting Gas Production

• 31 TAC §3.71

The General Land Office adopts the repeal of §3.71, without changes to the text as published in the June 13, 1989, issue of the *Texas Register* (14 TexReg 2944).

The General Land Office adopts the repeal of this section in order to further its policy of reorganizing the administrative rules into a more accessible and logical structure.

The subject matter of this repeal will be included in new Chapter 9 of this title (relating to Oil and Gas Exploration and Development).

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Natural Resources Code, §31.051, which provides the commissioner of the General Land Office with the authority to make and enforce rules consistent with the law.

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

Issued in Austin, Texas on September 7, 1989.

TRD-8908316 Garry Mauro
Commissioner
General Land Office

Effective date: September 29, 1989

Proposal publication date: June 13, 1989

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

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Chapter 9. Exploration and Development

Geophysical Rules and Regulations for Submerged Lands

• 31 TAC §§9.1-9.12

The General Land Office adopts the repeal of §§9.1-9.12, without changes to the text as published in the June 9, 1989, issue of the *Texas Register* (14 TexReg 2775).

The General Land Office adopts the repeal of these sections in order to further its policy of reorganizing the administrative rules into a more accessible and logical structure.

The subject matter of these repeals will be included in new Chapter 9 of this title (relating to Oil and Gas Exploration and Development).

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Natural Resources Code §31.051, which provides the commissioner of the General Land Office with the authority to make and enforce rules consistent with the law.

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

Issued in Austin, Texas on September 7, 1989.

TRD-8908314 Garry Mauro
Commissioner
General Land Office

Effective date: September 29, 1989

Proposal publication date: June 9, 1989

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

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• 31 TAC §§9.1-9.9

The General Land Office, with the approval of the School Land Board, adopts new Chapter 9, §§9.1-9.9. Sections 9.3-9.9 are adopted with changes to the proposed text as published in the June 9, 1989, issue of the *Texas Register* (14 TexReg 2775). Section 9.1 and §9.2 are adopted without changes and will not be republished.

The new sections are adopted in order to reorganize the administrative rules into a more accessible and logical structure.

Chapter 9 is adopted to reorganize current GLO oil and gas rules, to codify longstanding General Land Office practices and procedures, and to ensure economically and environmentally sound oil and gas development of Permanent School Fund and other state lands.

One commenter suggested that the wording of §9.3(a) be amended to more clearly set out the scope of Chapter 9. This suggestion was adopted and §9.3(a) was amended.

One commenter requested that §9.3(b) be amended to require TPWD rules to be harmonized with these proposed rules. This comment was incorporated.

Two comments were received concerning §9.3(c). The commenters raised the issue of how conflicts between these rules, applicable statutes, lease terms, and various agreements with the state are to be reconciled. Section 9.3(c) has been amended to reflect the fact that these rules are not intended to unlawfully impair any existing contract.

One commenter suggested that, under §9.3(e), an exception to the administrative rules granted by the commissioner be effective upon the exception's being signed. This suggestion was not incorporated because any such exceptions would necessarily materially affect the lease. The GLO feels that it is imperative that a copy of the signed and approved exception actually be placed in the appropriate mineral file. Lessees can easily assure themselves that all appropriate documentation has been filed by calling or visiting the Archives and Records Division of the GLO.

One comment requested language pertaining to the joint responsibility of client and operator when permits are transferred. Section 9.4(c)(2) has been changed to clarify the rule that permits shall not be transferred or assigned.

Comments were received about §9.4(c)(4) concerning the length of the processing period for exploration permit applications. In response to these comments, the rule has been amended to provide 14 days for processing submerged land applications and seven days for processing applications for uplands.

One comment was received regarding proof of insurance for those applicants who are self insured. This change has been incorporated into §9.4(d).

Comments were received about §9.4(e)(1)(A) regarding the maximum amount of time for which exploration permits are granted. The maximum period of 30 days, with a possible 30-day extension period, will remain effective because these periods are manageable and have been proven to be sufficient time in which to conduct exploration activities.

Comments were received requesting an increase in the permissible charge size in the use of explosives. Section 9.4(e)(1)(E) has been amended to increase the maximum amount of shots permissible in upland areas to 40 pounds dynamite equivalent.

Comments were received about §9.4(e)(1)(G) requesting a reduction in the distance limitations for explorations near public beaches on submerged lands. The three mile limitation from public beaches is based upon recommendations of federal resource agencies.

Comments were received about former §9.4(e)(1)(H) regarding the depth requirement for shot holes. In response to these comments, the shot hole depth in submerged areas shall be 120 feet below the mudline and is now provided for in §9.4(e)(2)(E).

There will be no required minimum depth for shot holes in uplands areas. Comments were received about §9.4(e)(2)(I) regarding the distance shots may be detonated from a shrimping fleet or from any boat not involved in exploration. Section 9.4(e)(2)(D) and new §9.4(e)(2)(H) have been amended to reflect these comments.

Comments about §9.4(e)(2)(I) were received concerning the discharge of shots near oyster reefs. The oyster beds and reefs are environmentally sensitive areas which require additional protection. A distance of less than 500 feet would be environmentally harmful to the reefs.

Comments were received regarding the discharge of shots near livestock. Section 9.4(e)(3)(B) has been amended to reflect these comments.

A comment was received regarding the use of water located on state-owned upland tracts. In response to this comment, §9.4(e)(3)(E) was amended.

A comment was received about §9.4(g)(2), suggesting that the GLO use the federal form for the inventory of explosives. Since the GLO has developed and utilizes its own form, this suggestion was not incorporated.

A comment was received suggesting other records be clarified. This recommendation has been incorporated in §9.4(i).

One commenter suggested that the language of §9.4(i) was too broad and should be amended to provide that only those records reasonably necessary to ascertain compliance with permits issued under this chapter or these rules can be required by the GLO. Because the scope of this section is limited to those records that relate to exploration operations and accounting the proposed rule, by definition, would exclude all extraneous or irrelevant documentation. To include the suggested language would be redundant.

One comment requested the word contractor be changed to operator This recommendation has been incorporated throughout §9.4.

One comment requested that records pertaining to exploration operations be maintained for a minimum of five years. This recommendation has been incorporated in §9.4(i).

One comment was received concerning the requirement for written proof that all franchise taxes have been paid. This comment has been incorporated into §9. 4(c)(3)(A). The permit application form will contain a statement affirming the applicant's payment of franchise taxes.

One comment was received requesting that the restoration of any physical modification of the surface due to exploration be limited to submerged areas. This is now contained in §9.4(e)(1)(H). The rule as proposed requires permittees to restore the surface in both submerged and uplands areas to their original conditions as nearly as possible. This is a reasonable requirement intended to protect the environment. The GLO works with the permittees in coordinating the best restoration possible as determined on an individual basis.

One comment suggested the GLO provide guidelines for constructing terraces on upland tracts. This suggestion has been incorporated into §9.4(e)(3)(F).

A comment was received about §9.4(h)(1) concerning the possibility of immediate revocation of the permit due to violations of these rules. The rules as proposed provide that the permit is subject to immediate revocation for a permittee's failure to comply with applicable laws or administrative rules. This provision authorizes the commissioner to review all relevant circumstances surrounding a permittee's violations to determine whether revocation is necessary.

One comment was received about §9.4(e)(1)(F) requesting the restriction for detonation during daylight hours be limited to upland areas. The rule limiting detonation to daylight hours for all state-owned lands is a reasonable restriction designed to protect the environment and is a safety factor designed to protect the public in its use of our public waters. The suggestion was not incorporated.

One commenter requested clear definitions of coastal wetlands and shrimping fleets. These recommendations were incorporated. This commenter also requested the GLO coordinate with TPWD regarding suspended high velocity energy sources. This request is being complied with. The commenter also expressed concern with explorations near oyster reefs. In response, new §9.4(e)(2)(I) was amended offering TPWD's assistance in locating submerged areas containing oysters.

One commenter recommended that artificial fishing reefs be included in new §9.4(e)(2)(I). This comment has been incorporated.

One commenter requested that §9.4 grant TPWD the authority to inspect exploration sights. This request would be better addressed in TPWD's administrative rules.

One commenter recommended changing §9.5(1)(B)(i) to set minimum bids before taking bids for lease. This procedure is already mandated by statute. The Texas Natural Resources Code §32.1072 states that the minimum royalty is 1/8th and the minimum cash bonus is $10/acre. Section 32.1073 of that code states that the School Land Board can either set a royalty and take bids for bonus or set the bonus and take bids for royalty. These procedures are detailed in School Land Board rules found in TAC, Title 31, Chapter 153.

One commenter suggested that §9.5(2)(C)(ii), which prohibits assignments to surface owners of leases they executed, be amended to include unless authorized in advance by the commissioner. While the commissioner by statute may permit the surface owner's acquisition of a lease that he or she executed, it is the current GLO policy to disallow any such acquisitions. If future Land Commissioners should choose to allow such acquisitions, they may amend the rule to reflect any change in this policy.

One commenter asked that the five-year primary term of Relinquishment Act leases found in §9.5(2)(E)(iii) be amended to seven years. The Petroleum and Minerals Division of the GLO has determined that a five-year primary term should be retained. Five years is the longest primary term on any state lease, including state fee leases.

Two commenters made comments relating to the numbering of subsections found in §9.5. Given the need for a prefatory statement explaining the function of this section, the *Texas Register* format rules require this section to be numbered in this manner.

One commenter suggested that §9.5(2)(E)(xi) be changed to read that leases are not effective until filed with, rather than in, the GLO. The agency agrees with this suggestion and it has been incorporated into the rules.

One commenter stated that it is unrealistic to expect that lessees would usually mail delay rentals at least 14 days in advance of the delay rental due date, as required under §9.6(b)(2)(A)(ii), and that a period of seven days would be more reasonable. This provision is intended to allow for special circumstances where the payment of a delay rental is not timely received. A lease will terminate upon the failure of the leaseholder to make timely payment of a delay rental. This provision attempts to ameliorate that consequence if the lessee has met certain other prescribed conditions. The conditions are that a delay rental shall be considered timely received, even if not actually received by the due date, if lessee tendered the payment into the United States mail, or the equivalent, at least 14 days prior to the due date. Fourteen days does not seem to be an unreasonable lead time to protect a valuable leasehold estate. In addition, the provision does not require a lessee to deposit payment in the mails at least 14 days before the anniversary date of the lease. It merely provides that, if payment is deposited in the mails at least 14 days before the anniversary date of the lease, subsequent negligence or mishandling by the carrier will not be counted against the lessee even if the payment is received after the due date.

Two commenters stated that, under §9.6(b)(2)(A)(iii), receipt of payment within 20 days of the actual due date was too short a period of time. The commenters requested a longer period of time in order to ascertain whether the GLO received payment. This provision was intended to avoid the following scenario: if the first two requirements were met, it would not matter whether the payment deposited in the mails was ever actually received by the GLO. It matters only that the payment of the delay rental is made, whether or not by the payment originally mailed. The point is well taken that 20 days after the anniversary date of the lease may be too short a period of time to determine the nonpayment of the delay rental, and the number of days has been extended to 45 days.

Comments were received on §9.6(b)(4) stating that a lessee should be permitted to reduce the delay rentals in an amount proportionate to the number of acres released. It appears that the commenters are actually asking for a proportionate reduction clause in the lease. Delay rentals due under a state lease are based upon a certain dollar amount per acre for each acre in the description of the leased premises. There is no lease provision addressing the payment of rentals based upon the number of acres actually covered by the lease at any given time. Lessee may certainly release any number of acres held under the lease, but there is no lease provision by which the delay rentals may be reduced. To include such a provision in the rules would conflict with the provisions of the lease.

One commenter stated that it would be advisable to define in §9.6(c)(l) the event which constitutes the completion of a well and suggested several definitions. It is the GLO's position that the term completion of a well is one which appears to be adequately addressed by Texas law and is commonly understood by the industry and by other administrative agencies such as the Railroad Commission. The term completion should be left as it is understood by the industry and by other administrative agencies and as defined by law. It seems reasonable that the date of completion of a well should be the same date as reflected on the completion report required to be filed with the Railroad Commission. Therefore, §9.6(c)(1) has been amended to reflect that the date of completion of a well is presumed to be the date reflected on the completion reports filed with the Railroad Commission.

One commenter requested that §9.6(c)(2)(F) be amended to provide that a lessee be required to give notice to the GLO within 30 days of any cessation of production to comport with the industry practice of accounting for reporting production on a monthly basis, and to create less administrative burden for lessees, while still providing the GLO with sufficient notice of cessation. The concern of the commenter has been incorporated to conform to prevailing industry reporting standards.

One commenter suggested that §9.6(d)(1)(B) be amended to include a clause providing that if an application for an extension of a state lease and payment are not timely received, the lease should expire automatically on the last day of the primary term or extension, unless otherwise maintained in force and effect. This section presumes already that no application or payment would be necessary if the lease was otherwise maintained in force and effect. However, the comment has been incorporated into §9.6(d)(1), which appears to be a more appropriate location for the phrase.

A comment received concerning §9.6(e)(2)(B) recommended that the clause after a final judgment is rendered should be amended to read on the date the judgment becomes final. Section 9.6(e)(2)(B) was amended to reflect that recommendation.

One commenter suggested an amendment to §9.6(e)(2)(C) to provide for simple interest at the rate of 12% per year for rentals which are required to be refunded to a lessee. Inasmuch as payment of the interest on rentals held by the state is not statutorily authorized, this recommendation cannot be included.

One commenter suggested that §9.6(e)(3) be amended to permit a suspension of the terms of the lease where a lessee is denied access to the leased property or denied a permit to drill by any duly constituted authority of the United States to include the State of Texas itself. The commenter's concerns should be allayed by the fact that the State of Texas would be included under the force majeure clause of the lease which permits a suspension of the terms of a lease when lessee is unable to comply with the terms thereof by order, rule or regulation of governmental authority.

One commenter requested that §9.6(e)(3)(C) be amended to provide that the terms of a suspended lease should recommence on the date of receipt by lessee of written notice of a determination by the School Land Board. It appears that amending the rule in such a manner would conflict with the express terms of the Natural Resources Code, §52.0301.

A commenter suggested that the requirements of force majeure listed under §9.6(e)(4) be expanded to include such things as equipment failure, floods or any other cause or event not reasonably within the control of lessee. All too often, equipment failure is an event within the control of lessee and may be avoided by periodic maintenance. It is not an event of force majeure that could not reasonably fall under the provisions of the 60-day rework clause. Floods could be reasonably construed as falling under the heading of Acts of God and are, therefore, already included. The term any other cause or event not reasonably within the control of lessee is a broad phrase often subject to extreme abuse, and, therefore, does not seem to be an appropriate clause to include.

Two commenters suggested that §9.6(f)(2), which bases a determination of production in paying quantities on a 6-month period, be deleted since Texas courts have not set a specific period of time that is not already included under the terms of the lease itself. In light of this consideration, the provision is one better suited for the lease and was deleted accordingly. Two commenters suggested that §9.6(f)(2)(A) be amended to provide that only reasonable documentation be filed to prevent the potentially onerous requirement that a lessee be required to provide documentation of what was termed as questionable relevance. Under this provision a lessee has the burden of proving that a well is producing, or is capable of producing, oil or gas in paying quantities. The provision therefore requires a lessee to provide documentation requested or required by the GLO staff to make that assessment. Clearly, the phrase required by the GLO staff to make that assessment includes only that documentation relevant to the issue of whether a well is producing in paying quantities. Thus, by definition, it would exclude all extraneous or irrelevant documentation. To include the term reasonable documentation in this provision would not only be redundant, it would also establish what may potentially become a battleground for defining what is, in fact, reasonable.

One commenter suggested that §9.6(f)(3) be amended to permit a lessee to submit written notice of operations on a state lease within 30 days, instead of five days, of spud date, workover, re-entry, temporary abandonment, or plugging and abandonment of any well. The purpose behind the notice requirement is to provide sufficient time for a field inspection of the operations. A 30-day notice requirement would defeat the ability of a field inspector to make a timely inspection.

Two commenters stated that under §9.6(g)(6)(A)(iii), receipt of payment within 20 days was too short a period of time. The commenters requested a longer period of time in order to ascertain whether the GLO received payment. This provision was intended to avoid the following scenario: if the first two requirements were met, it would not matter whether the payment mailed is actually received by the GLO, only that the payment of the shut-in royalty is made, whether by separate payment or not. The point is well taken that 20 days after the anniversary date of the lease may be too short a period of time to determine the non-payment of the shut-in royalty, and the number of days has been extended to 45 days.

A comment was received concerning §9.6(h) requesting a meeting with the GLO to rebut the presumption that a state lease is being drained by a producing well on an adjacent lease. The commenter wanted to be able to present evidence consisting of geological, geophysical, economic, engineering, production date from the offset well, and other data regarding the leased premises to rebut the presumption of drainage. Section 9.6(h)(2)(A),(B), (C), and (D) were specifically included to address the issue.

One commenter requested that §9.6(h)(1)(D) be amended to require confidentiality of logs submitted to the GLO. This section has been amended to provide that all logs submitted to the GLO will be kept confidential and returned upon request.

One commenter questioned the clarity of §9.7(b)(1)(A) and suggested that royalty be valued only at the wellhead, allowing the lessee to deduct transportation expenses and the like from the royalty base. Because neither leases nor the Natural Resources Code specify the wellhead as the valuation point for state royalty, and because the state's royalty must be free of cost, no change in the historic no deductions policy is appropriate.

One commenter questioned the presumption created under §9.7(b)(1)(E) for assuring that royalties are paid on the market value of oil and gas. The suggestion to extend the presumption of market value to proceeds paid under contracts entered into between corporate affiliates is rejected because the presumption does not change the state's burden to prove a royalty deficiency and the rule is intended to put corporate affiliates on notice that those non-arm's length contracts will be carefully scrutinized.

One comment was received recommending that §9.7(b)(2)(A) be amended to permit wire transfers of funds. This comment was incorporated and §9.7(b)(2)(A) was amended to specifically allow payment by Electronic Funds Transfer, as well as by other payment methods as specified by Texas Natural Resources Code, §52. 132.

One commenter recommended striking the last sentence of §9.7(b)(2)(B) to remove improperly identified royalty payments from the parameters of §9.7(b)(3) 's delinquency penalty provisions. Because of the administrative burden caused by improperly identified royalty payments and in compliance with the Texas Natural Resources Code, §52.131(c)(3) and (h), the penalty provision has been retained in §9.7(b)(2)(B) to encourage compliance with that rule.

One commenter recommended amending §9.7(b)(2)(C) to only require lessees to make various documents available for the GLO's inspection. The GLO can require the documentation set out in that rule pursuant to the Texas Natural Resources Code, §52.131(c). However, the GLO does not require all such documentation in every situation. Therefore, §9.7(b)(2)(C) has been amended to provide that lessees must provide only that documentation prescribed by the GLO's reporting pro-

cedures. Information regarding this required documentation may be obtained from the Royalty Management and Compliance Division of the GLO.

One commenter raised the concern that §9.7(b)(2)(I) exceeded statutory confines by requiring the filing of gas contract briefs (MA-5's). Because such a requirement is statutorily authorized by the Texas Natural Resources Code, §§52.131, 31.051(3), 32.062, and 32.154(3), this comment was not incorporated.

One commenter commented on the requirement of §9.7(b)(2)(I) that gas contract briefs (form MA-5) accompany each gas contract, agreement, or contract amendment. The commenter contended that this was onerous in an era of 30 day spot sales. The commenter was assured, at a meeting between the GLO staff and industry representatives, that a simplified form was being developed and that their input regarding the form would be sought.

One commenter questioned the state's statutory authorization to require the filing of certain settlement agreements and judgments in §9.7(b)(2)(J). Because the documents required to be filed by that rule clearly relate to the production, transportation, sale, and marketing of the state's oil and gas, and thereby can have a direct impact upon the state's royalty interest, they can be required under the Texas Natural Resources Code, §§52.131, 52.135, 31.051(3), 32.062, and 32.154(3). Therefore, this comment was not incorporated. The extent to which the GLO can restrict the dissemination of these documents is governed by the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, (Vernon Supplement 1989).

One commenter recommended that §9.7(b)(2)(K) be amended to change the word require to inspect or examine. Because the documents that can be required by that rule expressly relate to lease operations and accounting, they can be required under the Texas Natural Resources Code, §§52.131, 52.135, 31.051(3), 32.062, and 32.154(3). Therefore, this comment was not incorporated.

One commenter suggested clarification of the lessee's responsibility for the acts and omissions of certain third parties as set out in §9.7(b)(2)(M). This rule has been revised to more clearly set out the intended causal connection.

One commenter recommended altering §9.7(b)(2)(N)'s lien language to add under the lease at the end of the rule. Because such an addition would add a limitation not authorized by the Texas Natural Resources Code, §52.136, this comment was not incorporated.

Various commenters recommended amending §9.7(b)(4)(A) and (B) to alter the definition of non-routine corrections and adjustments and the approval process for such corrections and adjustments. As a result, these rules were amended.

One commenter commented on the requirement of §9.7(b)(4)(C) that prior month adjustments must be reported separately from current monthly reports. The commenter emphasized that this was not practical for those companies reporting by magnetic tape format. The GLO recognizes that this works a burden on these companies and the issue of magnetic tape reports will be addressed in the new royalty requirement procedures to be implemented in December, 1989.

One commenter questioned the penalty for improperly filed releases as provided in §9.8(b)(3)(B)(i). The filing fee is doubled when releases are improperly filed with the GLO in order to encourage compliance with the rules and to avoid the administrative burden caused by noncompliance. The doubled fee is not imposed when the information required by the rules is properly submitted.

One commenter requested an opportunity to cure prior to the commissioner's forfeiture under §9.8(e). That section has been amended to provide for a 30-day notice prior to forfeiture in most cases in order to set out the GLO's longstanding policy of affording a lessee ample opportunity to convince the commissioner that the commissioner should not forfeit a lease. However, the commissioner reserves the flexibility to forfeit a lease without such prior notice in circumstances where the commissioner deems such action necessary to protect the best interest of the Permanent School Fund.

One commenter expressed concern that notice of forfeiture could be sent to an incorrect address. The format of §9.8(e)(4)(C) requiring the GLO to mail such notice to the lessee and surface owner at their last known addresses as shown by the GLO's records was based on the Texas Natural Resources Code, §52.174. Because it is felt that requiring a lessee to keep its lessor informed of any changes in the lessee's address was a reasonable requirement, §9.8(e)(4)(C) was not substantively amended.

One commenter suggested changing the forfeiture notification and reinstatement rule, §9.8(e)(4)(C) and §9.8(e)(5)(A), to require notice by registered mail and to begin the running of the reinstatement time frame from the date of the lessee's receipt of that notice. The Texas Natural Resources Code, §52.174 provides that the reinstatement time frame runs from the date of the declaration of forfeiture. By statute, the notice of forfeiture is unrelated to the date, effectiveness, or reinstatement of that forfeiture. Because receipt of the forfeiture notice cannot affect the running of the reinstatement time frame, the necessity of notice by registered mail is rendered moot.

One commenter suggested that the heading of §9.9 be amended, for purposes of clarification, to Pooling and Unitization of State Leases, since lessees might distinguish between pooling and unitization and overlook the unitization provisions of the proposed section. The heading has been amended as suggested by the commenter.

Another commenter stated that §9.9(b)(1) should be deleted in its entirety and suggested that, at the very least, the information required under §9.9(b) (1) be held confidential and returned to lessee upon completion of review by the GLO. Since the GLO staff is charged with the duty to analyze pooling and unitization requests to determine that such requests are in the Permanent School Fund's best interests, it is unlikely that GLO staff could adequately do so if §9.9(b)(1) were deleted in its entirety. However, it is certainly understandable that such proprietary information should be held confidential and returned to lessee at the lessee's request. Therefore, §9.9(b)(1) has been amended to provide for such confidentiality and return.

The following commenters submitted comments both supporting the sections as proposed and suggesting changes: Texas Mid-Continent Oil and Gas Association (TMOGA) and the Texas Parks and Wildlife Department. The following commenters suggested changes in the proposed rules: Chevron U.S.A. Inc.; Exxon Company, U.S. A.; the International Association of Geophysical Contractors (IAGC); and Texas Independent Producers and Royalty Owners Association (TIPRO).

The new sections are adopted under the authority of the Texas Natural Resources Code, §31.051 which authorizes the commissioner of the General Land Office to make and enforce rules consistent with the law and §32.062 which authorizes the School Land Board to adopt rules regarding the sale and lease of land subject to the board's control.

§9.3. General Provisions.

(a) Scope of this chapter. This chapter shall apply to all lands specified in §9.2(1)-(5) of this title (relating to Leasing Guide). Those lands specified in §9.2(6)-(8) of this title (relating to Leasing Guide) are governed by the statutes and rules referenced in those subsections and by references to those lands found in §9.5 of this title (relating to Leasing State Property for Oil and Gas).

(b) Conflict between this chapter and other rules and statutes. Operations on state lands are subject to all applicable state and federal regulatory authorities. It is not the intent of this chapter to usurp the regulatory powers of such authorities. If the provisions of this chapter conflict with and cannot be harmonized with applicable state or federal statutes, federal rules, or state rules (e.g., the applicable rules of RRC, Texas Water Commission, Air Control Board, or TPWD), such other regulatory statutes or rules shall control.

(c) General policy. These rules are not intended to unlawfully impair any existing contract.

(d) Failure to comply with this chapter. If a lessee or operator fails to comply with this chapter, the state may seek any remedies authorized by statute or common law, including forfeiting the lease under §9.8 of this title (relating to Discontinuing the Leasehold Relationship). A lessee is responsible for the actions or omissions of its operator and the lessee's employees, agents, servants, contractors, subcontractors and any other agent in control of any or all of the leasehold interest.

(e) Exceptions to this chapter. The commissioner may, if authorized by law and upon proper written request, grant exceptions to the provisions of this chapter if the commissioner deems the exceptions to be in the best interest of the state. No such exception shall be effective until a written

request by the lessee and a written explanation, signed by the commissioner, is placed in the appropriate mineral file or other GLO file.

(f) Compliance with lease terms. Lessee shall comply with the provisions of the lease. Nothing in this chapter shall be construed as relieving a lessee of this duty or as impairing any remedies available to the state.

§9.4. Geophysical and Geochemical Exploration Permits.

(a) General rule of application. The rules in this section shall apply to lands described in §9.2(1)-(4) of this title (relating to Leasing Guide).

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

(1) Applicant–A person seeking authorization from GLO to conduct geophysical or geochemical exploration on state-owned lands.

(2) Client–One for whom the geophysical or geochemical exploration is to be conducted.

(3) Coastal wetlands–Emergent, periodically emergent, or submerged coastal areas of high biologic productivity where sea water is typically present during normal weather conditions and tidal ranges.

(4) Geochemical exploration–A survey or investigation conducted to discover or locate oil and gas prospects using techniques involving soil sampling and analysis.

(5) Geophysical exploration–A survey or investigation conducted to discover or locate oil and gas prospects using magnetic, gravity, seismic, and/or electric techniques.

(6) High velocity energy source–Energy sources which generate a sharp-peaked energy pulse including, but not limited to, dynamite, detonating cord, seismogel, and ammonium nitrate.

(7) Low velocity energy source–Energy sources which generate a bell shaped energy pulse including, but not limited to, pneumatic, acoustic, and vibrating devices.

(8) Operator–One who directs, supervises, controls, and/or performs the exploration operations, together with all employees and sub-operators.

(9) Oyster lease–An area leased from the state for the production of oysters and marked according to the requirements of TPWD.

(10) Oyster reef–Naturally occurring beds of oysters and oyster shells as defined by TPWD.

(11) Permit–License issued by the commissioner authorizing geophysical and/or geochemical exploration on public school land.

(12) Permittee–The holder of a permit.

(13) Public beaches–Any shoreline frequently utilized by the general public for recreational activities.

(14) Resource management codes–Abbreviations for environmental restrictions adopted by state and federal resource agencies and applicable to state-owned tracts.

(15) Shot–Any action resulting in the generation of an energy pulse from which geophysical data is obtained.

(16) Shrimping fleet–A group of five or more boats trawling for shrimp in an area not more than one mile in diameter.

(17) Structure–Any man-made improvement placed on or affixed to state-owned lands.

(c) Permit applications and procedures.

(1) Geophysical or geochemical exploration for mineral resources may not be conducted on state-owned lands without a permit issued by the commissioner.

(2) Permits shall be issued jointly to, and are the mutual responsibility of, the client and the operator. Permits shall not be transferred or assigned.

(3) Application for a permit shall be made by the operator. The application shall be made upon forms furnished by the GLO, and shall include:

(A) the names, addresses, phone numbers, and taxpayer I.D. numbers of the client and the operator. If an applicant is a corporation, it shall include the names of the corporate representatives authorized to execute legal documents;

(B) maps showing the location of shot lines in relation to state lease tracts, including x and y coordinates of the beginning and end points of each line as designated by the Texas Coordinate System, the Texas Natural Resources Code, §21.071 (for submerged lands only);

(C) any resource management code information available regarding the tracts on which the exploration activity will be conducted; and

(D) a complete description of the number and spacing of shots, the size of charge per shot, and a description of the energy source to be used during exploration activities.

(4) Applications must be received by GLO at least 14 working days for submerged lands and at least seven working days for uplands before proposed commencement of operations. The application processing period may extend beyond this time period. Operations, including surveying of the area, shall not begin until operator receives approval by GLO and is assigned a permit number.

(5) The application shall be accompanied by the following fees as specified in §1.91 of this title (relating to Fees):

(A) application filing fee;

(B) geophysical fee (applicable to submerged lands only);

(C) geochemical fee;

(D) exploration inspection fee (applicable to submerged lands only);

(E) surface damage fee; and/or

(F) bottom damage fee (applicable to submerged lands inside the barrier reef of the Gulf of Mexico only).

(6) Permits are issued subject to any existing lease or rights granted to a surface lessee on tracts to be explored.

(7) Prior to the issuance of a permit, applicant may be required to submit additional information.

(d) Insurance. Prior to the issuance of a permit, applicant shall file with GLO proof of current liability insurance from a company approved by the Texas Board of Insurance or alternatively such other evidence as may reasonably be required by the GLO to establish the applicant's financial ability to self insure against potential liability. The extent of the insurance coverage shall be in the amount deemed sufficient by the GLO.

(e) Geophysical or geochemical operational guidelines.

(1) The following provisions shall apply to all geophysical or geochemical operations conducted on state-owned lands.

(A) Permits shall be granted for a minimum of three days and a maximum of 30 days. A permit may be extended for a maximum of an additional 30 days at the discretion of the commissioner and upon payment of the applicable fees.

(B) Failure to comply with any conditions included in the permit which pertain to the GLO or any other state or federal regulatory agency shall be considered a violation as specified in subsection (h) of this section.

(C) The client or operator shall give verbal notice to the GLO prior to commencement of operations. The GLO will assign a number to the permit and give written notice of its issuance to the permittee.

(D) Geophysical crews operating on state-owned lands shall have the following items in their possession and available for inspection at the project site by the commissioner or a designated representative, upon request.

(i) a copy of the seismic permit, including any special conditions, and the authorized permit number;

(ii) a copy of the GLO rules governing geophysical and geochemical exploration;

(iii) detailed maps showing the approved shot lines and shot points covered by the permit; and

(iv) a copy of the resource management codes and definitions as provided by the GLO for those tracts on which operations will be conducted (applicable to submerged lands only).

(E) No shot in excess of 20 pounds dynamite equivalent may be used in submerged areas and no shot in excess of 40 pounds dynamite equivalent shall be used in uplands areas without special permission of the commissioner. Applicants wishing to utilize shots in excess of these limitations shall submit written documentation to the commissioner explaining the necessity for the size shot proposed, the number of shots to be utilized, the location of all shot holes, the proposed date that operations will commence, and the expected operations period. After evaluation, the request will be approved or denied, at the commissioner's discretion.

(F) No shots shall be discharged other than in daylight hours except by written permission of the commissioner.

(G) No shots shall be detonated within three miles of a public beach between May 1st and September 10th.

(H) All operations shall be conducted using the highest degree of care to prevent damage to or pollution of all lands and waters. Any physical modification of the surface including, but not limited to, mounding, cratering, or vehicle tracks shall be remedied upon completion of the work and the area returned to its original condition as nearly as possible. Such surface restoration shall be coordinated with and approved by GLO.

(I) Persons using wheeled or tracked vehicles on state-owned lands shall use reasonable efforts to follow existing tracks or roadways to minimize impact to the area. Persons using wheeled or tracked vehicles on submerged lands or marsh areas shall follow a single track.

(J) Prior to conducting any operations, permittees shall coordinate with the appropriate regulatory agencies regarding any operations which could potentially impact state or federally protected species.

(K) No geophysical surveying or shooting shall be performed within 1,000 feet of a known bird rookery island, as depicted on maps maintained by GLO, between February 15th and September 1st.

(L) Any person conducting geophysical or geochemical activities under this section must immediately advise the commissioner of the following which presently exist or can reasonably be anticipated:

(i) the location and type of any dangerous condition which may constitute an imminent threat to human activity; or

(ii) activities or situations, whether caused by permittee's activities or otherwise, which may adversely affect the environment, aquatic life or wildlife, cultural resources, or other uses of the area in which the exploration activity is conducted.

(M) No vessel, vehicle, or equipment operating under permit shall discharge solid waste or garbage into state waters or state-owned lands. Solid waste includes, but is not limited to, nonbiodegradable containers, rubbish, or refuse. A sign, with letters no smaller than one inch in height, shall be displayed in a high traffic area of any vessel or equipment operating in state waters under permit, stating, "Discharge of any solid waste or garbage into state waters is strictly prohibited and may result in revocation of the state permit authorizing exploration operations."

(N) Any pollution, fish or wildlife kill, or loss of property shall be immediately reported to the commissioner.

(2) In addition to the provisions of subsection (e)(1) of this section, the following provisions shall apply to geophysical operations conducted on submerged lands.

(A) Each person applying to perform geophysical exploration on state-owned lands shall file with GLO a unique symbol, number, or series of characters which will be used to identify all equipment and materials used in geophysical and/or geochemical exploration.

(B) All equipment used in connection with geophysical survey work which is placed on submerged lands shall be:

(i) distinctly marked with permittee's unique symbol, number, or series of characters clearly identifying the company performing the geophysical operations;

(ii) in compliance with rules governing size, design, and marking, as promulgated by the United States Coast Guard and the United States Army Corps of Engineers;

(iii) anchored in such a way as to minimize potential damage to commercial fishing operations;

(iv) properly flagged during daylight hours and properly lighted when remaining in position after sundown; and

(v) removed immediately upon completion of geophysical work.

(C) Staging and work areas shall not be established in vegetated coastal wetlands or vegetated dune areas.

(D) No shot shall be detonated within one mile of a shrimping fleet operating in good faith in the area immediately prior to exploration.

(E) Shot holes shall be at least 120 feet below the mudline on submerged lands.

(F) Suspended high velocity energy sources shall not be used without express written authorization from the commissioner. Requests for the use of such explosives shall be in writing, giving the size of charges to be used, the depth at which they are to be detonated, and the specific precautionary methods proposed for the protection of fish, oysters, shrimp, other aquatic life, wildlife, or other natural resources. After evaluation, the request will be approved or denied, at the commissioner's discretion.

(G) Air boats may be required, at the discretion of GLO, for operations in waters less than three feet deep as measured from mean low water.

(H) No low velocity energy shot shall be discharged within 500 feet and no high velocity energy shot shall be discharged within 1,000 feet of any boat not involved in the permitted operations unless otherwise directed by the GLO.

(I) No shot shall be discharged within 500 feet of any oyster reef, marked oyster lease, marked artificial reef, or marked red snapper bank, or within 500 feet of any dredged channel, dock, pier, causeway, or other structure. Assistance in locating oyster reefs and leases is available from TPWD.

(J) Buried shots shall not be left overnight in water less than four feet deep as measured at low tide, or within 1,500 feet of any shoreline unless the shots are properly buried and anchored, all wires are properly shunted to prevent accidental discharge, and all shot holes are properly marked and lighted.

(K) No shot in excess of 20 pounds shall be discharged within one mile of any pass, jetty, mouth of a river, or other entrance to the Gulf of Mexico from inland waters.

(L) A representative of the client shall be present anytime the operator is discharging a high velocity energy source.

(3) In addition to the provisions of subsection (e)(1) of this section, the following provisions shall apply to geophysical operations conducted on state-owned uplands.

(A) A surface lessee shall be notified prior to any entry by operator or client onto permitted land, and shall be notified upon operator's or client's leaving the area.

(B) Operator and client shall be held liable for any damages to livestock on state-owned lands caused by geophysical or geochemical exploration.

(C) Neither client nor operator may negotiate with the surface lessee regarding the payment of surface damages. The client or the operator shall be liable to the state for any damages caused by geophysical or geochemical explorations.

(D) Fences shall not be damaged or permanently removed. Any fence which is disturbed to permit passage shall be replaced and restored to its pre-existing condition. All gates shall remain closed and locked when not in use.

(E) Operator is not permitted the use of water from stock tanks located on the tract, except as directed by the GLO or in case of emergencies.

(F) In order to prevent erosion, operator shall construct terraces as directed by guidelines and instructions provided by the GLO and shall not remove top soil when blading the surface.

(f) Inspection. All operations shall be subject to inspection by the commissioner or the commissioner's representatives at any time. Upon reasonable notice, the permittee shall furnish the commissioner or the commissioner's representatives with transportation over submerged lands from the normal staging site to and from the operations site, along with any meals and living quarters necessary while the inspection is being conducted. If TPWD assigns a representative to the exploration party, the representative shall be furnished with similar accommodations.

(g) Reporting after expiration of permit. Within 30 days of the expiration date of the permit, the permittee shall file with the commissioner a sworn summary of activities report, prescribed by GLO, which:

(1) identifies each tract worked each day during which exploration operations were conducted, including surveying of the area;

(2) provides maps showing any deviation in shot line or shot point location from the maps which were submitted with the permit application; and

(3) if high-velocity energy sources are used, shall include a sworn inventory of all explosives which are loaded, used, returned, or lost during execution of the permit. This inventory shall be on the inventory of explosives form prescribed by GLO.

(h) Violations.

(1) A permittee that violates or fails to comply with any provision of the Texas Natural Resources Code or this chapter, is subject to immediate revocation of the permit and may be prohibited from further exploration on state-owned lands, except upon such additional terms, conditions, and safeguards as the commissioner may expressly stipulate. A permittee who commits such violation will be liable for any costs incurred from any damage resulting from the violation.

(2) Upon discovery of any violations, the commissioner or a designated representative may order temporary discontinuance of seismic operations until completely reviewed by the commissioner.

(i) Other records. At any time or from time to time the GLO may require any additional records relating to any aspect of exploration operations, excluding interpretive data. These records shall be maintained by client or operator for a minimum period of five years.

(j) General limitations. These rules shall not be construed to enlarge or restrict the rights of any owner of a state mineral lease.

§9.5. Leasing State Property for Oil and Gas. State property will be leased for the exploration and development of oil and gas under these procedures.

(1) Sealed bid leasing by SLB.

(A) Lands affected. See §9.2 of this title (relating to Leasing Guide) to determine which lands are leased by sealed bid. Generally, this includes all lands owned in fee by the PSF, all land trade lands, and state agency lands, except TPWD or TDC lands.

(B) Nominations, advertising, and awarding leases.

(i) The SLB or persons interested in leasing a specific tract may nominate a tract for lease. The tracts will be evaluated by GLO geologists. The SLB will set the terms and conditions upon which tracts will be offered for lease. These terms will be advertised and bids taken. Although any or all bids may be rejected, generally, the highest bidder for the tract will be issued a lease. See Chapter 153 of this title (relating to Exploration and Development) for more details on the leasing procedure.

(ii) The GLO will notify the surface owner of land trade lands of the tract's nomination and of any lease awarded if such notification has been requested.

(iii) Riverbeds and channels which are located more than two miles from a well that is producing, or capable of producing, oil or gas shall be leased pursuant to the special leasing provisions of the Texas Natural Resources Code, §52.086.

(2) Leasing of Relinquishment Act lands by surface owners.

(A) Lands affected. The leasing procedures as set out in this paragraph apply only to the leasing of Relinquishment Act lands.

(B) Identity of the state's agent. The surface owner of Relinquishment Act land acts as the state's leasing agent. A minor or a person of unsound mind, as these terms are defined in the Texas Probate Code, cannot act as the state's agent. An agent of the surface owner, including an attorney-in-fact, cannot execute a Relinquishment Act lease. However, if the surface owner is a corporation, a Relinquishment Act lease may be executed by any duly authorized officer or agent of the corporation.

(C) Authority and duties of agent.

(i) Authority. The surface owner shall execute oil and gas leases on behalf of the state, unless a surface owner's

agency rights have been forfeited. The surface owner may not enter into a contract to execute a Relinquishment Act lease.

(ii) Prohibition against self-dealing. A surface owner may not self-lease, either directly or indirectly. A surface owner may not acquire by assignment a lease executed by that surface owner. A surface owner will be considered to have engaged in self dealing if the surface owner leases or assigns a lease executed by that surface owner to the following persons:

(I) a nominee;

(II) any corporation or subsidiary in which the surface owner is a principal stockholder or an employee of such a corporation or subsidiary;

(III) a partnership in which the surface owner is a partner or an employee of such a partnership;

(IV) if the surface owner is a corporation or a partnership, a principal stockholder of the corporation or a partner of the partnership, or any employee of the corporation or partnership;

(V) a fiduciary representing the surface owner, including, but not limited to, a guardian, trustee, executor, administrator, receiver, or conservator; or

(VI) a family member or anyone related to the surface owner by marriage, blood, or adoption.

(iii) Fiduciary duty of agent. As the state's agent, a surface owner owes the state a fiduciary duty and the duty of utmost good faith. A surface owner must fully disclose any facts affecting the state's interest and must act in the best interest of the state. Any conflict of interest must be resolved by putting the interests of the state before the interests of the surface owner. In addition to these duties, the surface owner owes the state all the common-law duties of a holder of executive rights.

(iv) Consequences of a breach of the surface owner's fiduciary duty or a violation of the prohibition against self-dealing. When a surface owner engages in self-dealing by acquiring an assignment in a lease executed by that surface owner, such lease is void as of the time of assignment and the commissioner may forfeit the surface owner's agency rights. When a surface owner breaches any duty or obligation owed to the state, the commissioner may request that the attorney general file suit. A suit to enforce the surface owner's duties and obligations or to forfeit the surface owner's agency rights shall be filed in a district court in Travis County. See the Texas Natural Resources Code, §52.188 and §52.189.

(v) penalty assessment for breach of the surface owner's fiduciary duty. A penalty of 10% shall be imposed on any sums due the state because a surface owner breaches a fiduciary duty. The imposition of this penalty does not limit the right of the state to obtain punitive damages, exemplary damages, or interest. Any punitive damages or exemplary damages assessed by a court shall be offset by the 10% penalty imposed by this paragraph.

(D) Lease negotiation procedure.

(i) Subject to the limitations against self-dealing, the surface owner is authorized to act as the state's leasing agent with any person desiring to develop or explore for the oil and gas.

(ii) The lease shall be on the GLO lease form in use on the date of execution. This form will be prepared and furnished by GLO.

(iii) All of the negotiated terms must be included in the lease instrument. No lease term or provision may be included in a collateral contract or agreement.

(iv) The proposed lease shall be submitted to GLO for approval prior to recording the lease in the county records. The proposed lease shall be accompanied by the processing fee required by §1.91 of this title (relating to Fees).

(E) Approval and filing of lease.

(i) Any additions, modifications, deletions, or changes to the GLO lease form shall be subject to the commissioner's approval.

(ii) The commissioner may reject, or refuse for filing, any lease deemed contrary to the best interests of the state.

(iii) Unless the commissioner makes an exception under §9.3 of this title (relating to General Provisions), a Relinquishment Act lease may not provide for a primary term of more than five years.

(iv) Unless the commissioner makes an exception under §9.3 of this title, (relating to General Provisions), a Relinquishment Act lease may not encompass more than four full sections or 2,560 acres. A "mother hubbard" or "coverall" clause in the lease is not acceptable.

(v) Private land and Relinquishment Act land may not be included in the same lease.

(vi) A lease may encompass several smaller tracts if they are contiguous or within 1/2 mile of each other.

(vii) A Relinquishment Act lease may not provide for a royalty of less than 1/16th to the state or a delay rental of less than $.10 per acre.

(viii) When a proposed lease covering an undivided interest in Relinquishment Act land is submitted for approval, the person submitting the lease shall inform GLO of all remaining undivided interest owners of that land.

(ix) The state and the surface owner must share equally in all consideration paid under the lease. However, the surface owner may waive or defer his or her share of the bonus. The adequacy of the consideration shall be determined by the commissioner at the time a certified copy of the lease is offered for filing in GLO.

(x) If the commissioner rejects a proposed lease, the prospective lessee will be notified of the reasons for the rejection and any changes, deletions, or additions which would render the lease acceptable. The prospective lessee may request reconsideration of a rejection.

(xi) Upon receipt of approval, the lease shall be recorded in each county in which the land is located. A certified copy of the lease, from each county in which it is recorded, shall be filed with GLO. Leases are not effective until approved and filed with GLO. Such filing and approval of leases shall not limit, waive, or affect any lawful claim or remedy available to the state.

(xii) The state's share of the bonus payment and the filing fee prescribed by §1.91 of this title (relating to Fees) shall be submitted along with the certified copy or copies of the lease. A lease is void unless it recites the actual consideration paid or promised for the lease.

(F) Leasing procedure when surface owner cannot be located. If a potential lessee cannot locate a surface owner, the procedures set out in the Texas Natural Resources Code §52.186 shall be followed. The land Will then be leased by sealed bid as provided in paragraph (1) of this section. The state will receive all the consideration paid under such a lease.

(G) Leasing procedure when surface owner's agency rights are forfeited.

(i) When a surface owner's agency rights have been forfeited, the land shall be subject to lease by sealed bid as provided in paragraph (1) of this section. The surface owner shall not be entitled to share in the proceeds of such lease. Upon expiration or termination of such lease, the surface owner's agency rights will be ipso facto reinstated.

(ii) If no lease is executed within one year of forfeiture, the surface owner's agency rights may be reinstated at the commissioner's discretion.

(3) Leasing the state's free roy-

(3) Leasing the state's free royalty interests.

(A) Lands affected. These leasing procedures apply to lands sold pursuant to the Texas Natural Resources Code §51.054 or any lands sold with a free royalty interest reserved to the state.

(B) Leasing by executive right holder on behalf of the state. The holder of the executive or leasing rights on free royalty land shall act as the state's agent in executing oil and gas leases covering the state's free royalty interest. In executing this lease, the executive right holder owes the state a duty of good faith and any other common-law duties which an executive right holder owes to a non-executive mineral interest owner.

(C) Filing with GLO. Leases covering the states free royalty interest are not effective until filed with GLO.

(4) Leasing of highway rights-of-way by the SLB.

(A) Definitions. As used in this paragraph, the terms adjacent mineral owner and tract have the following meanings unless the context clearly indicates otherwise.

(i) A person is considered an adjacent mineral owner:

(I) if the adjoining land is unleased, the term refers to the holder of the mineral estate in that land;

(II) if the adjoining land is leased, the term refers to all working interest holders of that lease;

(III) if the adjoining land is leased but undivided mineral interests remain unleased, the term refers to those undivided mineral interest holders as well as the lease's working interest holders.

(ii) Tract means a highway right-of-way subject to lease under this paragraph.

(B) Lands affected.

(i) A tract may be leased if the state owns the minerals under it and if the tract is not within 2,500 feet of a well which was capable of producing oil or gas in paying quantities as of January 1, 1985. If such a well was in existence as of that date, the tract may not be leased.

(ii) In its discretion, SLB may establish the size and the outer boundaries of each tract to be leased; however, each tract shall extend across the entire width of the right-of-way.

(iii) The SLB may refuse to lease a particular tract, either on its own or upon the request of the Highway Department.

(iv) Tracts subject to the Relinquishment Act shall be leased by sealed bid under paragraph (1) of this section.

(C) Preliminary leasing procedures.

(i) The SLB may initiate the leasing of tracts by providing notice to adjacent mineral owners in accordance with paragraph (4)(C)(iv) of this section.

(ii) An application to lease a tract must contain the following:

(I) a written description of the tract sufficient for it to be located on the ground and a map showing the tracts boundaries and dimensions;

(II) the names and addresses of all adjacent mineral owners, as reflected in the tax assessor-collectors records and county clerks records in the county where the tract is located;

(III) an affidavit stating that there was no well capable of producing oil or gas in paying quantities within 2,500 feet of the tract as of January 1, 1985; and

(IV) the processing fee required by §1.91 of this title (relating to Fees).

(iii) A person who holds a lease on lands adjacent to a tract, and who applies to lease that tract must also submit the following:

(I) a written waiver of the notice to which the applicant as an adjacent mineral owner is entitled;

(II) a certified copy or a reproduction of a certified copy of the recorded lease on the land adjacent to the tract. If the lease has not been recorded, an applicant must submit a copy of the lease along with an affidavit stating that it is a true and correct copy of the lease on the adjacent land; and

(III) a notarized affidavit stating the consideration paid for the lease on the adjacent land.

(iv) The GLO shall notify each adjacent mineral owner, by registered mail, of the proposed leasing of the tract. An adjacent mineral owner may waive this notice by providing a written waiver to GLO. If the person who initiates the leasing process cannot determine the identity or address of an adjacent mineral owner from the county records, notice shall be by publication as provided in the Texas Natural Resources Code, §32.201(d).

(D) Preferential leasing right of adjacent mineral owners.

(i) General Rule. Each adjacent mineral owner is entitled to lease to the center of the tract in the same proportion as his or her ownership in the adjoining land.

(ii) Examples.

(I) If the adjacent mineral owners on opposite sides of a tract differ, each is entitled to preferentially lease to the center of the tract, thereby leasing one half of the tract.

(II) If the adjacent mineral owner on both sides of a tract is the same person, he or she may lease the entire tract.

(III) When the mineral ownership of leased or unleased land adjoining one side of a tract is owned in cotenancy among several adjacent mineral owners, each shall have a preferential right to lease to the center of the tract in proportion to his or her interest in the adjoining land.

(iii) Lease terms. Each lease issued on a tract shall grant the lessee the authority to pool the acreage in accordance with the Texas Natural Resources Code, §32.202. A certified copy of the unit designation or the pooling agreement must be filed with GLO. Each lease shall also provide for the payment of compensatory royalty in accordance with the Texas Natural Resources Code, §32.203. The additional terms of a lease depend on whether lands adjacent to the tract are leased. If the adjacent land is unleased, the SLB shall set the terms of the lease. If the adjacent land is leased, the tract shall be leased upon terms at least as favorable as those of the most favorable lease held on the adjoining land.

(iv) Lease approval and payments. A lease will not be issued until SLB approves the lease and receives the bonus payment and the 1.5% sales fee provided by the Texas Natural Resources Code, §32.110. If the adjacent mineral owner does not tender such sums within 120 days of receipt of notice under paragraph (4)(C)(iv) of this section, the preferential right to lease is forfeited.

(v) Waiver. Any adjacent mineral owner may waive the preferential right to lease by filing with GLO a written waiver executed and acknowledged by the mineral owner or his duly authorized agent.

(E) Leasing after forfeiture or waiver of preferential leasing right.

(i) Generally. Within 18 months of the forfeiture or waiver of the preferential right, SLB may lease the tract directly to an applicant or to the highest bidder under a sealed bid sale.

(ii) Lease to applicant.

(I) If the adjoining land on one side of the tract is owned by several adjacent mineral owners in cotenancy, and one or more of these adjacent mineral owners forfeits or waives his or her preferential right, SLB shall lease in equitable proportions to the remaining cotenants who have applied to lease the tract.

(II) If the adjacent mineral owners on one side of a tract waive or forfeit their preferential rights to lease, SLB shall lease in equitable proportions to the adjacent mineral owners on the other side of the tract who have applied to lease such tract.

(III) If all or part of a tract is not leased to an adjacent mineral owner, SLB shall lease all or part of the tract to the first person who submitted an application to lease the tract.

(IV) The terms and conditions of a lease issued under this subparagraph will be the same as those found in leases issued to adjacent mineral owners. SLB shall not lease to an applicant at a price or terms which are less than those offered to the adjacent mineral owner.

(V) A lease will not be issued until SLB approves the lease and receives the bonus payment and the 1.5% sales fee provided by the Texas Natural Resources Code, §32.110.

(iii) Lease by sealed bid. If all or part of the tract is not leased to an adjacent mineral owner or to an applicant, SLB shall offer all or part of the tract for lease by sealed bid under paragraph (1) of this section.

(5) Sealed bid leasing by TPWD and TDC boards for lease.

(A) Lands affected. See §9.2 of this title (relating to Leasing Guide) to determine which lands are subject to lease by sealed bid. Generally, all lands whose minerals are owned by or held in trust for TDC or TPWD will be leased for oil and gas by their respective boards for lease.

(B) Nominations, advertising and awarding leases. A board for lease or a person interested in leasing a specific tract may nominate a tract for lease. The board for lease may add special lease terms and conditions, but they are generally the same as those contained in SLB sealed bid leases. The terms and conditions are advertised and bids accepted. Although the board for lease can reject any or all bids, the highest bidder generally will be issued a lease. See Chapter 201 of this title (relating to General Rules) for more details on the leasing procedure.

§9.6. Maintaining the Lease.

(a) General rule of application. This section shall apply to leases covering lands described in §9.2(1)-(5) of this title (relating to Leasing Guide), to the extent these leases, or the statutes applicable thereto, address the topics covered in this section.

(b) Delay rentals and production.

(1) Automatic termination. The lease shall terminate automatically unless drilling operations or production of oil or gas in paying quantities, as defined in this section, has commenced on or before the anniversary date of the lease in any year during the primary term, or unless, on or before that date, the lessee pays and GLO actually receives the amount stipulated in the lease as a delay rental.

(A) Anything less than actual receipt of the delay rental payment in GLO shall be inadequate and improper and shall result in automatic termination of the lease.

(B) When delay rentals are timely paid and received, lessee shall retain the rights granted under the lease and may postpone the commencement of drilling operations or production of oil or gas for a period of one year from the anniversary date.

(C) The commencement of drilling operations, the production of oil or gas in paying quantities, and the delivery to GLO of the delay rental are at the option of lessee. Lessee shall not be obligated to perform any of those activities and no liability shall accrue to lessee for failure to produce, drill, or pay the rental. The commencement of drilling operations, the production of oil or gas in paying quantities, or the payment of delay rentals are conditions to maintain the lease in effect.

(2) Timely payment. The date stamped punched, or otherwise reflected on the delay rental payment, check, draft, stub, or envelope by GLO shall be presumed to be conclusive of the date of actual receipt by GLO.

(A) Payment of a delay rental shall be considered timely, irrespective of the date of actual receipt, if lessee establishes that:

(i) payment was dispatched to GLO's correct address by certified or registered mail or equivalent proof;

(ii) an acceptance form was initialed by an employee of the United States Post Office, a common carrier or its equivalent and the date stamped by the United States Post Office, a common carrier or its equivalent (not including private postal meters) showing the letter was received and accepted at least 14 days before the anniversary date of the lease; and

(iii) payment is actually received by GLO no later than 45 days after the anniversary date of the lease.

(B) Subparagraph (A) of this paragraph shall not apply if:

(i) an oil and gas lease has been issued on the same property by the state to another lessee prior to receipt of notice by GLO from lessee contending that subparagraph (A) of this paragraph would apply; or

(ii) the oil and gas interests of the state have been patented, deeded, or otherwise conveyed or disposed of and, as a result, are unavailable for lease by the state.

(C) If the due date of a delay rental should fall on a Sunday or a legal state or federal holiday, the due date shall be extended to the next calendar day which is not a Sunday or a holiday.

(3) Undivided interests. The failure of any interest owner to pay such owners share of the rental will result in termination of the entire lease, not just in the termination of the interest of the party failing to pay such portion of the rental.

(4) Rental indivisible. The delay rental is indivisible and may not be reduced for any reason.

(5) Effect of improper payment. Neither receipt nor retention by GLO of an improperly paid delay rental shall operate as a ratification or a re-grant of the interest covered by a lease that has terminated, nor shall such receipt or retention estop the state from asserting the termination of the lease.

(6) Production. If production in paying quantities is secured from the land covered by the lease and the payment of royalty begins and continues to be paid, lessee shall be exempt from the payment of further delay rentals so long as such production and payment of royalty continue through the primary term.

(c) Dry holes, cessation of production, and drilling or rework operations.

(1) Dry holes.

(A) Effect on rentals. Delay rentals shall not be required to maintain any lease on which actual drilling operations were commenced prior to the anniversary date of the lease during the primary term where such operations are diligently prosecuted across such anniversary date to the completion of a well as a dry hole, a producing well, or a shut-in well capable of producing in paying quantities.

(B) Effect on term. If a well is completed during the primary term as a dry hole, or as a shut-in well, the lease shall be perpetuated until the next rental paying date following the expiration of 60 days from the completion of such well. Delay rentals may be paid thereafter as set out under subsection (b) of this section to perpetuate the lease.

(C) Completion of dry hole. A completed well not capable of producing in paying quantities shall be considered a dry hole.

(D) Last year of primary term. If lessee completes a well at any time during the last year of the primary term, or within 60 days prior thereto, the lease will be perpetuated to the end of the primary term without the necessity of further operations or payment of delay rental.

(E) Effect on extensions. If lessee completes a well as a dry hole on a lease which has been extended under subsection (d) of this section, the lease shall not terminate if, within 60 days of such completion, lessee commences additional drilling or reworking operations in good faith and with reasonable diligence with no cessation of operations for more than a total of 60 days.

(F) Effect on operations. If lessee completes a well within the last 60 days of the primary term on a nonproducing lease, the rights of lessee shall continue without the necessity of further operations until the end of the primary term. If production in paying quantities is not obtained during the primary term, the lease shall terminate at the end of the primary term unless prior thereto lessee commences additional drilling operations and makes application for an extension of the lease and pays the extension fee pursuant to subsection (d) of this section.

(G) Date of completion. It shall be a rebuttable presumption that the actual date of the completion of a well shall be the date reflected on completion reports filed with RRC.

(2) Cessation of production and drilling and reworking operations.

(A) Lessee may maintain a lease that has ceased production in paying quantities at the expiration of the primary term, or at anytime thereafter, by conducting drilling or reworking operations.

(B) For purposes of this section, a lease shall be considered to be at the expiration of the primary term if actual production ceases within the last 60 days of the primary term of the lease.

(C) One drilling or reworking operation consists of all the activities designed and conducted on a well in an effort to obtain or enhance production from a well. One drilling or reworking operation ends when lessee obtains production in paying quantities or when lessee abandons efforts to obtain or enhance actual production.

(D) One drilling or reworking operation will maintain a lease at or after the expiration of the primary term if:

(i) drilling or reworking operations begin within 60 days of the cessation of production in paying quantities (referred to as the initial 60-day period);

(ii) lessee, in good faith and with reasonable diligence, pursues the drilling or reworking activities begun during the initial 60-day period without interruptions totalling more than 60 days during the entire drilling or reworking operation; and

(iii) the drilling or reworking commenced within the initial 60-day period results in production in paying quantities, or, if such drilling or reworking results in the completion of the well as a dry hole, additional drilling or reworking operations are commenced.

(E) Upon the completion of drilling or reworking operations and the resumption of production in paying quantities or upon the completion of a well as a dry hole, lessee shall furnish GLO an affidavit detailing the operations conducted and the date of such operations. All forms filed with RRC, including, but not limited to, RRC Forms W-2, W-3, or G-1 shall be filed simultaneously with GLO.

(F) Lessee shall give written notice to GLO within 30 days of any cessation of production.

(d) Extension of the primary term.

(1) If production in paying quantities has not been obtained during the primary term and the lease is not being maintained in force and effect pursuant to some other provision thereof, an extension of the primary term may be obtained if lessee is conducting actual drilling operations in good faith and in a workmanlike manner with reasonable diligence.

(A) Requirements. The term "actual drilling operations," as used in this section, means that a permit has been obtained from RRC and that actual work is in progress to drill a well. Preliminary work, such as grading roads, moving equipment, digging slush pits, or staking locations will be sufficient as long as the actual spudding of the well occurs within a reasonable time, and operations continue in a diligent manner toward the completion of a well. Lessee shall give GLO 10 working days' notice of the intention to commence drilling operations.

(B) Application. An application to extend the term of the lease, accompanied by the correct payment, must be received by GLO on or before the expiration date of the primary term or extension period. If such application and payment are not timely received, the lease shall expire automatically on the last day of the primary term or extension period.

(C) Payments. The payments required to extend the primary term of a lease for 30 days are as follows:

(i) lease covering 640 acres or less–$3,000;

(ii) lease covering more than 640 acres–$6,000.

(D) Affidavits required. Immediately following the expiration of the primary term or extension period, lessee shall file an affidavit of drilling operations. The affidavit shall reflect the date lessee commenced operations, the drilling operations being conducted by lessee, and shall state that on the last day of the primary term or the extension period, actual drilling operations were being conducted in good faith and in a workmanlike manner with reasonable diligence.

(E) Additional extensions. An extension is valid for 30 days and as long thereafter as oil or gas is produced in paying quantities. Additional extensions for 30 days may be obtained by filing:

(i) an application for extension accompanied by the appropriate payment prior to the expiration of the previous 30-day extension and notice of the date lessee intends to continue drilling operations; and

(ii) an affidavit of drilling operations immediately following the expiration of the previous 30-day extension.

(2) A lease may not be extended for more than 390 days after the expiration of the primary term. The lease will terminate automatically at the expiration of the maximum extended term unless a well capable of producing oil or gas in paying

quantities has been completed.

(e) Suspension of the terms of oil and gas leases.

(1) General conditions. A lessee may apply for a suspension of the terms of a lease if one or more of the following conditions exists:

(A) litigation (the Texas Natural Resources Code, §52.028);

(B) denial of access or permit (the Texas Natural Resources Code, §52. 0301);

(C) force majeure (lease provision).

(2) Litigation. If a lease issued by the commissioner is the subject of litigation relating to the validity of the lease or to the commissioners authority to issue the lease, the lease will be suspended under the following terms.

(A) The primary term of the lease will be suspended and all obligations imposed by the lease shall be set aside from the date suit was filed until a final judgment is rendered.

(B) On the date the judgment becomes final, the primary term will recommence for the remainder of the term, and all duties and obligations under the lease will be operative.

(C) Lessee shall continue to be liable for and shall pay all delay rentals and royalties accruing during the period of litigation. If the delay rentals are not paid as required by the lease, the lease shall not automatically terminate, but the delay rentals shall continue to be an obligation owed by lessee. If the lease is invalidated, rentals shall be refunded to lessee.

(3) Denial of access or permit. If a lessee is denied access to the leased property or is denied a permit to drill on or produce from the leased premises by any duly constituted authority of the United States, and lessee has made a good faith attempt to obtain access to the leased premises or to obtain a permit to drill thereon, SLB may suspend the terms of the lease under the following terms:

(A) The primary term and all other lease terms, except for the payment of delay rentals, may be suspended from the date the lessee was effectually denied access or a permit.

(B) During the period of suspension, lessee must pay all delay rentals required under the lease on or before the anniversary date.

(C) The primary term and all the suspended obligations and conditions will recommence when SLB determines that the cause for suspension has ceased to exist.

(4) Force majeure. If lessee, having made a good faith effort to comply with the terms of the lease, to conduct drilling operations, or to produce oil or gas, is prevented from doing so by reason of war, rebellion, riots, strikes, fire, acts of God, or any order, rule, or regulation of governmental authority, then the lease may be suspended as follows.

(A) The term will be suspended from the date lessee is prevented from producing oil or gas or otherwise complying with the terms of the lease.

(B) The term will recommence when the event giving rise to the force majeure ceases to exist.

(C) Lessee must pay an amount equal to the delay rental on or before each anniversary date of the lease during the period of suspension whether during the primary or secondary term.

(5) Procedure.

(A) A lessee seeking a suspension of the terms of a lease shall submit a written request to GLO, detailing the reasons for the suspension.

(B) GLO will evaluate the request and any supporting documentation submitted. Applicants should be prepared to submit any additional information requested and should be prepared to appear before SLB if requested to do so.

(C) After evaluation, GLO will submit a recommendation to SLB at its next regular meeting. SLB may accept or reject the recommendation and may impose additional terms as a condition to suspending the lease.

(D) A lessee granted a suspension shall submit a status report to SLB six months after the effective date of the suspension and at six-month intervals thereafter as long as the cause for suspension exists. The status report shall detail relevant information explaining what actions have been taken to remove or avoid the cause for suspension.

(E) In addition to the status report, each lessee granted a suspension shall immediately notify SLB of developments which affect the terms of the suspension and shall promptly notify SLB when the cause for suspension ends.

(f) Producing the state lease.

(1) Term. A lease shall remain in full force and effect so long as oil or gas is being produced in paying quantities.

(2) Producing in paying quantities. A lease shall be considered to be producing in paying quantities when receipts from the sale of oil or gas produced exceed the lease's total operating expenses and a reasonably prudent operator would continue to operate the well in the same manner for the purpose of making a profit and not merely for speculation.

(A) Lessee shall have the burden of proving that a well is producing (or is capable of producing) in paying quantities, and shall provide any and all documentation requested or required by GLO staff to make that assessment.

(B) Minimum royalty payments will not be considered as revenue from production for purposes of either the habendum clause of the lease or for calculating whether a well is capable of producing in paying quantities.

(3) Notice required. Written notice of all operations on a state lease shall be submitted to the commissioner by lessee or operator within five days of spud date, workover, re-entry, temporary abandonment, or plugging and abandonment of any well. Such written notice to GLO shall consist of copies of all completed forms filed with RRC.

(4) Presumption of non-production. RRC production reports or records which reflect either zero, no report, or the like, shall be presumed to be evidence of no production in the absence of probative evidence to the contrary.

(5) Division orders. All division orders listing an interest in a state lease or a lease covering land in which the state retains a free royalty must be filed with GLO.

(A) Division orders will be reviewed to insure that the states interest is listed correctly. If the states interest is listed incorrectly, the division order will be returned for revision. Failure to detect an error in a division order and to return it for revision will in no way bind the state to the terms of that division order.

(B) By letter, GLO will acknowledge receipt of each division order. However, this letter will not in any way bind the state to the terms of the division order. GLO employees are not authorized to sign or execute division orders, and no action of a GLO employee may bind the state to any terms contained within a division order.

(g) Shut-in royalty (constructive production).

(1) Reasons for shut-in. A well capable of producing oil or gas in paying quantities may be shut-in at any time for lack of suitable production facilities or for lack of a suitable market.

(2) Well defined. For purposes of this section, a well shall be defined as any one completion at a particular depth, zone, horizon, or stratigraphic unit.

(3) Due date. To maintain a lease in effect by payment of shut-in royalty, payment must be received by GLO within 60 days of the latest of the following dates:

(A) the expiration of the primary term;

(B) the date the well ceases to produce oil or gas; or

(C) the date lessee completes drilling or reworking operations in accordance with the lease.

(4) Effect of payment. When a shut-in royalty is timely paid and received the lessee shall retain the rights granted under the lease and postpone the actual production of oil or gas for one year from the first day of the month following the month the well was shut-in.

(A) The lease will terminate automatically on the anniversary date of the first day of the month following the month the well was shut-in unless lessee commences drilling or reworking operations or actual production of oil or gas in paying quantities on or before 60 days from such anniversary date or pays another shut-in royalty.

(B) The production of oil or gas in paying quantities and the delivery to GLO of the shut-in royalty are at the option of the lessee. Lessee shall not be obligated and no liability shall accrue to a lessee for failure to produce in paying quantities, drill, or pay the shut-in royalty. The production in paying quantities or paying the shut-in royalty are conditions to maintaining the lease in effect.

(5) Automatic termination. Receipt by GLO of the shut-in royalty is necessary to constitute proper payment. Anything less than actual receipt of the shut-in royalty payment by GLO shall be inadequate and improper and shall result in automatic termination of the lease.

(6) Timely payment. The date, stamped, punched, or otherwise reflected on the shut-in royalty payment receipt, check, draft, stub, or envelope by GLO shall be conclusive of the date of actual receipt by GLO.

(A) Payment of a shut-in royalty shall be considered timely, irrespective of the date of actual receipt, if the lessee establishes that:

(i) payment was dispatched to GLO's correct address by certified or registered mail or equivalent proof;

(ii) an acceptance form was initialed by an employee of the United States Post Office, a common carrier or its equivalent and date stamped by the United States Post Office, a common carrier or its equivalent (not including private postal meters) showing the letter was received and accepted at least 14 days before the payment was due; and

(iii) payment is actually received by GLO no later than 45 days after the shut-in royalty payment was due.

(B) Subparagraph (A) of this paragraph shall not apply if:

(i) an oil and gas lease has been issued by the state to another lessee prior to receipt of notice by GLO from lessee contending that subparagraph (A) of this paragraph would apply; or

(ii) the oil and gas interests of the state have been patented, deeded, or otherwise conveyed or disposed of and as a result, are unavailable for lease by the state.

(C) If the due date of a shut-in royalty payment should fall on a Sunday or a legal state or federal holiday, the due date shall be extended to the next calendar day which is not a Sunday or a holiday.

(7) Amount of shut-in payment. If a lessee timely tenders a shut-in royalty but pays less than the amount specified in the lease, the lease will terminate automatically on the shut-in royalty due date.

(A) To maintain a lease by payment of a shut-in royalty, lessee must pay the greater of the two following amounts:

(i) double the annual delay rental provided in the lease; or

(ii) $1,200 for each shut-in well which is capable of producing oil or gas in paying quantities.

(B) In calculating the shut-in royalty for a multiple-completion well, each separate formation or productive zone which is capable of producing hydrocarbons will be treated as a separate well.

(8) Effect of lease production. No shut-in royalty shall be necessary to maintain the lease under this section if the lease is being held in effect by production from some other well, by drilling or reworking operations, or by some other provision of the lease.

(9) Affidavit requirement. Upon receipt of a shut-in royalty, GLO will send a shut-in affidavit to the lease operator. Lessee, the operator, or a representative of either shall complete the affidavit and return it to GLO. Failure to complete and return the affidavit as required may result in forfeiture of the lease.

(10) Subsequent shut-in payments. If, after a well has been shut-in and the shut-in royalty has been properly paid, the well is not producing on the anniversary of the first day of the month following the shut-in of the well (the effective shut-in date), lessee may pay another shut-in royalty on or before such anniversary date. Such payment will maintain the lease for an additional year.

(11) Term of shut-in. A state lease may be maintained by payment of shut-in royalty for a maximum term of five years. At the end of the maximum shut-in period provided for in the lease, the lease will terminate for cessation of production unless the operator or lessee begins actual production of oil or gas from the previously shut-in well or wells. After obtaining production from a previously shut-in well, the well may be shut-in again for a maximum term of five years or as provided in the lease.

(12) Intermittent production. A well on a lease maintained in force by shut-in royalty may be produced intermittently and shut-in as often as desired. No additional shut-in payment is required while the lease is held by shut-in royalty. However, such intermittent production and shut-in shall not operate to change the anniversary date of the shut-in period. Subsequent production, drilling, or additional payment of a shut-in royalty will be required to maintain the lease.

(13) Shut-in royalty on pooled leases. Unless otherwise provided in the pooling agreement, a shut-in well located within the boundaries of a pooled unit will be considered to be a shut-in well located upon each state lease within the pooled unit. However, the leases included within the pooled unit shall terminate unless shut-in royalties are paid on each lease wholly or partially within the unit, according to the terms of each lease. Shut-in royalties due under each lease may be paid based upon the number of acres covered by a state lease included within the boundaries of the pooled unit, but in no event less than $1,200 per well shut-in.

(14) Undivided interests. Where there are multiple owners of undivided interests in a lease, the failure of any interest owner to pay its proportionate share of the shut-in royalty will result in termination of the entire lease, not just in the termination of the interest of the party failing to pay its portion of the shut-in royalty.

(15) Effect of improper payment. Neither receipt nor retention by GLO of an improperly paid shut-in royalty payment shall operate as a ratification or a regrant of the interest covered by a lease that has terminated because of improper payment, nor shall such receipt or retention estop the state from asserting the termination of the lease.

(h) Offset well/compensatory royalty requirement.

(1) Offset well requirement. The drilling of an offset well required because of drainage of a state lease not held by a shut-in well or payment of a compensatory royalty in lieu of an offset well shall be as follows.

(A) A lessee shall drill an offset well on land covered by a state lease when such lease is affected by a draining well. A well is considered a draining well when:

(i) a well producing in paying quantities is within 1,000 feet of land covered by a state lease or a well is actually draining state property;

(ii) well has been completed on private acreage or, in the case of a lease other than a Relinquishment Act lease, the well has been completed on state land with a lesser royalty; and

(iii) lessee has not obtained approval to pay compensatory royalties in lieu of drilling an offset well.

(B) It shall be a rebuttable presumption that a producing well located within 1,000 feet of land covered by a state lease is draining the land covered by the state lease.

(C) A lessee required to drill an offset well shall, in good faith and with diligence, begin the drilling within 60 days (100 days for Relinquishment Act lands) of the date of first production from the draining well. An offset well shall be drilled to a depth and in such a manner as to prevent undue drainage of oil or gas from state land.

(D) Within 30 days of completion or abandonment of an offset well, a log of each well shall be filed with GLO. All logs so filed shall be kept confidential as required by law, and upon request, will be returned to the lessee after the completion of examination by GLO staff.

(2) Compensatory royalty in lieu of offset wells. Upon the commissioners written approval, payment of a compensatory royalty will replace the obligation to drill an offset well. The amount of payment of a compensatory royalty shall be as follows.

(A) A lessee desiring to pay compensatory royalty in lieu of drilling an offset well should make written application to the petroleum and minerals division of GLO and explain the reason the drilling of an offset well is not prudent or feasible.

(B) Lessee should be prepared to submit any evidence necessary to support the application to pay compensatory royalty in lieu of drilling an offset well.

(C) Evidence to be submitted may consist of geological, geophysical, economic, engineering, production data from the offset well, and any other data regarding the leased premises that may be requested for a complete evaluation and accurate determination of the amount, if any, of compensatory royalty.

(D) The amount of compensatory royalty shall be at the royalty rate provided by the state lease under which the offset well requirement arose and shall be based on the market value at the well of production from the well draining state land. However, the amount of compensatory royalty may be reduced proportionately based upon the amount of state minerals being drained as reflected by the pertinent well data submitted by the applicant or based upon the amount of acreage adjacent to the draining well.

(E) If payment of compensatory royalty is approved, lessee shall have the remainder of the month in which payment of a compensatory royalty is approved plus an additional month to pay such compensatory royalty. Compensatory royalties due thereafter shall be paid monthly.

(3) Compensatory royalty on shut-in well. Compensatory royalty due because of drainage of a state lease held by a shut-in well shall be paid as follows.

(A) The right to maintain a state lease by payment of shut-in royalty shall cease when such lease is affected by a draining well. A well is considered a draining well when:

(i) oil or gas is being produced in paying quantities from a well completed in the same reservoir and located within 1,000 feet from the leased premises held by payment of shut-in royalty; or

(ii) in any case where land covered by a state lease held by payment of shut-in royalty is being drained.

(B) It shall be a rebuttable presumption that a well meeting the requirements of subsection (i)(I)(A)(i) of this section is draining land covered by a state lease.

(C) A state lease held by payment of a shut-in royalty that is being drained by a producing well on premises adjacent to such state lease shall remain in effect only until the next shut-in royalty due date. The lease may be held in effect after such date for four additional and successive periods of one year each by payment of a compensatory royalty.

(D) The amount of compensatory royalty shall be as follows.

(i) The compensatory royalty shall be an amount determined by the royalty rate in the state lease being drained on the market value of production from the draining well.

(ii) At the request of lessee, the commissioner may reduce the amount of compensatory royalty due. A lessee making such a request must show that the amount of compensatory royalty should be reduced based upon the amount of drainage from the state lease.

(I) Lessee should be prepared to submit any evidence necessary to support the request to reduce the amount of compensatory royalty due.

(II) Evidence to be submitted to GLO may consist of geological, geophysical, economic, engineering, and production data from the draining well, and any other data regarding the leased premises which may be requested for a complete evaluation and accurate determination of the amount of compensatory royalty, if any, to be paid.

(iii) The compensatory royalty due in any 12-month period shall never be an amount less than the annual shut-in royalty. If the compensatory royalty due in any 12-month period is less than the annual shut-in royalty, lessee shall pay the difference between the annual shut-in royalty and the compensatory royalty due within 30 days of the end of the 12-month period.

(E) Compensatory royalties due under this subsection shall be paid monthly by the last day of the month following the month in which oil or gas from the draining well is marketed.

(i) Lessee operations.

(1) Pollution controls.

(A) All wells shall be drilled, reworked, cleaned, tested, and produced in a manner as to prevent pollution. In the event of pollution, lessee shall use all reasonable means to recapture all hydrocarbons or other pollutants which may have escaped and shall be responsible for all damage to public and private property.

(B) All operations shall be conducted using the highest degree of care. No discharge of solid waste or garbage shall be allowed into state waters from any drilling or support vessel, production platform, crew or supply boat, barge, jack-up rig, or other equipment located on the leased area.

(i) Solid waste shall include, but shall not be limited to, containers, equipment, rubbish, plastic, glass, and other man-made nonbiodegradable items.

(ii) A sign must be displayed in a high traffic area on each vessel and manned platform stating, "Discharge of any solid waste or garbage into state waters from vessels or platforms is strictly prohibited and may subject a State of Texas lease to forfeiture." Such statement shall be in lettering at least one inch in size.

(C) Failure to comply with the requirements of this subsection may result in the maximum penalty allowed by law, including forfeiture of the lease. Lessee shall be liable for the damages caused by such failure and any costs and expenses incurred in cleaning areas affected by the discharged waste.

(D) All pollution resulting from operations on a state lease, including oil spills, pipeline leaks resulting in five barrels or more on upland tracts, and one barrel or more on riverbed and submerged tracts, shall be reported to GLO immediately upon discovery. Copies of reports required by local, state, and federal agencies shall be submitted simultaneously to the commissioner.

(E) Waste oil from all mechanical equipment shall be disposed of in such manner as to prevent pollution.

(F) No salt water, slush, or mud materials shall be disposed of in the water before all oil or chemicals harmful to marine life have been removed therefrom. Sufficient precautions shall be exercised to prevent pollution and destruction of marine life or its habitat.

(G) All wells producing liquids must be produced through an oil and gas separator of ample capacity and in good working order. Gas-oil separators and tank batteries may be located either offshore or on land.

(H) The movement of oil from wells shall be made in such manner as to prevent oil spills.

(i) In submerged areas, all oil lines leading from wells to storage shall be tested to 500 pounds per square inch water pressure before use and in no event to a pressure below the anticipated working pressure. All such lines shall be placed below the bottom of the gulf or bay at a depth not less than 24 inches or placed on a structure above mean high tide when permitted by the United States Corps of Engineers.

(ii) Each line shall be constructed from new or reconditioned pipe in first class condition, and before it is submerged, it shall be doped and treated in such manner as to offer reasonable resistance to the corrosive effect of salt water, but it shall not be necessary to dope or treat the portion of a line which is not submerged.

(iii) The transportation of oil and gas by pipeline shall be subject to the United States Department of Transportation pipeline regulations and any amendments thereto.

(iv) When a leak occurs in a pipeline or flow line carrying oil, distillate, or geothermal energy, the flow will be stopped at once. When it is necessary to break out the line for repairs, all liquids will be cleared from the line before repair is begun.

(2) Commingling production. Requests to commingle production from state leases should be sent with supporting data to the Commissioner of the General Land Office, Attention: Petroleum and Minerals Division, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701.

(3) Applicable laws. All drilling, producing, gathering, transporting, and processing operations shall be subject to applicable city, county, state, and federal laws.

(4) Inspections. The commissioners of GLO, RRC, and the Water Quality Board and their representatives, shall at all times have access to the premises upon which wells are being drilled or produced for oil, gas, or geothermal energy to make inspections of all drilling, producing, gathering, and processing operations, or for any other reason deemed necessary.

(5) Other records. At any time, or from time to time, GLO may require any additional records relating to any aspect of lease operations and accounting.

(6) Identification. All well locations, drilling barges, platforms, and other structures shall be marked so as to identify the state tract number, well number, and the company operating the lease.

(7) Lighting. Proper signal lights shall be installed at or near all wells and structures which are located in the submerged areas within the jurisdiction of the State of Texas. All lighting shall be in accordance with the United States Coast Guard interim instructions and any amendments thereto. If any well or structure located on lands within the jurisdiction of the state are exempt from lighting under United States Coast Guard regulations, a copy of the exemption must be filed with GLO.

(8) Abandonment. When a well site is to be abandoned, all wells shall be plugged and all structures removed in compliance with RRC and United States Corps of Engineers regulations. All fills for roads and drill sites shall be removed if requested by the commissioner.

§9.7. Royalty and Reporting Obligations to the State.

(a) In-kind royalties and reports. Producers meeting their royalty obligations by delivering the states royalty in-kind shall contact GLO for specific instructions for making and reporting in-kind royalties. Purchasers of the states oil or gas in-kind must make the payment for this oil or gas separately from any payment of monetary royalties.

(b) Monetary royalties and reports.

(1) Basis for computing royalties.

(A) Gross proceeds. Oil and gas royalties due under each lease must be computed on the gross proceeds received by the seller, including amounts collected to reimburse the seller for severance taxes and production-related costs. No deduction may be made for production or severance taxes, or for the cost of producing, processing, transporting, and otherwise making the oil, gas, and other products produced from the premises ready for sale or use.

(B) Volume subject to royalty.

(i) General. Royalties are due and payable on 100% of each leases gross production of oil and gas unless the lease contains language expressly exempting certain dispositions of oil and/or gas from state royalties.

(ii) Oil sales and stocks. As a matter of convenience, during periods of regular sales, GLO will permit monthly oil royalties to be based on the number of barrels sold (or otherwise disposed of) in a given month rather than on the gross production as may be required by the lease. Unless the lessee is otherwise notified by GLO, no royalties are payable on lease stocks until such stocks are either sold or otherwise disposed of. GLO reserves the right to require at any time, or from time to time, that royalties be paid on gross production rather than on barrels sold. It will be GLO practice to require that royalties be paid on existing stocks when there have been no sales from such stocks for several months.

(C) Plant products. The volume and value of plant products subject to

state royalty shall be calculated in accordance with the lease under which the gas is produced and processed and shall never be less than the minimum percentage specified in the lease. In cases where the lease does not specify the manner in which plant product royalties are to be calculated, then the volume and value of plant products subject to state royalty shall be that volume and value for which settlement is being made to the producer, under a gas contract prudently negotiated between the producer and processor. When gas is processed for the recovery of liquid hydrocarbons or other products, the royalties on residue gas and plant products shall not be less than the royalties which would have been due had the gas not been processed.

(D) Market value. Nothing in this subsection shall limit or waive the right of the state to receive its royalties based on market value of the oil and gas produced, if authorized by the lease, unit agreement, judgment, or other contract authorized by law.

(E) Determination of market value.

(i) For the purpose of computing and paying royalties to the state based on market value, the market value shall be presumed to be the gross proceeds received pursuant to a bona fide contract entered into at arms length between nonaffiliated parties of adverse economic interests.

(ii) If a contract was not negotiated at arms length, or was between affiliated parties, the presumption that market value is equal to gross proceeds shall not apply. In this situation, the lessee has the burden to establish that royalties paid to the state are based on market value.

(iii) The commissioner may overcome the presumption established under subsection (b)(1)(E)(i) of this section and assess additional royalties due by establishing a different price based on other sales in the general area which are comparable in time, quality, volume, and legal characteristics. If some of this information is not available to the commissioner, an assessment will be based on the best information available.

(iv) A lessee may challenge an assessment of additional royalties due by submitting information which establishes the prices used for comparison by the commissioner which involve products of significantly different quality; were based on contracts to deliver significantly different volumes or for different terms; were not from a relevant market; were derived from an area in which deliverability is significantly different; or by presenting any other information which could establish a more accurate market price. However, under no circumstances will the states royalty be computed on less than gross proceeds received, including reimbursements received for severance taxes and production-related costs.

(v) Parties are affiliated under this subsection if they are related by blood, marriage, or common business enterprise, are members of a corporate affiliated group, or where one party owns a 10% or greater interest in the other.

(vi) The term "general area," as used in this subsection, means the smallest geographical area which contains sufficient data to establish a market price. Examples include a unit, a field, a county, or the applicable RRC district.

(vii) For the purpose of computing and paying oil royalties to the state based upon a market value determined by the highest posted price, that phrase is defined as the greater of:

(I) the highest price available to the producer; or

(II) the gross price posted by the purchaser of the oil, less a reasonable transportation allowance after sale and delivery if the price bulletin reflects on its face that the purchaser will deduct a marketing or transportation allowance, and a transportation allowance is actually deducted by the purchaser from its gross price.

(viii) For the purposes of subsection (b)(1)(E)(vii)(I) of this section, a price will be presumed to be available to the producer if it is offered in the field where the lease is located at the time of sale. A producer may overcome the presumption by submitting evidence that the price is not actually available to the producer. The terms available and actually available, as used in this subsection, mean that a price is being offered to nonaffiliated parties by posting, contract listing, or amendment, or otherwise and that if a producer presented a barrel of oil to an entity offering said price, assuming all quality specifications for the price were met, that producer would, in fact, receive that offered price.

(ix) Subsection (b)(1)(E)(vii) of this section shall not be construed to allow the lessee, when calculating royalties payable to the state, to make any deductions for the cost of producing, processing, or transporting the oil prior to its sale and delivery.

(2) Royalty payments and reports.

(A) Mode of payment. Except as provided in subsection (a) of this section, royalties and other monies due may be paid by cash or check, money order, or sight draft made payable to the commissioner. Payment may also be made by electronic funds transfer or in any manner that may be lawfully made to the State Treasury. Information regarding alternative payment methods may be obtained from the Royalty Management and Compliance Division of GLO. Payors who have made over $2 million in payments to GLO during the preceding fiscal year, or who anticipate payments over $2 million during the current fiscal year, may be required to make such payments by electronic funds transfer. This provision applies only to payments from leases executed after January 1, 1990. For complete details, see the Texas Government Code, §404.095.

(B) Information required with royalty payments. All royalty payments must show the assigned GLO lease number and the amount of oil and gas royalty being paid. Royalty payments not identified by the lease number shall be considered delinquent and shall be subject to the delinquency provisions of subsection (b)(3) of this section.

(C) Required reports. Production/royalty reports (Form GLO-1 for oil and condensate and Form GLO-2 for gas), other required reporting documents for gas or oil and condensate, and other supporting documents required by GLO to verify gross production, disposition and market value of the oil and condensate, gas, and other products produced therefrom must be completed and provided in the form and manner prescribed by GLO. Failure to comply with the statutes and the reporting requirements of this chapter may subject a lease to forfeiture, delinquency penalties, or both.

(D) Timely receipt of royalty payments and reports.

(i) For the purpose of this subsection, GLO will timely receive a royalty payment or report if the payment or report:

(I) is placed in a postpaid, properly addressed wrapper; and

(II) is deposited with the United States Postal Service or any parcel delivery service at least one day before it is due and such deposit is evidenced by a postmark, a postal meter stamp, or a receipt.

(ii) If a royalty payment or report is due on a Sunday or a legal state or federal holiday, then such payment or report must be either received by GLO on the next calendar day which is not a Sunday or a holiday or postmarked or stamped prior to the next calendar day which is not a Sunday or a holiday.

(E) Oil royalties–due date. All oil and condensate royalties must be timely received in GLO on or before the

fifth day of the second month following the month of production.

(F) Gas royalties–due date. All gas royalties must be timely received in GLO on or before the 15th day of the second month following the month of production.

(G) Required reports–due date. Production/royalty reports (Forms GLO-1 and GLO-2) and other required reporting documents for gas or oil and condensate must be timely received in GLO on or before the day the corresponding royalty payment is due, except for reports on royalties paid by electronic funds transfer or reports filed on magnetic media. GLO-1's and GLO-2's and other required reporting documents for royalties paid by electronic funds transfer and reports filed on magnetic media must be timely received in GLO on or before five days after the corresponding royalty payment is due.

(H) Gas contracts. Lessees shall file with GLO a copy of all contracts under which gas is sold or processed and all subsequent agreements, or amendments to such contracts within 30 days of entering into or making such contracts, agreements or amendments. Such contracts, agreements, and amendments, when received by GLO, will be held in confidence by GLO unless otherwise authorized by lessee.

(I) Gas contract brief (Form MA-5). Each gas contract, agreement, or contract amendment must be accompanied by a gas contract brief (Form MA-5) completed in the form and manner prescribed by GLO even if GLO is taking its royalty in-kind All contracts, correspondence, or requests for gas contract briefs should be directed to: General Land Office, Energy Resources Division, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701, Attention: Gas Contracts Administrator.

(J) Settlements and judgments. Lessee shall file with GLO a copy of each settlement reached or judgment rendered in a dispute between the lessee and a purchaser regarding production from, and/or contracts relating to, state lands. These documents must be filed with GLO within 30 days of entering into such settlement or within 30 days of the rendering of such judgment.

(K) Other records. At any time, or from time to time, GLO may require any additional records relating to any aspect of lease operations and accounting.

(L) Responsibility of lessee to file royalty payments and required reports. Parties other than the lessee may remit royalties to the state on the lessee's behalf. This practice does not relieve the lessee of any statutory or contractual obligation to pay royalty or file reports and supporting documents. The lessee bears full responsibility for paying royalties and for filing reports and supporting documents as required in this chapter.

(M) Cooperation of operators, purchasers, and lessees. GLO recognizes that lessees may often delegate various lease obligations to third parties. However, such a delegation does not relieve a lessee of these obligations. Lessees must be aware that the acts and omissions of these third parties regarding these obligations may subject a lease to a delinquency penalty or forfeiture. Therefore, these parties must cooperate to responsibly discharge their obligations to each other and to the state.

(N) State's lien. The state has a first lien on all oil and gas produced from the leased area to secure the payment of all unpaid royalty or other sums of money that may become due.

(O) Certification of sufficient royalties. GLO will not be responsible for certifying, prior to the rental anniversary date, that sufficient royalty has been received to obviate the necessity of paying rentals or minimum royalties as may be required by lease. Lessees should maintain adequate records relating to lease royalty and rental status to determine if additional liability exists. If there is uncertainty concerning whether or not rental or minimum royalties are due, a lease or leases may be maintained in effect by remitting the annual amount required under each lease. Payments received in this manner and thereafter found not due will be refunded or credit granted.

(P) Partial payments. Partial payment of amounts assessed (delinquent royalties, penalty, and interest) will first be applied to unpaid penalty and interest and then to delinquent royalties. Penalty and interest will continue to accrue until the delinquent royalties are fully paid.

(3) Penalties and interest.

(A) Penalties on delinquencies. Any royalty not paid when due, or any required report or document not submitted when due, is delinquent and penalties as provided in this subsection shall be added. Royalty payments which are not accompanied by the required royalty affidavit which identifies GLO lease number are also delinquent. The penalties on delinquent royalties specified in this subsection shall not be assessed in cases of title dispute as to the state's portion of the royalty or to that portion of the royalty in dispute as to fair market value.

(i) For royalties and reports due on or after September 1, 1985, including those for oil and ga produced since July 1, 1985:

(I) a penalty of 5.0% of the delinquent amount or $25, whichever is greater, shall be added to any royalty which is delinquent 30 days or less;

(II) a penalty of 10% of the delinquent amount or $25, whichever is greater, shall be added to any royalty which is more than 30 days delinquent;

(III) a penalty of $10 per document may be added for each 30 day period that each report, affidavit or other document is delinquent. This penalty of $10 per document will be imposed only after the commissioner or a designated representative has notified the lessee in writing that reports, affidavits, or documents are not being filed correctly and that the penalty will be assessed on subsequent reporting errors.

(ii) For royalties and reports due before September 1, 1985, including those for oil and gas produced prior to July 1, 1985:

(I) a penalty of 1.0% of the delinquent amount or §5, whichever is greater, shall be added for each 30 day period that any royalty is delinquent;

(II) a penalty of $5 per document shall be added for each 30 day period that each report, affidavit, or other document is delinquent.

(iii) For royalties and reports due before September 1, 1975, including those for oil and gas produced prior to August 1, 1975, there is no penalty for delinquent royalties or delinquent reports.

(B) Interest on delinquencies. Any royalty not paid when due is delinquent and shall accrue interest as provided in this subsection.

(i) For royalties due on or after September 1, 1985, including those for oil and gas produced since July 1, 1985:

(I) interest shall accrue on all delinquent royalties at the rate of 12% per year (simple interest) pursuant to the Texas Natural Resources Code, §52. 131(g);

(II) interest shall begin to accrue 60 days after the due date.

(ii) For royalties due before September 1, 1985, including those for oil and gas produced prior to July 1, 1985:

(I) interest shall accrue on all delinquent royalties at the rate of 6.0% per year compounded daily pursuant to Texas Civil Statutes, Article 5069-1.03;

(II) interest shall begin to accrue 30 days after the date due.

(C) Penalties for fraud. The commissioner shall add a penalty of 25% of the delinquent amount if any part of the delinquency is due to fraud or an attempt to evade the provisions of statutes or rules governing payment of royalty. This penalty shall be applied in cases of title dispute as to the state portion of the royalty or to that portion of the royalty in dispute as to the fair market value. This penalty shall be in addition to any other penalty assessed.

(D) Forfeiture. The states power to forfeit a lease shall not be affected by the assessment or payment of any delinquency, penalty, or interest as provided in this subsection. Specifically, failure to pay royalties and other sums of money within 30 days of the due date or the failure to file reports completed in the form and manner prescribed by this section shall subject a lease to forfeiture under §9.8 of this title (relating to Discontinuing the Lease Relationship).

(4) Corrections and Adjustments to royalty payments and reports.

(A) Nonroutine corrections and/or adjustments, as used in this subsection, shall be defined as those corrections and adjustments that seek to change, on a lease basis, the originally reported royalty due for oil or the originally reported royalty due for gas by $25,000.00 or 25%.

(B) At least 30 days prior to the planned taking of a nonroutine correction and/or adjustment which will result in a credit, the Royalty Management and Compliance Division of GLO must receive written notice of the lessees intention to take such a credit with written documentation explaining and supporting the requested credit. The credit may be taken 30 days after that division of GLO receives such notice if by that date, GLO has not, in writing, denied lessee permission to take the credit. If this permission is denied, GLO will set forth its reasons for such denial. Any nonroutine credit improperly taken may not be used to offset royalty due on current reports. The improper application of credits will result in a current month delinquency and the assessment of associated penalties and interest.

(C) Effective with the production month of March 1989, all prior month adjustments must be submitted on GLO-1 and GLO-2 report documents separate from the reports containing the current month royalty activity. GLO-1 or GLO-2 containing prior month adjustments must be labeled as "Amended Reports" (underlined).

(5) Temporary reduction of gas royalty rates.

(A) Prerequisites. Application for a temporary reduction of the royalty rates established may be considered by SLB if:

(i) the lease covers any of the state lands described in §9.2 of this title (relating to Leasing Guide);

(ii) state land was leased by SLB on the basis of a royalty bid and at a royalty rate exceeding 25%; and

(iii) the lease has not been pooled or unitized with other leases.

(B) Amount of reduction. If the value of gas from such lands is at or below $3.00 for each 1,000 cubic feet of gas, the board may reduce the royalty rate for gas produced from such lands for any term set by SLB, such term to be set after September 1, 1987 and before September 1, 1990, as follows:

(i) for gas valued as $1.50 or less per mcf of gas, the board may reduce a royalty rate to 25%;

(ii) for gas valued from $1.51 to $2.00 per mcf of gas, the board may reduce a royalty rate to 30%;

(iii) for gas valued from $2.01 to $2.50 per mcf of gas, the board may reduce a royalty rate to 35%;

(iv) for gas valued from $2.51 to $3.00 per mcf of gas, the board may reduce a royalty rate to 40%.

(C) Definition of value. For purposes of this paragraph, the value of the gas is defined as the highest market price paid or offered for gas of comparable quality in the general area where produced and when run, or the gross price paid or offered to the producer, whichever is greater.

(D) Request for reduction. A lessee seeking the approval of SLB for a temporary reduction in gas royalty rates must make written request for an application to the Petroleum and Minerals Division, General Land Office, 1700 North Congress Avenue, Austin, Texas 78701. The application should be completed and returned to the Petroleum and Minerals Division of GLO.

(i) The applicant must submit an affidavit and documentation in support of its request for a temporary reduction of gas royalty rates. The affidavit will attest to the fact that the requirements set out in this paragraph have been satisfied. The accompanying documentation will contain pertinent lease data, production and reserve data, gas price data, development data, and any other information which may be required to support the application, including the reason for requesting a royalty reduction.

(ii) SLB will consider the request for temporary reduction in gas royalty rates based upon lessees affidavit, documents in support thereof, and the recommendation of the Petroleum and Minerals Division.

(iii) SLB may reevaluate the temporary reduction in gas royalty rates at any time.

(E) Verification of gas valuation. The gas valuation information submitted by the lessee will be subject to verification by the Royalty Audit Division.

(F) Effective dates for reduced royalty rates. The reduced royalty rates shall be effective beginning the first day of the next month following approval by SLB. Royalty rates on gas produced after September 1, 1990 will not be subject to reduction under this section.

(G) No retroactive effect. The reduced royalty rates will not be applied retroactively for previous months, production.

§9,8. Discontinuing the Leasehold Relationship.

(a) How the leasehold relationship may be discontinued. Any such discontinuance, except for termination, is effective only upon complete compliance with subsections (a)-(e) of this section. Terminations are effective according to the terms of the lease and the laws of the state. The leasehold relationship between the state and a lessee of state oil and gas may be discontinued by the following:

(1) release;

(2) assignment;

(3) termination;

(4) forfeiture.

(b) Release.

(1) Definition. A release is a voluntary relinquishment by a party of all or part of an interest held by that party.

(2) Release of a state oil and gas lease.

(A) Release available. All or part of a state oil and gas leasehold interest

may be released to the state by its lessee at any time.

(B) Procedure. A release is effectuated only by complete compliance with the following:

(i) recording the release in each county in which any part of the original acreage covered by the lease is located;

(ii) filing with GLO the recorded original or a certified copy of the recorded original of each release recorded as required by this subsection within 90 days after the execution of each such release;

(iii) properly paying the filing fees and providing the information as required in subsection (b)(3) of this section.

(3) Fees and other required information.

(A) The following must accompany each release required to be filed and every counterpart so filed in GLO under this subsection:

(i) the clear designation of:

(I) each mineral file number and GLO lease number affected by the release; and

(II) which leases referred to in the release are federal, state, and private leases;

(ii) the payment of the filing fee required by §1. 91 of this title (relating to Fees) for each mineral file number affected by the release;

(iii) an adequate legal description of the premises released including the survey name, block, township, county, and any other descriptive information requested by GLO; and

(iv) if a partial release, a metes and bounds description of the area so released unless the area released can be and is accurately described as a part of the section, such as the NE/4.

(B) If a release is sent to GLO for filing that is not in compliance with this subsection, then the following shall apply.

(i) If, from the information sent for filing, GLO can reasonably determine the property affected by the release, then GLO shall file the release and the filing fee due shall be double the normal fee.

(ii) If, from the information sent for filing, GLO cannot reasonably determine the property affected by the release, then that release shall be rejected for filing and returned to the sender. Any fee submitted with a rejected release may be credited toward fees due upon resubmission. When a rejected release is resubmitted, then the filing fee due shall be double the normal fee.

(4) Release of terminated lease.

(A) See subsection (d)(1) of this section for the definition of a terminated lease.

(B) A lessee should record and file a release of a terminated lease in the manner set out in this subsection. Such filing should be accompanied by the filing fee and information required by this subsection.

(c) Assignment.

(1) Definition. An assignment is a transfer of an interest in a right or property.

(2) Assignment of a state oil and gas lease.

(A) All or part of a state oil and gas leasehold interest may be assigned at any time.

(B) An assignment is effectuated only by complete compliance with the following.

(i) All assignments must be recorded in each county in which all or part of the lease is located. The original recorded assignment or a certified copy thereof shall be filed in GLO within 90 days of its execution. For purposes of this paragraph, the last execution date shown on the instrument shall be deemed to be the date of execution.

(ii) Each assignment required to be filed and every counterpart so filed with GLO must be accompanied by the filing fee prescribed by §1.91 of this section (relating to Fees) for each mineral file number affected by the assignment. Any assignment not accompanied by the required fees shall not be accepted for filing. If an assignment is not filed within 90 days of its execution, the filing fee due shall be double the usual fee.

(iii) Partial assignments of oil and gas leases shall be filed in the same manner as complete assignments.

(iv) Horizontal assignments of oil and gas leases covering state fee lands administered by SLB, and/or those issued by any state department, board, or agency shall be filed in GLO. The assignor of any horizontal assignment will remain liable to the state in the event of a breach of any covenant and/or condition of the lease.

(v) In-lieu assignments will not be accepted or filed in the records of GLO.

(C) If an assignment has not been properly filed, the commissioner, at the commissioners discretion, may forfeit the lease.

(D) The current holder of a lease or of any interest therein shall be responsible for proper filing with GLO of any assignments not previously filed by any predecessor in interest.

(E) The heir, devisee, executor, or administrator, as the case may be, of the estate of an assignee may file a statement of the parties entitled to hold the interest of the assignee in the lease. Such statement should include a list by mineral file number of all leases affected. No filing fee shall be required.

(F) Should an assignee formally change names, a notice of name change, accompanied by a list by file numbers of all leases affected, shall be submitted to GLO.

(G) Upon complete compliance with this subsection, the assignee will:

(i) succeed to all rights and be subject to all liabilities, obligations, penalties, and the like incurred by any prior lessee, including any liability to the state for unpaid royalty; and

(ii) assume all obligations, liabilities, and consequences arising from all covenants, conditions, and terms (whether express or implied) of the lease.

(d) Termination.

(1) Definition. A termination is the automatic nondiscretionary expiration of the leasehold interest under its own terms.

(2) Causes. The circumstances under which a state oil and gas lease will terminate are determined by certain provisions in each lease and by the laws of the state. Examples of circumstances commonly resulting in lease termination are:

(A) failure to properly pay delay rentals required during the primary term of the lease (see §9.6(b) of this title (relating to Maintaining the Lease));

(B) failure to properly pay shut-in royalties due under the lease (see §9.6(g) of this title (relating to Maintaining the Lease));

(C) failure to produce the lease in paying quantities (see §9.6(f) of this title (relating to Maintaining the Lease));

(D) failure to fully comply with the rework or extension clause of the lease (see §9.6(c) and (d) of this title (relating to Maintaining the Lease)).

(3) Procedure.

(A) Termination occurs automatically whenever a condition of a lease, as defined by the lease and the laws of the state, is not met.

(B) When GLO becomes aware of facts and circumstances which would result in the termination of a lease, GLO will, as a courtesy, issue an initial notice of termination to the lessee as shown by GLO files. This notice shall inform the lessee of GLO's determination that the lease at issue has terminated and the reasons for this determination. This notice shall also inform the lessee that the lessee has 30 days in which to present evidence and convince GLO that a termination has not occurred.

(C) If such evidence has not been presented at the expiration of the 30 day period, the mineral file shall be endorsed "terminated."

(D) Should such evidence be presented to GLO within the 30-day period, GLO shall review it and determine if it proves to GLO's satisfaction that the lease at issue did not terminate. If GLO is not so persuaded, a final notice stating this conclusion and GLO's reasons shall be sent to the lessee and the mineral file shall be endorsed terminated" If GLO is persuaded by the evidence presented that the lease at issue did not terminate, a letter explaining this conclusion shall be sent to the lessee and filed in the mineral file.

(E) Failure of GLO to send these notices, or failure of the appropriate parties to receive these notices, will not in any way affect the termination itself nor alter any liabilities accruing before or after termination.

(F) Timely filed GLO and RRC reports will be assumed to be true and correct representations of lease activity. Failure to file a GLO or RRC report in a given month will create a presumption that there was no production in that month. If, however, other surrounding facts and circumstances convince the commissioner that a report or presumption is not accurate, the commissioner may, in the commissioners discretion, disregard the report or presumption. The commissioner also has the discretion whether to consider any late or amended GLO or RRC reports as true and correct representations of lease activity.

(4) Release. See subsection (b)(4) of this section relating to the filing of releases of terminated leases.

(e) Forfeiture.

(1) Definition. Forfeiture is a remedy dissolving a lease that is available to the commissioner when certain breaches of provisions of a state lease have occurred.

(2) Forfeiture for failure to drill an offset well.

(A) Duty. See §9.6(h) of this title (relating to Maintaining the Lease) for a full discussion of the duty to drill offset wells.

(B) Subject to forfeiture. A lease is subject to forfeiture if there is a failure or refusal to:

(i) begin the activity required in §9.6 of this title (relating to Maintaining the Lease) within the proper time frame set out in that section; or

(ii) prosecute this activity as required and as is necessary to reasonably develop the state land and to protect it against drainage.

(3) Forfeiture for other breaches. A lease is subject to forfeiture if:

(A) a lessee or operator shall:

(i) fail or refuse to pay any sum within 30 days after it is due;

(ii) knowingly make any false return or false report concerning production or drilling;

(iii) fail to file reports in the manner required by law;

(iv) fail to comply with GLO and RRC administrative rules and regulations;

(v) refuse the proper authority access to the records pertaining to the operations;

(vi) knowingly fail or refuse to give correct information to a proper authority;

(vii) knowingly fail or refuse to furnish GLO correct logs of any well; or

(viii) fail to comply with any term of a lease; or

(B) the lease is assigned and the assignment is not filed in GLO as required by law.

(4) Procedure.

(A) When sufficiently informed of facts which subject a lease to forfeiture, it shall be the commissioners policy to mail notice that the lease is being considered for forfeiture to those then shown in GLO records as the current lessee of the lease and allow the lessee 30 days in which to present evidence and convince the commissioner that the commissioner should not forfeit the lease. The commissioner may, however, forfeit a lease without this prior notice in circumstances where the commissioner deems such action necessary to protect the best interest of the Public School Fund. Failure of the commissioner to send this prior notice, or failure of the appropriate parties to receive this prior notice, will not in any way affect the validity of the forfeiture itself. However, upon any forfeiture, the lessee may request a reinstatement of the lease as set out in subsection (e)(5) of this section.

(B) When sufficiently informed of facts which subject a lease to forfeiture, it is within the commissioners discretion to forfeit that lease by endorsing the following on the mineral file:

(i) words declaring the lease forfeited;

(ii) the commissioners signature; and

(iii) the date these actions are taken.

(C) Upon such endorsement, the lease and all rights and payments made thereunder shall be deemed forfeited.

(D) Promptly after forfeiture, GLO shall mail notice of this action to those then shown in GLO records as the current lessees of the lease and, in the case of Relinquishment Act land, to the current surface owners, at their most current addresses as shown in GLO records.

(5) Reinstatement.

(A) Within 3 days of forfeiture for failure to drill an offset well and upon satisfactory evidence of future compliance with the applicable laws, the commissioner has the discretion to reinstate the lease upon the terms required by law and upon any other terms the commissioner may prescribe.

(B) For forfeitures due to other breaches, the commissioner has the discretion to reinstate the lease at any time before the rights of another intervene. Upon satisfactory evidence of the lessees future compliance with the applicable laws, and with any other term the commissioner may prescribe, the lease may be reinstated.

(f) Effect of discontinuing the leasehold relationship. When the discontinuance of a leasehold relationship becomes effective, the lessee shall be relieved of all further obligations to the state due to the lessees ownership of the lease except for the following:

(1) those obligations, liabilities, penalties, or the like owed by the lessee to the state as of the effective date of the release, termination, forfeiture, or assignment;

(2) the duty to pay all royalty owed by lessee in the manner set out in the lease and this chapter on all oil or gas produced under the lease as of the date of the discontinuance of the leasehold relationship;

(3) the accrual of penalty and interest, both in the past and in the future, as set out in this chapter on any delinquent royalty or report owed by the lessee;

(4) the duty to file with GLO the reports, applications, and other records required by the lease, statutes, and/or this chapter regarding any activity by the lessee or operator relating to the previously leased premises and/or production therefrom. For example, all applications and reports regarding the plugging and abandoning of a well previously covered by a lease must be filed with GLO as set out in this chapter even though the lease has been released, terminated, forfeited, or assigned.

(5) the following clean-up duties:

(A) the duty to comply with all federal and state laws, particularly RRC and GLO statutes and administrative rules and United States Corps of Engineers regulations relating to plugging and abandoning wells and cleaning the property;

(B) except in the case of assignments, the duty to remove all oil stored on the property and clean any residue remaining on the property unless GLO agrees in writing to, or requests, an alternative plan. If such is not completed within 120 days of when the discontinuance of the leasehold relationship becomes effective, a presumption shall arise that these items have been abandoned by the lessee and the state shall own such oil.

(C) except in the case of assignments, the duty to remove all equipment, structures, machinery, tools, supplies, and other items on the property and otherwise restore the property to the condition it was in immediately preceding issuance of that lease unless GLO and any other relevant authority agree in writing to, or requests, an alternative arrangement. If such is not completed within 120 days of when the discontinuance of the leasehold relationship becomes effective, a presumption shall arise that these items have been abandoned by the lessee or operator and the state shall become the owner of these items.

(D) the duty to remove all fills for roads and drill sites if requested by the commissioner.

(g) Discharge of clean-up duties. Lessee shall not be relieved of any of the duties set out in subsection (f)(5) of this section until a GLO inspection has been made of the relevant area, the inspector reports that these duties have been satisfactorily met, and that report is filed in the appropriate mineral file. Lessee shall be liable for any damages incurred due to lessees failure to comply with subsection (f) of this section. At the commissioners discretion, the lessee may be excused from all or part of these duties upon presentation of proof to the commissioners satisfaction that these duties will be otherwise met.

(h) Other records. At any time, or from time to time, GLO may require any additional records relating to any aspect of lease operations and accounting.

§9.9. Pooling and Unitization of State Leases.

(a) Authorization to operate areas as units. The commissioner may execute pooling or unitization agreements, or ratifications of such agreements, for the production of oil or gas or both covering:

(1) the royalty interests reserved to the state by law, contract or sal, or under any oil and gas lease legally executed by an official, board, agent, agency, or authority of the state; or

(2) the free royalty interests, whether leased or unleased, reserved to the state.

(b) Procedure. Ā completed pooling application shall be submitted to the pooling committee. An application form may be obtained upon request. The applicant shall enclose the information, plats, and RRC forms requested in the pooling application or requested by the pooling committee. All proprietary information submitted by applicant shall be kept confidential as required by law, and upon request of applicant, will be returned after examination by GLO staff.

(1) The applicant shall submit evidence that the proposed pooling will be in the best interest of the state by providing:

(A) geological and geophysical data; e.g., structural maps, isopach maps, cross-sections, productive limits;

(B) information on wells drilled in the general area of the proposed unit, and current production rates of offset wells;

(C) electrical and/or geophysical logs;

(D) any other data which may be requested.

(2) The applicant shall include all information necessary for proper execution of the pooling agreement including:

(A) evidence of standing to request pooling;

(B) names of all owners of an interest in the leases to be pooled;

(C) names and respective capacities (e.g., president, vice-president, attorney-in-fact, etc.) of the persons authorized by the working interest owners to execute the pooling agreement;

(D) a list of all owners of the soil (Relinquishment Act land) who have not previously authorized pooling and will be executing the pooling agreement; and

(E) a legal description of the area to be pooled and the leases included within the surface boundaries of the pooled area.

(3) The pooling application shall be submitted at least 10 working days prior to the regular meeting of SLB. The pooling committee meets at times it deems necessary and upon mutual agreement of the applicant and the pooling committee.

(4) A personal appearance before the pooling committee is not required of the applicant or his representative. However, by timely appointment, either may appear and be heard if a personal appearance is desired. The pooling committee may also request the applicant to make an appearance.

(5) The pooling committee shall consist of representatives from GLO, the Governor's Office, and the Attorney General's Office.

(c) Approval of unit agreements.

(1) SLB approval must be obtained for any agreement which commits:

(A) the royalty interest in land belonging to the PSF or the asylum funds in riverbeds, inland lakes and channels, or in an area within tidewater limits;

(B) the free royalty interests, whether leased or unleased, reserved to the state; or

(C) Relinquishment Act lands.

(2) If the agreement includes land leased for oil and gas under the Relinquishment Act it must be executed by the owner of the soil and approved by SLB. The owner of the soil will be deemed to have executed the unit agreement if:

(A) the oil and gas lease contains language authorizing pooling consistent with the Texas Natural Resources Code, §§52.151-52.153;

(B) the owner of the soil expressly agrees that the inclusion of such language in the lease satisfies the execution requirement of the Texas Natural Resources Code, §52.152; and

(C) such language is approved by the commissioner.

(d) Agreement provisions. The pooling or unitization agreement may provide:

(1) that drilling, reworking, or other operations on the unitized area with respect to the pooled mineral shall be considered for all purposes as though the same were on each separate tract in the unit;

(2) that production of the pooled mineral allocated to each tract shall be deemed to have been produced from each tract in the unit;

(3) that the agreement and lease, with respect to the interest of the state, shall be effective for a specified term approved by SLB or as long as oil or gas or both are produced from the pooled unit in paying quantities and royalties are paid to the state;

(4) that royalties reserved to the state on production from any tract or portion of a tract included in the unit shall be paid only on the portion of the production allocated to the tract by the agreement;

(5) the manner in which unit production is to be allocated to each such tract (i.e. surface acres or volumetric calculation);

(6) the effective date and term of the unit; and

(7) any other provision which SLB considers necessary to protect the states interests.

(e) Requirement of timely execution.

(1) A pooling agreement approved by SLB shall be of no force and effect unless it is executed by both the applicant and the commissioner and filed with GLO within 90 days of approval. However, this 90-day limitation shall not apply to a pooling agreement in which the states only interest in any of the lands included therein is a free royalty interest.

(2) An applicant may resubmit a pooling application to the pooling committee.

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

Issued in Austin, Texas on September 7, 1989.

TRD-8908308 Garry Mauro
Commissioner of General Land Office

Effective date: September 29, 1989

Proposal publication date: June 6, 1989

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

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Exploration of State Lands With Geophysical Instruments

• 31 TAC §9.21

The General Land Office adopts the repeal of §9.21 without changes to the proposed text as published in the June 13, 1989, issue of the *Texas Register* (14 TexReg 2944).

The General Land Office adopts the repeal of this section in order to further its policy of reorganizing the administrative rules into a more accessible and logical structure.

The subject matter of this section will be included in new Chapter 9 of this title (relating to Oil and Gas Exploration and Development).

No comments were received regarding adoption of the repeal.

The repeal is adopted under the authority of the Natural Resources Code, §31.051, which provides the commissioner of the General Land Office with the authority to make and enforce rules consistent with the law.

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

Issued in Austin, Texas on September 7, 1989.

TRD-8908313 Garry Mauro
Commissioner
General Land Office

Effective date: September 29, 1989

Proposal publication date: June 12, 1989

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

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Chapter 11. Legal Division

Oil and Gas Leases, Mineral Classified Lands

• 31 TAC §§11.11-11.17

The General Land Office adopts the repeal of §§11.11-11.17, without changes to the text as published in the June 9, 1989, issue of the *Texas Register* (14 TexReg 2794).

The General Land Office adopts the repeal of these sections in order to further its policy of reorganizing the administrative rules into a more accessible and logical structure.

The subject matter of these repeals will be included in new Chapter 9 of this title (relating to Oil and Gas Exploration and Development).

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Natural Resources Code, §31.051, which provides the commissioner of the General Land Office with the authority to make and enforce rules consistent with the law.

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

Issued in Austin, Texas on September 7, 1989.

TRD-8908312 Garry Mauro
Commissioner
General Land Office

Effective date: September 29, 1989

Proposal publication date: June 9, 1989

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

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Part IV. School Land Board

Chapter 153. Exploration and Development

Unitization of State Lands

• 31 TAC §§153.11-153.15

The School Land Board adopts the repeal of §§153.11-153.15, without changes to the text as published in the June 13, 1989, issue of the *Texas Register* (14 TexReg 2944).

The repeals are adopted in order to further the reorganization of the administrative rules into a more accessible and logical structure.

The subject matter of these repeals will be included in new Chapter 9 of this title (relating to Oil and Gas Exploration and Development).

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Natural Resources Code, §32.062, which authorizes the School Land Board to adopt rules for the sale and lease of state land.

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

Issued in Austin, Texas on September 7, 1989.

TRD-8908311 Garry Mauro
Chairman
School Land Board

Effective date: September 29, 1989

Proposal publication date: June 13, 1989

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

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Operations on Permanent School Fund Lands

• 31 TAC §§153.21-153.37

The School Land Board adopts the repeal of §§153.21-153.37, without changes to the text as published in the June 13, 1989, issue of

the *Texas Register* (14 TexReg 2944).

The repeals are adopted in order to further the reorganization of the administrative rules into a more accessible and logical structure.

The subject matter of these repeals will be included in new Chapter 9 of this title (relating to Oil and Gas Exploration and Development).

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Natural Resources Code, §32.062, which authorizes the School Land Board to adopt rules for the sale and lease of state land.

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

Issued in Austin, Texas on September 7, 1989.

TRD-8908310 Garry Mauro
Chairman
School Land Board

Effective date: September 29, 1989

Proposal publication date: June 13, 1989

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

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Highway Right-of-Way Leases

• 31 TAC §§153.61-153.66, 153.71

The School Land Board adopts the repeal of §§153.61-153.66 and 153.71, without changes to the text as published in the June 13, 1989, issue of the *Texas Register* (14 TexReg 2945).

The repeals are adopted in order to further the reorganization of the administrative rules into a more accessible and logical structure.

The subject matter of these repeals will be included in new Chapter 9 of this title (relating to Oil and Gas Exploration and Development).

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Natural Resources Code, §32.062 which authorizes the School Land Board to adopt rules for the sale and lease of state land.

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

Issued in Austin, Texas on September 7, 1989.

TRD-8908309 Garry Mauro
Commissioner
School Land Board

Effective date: September 29, 1989

Proposal publication date: June 13, 1989

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 334. Underground and Aboveground Storage Tanks

The Texas Water Commission (TWC) adopts the repeal of §§334.1-334.5 and new §§334.1-334.13, 334. 41-334.55, 334.71-334.85, and 334.91-334.109. Sections 334.1, 334.2, 334.4-334. 12, 334.41, 334.43-334.52, 334.55, 334.71-334.76, 334.80, 334.81, 334.85, 334.92, 334.95, 334.96, and 334.104 are adopted with changes to the proposed text as published in the March 10, 1989, issue of the *Texas Register* (14 TexReg 1171, Volume I). Sections 334.3, 334.13, 334.42, 334.53, 334.54, 334.77-334.79, 334.82-334.84, 334.91, 334.93, 334.94, and 334.97-334.103 are adopted without changes and will not be republished.

The TWC 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 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 adopted 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 Regulation (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 commission received numerous oral and written comments on the proposed regulations, including comments from AT&T; Brown Maroney and Oaks Hartline; Electric Reliability Council of Texas; Department of the Air Force; Chevron U.S. A., Inc.; Aus-Tex Service Station Equipment Incorporated; Aviall; Browning-Ferris Industries; Bridgeport Chemical Corporation; The Association for Composite Tanks; Corrpro Companies, Inc.; Fueling Components Group; Exxon Company, U.S.A.; E.F. Tallon; Fina Oil and Chemical Company; G.T.E. Southwest Incorporated; Gulf Chemical and Metallurgical Corporation; Houston Lighting and Power Company; Hughes & Luce; Hunt and Hunt Engineering; Independent Pump Service; Lone Star Gas Company; L.T.D. Systems, Inc.; Mobil Oil Corporation; Modern Welding Company; Natural Leak Prevention Association; Petro Vend; Phillips Petroleum Company; Plasteel, Inc.; Pump Master, Inc.; Robert P. McMillen, P.E.; Rockey's, Inc.; Schlumberger; Sierra Club; Southland Corporation; Star Enterprise; Starco; Sterling Chemicals; Steel Tank Institute; Southwestern Bell Telephone; Taylor Sales Company, Inc.; Thrifty Rent-A-Car System; Texas Oil Marketers Association; T.V. Services; Texas Association of School Boards; Texas Automobile Dealers Association; Texas and New Mexico Power Company; Underground Systems Testing of Texas; Union Carbide Corporation; United Parcel Service; U.S. T. of Texas; Warren Rogers Associates, Inc.; Waste Management of North America; Whites Pump Service and Supply, Inc.; Watco Tanks, Inc.; and Young, Bacon and Brooks.

Numerous comments were received regarding the scope and impact of Chapter 334. Many commenters expressed support for the underground storage tank (UST) regulatory program as indicated in the federal rules, but expressed concern with the impact these rules would have on the regulated community. More specifically, the commenters addressed the complexity of these rules and the variance of these rules with the final federal rules. The TWC has closely tracked the federal rules and has varied only in the areas where the TWC believed that specific concern warranted a modification or clarification of the federal rules. A comment was made that these rules are presently structured toward petroleum tanks and more effort is needed to be made to distinguish the specific needs of hazardous substance tanks. The TWC agrees that these rules, like the federal rules, are necessarily structured toward the vast majority of regulated UST's. If significant unique situations exist concerning the hazardous substance tanks, a variance procedure is included in the rules which will allow such unique situations to be examined in detail. A commenter has stated that industry tank associations have valuable technical information and expertise and should be relied upon, so the TWC has throughout the rules attempted to fairly and reasonably utilize specific industry standards where applicable. A commenter has stated that technology in the UST field is advancing very quickly and that rules should take this into consideration. The TWC acknowledges that the UST field is advancing rapidly and believes that the waiver provision will allow new technologies to be used where applicable. One commenter believed that uniformity of statewide action throughout the UST program was needed. The TWC agrees and believes that formal adoption of these rules will in fact greatly advance uniformity.

Some commenters expressed appreciation with the basic format of the rules which they found to be more comprehensible and will have better effect of facilitating compliance by the regulated community than the federal rules.

With regard to qualified personnel for UST activities, one commenter suggested that the rules require additional use of professionals (e.g., professional engineer, hydrologist) while another commenter suggested that the rules had excessive requirements concerning the use of professionals. The TWC believes qualified personnel should be used in all UST activities and has attempted to provide reasonable and attainable qualification levels for personnel undertaking such activities. The TWC believes the rules should not be significantly changed in this area. The Legislature in House Bill 183, 71st Legislature 1989, has addressed this issue and has mandated that installers of UST systems be qualified as defined in this new law.

Numerous commenters expressed strong opposition to the retroactive application of specific sections in Subchapters A, C, D, and E. In some cases the TWC believes that the commenters are incorrect because previous TWC rules covering such requirements were in effect (e.g., §334.6 on construction notification, and §334.7 concerning registration), thus no change is considered necessary. These sections are discussed in more detail in this preamble. However, as more specifically related to the technical standards of Subchapter C where the TWC's proposal retroactively required compliance from December 22, 1988 (effective date of federal rules), the TWC agrees that a change to the effective date of these subchapters should be made. While the TWC has retained the definition for existing UST system and new UST system to be consistent with the federal rules, the TWC has changed the compliance dates for new UST systems, relating to technical standards and other related requirements, so that they coincide with the effective date of these subchapters and are not retroactive.

One commenter addressed the need for clarification of the applicability of the rules to tanks that had contained regulated substances, but were subsequently cleaned and refilled with unregulated substances. TWC states that if the tanks contained a regulated substance subsequent to January 1, 1974, then the tank is subject to UST regulation and should comply with the change in service requirements of §334.55(d). If a change inservice of the UST from a regulated to an unregulated substance occurred prior to January 1, 1974, the UST system will not be subject to UST regulation.

One commenter requested clarification as to the applicability requirements in §334.1(b) for compartmental tanks. TWC reiterates that §334.1(b)¡(4)(A), concerning compartmental tanks, specifies that compartmental tanks are subject to regulation when at least one of the compartments is used to store regulated substances and the tank meets the general requirements of USTs as described in §334.1(b).

One commenter suggested that in §334.1(a), the reference to underground storage tanks should be expanded to reference underground storage tank systems. TWC concurs. This commenter requests that §334.1(b)(1) be changed to read "underground storage tanks and underground storage tank systems that are subject to all or part of the requirements and provisions under this chapter include, but are not limited to, the following." TWC disagrees and feels this will add confusion as to which underground storage tanks are regulated.

One commenter stated that the rules gave too much authority to the executive director without any checks and balances. The TWC,

as a state agency, is subject to the Administrative Procedure and Texas Register Act, Article 6252-13a, thus TWC believes that checks and balances do, in effect, exist.

Several comments were received on the definitions in §334.2. One commenter suggested that the definition of "flow-through process tank" be expanded to include certain tanks addressed in the preamble of the federal rules. The TWC has not changed the definition of "flow-through process tank" but agrees that certain tanks such as holding tanks, pulse tanks, feed tanks, mixing tanks, tanks which are used for cutting or diluting concentration levels, and tanks that store intermediates may be classified as flow-through process tanks if the tank is an integral part of the production process stream. The executive director will make a determination as to the applicability of the flow-through process exemption when necessary.

Comments were received concerning the definition of "corrosion technician." Commenters were concerned about the definition being restrictive in nature. TWC agrees that minor changes are warranted and has modified the definition of "corrosion technician" to incorporate other individuals for these given tasks, specificaliy, persons working under the direct supervision of qualified corrosion specialists and others qualified as cathodic protection testers who meet the appropriate National Association of Corrosion Engineers (NACE) certification requirements.

Several comments were received questioning the methods for achieving equivalency of NACE certification. The TWC will evaluate each claim of equivalency based upon experience, training, and proficiency in the corrosion field. Some commenters were concerned with the availability of NACE certified corrosion technicians and the increased costs associated with using NACE certified technicians to perform the required tanks. TWC feels that the revised definition should help alleviate this concern.

Several commenters mentioned the fact that the rules substituted the term "corrosion technician" in place of the federal definition of "cathodic protection tester." The TWC believes that the term "corrosion technician" is more appropriate for the corrosion protection options included in the rules.

With respect to the TWC's definition of "change-in-service" in §334.2, language has been added to clarify that this term refers to one of the acceptable methods of permanent removal from service in §334.55.

Another commenter requested that the term "qualified personnel," as used throughout this chapter, should be defined. TWC agrees and has added a definition for "qualified personnel." In addition, due to the recent enactment of House Bill 183, 71st Legislature 1989, the TWC has substituted the word "in- staller" for the previously used term "qualified personnel" in those sections in this chapter regarding UST installation, repair, and permanent removals from service, for consistency.

One commenter requested that the NACE category for corrosion specialist-in-training should be included as a corrosion specialist in the TWC's rules. TWC feels that the corrosion specialist-in-training may indeed have met the necessary education requirements, however, he has not necessarily yet achieved the experience necessary to qualify for the corrosion specialist tasks required in these rules. The TWC's definition of "corrosion specialist" is intended to be essentially equivalent to the federal definition of corrosion expert as it relates to requirements for proficiency, experience, and education. We do not agree with the commenter's interpretation that the TWC's definition is more restrictive than the federal definition.

One commenter expressed concern that each corrosion protection system would need to be custom designed by a corrosion specialist. The TWC intends to allow standardized pre-engineered cathodic protection systems, so long as such systems are properly designed and installed under the responsible charge of qualified corrosion specialists.

One commenter suggested that in the definition of "existing UST system," the term "and which is not a new UST system" is unnecessary and confusing. The TWC agrees, and has deleted this term from the definition.

Another commenter requested clarification of the status of a new tank which is added to an "existing UST system," as defined in these rules. In these rules, the term "UST system" refers to an individual tank with its associated piping and ancillary equipment. Therefore, each UST facility may have one or more UST systems and a new UST system may be added to an existing UST system at the same facility at any time.

A commenter stated that the TWC's definition of "UST system" differed materially from EPA's definition by including all "piping" rather than only "underground piping." The commenter is technically correct; however, the intended meaning is identical since the TWC's definition of piping includes only the underground piping. Therefore, no change in the existing language is necessary.

With regard to TWC's definition of "petroleum UST" one commenter felt that analytical detection limits and methods should not be the basis for classification of a stored substance as either petroleum or hazardous. TWC agrees that the language in this definition is not precise; however, it was developed directly from the preamble to the federal rules, and was intended to provide limited guidance for distinguishing a petroleum UST from a hazardous substance UST where substance mixtures are involved.

Another commenter suggested that the definition of "petroleum UST system" should be expanded to also include tanks that previously contained petroleum substances. TWC agrees and has added the term "has contained, or will contain" to expand and clarify the definition.

A commenter suggested that the TWC's definition of "petroleum substance" was unclear as to whether a mixture of any listed petroleum substance with any other unlisted petroleum-based substance would be subject to regulation. The intent of this definition, in conjunction with the definition of "hazardous substance UST system" is that a UST storing one or more listed petroleum substances would be regulated as a petroleum UST. However, any UST storing one or more unlisted petroleum-based substances, or mixtures of such unlisted petroleum-based substances with either listed petroleum substances or CERCLA-listed hazardous substances, would be regulated as a hazardous substance UST.

Several commenters requested that the definition of "regulated substance" be revised by deleting the clause allowing the TWC to designate additional regulated substances. TWC has changed this definition slightly by deleting only the reference to the executive director authority in this regard, but has retained the commission's authority to designate additional regulated substances, as specifically authorized in the Texas Water Code, §26.343(a)(3). Further, the TWC does not concur with the commenter's request to adopt a rule which would limit this authority to designate additional regulated substances only through formal rulemaking procedures, including an opportunity for public comment.

One commenter expressed agreement with the TWC's addition of a definition for "in operation," which was not included in the federal rules. Another commenter suggested that the word "originally" should be deleted from this definition to clarify the meaning. TWC agrees, and has deleted the word "originally" as suggested.

Two commenters suggested that the definition of "spill" should either be deleted (due to possible redundancy with the definition of "release") or should at least be revised to remove the implication of careless or improper behavior or action by responsible personnel as part of this definition. TWC has revised this definition, as requested, to remove such implication.

One commenter stated that the definition of "external release detection" should be expanded to include interstitial monitoring of the spaces between the walls of a double-walled tank. The TWC does not agree, and has purposely excluded such interstitial monitoring from the allowable external release detection methods. The requirement for external release detection as referred to in this chapter is associated with tank removals, upgrading, integrity assessments, and other occasions where the tank excavation needs to be checked for the presence of releases from all sources. Interstitial monitoring would not be capable of detecting releases from spills, overfills, and other external release sources.

One commenter suggested that a definition be added for "installer." The TWC agrees with this comment, and has added a definition of "installer" which is consistent with the definition used in House Bill 183, 71st Legislature, 1989.

A comment was received concerning the definition of "tank." The commenter suggested that the definition of "tank" should be changed to include those devices which are used as well as designed to contain an accumulation of regulated substances. The TWC agrees and the definition has been changed to reflect this comment.

A comment was received concerning the definition of "farm tank." The commenter requested that the definition be changed to state that a certain percentage of stored regulated substances must be used directly in farm activities in order for a tank to be dassified as a farm tank. The TWC disagrees with the comment as the term "farm tank," as presently defined, requires that the tank be utilized directly in the farm activities without

any additional limitation. The TWC believes that additional requirements in the definition would be burdensome to those using farm tanks and would restrict the commission's flexibility in determining when a tank is in fact a farm tank.

In the proposed rules, the commission defined "facility owner," "owner," and "operator" to include past owners and operators. Many comments were received questioning the inclusion of past owners and operators in those definitions. Several commenters expressed the concern that the commission was attempting to impose strict liability for underground storage tank obligations on past owners and operators through this definition.

In response to these comments, the TWC has removed all references to past owners or past operators from these definitions. The commission is not intending to impose strict liability for underground storage tank obligations on past owners and operators. Instead, the purpose for including these persons in the definitions was simply to put the regulated community on notice that the commission intends to proceed, where necessary, to protect human health and the environment and where authorized by statute, with enforcement action not only against present owners and operators, but also against past owners and operators who are responsible for a release.

Several commenters objected to the inclusion in the definition of "owner" the statement that the fee simple owner of the surface estate where the UST is located is to be considered the owner of the UST system, absent proof to the contrary. TWC believes that this presumption is correct as an UST becomes a fixture to the property when it is installed, thus it is proper to presume that the fee simple owner of the surface estate also owns the fixtures affixed thereto. TWC believes that the definition allows proof that the UST belongs to someone other than the fee simple owner of the surface estate to be presented, thus no change has been made. The TWC received one comment concerning the failure of the proposed definition of "owner" to include an exclusion for those who merely possess a security interest in the UST. TWC agrees, and language has been added to clarify that those who possess a security interest only are not to be considered "owners."

One commenter requested that the definition of "bulk storage tank" be removed as it was not a term used in the rules. TWC disagrees as §334.43(c)(1) includes the term bulk storage tank and thus feels that the term needs to be defined.

One commenter suggested that the term "operational life," as defined, is indefinite, and should be changed to make it more definite by changing the term to "design life," and requiring all tanks to be permanently removed or abandoned in place no later than the end of the design life of the tank. The TWC's definition of "operational life" is generally consistent with the federal definition. TWC believes that it is unreasonable to require that all tanks be permanently removed or abandoned after the design life has expired when the tank may be operational.

One commenter noted that the TWC had included the term "UST system" in the definition of "release," while the Texas Water Code, §26.342(3) used the term "underground storage tank" in the definition of "release." The TWC has removed the word "system" in the definition of "release" to make the definition consistent with §26.342(3). The commenter went on to say that a leak from an UST that is controlled by the containment system is not a release, and the TWC concurs with this interpretation of release, provided that no regulated substance is released into the environment.

One commenter suggested that there was overlap between the definition of "aboveground release" and "below-ground release." This commenter felt that aboveground release should include releases directly to the surface and below-ground release include releases directly to the subsurface. TWC believes that a particular release could fall under both categories of aboveground and below-ground release and no changes should be made to the definitions. The TWC classifies the release by its physical location in the surrounding environment (e.g., either aboveground or below-ground release).

One commenter suggested that the definition of "accidental release" only applied to petroleum tanks and not hazardous substance tanks. The TWC agrees that this definition does not include accidental releases for hazardous substance tanks, but this term is only used in Subchapter E, concerning financial responsibility which only applies to petroleum substance tanks; thus, no change to the definition is warranted.

A comment was received stating that "below-ground release" should encompass the definition "underground release" to avoid confusion. The TWC agrees and has eliminated the definition of underground release.

One commenter stated that the statutory exemption of §334.3 should be reconsidered and certain exempt tanks be regulated. The TWC disagrees, as the exemptions in §334.3 are a restatement of the Texas Water Code, §26.344, and the TWC does not have the authority to eliminate tanks from the exempt category when the legislature has included such tanks in this category.

Several commenters requested that the TWC follow the federal rules and completely exempt hydraulic lifts from regulation. Section 334.3(b) which provides for a partial exemption of hydraulic lifts is a restatement of the Texas Water Code, §26.344(d), thus, no change is considered appropriate.

One commenter argued that the TWC release reporting requirements of §334. 3(b), concerning hydraulic lifts is not specifically authorized by the Texas Water Code, §26.344(d), which states that hydraulic lifts are only subject to corrective action. The TWC disagrees as the Texas Water Code, §26.349, requires the TWC to adopt requirements for the reporting of any release subject to corrective action. Since the release from a hydraulic lift is subject to corrective action pursuant to the Texas Water Code, §26.351, the release must be reported pursuant to Subchapter D of this chapter.

One commenter requested confirmation that tanks used for temporary storage of samples that are purged during a production process, which are stored for a short period of time and then returned to the process at a later time, be exempted pursuant to the flow-through process exemption of §334.3(a)(6). The TWC does not have sufficient facts to make a determination concerning the exempt status of such tanks. TWC encourages owners and operators to consult with TWC staff on a case-by-case basis to determine the exempt status of any tank potentially subject to this chapter.

Similarly, several commenters stated hydraulic lifts should be excluded because they are self-regulatory, they pose minimal risk to the environment, and EPA excluded hydraulic lifts from all regulations. While TWC generally agrees with these comments, it is felt that since the legislative intent to subject hydraulic lifts less the 100 gallon to corrective action requirements, it logically follows that the legislative intent would be to subject larger hydraulic lifts to the same minimum requirements. The basis for requiring release reporting for hydraulic lifts has already been addressed in this preamble.

Several comments were received concerning the exclusion of sumps having a capacity of less than 110 gallons in §334.4(a)(4). The federal rules exempted all tanks with a capacity 110 gallons or less on the basis that the regulatory burden outweighed the potential environmental benefits, while these rules exempted only sumps with a capacity of less than 110 gallons. The TWC has not found the argument of regulatory burden applicable in Texas. Available records indicate that less than 1.0% of all regulated tanks fit into this category of tanks with a capacity of less than 110 gallons. TWC concurs with the EPA's reasoning, as found in the final preamble of the federal rules, that "the mismanagement of even small quantities of regulated substances could pose serious danger to human health and the environment." TWC has elected not to exempt all UST systems with a capacity of 110 gallons or less, as the federal rules did, but only sumps with a capacity of less than 110 gallons will be exempt from regulation. The TWC excluded only sumps with a capacity of less than 110 gallons because the dilute concentrate of regulated substances typically found in such sumps would not normally pose an environmental concern.

One commenter requested that the volume of a sump be calculated without considering the volume in connected troughs or trenches. The TWC believes that consistent with the inclusion of piping when calculating the volume of a tank, the volume of connected trenches and troughs should be included in calculating the total volume of a sump. Due to the varying design and construction of sumps, the TWC will consider any request for a review and evaluation as to the applicability of this exclusion.

One commenter proposed that the exclusion concerning emergency spill protection or emergency overflow containment tanks found in §334.4(a)(5) be changed to reflect a time limitation based upon discovery of a release and not the occurrence of such release. TWC agrees and has made the change with the added proviso that these tanks be inspected for a release no less than once every month. The same commenter wanted the 48-hour removal requirement of subsection (a)(5) to be changed to reflect that TWC will take into consideration extenuating circumstances which would otherwise cause a violation of this requirement. TWC does not believe that

any change to the requirement is warranted and will evaluate extenuating circumstances on a case-by-case basis.

Two commenters felt that field constructed tanks should be temporarily deferred from regulation, consistent with EPA's approach, because of the difficulty of addressing technical standards for such tanks, particularly leak detection. TWC agrees that these tanks are in fact unique and may present more regulatory difficulty. However, the TWC is concerned with the environmental impact of these tanks, many of which have a capacity of greater than 50,000 gallons and are constructed in such a manner and with such materials that regulation is warranted. Alternative procedures to meet the technical requirements can be analyzed pursuant to the waiver provision in §334.43.

One comment was received questioning the TWC's failure to exclude or defer regulation of airport hydrant fueling systems which were deferred in the federal rules. The commenter stated that no industry standards exist for meeting the technical requirements for these types of systems. The TWC notes that these systems can involve large volumes of regulated substances which can, and do, pose a significant threat to human health, safety, and the environment. While TWC recognizes the insufficiency of specific standards to meet the technical requirements for many airport hydrant systems, TWC feels that alternative procedures to meet such requirements can be analyzed pursuant to the waiver provisions in §334.43, similar to the provisions for field constructed tanks.

One commenter stated that the exclusion found in §334.4(a)(6) is too vague, as the term "dilute concentration" is not defined. The TWC has not included a specific definition of "dilute concentration" as this presents a difficulty in establishing a dilute concentration level for the numerous regulated substances. The TWC will evaluate, on a case-by-case basis, which tanks that hold very low concentrations of regulated substances are excluded via the dilute concentration rationale. The term "significant threat to human health and safety or the environment" will be evaluated in the same manner.

Several commenters requested that TWC defer emergency generator tanks from the release detection requirements, as was done in the federal rules. The TWC has reviewed the EPA's basis for the deferral and is not in total agreement with their rationale. More specifically, EPA stated in the final preamble to the federal rules that their reason for deferring these tanks from release detection was only because they are often located in remote areas and are visited very infrequently. TWC recognizes that while some of these tanks may meet this description, there are also a substantial number of tanks which are located at hospitals, office buildings, schools, and other sensitive areas. Therefore, TWC believes that a complete deferral is not appropriate and such emergency generator tanks should be subject to the release detection requirements as well as all other requirements. However, TWC acknowledges that certain emergency generator tanks are situated such that compliance with specific release reporting requirements may be difficult, time consuming, and costly to achieve. In these specific situations the owner or operator of such tanks may request consideration of an alternate release detection method pursuant to §334.43.

One commenter suggested that the exemptions contained in §334.3(a)(1) include emergency generator tanks with a capacity of 1,100 gallons or less that are used for storing motor fuel. TWC has not made this change as the exemptions listed in the Texas Water Code, §26.344(1) apply only to farm or residential tanks with a capacity of 1,100 gallons or less that are used for storing motor fuel for noncommercial purposes, and does not include emergency generator tanks. Furthermore, TWC has not added these tanks as a commission exclusion in §334.4, as to do so would violate the Texas Water Code, §26.357(1), which states that the rules adopted by TWC must be at least as stringent as those in the federal requirements. The federal rules only exempted emergency power generator tanks from release detection requirements and not from any other regulatory requirements.

Several commenters requested clarification as to the scope of the wastewater treatment tank exclusion found in §334.4(a)(2). In order to prevent the dual regulation of wastewater treatment tanks associated with wastewater treatment facilities regulated pursuant to the federal Clean Water Act, §402 or §307(b) (33 United States Code §1251, et seq.), including any pretreatment facilities associated with such facilities, these tanks will be excluded from regulation under this chapter. In response to comments, this section has been revised to clarify the TWC's intent to include in the exclusion those pre-treatment tanks which are an integrated part of the permitted wastewater treatment facility. For further clarity, the TWC has added a provision to exclude any wastewater treatment tank which is an integral part of a wastewater treatment facility permitted pursuant to the Texas Water Code, Chapter 26, including those wastewater treatment plants involving land disposal of sewage effluent. These underground storage tanks, while excluded from regulation under this chapter, are regulated by either the EPA or TWC pursuant to either the Clean Water Act or the Texas Water Code, Chapter 26.

Concerning the general prohibitions included in §334.5, one commenter felt that the TWC should not retroactively apply the minimum design and regulation provisions of subsections (a) and (d) of this section to September 1, 1987. TWC does not agree that these sections are retroactive, but are in fact a restatement of 31 TAC §334.4(a)(1) which were in effect since September 1, 1987.

One commenter pointed out that the date of December 22, 1988, in §334.5(c), pertaining to notification, is a retroactive date and the requirement should be changed to reflect the effective date of this subchapter. TWC has removed the December 22, 1988 date from this section, and has added language in §334.6 clarifying the specific effective dates relating to construction notification. This clarification is discussed later in this preamble.

One commenter felt that the term "have installed" in §334.5(a) should be changed to "arranged for installation of" and the phrase "deposit or have deposited" be changed to "introduce or arrange for the introduction of." No change to these sections has been made as TWC believes that the proposed phrases do not add any clarification to the section since the term "arrange for" does not necessarily denote a regulated activity.

Several commenters pointed out an inconsistency in the requirements in §334. 5(b) which states that proof of registration be provided prior to deposit of any regulated substance into an underground storage tank, and §334.7(c), which allows 30 days to register a tank after any regulated substance is initially placed into the tank. TWC agrees that an inconsistency exists and has changed subsection (b) so that delivery of regulated substances can be made for 30 days to a new or replacement tank that is not yet registered, allowing for the registration notification submittal to TWC.

In response to a comment on §334.5(b) concerning to whom evidence of registration must be provided, the TWC has changed this section to make it more practicable by deleting the requirement that evidence of registration be provided to the person responsible for the delivery.

TWC feels that, in response to one comment, a copy of the tank registration form is sufficient evidence of registration as required by §334.5(b).

Another comment was made that tags and certificates should be provided to help fulfill the proof requirements of this section. TWC is currently evaluating the practicability of this comment, and, in order to provide lead time for implementation, has deferred the effective date of delivery prohibition until January 1, 1990. One commenter felt that the submittal of a construction notification pursuant to §334.6 should satisfy the proof of registration requirement of this section. TWC disagrees, because the construction activity denotes the intent to construct an underground storage tank but does not reflect actual operation of the underground storage tank.

One commenter felt that registration information is confidential business information and should not be made available. TWC disagrees, as this information is required by both federal and state regulations and is public information by law. In response to other comments to this section, TWC does not contend that proof of registration will be necessary for each individual delivery if the owner or operator has already provided evidence of registration in an otherwise acceptable manner.

One commenter requested an alternative to the notification procedure in §334.5(c) in emergency situations. The TWC has provided such a procedure in §334.6(c)(2)(A), thus no change is necessary.

Several commenters objected to the construction notification filing requirements of §334.6(a), as well as the associated implementation dates. The TWC believes that inspection of major construction activities is an integral and necessary part of the regulatory scheme concerning underground storage tanks. While these rules have specified the particular activities for which notification is required, the basic concept of construction notification has been effective since September 1, 1987, when TWC adopted the first set of emergency rules concerning underground storage tanks. The TWC still believes that the 30 day notification requirement is reasonable in most cases, but recognizes that certain situations will necessitate a variance from

these requirements. Thus, the TWC has provided mechanisms for a waiver for good cause in subsection (4) and alternative procedures in subsection (c). Further, the TWC has clarified the effective dates for notification requirements as applicable to specific activities by revising subsection (a)(1).

One commenter requested that the official date of notification of §334.6(a) (5) should be the postmark date on the envelope providing the notice instead of the date on which the notification is first received in a commission office. The TWC believes that current procedures are adequate to preclude any undue delays in processing these notices, thus no changes have been made.

One commenter was concerned with the potential for unnecessary construction delays which might exist due to the unavailability or schedule conflicts with TWC district inspections. TWC only requires that notice be provided in accordance with §334.6 and such notice will provide an opportunity for TWC personnel to inspect, but does not mandate such inspection. No change has been made.

One commenter requested that TWC grant a 60-day extension date in §334.6(b) (5) to correspond to building permits issued by many municipalities. TWC has agreed to this change. This commenter further requested that an allowance be made for a 90-day extension upon request. TWC believes that this is unnecessary, as a new or amended form can be filed pursuant to this section.

One commenter asked if the refiling of a construction notification form would require an additional 30-day waiting period. TWC will require an additional 30-day notification only if the new construction notification form is filed after the original notification form has expired.

One commenter requested clarification as to the appropriate place notification must be sent pursuant to §334.6(b). All notifications required under this section may be provided to the commission's district office as appropriate for the area of the activity, or to the central office in Austin, as allowed by subsection (a)(5). Wording has been changed in subsections (b)(6)(B) to clarify this.

Several commenters were concerned with §334.6(b)(6)(A), concerning the required construction notification on a TWC form which was not included in the rules. TWC will have such form available upon the effective date of this subchapter. The form will be substantially consistent with the information currently required in old §34.4(b)(3) which has been in effect since February 24, 1988, and is now being replaced by the requirements in this subchapter.

One commenter requested that the report required in §334.6(c)(1)(B) be eliminated. The TWC disagrees, as this report is considered necessary since the alternative notification which is provided to TWC will generally not allow the district sufficient notice to investigate the activity; however, the report will allow the commission to ascertain regulatory compliance. Another commenter requested that any commission request for additional information for the report required pursuant to subsection (c)(1)(B) should be in writing. TWC does not feel a change is warranted but can accommodate a request for a written request.

One commenter suggested that the alternative notification procedure in §334. 6(c) include a requirement for notifying TWC at least 48 hours prior to initiating a construction activity. TWC feels that this is inappropriate due to the nature of the activity involved in this section.

Several commenters requested clarification of and expressed concern with the scope and types of the construction activities for which 30-day construction notification is required in §334.6(b)(1). The TWC considers the 30-day notification to be reasonable for most major UST construction activities; however, the TWC agrees that some clarification and revision of this section is necessary. TWC has added language to clarify that this section is not intended to require construction notification for minor routine and repair activities. In this section TWC has included construction notification for tank repairs which is intended to cover only repairs to the tank vessel and not to piping and other connected components. One commenter wanted a specific exclusion for interior tank lining. TWC considers this activity as a major construction activity and has not added such an exclusion.

Regarding the responsibility for registering UST's, as provided in §334.7(a) (2), (numbering revised), one commenter correctly noted the responsibility should rest with the UST owner rather than the UST facility owner. TWC agrees, and has revised this section accordingly. The numbering in §334.7 has been revised to correct a typographical error in the proposed rules.

A few commenters were concerned with TWC's conditional exemption in §334. 7(a)(1)(D)(ii) pertaining to registration of tanks which remain in the ground but were emptied and cleaned in accordance with acceptable industry practice, and were filled with inert material on or before January 1, 1974. In response to these comments, TWC has changed this clause to allow the additional exemption from registration if a tank remains in the ground and was emptied and cleaned in accordance with industry standards at that time, but not filled with solid, inert material, so long as the tank is filled with a solid, inert material within one year of the final adoption of these rules, or within 60 days of discovery of the UST, and is closed in accordance with permanent removal requirements in §334.55. The exemptions allowed in this section only apply to registration requirements; these tanks are still subject to corrective action requirements pursuant to Subchapter D.

One commenter felt that the information required whenever the data included on a registration form is altered, as included in §334.7(d), is duplicative of information required on TWC's construction notification form. These are two separate reports and they do not always contain identical information, thus no change is necessary.

A commenter felt that §334.7(d)(1)(K) is vague. TWC agrees and has removed this subparagraph.

Two commenters expressed difficulty in complying with the requirement of notifying the TWC of a change in the location of tank facility documents and records, as stipulated in §334.7(d)(1)(I) and suggested that a specified period of time be allowed to provide TWC with such records upon request. TWC feels that it is necessary that the off-site location of these records at all times be known, thus no change is considered warranted.

One commenter requested clarification of what constituted changes or additional information of registration data, as included in §334.7(d). TWC does not intend for minor construction activities (e.g., replacement of malfunctioning components) to necessitate a revision to the registration form. TWC believes that subsection (d) is sufficiently specific about what changes or additions to the registration form will be required, and no change is made.

One commenter felt that the requirements of §334.7(d) are burdensome when there is more than one tank at a facility. TWC feels that the changes noted in this subsection are essential and need to be reported each time such change is made.

In response to §334.7(e), one commenter requested that TWC require only that the registration information be completed to the extent of the owner's best knowledge. TWC believes that subsection (e)(2) already allows this and no change has been made.

As pointed out by one commenter, there is currently no section on the current EPA registration form currently in use by TWC to indicate the status of spill and overfill prevention equipment. TWC has developed a form for use in Texas that will contain such information.

One commenter was concerned with the fact that the TWC is requiring that registration forms be used and these forms were not available at the time of publication of these rules. Similar to the construction notification form, these registration forms will be available upon the effective date this subchapter.

Pursuant to a comment concerning the effective date the installation certification requirements in §334.8(a)(1) as being retroactive, the TWC concurs and has changed the effective date of December 22, 1988, to the effective date of this subchapter.

Numerous commenters felt the installer certification requirements of §334.8 are unreasonable since most owners do not have adequate knowledge and expertise of technical installation standards. The TWC's requirements for certification by the owner or operator and by the installer is consistent with 40 Code of Federal Regulation, §280.20(e) and §280.22(e) and (f), thus §334.8 must contain these requirements to be at least as stringent as the federal rules, pursuant to the Texas Water Code, §26.357(a).

One commenter felt that it was unclear as to which of the requirements in §334.8 applied to owners or operators and which applied to installers. In §334.8(a)(2), TWC states that the tank owner or operator shall be responsible for assuring that the installer has provided the required certification, as TWC believes that the owner or operator has the ultimate responsibility concerning this matter.

One commenter suggested that all certification made pursuant to §334.8 be cross-referenced to §334.46(h)(1)(B) concerning installation certification criteria. The TWC feels that the existing cross-reference in §334.8(a)(1)(A) is sufficient for this purpose and no change is considered necessary.

One commenter believed that it was inappropriate to require owners of existing tanks to file proof of financial responsibility with the TWC as required by §334.8(b). TWC feels that this requirement is necessary for regulatory oversight of the financial responsibility requirements for both existing and new tank owners. This is the most efficient means by which this information can be conveyed to the TWC.

Comment was also made that the compliance date for financial responsibility, as referenced in §334.8(b)(1) , is inappropriate and impracticable. Changes have been made to this paragraph so that certification of financial responsibility for new tanks must be provided with the new tank registration as required in §334.7, while certification of financial responsibility for existing tanks must be provided within 30 days of the compliance dates as prescribed in §334.92.

Some commenters questioned TWC authority to require the seller disclosure requirements in §334.9. In accordance with the Texas Water Code, §26.357, TWC must adopt standards and rules at least as stringent as the federal rules, and 40 Code of Federal Regulations, §26.22(9) requires that "any person who sells a tank intended to be used as an underground storage tank notify the purchaser of such tank of the owner's notification obligation." TWC acknowledges that by requiring sellers to give notification to buyers concerning construction notification and registration requirements that TWC's notification requirements are somewhat broader than the federal requirement. However, the TWC feels the additional requirement is necessary to put buyers on notice.

One commenter questioned TWC's authority to require seller's disclosure beyond the initial conveyance of ownership from the tank manufacturer to the initial buyer of a tank. TWC does not concur with the commenter's limited interpretation, and TWC's interpretation of the federal rules is that all transfers of tank ownership are included in the seller's disclosure requirements.

Other commenters felt that §334.9 was burdensome and unnecessary. The TWC believes that this requirement is essential as purchasers of tanks should be made aware of their obligation and responsibilities concerning such tank. It is in the best interest of both the tank owner and the TWC to have the regulated community knowledgeable as to their responsibilities under these rules. The scope of this section does not require the seller to educate the subsequent buyer on all aspects of these rules, but only requires such seller to inform the buyer of his responsibility concerning tank registration and construction notification provisions. In order to help facilitate the compliance with this section TWC, has agreed to add suggested language to the section.

As in other sections, comment was made that the effective date of October 24, 1988 in §334.9 is retroactive. TWC agrees, and has changed the effective date to be the effective date of this subchapter.

Pursuant to several recommendations from commenters concerning sellers disclosure requirements, the requirement found in §334.9(3) for providing a copy of the written notification to the TWC has been eliminated. In this section and in the reporting requirements in §334.10(a)(5), records concerning seller's disclosure will only have to be maintained pursuant to §334.10(b)(2) (A)(iii).

Many commenters made the general statement that the reporting and recordkeeping requirements of §334.10 are excessive and burdensome. Regarding the reporting requirements of §334.10(a), the only reports which the TWC has added which are not included in the federal rules are as follows.

(1) Construction notification. The federal rules do not require construction notification, but TWC requires such notification pursuant to §334. 6 and believes that reports concerning this activity are necessary.

(2) Edwards Aquifer application. The application for approval of any proposed UST system in the Edwards Aquifer recharge or transistion zone is unique to Texas and is an existing requirement in 31 Texas Administrative Code, Chapter 313.

(3) Registration of changes in information related to UST systems. While this is not included in the federal rules, TWC believes that this report is essential in order for the TWC to maintain a current and accurate inventory of UST's in the state. This report is currently required pursuant to §334.4(a) (3).

(4) Certification of financial responsibility for existing systems. This requirement was discussed with other comments pertaining to §334.8(b).

(5) Documentation of site assessment. The federal rules require that a site assessment be performed but does not require that the results be filed with the implementing agency. TWC believes that adequate regulatory oversight cannot be maintained for most site assessments unless the opportunity for TWC review is allowed.

(6) Fee payments for underground storage tanks. While there is not a federal requirement, it is required by the Texas Water Code, §26.358.

(7) Report and certification of site check. The federal rules require that the site check be conducted, but does not require a report be filed when no evidence of a release is found. TWC believes that such a report is necessary for adequate regulatory oversight, agency review, and completion of records.

In response to commenters the TWC has agreed to make the following deletions and revisions to the reporting requirements in §334.10.

(1) Deletion of the requirement for the reporting of the notification to UST purchasers (see discussion of §334.9 in this preamble).

(2) Deletion of the requirement of facility owner's authorization for abandonment. The TWC has only deleted the reporting requirement in the section but has not deleted the disclosure requirement in §334.55(c)(2).

(3) Concerning forms and reports "evidencing" financial responsibility, the TWC has agreed to replace the word "evidencing" with the word "regarding" to clarify the meaning .

General comments were also made concerning recordkeeping requirements of §334.10(b) as being burdensome and beyond the scope of the federal rules. TWC feels that most of the records are essential for documentation and as evidence of regulatory compliance. TWC has reviewed all recordkeeping requirements pursuant to comments and has agreed to substantial revisions and modifications to this section. More specifically, most of the reports and documents which had been required to be filed with the TWC under subsection (a) have been deleted from the recordkeeping requirements in subsection (b) because such records will be on file at the TWC. However, those records which TWC considers vital from a regulatory standpoint have been retained in subsection (b). These reports include registration and certification documents, documents evidencing compliance with the technical standards (including upgrading), and financial responsibility documents. While TWC has eliminated the requirement that certain records be maintained for the purpose of regulatory compliance, TWC strongly encourages that all pertinent underground storage tank records be kept as dictated by good business practices.

One commenter indicated that the allowance for off-site maintenance for UST records in §334.10(b)(1)(C) was overly restrictive in that it appeared that the only allowable reason for off-site maintenance of records was because they could not be maintained in a secure location at the UST site. The TWC's intent was not to restrict off-site maintenance of records as inferred by the comments, and has therefore removed the term "in a secure location" from this subparagraph. The criteria for determining whether or not UST records can be maintained off-premises is if it is unreasonable to maintain such records on the premises.

Several comments were received concerning the requirement for giving TWC written notification of where UST records are maintained, as specified in §334. 10(b)(1)(C)(iii). The commenters felt that it was unreasonable and an excessive burden for the TWC to require written disclosure as to the location of those records which were not being kept on the UST site, and further that the requirement for disclosing the specific reason for not maintaining records on-site was unreasonable. TWC believes that it is necessary that the off-site location of UST records be provided in writing to TWC to assure ready accessibilty of such records to commission personnel. No change has been made relating to the specific location where records must be maintained to subsection (b)(1)(C)(iii)(I). However, TWC has deleted subsection (b)(1)(C)(iii) (III) relating to the specific reason that such records cannot be maintained on the premises of the UST facility, in accordance with the earlier explanation that the owner's decision to maintain records at an off-site location is based on the criteria of reasonableness. Thus it is not necessary for the TWC to have a written statement as to the specific reason records are being kept off-site.

One commenter felt that the five-year retention time for recordkeeping was excessive and would result in excessive costs. TWC has significantly reduced the number of reports required in §334.10(b)(2) to those considered essential and feels a five-year period of retention for the remaining records in not unreasonable.

One commenter requested that §334.11(a), regarding further action requirements, should be clarified by including a specific reference to account for TWC deadlines imposed in this chapter. TWC considers that the term "applicable requirements of this chapter" (as used in this section) already includes any requested deadlines or time frames.

Two commenters suggested that the TWC add language to §334.12, clarifying the appropriate authority when potential conflicts between these regulations and regulations or ordinances adopted by local governments exist. TWC recognizes that local governments have power to enact reasonable regulations to promote the health, safety, and welfare of its citizens. Whether an ordinance is reasonable or not is a question of law for the courts to decide. The TWC refuses to expand the Texas Water Code, §26.359, as it relates to local regulations and ordinances, in a manner which would expressly preempt or restrict the powers of a local government, as this is a matter of law and any such conflict which may arise would be adjudicated in the courts. Further, the Texas Water Code, §26. 359, only restricts local regulations or ordinances which apply to standards adopted for design, construction, installation, or operation of UST's. More stringent local regulations in other areas (eg. tank removal, upgrading, corrective action, etc.) could arguably be exempt. TWC has agreed to restate §26.359 in §334.12 as requested by one commenter.

One comment was received on §334.12(b), concerning the liability of an UST owner or operator for violation of rules resulting from action, or inaction, by an installer or other persons engaged by the owner or operator. Pursuant to the Texas Water Code, Subchapter I, the TWC only has jurisdiction over owners and operators of underground storage tanks as related to the requirements of this chapter. However, pursuant to House Bill 183, 71st Legislature, 1989, the TWC acknowledges that potential liability may exist for persons who install, repair, or remove UST's.

Several commenters objected to the general language pertaining to inspections, monitoring, and testing, as included in §334.12(c). This section is an exact restatement of the Texas Water Code, §26.356, and no change is warranted. More specifically, two commenters wanted any request for information, or any notices of an inspection made pursuant to §334.12, to be done in writing. The TWC is not required to provide written notice as the Texas Water Code, §26.356, and no change is necessary. One commenter suggested language be added to §334.12(c)(1)(C) to state that all copies be made at commission expense. TWC feels that additional language is unnecessary.

Several commenters stated that they believed that the joint and several liability provisions in §334.13 exceeded the TWC's authority. TWC believes that the TWC's authority regarding joint and several liability was clarified in House Bill 1588, 71st Legislature, 1989, the Texas Water Code, which amended Subchapter I. See §26.3513(g), which specifically addresses joint and several liability as it relates to releases from underground storage tanks. No changes are considered necessary.

Concerning the applicability provisions contained in §334.41, one commenter felt that specific language should be added to this section that would restate the exclusions and exemptions of §334.3 and §334.4. TWC does not believe this is necessary as §334.41(a) states that a tank must meet the general applicability requirements of §334.1(b), thus no change is considered necessary.

Several commenters felt that TWC's requirements for compliance with specific mandatory codes in Subchapter C is overly burdensome, as opposed to the federal rule's more general requirement that the technical standards may be met using any national recognized code or standard. While these rules, unlike the federal rules, have made compliance with particular codes and standards mandatory, the TWC believes that this is necessary in order to provide adequate guidance to the regulated community and sufficient enforcement capabilities to the TWC. These comments are particularly relevant to §334.45, concerning the technical standards for new UST systems and §334.46, on the installation standards for new UST systems. In most other areas of Subchapter C the TWC has been more general, and requires only that accepted mandatory codes and practices are utilized with no specific reference to the industry code.

To address the commenter's concerns in sections where the TWC has specified that a particular code or standard must be complied with, TWC has added language to §334.45(c)(3)(A) and (B) which will allow a request for a variance if an alternative industry code or standard of practice is demonstrated to be at least as stringent as the code specifically cited if no variance provision is included.

One commenter felt that the requirement in §334.42(f), where it is stated that the requirements of Subchapter C take precedence if a conflict exists between the subchapter and any code, standards of practice, or manufacturer specifications, should be deleted. The TWC does not believe a change is warranted as these rules will have the force of law and will be enforceable, while the industry codes referenced by the commenters do not have the force of law and are merely standards of practice. TWC is aware of conflicts between manufacturer specifications and industry codes and believes that a statement to the effect that the requirements of Subchapter C must be followed where this is determined to exist is necessary to put the regulated community on notice as to what standard must be followed and to give the TWC an enforceable regulatory program.

One commenter was concerned that requirements for corrosion protection for UST components in §334.42(g) could be interpreted to include tanks which contain clean water. TWC disagrees as such a tank would not meet the definition of underground storage tank since it would not contain a regulated substance.

A commenter's concern that corrosion protection only be required on those components of underground storage tank systems which routinely contain regulated substances has been addressed, and a change to §334.49 has been made to specifically address this concern, and is discussed in more detail later in this preamble. However, to reflect the changes made to §334.49, a change has been made to §334.42(g) to reflect the various methods that may be used to satisfy the corrosion protection requirements for such components.

One commenter felt that §334.43(d)(4), concerning documentation or supporting data for variances, should be changed to reflect that tests or studies done by qualified personnel employed by the owner should be accepted by the TWC to document a variance request. TWC believes that subsections (d)(4)(A) and (B) are intended to be examples of allowable documentation to support a variance and this paragraph does not preclude the submission of documentation prepared by the owner's personnel or others for compliance with this paragraph.

In response to a comment concerning variances and alternative procedures in §334.43(d)(6), the TWC has agreed to add the word "reasonably" to qualify "demonstrate" as used in this paragraph to clarify the intended meaning.

Several commenters pointed out that the implementation schedule for spill and overfill prevention of §334.44(b)(1)(B) is stricter and more burdensome than the federal rules, as TWC requires that spill and overfill prevention for existing UST systems be provided by December 22, 1994, while the federal rules at 40 Code of Federal Regulations, §280.21 do not require such compliance until December 22, 1998. Two commenters supported the six year term as proposed, while another requested that TWC change the schedule to two years. TWC's experience indicates that virtually all leaking UST sites have some degree of spill or overfill contamination. One commenter expressed agreement with this observation. TWC therefore believes that spill and overfill prevention should be added as soon as possible to protect human health, safety, and the environment. TWC believes the 10 year federal schedule is excessive, and the suggested two year schedule impracticable, and believes that the six year schedule is more appropriate considering the nature of the problem present in Texas.

One commenter asked if the implementation schedule for release detection for existing tanks in §334.44(b)(1)(D) should be based on the amount of time that has passed since the tank is first installed in the ground, or when regulated substances are first introduced into the tank. TWC has clearly indicated that the time frame is referenced to the installation date and no change to the section is determined necessary.

One commenter indicated the requirements for corrosion protection for UST components included in §334.45(a)(4) exceeded the federal requirements. This issue is discussed in this preamble with other comments on §334.49(b), relating to allowable corrosion protection methods.

In regard to technical standards for new tanks described in §334.45 (b)(1) (A), one commenter questioned whether the TWC required both UL Standard 1316 and USTM Standard D 4021 be followed. TWC has changed this section to require that only one of the listed standards be complied with.

One commenter pointed out that the reference to the numbering of NACE standards used in §334.45(b)(1)(C)(ii) and subsections (c)(1)(B)(iv) is inaccurate in view of NACE's unique code referencing system. TWC agrees and has dropped the specific numeri-

cal code reference to NACE standards but has retained the title of the required NACE standards in order to allow use of future versions of this standard.

One commenter felt that the TWC should require in §334.45(b) that all new tanks and associated UST equipment be listed or approved by an independent national testing facility. The TWC rules as written are consistent with the federal rules and will require that such tanks and equipment be constructed and installed in accordance with standards developed by nationally recognized associations or testing facilities. TWC believes that tanks which meet these standards, whether specifically approved or listed, will be protective of human health, safety, and the environment. For those tanks which are not specifically listed or approved, the burden will be upon the person using such tanks to demonstrate to the TWC equivalency with the national standard.

Comments were received concerning cathodic protection of composite tanks as addressed in §334.45(b)(1)(D). As proposed, the TWC has not required cathodic protection on composite tanks. Some commenters agreed with this position while others were opposed. TWC has reviewed material made available, including information included in the preamble to the final federal rules, and has determined that the data supports the TWC's conclusion that cathodic protection is not necessary on properly designed and installed composite tanks. All available information indicates very few, if any, corrosion failures of composite tanks exist, and TWC is not aware of any failure resulting in a warranty claim. No change is necessary.

Comments were received regarding the need for electrical isolation of composite tanks from other metallic structures. Section 334.45(b)(4)(C) requires such electrical isolation, and in response to one comment, additions have been made to subsections (b)(1)(D) to clarify that this is required in the design of composite tanks. One other commenter was opposed to this requirement but the TWC believes that electrical isolation is necessary to separate components that are protected by different corrosion protection methods and to facilitate any subsequent testing of component tanks. In addition, this electrical isolation is one of the requirements included in one of the national standards used for composite tanks (ACT 100 published by the Association for Composite Tanks). TWC has added clarifying language to subsections (b)(4)(C) that will make this requirement consistent with ACT–100 and will not require dielectic bushings where the connections to the tank are non-metallic.

One commenter requested that the requirement for corrosion protection of certain tank fittings should not be required in §334.45(b)(4)(A). TWC believes that any underground metal component of a UST system should be protected from corrosion. TWC also believes that a minimum requirement of coating for such fittings is reasonable and no change to this section is necessary.

One commenter requested that the requirement in §334.45(c)(3)(A) be justified or deleted. This section requires that a UL-listed emergency shutoff valve (shear or impact valve) be installed in each pressurized delivery or product line. TWC notes that this requirement is present in all current industry codes and is already an implicit requirement of the federal regulations. Furthermore, it is a standard safety requirement in all state and local fire codes. TWC believes this is an important requirement and no change has been made.

One commenter requested that §334.45(c)(3)(C) be revised so that components in contact with the soil or backfill be cathodically protected, instead of just components that are in contact with the soil and the backfill. TWC has agreed to this word change which does not make a substantive change to the subparagraph.

Comments were received both in favor and against the requirement for flex connectors in lieu of metal swing joints, as required in §334.45(c)(3)(B). TWC's experience has been that metal swing joints have been a significant source of piping system releases due to their design and method of operation. Flex connectors provide a more reliable means of making the required connection between pipe to pumps and dispensers; however, at the request of one commenter, TWC has prohibited the use of swing joints only on pressurized piping systems. Due to the method of operation of a piping suction system, the use of metal swing joints should not present a significant environmental concern.

One commenter questioned the requirement of §334.45(c)(3)(C) for cathodic protection for stainless steel flexible connectors installed in the backfill in lieu of other methods of corrosion protection, such as coating or wrapping. This requirement is consistent with the federal rules as specifically noted in the preamble of the final rules.

As an explanation to one comment, concerning the requirements for corrosion protection for double wall tanks in §334.45(d)(3)(A)(ii), the TWC does not intend to require that double wall composite tanks have additional cathodic protection since a composite tank is considered an allowable corrosion protection mechanism pursuant to §334.49(b).

In response to one commenter's suggestion, the TWC has added a requirement in §334.45(d)(3)(A)(iii) that requires double wall tanks not only be designed, installed, and operated, but also be maintained in accordance with this clause. The same commenter has suggested revised wording to subsections (d)(3)(B)(iv), concerning the volume requirement of tank liners. TWC believes the suggested language would be confusing but has revised this clause to provide additional clarity.

With respect to the corrosion protection requirements for vent lines, fill tubes, and other equipment, as included in §334.45(e), several commenters expressed concern that these requirements were not included in the federal rules, and the TWC requirement would result in unnecessary additional costs. One commenter supported TWC's position regarding this matter. This matter has been discussed previously in this preamble, and will be specifically addressed in more detail in our subsequent discussion of §334.49(b) in this preamble.

One commenter was concerned with the TWC's requirements for drop tubes in §334.45(e)(2)(D). The commenter felt the requirement for a factory constructed drop tube presented an unreasonable burden for certain types of tanks because of maintenance needs. TWC has revised this requirement to allow for either a removable or permanent drop tube to address the commenters concerns regarding maintenance.

Several commenters were concerned with the design standards for monitor wells in §334.45(e)(4). The TWC has addressed these concerns, and other matters concerning monitor wells, in this preamble in the discussion of §334.46(g).

In order to clarify §334.46(a)(2), and in response to a comment, the TWC has added language which will require all installation personnel to have all required licenses or certification which may be required pursuant to House Bill 183, 71st Legislature, 1989, or other applicable rules or regulations.

Several commenters expressed disagreement with §334.46, in that this section is more detailed than the corresponding federal rules on installation standards for new UST systems as outlined in Code of Federal Regulations, §280. 20(D). TWC has attempted in §334.46 to incorporate certain recognized industry practices as derived from national consensus codes and other sources. TWC has taken this approach in order to provide minimum performance standards on installation for the regulated community by specifying certain standards. Otherwise, there is a potential for conflicting standards of various industry codes. The TWC believes that the federal approach to installation, whereby the only installation standards are by reference to industry codes, could be inadequate. TWC believes that for the purpose of adequate regulatory oversight and enforcement, minimum installation standards must be established by regulation. TWC further considers that the requirements in §334.46 based upon industry codes are not contradictory with the federal rules since such rules implicitly require compliance with recognized industry codes.

One commenter supported the requirement in §334.46(a)(4)(B) that tank excavations in close proximity to adjacent structures must be approved by an registered professional engineer. Another commenter requested that the three-foot clearance requirement of subsection (a)(4)(B) should be changed to 10 feet. TWC disagrees with this upon review of industry codes and the rules for the safe storage, handling and sse of flammable liquids at retail service stations (28 TAC §§27.601-27.620) and believes that a 10 foot setback is excessive and the three-foot requirement is reasonable. No change to this paragraph has been made.

Several commenters were concerned with the requirement in §334.46(b)(2) that straps or cables used to anchor tanks be cathodically protected. This proposed requirement was derived from a current industry code (§5.5 of PEI–RP100-87 Recommended Practices for Installation of Underground Liquid Storage Systems); however, consistent with the revised approach for corrosion protection of UST system components which do not routinely contain regulated substances as explained further in this preamble under §334.49(b), TWC concurs that thorough coating or wrapping is sufficient. TWC has changed subsection(b)(2) accordingly.

One commenter requested that the term "high water tables," as used in §334. 46(b), be further defined. TWC believes this is unnecessary as the decision as to whether anchoring is necessary should be left to the owner, operator, or installer, and would depend on specific site location and geologic and climatic conditions at such location. TWC does not believe any change is warranted.

In response to one comment concerning §334.46(c)(3), the TWC has added language which will clarify that appropriate piping adhesives are required in the bonding or joining process of UST piping.

One commenter requested that the requirements for air testing of piping in §334.46(d)(2) be revised by reducing the minimum pressure requirement from 50 psig to 10 psig, and also amend the section to include warning language due to the hazardous nature of this activity. TWC has adopted the 50 psig requirement from current industry codes (§8.7 of PEI–RP100-87–Recommended Practices for Installation of Underground Liquid Storage Systems, and §1.3.22 of API-1615–Installation of Underground Petroleum Storage System) and therefore feels no revision to the pressure requirement is warranted. Further, TWC generally agrees with the commenters concern for safety in performing air testing of piping, but does not believe a specific warning should be included in this section. TWC intends that activities taken pursuant to this chapter will be conducted by qualified personnel who are familiar with the inherent dangers present in such activities.

One commenter requested that the TWC clarify the term "periodically monitored" as it applies to secondary containment in piping tests in §334.4 (f) (3)(B)(iii). TWC does not feel that this change is necessary as the frequency of monitoring pressure gauges during secondary containment piping tests is not considered critical from an environmental standpoint, so long as any pressure drops in the gauges are noted prior to the completion of the UST system installation, and appropriate repairs are made.

One commenter suggested that §334.46(f)(4)(B), regarding the installation of external liners, should be amended to require that such liner installation be inspected and certified by an independent third party professional. TWC does not consider such third party inspection necessary since, pursuant to House Bill 183 71st Legislature, 1989, UST liner installations must be performed by installers licensed by TWC. The TWC feels that such licensing will provide sufficient regulatory oversight for such liner installation activities.

Numerous comments were received regarding the monitoring well requirements in §334.45(e)(4) and §334.46(g). In response to these comments, and to clarify the monitoring well requirements, the TWC has rewritten both sections and has added definitions in §334.2 for the terms "monitoring well" and "observation well." The new definition of "monitoring well" is consistent with the existing statutory definition found in the Water Well Drillers Act, Article 7621e (Vernon's Water Auxiliary Laws), while the new definition of "observation well" is similar to the generally-accepted meaning found in recognized industry codes (e.g. PEI-RP-100 and API 1615). The final rules have also been revised to provide distinct and separate requirements for monitoring wells and observation wells.

Several commenters expressed concern regarding the requirement for licensing of monitoring well drillers by the Water Well Drillers Board. TWC points out that the licensing requirements for monitoring well drillers are established by statute in Texas Civil Statutes, Article 7621e, and that administration of the associated regulatory program is vested in a separate state board, the Water Well Drillers Board. TWC does not have authority to limit or restrict the Water Well Drillers Board's statutory or regulatory authority related to monitoring wells. However, the TWC has added language in §334.46(g) that would allow the construction of observation wells by unlicensed persons, but only when such observation wells are not subject to the regulatory authority of the Water Well Drillers Board.

Other commenters objected to the requirement for a minimum number of monitoring wells in each tank hole. These commenters felt that this requirement was unreasonable and, in some cases, would result in redundant release detection procedures. TWC considers that the installation of one or two observation wells during new UST installations is not an unreasonable requirement, and is consistent with accepted industry procedures. However, TWC has amended §334. 45(e)(4) to clarify that this requirement applies only to the installation of observation wells in new UST systems installed on or after the effective date of this subchapter.

Some commenters also objected to the requirements that all monitoring wells have a minimum diameter of four inches. Commenters felt that smaller wells may be more appropriate for certain types of release-detection equipment, and that constructing four-inch wells in an existing tank system could be a safety concern. TWC has revised these sections to clarify that TWC requires a minimum four-inch well diameter for the one or two mandatory observation wells in new UST installations as required by §334.45(e)(4)(B). The diameters of all other monitoring or observation wells may be determined on a case-by-case analysis of site conditions and other factors. The TWC considers that the one or two mandatory observation wells should be constructed with at least a four-inch diameter to facilitate monitoring by owners, operators, or regulatory personnel and to provide an effective means for recovery of fee-product contaminated groundwater, or vapors in the event of a release.

Two commenters questioned the requirement in §334.46(g)(3)(B)(ii) that a monitoring well be completed to a minimum depth of two feet below the bottom of the tank excavation. The TWC has revised this section to require that observation wells be completed to a minimum depth of two feet below the tanks, or one foot below the piping, as applicable, which is generally consistent with the current industry codes.

In response to one comment and the passage of House Bill 183, 71st Legislature, 1989, the TWC has amended §334.46(h)(4)(A) to incorporate the fact that after February 1, 1990, all installations must be performed by licensed installers.

One commenter expressed support for the commission's requirement that the installer, as well as the owner, certify the adequacy of the installation as required in §334.46(h)(2). TWC notes that the requirement is consistent with the federal requirement in 40 Code of Federal Regulations, §280.22(f). Another commenter supported the alternative of installation inspections by a registered professional engineer as included in §334.47(h)(1)(B)(ii). TWC points out that this option is consistent with the federal rules at 40 Code of Federal Regulations, §280.20(e)(3).

One commenter suggested that the TWC follow the federal rules at 40 Code of Federal Regulations, §280.20(e)(2), which allows the inspection and approval by the TWC as an alternative method of installation certification required by §334.46(h)(1). TWC has purposely elected to not allow this alternative because TWC personnel conduct inspections only for the purpose of compliance monitoring. TWC personnel typically do not see the entire installation process and therefore cannot be expected to verify the adequacy of all installation procedures. No addition has been made to this subsection.

In response to one comment, and to remain consistent with the changes made to §334.10(b), the TWC has eliminated the need for retaining construction notification records as proposed by §334.46(i)(2)(A). No other change to this subsection has been made as the TWC believes that all other information required to be maintained are necessary.

One commenter supported the TWC's position of allowing the upgrading of structurally sound existing UST systems in lieu of the arbitrary requirement of replacing leak-free tanks with new tank systems, as in §334.47(a)(1)(B). TWC notes that this allowance is consistent with the federal rules at 40 Code of Federal Regulations, §280.21(a)(2).

Several comments were received regarding the tank integrity assessment requirements in §334.47(b)(1)(A), concerning technical standards for existing UST systems. Two commenters specifically addressed the differences between the TWC's proposed requirements and the federal requirements in 40 Code of Federal Regulation §280.21(b)(2). Both the federal and proposed state rules require existing tanks to be assessed for structural integrity prior to being upgraded with cathodic protection. The purpose of this requirement is to prevent the unnecessary expense of applying cathodic protection to an unsound tank. The federal rules allow several alternative integrity assessment methods for tanks less than 10 years old (e.g. tank tightness tests, external release monitoring, internal inspections, etc.); however, the federal rules only allow internal inspection for the assessment of tanks which are 10 years old or older. The EPA concluded that many older tanks could have corrosion holes that are plugged by corrosion product, backfill, or interior sludge and that such older tanks could only by adequately assessed by internal inspection.

The TWC's proposed rules allow the use of several alternative methods of tank integrity assessment, regardless of the tank age (e.g. tank tightness tests, external release detection, internal inspections, etc.). One commenter expressed support for TWC's po-

sition, and cited potential concerns regarding safety, unqualified personnel, and liability relative to the internal inspections mandated by federal rules. Another commenter expressed opposition to TWC's position, and felt that internal inspection should be mandated for 10-year old or older tanks since TWC rules might otherwise be considered less stringent than the federal rules. This commenter feels that proper assessment of a tank for plugged corrosion holes, severe external pitting, and internal corrosion can only be achieved by internal inspection, and has particularly expressed opposition to certain soil and site assessment methods, which he feels are ineffective. Additionally, this commenter considers the suggested safety concerns of cutting and entering into a UST as unfounded.

In researching this issue, the TWC found disagreement among industry representatives regarding the federal requirement for internal inspections of 10-year old or older tanks. Many proponents of internal inspection requirements are involved in the business of interior tank lining, and base their position on reported observations of significant levels of interior corrosion and corrosion plugs during their tank lining activities. However, other industry representatives, including some in the corrosion control consulting field, feel that the issue of internal corrosion and corrosion plugs is exaggerated and does not actually present the environmental problem that some would argue. One commenter stated that in a recent detailed testing program performed on over 10, 000 tanks located in 44 states, only one tank was found to have an internal corrosion perforation.

To date, the TWC staff has not been presented with evidence of any substantive independent study or other empirical data which can justify a mandatory requirement for internal inspections on 10-year old or older tanks. While TWC does concur than an assessment to determine the structural integrity of an existing tank should be performed prior to adding cathodic protection, the TWC also feels that a tank owner or operator should be allowed to use other viable methods to conduct such assessment, regardless of the tank age. For most existing tanks in this state (i.e. those not equipped with access manways), preparation for an internal inspection would typically include the removal of concrete paving, the excavation to the top of the tank, the cutting of an access hole in the top of the tank, the complete purging of all explosive vapors, and the entry of inspection personnel into the tank. Due to the apparent additional expense and safety hazards that would result, the TWC does not feel that mandatory internal inspections are warranted for every existing tank, and that the environmental preference of internal inspections over other available integrity assessment methods for 10-year old or older tanks has not been sufficiently demonstrated. Accordingly, the TWC has not revised the final rule, and an owner or operator may choose one of several methods of tank integrity assessment (including internal inspection).

One commenter requested that the monthly release detection method of tank integrity assessment in §334.47(b)(1)(A)(i) be expanded to also allow the use of automatic tank gauging as an acceptable method. TWC agrees with this request, since automatic tank gauging is allowed in the federal rules (40 Code of Federal Regulations, §280.21(b)(2)(ii)) and since it should provide adequate assurance of tank integrity. Therefore, this clause has been amended to allow the use of automatic tank gauging as an acceptable tank integrity assessment method.

Another commenter suggested that the requirement in §334.47(b)(1)(A)(ii) for an initial tank tightness test prior to upgrading with cathodic protection is of limited value and should be deleted. TWC points out that this requirement is consistent with the federal rules (40 Code of Federal Regulations, §280.21(b)(2)(iii)), and is necessary to determine if the structural integrity of the tank is sufficient to warrant upgrading. Therefore, no change has been made in the final rules.

Another commenter was concerned that §334.47(b)(1)(A)(iii) would require an interior tank lining even when a site assessment determined that the tank was not leaking. The intent of this provision was to allow the use of a site assessment as an acceptable tank integrity assessment method only in the cases when an interior liner is to be installed as part of the upgrading. The TWC considers that in such cases, the site assessment, interior liner (with the requisite tank tightness test), and cathodic protection should provide adequate assurance of the integrity of the tank. However, this section has been rewritten to clarify this requirement.

Several comments were received regarding the differences between the upgrading requirements for existing UST systems in §334.47(b)(1)(C) of the proposed rules and those in the corresponding federal rules in 40 Code of Federal Regulation, §280.21(b). While the federal rules allow upgrading by the installation of either a cathodic protection system, an interior tank lining, or both, the proposed TWC rules would require the installation of cathodic protection on all existing UST systems (including tanks with interior linings) by December 22, 1998. There appears to be considerable disagreement among industry representatives regarding the need for cathodic protection on internally-lined tanks. One commenter expressed support for the commission's position, and stated that cathodic protection, regardless of whether the tank has been internally lined or not, is essential due to the fact that a major failure mechanism for internal tank linings is external corrosion. This commenter went on to state that cathodic protection is a long-proven technology which is federally mandated for other underground structures (e.g. natural gas pipelines).

Another commenter expressed disagreement with the TWC's position, stating that cathodic protection is an unnecessary and costly requirement for a properly relined tank which is routinely internally inspected. Another commenter stated that lined tanks which have an interior lining with compatible and chemically resistant material of a 100-125 mil. thickness do not require cathodic protection. Still another commenter suggests that the TWC should adopt the federal position and allow relined tanks without cathodic protection. He feels the federal position is more feasible and cost effective than requiring cathodic protection on all UST systems.

One commenter who disagreed with the commission's position on this issue submitted extensive comments and selected materials related to interior tank linings and cathodic protection. This commenter expressed several reasons why internally-lined tanks should not require additional cathodic protection, including: the EPA's recognition of internal lining as a sole form of tank upgrading; a 30-year history of successful use of internal tank lining; a contention that internally-lined tanks do not have any more leaks than cathodically-protected "sti-P3" steel tanks; a statement that the application of impressed current cathodic protection could void the warranty on internally-lined tanks because of the potential for failure due to the formation of hydrogen pockets between the steel shell and the lining; a contention that the TWC, as well as the designer, installer, and owner, could be held responsible for damages to other underground structures (e.g. water lines, gas lines, telephone lines, etc.) resulting from stray currents from impressed current cathodi protection systems installed to meet the TWC's requirement; and a statement that cathodic protection may not be the panacea for tank upgrading, and may not always be cost effective, viable, or possible where certain conditions exist (e.g. elevated temperatures, disbonded coatings, shielding, bacterial attack, and unusual contaminants in the electrolyte).

The TWC is not opposed to the use of internal tank lining for the purposes of repairs or preventative maintenance of existing tanks, and considers that internal tank lining may certainly be desirable, warranted, or preferable in certain cases. However, TWC believes that internal tank lining alone will not prevent or reduce the continuation of corrosion on the exterior surfaces of the tank. In studies conducted by the EPA and others, external corrosion has been determined to be the cause of a significant number of releases from underground storage tanks. The TWC is concerned that if the external steel tank shell is allowed to corrode indefinitely, the structural integrity of the tank could be jeopardized. Internal tank linings can form excellent coatings for the protection of the tank interior from internal corrosion; however, such internal linings are rarely designed to provide the necessary structural strength to support a fully-loaded tank. Therefore, even on internally-lined tanks, the structural integrity of the entire tank will depend extensively on the condition of the external tank shell.

The TWC has also found considerable disagreement among internal lining industry representatives regarding appropriate materials and procedures for internal tank linings. Although some industry standards have been developed for internal tank lining (e.g. API 1631-Interior Lining of Underground Storage Tanks, and National Leak Prevention Association Standard 631-Interior Inspection, Repair and Lining of Steel and Fiberglass Storage Tanks), apparently not all tank lining companies agree that all the procedures developed in such standards are appropriate or adequate. One commenter requested that the TWC give consideration to a certification program for tank lining personnel.

Although some commenters have made claims of the purported historical reliability of internal tank linings, the TWC has not been presented with evidence of any substantive independent study or other empirical data which would reasonably demonstrate the long-term structural integrity of internally lined

tanks which are not equipped with cathodic protection. While TWC feels that internal tank lining would certainly be appropriate and beneficial in some cases, we do not consider that internally-lined tanks should be granted a blanket exemption from the cathodic protection upgrading requirements. If an owner or operator can provide adequate documentation to demonstrate that an internally-lined tank without cathodic protection can be expected to maintain its structural integrity for the operational life of the tank, then the owner or operator may make appropriate application for a waiver under the provisions of §334.43. The TWC will consider such waivers on a case-by-case basis.

Several comments were received concerning the upgrading schedule of §334. 47(b)(2) for spill and overfill implementation. TWC's rationale for this advanced schedule which requires all existing underground storage tanks to be equipped with spill and overfill prevention equipment by December 22, 1994, as opposed to the federal requirement which requires upgrading by December 22, 1998, has been explained earlier in this preamble.

A comment was received concerning §334.47(b)(4), which bases the release detection upgrading schedule on the age of the underground storage tank. This requirement is consistent with the federal rules at 40 Code of Federal Regulations §280.40(c), and thus the TWC does not feel any change is appropriate. However, a request for a variance to this required schedule can be made pursuant to §334.43.

Two commenters expressed disagreement with the requirement in §334.47 (b)(4) (B) that requires the release detection upgrading schedule for all tanks in a common tank hole to be based on the age of the oldest tank. The commenters indicated that this requirement might be considered reasonable when the selected method of release detection is either vapor monitoring or groundwater monitoring, but would be unreasonable when certain other methods are chosen (e.g. automatic tank gauging or tank testing used in conjunction with inventory control). In order to address these concerns, the TWC has revised this section to limit this restriction to only those UST systems using either vapor monitoring or groundwater monitoring.

Numerous comments were received concerning the as-built drawings requirement in §334.47(d)(2)(B). The commenters were concerned that the expense and effort required to locate buried UST system components at existing facilities was an unreasonable burden. In response to these comments, TWC has revised this subparagraph to require as-built drawings only for new UST system components installed or added after the effective date of this subchapter.

In response to one comment, and to remain consistent with the changes made to §334.10(b) and §334.46(i), the TWC has eliminated the need for retaining construction notification records as proposed by §334.47(d)(2). No other changes have been made as the TWC believes that all other information required to be maintained is necessary.

One commenter felt that the requirement for maintaining names and addresses of manufacturers and service technicians in §334.47 (d)(2)(C) was unreasonable and burdensome. TWC agrees with the comment and has removed this requirement.

Several commenters expressed concern with the requirement in §334.48(c) that inventory control be conducted regardless of which method of release detection is used for compliance with §334.50 of this chapter. The proposed rule is based upon existing state regulations (see rules for the safe storage, handling and use of flammable liquids at retail service stations, 28 TAC §27. 612(a)(4)). TWC acknowledges that the proposed rule, which applied to all UST systems, actually exceeded the scope of §27.612(a)(4). TWC has amended subsection (c) to require inventory control only at retail service stations in order to remain consistent with §27.612(a)(4). To answer other commenter's concerns with this subsection, the TWC has deleted the API Publication 1621, and will only require compliance with an acceptable industry code.

One commenter supported the requirement in §334.48(c) that accurate inventory records be maintained, and stated that such maintenance of records is a prudent business practice.

One commenter suggested that the reference in §334.48(c) to API Publication 1621, which allows for a 0.5% inventory control deviation, could conflict with the federal rules at 40 Code of Federal Regulations, §280.43(a) and §334. 50(d)(1)(B)(ii) of this chapter, which allows for a deviation of 1.0% plus 130 gallons of total monthly flow-through. TWC comments that the 0.5% deviation in API Publication 1621 and related API Publication 1635 is the recommended deviation level at which further investigation is warranted. These publications set out in detail specific recommended procedures to be followed for investigating whether or not an actual release has occurred. This 0.5% deviation is not the mandatory threshold level for release reporting requirements. The TWC reiterates that the specific reference to API 1621 has been deleted from this subsection.

One commenter felt that §334.48(c) would require additional manual inventory control at UST systems which use automatic inventory control. TWC has added language to this subsection to clarify that either automatic or manual inventory control will be acceptable.

With regard to personnel conducting corrosion tests, as required in §334.49, some commenters again expressed concern about the need for such personnel being qualified as corrosion specialists or corrosion technicians. As already discussed, TWC has expanded the definition of corrosion technician to include other personnel to conduct such tests.

One commenter felt the requirement for corrosion protection for manholes, as required in §334.49(a)(4), is unnecessary since manholes only act as lids. TWC points out that the term "manhole" is often used to describe certain spill containment vessels used in UST systems. Since these vessels are designed to contain spilled regulated substances, cathodic protection is considered necessary on such manholes. Manholes that act only as lids and are not designed to contain regulated substances will not need to be cathodically protected.

Numerous commenters expressed concern with TWC's requirement that UST system components which do not routinely contain regulated substances be protected from corrosion as required by §334.49(a)(4), since this requirement was not included in the federal rules. TWC considers that all underground portions of UST systems should be adequately protected from corrosion, whether or not they routinely contain regulated substances, because such components at certain times may contain or convey regulated substances and could corrode, thus presenting a threat to the environment. However, the TWC acknowledges that such components can be adequately protected without the specific need for cathodic protection. Accordingly, TWC has added a provision to §334.49(b) which would allow the alternative of coating or wrapping of such components to meet the corrosion requirements. This method is consistent with accepted industry practices and TWC feels that it should not present an unreasonable burden on the regulated community.

In response to one comment concerning §334.49(a)(4) that corrosion protection requirements should only apply to those portions of the UST system which are underground, the TWC has added such clarifying language. TWC has also revised this paragraph to clarify that underground impact or shear valves are considered part of the piping system.

Several commenters questioned the fact that the TWC had not included a specific allowance for a certain waiver of the corrosion protection requirements, as was included in 40 Code of Federal Regulations, §280.11(b) of the federal rules. This federal waiver would apply to UST systems which are determined by a corrosion specialist not to be corrosive enough to cause it to have a release due to corrosion during its operating life. TWC considers that sites with a sufficiently low potential for corrosion will be infrequent, and has therefore not included a specific waiver allowance in §334.49. However, under the general provisions for waivers and alternative procedures in §334.43 of this chapter, the TWC has provided a mechanism for considering any justifiable requests for such waivers of corrosion protection requirements.

Two commenters requested that clarifying language be added to §334.49(a) which would allow metallic fittings, and other components which are isolated from surrounding soils, to be excluded from the corrosion protection requirements of this section. TWC feels that all underground metal components should be protected from corrosion; however, TWC does allow electrical isolation as an acceptable method of corrosion protection in subsection (b)(2) and (3). Therefore, no change is considered necessary.

Regarding §334.49(a)(4), one commenter suggested that submersible pump housings typically located in the backfill above the tanks cannot be effectively protected from corrosion by cathodic protection since such pump housings must normally be electrically grounded to meet local fire codes. As previously discussed, the TWC has amended subsection (b) to allow coating or wrapping of pump housings and certain other components as another acceptable corrosion protection method. Therefore, cathodic protection will

not necessarily be required for such pump housings.

One commenter pointed out that the electrical isolation criteria in §334. 49(b)(2) and (3) should also include a provision requiring electrical isolation from other metallic components. TWC agrees, and has included this provision in the final rules. Another commenter expressed support for TWC's approach of specifically allowing electrical isolation as an acceptable corrosion protection method. TWC points out that, although electrical isolation is implicitly allowed by the federal rules, the specific inclusion in these rules should provide some clarification for the regulated community.

Regarding the provision on dielectric coatings in §334.49(b)(5), one commenter felt that the term "component" was unclear, and suggested that the rule be rewritten. TWC considers that the first sentence in subsection (b) adequately explains that this rule applies to "all components of an UST system which are designed to convey, contain, or store regulated substances." Therefore, no further clarification is considered necessary.

In response to one commenter's request for clearer requirements related to cathodic protection test stations, TWC has added a new paragraph (3) in §334. 49(c). This new paragraph clarifies that test stations and associated wiring and connections are required for both factory-installed and field-installed cathodic protection systems, and that test leads must be clearly labeled. Former paragraph (3) in this subsection has been renumbered as paragraph (4). This same commenter requested that §334.49 subsection (c)(3)(B) be amended to specifically require compliance with the NACE standards for cathodic protection testing. TWC considers the NACE standards to be an acceptable standard for compliance with this subparagraph, but feels that limiting testing to this one standard may be overly restrictive.

Two commenters incorrectly stated that §334.49(c) did not make provision for the use of impressed current cathodic protection systems, as allowed in the federal rules 40 Code of Federal Regulations, §280.20(a)(2)(iii) Specific provision for the use of impressed current systems is included in subsection (c)(2).

In response to numerous comments received regarding the requirements for testing certain electrically isolated components in §334.49(d), and in order to further clarify this section, TWC has made several revisions. One change was to delete the requirement of electrical isolation testing for composite tanks. While one commenter supported the proposed requirement, extensive information and data supplied by other commenters has convinced the TWC that this requirement was not supported by the historical performance for this type of tank. This revision is also consistent with the federal rules. However, to insure that electrical isolation of a composite tank is not jeopardized by damage to the FRP coating during installation, the TWC has added a paragraph (4) to the tank installation requirements in §334.46(d). This new language requires that an appropriate test be conducted at the time of installation of the composite tank. This new paragraph also addresses the various tests that are required at the installation of other types of UST's

Concerning this same section, other commenters correctly pointed out that, depending on the circumstances, methods other than structure-to-soil voltage tests might be appropriate for determining electrical isolation. Accordingly, the TWC has revised subsection (d) to provide for appropriate alternative inspection and testing methods. For example, one commenter felt that air pressure testing may be appropriate for some components. While TWC has not specifically allowed for this method of testing, the alternative procedure in new subsection (d)(1)(A)(iii) will allow agency consideration of such test.

Other commenters questioned the requirement that all electrical isolation tests be conducted by corrosion technicians or corrosion specialists. The TWC has revised the testing requirements of §334.49(d)(1)(A)(i) to require that corrosion technicians or specialists only be required to conduct structure-to-soil voltage readings, and other methods of testing (eg. visual inspection) may be conducted by other qualified personnel.

One commenter suggested that the frequency of testing in §334.49 (d)(1)(B) should be revised to be consistent with the schedules for cathodic protection testing in subsection (c)(4)(C), while another commenter requested the requirement be completely eliminated. TWC has not eliminated this requirement as TWC believes that any time a metal structure is placed underground periodic testing is necessary, but TWC has changed the requirement to require testing to be conducted no later than three to six months after installation, and once every three years thereafter. TWC believes that this will allow for concurrent testing of different components at the same UST facility which are protected from corrosion by different methods. In order to further clarify the intent of subsection (d)(1), the TWC has made revisions to allow for an alternative of repairing or modifying metal components in order to restore electrical isolation when appropriate. Further changes were made to this section to correct typographical errors.

With respect to release detection requirements in §334.50, one commenter pointed out that the age of a tank is only one criterion that can be considered in determining when release detection should be added to a UST system, and that statistical methods of analyzing inventory data is another approach that can be utilized. TWC acknowledges that statistical inventory analysis may prove to be an effective procedure for proving to a high degree of probability that a leak may or may not occur at a given UST system. While these practices may vary from firm to firm and are not established by industry codes, TWC feels that this approach may be accepted as an acceptable alternative approach if it can be determined to be no less protective of human health and the environment. This approach could be considered under §334.43 as an alternative procedure for satisfying release detection requirements.

One commenter felt that the TWC seemed to be prejudiced toward volumetric tank testing as a means for release detection pursuant to §334.50, and indicated that vapor monitoring is generally more effective and reliable. TWC notes that volumetric tank testing combined with inventory control is only one of numerous methods of release detection allowed in §334.50(d), and these methods are substantially consistent with the federal rules. (See 40 Code of Federal Regulations, §§280.40-280.45.) Furthermore, TWC has restricted the use of inventory control combined with volumetric tank testing by prohib- iting this method after December 22, 1998, while the federal rules allow this method to be used until December 22, 2008 (see 40 Code of Federal Regulations, §280.41(a)(1)).

One commenter expressed concern with the requirement in §334.50 (a)(1)(C) (ii) that manual tank gauging is subjected to the probability tests for detection. TWC has adopted this requirement to be consistent with the federal rules at 40 Code of Federal Regulations, §280.40 (a)(3) and §280.43(b). After careful study, TWC agrees that it would be unreasonable to require manual tank gauging to meet the probability test, therefore this requirement has been eliminated. This same commenter requested clarification of subsection (a)(6) as it relates to the requirement for UL listing for portable release detection equipment, while another questioned the merit of requiring UL listed equipment. TWC has modified this paragraph in recognition that UL listing for equipment is one criteria which can be used, while other equipment which is designed and operated in accordance with industry standards may also be acceptable.

Two commenters expressed concern with the requirement in §334.50(a)(1)(A) which requires that release detection methods be capable of detecting a release from any portion of the UST system, since the federal rules at 40 Code of Federal Regulations, §280.40(a)(1) only require that release detection methods be capable of detecting releases from any portion of the system which routinely contain regulated substances. TWC feels that release from any portion of a UST system is an environmental concern. The extent of release detection will depend on the actual method of operating a particular UST system. If the operation of the UST system is conducted in such a manner that regulated substances are not contained or conveyed by a particular component, then the TWC will not require that a release detection method be capable of monitoring such component. TWC has not changed this paragraph and believes it is the owner or operator's decision whether to conduct release detection on certain components which do not routinely contain regulated substances.

Several commenters expressed concern with the monitoring frequency of at least every 30 days in §334.50, as they believed that this approach is inconsistent with the federal rules at 40 Code of Federal Regulations, §§280. 40-280.45. TWC points out that the §334.50 reference to once every 30 days is identical to the federal requirement at 40 Code of Federal Regulations, §280. 41(a). TWC believes that the term "once every 30 days" and monthly monitoring not to exceed 35 days between each monitoring period.

One other commenter suggested that the frequency of monitoring should be increased from monthly (30 days) to every two weeks for increased environmental protection. TWC's monthly monitoring is consistent with the federal requirements and is sufficiently protective of the environment.

One commenter suggested that the performance standard for piping testing in §334.50(b)(2)(A)(ii) be made more stringent. The TWC points out that the performance standard specified in the rule is consistent with the federal rule 40 Code of Federal Regulations, §280.44(b), and that more sensitive equipment will be acceptable for meeting these requirements for release detection of pipes. It should also be pointed out that the performance standard not only involves a detection limit (0.1 gallons per hour), but that it also includes a reliability standard of 0.95 probability of detection and a 0.05 probability of a false alarm. TWC feels the performance standard specified in the rules will provide substantial environmental protection, and that a more stringent standard is not warranted.

Another commenter suggested that the requirement in §334.50(b)(2)(B) for the testing or monitoring of gravity flow piping in an UST system is impracticable. This commenter felt that pressure testing and other testing methods commonly used for pressurized piping and suction piping was not applicable to gravity flow lines in certain field constructed tanks (e.g. sumps and wastewater treatment UST's), and that other release detection methods are not available for such systems at this time. TWC points out that, although not specifically addressed in the federal rules, release detection requirements for gravity flow lines are implicitly included in 40 Code of Federal Regulations, §280.40(a)(1). TWC rules are merely more specific regarding the need for release detection for all types of piping, including pressurized suction, and gravity piping. TWC considers that releases of regulated substances from any piping system, including gravity lines, could present an environmental concern. TWC further points out that other alternatives to gravity line testing are available (e.g. monthly vapor or groundwater monitoring) for meeting the release detection requirements. Additionally, TWC will consider other alternatives for meeting the release detection requirements under the provisions in §334.43 concerning variances and alternative procedures.

One commenter stated that hazardous substance UST systems should also be maintained as designed, and that the word "maintained" should be added to §334.50(c)(3)(A). TWC has agreed to add this to the subparagraph as maintenance of all hazardous UST systems is required in §334.48.

One commenter was concerned that qualified personnel be used for the installation of release detection equipment and requested that the TWC require certain professionals to do these tasks. The legislature has attempted to clarify this issue (see House Bill 183, 71st Legislature, 1989).

One commenter suggested that language be added to §334.50(d)(1)(A)(ii) which would address the manner in which tank tightness tests are conducted. TWC has added language which will require that tank tightness tests be conducted in strict accordance with testing procedures developed by the system manufacturer or developer. This same commenter felt that it would be advantageous to avoid bias by owners or operators of UST systems by requiring independent or third party tank testers perform tank tests to meet the requirements of subsection (d) (1)(A). TWC understands the commenter's concern but feels that requiring a third party to do the tank test is burdensome and TWC does not wish to preclude certain owners or operators from employing their own properly trained and certified testing personnel. No change has been made.

One commenter was concerned about the requirement in §334.50 (d)(1)(B)(iii) (I), concerning volume measurements. This commenter believed the requirement is not practicable at emergency generator tanks at unmanned locations. As previously discussed, TWC has revised §334.48(c) to only require mandatory inventory control at retail service stations; therefore, emergency generator tanks are no longer required to do daily inventory control. If an owner or operator of an emergency generator tanks considers that daily inventory measurements are not feasible, then alternative methods of release detection, as set out in this section, should be selected.

One commenter stated that automatic tank gauging should not be a mandatory release detection method. Section 334.50(d) does not mandate automatic tank gauging. This method is one of several alternate methods of release detection which are acceptable. The same commenter feels that the manual tank gauging method should be allowed for tanks which contain a volume up to 20,000 gallons. The TWC feels that the 550-gallon capacity limitation in subsection (d)(2) and also in the federal rules at 40 Code of Federal Regulations, §280.43(b)(5) is more appropriate. Due to the relatively imprecise level measurements produced by manual methods, relatively large leaks in larger tanks would not cause significant level changes, and may not be detected. No change has been made to this section.

Two commenters felt that the requirement in §334.50(d)(1)(A)(ii) for tank tightness test personnel to be present throughout the test is in error. TWC believes that continuous monitoring of the testing procedure is important but has changed the requirement to allow for a reasonable presence by testing personnel. In response to comments, the direct reference to operator error in subsection (d)(1)(A)(iv) has been eliminated.

One commenter felt the term "a specific detection level and confidence level" for vapor monitoring should be specified in §334.50(d)(4)(B) rather than using the phrase "readily detected." This same commenter thought a specific porosity standard should be used in lieu of the phrase "sufficiently porous" in subsection (d)(4)(A). TWC feels that this is inappropriate due to variation in product, equipment sensitivity, and site conditions. No change is necessary.

In reference to §334.50(d)(4)(D) regarding vapor monitoring, one commenter requested that the rule be revised to indicate the specific level of background contamination which would be allowed before release reporting and correction action is required by the TWC. TWC does not feel this is practicable as background levels vary throughout the state, thus no change is considered necessary.

One commenter stated that the requirement in §334.50(d)(5) of detecting dissolved constituents or a sheen of free product in a monitoring well would prevent the use of automatic monitoring equipment as such equipment is not commonly capable of detecting regulated substances within these limits. Accordingly, TWC has changed this subparagraph (C) so that automatic monitoring equipment should be capable of detecting the presence of at least 1/8 inch of substance on top of the groundwater, which is a reasonable detection limit for such equipment and is consistent with the federal rule at 40 Code of Federal Regulations, §280.43(f)(6). However, when manual monitoring methods are opted, the detection of a sheen or accumulation of regulated substance in or on the groundwater in the monitoring or observation well will be required.

One commenter indicated that §§334.5(d)(5)-(7) did not include a specific monitoring frequency. TWC points out that the frequency of monitoring is covered in subsection (b)(1), and thus no change is needed.

One commenter requested that the word "maintained" be included in §334.50(d) (5)(E). TWC agrees that all monitor wells and observation wells should be maintained in accordance with applicable requirements and has added the word.

One commenter felt the installation of monitoring or observation wells pursuant to §334.50(d)(4) and (5) in a tank excavation area would be difficult and hazardous at existing facilities. As previously discussed, TWC has revised §334.46(g) regarding monitoring well installation requirements, and these requirements, as revised, will allow either the construction of observation wells (in the tank excavation) or monitoring wells for the purposes of compliance with the vapor monitoring or groundwater monitoring requirements in §334.50, provided that the performance criteria for such methods are satisfied.

In response to a comment on the provision in §334.50(d)(6)(C), regarding institial monitoring, this section, as proposed, would only allow a liquid filled interstitial monitoring method on double-wall systems. This subparagraph was changed so that other effective methods of monitoring the interstitial space will be allowed.

One commenter requested clarification to the requirement in §334.51 (a)(4), which requires that certain requirements must be met where regulated substances are transferred under pressure. In order to clarify that the term "pressure" does not apply to normal gravity pressure, TWC has added language to this paragraph.

Another commenter felt that the TWC had exceeded the scope of the federal rules in requiring that persons conducting the transfer of regulated substances be physically present at or near the transfer point at all times during the transfer, as required by §334.51(a)(3)(A). The federal rule at 40 Code of Federal Regulations, §280.30(a) requires that the transfer operation be "monitored constantly to prevent overfilling and spilling." TWC interprets this requirement to mandate physical presence during the transfer of regulated substances, unless centralized electronic monitoring, as allowed by §334.50(a) (4)(B), is used. No change to this paragraph has been made.

One commenter expressed concern with TWC's requirement in §334.51(b)(2) that tight-fill fittings be used during the transfer of regulated substances. TWC acknowledges that this requirement is not addressed in fe-

deral rules, but feels that this equipment is necessary to prevent releases during the transfer of regulated substances, and its use is consistent with industry practices.

One commenter disagreed with the requirement in §334.51(b)(2)(B)(ii) that the spill containment device be equipped with a drain tube to allow accumulated substances to be safely drained into the tank. TWC concurs with the commenter's concern and has removed this requirement.

Commenters expressed concern with the requirement for corrosion protection for spill and overfill prevention equipment as required by §334.51(b)(3)(B). As addressed earlier, the TWC believes that all underground components should have corrosion protection, but has allowed for wrapping and coating as an acceptable corrosion protection method. No change has been made to this subparagraph.

Several commenters disagreed with the requirements in §334.51(b)(2)(C)(i) and (ii) that all tanks be equipped with a valve or other overfill prevention device that automatically shuts off flow of regulated substances when 95% of capacity level of the tank is met, and automatically restricts the flow when 90% of capacity of the tank is met. TWC notes that this requirement is consistent with the federal rule at 40 Code of Federal Regulations, §280.20(c)(1)(ii), thus no change is considered necessary. However, to allow an additional alternative for allowable spill and overfill prevention equipment, and to respond to specific comments, TWC has added an additional clause to subsection (b)(2)(C). This additional clause will allow the use of overfill alarms in conjunction with other overfill protection equipment. TWC believes this addition will provide the requested flexibility which the commenter felt necessary.

One commenter felt that the requirement in §334.51(c)(2)(B) that the maintenance of records or repairs of spill and overfill equipment and the requirement in §334.52(a)(4) for records of repair and relining should be limited to major repairs and alterations only. TWC believes that an owner or operator should retain all records pertaining to repair of spill and overfill equipment and other repair and relining, thus no changes have been made.

One commenter requested that §334.52(b)(4) be expanded to require that all persons conducting interior tank lining activities be certified or licensed. House Bill Number 183, §1 (9)(A), 71st Legislature 1989, which is a mechanism for licensing certain UST personnel, specifically excludes from the definition of repair the relining of an underground storage tank through the application of epoxy resins or similar materials. TWC has made no addition to this paragraph to require that tank liners be certified or licensed, but has added general language in subsection (a)(2) to incorporate licensing requirements for repair personnel.

In response to one comment concerning §334.52(a)(2), the TWC has added language to clarify that owners or operators are responsible for the adequacy of any repair or relining.

Several commenters addressed the requirement in §334.52(b)(6) that cathodic protection of internally relined tanks be provided by December 22, 1998. Several commenters expressed opposition to the need for cathodic protection on interior relined tanks, while another commenter felt that cathodic protection should not be postponed but applied immediately at the time of relining. As previously explained in the preamble, the TWC believes that all internally relined steel tanks should be fitted with cathodic protection. However, TWC considers it unreasonable to require relined tanks to be fitted with cathodic protection at the time of the relining when other unprotected and unlined tanks would not require cathodic protection until December 22, 1998, as provided by §334.47(b) (1). Therefore, TWC has made no change to require immediate application of cathodic protection upon relining.

One commenter objected to the provision in §334.52(b)(1) which requires that, if a tank must be removed from the ground prior to repair, it will be considered a "used tank" and subject to the specific requirements in §334.53 of this chapter. TWC considers that removed tanks must be disconnected from piping and other equipment, and that such removal disturbs the entire tank environment. TWC considers that reinstallation of a removed tank is essentially no different from installing a used tank obtained from a different location. The federal rules do not specifically address this issue. The TWC considers the proposed rule to be reasonable and practicable; therefore, no change has been made.

The same commenter questioned the TWC's omission of internal inspection and external monitoring as allowable methods in §334.52(b)(5) for assessing tank integrity after repair of a tank. This option is included in the federal rules at 40 Code of Federal Regulations, §280.33(d). Additionally, the commenter questioned the TWC's requirement in subsection (b)(5) that repaired tanks be assessed prior to being returned to service, in contrast to the federal provision in 40 Code of Federal Regulations, §280.33(d), which allows the assessment to be conducted within 30 days of the repair. TWC feels that a repaired tank should be assessed for integrity prior to being placed into operation; therefore, the external monitoring alternative is not considered acceptable. However, TWC contends that internal inspection should be an acceptable assessment method, and this paragraph has been amended to allow such a method for repaired tanks. In response to another comment, TWC has provided for other alternative assessment methods to be used, if approved, under the waiver provision of §334.43.

One commenter requested that §334.52(b)(5) be amended to allow an air pressure test as an assessment method subsequent to repair or relining of a tank. TWC notes that air pressure testing is not recognized as an acceptable industry practice for the testing of in-service tanks due to concerns related to effectiveness, safety, and reliability. No change has been made.

One commenter suggested that the provisions in §334.52(c)(4) which require the application of cathodic protection only to the repaired portion of an existing piping system are inadequate. The commenter suggested the TWC should require mandatory replacement rather than repair of all unprotected metal piping upon failure of any portion of the piping system. TWC believes that a requirement for complete replacement would be unreasonable and the procedure allowed in the section is adequate. The application of cathodic protection to the undamaged portions of the remaining piping system can be applied at the time indicated in §334.44 as the appropriate implementation date for this type of system.

Two commenters disagreed with the TWC's prohibition of the use of used piping in the UST system in §334.52(c)(2). TWC considers used piping to be unreliable from a quality control standpoint, and no change is thus warranted.

One commenter suggested that the requirement in §334.52(d)(2)(A) for the retention of repair records for the remaining operational life of the UST system is excessive. TWC notes that the retention schedule is consistent with the federal rules in 40 Code of Federal Regulations, §280.33(f), and no change is considered necessary.

One commenter disagreed with §334.53, which allows the reuse of used tanks. TWC believes that prohibiting the use of structurally sound used tanks would be unreasonable, and has provided stringent performance standards in this section (including the same installation standards applicable to new UST systems) which must be met before a used tank can be reinstalled.

Regarding the section on temporary removal from service, §334.54, one commenter supported the section as written, and felt that it provided clarification of the existing federal requirements. Another commenter felt that the TWC should prohibit the storage of related substances in UST's which are temporarily out of service. In subsection (d), the TWC requires that any unprotected and unmonitored system must be permanently removed from service within 12 months after the system has been taken out of operation, whether or not regulated substances are being stored. However, if an existing system is equipped with required release detection and corrosion protection equipment, then the TWC feels that such tanks storing regulated substances should not be a threat to human health, safety, and the environment, even if the tanks are temporarily out of service. No change has been made.

One commenter objected to the provision in §334.55(a)(6)(A) that requires a release determination or site assessment to be performed prior to completion of the permanent removal of a UST system from service. This commenter stated that analysis of soil samples typically takes approximately three weeks to complete, and that leaving a tank excavation open for that period of time creates a safety hazard. TWC points out that this requirement is consistent with the federal rules as 40 Code of Federal Regulations, §280.71(a). Furthermore, TWC believes that an open tank excavation can create a safety hazard, and would expect a tank owner to properly correct or remedy any unsafe situation. The TWC has no objection to the temporarily filling of a tank excavation where no apparent contamination exists, so long as the possibility of subsequent corrective action is understood. No change has been made.

Several commenters objected to the requirement in §334.55(b)(4)(A) which requires that a tank that has been removed from the ground be transported from the site within 24

hours of the removal. TWC feels that removed tanks can present a significant environmental and safety concern if left on-site for extended periods, and therefore feels this requirement is appropriate. However, TWC points out that in situations where good cause is shown, the 24 hour time period can be extended pursuant to this subparagraph. TWC feels no change is warranted.

One commenter felt that the requirement in §334.55(c)(2), which requires that tank owners provide facility owners with information concerning the tank when the facility owner and tank owner are different persons, is burdensome. TWC believes that it is reasonable for a facility owner to be informed of tank activities and potential contamination which may be present from a tank owned by others. No change has been made.

Several commenters objected to the requirements in §334.55(c)(1)(A) and (B) that allows abandonment in-place only when adjacent buildings, structures, or equipment would potentially be damaged, or removal of the tank if otherwise impossible or impracticable, and the appropriate district manager agrees to allow abandonment in-place in lieu of removal. TWC concurs and has made changes to subsection (c) such that the owner or operator has the option of permanently closing a tank by either removal or abandonment in-place.

One commenter felt that the TWC did not have the statutory basis for the provision in §334.55(c)(2)(A), now renumbered as subsection (c)(1)(A), which required prior written authorization from the facility owner to conduct an abandonment in-place. TWC has changed this provision by deleting the requirement for prior authorization and now requires only that prior written notice of an abandonment in-place be provided to the facility owner. In addition, TWC has deleted subparagraph (B) concerning the requirement that the authorization to the facility owner be filed with the TWC.

In response to one commenter concerned with the requirement that site assessments be done with a "high degree of confidence," as required in §334. 55(e)(2), TWC has agreed to remove this phrase as TWC agrees that this is a vague and ambiguous standard.

One commenter felt that the personnel qualified to conduct site assessments pursuant to §334.55(e) should be limited to geologists, hydrogeologists, or registered professional engineers. TWC does not intend to limit the educational or professional qualifications in the suggested manner as TWC believes that persons with varied experience may be qualified to perform site assessment.

Several commenters requested that §334.72 be clarified to allow suspected releases to be reported to the appropriate TWC district office. TWC agrees and has clarified this section to allow reporting of suspected releases be made either at the appropriate district office or to the central office in Austin.

One commenter was concerned with the requirement in §334.72(1) which requires that owners and operators provide notice within 24 hours of a suspected release when the release is discovered by others. TWC agrees with the commenter that discovery by others could lead to false reporting, and has added language which will require written notice to owners and operators by others before notice to the TWC is required.

One commenter felt that §334.72(2) should be changed to require notice to the TWC of a suspected release even if no release is found to be present and the only indication of a release is defective system equipment. TWC believes that no change is necessary to this section as reports of defective equipment with no corresponding release are not considered reportable incidents. Another commenter felt that a release only from the primary system which is contained by the secondary system should not be reported. TWC disagrees, as this may present an environmental concern because a release has occurred.

One commenter felt that the specific analyses to be performed on samples should be included in §334.72(2). TWC disagrees, because a change such as this would be of little benefit due to the various types of substances stored in regulated tanks.

One commenter felt that §334.72(4), which requires that notice of a suspected release be provided if monitoring or observation indicates a breach in either the primary wall or secondary barrier, be expanded to provide an exception for faulty monitoring devices. TWC agrees and language has been added.

Several commenters believed that the seven-day requirement for confirmation of suspected releases, pursuant to §334.74, is not adequate to perform the necessary work. TWC agrees that the seven-day time frame can be unreasonable in rural areas, and has thus changed the requirement to allow 30 days to confirm suspected releases.

Several commenters objected to the requirement in §334.74(3) that reports be filed in the event that no evidence of a release is found to exist. TWC believes this report is necessary to follow up a reported suspected release and to ultimately close the file if no evidence of a release is found.

Several commenters expressed concern with the 15 day reporting requirement in §334.74(3), or they felt more time is needed to perform the required tests necessary to confirm that a release has occurred. TWC agrees and has extended the 15 day reporting period to 45 days.

Several commenters objected to the requirements in §334.74(3) which required a notarized statement be filed stating that all requirements of the section have been met. TWC agrees that this requirement is burdensome and has eliminated the requirement of notarization.

Several commenters felt that the requirement in §334.75(a) and (b), which requires notification and corrective action if a spill or overfill of a hazardous substance or petroleum exceeds the reportable quantity under CERCLA (40 Code of Federal Regulations, Part 302) or 25 gallons, whichever is less, to be overly restrictive. TWC has agreed to only require reporting and corrective action if a spill or overfill of the reportable quantity under CERCLA is exceeded. TWC believes that this change allows for consistency with CERCLA.

Several commenters requested that language be added to §334.76(2) which would require that a UST system be shut down only when it is determined to be necessary to prevent any further release to the environment. TWC agrees that UST systems should be shut down only when necessary and has added language to that effect.

One commenter felt that it was more appropriate to consolidate the separate reports required in §§334.77, 334.78, and 334.79. TWC agrees that some reports may be consolidated and the rules allow for the consolidation of reports when determined practicable.

Several commenters requested that the 45-day time frame in §334.78(b) should be extended. TWC does not believe that the change is necessary as the time schedule for release investigation and confirmation in §334.74 has been extended from seven to 30 days. No change is considered necessary.

Comments concerning off-site investigation, as required in §334.80(a), were received which indicated that off-site investigations should be conducted when there is evidence that a release has migrated off-site. TWC agrees that off-site investigation should be conducted as necessary to determine the extent of the release, and has added language to this effect to subsection (a). Regarding this same section, one commenter requested that by rule, TWC stipulate when means for obtaining permission for off-site investigations are considered unreasonable. TWC does not believe that this type of determination can be made by rule, and will examine such circumstance on a case-by-case basis.

One commenter felt that the corrective action plan required in §334.81 should carry the seal of a registered professional engineer. TWC believes there are persons qualified to do corrective action plan who are not registered professional engineers, thus no change is considered necessary.

One commenter requested that specific requirements for assessing releases from UST systems be included in §334.81. TWC believes that because of the diverse geology in Texas, specific requirements for assessments and corrective action plans should be site specific, and no change is considered necessary.

One commenter requested that a new provision be added to §334.81 which would require the TWC to take into account the proximity of unique and sensitive environmental features when approving a corrective action plan. TWC feels that no change is necessary, as a corrective action plan will only be approved after ensuring that implementation of the plan adequately protects human health, safety, and the environment.

Several commenters objected to the requirement in §334.81(g) which requires that a notarized statement accompany the corrective action plan. TWC has removed the notarization requirement as a signed statement from the owner or operator is considered sufficient.

One commenter objected to the requirement in §334.82(b) which allows the executive director to require the owner or operator to perform or implement public notices. TWC believes that this requirement is within the scope of the executive director's authority, and requires notice of hearings be published by the applicant (see 31 TAC §305.102 concerning Notice by Publication). TWC believes that publication of public notice is analagous to publication of notice of hearing and no change is considered necessary.

One commenter requested that §334.83, concerning emergency orders, be clarified to state that emergency orders would be issued only when there is some threat of release different from those threats inherent in all UST systems. Section 334.83 is a restatement of the Texas Water Code, §26.354, and paragraph (2) of this section states that emergency orders will be issued when the executive director determines that more expeditious corrective action than otherwise provided is considered necessary. Emergency orders by rule will not be issued unless the protection of public health and safety, or the environment require it, therefore, no change in considered necessary.

One commenter requested that the word "adverse" be added to §334.85 to qualify impacts to human health, safety, and the environment. TWC concurs and has made this change, as suggested.

One commenter expressed strong support for Subchapter E, concerning financial responsibility.

As pointed out by one commenter, phrases like "in each state where used" should be substituted with "in Texas." TWC agrees and these changes have been made.

In order to avoid retroactive regulation in Texas, the compliance date for large petroleum marketing firms has been changed to "the effective date of this subchapter" in §334.92(1).

Several commenters were opposed to paragraph (2) in the guarantee found in §334.96(c) which requires that the number of tanks at each facility covered by the guarantee be included as well as the names and address of each facility at which tanks are located. The commenters felt this was a burden to companies with a large number of tanks which are covered by the same guarantee. The TWC agrees that the owner or operator and/or guarantor should not be required to add lengthy attachments to the guarantee document. TWC has made changes so that owners and operators and/or guarantors with more than 20 tanks may indicate on the guarantee document that the mechanism being used covers all tanks that the firm owns or operates in the United States, and the exact location where the facility information may be found. This same language has been added to the "Letter from the Chief Financial Officer" in §334.95(1).

One commenter objected to providing a complete list of facilities because of the numerous facilities he owned. The commenter suggested that the financial assurance mechanism submitted be applicable for all facilities registered in the company name. TWC does not feel this suggestion is acceptable due to the frequently changing business operations associated with the petroleum industry. TWC believes an up-to-date list of facilities will be necessary. No change has been made.

One commenter felt that the "Certification of Financial Responsibility" in §334.105(b)(5) which contains references to specific citations in Chapter 334 be amended to only reference federal citations. TWC disagrees, as the financial assurance mechanism found in Subchapter E should reference the specific TWC rules by proper Texas citation. Subchapter E was not adopted by reference to the federal rules, but was enacted for specific use in Texas.

(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.)

Subchapter A. General Provisions

• 31 TAC §§334.1-334.5

These repeals are adopted 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 assess and collect fees for deposit to an underground storage tank fund; 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 policies of the commission.

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

Issued in Austin, Texas on September 8, 1989.

TRD-8908388 Jim Haley
Director, Legal Division
Texas Water Commission

Effective date: September 29, 1989

Proposal publication date: March 10, 1989

For further information, please call: (512) 463-8078

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• 31 TAC §§334.1-334.13

The new sections are adopted 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 assess and collect fees for deposit to an underground storage tank fund; 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 policies 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 tank systems 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 system shall be subject to all or part of the regulations in this chapter only when such system:

(A) meets the definition of underground storage tank system 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 excluded 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 tank systems (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 systems, 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 tank systems (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 tank systems shall be subject to all or parts of the regulations in this chapter if they meet the general qualifications for an

underground storage tank system 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–The Association for 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 electro-chemical 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–A method of permanent removal from service involving 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 utili- zation and consumption of heating oil on the premises where stored.

Controlling interest–Direct ownership of at least 50% of the voting stock of another entity.

Corrosion specialist–A person who, by reason of a thorough knowledge of the physical sciences and the principals of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks, and who is either:

(A) certified as a corrosion specialist or a cathodic protection specialist by the National Association of Corrosion Engineers; or

(B) licensed as a professional engineer by the Texas State Board of Registration for Professional Engineers in a branch of engineering that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

Corrosion technician–A person who can demonstrate an understanding of the principals of soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements as relate to corrosion protection and control on buried or submerged metal tanks and metal piping systems; who is qualified by appropriate training and experience to engage in the practice of inspection and testing for corrosion protection and control on such systems, including the inspection and testing of all common types of cathodic protection systems; and who either:

(A) has been certified by the National Association of Corrosion Engineers (NACE) as a, corrosion technician, corrosion technologist or senior corrosion technologist;

(B) is employed under the direct supervision of a corrosion specialist (as defined in this section), where the corrosion specialist maintains responsible control and oversight over all corrosion testing and inspection activities;

(C) has been officially qualified as a cathodic protection testor,in strict accordance with the assessment and examination procedures prescribed by NACE; or

(D) can otherwise demonstrate at least an equivalent level of proficiency, training, and experience as required for personnel meeting the requirements of subparagraphs (A), (B), or (C) of this definition.

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 pit 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. 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 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 crops, domestic 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 non-agricultural 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 con- structed, 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 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.

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

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.

Monitoring well–An artificial excavation constructed to measure or monitor the quantity or movement of substances, elements, chemicals, or fluids below the surface of the ground. The term shall not include any monitoring well which is used in conjunction with the production of oil, gas, or any other minerals.

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 marine vessels), and which is one of the following types of fuels: leaded or unleaded gasoline, aviation gasoline, Number 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 sub- stances for which installation has commenced after December 22, 1988; or an underground storage system which is con-

verted 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 construc- tion, 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.

Observation well–A monitoring well or other vertical tubular structure which is constructed, installed, or placed within any portion of a UST excavation zone (including the tank hole and piping trench), and which is designed or used for the observation or monitoring of groundwater, or for the observation, monitoring, recovery, or withdrawal of either released regulated substances (in liquid or vapor phase) or groundwater contaminated by such released regulated substances.

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.

Out of operation–The description of an in-service under- ground storage tank which is not currently being used on a regular basis for its 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 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. Owner does not include a person who holds an interest in an UST system solely for financial security purposes unless, through foreclosure or other related actions, the holder of such security interest has taken legal possession of the UST system.

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 firms.

Petroleum substance–A crude oil or any refined or unre- fined 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, Number 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, varnish makers' 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 previously listed materials and receiving approval by the executive director for designation as a petroleum substance.

Petroleum UST system–An underground storage tank system that contains, has contained, or will contain 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 UST 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 the Department of Transportation 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 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 zone at an underground storage tank facility which contains the piping system and associated backfill materials.

Pressurized piping–Product or delivery piping in 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).

Qualified personnel–Persons who possess the appropriate competence, skills, and ability (as demonstrated by sufficient education, training, experience, and/or, when applicable, any required certification or licensing) to perform a specific activity in a timely and complete manner consistent with the applicable regulatory requirements and generally-accepted industry standards for such activity.

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, solu- tion, 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 commission to be regulated under the provisions of this chapter Aboveground Storage Tanks.

Release–Any spilling including overfills, leaking, emit- ting, discharging, escaping, leaching, or disposing from an underground storage tank 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.

em>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 during the filling, placement, or transfer of regulated Tanks substances into a UST or during the transfer 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 under- ground storage tank system which typically operates below atmospheric pressure.

Sump–Any man-made pit or reservoir that meets the defi- nition 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 or used 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 under ground 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, Inc.

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 storage tank–Any one or combination of under ground 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.

§334.4. 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 an oil-water separator and any pretreatment facility), which is an integral part of a wastewater treatment facility which is either:

(A) permitted under federal Clean Water Act, either §402 or §307(b) 33 United States Code, §1251, et seq.); or

(B) permitted pursuant to the Texas Water Code, Chapter 26;

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

(4) 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, overfill, or other unplanned release, and where the regulated substances are routinely removed within 48 hours of the discovery of the release; provided however, that such tanks shall be inspected for a release no less than once every month;

(5) 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 chapter (relating to Technical Standards), Subchapter E of this chapter (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 an integral part of a wastewater treatment facility which is either:

(A) permitted under either the federal Clean Water Act, §402 or §307(b) 33 United States Code §1151, et seq.); or

(B) permitted pursuant the Texas Water Code, Chapter 26;

(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 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 Tanks 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 chapter (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.

(1) Except as provided under paragraph (2) of this subsection, on or after January 1, 1990, 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 as necessary to meet the provisions of this paragraph.

(2) The prohibited delivery of regulated substances shall not be applicable to deliveries into a new or replacement UST system occurring within 30 days of the first deposit of regulated substances.

(c) Notification. No person shall perform any installation, replacement, removal, change-in-service, abandonment in-place, or any other major construction related to 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 (related to Registration), except for:

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

(2) underground storage tanks specifically excluded from regulation under §334.4(a) of this title (related to Commission 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 on or before January 1, 1974, in accordance with accepted industry practices in effect at the time the UST was taken out of operation, and either:

(i) were filled with solid inert materials on or before January 1, 1974; or

(ii) were not filled with solid inert materials on or before January 1, 1974, but were subsequently permanently removed from service in accordance with §334.55 of this title (relating to Permanent Removal from Service) no later than one year after the effective date of this subchapter, or within 60 days of the discovery of the UST, whichever is later.

§334.6. Construction Notification.

(a) General requirements.

(1) Beginning September 1, 1987, any person who intends either to install a new or replacement underground storage tank, to remove an underground storage tank from the ground, 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) On or after the effective date of this subchapter, any person who intends to perform any construction activity listed in subsection (b)(1) of this section shall comply with the notification requirements of this section prior to initiating such activity.

(3) 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).

(4) 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 chapter (relating to Technical Standards) .

(5) 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 chapter (relating to Release Reporting and Corrective Action).

(6) 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 official date of notification shall be the date on which the notification is first received in a commission office.

(7) 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.

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

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

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

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

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

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

(vi) addition of secondary containment equipment for new or existing tank or piping systems;

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

(viii) addition or replacement of any of the following items at existing facilities, when such addition or replacement is necessary for compliance with the minimum upgrading requirements in §334.47(b) of this title (relating to Technical Standards for Existing UST Systems):

(I) cathodic protection systems;

(II) release detection systems;

(III) spill and overfill prevention equipment; or

(IV) monitoring well.

(B) 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, conducting routine inspections and tests, and the substitution or in-kind replacement of any obsolete or malfunctioning UST system component for any purpose other than required upgrading.

(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 re-

quested 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, changes-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 manager's 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 180 days after the original notification date or 150 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 in accordance with subsection (a)(5) of this section.

(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 notification 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 underground 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) 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 on or before January 1, 1974, in accordance with accepted industry practices in effect at the time the UST was taken out of operation, and either:

(I) were filled with solid insert materials on or before January 1, 1974; or

(II) were not filled with solid insert materials on or before January 1, 1974, but were subsequently permanently removed from service in accordance with §334.55 of this title (relating to Permanent Removal form Service) no later than one year after the effective date of this subchapter, or within 60 days of discovery of the UST, whichever is later.

(2) The owner of an underground storage tank 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 chapter (relating to Underground Storage Tank Fees), except where specifically exempted in this chapter. 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) 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)-(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. mailing 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 inplace);

(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 overfill 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; and

(J) change in financial responsibility information related to 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 (in-

cluding 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. The following installation certifications are required.

(1) Owner or operator certifications. Any owner or operator who installs a new or replacement underground storage tank system after the effective date of this subchapter 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 the effective date of this subchapter, 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 on the effective date of this subchapter, 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 chapter (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 registrationform, and shall be filed with the commission as follows:

(A) For new UST systems, the financial responsibility information shall be filed with the commission in accordance with the tank registration time limits prescribed under §334.7 of this title (relating to Registration).

(B) For existing UST systems, the financial responsibility information shall be filed with the commission within 30 days of the prescribed date that financial responsibility is required pursuant to §334. 92 of this title (relating to Compliance Dates).

§334.9. Seller's Disclosure. Effective on and after the effective date of this subchapter, any person who sells or otherwise legally conveys a tank (or tank system) which is designed or intended to be installed 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.

(4) For the purpose of fulfilling the disclosure requirements of this section, the following language is deemed sufficient: "The underground storage tank(s) which are included in this conveyance are presumed to be regulated by the Texas Water Commission and may be subject to certain registration and construction notification requirements found in 31 Texas Administrative Code, Chapter 334."

§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) request for approval of any variance or alternative procedure, in accordance with §334.43 of this title (relating to Variances and Alternative Procedures);

(6) request for extension of time for an UST system that is temporarily out of service, in accordance with §334.54(d)(2) of this title (relating to Temporary Removal from Service);

(7) 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);

(8) payment of underground storage tank fees, in accordance with Subchapter B of this chapter (relating to Underground Storage Tank Fees);

(9) 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);

(10) notifications and reports relating 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 regarding 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

(11) 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 an 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 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; and

(II) the name, address, and telephone number of the authorized custodian of such records.

(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 systems 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) original and amended registration documents, in accordance with §337.7 of this title (relating to Registration);

(ii) original and amended certifications for UST installations and financial responsibility, in accordance with §334.8 of this title (relating to Certification);

(iii) notification to UST purchaser, in accordance with §334.9 of this title (relating to Seller's Disclosure).

(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 overfill control records, in accordance with §334.51(c) of this title (relating to Spill and Overfill 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 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.

(1) Except as provided in paragraph (2) of this subsection, 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, United States 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, Office of the State Comptroller, Texas Department of Public Safety, Texas Water Commission, and any other federal, state, and local governmental agencies or entities having appropriate jurisdiction.

(2) As provided in the Texas Water Code, §26.359, this chapter establishes a unified statewide program for underground and surface water protection, and any local regulation or ordinance is effective only to the extent the regulation or ordinance does not conflict with the standards adopted for the design, construction, installation, or operation of underground storage tanks under this chapter.

(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 or operator 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.

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

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

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

Issued in Austin, Texas on September 8, 1989.

TRD-8908290 Jim Haley
Director, Legal Division
Texas Water Commission

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Proposal publication date: March 10, 1989

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

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Suchapter C. Technical Standards

• 31 TAC §§334.41-334.55

The new sections are adopted 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 assess and collect fees for deposit to an underground storage tank fund; 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 policies 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 this subchapter under §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).

(d) For the purposes of this subchapter only, a new underground storage tank system (or new UST system) shall refer to any system for which installation has commenced on or after the effective date of this subchapter.

§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 (i.e. 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 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.

(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(b) 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 on or after the effective date of this subchapter which are used to store any regulated substances shall be in compliance with the following requirements from the time of installation through the operational

(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 on or after the effective date of this subchapter shall also be in compliance with the following requirements from the time of installation through the entire 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 overfill prevention equipment requirements of §334.51(b) of this title (relating to Spill and Overfill 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 22, 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 detection 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 on or after the effective date of this subchapter 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 new 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 new UST system which convey, contain, or store regulated substances shall be properly pro-

tected 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 one or more of the following standards:

(i) UL Standard 1316, "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products"; or

(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, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submer*ged 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.

(iv) The tank shall be electrically isolated from all other metallic structures by use of dielectric bushings or other appropriate methods.

(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 overfill prevention equipment. All new tanks shall be equipped with spill and overfill prevention equipment, in accordance with §334. 51(b) of this title (relating to Spill and Overfill 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 new 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 accordance 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. In order to provide electrical isolation of the tank from other connected metal components, all coated steel tanks equipped with either a factory-installed cathodic protection system or a factory-applied fiberglass-reinforced plastic laminate or cladding shall also be fitted with dielectric bushings or fittings at each tank opening where other metal UST system components are connected, except for unused openings closed with metal plugs and for openings where the connected component is non-metallic.

(c) Technical standards for new piping.

(1) Piping design and construction. All new under-ground 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, "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 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) 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 new piping components.

(A) For piping systems in which regulated substances are conveyed under pressure to an above-ground dispensing unit, a UL-listed (or approved equivalent) 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 (or approved equivalent) flexible connectors shall be installed at both ends of each pressurized 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 a pressurized underground storage tank piping system is specifically prohibited.

(C) If buried and in contact with soil or 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, operated, and maintained in accordance with one of the applicable codes or standards of practice listed as follows:

(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 Under ground 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; and

(III) any other code or standard of practice developed by a naturally recognized association or independent testing laboratory that has been reviewed and determined by the executive director to be no less protective of human health and safety and the environment than the standards described in subclauses (I) and (II) of this clause, in accordance with procedures in §334.43 of this title (relating to Variances and Alternative Procedures).

(iv) 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 provide a containment volume of no less than 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 overfill prevention equipment as required in §334.51(b) of this title (relating to Spill and Overfill Prevention and Control); and

(D) equipped with a removable or permanent 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 and observation wells.

(A) All monitoring wells and observation wells installed on or after the effective date of this subchapter shall be designed, constructed, and installed in accordance with the requirements in §334.46(g) of this title (relating to Installation Standards for New UST Systems).

(B) Each separate tank hole in a new UST system installed on or after the effective date of this subchapter shall include a minimum number of four-inch diameter (nominal) observation wells, as specified in the following clauses:

(i) for a tank hole containing only one tank, a minimum of one observation well shall be required; and

(ii) for a tank hole containing two or more tanks, a minimum of two observation wells shall be required.

(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. Any new UST system installed on or after the effective date of this subchapter shall be installed in compliance with the provisions of this section.

(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";

(C) ANSI Standard B31.3, "Petroleum Refinery Piping" and ANSI Standard B31.4, "Liquid Petroleum Transportation Systems"; or

(D) any other code or standard of practice developed by a nationally recognized association or independent testing laboratory that has been reviewed and determined by the executive director to be no less protective of human health and safety and the environment than the standards described in subparagraphs (A)-(C) of this paragraph, in accordance with the procedures in §334.43 of this title (relating to Variances and Alternative Procedures).

(2) Installation personnel. All tanks, piping, and associated equipment shall be installed by personnel possessing the appropriate skills, experience, competence, and, if applicable, any required certification or license 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 repaired 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 non-corrosive 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, as appropriate, 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 flotation 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 or wrapped with a suitable dielectric material.

(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 1/8 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, bonding agent, or adhesive in accordance with the piping manufacturer's specifications so as 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 (f)(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) (I), respectively, of this title (relating to Release Detection) shall be performed after the backfill has been placed but prior to bringing the new underground storage tank system into operation.

(4) In addition to the air tests and tightness tests required in this subsection, the following additional installation tests shall be required, as applicable.

(A) For fiberglass-reinforced plastic tanks, the tank diameter shall be accurately measured prior to and after installation to ascertain the amount of vertical deflection, as specified in the tank manufacturer's installation procedures. Except when specifically authorized in writing by an authorized representative of the tank manufacturer, tanks shall not be placed into operation if the measured vertical deflection exceeds the manufacturer's maximum allowable deflection ratings.

(B) For tanks which are factory constructed as either steel/fiberglass-reinforced plastic composite tanks or for steel tanks with a bonded fiberglass-reinforced plastic external cladding, an appropriate test shall be conducted by a qualified corrosion technician or qualified corrosion specialist to ensure that the steel tank shell remains electrically isolated from the surrounding soil, backfill, groundwater, and other metal components.

(i) Such test shall be performed after the tank installation is completed but prior to placing the tank into operation, and shall be conducted by taking structure to soil voltage readings in accordance with procedures established by a code or standard of practice developed by a nationally-recognized association or independent testing laboratory.

(ii) If the test indicates that the steel tank shell is no longer electrically isolated, a qualified corrosion specialist shall review the test results and thoroughly inspect the area of the tank installation to ascertain the extent of electrical isolation and corrosion protection for the steel tank shell.

(iii) If the qualified corrosion specialist determines that the steel tank shell is no longer adequately protected from corrosion, then the owner or operator shall assure that one or more of the following procedures are completed before the tank is placed into operation.

(I) Appropriate repairs or modifications shall be made to restore the electrical isolation of the steel tank shell.

(II) A field-installed cathodic protection system shall be installed in accordance with the requirements in §334.49(c)(2) of this title (relating to Corrosion Protection).

(C) For steel tanks and other UST system components which are equipped with factory-installed or field-installed cathodic corrosion protection systems, the cathodic protection systems shall be tested for operability and adequacy of protection by a qualified corrosion technician or qualified corrosion specialist after the UST system installation is completed but prior to placing the system into operation.

(i) If the test indicates that the cathodic protection system is inoperable or inadequate, a qualified corrosion specialist shall review the test results and thoroughly inspect the UST system to ascertain the extent of corrosion protection.

(ii) If the qualified corrosion specialist determines that the UST system component is no longer adequately protected from corrosion, then the owner or operator shall assure that one or more of the following procedures are completed before the UST system is placed into operation.

(I) Appropriate repairs or modifications shall be made to restore the cathodic corrosion protection to the applicable UST system components.

(II) The cathodic protection system shall be replaced with another operable cathodic protection system which will provide adequate corrosion protection to the applicable UST system components, in accordance with the requirements in §334.49(c)(2)of this title (relating to Corrosion Protection).

(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 manufac-

turer'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 de signed 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 and observation wells. All monitoring wells and observation wells installed in conjunction with an underground storage tank system on or after the effective date of this subchapter shall be constructed and installed in accordance with the requirements of this subsection.

(1) General requirements for both monitoring wells and observation wells.

(A) All monitoring wells and observation wells shall be constructed or installed by personnel possessing the appropriate skills, experience, competence, and, if applicable, any required license or certification to complete the construction or installation in accordance with recognized industry standards and the requirements of this subsection.

(B) Except for observation wells installed pursuant to §334.45(e)(4)(B) of this title (relating to Technical Standards for New UST Systems), the determination of the appropriate number and the appropriate diameters of monitoring wells or observation wells shall be based on the planned purpose of such well and on the specific procedures, methods, and equipment to be utilized in achieving such purpose.

(C) The slotted or screened portion of the monitoring well or observation well casing shall be designed and sized so as to prevent the migration of natural soils, backfill material, or filter pack material into the well, and to allow the unrestricted entry of any released regulated substances (liquid-phase or vapor-phase, as applicable) into the well at all times, regardless of the ground-water levels.

(D) The well casing material shall be sufficiently compatible with the stored regulated substance such that prolonged exposure to such substances will not cause failure or excessive deterioration of the casing.

(E) When installed or constructed for the purposes 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 and/or observation wells shall be based on the results of an assessment of the underground areas within and immediately surrounding the UST system excavation zone to assure compliance with the specific criteria and requirements for the applicable release detection method. Such assessment shall be performed by qualified personnel who are familiar with the characteristics of the stored regulated substance and the groundwater, soil, and geologic conditions at the site.

(F) All monitoring wells and observation wells shall be equipped with a properly-designed and properly-installed bottom cap.

(G) All monitoring well and observation well installations shall include an appropriate access vault or manhole, which shall be equipped with a liquid-tight cover and be designed to divert surface runoff away from the well.

(H) All monitoring wells and observation wells shall be properly capped, labeled, and secured (or locked) to prevent unauthorized access, tampering, and any deliberate or accidental depositing of unauthorized sub stances.

(2) Additional requirements for monitoring wells. In addition to the general requirements of paragraph (1) of this subsection, all monitoring wells installed in conjunction with an underground storage tank system shall be constructed or installed in accordance with the applicable requirements of Chapter 287 of this title (relating to Water Well Drillers) and the Water Well Drillers Act (Texas Civil Statutes, Article 7621e, Water Auxiliary Laws), and any person constructing or installing a monitoring well shall be appropriately licensed as required therein.

(3) Additional requirements for observation wells. In addition to the general requirements of paragraph (1) of this subsection, the following requirements shall be applicable to all observation wells installed in conjunction with an underground storage tank system.

(A) All observation wells that are regulated as monitoring wells by the Water Well Drillers Board shall be constructed or installed in accordance with the applicable requirements in Chapter 287 of this title (relating to Water Well Drillers) and the Water Well Drillers Act (Texas Civil Statutes, Article 7621e, Water Auxiliary Laws), and any person constructing or installing such well shall be appropriately licensed as required therein.

(B) All observation wells that are not regulated as monitoring wells by the Water Well Drillers Board shall be constructed or installed in accordance with the following minimum requirements.

(i) All observation wells shall be designed and installed in general accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory.

(ii) All observation wells shall be constructed or installed within the UST system excavation zone, and shall be completed to a depth of at least two feet below the lowest part of any monitored

tank, or at least one footbelow the lowest part of any monitored piping, as applicable.

(iii) For observation wells installed or constructed on or after the effective date of this subchapter in a new or existing UST system where the backfill consists of specialized or select materials (i.e., sand, pea gravel, or crushed rock), the following minimum requirements shall be applicable.

(I) The access vault or manhole shall be properly installed in a concrete encasement which shall extend from the top of the vault to at least one foot below the base of the vault to provide adequate structural support and to prevent surface runoff and pollutants from entering the well.

(II) Beginning at the bottom of the concrete encasement beneath the access vault, the well casing shall be properly sealed with impervious bentonite or a similar impervious material for a minimum distance of either one foot below the bottom of the concrete encasement or to the top of the specialized or select backfill material, whichever is the greater depth.

(iv) For observation wells installed or constructed on or after the effective date of this subchapter in an existing UST system where the backfill consists of materials other than specialized or select materials (e.g., native soils), the well shall be constructed or installed in accordance with the applicable standards in Chapter 287 of this title (relating to Water Well Drillers). If the observation well is not regulated as a monitoring well by the Water Well Drillers Board, the licensing requirements for persons constructing or installing such well shall not be applicable.

(h) Certification of installation.

(1) All owners and operators of new underground storage tank systems installed on or after the effective date of this subchapter shall ensure that the installation was completed in accordance with the provisions of this section, and that the following certification criteria applicable to the installation are met.

(A) For all UST system installations commencing on or after the effective date of this subchapter but before February 1, 1990, the owner or operator shall assure that at least one of the following criteria is met:

(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).

(B) For all UST system installations commencing on or after February 1, 1990, the owner or operator shall assure that the UST system installation is conducted by an installer licensed by the commission.

(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 requiredby §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) registration information, as required by §334.7 of this title (relating to Registration); and

(II) 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-way, 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 overfill 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 Implementa tion 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 In stallation

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 provisionsof §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 UST system cathodic protection. No later than December 22, 1998, all tanks in an existing UST system shall be assessed for structural integrity, and all underground metallic components of an existing UST system 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 release detection systems meeting the applicable requirements of §334.50 (d)(3)-(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 is placed into operation.

(iii) When the tank upgrading is to include the installation of an interior lining meeting the applicable provisions in §334.52 (b) of this title (relating to UST System Repairs and Relining), a site assessment or release determination may be conducted prior to the installation of the interior lining and the cathodic protection system. Such site assessment or release determination shall be conducted in accordance with the provisions of §334.55 (e) of this title (relating to Permanent Removal from Service).

(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:

(I) conducted in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory; and

(II) performed by qualified 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 chapter (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) Field-installed cathodic protection system. 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 overfill prevention equipment. No later than December 22, 1994, all existing underground storage tanks shall be equipped with appropriate spill and overfill prevention equipment, in accordance with the provisions in §334.51 (b) of this title (relating to Spill and Overfill Prevention and Control).

(3) Adding release detection for UST system piping.

(A) 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) .

(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, and when the selected method of release detection is either vapor monitoring or groundwater monitoring in accordance with §334.50 (d)(4) and (5) of this title (relating to Release Detection), then 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 (e.g., 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 detecuon 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 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 numbersof the persons conducting the tank integrity assessment and cathodic protection installation activities; and

(iii) copies of all related notifications or reports filed with the commission or others, including:

(I) registration information, as required by §334.7 of this title (relating to Registration); and

(II) 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 so as to accurately depict and describe the sizes, dimensions, and locations of any UST system components or equipment added or installed on or after the effective date of this subchapter which are installed pursuant to one of the construction activities included in §334.6 (b)(1)(A) of this title (relating to Construction Notification); and

(C) equipment information for any UST system components or equipment added or installed on or after the effective date of this subchapter for the purpose of compliance with the upgrading requirements of this section, including manufacturers specifications, installation instructions, operating instructions, warranty information, recommended test procedures, and inspection and maintenance schedules.

(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 dates such tests are conducted.

§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. On or after the effective date of this subchapter, regardless of which method of release detection is used for compliance with §334.50 of this title (relating to Release Detection), effective manual or automatic inventory control procedures shall be conducted for all UST systems at retail service stations where petroleum substances used as motor fuels are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles and where such dispensing is an act of retail sale. Such inventory control procedures shall be in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory. Complete and accurate inventory records shall be maintained in accordance with §334.10 of this title (relating to Reporting and Recordkeeping).

(d) Spill and overfill control. All owners and operators shall ensure that spills and overfills of regulated substances do not occur and that all spill and overfill prevention equipment is properly operated and maintained in accordance with §334.51 of this title (relating to Spill and Overfill 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 UST 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 maintenance of an UST system (including records related to inspection, servicing, testing, and inven tory 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 underground 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, swing joints, and impact/shear valves), secondary containment devices, manways, manholes, fill pipes, vent lines, submersible pump housings, spill containers, and riser pipes.

(5) For internal corrosion protection, the interior bottom surface of new metal tanks installed on or after the effective date of this subchapter 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 non-corrod- ible 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, groundwater, and other metallic components 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, groundwater, and other metallic components 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 the protected component shall be regularly inspected and tested for electrical isolation in accordance with the provisions in subsection (d)(1) of this section.

(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.

(6) Except for the tanks and the piping system components, other underground components of a UST system (including vent lines, fill risers, sub mersible pump risers and housings, spill containment vessels, and tank fittings (e.g. bunghole plugs)) which do not routinely contain regulated substances may be protected from corrosion by thorough coating or wrapping with a suitable dielectric material which is compatible with the stored regulated substance without the need for the use of other corrosion protection methods.

(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; and

(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.

(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 (4) 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) Test stations and connections. To allow for the periodic testing required in paragraph

(4) of this subsection, any factory-installed or field-installed cathodic protection system shall include appropriate connections, insulated lead wires, and accessible test stations. All lead wires connected to the tanks, anodes, reference electrodes, and other components associated with the cathodic protection system shall terminate at one or more test stations. The termination of each lead wire at a test station shall be clearly labeled or coded to properly identify the specific component to which it is connected.

(4) 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 or standard of practice 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) and (3) of this section, and which is not equipped with a cathodic protection system, shall be periodically inspected and tested to ensure that the metal component remains electrically isolated from the surrounding soil, backfill, groundwater, and other metal components in accordance with one or more of the following procedures.

(i) When visual inspection is possible, the entire exterior surface of such component may be thoroughly inspected visually by qualified personnel for the presence of corrosion or released regulated substances.

(ii) If visual inspection is not possible, the component may be inspected and tested by a qualified corrosion technician or by a qualified corrosion specialist by taking structure to soil voltage readings in accordance with procedures established by a code or standard of practice developed by a nationally-recognized association or independent testing laboratory.

(iii) The component may be inspected and/or tested by an alternative method which has been reviewed and determined by the executive director to ascertain electrical isolation and to 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 clauses (i) and (ii) of this subparagraph, in accordance with the procedures in §334.43 of this title (relating to Variances and Alternative Procedures).

(B) The inspections and tests required in subparagraph (A) of this paragraph shall be conducted within three to six months after installation of the metal component, and then once every three years thereafter for the remaining operational life of the UST system.

(C) 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, groundwater, 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.

(D) If the qualified corrosion specialist determines that the metal component is no longer adequately protected from corrosion, the owner or operator shall assure that one or more of the following procedures are completed within 60 days of the date of such determination:

(i) appropriate repairs or modifications shall be made to restore the electrical isolation of the protected component; or

(ii) a field-installed cathodic protection system meeting the requirements of subsection (c)(2) of this section shall be installed.

(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)(4) of this section may be waived. 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)(4) of this section; and

(iii) results of all tests and inspections to assure corrosion protection for electrically-isolated components in accordance with subsection (d)(1) of this section.

§334.50. Release Detection.

(a) General requirements.

(1) Owners and operators of 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 which contains regulated substances 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 5.0%:

(I) tank tightness testing, as prescribed in subsection (d)(1)(A) of this section;

(II) automatic tank gauging, as prescribed in subsection (d)(3) of this section;

(III) automatic line leak detectors for piping, as prescribed in subsection (b)(2)(A)(i) of this section; and

(IV) 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 chapter (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) As prescribed in §334.47 (a)(2) of this title (relating to Technical Standards for Existing UST Systems), 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) no later than 60 days after the implementation date for release detection as prescribed 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 §334.6 of this title (relating to Construction Notification), and upon completion 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 listed, approved, designed, and operated in accordance with standards developed 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 month (not to exceed 35 days between each monitoring) by using one or more of the release detection methods described in subsection (d)(3)-(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 standards 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 sys-

tem 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 independent 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 month (not to exceed 35 days between each monitoring) 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 an 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 independent 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 month (not to exceed 35 days between each monitoring) 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, installed, and maintained 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)-(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 qualified personnel who possess the requisite experience, training, and competence to conduct the test properly, who are present at the facility and who maintain responsible over-sight 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. The tank tightness test shall be conducted in strict accordance with the testing procedures developed by the system manufacturer or developer.

(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 which contains regulated substances.

(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, 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 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 1/8 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 1/8 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 2,000 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 1/8 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 1,001 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 chapter (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 which contains regulated substances.

(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 one month (not to exceed 35 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 and/or observation wells, so that releases into the excavation zone from any part of the UST system can be detected within one month of the release (not to exceed 35 days).

(G) All monitoring wells and observation wells shall be designed and installed in accordance with the requirements of §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, course to medium sands, or other similarly permeable material).

(C) Any automatic monitoring devices that are employed shall be capable of detecting the presence of at least 1/8 inch of free product on top of the groundwater in the monitoring well or observation well. Any manual monitoring method shall be capable of detecting a visible sheen or other accumulation of regulated substances in or on the groundwater in the monitoring well or observation well.

(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 monitoring wells and/or observation wells, so that releases from any part of the UST system can be detected within one month (not to exceed 35 days) of the release.

(E) All monitoring wells and observation wells shall be designed, installed, and maintained in accordance with the requirements in §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 one month (not to exceed 35 days) of the release.

(C) The sampling, testing, or monitoring method shall be capable of detecting a breach or failure in the primary wall and the entrance of groundwater into the interstitial space due to a breach in the secondary wall of the double-wall tank or piping system within one month (not to exceed 35 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 one month (not to exceed 35 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 one month (not to exceed 35 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 observation wells.

(E) All observation wells shall be designed and installed in accordance with the requirements in §334.46 (g) of this title (relating to Installation Standards for New UST Systems).

(8) Alternative release detection method. 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 requirement.

(A) All appropriate installation records related to the release detection 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 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 on-site 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 (other than routine gravity unloading from normal transport vehicles), 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 chapter (relating to Release Reporting and Corrective Action).

(b) Spill and overfill prevention equipment. Except as provided in paragraph

(4) of this subsection, all underground storage tank systems shall be equipped with spill and overfill prevention equipment which shall be designed, installed, and maintained in a manner that will prevent any spilling or overfilling of regulated substances resulting from transfers to such systems, as provided in this subsection.

(1) Compliance schedule.

(A) New UST systems installed on or after the effective date of this subchapter 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 overfill 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 liquid-tight lid or cover designed to minimize the entrance of any surface water, groundwater, or other foreign substances into the container.

(C) Overfill prevention equipment. Each tank shall be equipped with a valve or other appropriate 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; or

(iii) emit an audible and visible alarm capable of alerting the person responsible for the delivery 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 the tank is also equipped with a valve or other device which is designed to automatically shut-off or automatically restrict the flow of regulated substances into the tank when the liquid level reaches a preset level which shall be no higher than the 98% capacity level for the tank.

(3) Design and installation requirements.

(A) All spill and overfill 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 overfill 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 overfill 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 overfill 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 overfill 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 overfill prevention equipment prescribed in this subchapter 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 overfill control records.

(1) Owners and operators shall maintain the spill and overfill 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 overfill 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 overfill 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 overfill prevention equipment is used.

(B) Records of any servicing, calibration, maintenance, and repair of any spill and overfill 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 overfill 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 pre-

vent releases due to structural failure or corrosion for the remaining operational life of the system.

(2) Owners and operators shall ensure that any repair or relining is conducted by qualified personnel possessing the appropriate skills, experience, competence, and, if applicable, any required license or certification 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 chapter (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 either:

(A) tested by means of a tank tightness test meeting the requirements in §334.50 (d)(1)(A) of this title (relating to Release Detection).

(B) internally inspected and assessed in accordance with the requirements in §334.47 (b)(1)(A)(iv) of this title (relating to Technical Standards for Existing UST Systems); or

(C) tested or assessed by any other method that has been reviewed and determined by the executive director to be no less protective of human health and safety and the environment than the standards described in subparagraphs (A) and (B) of this paragraph, in accordance with the procedures in §334.43 of this title (relating to Variances and Alternative Procedures).

(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 under-ground 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)(I) 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.

§334.55. 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 qualified personnel possessing the appropriate skills, experience, competence, and, if applicable, any required license or certification 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 chapter (relating to Release Reporting and Corrective Action);

(ii) prepare or assemble the detailed written records of thisetermination, 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 (i.e., tanks at facilities which are closed or out of business) shall be considered temporarily out of service, and shall be subject to the provisions 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 the effective date of this subchapter.

(9) For an underground storage tank permanently removed from service prior to the effective date of this subchapter, 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, investigation, and corrective action if a release of a regulated substance has occurred, in accordance with Subchapter D of this chapter (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 connected 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 on-site storage period is obtained from the manager of the appropriate district office (or the manager's designated representative).

(B) The on-site 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) On-site 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 2 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 10 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 underground 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 on-site or off-site) 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. An underground storage tank may be permanently removed from service by abandonment in-place in lieu of actual removal from the ground. In addition to the requirements of subsection (a) of this section, the following requirements shall be applicable to the abandonment in-place of underground storage tanks.

(1) 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 provide written notice to the owner of the site or facility for the abandonment in-place prior to initiating the activity.

(B) 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 (3) of this subsection.

(2) 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.

(3) 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 under-ground storage tank shall be designed to remove as much as possible of the previously stored reguated 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.

(5) For the purposes of this section, an underground storage tank which has been converted to the storage of materials other than regulated substances (i.e., water) shall be subject to the procedures for temporary removal from service in §334.54 of this title (relating to Temporary Removal from Service), except when the stored materials are utilized on a regular basis for beneficial purposes.

(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 the effective date of this subchapter;

(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 the effective date of this subchapter, 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 qualified personnel possessing the appropriate skills, experience, and competence to perform the assessment in accordance with recognized industry practices and the provisions of this section.

(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 shall 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 under-ground storage tank system from service;

(B) the nature and composition of the stored regulated substance;

(C) the type and characteristics of the backfill material and surrounding soils;

(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 and surrounding soils, 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 and surrounding area, 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 subsection (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 rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 8, 1989.

TRD-8908291 Jim Haley
Director
Texas Water Commission

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

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Subchapter D. Release Reporting and Corrective Action

• 31 TAC §§334.71-334.85

The new sections are adopted 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 assess and collect fees for deposit to an underground storage tank fund; 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.

§334.71. 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 appropriate district office or the Austin central office of the commission 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 written notification by others to the owner or operator, 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.

(4) For UST systems which are required to be of double-wall construction or secondarily contained and for UST systems in which interstitial moni- toring is being employed for compliance with the requirements of §334.50 of this title (relating to Release Detection), whenever monitoring or obser-vation indicates a breach in either the primary wall or secondary barrier (whether or not a release of regulated substance into the environment has occurred), unless the primary or secondary barrier is determined to be intact, and the monitoring equipment is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result.

§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 30 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 contam-ination 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 45 days after the first observation of the suspected release or another schedule approved or required by the executive director. The owner or operator shall include with this report a statement which has been signed by the owner or operator certifying 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 clean up a spill or overfill, 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).

(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). 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 as determined necessary; and

(3) identify and mitigate fire, explosion, and vapor hazards.

§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 operator must conduct investigations of the release, the release site, and the surrounding area (including adjacent areas not under ownership by the owner or operator) as necessary to determine the extent of 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 requests 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 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.

§334.85. 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 adverse impacts to human health and safety and the environment.

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

Issued in Austin, Texas on September 8, 1989.

TRD-8906292 Jim Haley
Director, Legal Division
Texas Water Commission

Effective date: September 29, 1989

Proposal publication date: March 10, 1989

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

♦ ♦ ♦

Subchapter E. Financial Responsibility

• 31 TAC §§334.91-334.109

The new sections are adopted 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 assess and collect fees for deposit to an underground storage tank fund; 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.

§334.92. 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; effective date of this subchapter.

(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.

§334.95. 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 ten times.

(1) The total of the applicable aggregate amount required by §334.93 of this title (relating to Amount and Scope of Required Financial Responsi- bility), based on the number of underground storage tanks for which a financial test is used to demonstrate 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 subsections (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 Regula-

tion 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 subsection (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, as 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. Alternatively, if the number of tanks which a firm owns or operates in the United States exceeds 20, and all of these tanks are being covered by the same guarantee, state the exact location where the information relating to the number of tanks at each facility and the names and addresses of the facilities where the tanks are located can

be found.] 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 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 lia-

bilities, you may deduct that amount from this line and add that amount to line 6] ... ____ ____

6. Tangible new 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; or,

(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 both cases, 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:

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 (l) 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. Alternatively, if the number of tanks which a firm owns or operates in the United States exceeds 20, and all of these tanks are being covered by the same guarantee, state the exact location where the information relating to the number of tanks at each facility and the names and addresses of the facilities where the tanks are located can be found.] 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

insert 119

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 Assurance Mechanisms). This standby trust fund must meet the requirements specified in §334.101 of this title (relating to Standby Trust Fund).

§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, unless on file with the commission.

(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 Title 11 (Bankruptcy), United States Code, 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 a 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 Cancella- tion 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 must 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-Insur- ance, 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 subsections (b)(1), (b)(2)(A) or (b)(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 Aciton); or

(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 relavant 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 Owner or Operator	Attorney(s) for Claimant(s)
(Notary) Date	(Notary) Date

; or

(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 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 Title 11 (Bankruptcy), United States Code, 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 Title 11 (Bankruptcy), United States Code, naming a guarantor providing financial assurance as debtor, such guarantor must notify the owner or operator by certified mail of such commencement as 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, 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 rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on September 8, 1989.

TRD-8908293 Jim Haley
Director, Legal Division
Texas Water Commission

Effective date: September 29, 1989

Proposal publication date: March 10, 1989

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

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TITLE 34. PUBLIC FINANCE

Part III. Teacher Retirement System of Texas

Chapter 25. Membership Credit

Developmental Leave

• **34 TAC §25.153**

The Teacher Retirement System of Texas (TRS) adopts §25.153, with changes to the proposed text as published in the August 8, 1989, issue of the *Texas Register* (14 TexReg 3869).

The new section is adopted to reflect recent statutory amendments affecting eligibility of certain developmental leave for purchase and service credit. Subsection (e) of the proposed text was changed to clarify the costs that would be calculated on a cost statement provided to a member interested in purchasing developmental leave credit.

The new section will permit TRS to have rules and procedures in place to implement new legislation allowing members to establish membership credit for developmental leave requested, approved and begun before June 10, 1977. The new section explains the cost of establishing the credit for those members who wish to do so.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Title 110B, §35.102, which provide the board of trustees of the Teacher Retirement System with the authority to adopt rules for membership eligibility, administer the funds of the retirement system, and conduct its business; and §33.4021, which allows a member to establish credit for developmental leave requested, approved, and begun before June 10, 1977.

§25.153. Developmental Leave Requested and Begun Before June 10, 1977.

(a) A member is eligible to establish equivalent membership service credit for developmental leave requested and begun before June 10, 1977, if the statutory requirements applicable to such leave are met.

(b) A member who wishes to establish developmental leave credit under this rule must apply on a form available from TRS entitled Application for Credit for Developmental Leave Requested and Begun before June 10, 1977. The member must submit the form for certification to the employer who approved the leave.

(c) The employer must certify in the space provided on the form that, based on the records of the employer, developmental leave was requested and approved as required by the applicable statutory provisions. The employer must submit the form directly to TRS. The form will not be accepted directly from the member.

(d) The completed and certified form must be received by TRS not later than January 1, 1990.

(e) TRS will acknowledge receipt of the form and will provide a cost statement for developmental leave credit to the member. The cost for each year of this credit will be calculated by multiplying a combined member and stat contribution rate of 14.05% for the 1989-1990 school year times the member's annualized earnings for the member's latest year of service or the member's highest credited annual compensation at the time the deposits are made, whichever is greater. Annualized earnings are the amount a member would have earned if the member had worked the entire school year. The product of the contribution rate and the annualized earnings or the highest credited annual compensation shall then be increased by 1.0% for each year that the member's age as of the date of deposit is received exceeds 35 years. The statement shall also include any unpaid membership fees applicable to the period of time in which the leave was taken.

(f) Credit will be granted if the completed application, certification, and all documents are received by TRS no later than January 1, 1990, and if the full amount of the required deposit is received no later than March 1, 1990.

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

Issued in Austin, Texas on September 8, 1989.

TRD-8908339 Bruce Hineman
Executive Secretary
Teacher Retirement System of Texas

Effective date: September 29, 1989

Proposal publication date: August 8, 1989

For further information, please call: (512) 397-6400

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Chapter 29. Benefits

Service Retirement

• **34 TAC §§29.1, 29.2, 29.8, 29.9, 29.13, 29.15**

The Teacher Retirement System of Texas (TRS) adopts amendments to §§29.1, 29.2, 29.8, 29.9, 29.13, and 29.15. Sections 29.2 and 29.8 are adopted with changes to the proposed text as published in the August 8, 1989, issue of the *Texas Register* (14 TexReg 3871). Sections 29.1, 29.9, 29.13, and 29.15 are adopted without changes and will not be republished.

The changes in the sections are adopted to correct a typographical error, change a statutory reference as a result of recodification of the teacher retirement statutes, and implement recent statutory amendments affecting age and service requirements, retirement payment plans, and survivor benefits. The proposed text of §29.8(c)(2) was changed to correct a typographical error, and the proposed text of §29.8(c) was changed in order to make it consistent with the statutory lan-

guage requiring payment of the increased annuity starting with the payment which should have been made after the beneficiary's death.

The amendments will allow TRS to implement new statutory changes providing better benefits for TRS members, such as providing full retirement benefits at age 55 after 30 years of service and providing retirement benefits to a member after five years of service when members reach the required age. They will also allow TRS to implement the Option 1 or 2 pop-up feature, which will cause the annuity of a member who retired under Option 1 or 2 to increase to the standard annuity if the designated beneficiary predeceases the retiree, to increase the lump sum survivor benefits form $2,500 to $10,000 for a retiree's beneficiary, and to have a correct statutory reference in the rules.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Title 110B, §35.102, which provide board of trustees of the Teacher Retirement System with the authority to adopt rules for membership eligibility, administer the funds of the retirement system, and conduct its business; §34.202(a)-(d) and (f), which provides for new age and years of service requirements., §34.501,which provides for survivor benefits for retirees; and §34.204, which provides for the pop-up feature for Option 1 and 2 annuities.

§29.2. Age and Service Requirements for Service Retirement. Service retirement benefits are payable according to the following schedule. See §29.3 of this title (relating to Standard Annuity) for computation of standard annuity, §29.7 of this title (relating to Minimum Service Retirement Benefits) for minimum benefits, and §29.8(b) of this title (relating to Retirement Payment Plans) for optional reduced benefits. All retired members are covered by survivor benefits. The following is a list of length of service, age, and benefits.

(1) Normal age retirement.

(A) 30 years or more-55: the larger of a standard annuity or a minimum benefit;

(B) 20 years through 29 years-60: the larger of a standard annuity or a minimum benefit;

(C) five years through 19 years-65: the larger of a standard annuity or a minimum benefit.

(2) Early age retirement.

(A) five years through 19 years-between 55 and 65: the larger of a standard annuity or a minimum benefit reduced from age 65;

(B) (No change.)

(C) 30 years or more-any age below 55: the larger of a standard annuity or a minimum benefit reduced from age 55.

§29.8. Retirement Payment Plans

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

(c) For Option 1 and for Option 2, if the beneficiary predeceases the retiree, the retiree's annuity will be increased (pop-up) to the standard service annuity that the retiree would otherwise be entitled to receive if the retiree had not selected Option 1 or 2 but had selected the standard annuity. The standard annuity shall be adjusted by the early age reduction factor in effect at the time of retirement if the member retired under the early age retirement provisions. The standard annuity shall also be adjusted for any post retirement increases in retirement benefits authorized by law for the standard annuity after the date of retirement.

(1) The increased annuity will begin with the first monthly payment which should have been made to the retiree following the month in which the beneficiary's death occurs.

(2) The retiree shall promptly notify TRS of the death of the beneficiary and submit a certified copy of the beneficiary's death certificate or other adequate proof of death to TRS. In the event that the retiree fails to notify TRS promptly of the death of the beneficiary, TRS shall continue to pay the reduced annuity to the retiree until properly notified of the beneficiary's death. Any payment for past months in which the retiree could have been receiving the standard annuity shall be made in a lump sum with the first monthly payment after the month in which notice is received. No interest shall be paid with any lump sum payment.

(d) Subsection (c) of this section applies:

(1) to members who retire after August 31, 1989; and

(2) to members who retired under Option 1 or 2 after April 30, 1989, and who elect in writing no later than September 30, 1989, to receive an annuity reduced as necessary to implement the pop-up feature in accordance with actuarial tables effective September 1, 1989.

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

Issued in Austin, Texas on September 6, 1989.

TRD-8908338 Bruce Hineman
Executive Secretary
Teacher Retirement System of Texas

Effective date: September 29, 1989

Proposal publication date: August 8, 1989

For further information, please call: (512) 397-6400

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Chapter 47. Qualified Domestic Relations Orders

• 34 TAC §§47.1-47.10, 47.13-47.16

The Teacher Retirement System of Texas (TRS) adopts a new §§47.1-47.10. Sections 47.10 and 47.15, are adopted with changes to the proposed text as published in the August 8, 1989, issue of the *Texas Register* (14 TexReg 3873). Sections 47.1-47.9, 47.13, 47.14, and 47.16 are adopted without changes and will not be republished. Sections 47.11 and 47.12 have been automatically withdrawn, and the notice of withdrawal appears elsewhere in this issue of the *Texas Register*.

The new sections are adopted to reflect recent statutory amendments which require TRS to make direct payment of benefits awarded by a court to a nonmember when a domestic relations order meets the statutory criteria. The proposed text of §47.10(2)(B) was modified to clarify the applicability of a criterion when the member has already retired without an early age reduction. The proposed text of §47.10(3)(A) and (B) was modified to eliminate certain exceptions to the requirement of the rule. The exceptions were eliminated because of the possibility of revocation of retirement and re-retirement. The proposed text of §47.10(7) was modified to make it applicable to all amounts payable by TRS, thus including not only benefits but also refund of contributions. The proposed text of §47.10(8) was modified to clarify that a lump-sum payment is available when the TRS benefit is payable in a lump sum. The proposed text of §47.15 was changed to delete a reference to a proposed section that was withdrawn.

The new sections will allow TRS to make direct payment to a nonmember of the nonmember's interest in the amounts payable by TRS if the interest is awarded to the nonmember through a qualified domestic relations order, which must meet the requirements of the statute and these new sections.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Title 110B, §76. 003(n), which authorize the TRS board of trustees to promulgate rules it deems necessary to implement the provisions of the qualified domestic relations order statute.

§47.10. Determination of Whether an Order is a Qualified Domestic Relations Order. TRS shall apply the statutory criteria to determine whether an order is a qualified domestic relations order. The following provisions shall also be used in making the determination:

(1) The order must provide for each possible distribution by the retirement system for the member or retiree. This requirement may be met by a provision that:

(A) awards a specified or clearly determinable percentage, rather than an amount, of each distribution by TRS based on the participant's account; or

(B) awards all benefits not specified to the participant to be paid in accordance with plan provisions.

(2) The order must provide for reducing the amount awarded in the event of reduction of the benefit based on the age of the participant, each reduction to be in proportion to the factors used to reduce the standard annuity on the basis of the participant's age below normal retirement age. This requirement shall not apply if:

(A) the order awards a percentage of whatever monthly benefit is payable after all elections have been made by the member, or in the event of death benefits, by the designated beneficiary;

(B) the member or retiree has reached normal retirement age and, if a retiree, has retired without any reduction for early age retirement at the time of the determination as to whether the order is a qualified domestic relations order; or

(C) the order reflects that the retiree is or will be receiving retirement benefits reduced for early age retirement and the award to the alternate payee has considered the reduced amount of the retiree's annuity payments.

(3) The order may not:

(A) purport to require the designation by the participant of a particular person as the recipient of benefits in the event of a member's or annuitant's death;

(B) purport to require the selection of a particular benefit payment plan or benefit option;

(C) require any action on the part of the retirement system contrary to its governing statutes or plan provisions other than the direct payment of the benefit awarded to an alternate payee; or

(D) award any interest in distributions by the retirement system contingent on any condition other than those conditions resulting in the liability of the retirement system for payment under its plan provision.

(4) A qualified domestic relations order may not provide for the award of a specific amount of a benefit, rather than a percentage of this benefit, to an alternate payee unless the order also provides for a reduction of the amount awarded in the event that the benefits available to the retiree or member are reduced by law. This requirement shall not apply to benefit waivers executed by the participant.

(5) If the order intends to award the participant the full amount of any future benefit increases that are provided or required by the legislature, the order must explicitly state such. TRS, its board of trustees, and its officers and employees shall not be liable for making payment of part of any future benefit increases to any person if the order so requires or if the order awards a percentage of benefits payable and does not explicitly state that future benefit increases are awarded solely and completely to the plan participant.

(6) An order that purports to give to someone other than a member the right to designate a beneficiary or choose any retirement plan available from TRS, is one that requires an action contrary to TRS' governing statute and plan provisions and therefore is not a qualified domestic relations order.

(7) An order that attaches a lien to any part of amounts payable with respect to a member or retiree is one that requires an action contrary to TRS' governing statute and plan provisions and therefore is not a qualified domestic relations order.

(8) An order that awards an alternate payee a portion of the benefits payable with respect to a member or retiree under TRS and that purports to require TRS to make a lump sum payment of the awarded portion of the benefits to the alternate payee that are not payable in a lump sum, is one that requires action contrary to TRS' governing statute and plan provisions and therefore is not a qualified domestic relations order.

(9) An order shall specify the date of the marriage.

(10) An order that allocates the participant's investment in contract in a manner not in compliance with any requirements of the Internal Revenue Code and applicable regulations, is not a qualified domestic relations order. An order that does not allocate a participant's investment in contract may be determined to be a qualified domestic relations order if it provides sufficient information for TRS to make the allocation in accordance with applicable laws and regulations.

(11) An order that purports to require a member to terminate employment, to withdraw contributions, or to apply for retirement, is not a qualified domestic relations order.

§47.15. Death of an Alternate Payee. The death of an alternate payee shall terminate the interest of that payee in TRS. Upon proof of death of the alternate payee, the member, retiree, or beneficiary shall be entitled to receive the full amount of benefits payable in the future to the member, retiree, or beneficiary without reduction for the amount previously being paid to the alternate payee. This section does not affect the manner of payment of benefits to the member, retiree, or beneficiary.

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

Issued in Austin, Texas on September 8, 1989.

TRD-8908336

Bruce Hineman
Executive Secretary
Teacher Retirement System of Texas

Effective date: September 29, 1989

Proposal publication date: August 8, 1989

For further information, please call: (512) 397-6400

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Part IV. Employees Retirement System

Chapter 81. Insurance

• 34 TAC §81.7

The Employees Retirement System of Texas adopts an amendment to §81.7, with changes to the proposed text as published in the July 18, 1989, issue of the *Texas Register* (14 TexReg 52).

The amendment clarifies health coverage options available for participants in the Texas Employees Uniform Group Insurance Program (UGIP) who are enrolled in an HMO whose contract is cancelled during the year or not renewed for the next fiscal year. Amending this section will allow participants in UGIP to request a change or changes in coverage during the annual limited enrollment period with such change(s) to be effective September 1, 1989.

The amendment requires that participants be advised of their options when an HMO contract is cancelled and gives them an opportunity to enroll in a health program under the newly adopted rule. The amendment also requires that participants be advised of the right to make changes in coverage and the changes can be accomplished with less paper work and greater administrative efficiency.

It was commented that subsection (e)(4)(C) does not address what happens to dependent coverage. It was also commented that subsection (e)(4)(D) is written in such a way that it appears to allow employees to get around the pre-existing condition clause.

The State Department of Highways and Public Transportation commented against the adoption of this amendment.

The agency agrees with these comments; therefore the amendment has been changed to reflect the comments made.

The amendments are adopted under the Texas Insurance Code, Article 3.50-2, §4, which provides the trustees of the Employees Retirement System of Texas with the authority to promulgate all rules, regulations, plans, procedures, and orders reasonably neces-

sary to implement and carry out the purposes and provisions of the Texas Employees Uniform Group Insurance Benefits Act.

§81.7. Enrollment and Participation.

(a)-(d) (No change.)

(e) Special rules for additional or alternative coverages.

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

(4) An employee, retiree, or other eligible participant in the Uniform Group Insurance Program enrolled in an HMO, whose contract is not renewed for the next fiscal year will be eligible to make one of the following elections:

(A) change to another approved HMO for which the participant is eligible by completing an application during the annual limited enrollment period. The effective date of the change in coverage will be September 1;

(B) enroll in the insured health plan without evidence of insurability by completing an application during the annual limited enrollment period, if the participant is eligible to enroll in another approved HMO. The pre-existing conditions exclusion will apply, as defined in subsection (g) of this section. The effective date of the change in coverage for the employee/retiree shall be September 1. Eligible dependents shall be subject to evidence of insurability requirements. The pre-existing conditions exclusion will apply as defined in subsection (g) of this section. The effective date of coverage for dependents may be either September 1 or the first day of the month following the date approval is received by the employing agency;

(C) enroll in the insured health plan without evidence of insurability by completing an application during the annual limited enrollment period, if the participant is not eligible to enroll in another approved HMO (an approved HMO is not available to the participant). Eligible dependents shall not be subject to evidence of insurability requirements. The pre-existing conditions exclusion will not apply except that, if the participant's or dependent's enrollment in the insured health plan occurs within 12 months of the initial date of coverage under the current term of employment or retirement, the exclusion will apply for the remainder of such 12-month period. The effective date of the change in coverage will be September 1; or

(D) if the participant does not make one of the elections, as defined in subsection (e)(4)(A)-(C) of this section, he or she will automatically be enrolled in the insured health plan with basic health coverage. Evidence of insurability and pre-existing conditions exclusion for the participant and the participant's dependents will apply as referenced in subsection (e)(4)(B) of this section.

(5) An employee, retiree, or other eligible Uniform Group Insurance Program participant enrolled in an HMO whose contract is terminated during the fiscal year or which fails to maintain compliance with the letter of agreement will be eligible to make one of the following elections:

(A) change to another approved HMO for which the participant is eligible. The effective date of the change in coverage will be determined by the trustee;

(B) enroll in the insured health plan without evidence of insurability if the participant is not eligible to enroll in another approved HMO. Application of the pre-existing conditions exclusion and the effective date of the change in coverage will be determined by the trustee; or

(C) if a participant is eligible to enroll in another HMO, the trustee may allow the participant to enroll in the insured health plan without evidence of insurability and the pre-existing conditions exclusion. The effective date of the change in coverage will be determined by the trustee.

(f) Changes in coverage beyond the first 31 days of eligibility.

(1)-(8) (No change.)

(9) Notwithstanding the effective dates of coverages, as defined in paragraphs (1)-(8) of this subsection, an employee, retiree or other eligible participant in the Uniform Group Insurance Program may complete an application or applications during the annual limited enrollment period to make coverage changes, as determined by the trustee, to be effective September 1.

(g)-(i) (No change.)

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

Issued in Austin, Texas on September 8, 1989.

TRD-8908333 Clayton T. Garrison
Executive Director
Employees Retirement
System of Texas

Effective date: September 29, 1989

Proposal publication date: July 18, 1989

For further information, please call: (512) 476-6431, ext. 213

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Chapter 85. Flexible Benefits

• **34 TAC §§85.1, 85.3, 85.5**

The Employees Retirement System of Texas adopts amendments to §§85.1, 85. 3, and 85.5, without changes to the proposed text as published in the *July* 18, 1989, issue of the *Texas Register* (14 TexReg 52).

The amendments are to comply with Senate Bill 815 (71st Legislature, Regular Session, 1989) which amended subsection (c), §11 and subsection (d), §14, Texas Employees Uniform Group Insurance Benefits Act, (Insurance Code, Article 3. 50-2).

The amendment to §85.3 will permit employees who execute a FY 1990 plan year salary reduction agreement enrolling in premium conversion to automatically participate in subsequent plan years. The amendments to §85.1 and §85.5, authorize all optional term life insurance to be included in the Premium Conversion Plan.

No comments were received regarding adoption of the amendments.

The amendments(s) are adopted under the Texas Insurance Code, Article 3.50-2, §4(k) which provides The Trustees of the Employees Retirement System of Texas with the authority to promulgate all rules and regulations necessary to implement and to administer a Flexible Benefits (Cafeteria Plan) Program for state employees.

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

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

TRD-8908250 Clayton T. Garrison
Executive Director
Employees Retirement
System of Texas

Effective date: September 28, 1989

Proposal publication date: July 18, 1989

For further information, please call: (512) 476-6431, ext. 213

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TITLE 40. SOCIAL SERVICES AND ASSITANCE

Part I. Texas Department of Human Services

Chapter 41. Utilization Review

Waiver for Utilization Review Procedures

• **40 TAC §41.102**

The Texas Department of Human Services (DHS) adopts an amendment to §41. 102, without changes to the proposed text as published in the August 4, 1989, issue of the *Texas Register* (14 TexReg 3800).

The purpose of the amendment is to allow DHS to increase the number of reviews for a specific provider that exceeds a diagnostic related group (DRG) error threshold without having to intensify reviews for all hospitals. This will avoid the possibility of unnecessarily intensifying hospital admission reviews for all providers because of the performance of a

law. The amendment will also change the sampling methodology for hospitals reimbursed under the Tax Equity and Fiscal Responsibility Act (TEFRA) principles. This change will allow DHS to select a 15% random sample of cases from each hospital instead of selecting cases on the basis of a stastical sampling formula.

The amendment will function to more clearly define an equitable and efficient sampling methodology.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

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

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

TRD-8908247 Ron Lindsey
Commissioner
Texas Department of
Human Services

Effective date: September 29, 1989.

Proposal publication date: August 4, 1989.

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

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Chapter 48. Community Care for Aged and Disabled

• 40 TAC §48.2914

The Texas Department of Human Services (DHS) adopts an amendment to §48. 2914 with changes to the proposed text as published in the May 30, 1989, issue of the *Texas Register* (14 TexReg 2606).

The amendment clarifies eligibility for special services to handicapped adults and requires that successful applicants have characteristics that match the program services.

The amendment will function by screening applicants so that clients' needs will be appropriately met and services will not be misdirected.

No comments were received regarding adoption of the amendment. The department, however, has initiated a change to the text to clarify the title of the program.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§48.2914. Special Services to Handicapped Adults. To be eligible for special services to handicapped adults, clients must score at least nine on the client needs assessment questionnaire. Applicants may be admitted to the attendant services program only if their needs do not exceed the program's available services.

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

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

TRD-8908248 Ron Lindsey
Commissioner
Texas Department of
Human Services

Effective date: October 16, 1989.

Proposal publication date: May 30, 1989.

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

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State Board of Insurance Exempt Filing

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

(Editor's note: As required by the Insurance Code, Article 5.96 and Article 5.97, the Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act, and the final actions printed in this section have not been previously published as proposals.

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the State Board of Insurance, 1110 San Jacinto Street, Austin.)

The State Board of Insurance has approved a filing by Insurance Services Offices, Incorporated reaffirming the current rates for Owners and Contractors Protective Liability (OCP) Coverage in the Commercial Lines Manual–Division Six, in compliance with the Texas Insurance Code, Article 5.15, paragraph (h).

This filing is approved to become effective October 1, 1989, in accordance with the following rule of application. These changes are applicable to all policies effective on or after October 1, 1989. No policy effective prior to October 1, 1989, shall be endorsed, canceled, or rewritten to take advantage of or to avoid the application of these changes except at the request of the insured and using the cancellation procedures applying on the date of such request.

This notification is filed pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedures and Texas Register Act.

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

Issued in Austin, Texas on September 7, 1989.

TRD-8908233 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: September 7, 1989

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

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The State Board of Insurance has approved a filing by Insurance Services Offices, Incorporated reaffirming the existing rates for Farm Liability and Farm Inland Marine in the Commercial Lines Manual–Division Four, in compliance with the Texas Insurance Code, Article 5.15, paragraph (h).

This filing is approved to become effective October 1, 1989, in accordance with the following rule of application. These changes are applicable to all policies effective on or after October 1, 1989. No policy effective prior to October 1, 1989, shall be endorsed, cancelled, or rewritten to take advantage of or to avoid the application of these changes except at the request of the insured and using the cancellation procedures applying on the date of such request.

This notification is filed pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedures and Texas Register Act.

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

Issued in Austin, Texas on September 7, 1989.

TRD-8908234 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: September 7, 1989

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

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Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

Texas Department of Agriculture

Wednesday, September 20, 1989, 11 a.m. The Texas Department of Agriculture will meet at the District Office, 2626 South Loop West, Houston. According to the agenda, the administrative hearing to: show cause for cancellation of cash dealer license held by Edward Flores, Jr.

Contact: Imelda M. Escobar, P.O. Box 12847, Austin, Texas 78711, (512) 463-7682

Filed: September 8, 1989, 10:05 a.m.

TRD-8908281

Wednesday, September 20, 1989, 1 p.m. The Texas Department of Agriculture will meet at the District Office, 2626 South Loop West, Houston. According to the agenda, the administrative hearing to review: alleged violation of Texas Agriculture Code, §103.001 by Magnolia Fruit and Produce Co., Inc., Daniel J. Faour and Anthony J. Faour as petitioned by G & D Vegetable Company.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: September 8, 1989, 10:05 a.m.

TRD-8908280

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Texas Commission on Alcohol and Drug Abuse

Tuesday, September 19, 1989, 9 a.m. The Board of Commissioners of the Texas Commission on Alcohol and Drug Abuse will meet in Room 104, John H. Reagan Office Building, Austin. According to the agenda, the board will approve minutes from June 20, 1989; hear public comment; proposed revision to advisory council bylaws and appointment of new members; appeal from Dunbar Neighborhood Council, Inc. on TCADA award #04-57-892-UCA; appeal from land manor regarding TCADA's funding criteria; governing body policy; update on Open Meetings Act/executive sessions taped or certified agenda prepared; proposed revisions to Chapter 141-general provisions rules; legislative appropriations request for FY 1992-1993; reports on comprehensive program services development; status report/discussion of proposed revisions to funding process; action on licensure rules; proposed revision to board of inquiry policy; chairman's and executive director's report.

Contact: Becky Davis or Larry Goodman, 1705 Guadalupe, Austin, Texas, (512) 463-5510.

Filed: September 11, 1989, 9:53 a.m.

TRD-8908362

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State Bar of Texas

September 15-17, 1989, 2:30 p.m. The Supreme Court/Executive Committee of the State Bar of Texas will meet at Barton Creek Conference Center, Austin. According to the agenda, the workshop discussions of proposed grievance procedures, integrated bar, sunset process, budget, dues, new law schools, law professors bar membership, and simplification of rules to ameliorate high cost of litigation.

Contact: Paula Welch, 1414 Colorado Street, Austin, Texas 78701, (512) 463-1451.

Filed: September 7, 1989, 3:52 p.m.

TRD-8908263

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Texas School for the Blind and Visually Impaired

Friday, September 22, 1989, 10 a.m. The Board of Trustees, Personnel, Budget, Curriculum Committees of the Texas School for the Blind and Visually Impaired will meet at 1100 West 45th Street, Austin. According to the agenda summary, the committees will discuss personnel, financial and curriculum matters.

Contact: Cyral A. Miller, 1100 West 45th Street, Austin, Texas 78756, (512) 454-8631, ext. 233.

Filed: September 8, 1989, 5:15 p.m.

TRD-8908356

Friday, September 22, 1989, 12:30 p.m. The Board of Trustees of the Texas School for the Blind and Visually Impaired will meet at 1100 West 45th Street, Austin. According to the agenda summary, the board will hear individual or committees wishing to make a report or request; approve minutes of June 1, 1989, meeting; report and present business requiring board approval; business for informational purposes; report of special committees and reports of discussion from board members.

Contact: Cyral A. Miller, 1100 West 45th street, Austin, Texas 78756, (512) 454-8631, ext. 233.

Filed: September 8, 1989, 5:15 p.m.

TRD-8908357

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Texas Bond Review Board

Wednesday, September 13, 199 10 a.m. The College Opportunity Act Committee of the Texas Bond Review Board for an emergency meeting in the Senate Reception Room, State Capitol, Austin. According to the agenda, the committee elected a chairman; adopted temporary rules and guidelines; considered designation of Veterans Land Board current refunding bonds as college savings bonds; and other business. The emergency status was necessary because of scheudling conflicts of the committee members and the necessity for this action prior to the regular bond review board meeting scheduled for September 21, 1989.

Contact: Nancy Hagquist, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-5025.

Filed: September 7, 1989, 2:06 p.m.

TRD-8908244

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Texas Catastrophe Property Insurance Association

Tuesday, September 19, 1989, 9 a.m. The

Board of Directors of the Texas Catastrophe Property Insurance Association will meet in the Key Largo Resort Hotel, 5400 Seawall Boulevard, Galveston. According to the agenda, the board will explain open meetings law impact on/ramifications to TCPIA board meetings Jay Thompson; approve minutes of June, 1989, meeting; chairman's, secretary/treasurer, manager's underwriting, director's loss manager's, and counsel's, and I.I.I. reports; old business; agent handbook; guaranty fund statement on TCPIA policies; application revisions and plan of operations amendments; inspection program, Padre Isles/Galveston F airac update; new business; mobile home inspections, loss run for SBI investment yield program; companies in receivership; participation committee report-J. Mulady.

Contact: James A. Douglass, 2801 South IH 35, Austin, Texas, (512) 444-9611.

Filed: September 8, 1989, 1:40 p.m.

TRD-8908306

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Texas Department of Criminal Justice

Tuesday, September 12, 1989, 9 a.m. The Board of the Texas Department of Criminal Justice met for an emergency meeting in Rooms 105 and 106, John H. Reagan Building, 105 West 15th Street, Austin. According to the revised agenda summary, the agenda was amended to add the following items: election of officers, approval of policy regarding inmate defense counsel program, change of industrial program on Michael unit. The emergency status was necessary because the additional topics necessitating board action to initiate programs.

Contact: James A. Lynbaugh, P.O. Box 99, Huntsville, Texas 77342-0099, (409) 294-2101.

Filed: September 11, 1989, 10:45 a.m.

TRD-8908366

Tuesday, September 12, 1989, 9 a.m. The Board of the Texas Department of Criminal Justice Board met for an emergency meeting in the Senate Chamber, State Capitol, Austin. According to the revised agenda, the board gives notice herewith of change of location of previously announced meeting from the John H. Reagan Building, Austin, to the Senate Chambers, Capitol, Austin. The emergency status was necessary because of need for additional seating for public.

Contact: James A. Lynaugh, P.O. Box 99, Huntsville, Texas 77342-0099, (409) 294-2101.

Filed: September 11, 1989, 1:50 p.m.

TRD-8908383

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Interagency Council on Early Childhood Intervention

Tuesday, September 19, 1989, 8:30 a.m. The Interagency Council on Early Childhood Intervention will meet in Room M-653, Texas Department of Health, 1100 West 49th Street, Austin. According to the agenda, the council will hear public comments; approve minutes of previous meeting; appoint new advisory committee member; and consider: federal part H award; moving Department of Health staff; fiscal year 1990 budget; research and evaluation award; operational procedures; cosponsor of early childhood award; state auditor's response to request for classification study of administrator's position; reallocating funds for services in Collin County; request for additional funds by local program; rule redefining "equipment".

Contact: Mary Elder, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 465-2671.

Filed: September 7, 1989, 4:05 p.m.

TRD-8908273

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Texas Higher Education Coordinating Board

Thursday, September 28, 1989, 10:30 a.m. The Administrative Council of the Texas Higher Education Coordinating Board Administrative Council will meet in Board Room 255, Bevington A. Reed Building, 200 East Riverside Drive, Austin. According to the agenda summary, the council will consider matters relating to the higher education insurance program.

Contact: Kathy Lewis, P.O. Box 12788, Austin, Texas 78711.

Filed: September 12, 1989, 9:57 a.m.

TRD-8908402

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Employees Retirement System of Texas

Wednesday, September 20, 1989, 9 a.m. The Group Insurance Committee of the Employees Retirement System of Texas will meet in Room 1420-30, 4900 North Lamar, Austin. According to the agenda summary, the committee will recognize visitors and guests; approve minutes from previous meeting; elect officers for FY 1990; presentations from dental insurance carriers; ERS staff reports; discuss prescription drug card program and pharmacy negotiations by Blue Cross and Blue Shield of Texas, Inc.; HMO standardization of benefits; adopt bylaws, rules, and procedures; and other related insurance matters.

Contact: James W. Sarver, 18th & Brazos, Austin, Texas 78701, (512) 476-6431, ext. 217.

Filed: September 11, 1989, 10:14 a.m.

TRD-8908365

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Texas Employment Commission

Tuesday, September 19, 1989, 2 p.m. the Texas Employment Commission will meet in Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda summary, prior meeting notes; executive session on TEC and Trucks Stops of America vs. Ruben S. Almanza; actions if any resulting from executive session; internal procedures of commission appeals; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on Docket No. 38; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: September 11, 1989, 4:10 p.m.

TRD-8908397

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Texas Department of Health

Friday, September 15, 1989, 4 p.m. The Public Health Promotion Committee of the Texas Department will meet in the Jim Hogg Parlor, Driskill Hotel, 6th and Brazos, Austin. According to the agenda summary, the committee will consider proposed rules concerning state agency health fitness program plans, signs relating to the sale or provision of tobacco to persons under age 18, and public information plan.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: September 7, 1989, 4:08 p.m.

TRD-8908269

Friday, September 15, 1989, 5 p.m. The Environmental Health Committee of the Texas Department will meet in the Jim Hogg Parlor, Driskill Hotel, 6th and Brazos, Austin. According to the agenda summary, the committee will discuss appointment to asbestos advisory committee, appointments to municipal solid waste management and resource recovery advisory council, and registration of riding stables.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: September 7, 1989, 4:08 p.m.

TRD-8908268

Saturday, September 16, 1989, 7:30 a.m. The Executive Committee of the Texas Board of Health will meet in the Driskill Hotel Dining Room, Driskill Hotel, 6th and Brazos, Austin. According to the agenda summary, the committee will discuss proposed policies and procedures of personnel

committee, and items of procedure for upcoming board of health meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: September 8, 1989, 4:09 p.m.

TRD-8908349

Saturday, September 16, 1989, 8 a.m. The Alternate Care Commmittee of the Texas Department of Health Alternate Care Committee will meet in Room M-721, 1100 West 49th Street, Austin. According to the agenda summary, the committee will consider emergency and proposed rules on health maintenance organizations; proposed rules on home health agencies and home health medication aides, kidney health care, professional counsellors, massage therapists and massage establishments, registry of health related professionals, home dialysis technicians; final rules concerning athletic trainers, vital records.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: September 8, 1989, 4:08 p.m.

TRD-8908348

Saturday, September 16, 1989, 8:30 a.m. The Health Disease Control Committee of the Texas Department will meet in Room M-741, 1100 West 49th Street, Austin. According to the agenda summary, the committee will consider proposed rules on control of communicable and sexually transmitted diseases, and emergency and proposed rules on Texas HIV medication program.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: September 8, 1989, 4:09 p.m.

TRD-8908347

Saturday, September 16, 1989, 9 a.m. The Chronically Ill and Disabled Children's Services and Maternal and Child Health Committee of the Texas Department of Health will meet in Room M-652, 1100 West 49th Street, Austin. According to the agenda summary, the committee will consider chronically ill and disabled children's services program (CIDS) proposal to add neonatal/pediatric acquired immune deficiency syndrome as a pilot study; CIDC proposed rule on medical condition coverage; CIDC advisory committee recommendation on Cook-Fort Worth Children's Medical center; and Driscoll Foundation Children's Hospital in Corpus Christi; appointments to primary health care services program advisory committee; fiscal update on CIDC program.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: September 8, 1989, 4:10 p.m.

TRD-8908344

Saturday, September 16, 1989, 9 a.m. The Nursing Homes Committee of the Texas Department of Health will meet in Room M-752, 1100 West 49th Street, Austin. According to the agenda summary, the committee will consider proposed rules on medication aides, certification and termination of certification of long term facilities, administrative penalties for nursing homes; legislative amendment to Texas Civil Statutes, Article 4442c, to allow students (medication aides, RN, and LVN) to administer medications as part of clinical trainings.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: September 8, 1989, 4:10 p.m.

TRD-8908345

Saturday, September 16, 1989, 10 a.m. The Personnel Committee of the Texas Department of Health will meet in Room M-721, 1100 West 49th Street, Austin. According to the agenda summary, the committee will consider appointments to asbestos advisory committee, primary health care services program advisory committee, municipal solid waste management and resource recovery advisory council; and proposed policies and procedures for personnel committee.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: September 8, 1989, 4:10 p.m.

TRD-8908351

Saturday, September 16, 1989, 11 a.m. The Legislative Committee of the Texas Department of Health will meet in Room M-652, 1100 West 49th Street, Austin. According to the agenda summary, the committee will consider proposed legislation for second called special session, 71st Legislature.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: September 8, 1989, 4:10 p.m.

TRD-8908346

Saturday, September 16, 1989, 11:30 a.m. The Texas Board of Health of the Texas Department of Health will meet in Room M-739, 1100 West 49th Street, Austin. According to the agenda summary, the committee will consider approval minutes of previous meeting; hear commissioner's update and AIDS report; emergency and proposed rules (health maintenance organizations; Texas HIV medication program); proposed rules (delinquent corporate franchise taxes; kidney health; professional counsellors; home health agencies and home health medication aides; massage therapists and massage establishments; registry of health-related professionals; medication aides; state agency health fitness program; control of communicable and sexually transmitted diseases; chronically ill and disabled children's services; final rules (athletic trainers, vital records, certification and termination of certification of long term care facilities); neonatal/pediatric acquired immune deficiency syndrome as pilot study; CIDC committee recommendations on Cook-Fort Worth Children's Medical Center and Driscoll Foundation Children's Hospital in Corpus Christi; committee reports and appointments; proposed legislation for special session; announcements and comments.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: September 8, 1989, 4:10 p.m.

TRD-8908343

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Texas Department of Human Services

Tuesday, September 19, 1989 1:30 p.m. The Adolescent Pregnancy and Parenthood Advisory Committee of the Texas Department of Human Services will meet in the Conference Room 1W, First Floor, West Tower, 701 West 51st Street, Austin. According to the agenda, the committee will hear opening remarks; approve minutes; by-law revision; presentation of Senate Bill 151; education program for pregnant or parenting students implementation; APPAC workplan; establish subcommittee and develop charge; program updates; establish next meeting date.

Contact: Liz Silbernagel, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-4163.

Filed: September 11, 1989, 10:53 a.m.

TRD-8908367

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State Board of Insurance

Tuesday, September 19, 1989, 9 a.m. The State Board of Insurance Commissioner's Hearing Section will meet in Room 353, 1110 San Jacinto, Austin. According to the agenda, the commissioner's hearing section will conduct a public hearing to consider Docket No. 10505-- applications of Annice Harrington, Irving, Texas, for a Group I, legal reserve life insurance agent's license.

Contact: Wendy L. Ingham, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: September 11, 1989, 1:51 p.m.

TRD-8908376

Tuesday, September 19, 1989, 1:30 p.m. The State Board of Insurance Commissioner's Hearing Section will meet in Room

460, 1110 San Jacinto, Austin. According to the agenda, the commissioner's hearing section will conduct a hearing on Docket No. 10518--application of Ford Motor Company to acquire control of Associates Financial Life Insurance Company of Texas, Irving, Texas and Associates Lloyds Insurance Company, Irving, Texas.

Contact:O. A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: September 11, 1989, 1:51 p.m.

TRD-8908377

Wednesday, September 20, 1989, 9 a.m. The State Board of Insurance Commissioner's Hearing Section will meet in Room 353, 1110 San Jacinto, Austin. According to the agenda, the commissioner's hearing section will reopen a public hearing on Docket 10361--to consider whether disciplinary action should be taken against Ernest R. Gamez, San Antonio, Texas who holds a Group I, legal reserve life insurance agent's license and a local recording agent's license issued by the State Board of Insurance.

Contact: Lisa Lyons, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: September 11, 199, 1:51 p.m.

TRD-8908378

Wednesday, September 20, 1989, 9 a.m. The State Board of Insurance Commissioner's Hearing Section will meet in Room 460, 1110 San Jacinto, Austin. According to the agenda, the commissioner's hearing section will conduct a pubic hearing on Docket No. 10516--consider the reinsurance agreement whereby Fruend Funeral Insurance Company, Cuero, Texas, will be reinsured by Texas Funeral Insurance Company, Austin, Texas.

Contact: O.A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: September 11, 1989, 1:50 p.m.

TRD-8908379

Wednesday, September 20, 1989, 1:30 p.m. The State Board of Insurance Commissioner's Hearing Section will meet in Room 460, 1110 San Jacinto, Austin. According to the agenda, the commissioner's hearing section will conduct a public hearing on Docket No. 10525--application of W.T. Insurance Holdings, Inc. to acquire control of great National Life Insurance Company, San Antonio, Texas.

Contact: Will McCann, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: September 11, 1989, 1:50 p.m.

TRD-8908380

Friday, September 22, 1989, 9 a.m. The State Board of Insurance Commissioner's Hearing Section will meet in Room 353, 1110 San Jacinto, Austin. According to the agenda, the commissioner;s hearing section will conduct a public hearing on Docket No. 10495--to consider whether disciplinary action should be taken against Roy Allen Harvey, Lubbock, Texas, who holds a Group I, legal reserve life insurance agent's license and a local recording agent's license issued by the State Board of Insurance.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: September 11, 1989, 1:50 p.m.

TRD-8908381

Friday, September 22, 1989, 1:30 p.m. The State Board of Insurance Commissioner's Hearing Section will meet in Room 460, 1110 San Jacinto, Austin. According to the agenda, the commissioner's hearing section will conduct a public hearing on Docket No. 10508--to consider whether disciplinary action should be taken against Joe Maldon Rice, Jr. doing business as Rice Insurance Agency, Pilot Point, Texas, who holds a Group I, legal reserve life insurance agent's license and a local recording agent's license issued by the State Board of Insurance.

Contact: Lisa Lyons, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: September 11, 1989, 1:51 p.m.

TRD-8908374

Friday, September 22, 1989, 1:30 p.m. The State Board of Insurance Commissioner's Hearing Section will meet in Room 353, 1110 San Jacinto, Austin. According to the agenda, the commissioner's hearing section will conduct a public hearing on Docket No. 10504--to consider whether disciplinary action should be taken against Dennis John Watters, Willow Park/Fort Worth, Texas, who holds a Group I, legal reserve life insurance agent's license, a local recording agent's license and a variable contract agent's license.

Contact: Wendy L. Ingham, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: September 11, 1989, 1:51 p.m.

TRD-8908375

Friday, September 22, 1989, 1:30 p.m. The State Board of Insurance Commissioner's Hearing Section will meet in Room 342, 1110 San Jacinto, Austin. According to the agenda, the commissioner's hearing section will conduct a public hearing on Docket No. 10494--to consider whether disciplinary action should be taken against Great America Life Insurance Company, Los Angeles, California, who holds a certificate of authority issued by the State Board of Insurance, State of Texas.

Contact: Earl Corbitt, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: September 11, 19889, 1:50 p.m.

TRD-8908382

Monday, September 25, 1989, 9 a.m. The State Board of Insurance Commissioner's Hearing Section will meet in Room 342, 1110 San Jacinto, Austin. According to the agenda, the commissioner's hearing section will conduct a public hearing on docket No. 10517--application for amendment to the articles of incorporation of American States Insurance Company of Texas, Dallas, Texas, increasing the authorized capital.

Contact: Lisa Lyons, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: September 11, 1989, 1:51 p.m.

TRD-8908373

Monday, Septer ber 25, 1989, 1:30 p.m. The State Board of Insurance Commissioner's Hearing Section will meet in Room 342, 1110 San Jacinto, Austin. According to the agenda, the commissioner's hearing section will conduct a public hearing on Docket No. 10527--to consider the reinsurance agreement whereby Southwest First Community Life Insurance company, Beeville, Texas, will be reinsured by Texas Savings Life Insurance Company, Austin, Texas.

Contact: O.A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: September 11, 1989,. 1:51 p.m.

TRD-89083372

Thursday, September 28, 1989, 9:30 a.m. The State Board of Insurance will meet in Room 414, State Insurance Building, 1110 San Jacinto, Austin. According to the agenda, the board will hold a public hearing to consider manual rules and amendments to the general basis schedules, adopted by the State Board of Insurance under the Texas Insurance Code, Article 5.96, including amendments to the key rate schedules therein, and other matters pertaining to the writing of fire and allied lines, commercial multi-peril, homeowners, and farm & ranch owners insurance.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: September 11, 1989, 2:13 p.m.

TRD-8908985

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Texas Board of Private Investigators and Private Security Agencies

Tuesday, September 19, 1989, 10 a.m. The Texas Board of Private Investigators

and Private Security Agencies will meet at The Worthington Hotel, 200 Main Street, Fort Worth. According to the agenda, the board will discuss approval of minutes; approval of staff action of new licenses; suspension orders; reinstatement orders; certificates for replacement managers; license terminations, revocations, denials, reprimands, requests for waiver of board rule; and other proposals for decision; discussion and adoption of agency operating budget for fiscal year 1990; update on automated services and/or conversation.

Contact: Clema D. Sanders, 313 East Anderson Lane, Austin, Texas.

Filed: September 8, 1989, 2:24 p.m.

TRD-8908328

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Texas Commission on Jail Standards

Wednesday, September 27, 1989, 9 a.m. The Texas Commission on Jail Standards will meet in Room 100, Employees Retirement Building, 18th and Brazos, Austin. According to the agenda summary, the commission will read and approve minutes of July 19, 1989, meeting; introduce new commission member, Florence Shaprio; old business: Camp, Delta, Harrison, Jefferson, Madison, Williamson Counties--active remedial orders, change to standards, completed jail projects, environmental smoke, jail population report, smoke and fume removal study; new business: Angelina, Liberty, Karnes, Hardin, Smith, Webb Counties--implementation of House Bill 2335, proposed development of private facilities, application for variances, directors report; other business; and executive session.

Contact: Jack E. Crump, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

Filed: September 11, 1989, 10:40 a.m.

TRD-8908368

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Texas Low-Level Radioactive Waste Disposal Authority

Wednesday, September 20, 1989, 10 a.m. The Board of Directors of the Texas Low-Level Radioactive Waste Disposal Authority will meet in Suite 300, 7701 North Lamar Boulevard, Austin. According to the agenda, the board will discuss Fort Hancock site archaeology presentation-U.T. El Paso Anthropology Department; Fort Hancock site ecology presentation-Texas Tech University Range and Wildlife Science Department.

Contact: L. R. Jacobi Jr., 7701 North Lamar Boulevard, Suite 300, Austin, Texas (512) 451-5292.

Filed: September 8, 1989, 2:38 p.m.

TRD-8908329

Tuesday, September 26, 1989, 10 a.m. The Board of Directors, Public Information Committee of the Texas Low-Level Radioactive Waste Disposal Authority will meet at Texas Medical Imaging Center, 3465 West Alabama, Houston. According to the agenda, the board will discuss fiscal year 1990 public information plan; fiscal year 1990 public information budget.

Contact: L. R. Jacobi Jr., 7701 North Lamar Boulevard, Suite 300, Austin, Texas (512) 451-5292.

Filed: September 8, 1989, 2:38 p.m.

TRD-8908330

Tuesday, October 3, 1989, 9 a.m. The Board of Directors of the Texas Low-Level Radioactive Waste Disposal Authority will meet in Room 302, Texas A&M University, Rudder Tower, College Station. According to the agenda, the board will discuss Fort Hancock site Meteorology presentation-Texas A&M University Meteorology Department; Fort Hancock site Sociology presentation-Texas A&M University Rural Sociology Department; Fort Hancock site Environmental Monitoring presentation-TLLRWDA staff.

Contact: L. R. Jacobi Jr., 7701 North Lamar Boulevard, Suite 300, Austin, Texas (512) 451-5292.

Filed: September 8, 1989, 2:38 p.m.

TRD-8908331

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Texas Department of Mental Health and Mental Retardation

Monday, September 18, 1989, 9 a.m. The Single Portal Review Committee of the Texas Department of Mental Health and Mental Retardation will meet at the Central Office, (Law Library) 909 West 45th Street, Austin. According to the agenda, the application of Kerrville State Hospital; redesignation of Tri-County MHMR Center; and monitoring procedures.

Contact: Harry Deckard, P.O. Box 12668, Austin, Texas 78711.

Filed: September 7, 1989, 4:34 p.m.

TRD-8908277

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Board of Nurse Examiners

Tuesday, September 26, 1989, 8 a.m. The Finance Committee of the Board of Nurse Examiners will meet in the Howard Johnson Plaza-Hotel North, 7800 North IH 35, Austin. According to the agenda summary, the committee will receive minutes from the July meeting and financial statements from June and July.

Contact: Louise Waddill, P.O. Box 140466, Austin, Texas 78714, (512) 835-4880.

Filed: September 7, 1989, 11:16 a.m.

TRD-8908243

Tuesday, September 26, 1989, 8:30 a.m. or upon adjournment of Finance Committee The Board Education Committee of the Board of Nurse Examiners will meet in the Howard Johnson Plaza-Hotel North, 7800 North IH 35, Austin. According to the agenda summary, the committee will consider minutes of July meeting; review the survey visit schedule, primary reviewer assignments, list of accredited schools for 1989-90; consider request for a new program at Pan American University BSN program, Edinburg and has scheduled a public hearing for September 26, 1989 at 8:30 a.m.; consider request from Collin County Community College at McKinney for an ADN program; consider request for an extended campus at North Harris College, ADN program, Huntsville and has scheduled a public hearing for September 26, 1989 at 9 a.m.; consider faculty petitions from four programs and a progress report from Houston Community College.

Contact: Louise Waddill, P.O. Box 140466, Austin, Texas 78714, (512) 835-4880.

Filed: September 7, 1989, 11:16 a.m.

TRD-8908242

Tuesday, September 26, 1989, 10 a.m. or upon adjournment of Education Committee The Legislative/Public Relations Committee of the Board of Nurse Examiners will meet in the Howard Johnson Plaza-Hotel North, 7800 North IH 35, Austin. According to the agenda summary, the committee will receive minutes from the July meeting; and an analysis of selected legislative bills and consider networking activities.

Contact: Louise Waddill, P.O. Box 140466, Austin, Texas 78714, (512) 835-4880.

Filed: September 7, 1989, 11:17 a.m.

TRD-8908241

Tuesday, September 26, 1989, 10:30 a.m. or upon adjournment of Legislative/public Relations Committee The Practice Committee of the Board of Nurse Examiners will meet in the Howard Johnson Plaza-Hotel North, 7800 North IH 35, Austin. According to the agenda summary, the committee will receive minutes of the July meeting; an update on the evaluation of mandatory reporting; update on the status of the mandatory continuing education committee; consider House Bill 18 in relation to prescriptive authority; and an update on the speaking tour of Texas.

Contact: Louise Waddill, P.O. Box 140466, Austin, Texas 78714, (512) 835-4880.

Filed: September 7, 1989, 11:17 a.m.

TRD-8908240

Tuesday, September 26, 1989, 11:30 a.m. or upon adjournment of Practice Committee The Planning and Performance Committee of the Board of Nurse Examiners will meet in the Howard Johnson Plaza-Hotel North, 7800 North IH 35, Austin. According to the agenda summary, the committee will receive minutes from the July meeting; and a report on the board evaluation summary.

Contact: Louise Waddill, P.O. Box 140466, Austin, Texas 78714, (512) 835-4880.

Filed: September 7, 1989, 11:18 a.m.

TRD-8908239

Tuesday-Thursday, September 26-28, 1989, Noon or upon adjournment of Planning and Performance Committee The Board of Nurse Examiners will meet in the Howard Johnson Plaza-Hotel North, 7800 North IH 35, Austin. According to the agenda summary, the board will receive the minutes of the July meeting; consider possible action on disciplinary hearings and other action as recommended by the executive secretary in relation to hearings and consider two reinstatement hearing requests; receive reports from the committees; hold an open forum from 8-8:30 a.m., on September 28 to receive input from interested parties and hold election of officers.

Contact: Louise Waddill, P.O. Box 140466, Austin, Texas 78714, (512) 835-4880.

Filed: September 7, 1989, 11:18 a.m.

TRD-8908238

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Texas Board of Licensure for Nursing Home Administrators

Tuesday, September 19, 1989, 2 p.m. The Texas Board of Licensure for Nursing Home Administrators will meet in Suite 310, 4800 North Lamar Boulevard, Austin. According to the agenda, a hearing officer approved by the Attorney General of Texas will conduct a formal hearing in the matter of John Thomas Wright, LNHA #5266 to receive testimony regarding possible violation of the Nursing Home Administrator's Licensure Act, Article 4442d of Texas Civil Statutes, §11 (1)(b) and §11 (1)(g) and may also consider possible violations of 4442c, §18, Texas Civil Statutes as a violation of 4442d §11 (4).

Contact: Janet McNutt, 4800 North Lamar Boulevard #355, Austin, Texas, (512) 458-1955

Filed: September 7, 1989, 4:05 p.m.

TRD-8989272

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Board of Pardons and Paroles

Wednesday, September 13, 1989, 2:30 p.m. The Board of Pardons and Paroles met in an emergency session at 8610 Shoal Creek Boulevard, Austin. According to the revised agenda rescheduled from September 13, 1989, at 9 a.m., the board added the following item and changed the meeting time to 2:30 p.m.; progress report concerning negotiations for work program contract. The emergency status was necessary because of urgency of completing negotiations to initiate construction of facility in order to ease prison overcrowding.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-7249.

Filed: September 11, 1989, 4:13 p.m.

TRD-8908398

Monday-Friday, September 18-22, 1989, 1:30 p.m., except Friday, at 11 a. m. The Board Panel of the Board of Pardons and Paroles will meet at 8610 Shoal Creek, Austin. According to the agenda summary, the panel will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate action.

Contact: K. Armstrong, 8610 Shoal Creek Boulevard, Austin, Texas, (512) 459-2713.

Filed: September 8, 1989, 10:56 a.m.

TRD-8908287

Tuesday, September 19, 1989, 1:30 p.m. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board will meet to consider executive clemency recommendations and related actions (other than Out of Country Conditional Pardons), including: full pardons/restoration of civil rights of citizenship; emergency medical reprieves; commutations of sentence; other reprieves, remissions and executive clemency actions.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2749.

Filed: September 8, 1989, 10:56 a.m.

TRD-8908288

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Texas State Board of Pharmacy

Tuesday and Wednesday, September 19 and 20, 1989, 8:30 The Texas State Board of Pharmacy will meet in the Embassy Suits Hotal North, 5901 IH 35, Austin. According to the agenda summary, the board will hear testimony and review evidence of alleged violations of those laws which persons are subject to administrative sanctions and what form the sanctions are to take; the board will consider: minutes of June 29, 1989 and July 26-28, 1989 meetings; consider adoption of rules 291.32, 291.36, 291.72, 291.74 and 283.2; hear reports and discuss: strategic planning committee schedule and update, upcoming pharmacy in the 21st century conference, progress of adhoc committee on continuing education, automated technology committee report, implementation of the committee's recommendations; implementation of the controlled substances act amendments and meeting with TDPS, VAX computer system conversion; study of home health care/sterile products standards; update on TSBP personnel, and a report on TSBP's financial accounting review; consider proposed agreed board orders; and executive session to discuss pending litigation and personnel matters.

Contact: Fred S. Brinkley, Jr., 8505 Cross Park Drive, Suite 110, Austin, Texas 78754, (512) 832-0661.

Filed: September 12, 1989, 9:57 a.m.

TRD-8908401

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Texas State Board of Podiatry Examiners

Friday, September 29, 1989, 9:30 a.m. The Texas State Board of Podiatry Examiners will meet in the Embassy Suites, 2727 Stemmons Freeway, Dallas. According to the agenda, the board will meet to hear disciplinary hearings and review current complaint files.

Contact: Sandra Marshall, 8317 Cross Park Drive, Suite 401, Austin, Texas 78754, (512) 834-0558.

Filed: September 11, 1989, 2:25 p.m.

TRD-8908387

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Texas State Board of Public Accountancy

Thursday, September 14, 1989, 8 a.m. The Licensee Education Committee of the Texas State Board of Public Accountancy met in Suite 340, 1033 La Posada, Austin. According to the agenda, the committee reviewed the exemption requests and forms which have been submitted to the committee; CE hours submitted by licensees who have received board sanction for noncompliance with CE requirements; requests for additional credit for published articles and books; sponsor registrations; CE credit from unregistered sponsors; CE attendance; dates for next committee meeting and proposed changes to license renewal report for fiscal year 1990.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: September 8, 1989, 1:15 p.m.

TRD-8908305

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Public Utility Commission of Texas

Tuesday, September 12, 1989, 8:45 a.m. The Hearings Division of the Public Utility Commission of Texas met for an emergency session in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the board conducted a meeting on Docket Nos. 8971 and 8972--application of AT&T Communications of the Southwest, Inc. for approval of revisions to the channel service tariff pursuant to PUC Subst. Rule 23.25(c), and application of AT&T Communications of the Southwest, Inc. for approval of minimum rates for Wats, Megacom, Wats, SDN, the AT&T business plan and analog private line pursuant to PUC Subst. Rule 23.25(c) to consider the appeal of the examiner's Order and Notice of Docketing. The emergency status was necessary because prompt commission action was necessary to preserve jurisdiction over the subject mater of the appeal.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 11, 1989, 8:47 a.m.

TRD-8908370

Tuesday, September 19, 1989, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the hearing division will discuss Docket Number 9030-petition of general counsel for a fuel reconciliation for Southwestern Public Service Company.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 8, 1989, 3:19 p.m.

TRD-8908353

Monday, September 25, 1989, 10 a.m. The Public Utility Commission of Texas Hearings Division will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the hearing division will discuss Docket Numbers 8585 and 8218-inquiry of the general counsel into the reasonableness of the rates and services of Southwestern Bell Telephone Company and inquiry of the general counsel into the WATS prorate credit.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 8, 1989, 3:19 p.m.

TRD-8908354

Thursday, November 16, 1989, 9 a.m. The Public Utility Commission of Texas Hearings Division will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the hearings division will conduct a rescheduled hearing on Docket No. 8667--application of GTE Southwest Incorporated for approval of 911 tariff amendments, including adoption of customer specific rates.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed:

September 11, 1989, 4:01 p.m.

TRD-8908396

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Railroad Commission of Texas

Monday, September 18, 1989, 9 a.m. The Railroad Commission of Texas will meet in the 12th Floor Conference Room (12-126), William B. Travis Building, 1701 North Congress Avenue, Austin. Agendas follow.

The commission will consider and act on the Administrative Services Division director's report on division administration, budget, procedure, and personnel matters. Discussion of the development of a natural gas clearing house that would match companies that need gas to fuel new plants with producers that have gas to sell-possible action.

Contact: Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7257.

Filed: September 8, 1989, 12:11 p.m.

TRD-08908299

The commission will consider and act on the Automatic Data Processing Division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

Contact: Bob Kmetz, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7251.

Filed: September 8, 1989, 12:10 p.m.

TRD-08908300

The commission will consider and act on the executive director's report on commission budget and fiscal matters, administrative and procedural matters, personnel and staffing, state and federal legislation, and contracts and grants. Consider reorganization of various commission divisions; consolidation of positions; and appointment, reassignment and/or termination of various positions, including division directors. Consideration of reorganization of the well plugging program. The commission will meet in executive session to consider the appointment, employment, evaluation, reassignment, duties, discipline and/or dismissal of personnel.

Contact: Cril Payne, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7274.

Filed: September 8, 1989, 12:12 p.m.

TRD-08908294

The commission will consider and act on the Flight Division director's report on division administration, budget, procedures and personnel matters.

Contact: Ken Fossler, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6787.

Filed: September 8, 1989, 12:12 p.m.

TRD-08908295

The commission will consider and act on the Office of Information Services/Office of Research and Statistical Analysis Director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Drawer 12967, Austin, Texas 78753, (512) 463-6710.

Filed: September 8, 1989, 12:12 p.m.

TRD-08908297

The commission will consider and act on the Investigation Division director's report on division administration, investigations, budget, and personnel matters.

Contact: Mary Anne Wiley, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6828.

Filed: September 8, 1989, 12:12 p.m.

TRD-08908296

The commission will consider and various matters within the jurisdiction of the Railroad Commission of Texas, as more fully stated inthe attached agenda. In addition the Railroad Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Railroad Commission may take various action, including but not limited to scheduling an item in its entirety or for particular action at a future time or date. The Railroad Commission of Texas may consider the procedural status of any contested case if 60days or more have elapsed from the date the hearing was closed or from the date the transcript was received. The Commission will meet in executive session to receive legal advice regarding pending and/or contemplated litigation.

Contact: Cue Boykin, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6921.

Filed: September 8, 1989, 12:12 p.m.

TRD-08908304

The commission will consider category determinations under the Natural Gas Policy Act of 1978, §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108.

Contact: Margie L. Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755.

Filed: September 8, 1989, 12:11 p.m.

TRD-08908298

The commission will meet to consider and disucss the report of the General Acounting Office regarding Class II injection wells.

Contact: Jerry Mullican, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-6790.

Filed: September 8, 1989, 12:10 p.m.

TRD-8908303

The commission will consider and act on the Personnel Division director's report on division administration, budget, procedures, and personnel matters. The commission will meet in executive session to consider the appointment, employment, evaluation, reassignment, duties, discipline, and/or dismissal of personnel.

Contact: Mark Bogan, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6981.

Filed: September 8, 1989, 12:10 p.m.

TRD-08908301

The commission will discuss bird losses due to contact with oil in pits.

Contact: Jerry Mullican, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6790.

Filed: September 8, 1989, 12:10 p.m.

TRD-08908302

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Office of the Secretary of State

Thursday, September 14, 1989, 10 a.m. The Elections Advisory Committee of the Office of the Secretary of State met in the House Appropriations Meeting Room, Room 309, State Capitol, Austin. According to the agenda, the committee reviewed the operations manual and discussed election night returns preparations for the upcoming November 7th, 1989 Constitutional Amendment Election.

Contact: Tom Harrison, P.O. Box 12060, Austin, Texas 78711, (512) 463-5650

Filed: September 7, 1989, 3:57 p.m.

TRD-8908267

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Task Force on Public Utility Regulation

Tuesday and Wednesday, September 19 and 20, 1989, 9 a.m. The Task Force on Public Utility Regulation will meet in the Senate Chamber, State Capitol Building, Austin. According to the agenda, the task force will approve minutes; presentation of testimony by the office of public utility counsel, advocates for residential consumers, small businesses, and municipalities; presentation of testimony by industrial and commercial consumers; and other business.

Contact: Karl Spock, 305 Reagan Building, Austin, Texas, (512) 463-1300.

Filed: September 11, 1989, 1:07 p.m.

TRD-8908371

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The Texas A&M University System, Board of Regents

Wednesday, September 13, 1989, 9 a.m. The Committee for Academic Campuses of the Texas A&M University System, Board of Regents met in the meeting room, J.K. Williams Library, Texas A&M University, Galveston. According to the agenda summary, the committee received presentations from administrative staff and public testimonials from citizens; the committee will reconvene at 2: 30 p.m. the same day at Prairie View A&M University in the executive conference room, Dr. John B. Coleman Library, reconvene at 9 a.m., September 14, in the board meeting room at College Station; reconvene at 2:45 p.m. the same day at Tarleton State University, Clyde H. Wells Fine Arts Center, small auditorium.

Contact: Vickie Burt, College Station, Texas, (409) 845-9603

Filed: September 8, 1989, 11:24 a.m.

TRD-8908289

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University of Houston System

Monday, September 11, 1989, 8 a.m. The Board of Regents/Executive Committee of the University of Houston System met in the Conference Room, 5th Floor, Enterprise Bank Building, 4600 Gulf Freeway, Houston, According to the agenda summary, the committee discussed and/or approved the following: an agreement to provide student housing at the University of Houston.

Contact: Peggy Cervenka, 4600 Gulf Freeway, Suite 500, Houston, Texas 77023, (713) 749-7545.

Filed: September 7, 1989, 2:23 p.m.

TRD-8908249

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University of Texas System

Monday, September 18, 1989, 9 a.m. The Board for Lease of University Lands of the University of Texas System will meet inthe Director's Room, La Quinta Plaza, 10010 San Pedro, San Antonio. According to the agenda summary, the board will approve minutes; consider extension for proration contracts, applications for oil/gas pooling; and approve oil and gas lease sale.

Contact: Linward Shivers, 201 West 7th Street, Austin, Texas 78701, (512) 499-4462.

Filed: September 8, 1989, 10:51 a.m.

TRD-8908286

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University of Texas Health Science Center at San Antonio

Wednesday, September 20, 1989, 3 p.m. The Institutional Animal Care and Use Committee of the University of Texas Health Science Center at San Antonio will meet in the Dental Dean's Conference Room 4.320R, 7703 Floyd Curl Drive, San Antonio. According to the agenda, the committee will approve minutes; receive recommendations from protocol review group; subcommittee reports; other business--USDA parts 1 and 2, and items from the floor.

Contact: Molly Greene, 7703 Floyd Curl Drive, San Antonio, Texas, (512) 567-3917.

Filed: September 11, 1989, 3:55 p.m.

TRD-8908395

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Texas Water Commission

Thursday, September 21, 1989, 10 a.m. The Texas Water Commission will meet in Room 1-111, 1701 North Congress Avenue, William B. Travis Building, Austin. According to the agenda, the consideration of various matters within the regulatory jurisdiction of the Texas Water Commission of Texas; consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Texas Water Commission may take various actions, including but not limited to scheduling an item in the entirety or for particular action at a future date or time.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

Filed: September 8, 1989, 1:35 p.m.

TRD-8908327

Thursday, September 28, 1989, 10 a.m. The Texas Water Commission will meet in Room 118, 1700 North Congress Avenue, Stephen F. Austin Building, Austin. According to the agenda, the consideration of various matters within the regulatory jurisdiction of the Texas Water Commission; consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Texas Water Commission may take various actions, including but not limited to scheduling an item in the entirety or for particular action at a future date or time.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

Filed: September 8, 1989, 1:37 p.m.

TRD-8908307

Tuesday, October 10, 1989, 10 a.m. The Texas Water Commission will meet in Room 1-111, 1701 North Congress Avenue, William B. Travis Building, Austin. According to the agenda, the notice of public hearing on consideration of a temporary order for the City of Arlington to discharge excess stormwater caused by heavy rains. Stormwater is located in a landfill north of the City of Arlington, Tarrant County, Texas, where it is used for dust suppression. Discharge would be into Fox Creek and thence into the Trinity River.

Contact: Irene L. Montelongo, P.O. Box 13087, Austin, Texas 78711, (512) 463-8069.

Filed: September 8, 1989, 1:34 p.m.

TRD-8908326

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Regional Meetings

Meetings Filed September 7, 1989

The Austin-Travis County MHMR Center, Finance and Control Committee, met at 1430 Collier, Austin, on September 11, 1989, at Noon. Information may be obtained from Sharon Taylor, (512) 447-4141.

The Central Appraisal District of Taylor County, Appraisal Review Board will meet at 1534 South Treadaway, Abilene, September 21, 1989, at 1:30 p. m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 796004, (915) 676-9381.

The Concho Valley Council of Governments, Executive Committee met at 5002 Knickerbocker Road, San Angelo, September 13, 1989, at 7 p.m. Information may be obtained from Robert R. Weaver, P.O. Box 60050, San Angelo, Texas 76906, (915) 944-9666.

The Dallas Central Appraisal District, Board of Directors met at $500, 1420 West Mockingbird Lane, Dallas, September 13, 1989, at 7:30 p.m. Information may be obtained from Rick L. Kuehler, 1420 West Mockingbird Lane, #500, Dallas, Texas 75247, (214) 631-0520.

The Harris County Appraisal district, Board of Directors met on the 8th Floor, 2800 North Loop West, Houston, September 14, 1989, at 10 a.m. Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292, (713) 957-5291.

The Hickory Underground Water Conservation District #1, Board and Advisers met in the District Office, 2005 Nine Road, Brady, September 14, 1989, at 5 p.m. Information may be obtained from Vickie Roddie, P.O. Box 1214, Brady, Texas 76825, (915) 597-2785.

The Hickory Underground water Conservation District #1, Board and Advisers met in the District Office, 2005 Nine Road, Brady, September 14, 1989, at 7 p.m. Information may be obtained from Vickie Roddie, P.O. Box 821, Brady, Texas 76825, (915) 597-2785.

The Hickory Underground Water Conservation District #1, Board and Advisors met in the District Office, 2005 Nine Road, Brady, September 14, 14989, at 10 p.m. Information may be obtained from Vickie Roddie, P.O. Box 1214, Brady, Texas 768205, (915) 597-2785.

The Lubbock Regional Mental Health and Mental Retardation Center, met in the Board Room, 3801 Avenue J, Lubbock, September 11, 1989, at 11 a.m. Information may be obtained from Gene Menefee, 1210 Texas Avenue, Lubbock, Texas 79401, (806) 766-0202.

The South Plains Association of Governments, General Assembly met in the Lubbock Plaza, 3201 South Loop 289, Lubbock, September 12, 19889, at 6 p. m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730 Freedom Station, Lubbock, Texas 79452.

TRD-8908231

Meetings Filed September 8, 1989

The Barton Springs/Edwards Aquifer Conservation District, Board of Directors met at 1124-A Regal Row, Austin, September 11, 1989, at 7 p.m. Information may be obtained from Bill E. Couch, 1124-A Regal Row, Austin, Texas 78744, (512) 282-8441.

The Central Appraisal District of Johnson County, will meet in Room 202, Suite 201, 109 North Main, Cleburne, September 21, 1989, at 4:30 p.m. Information may be obtained from Jackie Gunter, 109 North Main, Cleburne, Texas 76031, (817) 645-33987.

The Dallas Area Rapid Transit, Budget and Finance Committee met in the Board Room, 601 Pacific Avenue, Dallas, September 12, 1989, at 2 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dallas Area Rapid Transit, Audit Committee met in Conference Room 7A, DART Office, 601 Pacific Avenue, Dallas, September 12, 1989, at 4 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dallas Area Rapid Transit, Committee-of-the-Whole met in the Board Room, DART Office, 601 Pacific Avenue, Dallas, September 12, 1989, at 4:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dallas Area Rapid Transit, Board met in the Board Room, DART Office, 601 Pacific Avenue, Dallas, September 12, 1989, at 6:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The El Oso Water Supply Corporation, Board of Directors, met at El Oso Water Supply Corporation's Office, Karnes City, September 12, 1989, at 7:30 p.m. Information may be obtained from Holmer Wagener, P.O. Box 309, Karnes City, Texas 78118, 780-3539.

The Golden Crescent Service Delivery Area, Private Industry Council, Inc., met at 301 Colony Creek Drive, Victoria, September 13, 1989, at 6: 30 p.m. Information may be obtained from Charles Steele, P.O. Box 164, Victoria, Texas 77902.

The Grand Parkway Association, met in 140 East Wing, 5757 Woodway, Houston, September 13, 1989, at 8:15 a.m. Information may be obtained from Larry W. Nettles, 2823 First City Tower, 1101 Fannin, Houston, Texas 77002-6760, (713 654-4586.

The Hunt County Tax Appraisal District, Board of Directors met in the Board Room, District Office, 4801 King Street, Greenville, September 124, 1989,. at 7 p.m. Information may be obtained from Joe Pat Davis or Shirley Smith, P.O. Box 1339, Greenville, Texas 75401, (214) 454-3510.

The Lampasas County Appraisal District, Board of Directors met at 109 East Fifth, Lampasas, September 13, 1989, at 9:30 a.m. Information may be obtained from Dana Ripley, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058

The Liberty County Central Appraisal District, Appraisal Review Board will meet at 1820 Sam Houston, Liberty, September 21, 1989, at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575.

The Liberty County Appraisal District, Board of Directors will meet at 1820 Sam Houston, Liberty, September 27, 1989, at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575.

The Texas Municipal Power Agency (TMPA), Board of Directors Annual Meeting met in the University Ballroom #1, Sheraton Hotel and Conference Center, 2211 IH 35 E. North, Denton, September 14, 1989, at 10 a.m. Information may be obtained from Carl Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013.

TRD-8908278

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Meetings Filed August 11, 1989

The Bexar Appraisal District, Appraisal Review Board will meet at 535 South Main, San Antonio, September 15, 1989 at 8:30 a.m. Information may be obtained from

Walter Stoneham, 535 South Main, San Antonio, Texas 78204, (512) 224-8511.

The Callahan County Appraisal District, Board of Directors will meet in the District Office, First Floor, Callahan County Courthouse, 400 Market Street, Baird, September 18, 1989, at 7:30 p.m. Information may be obtained from Jane Ringhoffer, P.O. Box 806, Baird, Texas 79504, (915) 854-1165.

The Central Appraisal District of Taylor county, Board of Directors met at 1534 South Treadaway, Abilene, September 13, 1989, at 3:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381.

The Ellis County Appraisal District, met at 406 Sycamore street, Waxahachie, at 7 p.m. Information may be obtained from Russell A. Garrison, P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552.

The Gray County Appraisal District, Board of Directors met at 815 North Sumner, Pampa, September 14, 1989, at 5 p.m. Information may be obtained from W. Pat Bagley, P.O. Box 836, Pampa, Texas 789066-0836, (806) 665-0791.

The Jack County Appraisal District, Board of Directors met in the Los creek Office Building, 216-D South Main Street, Jacksboro, September 14, 199, at 7 p.m. Information may be obtained from Gary L. Zeitler or Donna Hartzell, 216-D South Main, Jacksboro, Texas 76056, (817) 567-6301.

The Mason County Appraisal District, will meet at 206 Ft. McKavitt Street, Mason, September 21, 1989, at 7 p.m. Information may be obtained from Neal Little, P.O. Box 1119, Mason, Texas 76856, (915) 347-5989.

The Nortex Regional Planning Commission, General Membership Committee will meet in the Wichita II Room, Hilton Hotel, 401 Broad Street, Wichita Falls, September 21, 1989, at Noon. Information may be obtained from Dennis Wilde, 2101 Kemp Boulevard, Wichita Falls, Texas, (817) 322-5281.

The North Central Texas Council of Governments, Job Training Consortium Private Industry Council will meet at Centerpoint Two, 616 Six Flags Drive, Arlington, September 21, 1989 at 10 a.m. Information may be obtained from Mike Gilmore, P.O. Box COG, Arlington, Texas 76005-5888, (817) 640-3300.

The North Texas State Planning Region Consortium, will meet in the Wichita II Room, Hilton Hotel, 401 Broad, Wichita Falls, September 21, 1989, at 1 p.m. Information may be obtained from Bobbie A. Owen, Jacksboro, Texas 76056, (817) 567-2241.

The North east Texas Municipal Water District, Board of Directors will meet at Highway 250 South, Hughes springs, September 18, 1989, at 10 a.m. Information may be obtained from J. W. Dees, P.O. Box 955, Hughes Springs, Texas 75656, (214) 639-7538.

The Palo Pinto Appraisal District, Board of Directors will meet in the County Courthouse, Palo Pinto, September 20, 1989, at 3 p.m. Information may be obtained from Jack Samford, P.O. Box 250, Palo Pinto, Texas 76072, (817) 659-1234.

The Region VII Education Service Center, Board of Directors will meet at the Henderson Inn, Highway 259 South, Henderson, September 21, 1989, 7 p. m. Information may be obtained from Don J. Peters, 818 East Main, Kilgore, Texas 75662, (214) 984-3071.

The Red River Authority of Texas, Board of Directors will meet in Room 215 Wichita Falls Activity Center, 607 Tenth Street, Wichita Falls, September 21, 1989, 9:30 a.m. Information may be obtained from Ronald J. Glenn, 520 Hamilton Building, Wichita Falls, Texas 76301, (817) 723-8697.

The Rio Grand Council of Governments, Board of Directors will meet in Salons C and D, Marriott Hotel, 1600 Airway Boulevard, El Paso, September 20, 1989, 9:30 a.m. Information may be obtained from Cecile C. Gamez, 123 Pioneer Plaza, Suite 210, El Paso, Texas 79901, (915) 533-0998.

The Rio Grande Council of Governments, Full Council will meet in Salons C and D, Marriott Hotel, 1600 Airway Boulevard, El Paso, September 20, 1989, at 10:30 a.m. Information may be obtained from Cecile Gamez, 123 Pioneer Plaza, Suite 210, El Paso, Texas 789901, (915) 533-0998.

The San Antonio River Authority Employees Retirement Trust, Board of Trustees will meet in SARA General Offices, 100 East Guenther Street, San Antonio, September 20, 1989, at 1:45 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (512) 227-1373.

The San Antonio River Authority, Board of Directors will meet in SARA General Offices, 100 East Guenther Street, San Antonio, September 20, 1989, at 2 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (512) 227-1373.

The San Antonio River Authority, Board of Directors Audit Committee will meet at SARA General Offices, 100 East Guenther Street, San Antonio, September 20, 1989, at 2 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (512) 227-1373.

The South East Texas Regional Planning Commission, Executive Committee will meet in the City Council Chambers, Beaumont, September 20, 1989, 7 p.m. Information may be obtained from Jackie Vice, P.O. Drawer 1387, Nederland, Texas 77627, (409) 727-2384.

The Swisher County Appraisal District, Board of Directors met at 130 North Armstrong, Tulia, September 14, 1989, at 7:30 p.m. Information may be obtained from Rose Lee Powell, P.O. Box 8, Tulia, Texas 79088, (806) 995-4118

TRD-8908355

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Meetings Filed September 12, 1989

The Archer County Appraisal District, Board of Directors met in the District Office, 211 South Center, Archer City, September 13, 1989 at 5 p.m. Information may be obtained from Edward H. Trigg, III, P.O. Box 1141, Archer City, Texas 76351, (817) 574-2172.

The Blanco County Appraisal District, Board of Directors met in the Blanco County Courthouse Annex, Johnson City, for an emergency meeting on September 12, 1989, at 6 p.m. Information may be obtained from Hollis Petri, P.O. Box 338, Johnson City, Texas 78636, (512) 868-4624.

The Capital Area Planning Council, Executive Committee will meet in the Austin South Plaza Hotel, IH 35 South and Woodward, Austin, September 19, 1989, at 11:45 a.m. Information may be obtained from Richard G. bean, 2520 IH 35 South, Suite 100, Austin, Texas 78704, (512) 443-7653.

The Deep East Texas Private Industry Council, Inc., Planning & Monitoring Committees met at 118 South First Street, Lufkin, September 13, 1989, at 10 a.m. Information may be obtained from Charlene Meadows, 118 South First Street, Lufkin, Texas 75901, (409) 634-2247.

The Dewitt County Appraisal District, Board of Directors will meet in the Dewitt County Appraisal Office, 103 Bailey Street, Cuero, September 19, 1989. at 7:30 p.m. Information may be obtained from John Haliburton, P.O. Box 4, Cureo, Texas 77954, (512) 275-5753.

The Liberty County Central Appraisal District, Board of Directors will meet at 1820 San Houston, Liberty, September 27, 1989 at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575.

The Lower Neches Valley Authority, Board of Directors will meet in the LNVA Office Building, 7850 Eastex Freeway, Beaumont, September 19, 1989, at 10:30 a.m. Information may be obtained from A. T. Hebert, Jr., P.O. Drawer 3463, Beaumont, Texas 77704,(409) 892-4011.

The Permian Basin Regional Planning Commission, Board of Directors met at the Permian Basin Regional Planning Commis-

sion office, Midland, for an emergency meeting on September 13, 1989, at 1:30 p.m. Information may be obtained from Terri Moore, P.O. Box 6391, Midland, Texas 79711

TRD-8908355

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In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards..

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Air Control Board

Notice of Applications for Construction Permits

Notice is hereby given by the Texas Air Control Board (TACB) of applications for construction permits received during the period of August 1, 1989 to August 31, 1989.

Information relative to the applications listed below, including projected emissions and the opportunity to comment or to request a hearing, may be obtained by contacting the office of the Executive Director at the central office of the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711.

A copy of all materials submitted by the applicant is available for public inspection at the central office of the TACB at the address stated above and at the regional office for the air quality control region within which the proposed facility will be located.

Exterior Technology Corporation; invent dip line and paint spray; PortArthur, Jefferson County; 19635; August 2, 1989; new.

International Business Machines Corporation; pilot plan; Austin, Travis County; 18126; August 2, 1989; modification.

Koch Refining Company; Austin Terminal; Austin, Travis County; 19079; August 2, 1989; modification.

Temple-Eastex, Inc.; laminating facility; Diboll, Angelina County; 19023; August 2, 1989; modification.

Koch Refining Company; San Antonio Terminal; San Antonio, Bexar County, 19082; August 2, 1989; modification.

Department of the Army; trench burner; Karnack, Harrison County; 6356; August 3, 1989; modification.

Amoco Chemical Company; polypropylene production; Alvin, Brazoria County; 5419; August 3, 1989; modification.

Weaver Manufacturing Company; vapor degreaser; Flower Mound, Denton County; 3318, August 3, 1989; modification.

Southwestern Analytical Chemicals Inc.; add evaporation stage; Austin, Travis County; 18926; August 7, 1989; modification.

Hunt Oil Company; Fairway Gas Plant; Poynor, Henderson County; 215; August 7, 1989; modification.

Heritage Press; heatset and non heatset facility; Dallas, Dallas County; 18189; August 7, 1989; modification.

Sherwood Medical, ETO Stack Emissions; Commerce, Hunt County; 9623; August 7, 1989; modification.

Dal-Tile Corporation; Baghouse/stg. bins; Dallas, Dallas County; 8726; August 7, 1989; modification.

R.E. Hable Company; portable drum mix ashpalt plant; Terrell, Kaufman County; 5588A; August 8, 1989, modification.

Koch Refining Company; Cumene Unit Modification; Corpus Christi, Nueces County; 9516; August 8, 1989; modification.

Applied Industrial Materials Corporation; bulk handling and storage facility; Texas City, Galveston County; 9349A; August 8, 1989; modification.

Dow Chemical U.S.A., Bisphenol Expansion; Freeport, Brazoria County; 2804; August 8, 1989; modification.

Phillips 66 Company; multi-purpose reactor unit 17; Borger, Hutchinson County; 7172; August 8, 1989; modification.

Union Carbide Chemicals and Plastics Corporation; LPO-10 unit; Texas City, Galveston County; 2467; August 9, 1989; modification.

Nord Perlite; perlite furnace; Fort Worth, Tarrant County; 6015; August 9, 1989; modification.

Temple-Eastex, Inc.; pulpmill/lime kiln; Evadale, Jasper County; 1473; August 9, 1989; modification.

Texaco Chemical Company; ethyleneamines unit; Conroe, Montgomery County; 19641; August 10, 1989; new.

Southwestern Foundry; sand processing; Paris, Lamar County; 7618; August 10, 1989; modification.

Southwestern Foundry; casting cleaning; Paris, Lamar County; 7619; August 10, 1989; modification.

Ford's Chemical and Service; pesticide packaging; Pasadena, Harris County; 9964; August 11, 1989; modification.

Stabilizing Technology of Texas, Inc.; materials blending facility; San Antonio, Bexar County; 19659; August 11,1989; new.

Lopez-Gloria Construction, concrete batch plant; Baytown, Harris County; 17964; August 14, 1989; modification.

Soltex Polymer Corporation; Soltex experimental unit; Deer Park, Harris County; 18968; August 14, 1989; modification.

Mobil Chemical Company; storage tank; Houston, Harris County; 17373; August 14, 1989; modification.

Rollins Environmental Services (TX), Inc.; firewater pumps; Deer Park, Harris County; 5064; August 14, 1989; modification.

Mobil Exploration and Producing U.S. Inc.; reinject acid gas; Salt Creek, Kent County; 5037A; August 14, 1989; modification.

Simpson Pasadena Paper Company; Boiler E and Boiler F; Pasadena, Harris County; August 14, 1989; new.

PVI Industries Incorporated; metal finishing; Fort Worth, Tarrant County; 1801; August 14, 1989; modification.

United Salt Corporation; salt handling facility; Missouri City, Fort Bend County; 17609; August 14, 1989; modification.

Javelina Company; gas processing plant; Corpus Christi, Nueces County; 19296; August 15, 1989; modification.

Recat, Incorporated; catalyst regeneration plant; Pampa, Gray, County; 19655, August 15, 1989; new.

Lubrizol Corporation, Tank EQW-3; Deer Park, Harris County; 19657; August 15, 1989; new.

Roberds-Johnson Industries, Inc., sandblasting; Galena Park, Harris County; 19658; August 15, 1989; new.

Desoto, Inc., Sodium Lauryl Sulfate; Fort Worth, Tarrant County; 19656; August 15,1989; new.

Champlin Refining and Chemicals, Inc., molecular sieve drier unit; Corpus Christi, Nueces County; 2706; August 15, 1989; modification.

Texas Fibers, Division of Leggett and Platt, Inc., flexible polyurethane foam Mfg; Brenham, Washington County; 8380; August 15, 1989; modification.

Mobay Corporation, Desmodur-N (DES-N); Baytown, Chambers County; 2006A; August 15, 1989; modification.

Lonza, Incorporation, arylides unit; Pasadena, Harris County; 4017; August 15, 1989; modification.

Basf Corporation, polycaprolactam; Clute, Brazoria County; 3848; August 15, 1989; modification.

Hi-Tech Polymers; Inc., Milling Number 1 Facility; Vernon, Wilbarger County; 8228A; August 17, 1989; modification.

Trico Industries, Inc.; Truck Torsion Bar Fabr Plant; Greenville, Hunt County; 19664; August 17, 1989; new.

Texas Fibers, Division of Leggett and Platt, Inc., foam manufacturing; Brenham, Washington County; 8380; August 17, 1989; modification.

Arkla Energy Resources, C/P Refrigeration Plant; Carthage, Panola County; 19665; August 17, 1989; new.

Union Carbide Chemicals and Plastics Corporation, Solvent Vinyl Resin Pilot Plt; Texas City, Galveston County; 19662; August 17, 1989; new.

LTV Aircraft Products Group; paint booth; Grand Prairie, Dallas County; 18471; new.

American Marazzi Tile, Inc.; Tile Manufacturing; 8342; August 18, 1989; modification.

EBAA Iron, Inc., grinding facility; Eastland, Eastland County; 664; August 18, 1989; modification.

Amoco Oil Company, ultraformer Number 4; Texas City, Galveston County; 6488; August 21, 1989; modification.

Polysar Gulf Coast, Inc., EPDM Manufacture; Orange, Orange County; 19663; August 21, 1989; new.

Union Carbide Corporation, Oxo Unit Tank 3309; Texas City, Galveston County; 6355; August 21, 1989; modification.

Cain Chemical Inc., EO/EG Modification; Pasadena, Harris County; 6257E; August 21, 1989; modification.

J. M. Huber Corporation; revise special prov 3C; Baytown, Harris County; 9694; August 21, 1989; modification.

Owens Corning Fiberglass Corp; insulation line; Waxahachie, Ellis County; 6906; August 21, 1989; modification.

Union Carbide Chemicals and Plastics Company, Inc.; vaporizer/stripper and 40 column; Texas City, Galveston County; 4884; August 22, 1989; modification.

Houston Lighting and Power Company, revise Company Allowable; Strang, Harris County; 18600; August 22, 1989; modification.

Avi-Gran USA, Inc.; grain elevator; Progreso, Hidalgo County; 19666; August 24, 1989; new.

Union Carbide Chemicals and Plastics Company, Inc.; Tank L-11; Texas City, Galveston County; 19671; August 25, 1989; new.

Star Enterprise, sulfur complex; Port Arthur, Jefferson County; 19672; August 25, 1989; new.

Star Enterprise, delayed coking unit (DCU); Port Arthur, Jefferson County; 19674; August 25, 1989; new.

Union Carbide Chemicals and Plastics Corp., OXO 11/12 Production Unit; Texas City, Galveston County; 9085; August 25, 1989; modification.

Lubrizol Petroleum Chemicals Company, scrubbers; Deer Park, Harris County; 1093; August 28, 1989; modification.

Phillips 66 Company; loading rack number 2; Old Ocean, Brazoria County; 19677; August 29, 1989; new.

Issued in Austin, Texas on September 5, 1989.

TRD-8908285 Bill Ehret
Director of Hearings
Texas Air Control Board

Filed: September 8, 1989

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

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Texas Department of Banking

Notice of Application

Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a trust company to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular trust company. A hearing may be held if the application is denied by the commissioner.

On September 6, 1989, the banking commissioner received an application to acquire control of Texas Investment and Trust Company, Dallas, by First Surety Bank, Limited, Majuro, Republic of the Marshall Islands.

Additional information may be obtained from William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas, on September 6, 1989.

TRD-8908275 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: September 7, 1989

For further information, please call: (512) 479-1200

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Notice of Hearing

The hearing officer of the State Banking Department will conduct a hearing on an application to withdraw excess earnings from trust deposits filed by Zoeller Funeral Home Trust, New Braunfels. The hearing will be held on September 21, 1989, at 9 a.m., at Texas Department of Banking, 2601 North Lamar Boulevard, Austin.

Any interested person wishing to appear must file a written notice of intent to appear including a brief statement of position with the Texas Department of Banking at least 10 days prior to the hearing. A copy of this notice, and all other pleadings must be sent to each party to the hearing. All parties appearing at the hearing are requested to provide the department with two copies of all exhibits received as evidence, excepting poster size exhibits and photographs.

Additional information may be obtained from Ann Graham, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

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

TRD-8908229 Ann Graham
General Counsel
Texas Department of Banking

Filed: September 7, 1989

For further information, please call: (512) 479-1200

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State Banking Board

Notice of Hearing Cancellation

In the matter of the application for change of domicile for Commercial Acceptance Corporation, Dallas, Dallas County. Before the State Banking Board, State of Texas, Austin, Travis County.

As no opposition has been noted in the application for domicile change by the Commercial Acceptance Corporation, Dallas, the hearing previously scheduled for Monday, September 11, 1989, has been cancelled.

Issued in Austin, Texas, on September 5, 1989.

TRD-8908211 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: September 6, 1989

For further information, please call: (512) 479-1200

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

Type of Rate Ceilings	Effective Period (Dates are Inclusive)	Consumer(3)/Agricultural/Commercial(4) thru $250,000	Commercial(4) over $250,000
Indicated (Weekly) Rate - Art. 1.04(a)(1)	09/11/89-09/17/89	18.00%	18.00%
Monthly Rate Art. 1.04(c)(1)	09/01/89-09/30/89	18.00%	18.00%
Standard Quarterly Rate - Art. 1.04(a)(2)	10/01/89-12/31/89	18.00%	18.00%
Retail Credit Card Quarterly Rate - Art. 1.11(3)	10/01/89-12/31/89	18.00%	N.A.

Lender Credit Card Quarterly Rate - Art. 15.02(d)(3)	10/01/89-12/31/89	15.52%	N.A.
Standard Annual Rate - Art. 1.04(a)(2)(2)	10/01/89-12/31/89	18.00%	18.00%
Retail Credit Card Annual Rate - Art. 1.11(3)	10/01/89-12/31/89	18.00%	N.A.
Annual Rate Applicable to Pre-July 1, 1983 Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from:	10/01/89-12/31/89	18.00%	N.A.
Judgment Rate - Art. 1.05, Section 2	09/01/89-09/30/89	10.00%	10.00%

(1) For variable rate commercial transactions only.

(2) Only for open-end credit as defined in Art. 5069-1.01(f) V.T.C.S.

(3) Credit for personal, family or household use.

(4) Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on September 5, 1989.

TRD-8908274 Al Endsley
Consumer Credit Commissioner

Filed: September 7, 1989

For further information, please call: (512) 479-1280

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Credit Union Department

Notice of Hearing

A hearing officer for the Credit Union Department will conduct a consolidated hearing to determine whether the applications for amendment to the bylaws for expansion of fields of membership by the following credit unions should be approved or disapproved: Dallas Teachers Credit Union, Dallas; Community Credit Union, Plano; City Employees Credit Union, Dallas; FFE Operators Credit Union, Lancaster; Dallas Postal Credit Union, Dallas; Gifford-Hill Credit Union, Dallas; Johnson County Community Credit Union, Cleburne; and Texas Industries Employees Credit Union, Arlington.

Time and Place of Hearing. The hearing will be held on November 27, 1989, at 10 a.m. in Dallas, at a location to be announces at a later date.

Authority. Texas Civil Statutes, Articles 6252-13 (a), 2461-2. 06(b), and 2461-12.01 (Vernon Supplement 1989); 7 Texas Administrative Code, §93.221.

Names and Addresses of Parties. Applicants–S. E. Hale, President, Dallas Teachers Credit Union, P.O. Box 64728, Dallas, Texas 75206; M. H. Hearon, President, Gifford-Hill Employees Credit Union, P.O. Box 210628, Dallas, Texas 75211; Anthony R. Taiani, President, Johnson County Community Credit Union, P.O. Box 637, Cleburne, Texas 76033; Davis W. Marr, President, City Employees Credit Union, 7474 Ferguson Road, Dallas, Texas 75228; Suzanne Fewin, President, FEE Operators Credit Union, P.O. Box 444, Lancaster, Texas 75146; James P. Gibson, President, Dallas Postal Credit Union, P.O. Box 224444, Dallas, Texas 75222-4444; Gerald L. Dunn, President, Texas Industries employees Credit Union, P.O.Box 400, Arlington, Texas 76004; Mr. Garold (Gary) Base, President, Community Credit Union, P.O. Box 867119, Plano, Texas 75068; Robert W. Rogers, Deputy Commissioner, 914 East Anderson Lane, Austin,

Texas 78752. Represented by: Everett Jobe, Assistant Attorney General, P.O. Box 12548, Capitol Station, Austin,m Texas 78711-2548.

Nature of Hearing. This hearing is a contested case under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a. Each applicant must demonstrate the exact geographic boundaries expressed by city, county, or radius from the credit union's principal or branch office; whether its proposed expansion overlaps the field of membership of another credit union; the nature and degree of the overlap; whether the new group proposed to be served by the expansion has requested the expansion; whether any efforts have been taken to resolve the overlap, if any; the applicant's ability to adequately serve the proposed expanded field of membership. Each applicant shall also be required to provide the information requested in the Application to amend Article of Incorporation or Bylaws filed with the Credit Union Department. The hearing officer shall consider this and other information necessary to comply with the provisions of the Texas Civil Statutes, Articles 2461-1.05, and 2.06 (b).

Deadline for Requesting to be a Party. At the hearing, only those persons admitted as parties and their witnesses will be allowed to participate. Presently, the only prospective parties are the applicants and the Credit Union Department staff. Any person who may be affected by the proposed expansions of fields of membership who wants to be made a party must send a specific written request for party status to Hearings examiner, Edna Ramon Butts and make sure that this request is actually received at the Credit Union Department Office, 914 East Anderson Lane, Austin, Texas 78752, by 5 p.m. on October 9, 1989. The examiner cannot grant party status after that deadline, unless there is good cause for the request arriving late. Hearing requests, comments, or other correspondence sent to the Credit Union Department before publication of this notice will not be considered as a request for party status. The examiner will make a final decision on party status at the prehearing conference.

Prehearing Conference. The examiner has scheduled a prehearing conference on October 16, 1989, at 10 a.m. at the Credit Union Department Office, 914 East Anderson Lane,Austin. At this conference, the examiner will consider any motions of the parties but may grant contested motions for continuance only upon proof of good cause. The examiner will also establish a specific date prior to the hearing on the merits for the exchange of written and documentary evidence.

Public Attendance and Testimony. Members of the general public may attend the hearing. Those who plan to attend are encouraged to telephone the Credit Union Department Office in Austin at (512) 837-9236, a day or two prior to the hearing date in order to confirm the setting, since continuances are sometimes granted.

Any person who wants to give testimony at the hearing, but who does not want to be a party, may call the Credit Union Department Office at (512) 837-9236, to find out the names and addresses of all admitted parties who may be contacted about the possibility of presenting testimony.

Information About the Application. Information about the application are available at the Credit Union Department Office located at 914 East Anderson Lane, Austin, Texas 78752.

Issued in Austin, Texas on September 8, 1989.

TRD-8908332 Harry L. Elliott
Staff Services Officer
Credit Union Department

Filed: September 8, 1989

For further information, please call: (512) 837-9236

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Texas Education Agency
Notice of Contract Award

Description: This notice is filed pursuant to Texas Civil Statutes, Article 6252-11c. After publication of a request for proposals in the May 1, 1989, issue of the *Texas Register* (14 TexReg 530), the Texas Education Agency on August 31, 1989, executed a contract with First City, Texas-Houston, N. A., P.O. Box 809, Houston, Texas 77001, to provide master trust custodian services to the permanent school fund.

Cost and Dates: The total amount of the contract is $324,600. The beginning date of the contract is September 1, 1989, and the ending date is August 31, 1991.

Issued in Austin, Texas, on September 5, 1989.

TRD-8908226 W. N. Kirby
Commissioner of Education

Filed: September 6, 1989

For further information, please call: (512) 463-9212

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Request for Application

The Texas Education Agency is requesting applications (RFA #701-90-015) from public school districts in Texas for the development of manuals of best practice procedures for educating homeless children and youth. Ultimately, the manuals will serve as technical assistance documents to districts throughout the state as they attempt to provide free and appropriate public education to homeless students.

Successful applicants will be required to assess their district's procedures and policies for educating homeless children; develop procedures and policies that reduce or eliminate barriers to enrollment that confront homeless children and youths; develop procedures and policies that reduce or eliminate the barriers to attendance and school success that confront homeless children and youth; and compile procedures and policies related to the education of homeless children and youth into a manual. The manual will include at least the following: policies and procedures for enrolling homeless students that ensure access to enrollment (addressing residency and guardianship issues); systems used to train attendance officers, secretaries, registrars, and principals regarding the enrollment policies and procedures developed; systems for communication and coordination with shelter providers and other service agencies that are interested in providing services to homeless students; systems for making school personnel aware of and sensitive to the needs of homeless children and youth; systems for coordination with other school district programs (e.g., state and federal compensatory education programs, programs for at-risk youth, counseling programs, school meals, bilingual education, special education, and other programs) to ensure homeless children access to such services, at least on a basis that is comparable to that received by other students in the district; and systems for involving homeless parents in the education of their children.

The projects will be conducted from November 3, 1989-June 30, 1990, for up to $10,000 per grant award.

To obtain a copy of the Request for Application, call (512)

463-9304 or write the Texas Education Agency, Document Control Center, Room 6-108, 1701 North Congress Avenue, Austin, Texas 78701-1494. Applications may be delivered by mail or in person to the Texas Education Agency, Document Control Center, Room 6-108. To be considered for funding, applications must be received no later than 5 p.m. on Monday, October 23, 1989. Any person wishing clarifying information about the application may contact Joseph F. Johnson, Jr., Division of Special Programs, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9694.

Issued in Austin, Texas on September 7, 1989.

TRD-8908363 W. N. Kirby
Commissioner of Education

Filed: September 11, 1989

For further information, please call: (512) 463-9212

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Texas Department of Health

Correction of Error

The Texas Department of Health submitted a proposed amendment which contained errors as published in the August 11, 1989, issue of the *Texas Register* (14 TexReg 3454-3456).

In §741.162(f)(2), new subparagraphs (A) and (B) are new language and should be printed entirely in bold print.

In §741.181, paragraph (16) should read: "(16) penalty fee if inactive status was properly requested-all accrued renewal fees; (17) [(16)] late renewal penalty-$15 per month following the 60-day grace period plus all accrued renewal fees; and"

In §§741.193, 741.194, 741.198, and 741.199, the subchapter title is missing. The missing subchapter title is "Subchapter K. Denial, Suspension, or Revocation of Licensure."

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The Texas Department of Health submitted an adopted amendment which contained errors as submitted and published in the August 22, 1989, issue of the *Texas Register* (14 TexReg 4238).

Subitems (4)(B)(ix)(I)(-a-)(-1-), (-2-), and (-3-) were omitted. Those subitems should read as follows: "(-1-) a surgeon specializing in plastic surgery, oral surgery, or otolaryngology; (-2-) an orthodontist or pedodontist; and (-3-) a speech language pathologist (CCC)."

Subitems (4)(B)(ix)(I)(-c-)(-1-) and (-2-) were omitted and should read as follows: "(-1-) the method of communicaation and consultation; and (-2-) the arrangements for provision of the diagnostic procedures specified in clause (vii) of this subparagraph."

The following error in need of correction is a result of department submission.

Subclause (4)(B)(x)(I) should read: "(I) Comprehensive C/C teams and affiliated C/C teams shall be designated by February 1, 1990. After February 1, 1990, the CIDC Program will provide authorization and reimbursement for invasive procedures for patients with cleft lip/palate and/or craniofacial anomalies only if performed by approved C/C teams. Teams that obtain CIDC approval after February 1, 1990, and prior to September 1, 1990, may appeal denied claims for invasive procedures performed within the transition period (February 1, 1990 to September 1, 1990). After September 1, 1990, the special appeals provision will be removed and only approved C/C teams will be reimbursed for invasive procedures. Corresponding members may be reimbused for non-invasive follow-up and interim care only."

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Emergency Impound Order

Notice is hereby given that the Bureau of Radiation Control ordered Syl A. Viaclovsky and/or Via NDT Engineering and Testing, Inc. to surrender to the agency for impoundment all radioactive material in his possession. The order was issued because the individual had illegal possession of radioactive materials.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin, Monday-Friday, 8 a. m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on September 5, 1989.

TRD-8908210 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: September 6, 1989

For further information, please call: (512) 835-7000

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Intent to Revoke a Certificate of Registration

Pursuant to *Texas Regulations for Control of Radiation* (TRCR) 13.8, the Bureau of Radiation Control, Texas Department of Health, filed a complaint against Harold E. Kurtz, Jr., D.D.S., 1605 Clover Lane, Fort Worth, Texas 76106, holder of Certificate of Registration Number 5-10081. The agency intends to revoke the certificate of registration, order the registrant to cease and desist use of radiation machine(s), and order the registrant to divest himself of such equipment, presenting evidence satisfactory to the Bureau of Radiation Control that he has complied with the order and the provisions of Texas Civil Statues, Article 4590f. If the items in the complaint are corrected within 30 days of the date of the complaint, no order will be issued.

This notice affords the opportunity for a hearing to show cause why the certificate of registration should not be revoked. A written request for a hearing must be received within 30 days from the date of service of the complaint to be valid. Such written request must be filed with David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed, the certificate of registration will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin, Monday-Friday, 8 a. m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on September 5, 1989.

TRD-8908208 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Filed: September 6, 1989

For further information, please call: (512) 835-7000

Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License#	City	Amendment #	Date of Action
Nacogdoches	Terry A. Boulware, M.D., P.A.	L04326	Nacogdoches	0	08/18/89
Robstown	Texas Ecologists Inc.	L04331	Robstown	0	08/23/89
Throughout Texas	El Paso Engineering and Testing Company	L04325	El Paso	0	08/15/89
Throughout Texas	Memphis Testing Services	L04338	Humble	0	08/24/89

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amendment #	Date of Action
Amarillo	Amarillo Diagnostic Clinic	L04085	Amarillo	3	08/21/89
Andrews	Permian General Hospital	L03158	Andrews	6	08/21/89
Austin	Austin Radiological Association	L00545	Austin	54	08/21/89
Austin	Allan Shivers Radiation Therapy Center	L03726	Austin	5	08/14/89
Azle	Harris Methodist Northwest	L03230	Azle	6	08/14/89
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	57	08/18/89
Beaumont	North Star Steel Texas	L02122	Beaumont	13	08/16/89
Conroe	Conroe Radiology Associates	L04083	Conroe	3	08/10/89
Dallas	Princeton Packaging, Inc.	L00803	Dallas	17	08/09/89
Dallas	Southern Methodist University	L00443	Dallas	15	08/22/89
Denton	Jostens, Inc.	L03939	Denton	2	08/16/89
Domino	International Paper Company	L01686	Texarkana	17	08/14/89
El Paso	Ansell Incorporated	L04214	El Paso	2	08/15/89
El Paso	Providence Memorial Lospital	L02353	El Paso	34	08/14/89
Falls City	Conoco Inc.	L01634	Falls City	32	08/18/89
Fort Worth	Talem, Inc.	L02886	Fort Worth	6	08/15/89
Fort Worth	Harris Methodist Hospital	L01837	Fort Worth	39	08/18/89

Gainsville	Gainsville Memorial Hospital	L02585	Gainsville	10	08/21/89
Houston	Houston Northwest Medical Center	L02253	Houston	31	08/18/89
Houston	HCA Medical Center Hospital	L02073	Houston	21	08/15/89
Houston	Baylor College of Medicine	L00587	Houston	21	08/14/89
Houston	AMI Heights Hospital	L01782	Houston	21	08/23/89
Houston	NUS Corporation	L02297	Houston	10	08/18/89
Humble	Northeast Medical Center Hospital	L02412	Humble	24	08/21/89

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Midland	Physicians & Surgeons Hospital	L03386	Midland	11	08/18/89
Odessa	Odessa Diagnostic Imaging Center, Ltd.	L03687	Odessa	9	08/18/89
Palestine	Memorial Hospital Foundation - Palestine, Inc.	L02728	Palestine	12	08/21/89
Pasadena	Phillips Petroleum Company	L00230	Pasadena	49	08/08/89
Pasadena	Humana Hospital Southmore	L03501	Pasadena	6	08/21/89
Plano	Texas Cardiovascular Imaging Center, Inc.	L03704	Plano	7	08/04/89
Port Neches	Texaco Chemical Company	L04227	Port Neches	2	08/11/89
San Antonio	Syncor International Corp.	L02033	San Antonio	47	08/21/89
[illegible]drift	Union Carbide Corporation	L00051	Port Lavaca	49	08/08/89
[illegible]rman	Texas Instruments, Inc.	L02682	Sherman	12	08/15/89
[illegible]eeny	Phillips 66 Company	L00337	Sweeny	27	08/23/89
Texas City	Amoco Oil Company	L00254	Texas City	36	08/10/89
Texas City	Union Carbide Chemicals and Plastics Company, Inc.	L00495	Texas City	37	08/23/89
Throughout Texas	Non-Destructive Testing Company	L01008	Grand Prairie	38	08/10/89
Throughout Texas	D-Arrow Inspection, Inc.	L03816	Houston	19	08/10/89
Throughout Texas	American Inspection Company, Inc.	L04073	Beaumont	6	08/10/89
Throughout Texas	Coastal Inspection Service Company	L00810	Orange	34	08/10/89
Throughout Texas	Southwestern Laboratories, Inc.	L00299	Houston	60	08/10/89
Throughout Texas	In-House Inspection Company	L03381	Houston	10	08/14/89
Throughout Texas	Ebasco Services Incorporated	L02662	Houston	18	08/14/89
Throughout Texas	Professional Service Industries, Inc.	L03055	Houston	11	08/14/89
Throughout Texas	ICI Tracerco	L03096	Houston	31	08/09/89
Throughout Texas	The Western Company of North America	L01323	Houston	45	08/09/89
Throughout Texas	Step Rate Testers, Inc.	L03700	Odessa	2	08/09/89
Throughout Texas	ACS Commercial Testing	L03752	Longview	5	08/09/89
Throughout Texas	Professional Service Industries, Inc.	L00931	Lombard, IL	70	08/18/89

Throughout Texas	Houston Department of Health and Human Services	L00149	Houston	39	08/17/89
Throughout Texas	Texas Department of Health	L01155	Austin	37	08/15/89
Throughout Texas	Tubular Inspectors, Inc.	L03083	Houston	11	08/16/89
Throughout Texas	Dresser Industries Inc.	L04328	Pearland	1	08/16/89
Throughout Texas	Anadrill, Inc.	L04053	Sugar Land	4	08/15/89
Throughout Texas	Baker Hughes Tubular Services, Inc.	L00916	Houston	44	08/11/89
Throughout Texas	Phoenix Surveys Inc.	L04108	Graham	1	08/11/89
Throughout Texas	Syncor International Corporation	L01911	Houston	71	08/14/89
Throughout Texas	Pickett Jacobs Consultants, Inc.	L03690	Tyler	9	08/11/89
Throughout Texas	Phoenix Surveys Inc.	L04108	Graham	1	08/11/89
Throughout Texas	On-Line Testing	L04109	Arlington	2	08/11/89
Throughout Texas	Tuboscope, Inc.	L00287	Houston	78	08/09/89
Throughout Texas	H & G Inspection Company, Inc.	L02181	Houston	41	08/17/89
Throughout Texas	Raba-Kistner Consultants, Inc.	L01571	San Antonio	26	08/16/89
Throughout Texas	Bonded Inspections, Inc.	L00693	Garland	36	08/24/89
Throughout Texas	Conam Inspection, Inc.	L00478	Houston	58	08/23/
Throughout Texas	Applied Standards Inspection, Inc.	L03072	Beaumont	18	08/23
Throughout Texas	Schlumberger Well Services	L00109	Houston	30	08/23/
Throughout Texas	Pickett Jacobs Consultants, Inc.	L03690	Tyler	10	08/22/89
Throughout Texas	Harding-Lawson Associates	L01970	Houston	16	08/18/89
Throughout Texas	Texas Department of Health	L01155	Austin	38	08/23/89
Throughout Texas	E. I. du Pont de Nemours & Co., Inc.	L00517	Beaumont	50	08/23/89
Throughout Texas	Vector Engineering and Testing Co.	L04031	Wichita Falls	1	08/22/89
Throughout Texas	Visions Innovations Corporation (VICORP)	L04050	Odessa	4	08/23/89
Throughout Texas	Ludlum Measurements, Inc.	L01963	Sweetwater	37	08/24/89
Tyler	The University of Texas Health Center at Tyler	L01796	Tyler	37	08/21/89

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Tyler	Medical Center Hospital	L00977	Tyler	47	08/21/89
Tyler	Community Hospital of Tyler	L02057	Tyler	15	08/21/89
Tyler	Cameron Iron Works USA, Inc.	L00079	Tyler	34	08/24/89

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amendment #	Date of Action
Austin	Robert A. Laibovitz, M.D.	L02246	Austin	4	08/14/89
Graham	Graham General Hospital	L03271	Graham	6	08/18/89
Houston	The U.T. Health Science Center at Houston	L02774	Houston	13	08/07/89
LaGrange	Fayette Memorial Hospital	L03572	LaGrange	3	08/09/89
San Antonio	O'Neill and Associates, P.A.	L03710	San Antonio	3	08/21/89

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amendment #	Date of Action
Houston	Immuno Modulators Laboratories, Ltd.	L03128	Houston	3	08/11/89
Lubbock	Paymaster Oil Mill Company	L02367	Lubbock	7	08/09/89
Lubbock	Paymaster Oil Mill Company	L02414	Lubbock	7	08/14/89
Texas City	Reagent Chemical and Research Inc.	L03058	Texas City	2	08/16/89
Tyler	RadCon Services	L03931	Tyler	5	08/09/89

AMENDMENTS TO EXISTING LICENSES DENIED:

Location	Name	License#	City	Amendment #	Date of Action
Houston	HVJ Associates Inc.	L03813	Houston	0	08/17/89

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with *Texas Regulations for Control of Radiation* in such a manner as to minimize danger to public health and safety or property and the environment; the applicants proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation*.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by Agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, 1212 East Anderson Lane, Austin, from 8 a.m. to 5 p.m. Monday-Friday (except holidays).

Issued in Austin, Texas, on September 6, 1989.

TRD-8908284 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Filed: September 8, 1989

For further information, please call (512) 835-7000.

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Intent to Revoke Radioactive Material Licenses

Pursuant to *Texas Regulations for Control of Radiation* (TRCR) 13.8, the Bureau of Radiation Control, Texas Department of Health, filed a complaint against the following licensees: American Surveys, Inc., P.O. Drawer KK, Stafford, Texas 77477, 11-2086; Quantitative Analysis, 2701 Avenue O, Galveston, Texas 77550, 11-3031; Houston Coagulation Consultants, Incorporated, 1200 Binz, #950, Houston, Texas 77004, G11-1403; First Clinical Laboratory, 2209 West 7th Avenue, P.O. Box 446, Amarillo, Texas 79105-0446, G01-0156; Jerry Quinn, D.P.M., 10784 FM 1960 West, Houston, Texas 77070, 11-3635; Dallas Central Diagnostic Imaging Center, 5445 La Sierra Drive, Dallas, Texas 75231, 5-3932; Lightfoot Wireline Service Company, P.O. Box 275, Andrews, Texas 79714, LO3478; Houston Inspectors, 10150 Longmont, Houston, Texas 77042, LO3482; Aluminum Company of America, P.O. Box 558, Palestine, Texas 75801, LO1846; Neltronic Instrument Corporation, 4319 Stanford Street, Houston, Texas 77006, 11-778.

The agency intends to revoke the radioactive material licenses, order the licensees to cease and desist use of such radioactive materials, and order the licensees to divest themselves of the radioactive material, presenting evidence satisfactory to the Bureau of Radiation Control that they have complied with the order and the provisions of Texas Civil Statutes, Article 4590f. If the fee is paid within 30 days of the date of each complaint, no order will be issued.

This notice affords the opportunity for a hearing to show cause why the radioactive material licenses should not be revoked. A written request for a hearing must be received within 30 days from the date of service of the complaint to be valid. Such written request must be filed with David K. Lacker, Chief, Bureau of Radiation Control, (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material licenses will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin, Monday-Friday, 8 a. m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on September 5, 1989.

TRD-8908207 Robert A. MacLean, M.D.
Deputy Commissioner for Profesional Services
Texas Department of Health

Filed:September 6, 1989

For further information, please call: (512) 835-7000

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Public Hearing

The Department will conduct a public hearing on the following municipal solid waste disposal site.

Texas Waste Systems, has filed Application Number 1986 with the Texas Department of Health for a permit to operate a proposed Type I municipal solid waste disposal site to be located approximately 2,000 feet east of IH 410, on the west side of W.W. White Road, southwest of the intersection of W.W. White Road and Hildebrandt Road, and bounded on the west side by Rosillo Creek, southeast of San Antonio, in Bexar County.

The site consists of approximately 164.25 acres of land, and is to daily receive approximately 500 tons of solid wastes under the regulatory jurisdiction of the department when disposed of or otherwise processed in accordance with the department's Municipal Solid Waste Management Regulations.

Pursuant to the provisions of the Texas Solid Waste Disposal Act (Texas Civil Statutes, Article 4477-7) the department's said regulations, and the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a), a public hearing on the aforesaid application will be held at Holiday Inn Northeast, 3855 North Pan Am Expressway (located on I-35 at the Binz-Engleman Exit), San Antonio, in the Fiesta Room, at 10 a.m. on Monday, October 30, 1989. The purpose of the hearing is to receive evidence for and against the issuance of a permit for the

aforesaid application. Specific matters to be dealt with at the hearing will be to establish jurisdiction; to designate parties; to take evidence, if requested, on whether or not a person qualifies as a person affected (party); to set a discovery schedule, if requested; to recess to a time and date to be determined for the purpose of continuing the public hearing on the merits.

The hearing will be conducted and the final decision will be rendered in accordance with the applicable rules contained in the department's said regulations, including all changes in effect as of May 10, 1988. All parties having an interest in this matter shall have the right to appear at the hearing, present evidence and be represented by counsel. Pursuant to Texas Civil Statutes, Article 6252-13a, and the department's formal hearing procedures, the cost of a written hearing transcript may be assessed against one or more of the designated parties.

A copy of the complete application may be reviewed at the Texas Department of Health, 1100 West 49th Street, Austin, or at the Department's Public Health Region 6 office located at the Old Memorial Hospital, Garner Field Road, Uvalde, Texas 78801; (512) 278-7173.

Issued in Austin, Texas, on September 8, 1989.

TRD-8908283 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Filed: September 8, 1989.

For further information, please call: (512) 458-7271

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Radioactive Material License Amendment

Notice is hereby given by the Texas Department of Health that is has granted an amendment to the following radioactive material license.

Radioactive Material License Number L03548, issued to Atomic Energy Industrial Laboratories of the Southwest located in Houston, (mailing address: Atomic Energy Industrial Laboratories of the Southwest, 6421 South Main Street, Houston, Texas 77030).

The amendment to this license terminates the authorization to use radioactive materials at 1017 Lehall in Houston.

The Division of Licensing, Registration and Standards has determined that the licensee is qualified by reason of training and experience to use the material in question for the purpose requested in accordance with these regulations in such a manner as to minimize danger to public health and safety or property; the licensee's equipment, facilities and procedures are adequate to minimize danger to public health and safety or property; the issuance of the license amendment will not be inimical to the health and safety of the public; and the licensee satisfies any applicable requirements of the *Texas Regulations for Control of Radiation* (TRCR).

This notice affords the opportunity for a public hearing upon written request within thirty days of the date of publication of this notice by a person affected as required by Texas Civil Statutes, Article 4590f, §11B(b), as amended, and as set out in TRCR 13.6. A person affected is defined as a person who is a resident of a county, or a county adjacent to a county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage. A person affected may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756. Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the amendment will remain in effect.

A copy of all material submitted is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin. Information relative to the amendment of this specific radioactive material license may be obtained by contacting David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756. For further information, please call (512) 835-7000.

Issued in Austin, Texas on September 8, 1989.

TRD-8908350 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Filed: September 8, 1989

For further information, please call: (512) 835-7000

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Texas Department of Health

Request for Proposals

The Texas Department of Health (TDH) is requesting proposals to provide contract services to the department's diabetes programs within the Chronic Disease Prevention Program. The services would address the prevention of blindness and lower extremity amputations due to diabetes, and coexisting diabetes and hypertension for public health clients.

Description of Activities: The activities include detection, intervention, patient education, referral for treatment, and appropriate follow-up services for prevention of diabetic complications such as diabetic eye disease, lower extremity amputations, and problems caused by coexistent hypertension and diabetes in public health clients aged 18 years and older.

Eligible Applicants: Eligible applicants for this program are city/county health departments, community health centers, primary care centers, and other federally funded health centers serving a large number of medically indigent clients with diabetes located in Public Health Regions 3, 6, and 8.

Budget Limitations: The department will award three-five contracts. The maximum grant award will not exceed $75,000.

Contract Period: The proposed contract period is from November 1, 1989-August 31, 1990.

Date Due: Proposals from applicants are due by 5 p.m. on or before October 1, 1989. Please mail grant application to Charlene Laraney, Director, Chronic Disease Prevention Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756. Proposals received late, for any reason, will not be considered.

Final Selection: The department's Chronic Disease Prevention Program will make the selection. The department reserves the right to accept or reject any or all of the

proposals submitted and is under no legal requirement to execute a contract on the basis of this advertisement.

Contact: The request for proposals application form and additional information may be obtained from Dora McDonald, Diabetes Program, Chronic Disease Prevention Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, (512) 458-7534.

Issued in Austin, Texas, on September 8, 1989.

TRD-8908335 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Filed: September 8, 1989.

For further information, please call: (512) 458-7534.

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The Texas Department of Health (TDH) is requesting proposals to provide contract services to the department's diabetes programs within the Chronic Disease Prevention Program. The diabetes education network grant (DEN) will support the development of comprehensive diabetes patient and professional education programs to benefit diabetic public health clients.

Description of Activities: The activities include: 1) support for a diabetes education facilitator team composed of a nurse educator, nutritionist/dietitian, and a clerk who would develop patient and professional education programs for medically indigent clients; and 2) the development, coordination, and integration of comprehensive preventive and treatment services for medically indigent diabetic clients.

Eligible Applicants: Eligible applicants for this grant are county health departments, community health centers, primary care centers, and other ambulatory treatment facilities serving a large number of medically indigent clients with diabetes located in Public Health Regions 3, 6, 7, and 8. Applicants should have ambulatory outpatient treatment facilities, or have a contract with such facilities for provision of care to public health clients.

Budget Limitations: The department will award one contract for the DEN grant. A maximum of $110,000 will be available in fiscal year 1990. Funding for 1991 will be available if the applicant demonstrates achievement of 1990 goals and presents a completed application for continuation funding. The continuation application will be available by May, 1990.

Contract Period: The proposed contract period is from November 1, 1989-August 31, 1990.

Date Due: Proposals from applicants are due by 5 p.m. on or before October 1, 1989. Please mail grant application to Charlene Laramey, Director, Chronic Disease Prevention Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756. Proposals received late, for any reason, will not be considered.

Final Selection: The department's Chronic Disease Prevention Program will make the selection. The department reserves the right to accept or reject any or all of the proposals submitted and is under no legal requirement to execute a contract on the basis of this advertisement.

Contact: The request for proposal application form and additional information may be obtained from Dora McDonald, Diabetes Program, Chronic Disease Prevention Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, (512) 458-7534.

Issued in Austin, Texas, on September 8, 1989.

TRD-8908334 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health.

Filed: September 8, 1989.

For further information, please call: (512) 458-7534.

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Revocation of Certificates of Registration

The Texas Department of Health, having duly filed complaints pursuant to *Texas Regulations for Control of Radiation* Part 13.8, has revoked the following certificates of registration: Laser Systems Development Corporation, Z-00275, Green Mountain Falls, Colorado, August 10, 1989; Gary C. Baine, D.D.S., 10-08395, Beaumont, August 10, 1989; R. B. Russell, D.D.S., David H. Grinsfelder, D.D.S., 5-06421, Dallas, August 10, 1989; William H. Mitchell, D.P.M., 11-08066, Houston, August 10, 1989.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin, Monday-Friday, 8 a. m. to 5 p.m. (except holidays).

Issued in Austin, Texas, on September 5, 1989.

TRD-8908209 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Filed: September 6, 1989

For further information, please call: (512) 835-7000

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Texas Department of Human Services

Invitation to Bid

The Texas Department of Human Services (DHS) announces an invitation to bid for purchased food stamp issuance services. DHS uses a competitive procurement process to ensure and document that services are of the highest quality, lowest price, and best meet the needs of the clients served.

Description: Over-the-counter food stamp issuance is the exchange of food coupon booklets for authorization to participate (ATP) forms. ATP forms will specify client name, case number, ID and issuance numbers, total benefit amount, number of each denomination booklet to be issued, and month valid. Issuance agent will verify that the ID serial number is the same on the ATP. If they match and the ATP is valid, the client will sign the ATP before the agent, who will then exchange the indicated number of food stamps for the ATP. The agent will copy a three-character code from the ID card to the ATP, date stamp the ATP, and batch it with other ATPs redeemed that day for daily shipment to DHS in Austin. To contract with DHS, bidders must comply with: applicable state and federal laws, regulations, and policies; DHS standards applicable to the service being purchased; accounting principles and procedures recognized by the American Institute of Certified Public Accountants; and contractual terms such as those relating to required insurance coverage, required operating capital, assumption of liability for issuance errors, losses, audit exceptions, and contract termination. DHS will procure over-the-counter food stamp issuance services in Harris, Bexar, and Webb counties.

Contact person: To request an invitation to bid package or for more information, contact Charles Jennings at (512) 450-3459.

Closing date: Sealed bids must be received no later than noon on November 30, 1989. Issuance services must begin by March 1, 1990.

Terms: Each contract will be for a 12-month period. DHS has the option to renew each contract on a non-competitive basis for a limited number of additional periods. Contractors will be paid a fee for each correctly redeemed ATP.

Procedures: The lowest bidder whose proposal meets the requirements of the procurement will be awarded the contract. One contract will be awarded for each county, unless no responsive bids are received for one or more of the counties.

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

TRD-8908245 Ron Lindsey
Commissioner
Texas Department of Human Services

Filed: September 7, 1989.

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

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The Texas Department of Human Services (DHS) announces an invitation to bid for purchased food stamp issuance services. DHS uses a competitive procurement process to ensure and document that services are of the highest quality, lowest price and best meet the needs of the clients served.

Description: Direct mail food stamp issuance is the mailing of federal food coupons to certified food stamp recipients. The contractor will be responsible for the secure storage, processing and transportation of federal food stamp coupons. DHS will provide the contractor with lists of certified food stamp recipients, corresponding address forms and a supply of window envelopes. The contractor will accurately insert the address forms and required food coupon books into the envelopes, seal them, apply postage with a postage meter (provided by DHS), pre-sort the envelopes by five-digit zip codes, and transport the envelopes to the Austin general mail facility. The contractor will collect returned food coupon issuances from the Austin general mail facility and return them to inventory. All such processing must be fully and accurately documented and reported. To contract with DHS, the contractor must comply with: applicable federal and state laws, regulations and policies; DHS standards applicable to the service being purchased; accounting principles and procedures recognized by the American Institute of Certified Public Accountants; and contractual terms such as those relating to required insurance coverage, sufficient operating capital, assumption of liabilities for losses and audit exceptions, and contract termination.

Contact person: To request an invitation to bid package or information, contact Charles Jennings at (512) 450-3459.

Closing date: Sealed proposals must be received by noon on November 30, 1989. Issuance must begin on March 1, 1990.

Terms: The contract will be for a 12-month period. DHS has the option to renew the contract on a non-competitive basis for a limited number of one-year periods. The contractor will be paid a fee for each issuance mailed.

Procedures: The contract will be awarded to the lowest bidder whose proposal meets the requirements of the procurement. No contract will be awarded if no responsive proposals are received.

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

TRD-8908246 Ron Lindsey
Commissioner
Texas Department of Human Services

Filed: September 7, 1989.

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

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State Board of Insurance

Notice of Public Hearing

Notice is hereby given that a hearing will be held under Docket Number 1676 before the State Board of Insurance beginning at 9:30 a.m. on Thursday, September 28, 1989, in Room 414 of the State Insurance Building at 1110 San Jacinto Boulevard in Austin. The purpose of the hearing is consideration of manual rules and amendments to the general basis schedules, adopted by the State Board of Insurance under the Texas Insurance Code, Article 5.96, including amendments to the key rate schedules therein, and other matters pertaining to the writing of Fire and Allied Lines, Commercial Multi-Peril, Homeowners, and Farm and Ranch Owners insurance. The hearings will be conducted in accordance with the agenda in this notice of public hearing.

The State Board of Insurance has jurisdiction over the promulgation and revision of Fire and Allied Lines, Commercial Multi-Peril, Homeowners, and Farm and Ranch Owners rates and rules, forms, clauses, permits, warranties, classes, rating plans, amendments to the general basis schedules,and all matters pertinent to the writing of Fire and Allied Lines, Commercial Multi-Peril, Homeowners, and Farm and Ranch Owners insurance in the state of Texas pursuant to the Texas Insurance Code, Articles 1.02, 1.04, 5.25, 5.81, 5.96, and 21.49, as well as the Texas Insurance Code, Chapter 5, Subchapter C.

The Rules of Practice and Procedure before the State Board of Insurance (Texas Administrative Code, Title 28, Chapter 1, Subchapter A) and the Texas Insurance Code, Article 5.96, will govern the procedural aspects of this hearing.

Reference is further made to the above-cited statutes and rules and to Chapter 5, Subchapters C, I, and L, and other Articles of the Texas Insurance Code, to the General Basis Schedules and Key Rate Schedules adopted thereunder, and to §§5.8001-5.8004 and other sections of the Texas Administrative Code, Title 28, as particular statutes and rules which may be involved in this hearing.

Matters to be considered under the agenda for this hearing will include the following items.

1A-89 Consider amending the Key Rate Schedule to provide for advances in technology in fire-fighting equipment. By City of Willis.

2A-89 Consider amending the Key Rate Schedule to provide key rates for county automatic mutual aid agreements that cover cities. By City of Willis.

3A-89 Consider amending the Key Rate Schedule to restrict application of credit for mutual aid agreements to those cities with no fire department manpower or apparatus deficiencies. By State Board of Insurance Staff.

4A-89 Consider amending the Key Rate Schedule to establish a minimum tank size of 350 gallons and a maximum tank size of 800 gallons for fire department pumper vehicles. By State Board of Insurance Staff.

Please direct inquiries relating to this hearing to Lyndon Anderson, Mail Code 011-1, Acting Deputy Insurance Commissioner for Property Insurance, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998, (512) 322-2265.

Issued in Austin, Texas on September 11, 1989.

TRD-8908363 Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: September 11, 1989

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

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Texas State Library and Archives Commission

Consultant Contract Proposal

The Texas State Library and Archives Commission, under authority of its enabling Act, Government Code, Texas Civil Statutes, Chapter 441, announces a request for proposals from its Library Development Division. The project involves consultant services; notice is hereby given as required under Vernon's Annotated Civil Statutes, Article 6252-11c.

Description of Project. The State Library is soliciting proposals to plan, organize and conduct a statewide conference and an associated program of state activities to precede the second national White House Conference on Libraries and Information Services (WHCLIS). The Texas conference will be a statewide meeting, with local or regional community meetings conducted prior to the conference. The purpose of the state conference is to increase public awareness of library issues; to investigate the library's role in furthering the national priorities of improved literacy, productivity and democracy; and to select delegates to the national conference.

Evaluation Process. The process of application review will involve examination of the proposal by members of the State Library staff. The Invitation of Bid describes the required experience and qualifications of bidders and benchmarks which must be met for timeliness and organizational planning. The final decision on awarding the contract will be made by the Texas State Library and Archives Commission.

Eligible Applicants. A contract may be awarded to an organizational showing: evidence of access to a pool of librarians and library-related persons, demonstrated ability to oversee planning committees with successful results, demonstrated ability to manage grant funds and ensure fiscal accountability, and demonstrated ability to plan and conduct successful conferences.

Deadline for Submission of Proposals. Proposals must be received no later than 3 p.m,. September 29, 1989. Proposals may be hand delivered up to this time to the Library Development Division,Lorenzo de Zavala Archives and Library Building, 1201 Brazos Street, Austin, on any weekday between 8 a.m. and 5 p.m.

Duration of Programs and Amount of Funding. Federal Library Services and Construction Act, Title I funds in the amount of $67,500 are available. The duration of the contract will be from February 1, 1990 to August 31, 1991. The State Library reserves the right to accept or reject any and all proposals submitted and is under no legal requirement to execute any resulting contract on the basis of this advertisement, and provides this information only to fulfill the requirements of notification. Should the Texas State Library and Archives Commission award any contract, it will base its choice on the quality of the proposal, as assessed by the State Library staff in accordance with the published application guidelines.

Contact. To receive an Invitation to Bid, contact Edward Seidenberg, Director, Library Development Division, Texas State Library, P.O. Box 12927, Austin, Texas 78711, (512) 463-5459.

Issued in Austin, Texas on September 5, 1989.

TRD-8908358 Raymond Hitt
Assistant State Librarian
Texas State Library and Archives Commission

Filed: September 11, 1989

For further information, please call: (512) 463-5440.

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Texas Parks and Wildlife Department

Correction of Error

The Texas Parks and Wildlife Department submitted an adopted amendment which contained errors as submitted by the department in the July 28, 1989, issue of the *Texas Register* (14 TexReg 3691).

Section 65.15(d)(4) should read: "(4) the crossbow stock is not less than 25 inches in length; and"

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Public Utility Commission of Texas

Notice of Application to Revise a Telephone Service Base Rate Area

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 14, 1989, to revise a base rate area pursuant to the Public Utility Regulatory Act, §§16(a), 18(b) and 37. A summary of the application follows.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Proposed Revision to the Grandbury Exchange Base Rate Area Within Hood County, Docket Number 9014, before the Public Utility Commission of Texas.

The Application. In Docket Number 9014, Southwestern Bell Telephone Company filed an application to expand the Grandbury Exchange Base Rate Area.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400, Austin, Texas 78757, or call the Public Utility Commission Public Information Division at (512) 458-0223, or (512) 458-0227, or (512) 458-0221 for typewriter for deaf within 15 days of this notice.

Issued in Austin, Texas, on September 6, 1989.

TRD-8908271 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: September 7, 1989

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

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 17, 1989, to revise a base rate area pursuant to the Public

Utility Regulatory Act, §§16(a), 18(b) and 37. A summary of the application follows.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Proposed Revision to the Frisco Exchange Base Rate Area Within Collin and Denton Counties, Docket Number 9015, before the Public Utility Commission of Texas.

The Application. In Docket Number 9015, Southwestern Bell Telephone Company filed an application to expand the Frisco Exchange Base Rate Area.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400, Austin, Texas 78757, or call the Public Utility Commission Public Information Division at (512) 458-0223, or (512) 458-0227, or (512) 458-0221 for typewriter for deaf within 15 days of this notice.

Issued in Austin, Texas on September 6, 1989.

TRD-8908270 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: September 7, 1989

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

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Texas Water Commission

Correction of Error

The Texas Water Commission submitted a proposed repeal which contained an error as submitted and published in the August 25, 1989, issue of the *Texas Register* (14 TexReg 4280).

In the preamble of §§325.2-325.5 the amended sections should read "§§325. 1, 325.6, 325.7, 325.9-325.12, and 325.15". In the fourth paragraph of the preamble on line 12, the number "(1)" should be the letter "(1)".

The fifth paragraph of the preamble should read: "Proposed §325.3 would add new provisions relating to the certification of collection system operators. This new section would provide that all operators must be certified, but new operators may be employed as an operator-in-training for one year without certification. The proposed sections also provide that a person whose certificate is revoked or suspended may not operate a facility without commission authorization. The proposed sections would also divide the certifications into two levels–Class I and Class II–and provides minimum qualifications for obtaining each, as well as application fee amounts and maximum terms for certification."

The ninth paragraph of the preamble should read: "The proposed sections would amend current §325.6, relating to certification renewal by providing that failure to submit a renewal application and fee within 30 days of expiration of the certification will require the applicant to re-take the examination for such certification. The proposed amendment would also provide requirements for collection system operators wishing to renew their certification. Class D certificates would not be renewable if the operator works at any activated sludge type facility, or at a trickling filter or RBC facility, with a permitted daily average flow of 100,000 gpd or greater. Additionally, to renew a certificate which has been expired for a year or more, the applicant would have to satisfy all current requirements necessary for the issuance of a new certification. Finally, if a certificate expires when the operator is serving actively in the military, the certification may be renewed without re-examination."

In §325.2(a) should read: "(a) Any wastewater treatment plant operator as defined in §325.1 of this title (relating to Definitions) must hold a valid certificate of competency issued pursuant to this chapter with the following exception. A person first entering the field of wastewater treatment may be employed as an operator-in-training under constant supervision, without certification, for a maximum of one year employment. This time period will allow the person to obtain the required designated training courses and take the appropriate examination. Any applicant who is unable to acquire current certification within one year of his or her employment is prohibited from performing any functions at the facility other than minor maintenance work unless specifically authorized to do so by the commission. Upon suspension or revocation of a certificate under §325.11 of this title (relating to Revocation or Suspension of Certificate), the operator shall no longer operate or assist in operation of any wastewater treatment plant, unless specifically authorized to do so by the commission, or unless the certificate has been reinstated."

In §325.4(b) should read: "(b) A wastewater treatment facility having a combination of treatment processes which are in different categories shall be assigned the higher category."

In §325.6(a) should read: "(a) Unless revoked under §325.11 of this title (relating to Revocation or Suspension of Certificate), or replaced by a higher class of certificate, certificates may be renewed by payment of the applicable fee and either by taking and passing a renewal examination or by receiving a specified number of hours of approved additional training. When renewing by training hours, applications for renewal and appropriate fees must be received by the executive director no later than 30 days after the date of expiration of the certificate, or the certificate will be renewable only by re-examination."

In §325.6(c) should read: "(c) Class D certificates are not renewable at any activated sludge type facilities, or at trickling filter or RBC facilities, with a permitted daily average flow of 100,000 gallons per day or greater."

In §325.12(b) should read: "(b) Transmittal of the notice will be certified mail, return receipt requested. Such notice shall be sufficient if mailed to the last known address supplied to the commission by the operator or company."

In §325.16(a)(1) should read: "(1) the renewal is the first renewal following the commission's receipt of the list including the licensee's name among those in default; or"

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Texas Water Development Board

Consultant Contract Award

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Water Development Board publishes this notice of consultant contract award. The consultant proposal request appeared in the May 9, 1989, issue of the *Texas Register* (14 TexReg 2303). The consultant will enhance the current RBase for DOS grant and contract accounting system.

The consultant selected is Bugin-Lott Engineers, 13204 Mansfield Drive, Austin, Texas 78732. The contract amount is $2,500, and will be performed during the month of October, 1989.

Issued in Austin, Texas, on September 5, 1989.

TRD-8908212 Suzanne Schwartz
General Counsel
Texas Water Development Board

Filed: September 6, 1989

For further information, please call: (512) 463-7981

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