

DEC 12 88

Texas Register

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

Governor—appointments, executive orders, and proclamations

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

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

Proposed Sections—sections proposed for adoption

Withdrawn Sections—sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date

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

Open Meetings—notices of open meetings

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

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

How To Cite: Material published in the *Texas Register* is referenced by citing the volume in which a document appears, the words "TexReg," and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 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: "13 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 13 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, 503E Sam Houston 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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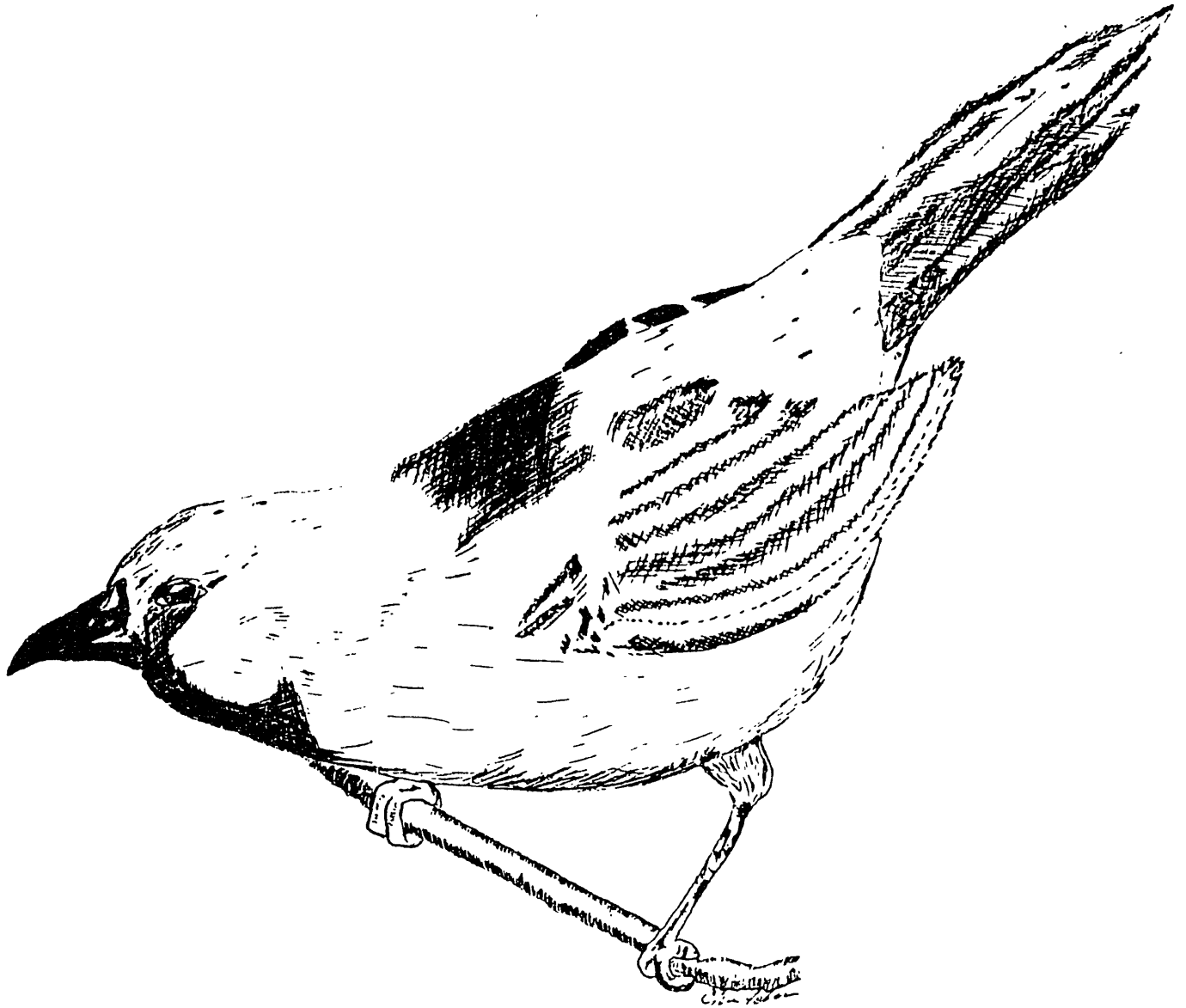
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43 TAC §§25.701-25.709—6034





Chris Feline
10

Name: Chris Feline
Grade: 10
School: Burnet High, Burnet

Attorney General

Description of Attorney General submissions. Under provisions set out in the Texas Constitution, Texas Civil Statutes, Article 4399, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies maybe held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the *Texas Register*. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record.

Open Records Decisions

ORD-511 (RQ-1411). Request from John C. Ross, Jr., City Attorney, City of Lubbock, Lubbock, concerning whether an attorney for a governmental body may unilaterally decide that certain information relating to litigation may be withheld under the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, §3(a)(3) without an independent determination by the attorney general under §7 of the Act.

Summary of Decision. The Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, §3(a)(3), requires that the respective attorneys for governmental bodies covered by the Act determine initially whether the governmental body should claim §3(a)(3). This determination and the information at issue are subject to review by the attorney general under the Open Records Act, §7.

Governmental bodies may withhold information under §3(a)(3), only if the information relates to litigation such that releasing the information would impair the governmental bodies' litigation interests. For this reason, information may not be withheld from public disclosure once it has been seen by the parties in litigation with the governmental body. TRD-8812232

ORD-512 (RQ-1519). Request from James R. Lindley, American Educational Complex System, General Counsel, Killeen, concerning whether the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, §4A, authorizes a governmental body to refuse release of information to requestors who make repeated requests for the same information.

Summary of Decision. The Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, §4A, limits the time period during which a member of the public may physically inspect public records. Section 4A does not authorize governmental bodies to deny repeated requests for copies of public records. TRD-8812231

Opinions

JM-984 (RQ-1469). Request from Jack M. Rains, Secretary of State, Austin, concerning whether a filing with the Secretary of State is necessary to perfect a security interest in manufactured housing held as inventory.

Summary of Opinion. A filing with the secretary of state is not necessary to perfect a security interest in manufactured housing held by the financier as inventory. TRD-8812355

JM-985 (RQ-1483). Request from Charles D. Penick, Criminal District Attorney, Bastrop County, Bastrop, concerning the meaning of the term "emergency" in the Texas Open Meetings Act, Texas Civil Statutes, Article 6252-17, §3A and whether a governmental entity may ratify certain actions taken during an emergency meeting.

Summary of Opinion. The Texas Open Meetings Act, Texas Civil Statutes, Article 6252-17, authorizes holding meetings with only two hours' notice only for legitimate emergencies. Action taken in violation of the Open Meetings Act's emergency notice provisions cannot be validated simply by ratifying the minutes of the emergency meeting.

The existence of an emergency necessarily depends on the facts in any given case. Based on the facts you present, an emergency did not exist. Actions taken in violation of the Open Meetings Act are not automatically void; they are subject to reversal in court actions.

Independent school districts have the authority to hire attorneys to protect the legitimate interests of the districts. The lawfulness of defending a particular law suit depends on the facts. TRD-8812356

Requests for Opinions

(RQ-1591). Request from Marlin W. Johnston, Commissioner, Texas Department of Human Services, Austin, concerning whether recent amendments to the Human Resources Code, §21.003 would authorize the transaction of business by a majority of

those board members qualified for service.

(RQ-1592). Request from Helen Campbell, Commissioner, Office of Firemen's Pension Commissioner, Austin, concerning the disability and retirement options available to firefighters.

(RQ-1593). Request from Jack C. Vowell, Texas House of Representatives, District 70, El Paso County, El Paso, concerning the requirements for the creation of a reinvestment zone.

(RQ-1594). Request from Frank Long, Office of the District Attorney, eighth Judicial District, Sulphur Springs, concerning whether a county commissioner may use county equipment and county employees to construct a driveway on the commissioner's private property, where that property is to be used to store county equipment.

(RQ-1595). Request from D.R. "Tom" Uher, Chairman, Texas House of Representatives, Higher Education, Budget and Oversight, Austin, concerning the annexation of territory by a junior college district.

(RQ-1596). Request from David Brabham, Criminal District Attorney, Gregg County, Longview, concerning whether a county tax collector may refuse to accept a tax payment.

(RQ-1597). Request from Amado J. Abascal, III, District Attorney, Eagle Pass, concerning whether various persons may validly serve on the board of directors of the Maverick County Hospital District.

(RQ-1598). Request from Fred G. Rodriguez, Criminal District Attorney, Bexar County Courthouse, San Antonio, concerning whether a sheriff's civil service com-

mission established under the Local Government Code, §158.03, et seq. may amend its rules to provide for a policy on collective bargaining.



(RQ-1599). Request from Dennis R. Jones, Commissioner, Texas Department of Mental Health and Mental Retardation, Austin, concerning the authority of the Department of Mental Health and Retardation to impose certain requirements on contracts for community-based mental health and mental retardation services.



(RQ-1600). Request from Grant Jones, Chairman, Senate Finance Committee, Texas State Senate, Austin, concerning the constitutionality of the Tax Code, §26.07, as applied to a general law city.



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 21. Seed Certification Standards

Additional Requirements for the Certification of Certain Crops

• 4 TAC §21.68

The Texas Department of Agriculture proposes new §21.68, concerning certification of fields in which sclerotinia blight is found. The new section will add the requirement, that a peanut field in which sclerotinia blight is found shall be ineligible for certification.

Kenneth Boatwright, director, seed and grain warehouse program, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Boatwright 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 aid in the assurance that certified peanut seed will be free of the sclerotinia blight. 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 Kenneth Boatwright, Director, Seed and Grain Warehouse Program, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

The new section is proposed under the Texas Agricultural Code, Chapter 62, which provides the Texas Department of Agriculture with the authority to make rules necessary to carry out provisions of the Code.

§21.68. Disease Requirements of Peanut Production. A peanut field in which sclerotinia blight is found in the course of any inspection shall be ineligible for any class of certification by the department.

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

Issued in Austin, Texas, on November 29, 1988.

TRD-8812258

Dolores Alvarado Hibbs
Director of Hearings

Texas Department of
Agriculture

Earliest possible date of adoption: January 9, 1989

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

TITLE 7. BANKING AND SECURITIES

Part VII. State Securities Board

Chapter 107. Terminology

• 7 TAC §107.2

The State Securities Board proposes an amendment to §107.2, concerning definitions of words and terms for purposes of the Securities Act (Act). Specifically, the board proposes to define telephone or telegram for purposes of the Act, §7.C.

Micheal Northcutt, director, securities registration 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 or small businesses as a result of enforcing or administering the section.

Mr. Northcutt also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that applicants seeking to register securities with both the board and the Securities and Exchange Commission will be apprised of which means of communication may be utilized for purposes of the Act, §7.C. 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 Denise Voight Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendment is proposed under Texas Civil Statutes, Article 581, §28-1, which provide the board with the authority to adopt rules and regulations governing registration statements and applications; classify securities, persons, and matters within its jurisdiction; and prescribe different requirements for different classes.

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

Telephone or telegram—For purposes of the Securities Act, §7.C(2)(c), includes any means of electronic transmission such as, but not limited to telephone, telegraph, graphic scanning, modem or facsimile; provided however, that the office of the State Securities Board has the necessary equipment to accept such a transmission.

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 December 2, 1988.

TRD-8812316

Richard D. Latham
Securities Commissioner
State Securities Board

Earliest possible date of adoption: January 9, 1989

For further information, please call: (512) 474-2233

Chapter 109. Transactions Exempt from Registration

• 7 TAC §109.7

The State Securities Board proposes an amendment to §109.7, concerning the secondary trading exemption contained in the Securities Act (Act), §5.0. The board proposes to clarify that the Standard and Poor's Corporation Records Daily News Section, is included among the board's "recognized securities manuals" for purposes of the exemption.

Micheal Northcutt, director, securities registration 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 or small businesses as a result of enforcing or administering the section.

Mr. Northcutt also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that registered dealers seeking reliance upon the exemption contained in the Act, §5.0, will have notice that the Standard and Poor's Corporation Records Daily News Section is included among the board's "recognized securities manuals" for purpose of the exemption. 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 Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendment is proposed under Texas Civil Statutes, Article 581, §28-1, which provide the board with the authority to adopt rules and regulations governing registration statements and applications; classify securities, persons, and matters within its jurisdiction; and prescribe different requirements for different classes.

§109.7. Secondary Trading Exemptions.

(a)-(d) (No change.)

(e) The term "recognized securities manual" used in the Securities Act, §5.0(9)(c), is limited to the following:

(1) Standard and Poor's Corporation Records (including the Daily News Section);

(2)-(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 December 2, 1988.

TRD-8812315

Richard D. Latham
Securities Commissioner
State Securities Board

Earliest possible date of adoption: January 9, 1989

For further information, please call: (512) 474-2233

Chapter 141. Administrative Guidelines for Registration of Equipment Programs

• 7 TAC §§141.1-141.8

The State Securities Board proposes amendments to §§141.1-141.8, concerning the administrative guidelines for registration of equipment programs. The proposal reflects recent changes to the North American Securities Administrators, Association, Incorporated (NASAA) equipment program guidelines.

Michael Northcutt, director, securities registration division, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Northcutt 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 continued uniformity with other states in applying standards for the registration of equipment programs. 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 Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-

3167

The amendments are proposed under Texas Civil Statutes, Article 581, §28-1, which provide the board with the authority to adopt rules and regulations governing registration statements and applications; classify securities, persons, and matters within its jurisdiction; and prescribe different requirements for different classes.

§141.1. Introduction.

(a) Application.

(1) The rules contained in these guidelines apply to **qualification** [qualifications] and **registration** [registrations] of programs formed to own equipment and either:

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

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

(b) Definitions. Where terms used in the prospectus are subject to more than one interpretation and such terms are material to program provisions, the prospectus shall contain a glossary of such terms. Any discrepancies between the definitions set forth in these guidelines and the definitions set forth in the glossary shall be indicated in the application filed with the securities commissioner.

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

(6) Carried interest—An interest taken in a program by a person, other than the promotional interest provided for in §141.4(c)(3) and (d) of this title (relating to Compensation and Expenses), for which full consideration has neither been [is not] paid nor is [or] to be paid. [Refer to §141.4(b) and (c)(4) of this title (relating to Compensation and Expenses) for the treatment of carried interest.]

(7)-(11) (No change.)

(12) Front-end fees—Fees and expenses paid by any party for any services rendered during the program's organizational or acquisition phase including organization and offering expenses, leasing fees, acquisition fees, acquisition expenses, and any other similar fees, however designated by the sponsor. [Notwithstanding the foregoing,] front-end fees shall not include any acquisition fees or acquisition expenses paid by a manufacturer of equipment to any of its employees unless such persons are affiliates of the sponsor.

(13) Full payout leases—Leases under which the non-cancellable rental payments due during the initial term of the lease are [at least] sufficient to recover the purchase price of equipment.

(14) (No change.)

(15) Leasing fee—The total of all fees and commissions paid by any party in connection with the initial lease [lease-up] of equipment acquired by a program.

(16) Net disposition proceeds—The proceeds realized by the program from sale, refinancing, or other disposition of program equipment, including insurance proceeds or lessee indemnity payments arising from the loss or destruction of the equipment, less all [related] program liabilities

(17) (No change.)

(18) Net worth—The excess of total assets over total liabilities as determined by generally accepted accounting principles, except that if any of such assets have been depreciated, then the amount of depreciation relative to any particular asset may be added to the depreciated cost of such asset to compute total assets. [, provided that] The amount of depreciation may be added only to the extent that the amount resulting after adding such depreciation does not exceed the fair market value of such asset.

(19) (No change.)

(20) Organizational and offering expenses—[those] Expenses [regardless of when] incurred [or paid, incurred] in connection with preparing a program for [contemplation of] registration and [sale of program interests, as well as in actual registration of program interests and] subsequently offering and distributing it [them] to the public, including sales commissions [or other fees] paid to broker-dealers in connection with the [sale and] distribution of program interests and all advertising expenses except advertising expenses related to the leasing of the program's equipment. [The commissioner may deem particular expenses to be offering expenses, even though such expenses are categorized differently by the sponsor.]

(21)-(27) (No change.)

(28) Sponsor—[a sponsor is] Any person directly or indirectly instrumental in organizing, wholly or in part, a program or any person who will manage or participate in the management of a program, and any affiliate of any such person. [but] Sponsor does not include a person whose only relation with the program is that of an independent equipment manager and whose only compensation is as such. Sponsor does not include wholly independent third parties such as attorneys, accountants, and underwriters whose only compensation is for professional services rendered in connection with the offering of program interests.

§141.2. Requirements of Sponsors.

(a) Experience. The sponsor, the general partner, or their chief operating officers, shall have at least three years relevant equipment leasing or other experience which demonstrates sufficient knowledge and experience to acquire and manage the type of equipment the program will purchase. [, and] Any of the foregoing or any affiliate providing services to the program

shall have had not less than three years relevant experience in the kind of service being rendered or must otherwise demonstrate sufficient knowledge and experience to perform the services proposed.

(b) **Net worth requirement** [Requirements] of sponsor [sponsors].

(1) **Financial condition** [Net worth]. The financial condition of the sponsor liable for the debts of the program must be commensurate with any financial obligations assumed in the offering and in the operation of the program. At [As] a minimum, such sponsor shall have an aggregate financial net worth, exclusive of home, automobile, and home furnishings, of the greater of either \$50,000 or an amount at least equal to 5.0% of the gross amount of all direct participation offerings sold within the prior 12 months plus 5.0% of the gross amount of the current offering, to an aggregate maximum net worth of such sponsor of \$1 million. In determining net worth for this purpose, contingent liabilities and the use of promissory notes will be evaluated by the **Securities Commissioner** to determine the appropriateness of their inclusion in net worth computation.

(2) **Financial information** required. The sponsor shall provide as an exhibit to the application the following financial information in support of its net worth.

(A) Corporate sponsors shall submit a balance sheet as of the end of their most recent fiscal year, prepared in accordance with generally accepted accounting principles and examined and reported upon by an independent certified public accountant in accordance with generally accepted auditing standards. A balance sheet for the prior fiscal year which meets the previously mentioned qualifications shall [may] be used if the most recent fiscal year has ended not more than 90 days prior to the date of filing, and [.] an unaudited balance sheet as of a date not more than 135 days prior to the date of filing should also be prepared. Such statements shall be included in the prospectus.

(B) Where the net worth requirement of this section cannot be met by corporate sponsors, a balance sheet for each noncorporate sponsor (including individual partners or individual joint ventures [venturers] of a sponsor) as of a date not more than 135 days prior to the date of filing an application shall be submitted. Such balance sheet shall be prepared in accordance with generally accepted accounting principles and reviewed and reported upon by an independent certified public accountant under the review standards set forth by the American Institute of Certified Public Accountants. In such case, a representation of the amount of such net worth must be included in the prospectus, or in the alternative, a

representation that such sponsor meets the net worth requirements of this section.

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

(e) **Liability and indemnification.**

(1) **The Program shall not provide for indemnification of the sponsor for any liability or loss suffered by the sponsor, nor shall it provide that the sponsor be held harmless for any loss or liability suffered by the program, unless all of the following conditions are met.**

(A) **The sponsor has determined** [or its affiliates shall not pass on to participants the general liability imposed on them by law, except that program agreement may provide that a sponsor or its affiliates shall have no liability whatsoever to the program or to any participant for any loss suffered by the program which arises out of any action or inaction of the sponsor or its affiliates if the sponsor or its affiliates], in good faith, [determined] that the [such] course of conduct which caused the loss or liability was in the best interests of the program; [and such course of conduct did not constitute negligence or misconduct of the sponsor or its affiliates. The sponsor or its affiliates may be indemnified by the program against losses sustained in connection with the program, provided the losses were not the result of negligence or misconduct on the part of the sponsor or its affiliates.]

(B) **the sponsor was acting on behalf of or performing services for the program;**

(C) **such liability or loss was not the result of negligence or misconduct by the sponsor; and**

(D) **such indemnification or agreement to hold harmless is recoverable only out of the assets of the program and not from the limited partners; and**

(E) **for purposes of this subsection, affiliates must be performing services on behalf of the program and acting within the scope of the general partner's authority.**

(2) **Indemnification of the sponsors** [sponsor or its affiliates] will not be allowed for an liability imposed by judgment, and costs associated therewith, including attorney's fees, arising from or out of a violation of state or federal securities laws associated with the offer and sale of partnership units.

(A) **Indemnification will be allowed for settlements and related expenses of lawsuits alleging securities law violations, and for expenses incurred in successfully defending such lawsuits, pro-**

vided that a court either:

(i) [in the case of a settlement, the lawsuit has been dismissed with prejudice on the merits or the court] approves the settlement and finds that the indemnification of the settlement and related costs should be made; or

(ii) **approves indemnification of litigation costs if a successful defense is made** [the sponsor or its affiliates are successful in defending such lawsuit].

(B) (No change.)

(3) **The program may not incur the cost of that portion of liability insurance which insures the sponsor** [or its affiliates] for any liability as to which the sponsor [or its affiliates] is prohibited from being indemnified under this section.

§141.3. Suitability of the Participant.

(a) **Standards to be imposed.** Given the limited transferability, the relative lack of liquidity, and the degree of risk associated with an investment in [specific tax orientation of many] programs, the sponsor and its selling representatives should be cautious concerning the persons to whom such securities are marketed. Suitability standards for participants will, therefore, be imposed which are reasonable in view of the foregoing and of the type of programs to be offered. Sponsors will be required to set forth in the prospectus the investment objectives of a program, a description of the type of person who could benefit from the program, and suitability standards to be applied in marketing it. The suitability standards proposed by the sponsor will be reviewed [for fairness] by the securities commissioner in processing the application. In determining how restrictive the standards must be, special attention will be given to the existence of such factors as high leverage, tax implications, balloon payment financing, and the uncertainty [uncertain] or the lack of [no] cash flow from program equipment. [As a general rule, programs structured to give deductible tax losses of 50% or more of the capital contribution of the participant in the year of investment should be sold only to persons in higher income tax brackets considering both state and federal income taxes.] Programs which involve more than ordinary investor risk should emphasize suitability standards involving substantial net worth of the participants.

(b) **Sales to appropriate persons.** The sponsor and each person selling program interests on behalf of the sponsor or program shall make every reasonable effort to assure that those persons being offered or sold the program interests are suitable, in light of the standards set forth in subsection (a) of this section, and that the program interests are appropriate for the investors'

[customers'] investment objectives and financial situations. Reasonable effort shall include receipt of the executed subscription agreement referred to in subsection (d) of this section prior to the sale of program interests to the investor. The sponsor or his representatives shall have reasonable grounds to believe, [and shall believe,] prior to the sale of program interests, [to the investor] that the investor will [can reasonably] benefit from the program in view of the investors' [his] overall investment objectives and portfolio structure[, and the following shall be evidence thereof].

(1) The investor shall have [has] the capacity to understand [of understanding] the fundamental aspects of the program[, which] . That capacity may be evidenced by the following:

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

(2) (No change.)

(c) The participant must be [is] able to bear the economic risk of the investment. For purposes of determining the ability to bear the economic risk, unless the securities commissioner approves a lower suitability standard, participants shall have:

[(1) Income production programs. In the case of the programs with a primary objective of income production,] a minimum annual gross income of \$30,000 [from whatever source of \$30,000] and a net worth of [at least equal to] \$30,000 [in excess of their capital contribution], or in the alternative, a net worth of[at least equal to] \$75,000 [in excess of their capital contribution]. As provided in subsection (a) of this section, higher suitability standards may be required. In the case of sales to fiduciary accounts, the participant shall mean the fiduciary account and/or the donor who directly or indirectly supplies the funds to purchase the program interests. Net worth shall be determined exclusive of home, home furnishings, and automobiles.

[(2) Tax-oriented programs. In the case of programs structured to give deductible tax losses of 50% or more of the capital contribution of the participant in the year of investment, a minimum taxable income of \$50,000 and a net worth at least equal to \$30,000 in excess of their capital contribution or a net worth at least equal to \$175,000 in excess of their capital contribution.]

[(3) Net worth, for purposes of this section, shall be determined exclusive of home, home furnishings, and automobiles.]

(d) Maintenance of records. The sponsor shall maintain a record of the information obtained to indicate that a participant meets the suitability standards employed in connection with the offer and sale of program [its] interests and a representation by [of] the participant that the partici-

part [he] is purchasing for [its [his] own account or, in lieu of such representation, information indicating that the participants for whose account the purchase is made meet such suitability standards. Such information shall be obtained from the participant through the use of the subscription agreement signed by the participant which sets forth the prescribed suitability standards in full and in which the participant [he] represents that the participant [he] meets such suitability standards and is purchasing for [its [his] own account. However, where the offering is underwritten or sold by a broker-dealer, the sponsor shall obtain a commitment from the broker-dealer to maintain the same record of information required of the sponsor.

(e) Minimum investment. The Securities Commissioner may require a [For an income production program, the] minimum initial cash purchase [shall be \$2,500 per participant, except for a tax qualified plan for which no minimum investment is required. For a tax-oriented program, the minimum initial cash purchase shall be \$5,000 per participant]. Subsequent transfers of program interests shall be limited to not less than such [a minimum number of units equivalent to the] initial minimum cash purchase, except for transfers by gifts, inheritance, intra-family transfers, family dissolutions, and transfers to affiliates.

§141.4. Compensation and Expenses.

(a) Introduction. All forms of fees, reimbursement, compensation, and [any other] remuneration paid to the sponsor [and its affiliates] from any source in connection with the program shall be reasonable, taken as a whole, and shall be presumed [considered presumptively] reasonable if permitted by these guidelines. Any other form of remuneration may be permitted if fully justified, supported, and permitted by the securities commissioner. All such remuneration shall be disclosed in the prospectus.

(b) Organizational [Organization] and offering expenses.

[(1)] Organizational and offering [Organization] expenses[. To be fair, just, and equitable, program organization expenses which are to be paid from the proceeds of the offering must] shall be reasonable and shall comply with all statutes, rules, and regulations imposed in connection with the offering of other securities in the state. Compensation of broker-dealers and agents for selling program interests or assisting in the organization of the program shall be in cash. [Generally, most expenses incurred to establish and structure the program in a manner to make its interests acceptable for registration in any jurisdiction will be considered offering expenses and not organization expenses.

[(2) Offering expenses. All of-

fering expenses shall be reasonable, and total expenses for marketing securities paid by the program shall in no event in the aggregate exceed the percentages specified in §113.4(g) of this title (relating to Application for Registration).]

(c) Investment in equipment.

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

(3) If the sponsor enters into an [total amount of the] investment in equipment commitment in excess of that specified [exceeds the minimum required amount] in paragraph (2) of this subsection [above], the following mutually exclusive forms of compensation are viewed as reasonable alternatives to front-end fees:

(A) for each 1.0% of capital contributions committed to investment in equipment in excess of the minimum amount required[,] the sponsor may take an additional promotional interest equal to 1.0% of all distributions from cash available for distribution and net disposition proceeds remaining after participants have received a cash return of 100% of their capital contributions; or [.]

(B) the sponsor may take a fully participating carried interest equal to 1.0% for the first 2.5% of additional investment in equipment, 1.0% for the next 2.0% of additional investment in equipment, and 1.0% for each 1.0% of additional investment in equipment thereafter.

(4) Except as permitted by paragraph (3) of this subsection, no carried interest in the program shall be allowed. [Neither the sponsor nor its affiliates shall be permitted a carried interest. Any allocation to the sponsor or its affiliates of profits and losses to satisfy the requirements of the Internal Revenue Code shall not include the distributive share of the sponsor or its affiliates.]

(d) Promotional interest. An interest in the program will be allowed as a promotional interest provided that the amount or percentage of such interest is reasonable. Such an interest will be presumed [considered presumptively] reasonable if it is within the limitations expressed in the following paragraphs [(1) and (2) of this subsection]:

(1) An interest equal to:

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

(2)[(C)] For purposes of this subsection [paragraph], the cumulative return to each participant shall commence no later than the end of the calendar quarter in which the participant's [his] capital contribution is made.

(3)[(2)] For the purposes of this subsection, the capital contributions of the

participants shall be reduced only by [the then-vested investment tax credits (including any energy credits),] distributions from cash available for distribution, and distributions from net distribution proceeds.

(e) **Equipment management fee.** If the sponsor performs the [Should the sponsor or its affiliates perform] services as described in the following paragraphs, the fees paid to the sponsor [or its affiliates] shall be the lesser of the maximum fees set forth in the following [in] paragraphs (1)-(4) of this subsection, whichever is applicable, or the fees which are competitive for similar services for similar equipment. Except for the fee provided in paragraph (3) of this subsection, included in these fees shall be fees paid by the program to persons who are not affiliates:

(1) the sponsor [or its affiliates] may charge the program an annual fee for equipment management, not to exceed 5.0% of gross rental payments for operating leases; or

(2) the sponsor [or its affiliates] may charge the program an annual fee for equipment management not to exceed 2.0% of gross rental payments in the case of full payout leases which contain net lease provisions; or

(3) the sponsor [or its affiliates] may receive a fee of 1.0% of gross rental payments if it arranges for and actively supervises the performance of the services in paragraph (1) [above] of this subsection by non-affiliates; or

(4) if the sponsor provides [or its affiliates provide] both equipment management and additional services, relating to the continued and active operation of program equipment, such as on-going marketing and re-leasing of equipment, hiring or arranging for hiring of crews or operating personnel for program equipment and similar services, it may charge the program a fee not to exceed 7.0% of gross rental payments [operating revenues] from equipment operated by the program.

(f) **Resale fee.**

(1) In specified equipment programs, the total compensation paid to the sponsor [or its affiliates] for the sale of program equipment shall be limited to one-half of a competitive equipment sale commission, subordinated as in subsection (d)(1)(B) of this section. If such amount exceeds 3.0% of the contract sales price, the sponsor shall state the current competitive equipment sale commission, the basis upon which such was determined, and the method to be used in establishing the competitive equipment sale commission at the time of sale. The total of all such commissions paid to all persons shall not exceed the competitive equipment sale commission.

(2) In all other programs, the total compensation paid to the sponsor [or its affiliates] for the sale of program equip-

ment shall be limited to one-half of a competitive equipment sale commission, not to exceed 3.0% of the contract sales price and subordinated as in subsection (d)(1)(B) of this section. [but] In no event shall total commissions paid to all persons exceed the competitive equipment sale commission. If the sponsor participates with an independent broker on resale, the subordination requirement shall apply only to the commission earned by the sponsor.

(g) **Re-leasing services.** Subject to the provisions of subsection (g) (2)(B) and (3) of this section concerning conflicts of interest and investment restrictions, the sponsor may provide re-leasing services to the program if all of the following conditions are met.

(1) The sponsor represents that it has and will maintain adequate staff which it will utilize in rendering such services to the program.

(2) The services will be provided at a price that does not exceed the lesser of the competitive rate for comparable services for similar equipment or 2.0% of gross rental payments derived from the re-lease of such equipment after the time that the re-lease of such equipment has been consummated as a result of the efforts of the sponsor. Such payment for services shall be paid as each rental payment is made over the term of the lease.

(3) The sponsor may not be paid or reimbursed for re-leasing services where the equipment is re-leased to a previous lessee or affiliates of such lessee.

(4) The sponsor has rendered substantial re-leasing services in connection with such re-lease.

(5) The sponsor is compensated for rendering equipment management services pursuant to subsection (e)(1)-(3) of this section.

§141.5. Conflicts of Interest and Investment Restrictions.

(a) **Sales and leases to or from program.**

(1) Notwithstanding the provisions of paragraph (2) of this subsection [notwithstanding,] the sponsor [or its affiliates] may purchase equipment in its own name (and assume loans in connection therewith) and hold title thereto on a temporary or interim basis (generally not in excess of six months) for the purpose of facilitating the acquisition of such equipment or the borrowing of money or obtaining of financing for the program, or any other purpose related to the business of the program, provided:

(A) it is in the best interest [interests] of the program;

(B) such equipment is purchased by the program for a price no greater than the cost of such equipment to the sponsor [or its affiliates], except compensation in accordance with §141.4 of this title (relating to Compensation and Expenses);

(C) there is no difference in interest terms of the loans secured by the equipment at the time acquired by the sponsor [or its affiliates] and the time acquired by the program; and

(D) no other benefit arises out of such transaction to the sponsor [or its affiliates] apart from compensation otherwise permitted by these guidelines.

(2) The program shall not purchase or lease equipment from nor sell or lease equipment to, the sponsor [or its affiliates], including equipment in which the sponsor [or its affiliates] has an interest, except that the program may lease equipment to the sponsor [or its affiliates] under a lease arrangement made at the outset and on terms no more favorable to the sponsor [of its affiliates] than those offered other persons and fully described in the prospectus. Notwithstanding the foregoing, the program may purchase new equipment from the sponsor [or its affiliates] if such person is in the business of manufacturing and selling such equipment to persons not affiliated with the program, the transaction occurs at the formation of a specified equipment program and the terms thereof are fully described in the prospectus, the equipment is sold at the lower of manufacturer's cost without mark-up or fair market value, and the equipment is subject to a prearranged lease. Such equipment may not be leased to the sponsor [or its affiliates].

(3) If the program has been formed for the primary purpose or financing equipment to be ultimately used by the sponsor [or its affiliates] in its business, the sponsor [or its affiliates] shall have the right to purchase the equipment at the time of sale at fair market value as determined in a commercially reasonable manner. Such purchase price shall be not less than that established by an independent appraiser. However, the sale may not take place until any applicable investment tax credit is no longer subject to recapture from participants unless the sponsor [or its affiliates] indemnifies the program.

(b) **Loans.** No loans may be made by the program to the sponsor [or its affiliates].

(c) **Dealings with related programs.** A program shall not acquire equipment from a program in which the sponsor [or its affiliates] has an interest.

(d) (No change.)

(e) Exclusive agreement. A program shall not give the [a] sponsor [or its affiliates] an exclusive right to sell or exclusive employment to sell equipment for the program.

(f) Commissions on financing, refinancing, reinvestment, or distribution. A program shall not pay, directly or indirectly a commission or fee (except as permitted under §141.4 or this title (relating to Compensation and Expenses)) to a sponsor [or an affiliate] in connection with the reinvestment or distribution of cash available for distribution or of the proceeds of the resale, exchange, or refinancing of program equipment.

(g) Services rendered to the program by the sponsor [or its affiliates].

(1) Expenses of the program.

(A) All expenses of the program shall be billed directly to and paid by the program. The sponsor [or its affiliates] may be reimbursed for the actual cost or goods and materials used for or by the program and obtained from entities unaffiliated with the sponsor. The sponsor [or its affiliates] may be reimbursed for the administrative services necessary to the prudent operation of the program provided that the reimbursement shall be at the lower of the sponsor's [or its affiliate's] actual cost or the amount the program would be required to pay to independent parties for comparable administrative services in the same geographic location. No reimbursement shall be permitted for services for which the sponsor [or its affiliate] is entitled to compensation by way of a separate fee. Excluded from the allowable reimbursement (except as permitted under §141.4(c) of this title (relating to Compensation and Expenses)) shall be:

(i) (No change.)

(ii) salaries, fringe benefits, travel expenses, and other administrative items incurred or allocated to any controlling person of the sponsor [or its affiliates].

(B) Controlling person, for purposes of this subsection includes, but is not limited to, all persons, whatever their titles, who perform functions for the sponsor [or its affiliates] similar to those of:

(i)-(iii) (No change.)

(iv) Those holding 5.0% or more equity interest in the sponsor [or its affiliates] or a person having the power to direct or cause the direction of the sponsor [or its affiliates], whether through the ownership of voting securities, by contract, or otherwise.

(C) Reports.

(i) The annual program must contain a breakdown of the costs re-

imbursed to the sponsor [or its affiliates]. Within the scope of the annual audit of the sponsor's [and its affiliates,] financial statements, the independent certified public accountants must issue a special report on the allocation of such costs to the program in accordance with the program agreement. The special report shall at minimum provide:

(I)-(II) (No change.)

(ii) The special report shall be in accordance with the American Institute of Certified Public Accountants United State auditing standards relating to special reports. The additional costs of such special report will be itemized by said accountants on a program by program basis and may be reimbursed to the sponsor [or its affiliates] by the program in accordance with this subparagraph only to the extent that such reimbursement, when added to the cost for administrative services rendered does not exceed the competitive rate for such services as determined in this subsection.

(D) (No change.)

(2) Other services. The sponsor [or its affiliates] may provide other services for the program, if necessary. At a minimum, self-dealing arrangements must meet the following criteria.

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

(C) The sponsor [or its affiliates] must be independently engaged in the business of providing such services to other than affiliates and at least 75% of the person's gross revenue from providing such services must be derived from other than the sponsor [or its affiliates].

(3) Contracts for goods and services. All services or goods for which the sponsor [or its affiliates] is to receive compensation shall be embodied in a written contract which precisely describes the services to be rendered and all compensation to be paid. The [, which] contract may only be modified by vote of a majority of the outstanding program interests. The contract shall contain a clause allowing termination without penalty on 60 days notice.

(h) Rebates, kickbacks, and reciprocal arrangements.

(1) No rebates or give-ups may be received by the sponsor [or its affiliates] nor may the sponsor [or its affiliates] participate in any reciprocal business arrangements which would circumvent these guidelines. Furthermore, the prospectus and program charter documents shall contain language prohibiting such rebates and give-ups as well as language prohibiting reciprocal business arrangements which would circumvent the restrictions against dealing

with affiliates.

(2) No sponsor [or its affiliates] shall directly or indirectly pay or award any commissions or other compensation to any person engaged by a potential investor for investment advice as an inducement to such adviser to advise the purchaser of interests in a particular program; provided, however, that this paragraph shall not prohibit the normal sales commission payable to a registered broker-dealer or other properly licensed person for selling program interests.

(i) Commingling of funds. The funds of a program shall not be commingled with the funds of any other person. Nothing contained in this section shall prohibit a sponsor from establishing a master fiduciary account pursuant to which separate subtrust accounts are established for the benefit of affiliated limited partnerships, provided, that program funds are protected from claims of such other partnerships and/or creditors. The prohibition of this section shall not apply to investments meeting the requirements of subsection (j) of this section.

(j) Investments in other programs.

(1) (No change.)

(2) Notwithstanding the foregoing, the program shall be permitted to invest in joint venture arrangements with other programs formed by the sponsor [or its affiliates] if such action is in the best interest of all programs and if all of the following conditions are met.

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

(C) The sponsor [or its affiliates] compensation should be substantially identical in each program.

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

(F) The joint venture is done either for the purpose of effecting appropriate diversification for such programs or for the purpose of relieving the sponsor [or its affiliates] from a commitment entered into pursuant to subsection (a)(1) of this section.

(G) (No change.)

(k) Lending practices. When [On] financing is made available to the program by the sponsor [or its affiliates], the sponsor [or its affiliates] may not receive interest and other financing charges or fees in excess of the amounts which would be charged by unrelated lending institutions on comparable loans for the same purpose. The sponsor [or its affiliates] shall be prohibited from providing permanent financing for the program. For purposes of this section, permanent financing shall mean any financing with a term in excess of 12 months.

(l)-(m) (No change.)

(n) Multiple programs. Sponsors [or its affiliates] are prohibited from offering for sale program interests in more than one program simultaneously, unless the programs have different investment objectives or are specified equipment programs. **The method for allocating investment opportunities among programs of the sponsor seeking to acquire similar types of equipment shall be reasonable. The method shall be described in the prospectus.** [Additionally, new offerings by the same sponsor or its affiliates shall not be permitted if that sponsor or its affiliates has not substantially committed or placed the funds raised from similar programs other than specified equipment programs. The sponsor must disclose the method to be used by its if funds for reinvestment become available in the future to prior and/or future affiliated programs.]

(o) Period of offering and expenditure of proceeds. **The [No] offering period of program interests in a program may not exceed [extend for more than] one year from the date of effectiveness unless permitted [extended] by [permission of] the securities commissioner.** [No proceeds of the offering may be invested in equipment prior to the date of closing if the loss of the investment tax credit to be allocated to the participants admitted into the program subsequent to the acquisition of the equipment creating the investment tax credit is material.] While the proceeds of an offering are awaiting investment in equipment, the proceeds may be temporarily placed into short-term, highly liquid investments which afford appropriate safety of principal, such as United States Treasury Bonds or Bills. Any proceeds of the offering of program interests not committed for investment within **two year [18 months]** from the date of effectiveness (except for necessary operating capital) shall be distributed pro rata to the participants as a return of capital.

(p) (No change.)

(q) Distributions in kind. Distributions in kind shall not be permitted except upon dissolution and liquidation, and then only to a liquidating trust which has been established for the purpose of the liquidation of the assets of the program, and the distribution of cash in accordance with the terms of the program agreement.

§141.6. Rights and Obligations of Participants.

(a) (No change.)

(b) Voting rights of participants. The limited partnership agreement must provide that a majority of the then outstanding program interests may, without the necessity for concurrence by the sponsor, vote to:

(1) amend the limited partner-

ship agreement;

(2) dissolve the program;

(3) remove the sponsor and elect a new sponsor; and

(4) approve or disapprove the sale of all or substantially all of the assets of the program. [The agreement should provide for a method of valuation of the sponsor interest, upon removal of the sponsor, that would not be unfair to the participants.] The agreement should also provide for a successor sponsor where the only sponsor of the program is an individual.

(c) Reports. The program agreement shall provide that the sponsor shall **prepare [cause to be prepared] and distribute [distributed]** to participants the following reports.

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

(7) **If [Where] any sponsor [or its affiliates] receives fees for services, [then] it shall, within 60 days of the end of each quarter wherein such fees were received, send to each participant a detailed statement setting forth the services rendered, or to be rendered, by such sponsor [or its affiliates] and the amount of the fees received. This requirement may not be circumvented by lump-sum payments to management companies or other entities who then disburse the funds.**

(8) (No change.)

(d) Access to records. Any participant and [a] designated representative thereof [and their designated representatives] shall be permitted access to all records of the program at all reasonable times.

(e) Assessments and defaults.

(1) Assessments. In appropriate cases, there may be a provision for voluntary assessability in specified equipment programs; provided however, that the maximum amount for such voluntary assessments shall not exceed 100% of initial capital contributions. The assessments shall be made solely for or relating to equipment already acquired, when [where] the sponsor has determined that the additional expenditures are allowed [merited] and in the best interests of the program. Examples of expenditures which may be merited include expenditures for extraordinary repairs when [where] such expenditures will not exceed the value of benefits to be derived from the equipment after repair or when [where] anticipated cash flow from equipment is not sufficient to pay taxes and/or special assessments imposed by governmental or quasi-governmental units.

(2) Defaults. In the event of a default in the payment of assessments by participants, their interests shall not be subject to forfeiture, but they may be subject to a reasonable penalty for failure to meet their commitments. [Provided that the ar-

rangements are fair,] This may take the form of reducing their proportionate interests in the program, subordinating their interests to that of nondefaulting participants, a forced sale complying with applicable procedures for notice and sale, the lending or the amount necessary to meet their commitment(s) by the other participants or a fixing of the value of their interests by independent appraisal or other suitable formula with provision for a delayed payment to them for their interests for [not beyond] a reasonable period. [,but] A debt security issued for such interest(s) should not have a claim prior to that of the other participants in the event of liquidation.

(f) Admission of participants. Admission of participants to the program shall be subject to the following.

(1) Admission of original participants. Upon the original sale of program interests, the purchasers should be admitted as participants not later than 15 days after the release from impound of the purchaser's funds to the program. [,and] Thereafter, purchasers should be admitted into the program not later than the last day of the calendar month following the date their subscription was accepted by the program. Subsequent subscriptions shall be accepted or rejected by the program within 30 days of their receipt; if rejected, all subscription monies should be returned to the subscriber immediately [forthwith].

(2) (No change.)

(3) Except where deemed inappropriate by the securities commissioner, persons holding program interests by assignment from entities holding limited partnership interests in a program for the purpose of assigning all or a portion of such interests to persons investing in such program (hereinafter the assignor) shall be expressly granted the same rights as if they were limited partners except as prohibited by applicable law, including but not limited to, the rights enumerated under this section. The assignment agreement and prospectus shall provide that the assignor's management shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the assignees, whether or not in the assignor management's possession or control, and that the management of the assignor shall not employ, or permit another to employ such funds or assets in any manner except for the exclusive benefit of the assignees. In addition, the agreement shall not permit the assignee to contract away the fiduciary duty owed to the assignee by the assignor's management under the common law of agency.

(g) Redemption of program interests. Ordinarily, the program and the sponsor are [may] not [be mandatorily] obligated to redeem or repurchase any of the [its] program interests. However, [, although] the program and the sponsor are

[may] not [be] precluded from voluntarily repurchasing or redeeming the program [purchasing such outstanding] interests if such repurchase or redemption [purchase] does not impair the capital or [the] operations [operation] of the program. [Notwithstanding the foregoing.] A program may provide for mandatory redemption rights under the following [necessitous] circumstances:

(1) (No change.)

(2) a substantial reduction in the owner's net worth or income, provided that:

(A) (No change.)

(B) the purchase will not be in violation of applicable legal requirements; and

(C) (No change.)

(3) a penalty may be assessed on the redemption of the interest if the penalty accrues to the benefit of the program. The sponsor is [or its affiliates are] prohibited from receiving a fee on the redemption of program interests by the program.

(h) Transferability of program interest. Restrictions[, except as permitted in §141.3(c) of this title (relating to Suitability of the Participant),] on assignment of limited partnership [program] interests or a [will not be allowed. Restrictions on the] substitution of limited partners [a participant] are generally disfavored and such restrictions will be allowed only to the extent necessary to preserve the tax status of the partnership or the characterization or treatment of income or loss. [program and] Any restriction must be affirmatively supported by an opinion of counsel. A charge may be imposed by the program to cover its actual, necessary, and reasonable administrative and filing expenses incurred in connection with a transfer. Such a charge shall be disclosed in the prospectus.

§141.7. Disclosure and Marketing Requirements.

(a) Sales promotional efforts.

(1) (No change.)

(2) Group meetings. All advertisements of and oral or written invitations to seminars or other group meeting at which program interests are to be described, offered, or sold, shall clearly indicate that the purpose of such meetings is to offer such program interests for sale, the minimum purchase price thereof, and the name of the sponsor, underwriter, or selling agent. No cash, merchandise, or other item of value shall be offered as an inducement to any prospective participants to attend any such meeting. In connection with the offer or sale of program interests, no general offer

shall be made of free or bargain price trips to view equipment in which the program has invested or intends to invest. All written or prepared audiovisual presentations (including scripts prepared in advance for oral presentations) to be made at such meetings must be submitted in advance to the securities commissioner not less than five business days prior to the use thereof. The foregoing restrictions of this paragraph shall not apply to meetings consisting only of representatives of securities broker-dealers.

(b) Prospectus and its contents.

(1) Prospectus [Disclosure]. A prospectus which is not part of a registration statement declared effective by the Securities and Exchange Commission pursuant to the Securities Act of 1933 shall generally conform to the disclosure requirements which would apply if the offering were so registered. The format and information requirements of Guide 5 promulgated by the Securities and Exchange Commission shall be followed, with appropriate adjustments made for the different business of the program.

(2) Forecasts.

(A) Use of forecasts. The presentation of predicted future results of operations of equipment programs shall be permitted, but not required, for specified equipment programs and shall be prohibited for all other programs. The covers of the prospectus must contain in bold face language one of the following statements:

(i) (No change.)

(ii) for all other programs: "The use of forecasts in this offering is prohibited. Any representations [representation] to the contrary and any predictions [prediction], written or oral, as to the amount or certainty of any present or future cash benefit or tax consequence which may flow from an investment in this program is not permitted."

(B) Content of forecasts. Forecasts for specified equipment programs shall be included in the prospectus, offering circular, or sales material of the program only if they comply with the following requirements:

(i) (No change.)

(ii) Material information.

Forecasts shall include all the following information:

(I)-(VI) (No change.)

(VII) predicted annual taxable income or loss and a simplified explanation of the tax treatment of such results[;] (assumed tax brackets may be used); and

(VIII) (No change.)

(C) Presentation.

(i) Caveat. Forecasts shall prominently display a statement to the effect that they represent a mere prediction of future events based on assumptions which may or may not occur, and should [may] not be relied upon to indicate the actual results which will be obtained.

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

(D) (No change.)

§141.8. Miscellaneous Provisions.

(a) Fiduciary duty. The program agreement shall provide that the sponsor shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the program, whether or not in its [his] immediate possession or control. The sponsor [,and that he] shall not employ, or permit another to employ such funds or assets in any manner except for the exclusive benefit of [to] the program. In addition, the program shall not permit the participant to contract away the fiduciary duty owed to the participant by the sponsor under the common law.

(b) Deferred payments. Arrangements for deferred payments on account of the purchase price of program interests may be allowed when warranted by the investment objectives of the program. [but in any event] Such arrangements shall be subject to the following conditions:

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

(c) (No change.)

(d) Reinvestment of cash available for distribution. Reinvestment of cash available for distribution will be allowed if:

(1) (No change.)

(2) the cumulative return [subordination] requirement in §141.4(d) of this title (relating to Compensation and Expenses) shall be [cumulative] compounded daily. This policy should be contained in the prospectus.

(e) Reinvestment of proceeds on disposition of equipment. Reinvestment of proceeds resulting from the sale or refinancing of program equipment may take place if sufficient cash will be distributed to pay state and federal income tax, if any, (assuming investors are in a specified tax bracket) created by the sale or refinancing of such equipment. This policy should be contained in the prospectus.

(f)[(e)] Payments to terminated sponsors. [Terminating Event.] Upon the occurrence of a terminating event, the partnership may be required to pay to the termi-

nated sponsor all amounts then accrued and owing to the terminated sponsor. Additionally, the partnership may terminate the sponsor's interest in partnership income, losses, distributions, and capital by payment of an amount equal to the then present fair market value of the terminated sponsor's interest determined by agreement of the terminated sponsor and the partnership, or, if they cannot agree, by arbitration in accordance with the then current rules of the American Arbitration Association. The expense of arbitration shall be borne equally by the terminated sponsor and the partnership. The method of payment to the terminated sponsor must be fair and must protect the solvency and liquidity of the partnership. When [Where] the termination is voluntary, the method of payment will be presumed to be [deemed presumptively] fair if [where] it provides for a noninterest bearing unsecured promissory note with principal payable, if at all, from distributions which the terminated sponsor otherwise would have received under the partnership agreement had the sponsor not terminated. [Where] When the termination is involuntary, the method of payment will be presumed to be [deemed presumptively] fair if [where] it provides for an interest bearing promissory note maturing [coming due] in not [no] less than five years with equal installments each year.

(g)(f) Provisions of program agreement. The requirements and/or provisions of appropriate portions of the following sections shall be included in the program agreement: §§141.2(d); 141.4(d), (e), [and] (f) and (g); 141.5(a)-(k), (m), (o), [and] (p) and (g); 141.6(a)-(g) of this title (relating to Requirements of Sponsors, Compensation and Expenses; and Rights and Obligations of Participants); and subsections (a), (b) (4), and (c)-(f)[(e)] of this section.

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

Issued in Austin, Texas, on December 2, 1988.

TRD-8812314

Richard D. Latham
Securities Commissioner
State Securities Board

Earliest possible date of adoption: January 9, 1989

For further information, please call: (512) 474-2233

TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Rates

• 16 TAC §23.27

The Public Utility Commission of Texas proposes an amendments to §23.27, concerning rate-setting flexibility for local exchange carriers in providing telecommunications services subject to significant competition.

The Public Utility Commission will consider the adoption of the following: subsection (c) or subsection (d) but not (c) and (d); subsection (e) or subsection (f) but not (e) and (f); subsection (g) or subsection (h) but not (g) and (h); subsection (i) or subsection (j) but not (i) and (j); subsection (m) or subsection (n) but not (m) and (n); subsection (o) or subsection (p) but not (o) and (p); and subsection (q) or subsection (r) but not (q) and (r). In addition, the Public Utility Commission will consider the deletion of the language contained in paragraph (y).

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

Mr. Laub 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 enhancement of competition for relevant telecommunications services. 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 Phillip A. Holder, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, within 30 days after publication. Reply comments may be submitted to the same address within 15 days after the due date for comments. Comments which were submitted in response to the January 5, 1988, version of the *Texas Register* publication of 16 TAC §23.27 remain valid for the current publication of the section. Parties need not resubmit duplicate comments for this publication; however, supplemental comments may be submitted.

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

§23.27. Rate-Setting Flexibility for Services Subject to Significant Competition.

(a) (No change.)

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

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

(6) Service market—A tariffed service of an LEC. [a service market is any tariffed service of an LEC or any submarket of customers of a tariffed service of an LEC.]

(c) (No change.)

(d) Filings requesting a service market to be declared subject to significant competition. After the effective date of this section, an LEC may file an application to have one or more of the following service markets declared to be subject to significant competition: packet switching service; digital private line service; central office-based PBX-type service of more than 100 stations; mobile telephone service; and paging service. No sooner than 18 months after the effective date of this section, an LEC may petition the commission to accept an application related to any other service market, except basic local exchange service including local measured service. The commission may modify or deny any such petition. Applications to declare a service market subject to significant competition shall indicate:

(1) the LEC's intent to use the procedures described in this section;

(2) the service market which the LEC is requesting be declared subject to significant competition;

(3) the geographic market in which the LEC is requesting the service be declared subject to significant competition;

(4) the services or products competing with the LEC's service within that geographic market;

(5) the number, size, names and addresses of telecommunications utilities or other persons providing the same, equivalent, or substitutable services or products in that geographic market for the service;

(6) the extent to which the same, equivalent, or substitutable service is available in that geographic market for the service;

(7) the ability of customers to obtain the same, equivalent, or substitutable services at comparable rates, terms, and conditions in that geographic market for the service within the LEC's system;

(8) the ability of telecommunications utilities or other persons to make the same, equivalent, or substitutable service readily available at comparable rates, terms, and conditions in that geographic market for the service;

(9) the existence of any significant barrier to the entry or exit of a provider of the service in that geographic market for the service;

(10) information demonstrating that extant competition in the geo-

graphic market proposed by the LEC poses a substantial threat to the contribution the service provides or threatens to strand substantial investment in the geographic market proposed by the LEC. If the service has not provided a contribution in the past, the LEC shall provide information demonstrating that competition precludes such a contribution unless pricing flexibility is granted;

(11) Information on the long run incremental costs related to the service, including the specific categories of costs which are to be recovered by the rates for such service, as well as detailed documentation supporting the LEC's cost calculations including the LEC's assumptions related to those costs;

(12) If the LEC is requesting a modification of the long run incremental cost standard, information related to the alternative cost standard, including the specific categories of costs which are to be recovered by the rates for the service as well as detailed documentation supporting the LEC's cost calculation and the LEC's assumptions related to those costs;

(13) Information demonstrating that the type of pricing flexibility being requested by the LEC (rate-banding, customer-specific contracts or both, detariffing, or some other form of flexibility) is appropriate given the extent of competition within the geographic area of the service market for which price flexibility is being requested. If rate-banding is proposed, the application shall state the maximum and minimum rates proposed, demonstrate that the minimum rate is above the long run incremental cost of such service, and include all workpapers and supporting documentation relating to computations or assumptions supporting this assertion;

(14) Information on whether pricing flexibility, if granted by the commission, would affect high-cost LECs to the extent that additional support for those LECs from the universal service fund is in the public interest; and

(15) any other information the LEC wants considered in connection with the commission's review of its application.

(e)[(d)] Modifications and waivers of requirements. [In its application] An LEC may request for good cause the modification or waiver of the systemwide, long run incremental cost requirements set forth in this section. [If an LEC is requesting the approval of customer-specific contracts for service, the LEC may request the modification of the systemwide, long run incremental cost standard and the approval of a customer-specific long run incremental cost standard.] The commission may grant such a request on a showing by the LEC of good

cause through clear and convincing evidence that a departure from the systemwide, long run incremental cost standard is necessary to enable the LEC to respond to significant competitive challenges that overcome the public policy benefits of minimizing rate differences among geographic areas of the state [so as to ensure the competitiveness of businesses in rural and small urban areas]. A waiver of the systemwide, long run incremental cost standard shall also [only] be granted if the commission determines that such standard imposes an unreasonable burden on an LEC which has inadequate resources to produce the required cost information to meet that standard and if the commission determines that an appropriate alternative cost standard is available. If the systemwide, long run incremental cost standard is waived, the LEC must provide other cost information demonstrating its proposed rates will recover the costs of the service as well as a contribution for joint and/or common costs. Any requests for modification or waiver of the systemwide, long run incremental cost support requirement shall include a complete statement of the LEC's arguments supporting that request.

(f) Modifications and waiver of requirements. In its application an LEC may request for good cause the modification or waiver of the long run incremental cost requirements set forth in this section. If an LEC is requesting the approval of customer-specific contracts for service, the LEC may request the modification of the long run incremental cost standards. A waiver of the long run incremental cost standard shall only be granted if the commission determines that such standard imposes an unreasonable burden on an LEC which has inadequate resources to produce the required cost information to meet that standard and if the commission determines that an appropriate alternative cost standard is available. If the long run incremental cost standard is waived, the LEC must provide other cost information demonstrating its proposed rates will recover the costs of the service as well as a contribution for joint and/or common costs. Any requests for modification or waiver of the long run incremental cost support requirement shall include a complete statement of the LEC's arguments supporting that request.

(g)[(e)] Determination of service markets subject to significant competition. The commission shall hold an evidentiary hearing to determine whether a service market is subject to significant competition in any geographic market and whether barriers to entry or exit exist in any geographic markets in which the service is offered by the LEC. The commission may consolidate applications filed by two or more LEC's related to similar service markets into a single evidentiary proceeding and may join

any other LEC in such a proceeding but shall make separate determinations regarding whether a service market is subject to significant competition for the appropriate geographic markets of each LEC applying or joined in the proceeding. An LEC may file a request to be excluded from any such proceeding provided that such request is accompanied by an explanation of why the LEC should not be joined in the proceeding. An LEC which is excluded from such a proceeding upon its own request shall not file an application related to that service under this section for two years after the date of the commission's approval of its request to be excluded from the proceeding. If two or more undocketed applications are pending before the commission at any time, the commission staff may recommend and the director of hearings may determine the order in which those applications are docketed based on an assessment of the public interest in those applications. In determining whether a service market is subject to significant competition in any geographic market, the commission shall hold an evidentiary hearing to consider the following:

(1)-(13) (No change.)

(h) Determination of service markets subject to significant competition. The commission shall hold an evidentiary hearing to determine whether a service market is subject to significant competition in any geographic market and whether barriers to entry or exit exist in any geographic markets in which the service is offered by the LEC. The commission may consolidate applications filed by two or more LEC's related to similar service markets into a single evidentiary proceeding and may join any other LEC in such a proceeding but shall make separate determinations regarding whether a service market is subject to significant competition for the appropriate geographic markets of each LEC applying or joined in the proceeding. An LEC may file a request to be excluded from any such proceeding provided that such request is accompanied by an explanation of why the LEC should not be joined in the proceeding. An LEC which is excluded from such a proceeding upon its own request shall not file an application related to that service under this section for two years after the date of the commission's approval of its request to be excluded from the proceeding. If two or more undocketed applications are pending before the commission at any time, the commission staff may recommend and the director of hearings may determine the order in which those applications are docketed based on an assessment of the public interest in those applications. In determining whether a service market is subject to significant competition in any geographic market, the commission shall hold an evidentiary hearing to consider the following:

(1) the threat posed by competition to the contribution the service provides to joint and common costs of the LEC and to the LEC's capital investment related to the service in the geographic market in question, or if the service has not provided a contribution in the past, whether pricing flexibility will allow the service to provide such a contribution;

(2) the number and size of telecommunications utilities or other persons providing the same, equivalent, or substitutable service, and the geographic areas served by those providers;

(3) the financial and technical resources of specific competitors relative to the financial and technical resources of the LEC in providing the service;

(4) the extent to which the same, equivalent, or substitutable service is available; the ability of customers to obtain such alternative services at comparable rates, terms, and conditions; and customer perceptions and knowledge regarding the availability of such alternative services in the geographic market in question;

(5) the ability of telecommunications utilities or other persons to make the same, equivalent, or substitutable service readily available at comparable rates, terms, and conditions in the geographic market in question;

(6) the existence of any significant legal, economic, and other barriers to the entry into or exit from the geographic market in question, and all other such markets for that service, and the rate at which competitors are entering and leaving those geographic markets for the service;

(7) evidence of cream-skimming strategies of competitors made possible by regulatory decisions or policies which have raised rates above the LEC's long run incremental costs in the market proposed by the LEC;

(8) any deterioration or diminished growth of revenues, market share, or service volumes of the LEC attributable to increasing competition for that service and how pricing flexibility, if granted, would mitigate or halt that deterioration or diminished growth;

(9) the relative ability of the LEC and of competitors to make use of scale or scope economies in providing the service;

(10) the ability of the LEC to use bottleneck facilities to discriminate against competitors, and measures needed to prevent such actions;

(11) any other information the commission considers relevant in determining the level of competition in the market.

(l)(f) Approval of application. The LEC shall give such notice of its application as is required by the commission. If, after notice and hearing, the commission determines in an order that the service market is subject to significant competition in a geographic market, it shall indicate in that order whether rate-banding, use of customer-specific contracts (or both), detariffing, or some other form of pricing flexibility is appropriate in those geographic markets for the service. If the commission determines that no barriers to entry or exit exist in any geographic market in which the LEC offers the service, the commission shall require that the form of pricing flexibility which it authorizes be applied in all such geographic markets of the LEC. If the commission determines that barriers to entry or exit do exist in any geographic market in which the LEC offers the service, pricing flexibility may be approved for all such geographic markets in which there are no barriers to entry or exit. If the commission authorizes pricing flexibility in only those markets in which there are no barriers to entry or exit, the commission may also require implementation plans to be filed by the LEC demonstrating its plans for removing all such barriers to entry and exit which are under the control of the LEC. When authorizing pricing flexibility, the commission shall order a form of flexibility which reflects the level and nature of competition in the LEC's systemwide market. When authorizing pricing flexibility, the commission shall also consider the impact of such flexibility on high-cost LECs and whether changes in the universal service fund are therefore in the public interest. In making all such determinations, the commission shall seek to balance the public interest in a technologically advanced telecommunications system with such concerns as preserving universal service, prohibiting anticompetitive practices, and preventing the subsidization of services subject to competition with revenues from regulated monopoly services.

(j) Approval of application. The LEC shall give such notice of its application as is required by the commission. If, after notice and hearing, the commission determines in an order that the service market is subject to significant competition in a geographic market, it shall indicate in that order whether rate-banding, use of customer-specific contracts (or both), detariffing, or some other form of pricing flexibility is appropriate in those geographic markets where the LEC had requested pricing flexibility. If the commission determines that no barriers to entry or exit exist in any geographic market in which the LEC offers the service, the commission may require that the form of pricing flexibility which it authorizes be applied in all such geographic markets of the LEC. If the commission determines that barriers to entry or exit do exist in any geographic market in

which the LEC offers the service, pricing flexibility may be approved for all such geographic markets in which there are no barriers to entry or exit. If the commission authorizes pricing flexibility in only those markets in which there are no barriers to entry or exit, the commission may also require implementation plans to be filed by the LEC demonstrating its plans for removing all such barriers to entry and exit which are under the control of the LEC. When authorizing pricing flexibility, the commission shall order a form of flexibility which reflects the level and nature of competition within the LEC geographic market. When authorizing pricing flexibility, the commission shall also consider the impact of such flexibility on high-cost LECs and whether changes in the universal service fund are therefore in the public interest. In making all such determinations, the commission shall seek to balance the public interest in a technologically advanced telecommunications system with such concerns as preserving universal service, prohibiting anticompetitive practices, and preventing the subsidization of services subject to competition with revenues from regulated monopoly services.

(k)(g) Changes in the universal service fund. If the commission declares a service to be subject to significant competition and determines that pricing flexibility will affect high-cost LECs to the extent that additional support for such LECs is in the public interest, the commission shall specify in its order the manner in which the universal service fund is to be changed so as to provide additional support to high-cost LECs.

(l)(h) Subsequent review of a service market found to be subject to significant competition. Nothing in this section shall preclude the commission from investigating the competitiveness of a service market previously found to be subject to significant competition and from revoking such designation if it finds that the service market is no longer subject to significant competition.

(m)(i) Banded rates. If the commission in an order declares a service market to be subject to significant competition and authorizes an LEC to utilize banded rates, the commission shall establish in that order the minimum and maximum rates to be used. The minimum rate shall recover the systemwide, long run incremental cost as well as a contribution for joint and/or common costs or, if the systemwide, long run incremental cost standard was waived, such other costs as are approved by the commission. The commission shall also specify in the order the manner in which the LEC shall provide notice to the public, the Office of Public Utility Counsel, and the commission of subsequent changes in rates within the range specified by the commission. Thereafter, the LEC may make rate

changes within the range upon completion of public notice and notice to the commission and the Office of Public Utility Counsel as required in the commission's order authorizing banded rates. Rates and other terms established under this provision shall not be unreasonably preferential, prejudicial or discriminatory, predatory or anticompetitive, nor subsidized by regulated monopoly services.

(n) **Banded rates.** If the commission in an order declares a service market to be subject to significant competition and authorizes an LEC to utilize banded rates, the commission shall establish in that order the minimum and maximum rates to be used. The minimum rate shall recover the long run incremental cost as well as a contribution for joint and/or common costs or, if the long run incremental cost standard was waived, such other costs as are approved by the commission. The commission shall also specify in the order the manner in which the LEC shall provide notice to the public, the Office of Public Utility Counsel, and the commission of subsequent changes in rates within the range specified by the commission. Thereafter, the LEC may make rate changes within the range upon completion of public notice and notice to the commission and the Office of Public Utility Counsel as required in the commission's order authorizing banded rates. Rates and other terms established under this provision shall not be unreasonably preferential, prejudicial or discriminatory, predatory or anticompetitive, nor subsidize by regulated monopoly services.

(o)(j) Filings of customer-specific contracts. Use of customer-specific contracts shall not be approved for basic local exchange service including local measured service, message telecommunications service, wide area telecommunications service, and switched access service for interexchange carriers. If the commission declares a service market to be subject to significant competition and authorizes the LEC to enter into customer-specific contracts for that service, the commission shall specify in its order whether the cost standard to be applied in subsequent administrative reviews shall be systemwide or customer-specific long run incremental costs (or if the long run incremental cost standard was waived by the commission, such other cost standard as the commission finds reasonable), the appropriate minimum contribution for joint and/or common costs which shall be recovered under those contracts, and the notice requirements the LEC must meet prior to filing such contracts for approval by the commission. Thereafter, the LEC shall apply to the commission for approval of any such contracts and shall, on the filing date of such an application, provide a copy of the filing to the Office of Public Utility Counsel. In addition to service markets which the commission de-

clares to be subject to significant competition, an LEC may also apply to the commission for approval of such contracts for the following services: central office based PBX-type service of 200 stations or more, billing and collection services, high-speed private line services of 1.544 megabits or greater, and customized services. However, at least 10 days before any application for these enumerated services may be filed by an LEC, the LEC shall file with the commission and the Office of Public Utility Counsel a notice of intent to file such an application and the expected filing date. Such notice shall also include a statement of the LEC's intent to use the expedited provisions of this section, a description of the service, and a description of the geographic market or markets in which the service is proposed to be offered. The commission shall then publish notice of the LEC's intent to file such application in the *Texas Register*. All applications for approval of customer-specific contracts shall be filed at least 30 days before the date on which the LEC proposes that the service contracted for be initiated. In addition to copies filed pursuant to other commission rules, a copy of the application shall be delivered to the Telephone Division and the Office of Public Utility Counsel. The application shall include:

(1)-(10) (No change.)

(p) Filings of customer-specific contracts. Use of customer-specific contracts shall not be approved for basic local exchange service including local measured service, message telecommunications service, wide area telecommunications service, and switched access service for interexchange carriers. If the commission declares a service market to be subject to significant competition and authorizes the LEC to enter into customer-specific contracts for that service, the commission shall specify in its order the cost standard to be applied in subsequent administrative reviews. If the long run incremental cost standard was waived by the commission, the commission will specify the appropriate minimum contribution for joint and/or common costs which shall be recovered under those contracts, and the notice requirements the LEC must meet prior to filing such contracts for approval by the commission. Thereafter, the LEC shall apply to the commission for approval of any such contract and shall, on the filing date of such an application, provide a copy of the filing to the Office of Public Utility Counsel. In addition to service markets which the commission declares to be subject to significant competition, an LEC may also apply to the commission for approval of such contracts for the following services: central office based PBX-type service of 200 stations or more, billing and collections services, high-speed private line service of 1.544 megabits or greater, and customized service.

However, at least 10 days before any application for these enumerated services may be filed by an LEC, the LEC shall file with the commission and the Office of Public Utility Counsel a notice of intent to file such an application and the expected filing date. Such notice shall also include a statement of the LEC's intent to use the expedited provisions of this section, a description of the service, and a description of the geographic market or markets in which the service is proposed to be offered. The commission shall then publish notice of the LEC's intent to file such application in the *Texas Register*. All applications for approval of customer-specific contracts shall be filed at least 30 days before the date on which the LEC proposes that the service contracted for be initiated. In addition to copies filed pursuant to other commission rules, a copy of the application shall be delivered to the Telephone Division and the Office of Public Utility Counsel. The application shall include:

(1) a statement of intent by the LEC to use the procedures established in this subsection;

(2) a description of the service to be contracted;

(3) the date on which the LEC proposes that the service contracted for be initiated;

(4) a copy of the contract;

(5) proof that the LEC has accomplished public notice as required in this section or by the commission in its order authorizing the LEC to enter into customer-specific contracts;

(6) the geographic market or markets in which the service is to be provided;

(7) detailed documentation demonstrating the relationship between the the prices included in the contract and the cost standard specified in the commission's order authorizing customer specific contracts, including the contribution for joint and/or common costs specified by the commission, and all workpapers and supporting documentation relating to computations or assumptions underlying this assertion;

(8) an affidavit from the person or entity contracting for the service stating that such person or entity considered acquiring the same, equivalent or substitutable services by bid or quotation from a source other than the LEC. In the case of customized services, each individual service included in the package of customized services shall be specified in the affidavit and the customer must have considered acquiring equivalent or substitutable services for each such service from sources other than the LEC. In the case of contracts which involve services enumerated in the Public Utility Regula-

tory Act, §18(e)(3)(b), an affidavit from the person or entity contracting for the telecommunications services, is required for each customer specific contract that is filed.

(9) any other information which, in its order authorizing the LEC to enter into customer-specific contracts, the commission may have required the LEC to file; and

(10) any other information which the LEC wants considered in connection with the administrative review of the application.

(q)[(k)] Administrative review of customer-specific contracts. The presiding examiner shall examine the application for sufficiency. If the presiding examiner concludes that material deficiencies exist in the application, the applicant shall be notified within 10 working days of the filing date of the specific deficiency in its application, and the earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding examiner. After a sufficient application has been filed, the presiding examiner shall conduct an administrative review to determine whether the LEC's application meets the following requirements:

(1)-(9) (No change.)

(r) Administrative review of customer-specific contracts. The presiding examiner shall examine the application for sufficiency. If the presiding examiner concludes that material deficiencies exist in the application, the applicant shall be notified within 10 working days of the filing date of the specific deficiency in its application, and the earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding examiner. After a sufficient application has been filed, the presiding examiner shall conduct an administrative review to determine whether the LEC's application meets the following requirements:

(1) the contracted service is a service found by the commission to be subject to significant competition under this section specified in the Public Utility Regulatory Act, §18(e)(3)(B);

(2) the proposed rates will recover all costs associated with the cost standard specified by the commission in its order authorizing customer-specific contracts, including an appropriate contribution for joint and/or common costs;

(3) If the contract is for a service specified in the Public Utility Regulatory Act, §18(e)(3)(B), the proposed rates will recover the customer specific long run incremental costs of providing

the service, as well as an appropriate minimum contribution of 5.0%;

(4) an affidavit as specified in subsection (j)(8) is required.

(5) public notice was provided as required in this section or otherwise required by the commission;

(6) the specific contract terms are not unreasonably preferential, prejudicial or discriminatory, and similar services are not priced in an unreasonably discriminatory manner;

(7) the terms of the contract are such that the contracted service will not be subsidized directly or indirectly by regulated monopoly services or be predatory or anticompetitive;

(8) the contracted service does not include basic local exchange service, local measured service, message telecommunications service, switched access service for interexchange carrier, or wide area telecommunications service; and

(9) approval of the contract is consistent with the public interest in a technologically advanced telecommunications system, the preservation of universal service, and the prevention of anticompetitive practices and the subsidization of services subject to competition with revenues from regulated monopoly services.

(s)[(1)] Requests for information. During the administrative review, the commission staff and the Office of Public Utility Counsel may submit requests for information to the LEC. Three copies of all answers to such requests for information shall be provided to the commission staff and the Office of Public Utility Counsel within 10 days after receipt of the request by the LEC. No later than 20 days after the filing date of the application, interested persons may provide to the staff written comments or recommendations concerning the application. The commission staff shall and the Office of Public Utility Counsel may file with the presiding examiner written comments or recommendations concerning the application.

(t)[(m)] Approval or denial of customer-specific contracts. The application shall be approved or denied within 30 days after a complete filing is submitted by the LEC unless the presiding examiner for good cause suspends the effective date for an additional 35 days. If, based on the administrative review, the presiding examiner determines that any of the above requirements have not been met, the application shall be denied. If, based on the administrative review, the presiding examiner determines that all requirements have been met, the application shall be approved. Service under a contract approved under this subsection shall be initiated no sooner than the latest of the following dates: 30 days after a complete filing under this subsection has been

submitted by the LEC; the date on which the period for reviewing the application, including the suspension period, expires; or the date on which the LEC proposed in its application that the service contracted for be initiated. If an LEC claims that a contract, information related to the costs of providing service under the contract, and/or that information in a customer's affidavit that identifies the customer and the customer's address submitted pursuant to this section is proprietary or a trade secret, such information shall be treated in the same manner as is information submitted pursuant to §23.61(1)(6) of this title (relating to Telephone Utilities). If appropriate, the contract and supporting documentation may be disclosed to interested persons during the administrative review or to parties in any subsequent contested proceeding pursuant to a protective agreement. Such protective agreement shall afford the protected information an appropriate degree of protection accorded by law. If, based on the administrative review, an application filed under this subsection is denied, the LEC may request that its application be docketed and a hearing held. In that event, the commission's rules applicable to docketed proceedings shall apply to such a request, and the service contracted for shall not be initiated without the approval of the commission or the presiding examiner.

(u)[(n)] Rate case review of rates established under this section. Any rate, term or condition established under this section by commission order or upon administrative review, including rates established through customer-specific contracts, may be reviewed and changed by commission order in a subsequent rate case under the Public Utility Regulatory Act, §42 and §43.

(v)[(o)] Detariffing of a service. If the commission declares a service to be subject to significant competition and authorizes the LEC to detariff the service, the LEC shall maintain at the commission at all times a current price list for the service, and the commission shall retain authority to regulate the terms and conditions of the detariffed service other than rates, including the quality of the service. Further, in any subsequent rate case under the Public Utility Regulatory Act, §42 or §43, any revenues in excess of the long run incremental costs of the service may be retained above the line by the commission, but any losses related to such costs of the service shall not be recovered from the general body of rate-payers but shall be borne by the shareholders of the LEC.

(w)[(p)] Subsequent review of the rates, terms, and conditions of a flexibly priced service under this section. The commission's general counsel, the public utility counsel, or any affected person may file with the commission a petition seeking modification of the rates, terms and conditions under which any service which utilizes a form of pricing flexibility as

authorized under this section is offered or a petition seeking the withdrawal of the service.

(x)(q) Review of cost standard under this section. Any cost standard established by the commission in this section shall be subject to change pending the commission's deliberations in the cost standard rulemaking required by the Public Utility Regulatory Act, §18(h).

(y)(r) Commission review of this section. A review of the provisions of this section shall be initiated by January 1, 1990, [July 1, 1988] to allow LECs an opportunity to provide documentation and/or evidence related to the effect of this section on the general body of ratepayers; and the effectiveness of this section in meeting competitive challenges faced by the LECs in the systemwide market.

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 December 1, 1988.

TRD-8812276

Phillip A. Holder
Secretary
Public Utility Commission
of Texas

Earliest possible date of adoption: January 9, 1989

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

TITLE 22. EXAMINING BOARDS

Part V. Texas State Board of Dental Examiners

Chapter 109. Conduct

Anesthesia and Anesthetic Agents

• 22 TAC §109.173

The Texas State Board of Dental Examiners proposes an amendment to §109.173, concerning the minimum standard of care for dentists. The board is changing the requirements for a CPR course to biannually instead of current. Many CPR courses cover a two-year period and the board felt that taking a CPR course every other year would keep a practitioner sufficiently versed in current technology in order to be able to respond to an emergency.

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

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 clarification of CPR courses for dentists. 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, Executive Director, 8317 Cross Park Drive, Suite 400, Austin, Texas 78754.

The amendment is proposed under Texas Civil Statutes, Article 4551d, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§109.173. *Minimum Standard of Care.* Each dentist licensed by the Texas State Board of Dental Examiners and practicing in Texas shall utilize the following standard of care:

(1) shall maintain a current history and limited physical evaluation on all dental patients. This shall include, but shall not necessarily be limited to, physiologic vital signs, known allergies to drugs and anesthetics, serious illnesses, current medications, previous hospitalizations and surgery, and physiologic systems review;

(2) shall maintain emergency equipment appropriate for patient resuscitation. Such equipment shall include a positive pressure breathing apparatus including oxygen. All emergency equipment shall be present in the dental office and shall be utilized by the licensed dentist or under his/her personal supervision;

(3) shall provide training of emergency procedures to his/her personnel;

(4) shall take a course [maintain current certification] in basic cardiopulmonary resuscitation sponsored by either the American Heart Association or the American Red Cross. Such course must be taken biannually. Proof of compliance [current certification] shall be the responsibility of the dentist; and

(5) should maintain an informed consent for all procedures where a reasonable probability of complications from the procedure exists.

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 November 30, 1988.

TRD-8812298

William S. Nail
Executive Director
Texas State Board of
Dental Examiners

Earliest possible date of adoption: January 9, 1989

For further information, please call: (512) 834-6021

Part XII. Board of Vocational Nurse Examiners

Chapter 231. Administration

General Practice and Procedure

• 22 TAC §231.11, §231.15

The Board of Vocational Nurses Examiners proposes an amendment to §231.11 and §231.15, concerning general practice and procedure. Section 231.11 relates to the address of the board and §231.15 relates to a directory of vocational nurses. Section 231.11 is being amended to reflect the new address of the board. Section 231.15 is being amended to allow a more up-to-date method for individuals to obtain current listings of vocational nurses.

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

Ms. Fleming 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 knowledge of the board's current address and the ability of individuals to obtain more current listings of vocational nurses in Texas. 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 Joyce Fleming, Acting Executive Director, Board of Vocational Nurse Examiners, P.O. Box 141007, Austin, Texas 78714-1007, (512) 835-2071.

The amendments are proposed under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to govern its procedures and to carry in effect the purposes of the law.

§231.11. *Headquarters of the Board.* The headquarters office is located at 9101 Burnet Road, Suite 105, Austin, Texas 78758 [1300 East Anderson Lane, Building C, Suite 285, Austin, Texas 78752].

§231.15. *Functions of the Board.* The board is authorized to:

(1)-(8) (No change.)

(9) keep a register of the names of all nurses licensed under the Vocational Nurse Act. This register shall be at all times open to public inspection and available for sale upon request. [prepare annually a directory for distribution containing the names and addresses of currently licensed vocational nurses.]

(10)-(14) (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 November 30, 1988.

TRD-8812349

Joyce Fleming
Acting Executive Director
Board of Vocational Nurse
Examiners

Earliest possible date of adoption: January 9, 1989

For further information, please call: (512) 835-2071

Chapter 233. Education

Definitions

• 22 TAC §233.1

The Board of Vocational Nurse Examiners proposes an amendment to §233.1, concerning definitions. The section is being amended to define the requirement for an assistant program coordinator in order to facilitate professional career advancement of directors of vocational nursing programs while maintaining the integrity of the programs.

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

Ms. Fleming 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 opportunity for professional career advancement of directors of vocational nursing programs. 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 Joyce Fleming, Acting Executive Director, Board of Vocational Nurse Examiners, P.O. Box 141007, Austin, Texas 78714-1007, (512) 835-2071.

The amendment is proposed under Texas Civil Statutes, Article 4528c, §5(g) which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to govern its procedures and to carry in effect the purposes of the law.

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

Assistant program coordinator—A registered nurse vocational nursing program faculty member designated to assist with program management when the director assumes responsibilities other than the program.

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

Issued in Austin, Texas, on November 30, 1988.

TRD-8812350

Joyce Fleming
Acting Executive Director
Board of Vocational Nurse
Examiners

Earliest possible date of adoption: January 9, 1989

For further information, please call: (512) 835-2071

Operation of a Vocational Nursing Program

• 22 TAC §233.21

The Board of Vocational Nurse Examiners proposes an amendment to §233.21, concerning operation of a vocational nursing program. The section is being amended to facilitate professional career advancement of directors of vocational nursing programs while maintaining the integrity of the programs.

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

Ms. Fleming 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 opportunity for professional career advancement of directors of vocational nursing programs. 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 Joyce Fleming, Acting Executive Director, Board of Vocational Nurse Examiners, P.O. Box 141007, Austin, Texas 78714-1007, (512) 835-2071.

The amendment is proposed under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to govern its procedures and to carry in effect the purposes of the law.

§233.21. Director. The director shall be a registered nurse licensed to practice in the State of Texas. The director shall have been actively employed in nursing for the past five years, preferably in supervision or teaching. The director shall have a degree or equivalent experience that will demonstrate competency or advanced preparation in nursing, education, and administration. The director shall have the authority to direct the program in all its phases including approval on selection of teaching staff, admissions, progression, probation, and dismissal of students. A director qualifications form shall be submitted to the board office for approval prior to hiring. The director shall be employed solely for program development at least eight weeks prior to beginning a new program. [The director shall have no other responsibilities but the program.] The director shall be responsible to the controlling agency. **The director may have responsibilities other than the program, provided that an assistant pro-**

gram coordinator is designated to assist with program management. A director with responsibilities other than the program may not have major teaching responsibilities. Written job descriptions which clearly delineate responsibilities of the director and coordinator are required. The director shall inform the board office of coordinator appointment.

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 November 30, 1988.

TRD-8812351

Joyce Fleming
Acting Executive Director
Board of Vocational Nurse
Examiners

Earliest possible date of adoption: January 9, 1989

For further information, please call: (512) 835-2071

Part XXII. Texas State Board of Public Accountancy

Chapter 501. Professional Conduct

General Provisions

• 22 TAC §501.2

The Texas State Board of Public Accountancy proposes an amendment to §501.2, concerning the definition of the term practice of (or practicing) public accountancy. The amendment provides that any service for the public involving accounting or auditing skills performed by a licensee is the practice of public accountancy.

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

Mr. Bradley 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 insure that all licensees providing any service to the public which involves accounting or auditing skills, will be subject to the Rules of Professional Conduct. 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 A. Sansing, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a) which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to definitions used in the Rules of Professional Conduct.

§501.2. Definitions. The following words and terms, when used in this chapter, shall

have the following meanings, unless the context clearly indicates otherwise.

Practice of (or practicing) public accountancy—The [performance or] offering to perform by a person holding himself out to the public as a certificate or registration holder, or the performance by a certificate or registration holder, for a client or potential client, of one or more kinds of services involving the use of accounting or auditing skills, including the issuance of reports on financial statements, or of one or more kinds of management advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters. The phrase "services involving the use of accounting or auditing skills," as used in this definition, includes the provision of advice or recommendations in connection with the sale of products, when the advice or recommendations require or imply the possession of accounting or auditing skills or expert knowledge in auditing or accounting.

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 November 30, 1988.

TRD-8812234 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: January 9, 1989

For further information, please call: (512) 450-7066



Client Records

• 22 TAC §501.32

The Texas State Board of Public Accountancy proposes an amendment to §501.32, concerning the responsibilities of the licensee with regards to client records. The amendment provides guidelines regarding the licensee's responsibility when providing copies of reports to clients.

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

Mr. Bradley 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 insure that the licensee does not provide clients copies of reports which would violate auditing standards relating to subsequent events. 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 A. Sansing, 1033 La Posada, Suite

340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to records utilized in the performance of public accounting.

§501.32. Records.

(a) Upon request, regardless of the status of the client or former client's account, a certificate or registration holder shall provide to the client or former client any accounting or other records belonging to, or obtained from or on behalf of, the client which the certificate or registration holder removed from the client's premises or received on behalf of the client, but the certificate or registration holder may make and retain copies of such documents when they form the basis for work done by him. For a reasonable charge, a certificate or registration holder shall furnish to his client or former client, upon request made within a reasonable time after original issuance of the document in question:

(1) (No change.)

(2) a copy of any report or other document issued by the certificate or registration holder to or for such client[;] providing that furnishing such reports to or for a client or former client would not cause the certificate or registration holder to be in violation of the portions of §501.22 of this title (relating to Auditing Standards), concerning subsequent events;

(3) (No change.)

(b) (No change.)

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

Issued in Austin, Texas, on November 30, 1988.

TRD-8812233 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: January 9, 1989

For further information, please call: (512) 450-7066



Advertising and Soliciting

• 22 TAC §501.48

The Texas State Board of Public Accountancy proposes an amendment to §501.48, concerning the requirement for licensees of the board to respond to board communications sent by registered or certified mail to the licensee's last known address.

Bob E. Bradley, executive director, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local govern-

ment or small businesses as a result of enforcing or administering the section.

Mr. Bradley also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the licensee file a change of address within 30 days of the effective date of the address change. This will insure a current address and cut down on remailing expenses. 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 A. Sansing, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to licensee response to board communications to last known address of licensee.

§501.48. Responses. A certificate or registration holder shall respond in writing to any communication from the board requesting a response, within 30 days of the mailing of such communication by registered or certified mail to the last address furnished to the board by the certificate or registration holder. Each certificate holder and each person required to be registered with the board under The Public Accountancy Act of 1979, §10 shall notify the board, in writing, of any and all changes in such person's mailing address and the effective date thereof within 30 days before or after such effective date.

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 November 30, 1988.

TRD-8812235 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: January 9, 1989

For further information, please call: (512) 450-7066



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 49. Child Protective Services

Subchapter C. Eligibility for Child Protective Services

The Texas Department of Human Services (DHS) proposes amendments to §49.315 and §49.316, new §49.345, and the repeal of

§49.1301, concerning eligibility requirements for foster care assistance, in its Child Protective Services chapter. The amendment to §49.316 extends eligibility for AFDC, medical-assistance-only, and state-paid foster care assistance to include children in certain out-of-state foster care placements. The amendment to §49.315 and new §49.345 consolidate provisions for Medicaid coverage and foster care payments for foster care recipients placed out of state or placed in Texas from other states. This consolidation includes provisions implementing the Consolidated Omnibus Reconciliation Act of 1985 (Public Law 99-272) which entitles Title IV-E (AFDC) foster care recipients to receive Medicaid coverage from the state in which they are placed. The new section also extends DHS foster care assistance and Medicaid benefits to state-paid and medical-assistance-only foster care recipients placed out of state. The repeal of §49.1301 eliminates restrictions on out-of-state foster care benefits which no longer apply.

Stephen Svadlenak, associate commissioner for budget, planning, and economic analysis, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local governments or small businesses as a result of enforcing or administering the sections.

Mr. Svadlenak also has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be to permit eligible children to receive out-of-state foster care, rather than requiring them to remain in or move back to Texas when being in Texas is not in their best interest. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-565, Texas Department of Human Services 222-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

• 40 TAC §49.315, §49.316

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§49.315. Foster Care Maintenance Resources.

(a)-(d) (No change.)

[(e) DHS must provide Medicaid coverage for Title IV-E (AFDC) foster care children placed in Texas from another state. The state that places the child in Texas is responsible for providing necessary eligibility information to DHS staff.]

§49.316. Eligibility Requirements for AFDC, MAO, and State-paid Foster Care Assistance. The child must meet all of the following criteria to be eligible for AFDC, MAO, or state-paid foster care:

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

(4) Placement. The child must be receiving care in Texas in a licensed, certified, or verified foster home or a licensed, private, non-profit child caring institution approved for DHS foster care assistance, except in the following circumstances:[]

(A) The child is in permanent foster family care and the foster family must move out of state. The foster family must secure foster care licensing in the new state of residence within 90 days, or the child's eligibility for foster care assistance will be terminated until appropriate licensing is secured. The DHS program director may grant one extension of no more than 60 days, but only if it is clear that the foster family will be licensed in the additional time.

(B) The child must be removed from an out-of-state adoptive or foster care placement; and DHS determines that another out-of-state placement will better meet the child's needs than a return to Texas.

(C) Under the service plan, the child is to be reunited with his biological family and must be moved out of state in order to live near the family.

(5)-(8) (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 December 2, 1988.

TRD-8812327

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption: February 1, 1989

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

• 40 TAC §49.345

The new section is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§49.345. Eligibility for Foster Care Recipients Placed Out of State or Placed in Texas from Other States.

(a) When an AFDC foster care recipient is placed out of state, DHS continues to make AFDC foster care payments; but the receiving state becomes responsible for the Medicaid benefits. DHS furnishes the receiving state with Title IV-E eligibility information for payment of Medicaid benefits.

(b) When a state-paid or medical-

assistance-only foster care recipient is placed out of state, DHS continues to provide both Medicaid benefits and foster care payments.

(c) When an AFDC foster care recipient is placed in Texas from another state, the sending state continues to make AFDC foster care payments, but DHS provides the Medicaid coverage. The sending state furnishes DHS with Title IV-E eligibility information for payment of Medicaid benefits.

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 December 2, 1988.

TRD-8812328

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption: February 1, 1989

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

◆ ◆ ◆
Subchapter M. Substitute
Care Placement Services

• 40 TAC §49.1301

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

The repeal is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§49.1301. Payments for Out-of-State Placement.

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 December 2, 1988.

TRD-8812326

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption: February 1, 1989

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

Part II. Texas Rehabilitation Commission

Chapter 115. Memoranda of Understanding with Other State Agencies

• 40 TAC §115.4

The Texas Rehabilitation Commission proposes new §115.4, concerning statewide coordinated services for multiproblem children and youth. Senate Bill 298, passed by the regular session of the 70th Texas Legislature, 1987, requires the adoption by rule of a memorandum of understanding among the Texas Department of Human Services, Texas Commission for the Blind, Texas Department of Health and Mental Retardation, Texas Education Agency, Texas Juvenile Probation Commission, Texas Rehabilitation Commission, and Texas Youth Commission. The Texas Rehabilitation Commission adopts by reference a joint memorandum of understanding with the above listed agencies regarding coordinated services for multiproblem children and youth which provides for the implementation of a system of community resource coordination groups. The memorandum of understanding was published in the November 15, 1988, issue of the *Texas Register* (13 TexReg 5727) by the Texas Department of Human Services. Copies of the memorandum of understanding are available from the Texas Rehabilitation Commission.

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

Delvin Sparks, program specialist, 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 eliminate duplication of effort and improve services to multiple problem children and youth. 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 Delvin Sparks, Program Specialist, 118 East Riverside Drive, Austin, Texas 78704, (512) 445-8287.

The new section is proposed under the Texas Human Resources Code, Title 7, which provides the Texas Rehabilitation Commission with the authority to "... make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for rehabilitation and other services, procedures for hearings, and other regulations necessary to carry out the purposes of this chapter."

§115.4. Coordinated Services for Multiproblem Children and Youth.

(a) The Texas Rehabilitation Commission adopts by reference a joint memorandum of understanding with the Texas

Department of Human Services, Texas Commission for the Blind, Texas Department of Health, Texas Department of Mental Health and Mental Retardation, Texas Education Agency, Texas Juvenile Probation Commission, Texas Rehabilitation Commission, and Texas Youth Commission concerning coordinated services for multiproblem children and youth which provides for the implementation of a system of community resource coordination groups.

(b) The memorandum of understanding was published in the November 15, 1988, issue of the *Texas Register* (13 TexReg 5727) by the Texas Department of Human Services. Copies of the memorandum of understanding are available from the Texas Rehabilitation Commission, 118 East Riverside Drive, Austin, Texas 78704.

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 December 2, 1988.

TRD-8812391

Charles W. Schiesser
Assistant Commissioner
Texas Rehabilitation
Commission

Earliest possible date of adoption: January 9, 1989

For further information, please call: (512) 445-8124



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 7. BANKING AND SECURITIES

Part VII. State Securities Board

Chapter 115. Dealers and Salesmen

• 7 TAC §115.3

The State Securities Board has withdrawn from consideration for permanent adoption a proposed amendment to §115.3 which appeared in the October 7, 1988, issue of the *Texas Register* (13 TexReg 4939). The effective date of this withdrawal is December 23, 1988.

Issued in Austin, Texas, on December 2, 1988.

TRD-8812320 Denise Voight Crawford
General Counsel
State Securities Board

Effective date: December 23, 1988

For further information, please call: (512) 474-2233

TITLE 22. EXAMINING BOARDS

Part XI. Board of Nurse Examiners

Chapter 217. Licensure and Practice

• 22 TAC §217.11

The Board of Nurse Examiners has withdrawn from consideration for permanent adoption a proposed repeal which appeared in the August 19, 1988, issue of the *Texas Register* (13 TexReg 4115). The effective date of this withdrawal is December 1, 1988.

Issued in Austin, Texas, on December 1, 1988.

TRD-8812267 Louise Waddill
Executive Secretary
Board of Nurse Examiners

Effective date: December 1, 1988

For further information, please call: (512) 835-4880

TITLE 34. PUBLIC FINANCE

Part VII. State Property Tax Board

Chapter 155. Tax Record Requirement

• 34 TAC §155.15

Pursuant to Texas Civil Statutes, Article 6252-13, §5(b), and 1 TAC §91.24(b), the proposed amendment to §155.15, submitted by the State Property Tax Board has been automatically withdrawn, effective December 6, 1988. The amendment as proposed appeared in the June 3, 1988, issue of the *Texas Register* (13 TexReg 2735).

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

TRD-8812425

Filed: December 6, 1988

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The Examining Board has withdrawn from consideration for permanent adoption a new proposed §217.11 which appeared in the August 19, 1988, issue of the *Texas Register* (13 TexReg 4115). The effective date of this withdrawal is December 1, 1988.

Issued in Austin, Texas, on December 1, 1988.

TRD-8812268 Louise Waddill
Executive Secretary
Board of Nurse Examiners

Effective date: December 1, 1988

For further information, please call: (512) 835-4880

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Name: Te Tine U
Grade: 11
School: Burnet High, Burnet

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 7. BANKING AND SECURITIES

Part VII. State Securities Board

Chapter 131. Confidentiality of Information

• 7 TAC §131.2

The State Securities Board adopts an amendment to §131.2, without changes to the proposed text as published in the October 7, 1988, issue of the *Texas Register* (13 TexReg 4939).

The amendment enables the agency to better protect investors by having access to the law enforcement data base concerning telemarketing problems that was set up, in part, by the Federal Trade Commission.

The amendment adds the Federal Trade Commission to the list of entities with which the securities commissioner may share law enforcement-related information on a confidential basis.

No comments were received regarding adoption of the amendment

The amendment is adopted under Texas Civil Statutes, Article 581, §28-1, which provide the State Securities Board with the authority to make or adopt rules or regulations governing registration statements, applications, notices, and reports, and in the adoption of rules and regulations, may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes.

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 December 2, 1988.

TRD-8812319 Richard D. Latham
Securities Commissioner
State Securities Board

Effective date: December 23, 1988

Proposal publication date: October 7, 1988

For further information, please call: (512) 474-2233

Chapter 137. Guidelines for Regulation of Offers

• 7 TAC §137.2

The State Securities Board adopts an amendment to §137.2, without changes to the pro-

posed text as published in the October 7, 1988, issue of the *Texas Register* (13 TexReg 4940).

The sections concerning the regulation of offers should not deviate from the requirements of the Securities Act, §22. The amendment maintains this consistency.

As a result of the amendment, the requirements of the sections are in conformity with the statutory requirements for the regulation of offers.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581, §28-1, which provide the State Securities Board with the authority to make or adopt rules or regulations governing registration statements, applications, notices, and reports, and in the adoption of rules and regulations, may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes.

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 December 2, 1988.

TRD-8812318 Richard D. Latham
Securities Commissioner
State Securities Board

Effective date: December 23, 1988

Proposal publication date: October 7, 1988

For further information, please call: (512) 474-2233

Chapter 139. Exemptions by Rule or Order

• 7 TAC §139.11

The State Securities Board adopts an amendment to §139.11, without changes to the proposed text as published in the October 7, 1988, issue of the *Texas Register* (13 TexReg 4940).

The amendment is adopted because the board believes that third parties, not otherwise associated with the employer, who are hired in order to sell interests in employee plans should not be excluded from the dealer registration requirements of the act.

The amendments narrow the exclusion from the dealer registration requirements in the context of the exemption such that it applies only to the employer offering the plan, its participating subsidiaries, and certain of their

employees, rather than to any company or person engaged in the transaction, including third parties hired solely in order to sell such interests.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581, §28-1, which provide the State Securities Board with the authority to make or adopt rules or regulations governing registration statements, applications, notices, and reports, and in the adoption of rules and regulations, may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes.

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 December 2, 1988.

TRD-8812317 Richard D. Latham
Securities Commissioner
State Securities Board

Effective date: December 23, 1988

Proposal publication date: October 7, 1988

For further information, please call: (512) 474-2233

TITLE 22. EXAMINING BOARDS

Part V. State Board of Dental Examiners

Chapter 115. Extension of Duties of Auxiliary Personnel

• 22 TAC §115.10

The Texas State Board of Dental Examiners adopts the repeal of §115.10, without changes to the proposed text as published in the October 7, 1988, issue of the *Texas Register* (13 TexReg 4950).

The board repealed the section because of the numerous and various questions that had been raised regarding the section. The board has adopted a new section to replace the repealed section.

The section is repealed and is replaced by a new adopted section.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 4551d, which provide the board

with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

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 November 30, 1988.

TRD-8812297

William S. Nail
Executive Director
Texas State Board of
Dental Examiners

Effective date: December 22, 1988

Proposal publication date: October 7, 1988

For further information, please call: (512) 834-6021

The Texas State Board of Dental Examiners adopts new §115.10, with changes to the proposed text as published in the October 7, 1988, issue of the *Texas Register* (13 TexReg 4950).

Since there had been numerous and various questions regarding the original section, the board repealed the section and has adopted this section to replace it. The board added the term "registered nurses" to subsection (b) because they are governed by their own rules and regulations of their profession. The wording in subsection (d) was changed because the cost of the examination has not been determined and there will not be two testing sections.

The new section sets out the specific requirements for persons performing radiologic procedures under the supervision of a Texas licensed dentist.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 4551d, which provide the board with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§115.10. Radiologic Procedures.

(a) Any person performing radiologic procedures under the supervision of a Texas licensed dentist must register with the Texas State Board of Dental Examiners (TSBDE). This registrant may perform, by the direct oral or written order(s) of the licensed dentist, any radiographs required for the diagnosis of the maxillofacial complex.

(b) This section does not apply to registered nurses or persons certified under the Medical Radiologic Technologist Certification Act.

(c) A dental hygienist who is li-

censed and currently registered in this state, shall be deemed to be registered for the purpose of performing radiologic procedures as defined in §115.2(3) of this title (relating to Permitted Duties).

(d) There will be no additional fee for the registration of qualified people defined under this section. The current registration fee paid by the employing licensee will adequately cover costs. An examination materials charge, not to exceed \$30, payable to Texas State Board of Dental Examiners, will be assessed to those requiring examination under the provisions of this Act.

(e) Dental assistants who meet the minimum standards established by these rules shall be listed on the annual registration notice of their present employing dentist (Texas Civil Statutes, Article 4551e-1(3)). This notice will be available for inspection in the office of the licensee.

(f) A registered dentist may certify that a dental assistant is qualified to perform radiographic procedures if any one of the following criteria is met:

(1) be currently certified dental assistant by meeting criteria established by the Dental Assisting National Board, Inc.;

(2) have taken and passed the Dental Radiation Health and Safety examination administered by the Dental Assisting National Board, Inc.;

(3) have been employed as a dental assistant for three years prior to January, 1989, and performed radiologic procedures during this three-year time period (note: this provision will be eliminated January 1, 1991);

(4) has taken and passed an examination specified by the TSBDE. This test shall be constructed by a Radiologic Advisory Committee appointed by the board. Essential areas of testing shall include, but not be limited to, the following areas:

(A) radiation protection for the patient and others;

(B) radiographic equipment including safety standards, operations, and maintenance;

(C) image production and evaluation;

(D) applied human dental anatomy; and

(E) radiographic techniques.

(g) As of December 31, 1988, presently employed assistants, who are not qualified under this section, will have until July 1, 1989, to successfully pass the examina-

tion.

(h) Dental assistants who are not qualified under the provisions of this section, shall be allowed to perform necessary diagnostic radiographs under the direct supervision of the dentist as a part of their training and as a part of their examination.

(i) Any new dental assistants, with no previous experience in dentistry, will have up to six months to come into compliance with the provisions of these regulations if they are to perform radiographic procedures.

(j) Any dental assistant (who qualifies under this rule) hired by the licensee after he/she has submitted his/her annual registration notice, shall be deemed registered if the licensee lists the assistant's name and date of employment on the back of the registration notice.

(k) All dental radiologic procedures can be performed by any person qualified and certified under this section.

(l) Registration may be suspended, revoked, or not renewed for the following reasons:

(1) violation of the rules of the Texas State Board of Dental Examiners;

(2) violation of the Medical Radiologic Technologist Certification Act or rules promulgated thereunder; or

(3) violation of the Texas Dental Practice Act.

(m) All registrants must comply with the rules and regulations of the Texas Department of Health for control of radiation.

(n) These rules are effective January 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 November 30, 1988.

TRD-8812296

William S. Nail
Executive Director
Texas State Board of
Dental Examiners

Effective date: December 22, 1988

Proposal publication date: October 7, 1988

For further information, please call: (512) 834-6021

Part XI. Board of Nurse Examiners

Chapter 211. Bylaws

• 22 TAC §§211.1-211.16

The Board of Nurse Examiners adopts the repeal of §§211.1-211.16, without changes to the proposed text as published in the September 20, 1988, issue of the *Texas Register*

(13 TexReg 4671).

The repeal of this section will allow the Board of Nurse Examiners to adopt the new, and more applicable bylaws.

The repeal of this section will permit adoption of the new bylaws, providing the public with a clearer understanding of how the Board of Nurse Examiners functions.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it, to establish standards of professional conduct for all persons licensed under the provisions of this law in keeping with its purpose and objectives, to regulate the practice of professional nursing, and to determine whether or not an act constitutes the practice of professional nursing, not inconsistent with this Act. Such rules and regulations shall not be inconsistent with the provisions of this 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 December 1, 1988.

TRD-8812384 Louise Waddill
Executive Secretary
Board of Nurse Examiners

Effective date: December 23, 1988

Proposal publication date: September 20, 1988

For further information, please call: (512) 835-4880

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• 22 TAC §§211.1-211.10

The Board of Nurse Examiners adopts new §§211.1-211.10. Section 211.2 is adopted with changes to the proposed text as published in the September 20, 1988, issue of the *Texas Register* (13 TexReg 4671). Sections §§211.1, 211.3-211.20, are adopted without changes, and will not be republished.

The new sections describe the name, legal authority, purpose, organization and structure, officers, meetings, committees, advisory committees, conflict of interest, general consideration, and amendments.

By clarifying the new section, the public will be better informed of the bylaws governing the Board of Nurse Examiners.

One comment was received regarding further clarification of the board's role of setting standards and regulating the practice of professional nursing.

The Texas Nurses' Association submitted a recommendation for clarification and strengthening of the board's role. The recommendation was neither for nor in opposition of the section being proposed.

The Board of Nurse Examiners did not disagree with the comment. The suggestion submitted was considered by the members of the board and incorporated into the rule.

The new sections are adopted under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules of proceedings before it, to establish standards of professional conduct for all persons licensed under the provisions of this law in keeping with its purposes and objectives, to regulate the practice of professional nursing, and to determine whether or not an act constitutes the practice of professional nursing, not inconsistent with this Act. Such rules and regulations shall not be inconsistent with the provisions of this law.

§211.2. Purpose and Functions.

(a) Purpose. The purpose of the board is to protect and promote the welfare of the people of Texas. This purpose supersedes the interest of any individual, the nursing profession, or any special interest group. The board fulfills its mission through two principle areas of responsibility:

(1) regulation of the practice of professional nursing; and

(2) establishment of standards for nursing education.

(b) Functions. The board shall perform the following functions as outlined in Texas Civil Statutes, Articles 4513-4528:

(1) establish standards of nursing practice and regulate the practice of professional nursing;

(2) interpret the Nurse Practice Act and the rules and regulations relating to professional nurse education, licensure, and practice to nurses, employers, and the public to ensure informed professionals, allied health professionals, and consumers;

(3) receive complaints and investigate possible violations of the nurse practice act and rules and regulations;

(4) discipline violators through appropriate legal action to enforce the nurse practice act and rules and regulations;

(5) provide a mechanism for public comment with regard to the rules and regulations and the nurse practice act and review and modify the rules and regulations when necessary and appropriate;

(6) examine and license qualified applicants to practice professional nursing in the state of Texas in a manner that ensures that applicable standards are maintained and that practitioners are minimally competent;

(7) grant licensure by endorsement to registered nurses from other states to ensure standards are maintained and applicable practices are consistent;

(8) recommend to legislature appropriate changes in the nurse practice act to ensure that the Act is current and applicable to changing needs and practices;

(9) establish standards for nursing education and accredit or deny accredi-

tation to schools of nursing and educational programs which fail to meet or maintain the prescribed course of study or other applicable standards to ensure that high levels of education are achieved;

(10) monitor the examination results of licensure applicants to determine variances in the level of educational effectiveness;

(11) provide consultation and guidance to nurse education institutions to facilitate self-study, evaluation, and the development of effective nurse education programs; and

(12) provide advice and counsel to the faculty of educational programs, to staff of health agencies utilizing nursing services, and to practitioners of nursing to continually improve professional service delivery.

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 December 1, 1988.

TRD-8812385 Louise Waddill
Executive Secretary
Board of Nurse Examiners

Effective date: December 23, 1988

Proposal publication date: September 20, 1988

For further information, please call: (512) 835-4880

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TITLE 25. HEALTH SERVICES

Part VI. Statewide Health Coordinating Council

Chapter 571. Health Planning and Resource Development

State Health Plan

• 25 TAC §571.1

The Statewide Health Coordinating Council (SHCC) adopts an amendment to §571.1, with changes to the proposed text as published in the May 31, 1988 issue of the *Texas Register* (13 Tex Reg 2671). There are also changes to the State Health Plan (SHP), which is adopted by reference in §571.1.

The amendment provide for increased awareness of the health problems in the state, knowledge about prevention activities, and improvements in the availability and accessibility of health care services in the state. The amendment updates and modifies the Texas State Health Plan (SHP), covers statewide health problems, develops recommendations designed to resolve these problems, and proposes needed implementation strategies. The health problems specifically addressed include AIDS, health care needs of the homeless, maternal and child health, medical liability insurance, school health, environmental health, mental health and mental retarda-

tion, health professions, trauma-EMS, disability and rehabilitation, long-term care and alternatives, short-term care, and alcohol and drug abuse. The amendment also involves changes, modifications, and placement of titles of chapters in the state health plan.

Concerning Chapter IV, Environmental Health, five commenters suggested changes. One commenter asked that the SHCC recommend that the funding in the Senate Bill 537 fiscal note be supported. The SHCC made no change because funding can be recommended in the cost data submission to the Legislative Budget Board. Another commenter asked that the SHP focus more on environmental issues of high priority relating to the ongoing programs of the department (Texas Department of Health). Two other commenters suggested that the SHP recommend that the legislature provide funding for the Municipal Solid Waste Planning Fund. The SHCC made no changes because these comments addressed issues which were not included in the priority issue for this chapter. The fifth commenter suggested that this chapter expand the phrase, "ground water quality issues" to "all water quality issues." Since this issue was referenced as an issue from the 1987-1988 SHP, the SHCC could make no changes. Another commenter suggested that the word "health" be inserted after "environmental" in the priority issue. The SHCC agreed and amended Chapter IV accordingly.

Concerning Chapter V, School Health, three commenters suggested changes. One commenter expressed support for comprehensive health education in the areas of pregnancy prevention, alcohol and drug abuse prevention, and prevention of AIDS and other sexually-transmitted diseases. The SHCC made no changes because these issues were already addressed elsewhere in the SHP. Another commenter recommended additional funding for school districts impacted by residential treatment centers serving children and funding for specialized counselling services for students with substance abuse disorders. Since this subject was not addressed in this chapter, the SHCC made no change. The third commenter asked that a section be included detailing the health instruction requirements for kindergarten through high school. As the SHP is a policy document, the SHCC felt that this much detail was unnecessary and made no change.

Concerning Chapter V, School Health, three commenters suggested the following: that language be added which reads, "Foster continue cooperation between the Texas Commission on Alcohol and Drug Abuse as the state authority for drug use prevention and treatment and the Texas Education Agency as the state public education authority."; that a provision be added which describes the scope of drug use in the school system and current state-level efforts to address it; and that several minor wording changes be added to the language of this chapter. The SHCC concurred with the preceding suggestions and made the appropriate changes. A fourth commenter recommended that the wording in the recommendations should be changed to read: "The Texas Education Agency should develop a plan to enable school districts...and to enable other districts to provide a school health services program under the supervi-

sion of a registered nurse." The SHCC concurred in substance, changing the recommendation in part, but modifying it to read "...supervision of public health physicians and registered nurses."

Concerning Chapter VI, Acquired Immunodeficiency Syndrome (AIDS), two commenters provided information that the Texas Department of Human Services had expended over \$6 million for AIDS/HIV services and the Texas Department of Health was administering a one-time federal allocation of approximately \$2 million for the drug AZT. The SHCC incorporated this information into the chapter.

Concerning Chapter VI, Acquired Immunodeficiency Syndrome (AIDS), three commenters noted that the state appropriations (for AIDS) is too low, encouraged support for self-responsibility concerning AIDS prevention, and recommended a stronger position on teaching sex education in the schools. The SHCC felt that these issues were already addressed adequately in the SHP and made no change.

Concerning Chapter VII, Trauma and Emergency Medical Services, three commenters suggested that the chapter discuss health issues generated by animals, e.g., pit bull attacks; that the chapter require a thorough study of trauma registries and encourage active participation by physicians and other health-related professionals in identifying hospitals not meeting standards; and to change the wording in the chapter recommendation from "trauma certification system" to "trauma system" and add the words "and undercompensated" following "uncompensated." The SHCC agreed with the latter wording change, but felt that recommending a "trauma system" implied development of a network of trauma centers, a concept which has met with strong opposition in prior plan discussions. The SHCC also disagreed with the first two suggestions because they were not consistent with the priority issue in this chapter of the SHP.

Concerning Chapter VII, Trauma and Emergency Medical Services, one commenter suggested that the standard of proof of medical malpractice be raised for emergency medical services. The SHCC agreed and included a final paragraph to this chapter which expressed the commenter's concerns.

Concerning Chapter VIII, Short-Term Institutional Care, two commenters supported raising Medicaid eligibility to 100% of the federal poverty level for pregnant women and children under two years of age. This comment required no action.

Concerning Chapter IX, Long-Term Institutional Care and Alternatives, four commenters suggested that nursing homes be resurveyed within two weeks of punitive action and that homes providing good nursing care be rewarded; that nursing home licensure fees not be raised without increasing the Medicaid reimbursement rate; that funding be expended to include training of inspection surveyors; and that the licensed facility data be shown by the number of facilities and by the types of care. The SHCC made no changes in response, feeling that such changes were either not necessary or were not within the scope of the chapter.

Concerning Chapter IX, Long-Term Institu-

tional Care and Alternatives, one commenter suggested that cost adjustments be made to Medicaid reimbursement rates for implementation of the Omnibus Budget Reconciliation Act of 1987. The SHCC agreed and amended the first recommendation accordingly.

Concerning Chapter X, Disability and Rehabilitation, three commenters addressed the following concerns: the chapter indicates there is a lack of planning and efficiency within agencies providing services to persons with disabilities; the Rehabilitation Act of 1973 should be mentioned; and other agencies and organizations providing recommendations to the Texas Legislature should be included in the chapter. The SHCC made no changes. The chapter addresses fragmentation of services among, not within, state agencies; enabling legislation will not be included; and other agencies and organizations had an opportunity to comment through the public hearing process of the council on disabilities and the Texas Planning Council for Developmental Disabilities.

Concerning Chapter X, Disability and Rehabilitation, two commenters suggested the following wording changes: the definition of disability should be limited to functional limitations due to physical or mental impairments and that the wording concerning agency responsibilities with respect to other agencies should be clarified. The SHCC agreed and amended the wording accordingly.

Concerning Chapter XI, Mental Health and Mental Retardation, one commenter provided additional background on financial changes made within programs of the Texas Department of Mental Health and Mental Retardation as a result of two class-action suits to shift funding from campus-based services to community-based services. The SHCC included this data in the background of this chapter. Another commenter stated that more money is needed for community mental health services. The SHCC made no change. This position is already addressed in the SHP.

Concerning Chapter XII, Alcohol and Drug Abuse, one commenter suggested adding a statement that the chapter on school health also addresses this priority issue. The SHCC agreed and made the addition accordingly.

Concerning Chapter XIII, Health Professions, five commenters expressed the following: concern about the medical associations' proposal on registered care technologists and that the Texas Nurses Association also should be mentioned as a group concerned about correcting the nurse shortage; that physical therapists and other health professionals should be included in this chapter; concern that shortages among certain health care professions in the Coastal Bend area make professional education and skills improvement difficult; the desire that the SHP include background about the Texas Medical Association's physician placement service and new ways to use the loan repayment programs to encourage physicians to practice in underserved areas; and concern about the acquisition and retention of qualified mental health and mental retardation staff. The SHCC made no change where the comments did not directly address the priority issue of maldistribution of primary care physicians and nurses. Furthermore, some comments related only to a symptom of the maldistrib-

tion issue and were thus not detailed in the plan. The comment on the Texas Nurses Association appeared to be related to listing the association with the name of the Special Commission on Post-Secondary Medical, Dental and Allied Health Education. The SHCC could not make such a change.

Concerning Chapter XIV, Maternal and Child Health, one commenter suggested that a fourth goal which promotes family planning education be added at the end of this chapter. The SHCC agreed, and a fourth goal was added as follows, "to continue to promote family planning education and services for all Medicaid recipients." Another commenter suggested that teenage pregnancy should be included as a priority issue. The SHCC made no change since this topic had previously been considered.

Concerning Chapter XV, Professional and Medical Liability Insurance, one commenter suggested several options for ways to change the present medical liability system. The commenter provided suggestions for liability changes in the areas of indigent care, obstetrics, emergency room care, and general tort relief. Options included were: indemnification of physicians and health care providers who provide services under contract with the state or without expectation of remuneration or for limited remuneration; limiting the liability of the health care provider to the extent of the Texas Tort Claims Act; modification of the standard of care of health care providers contracting with the state to allow claimant recovery when the provider acts with reckless disregard or with intent to harm the health or welfare of the patient; modification of the Good Samaritan Law; and consideration of a state fund to cover excess compensation or to cover damages in case of indigent care or care under contract with the state. The SHCC agreed in concept with some of these suggestions. The SHCC amended recommendation two and the next to the last paragraph in the "Background" portion of this chapter.

Concerning Chapter XV, Professional and Medical Liability Insurance, one commenter suggested that the state subsidize insurance premiums for physicians delivering babies for the medically indigent, or indemnify these physicians against liability. The SHCC agreed in principle with the suggestion and added more discussion in this chapter relating to legislative reform in the civil justice and insurance regulation arenas. Another commenter suggested adding a recommendation to educate the public regarding what is in the nurse practice act and the medical practice act which relates to peer review. The SHCC made no change because the suggestion did not directly address the priority issue of the chapter.

Concerning Chapter XVI, the Health Care Needs of the Homeless in Texas, one commenter suggested making a reference to the Texas Department of Community Affairs in the first recommendation. The SHCC agreed and modified the recommendation accordingly.

Names of those making comments for and against the proposed amendments are as follows: City of Houston; Coalition for the Homeless of Houston/Harris County; Corpus Christi-Nueces County Department of Public Health - Nursing Division; Health Care of Texas, Inc.; Lamar University; Laredo City

Council; Laredo State Center; Nueces County Community Action Agency; South East Texas Regional Planning Commission; St. Elizabeth Hospital; Texas Air Control Board; Texas Association of Regional Councils; Texas Commission for the Blind; Texas Department of Community Affairs; Texas Department of Health (associate commissioner, Environmental and Consumer Health Protection; Bureau of AIDS and STD Control; Bureau of Emergency Management; Epidemiology Division); Texas Department of Human Services; Texas Department of Mental Health and Mental Retardation; Texas Education Agency; Texas Family Planning Association; Texas Health Care Association; Texas Medical Association; Texas Rehabilitation Commission; and the Texas Water Commission. All of the commenters were for the amendments, but offered suggestions and comments as outlined in the summary of comments.

The amendment is adopted under the Texas Health Planning and Resources Development Act of 1974, Texas Civil Statutes, Article 4418h, §4.04, which provides the Statewide Health Coordinating Council with the authority to adopt a state health plan.

§571.1. State Health Plan for Texas. The Statewide Health Coordinating Council adopts by reference the document entitled, "The Texas State Health Plan, 1989-1990." This document reflects a five-year planning period, has been published by the Statewide Health Coordinating Council, and is available from the Bureau of State Health Data and Policy Analysis, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

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 November 30, 1988.

TRD-8812213 Marion R. Zetzman
Chairman
Statewide Health
Coordinating Council

Effective date: February 7, 1989.

Proposal publication date: May 31, 1988.

For further information, please call: (512) 458-7261

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 3. Energy Resources

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

• 31 TAC §3.10

The General Land Office (GLO) adopts an amendment to §3.10, with changes to the

proposed text as published in the October 14, 1988, issue of the *Texas Register* (13 TexReg 5185).

The adopted section will clarify the terms "available" and "actually available" as used in subsection (e)(7) and (8) of this section.

The section will function to define more precisely the standard for understanding how the availability of a posted price will be ascertained. The section does not impose any obligations on a producer in addition to those already undertaken by the producer in signing a lease.

Comments received concerned proposed definitions, when used in conjunction with the GLO's expansive interpretation of the terms "field" and "general area", which impose royalty obligations on producers based upon prices which are not economically attainable by the producers.

A commenter against adoption of the amendment was the Scott, Douglass, and Luton Law Firm.

The purpose of the amendment is to define more clearly the royalty obligations imposed by the lease. The amendment clarifies that "availability" is intended to remove "fictitious" postings from the posted price equation for royalty computation. The comments suggest that if securing the highest posted price is economically disadvantageous, then the lessee should be allowed to pay royalty on gross proceeds. Such an interpretation is not authorized by the lease terms.

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

§3.10. Basis for Computing Royalties.

(a)-(d) (No change.)

(e) Determination of market value.

(1)-(7) (No change.)

(8) For the purposes of paragraph (7)(A) of this subsection, 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 paragraphs (7) and (8) of this subsection mean that a price is being offered, by posting, contract listing, or amendment, or otherwise, to non-affiliated parties, and that if a producer presented a barrel of oil or an MCF/MMBTU of gas to an entity offering said price, assuming all quality specifications for the price were met, that producer would in fact, receive that offered price.

(9) (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 December 1, 1988.

Effective date: December 22, 1988

Proposal publication date: October 14, 1988

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

Part II. Texas Parks and Wildlife Department

Chapter 57. Fisheries

• 31 TAC §57.601

The Texas Parks and Wildlife Commission in a regularly scheduled public hearing held November 3, 1988, adopted by reference new §57.601(a) and (b) without changes to the proposed text as published in the September 2, 1988, issue of the *Texas Register* (13 TexReg 4371). However, the adoption by reference material, proposed Management Plan for Oysters, was adopted with five revisions derived from public comments. The revisions, as adopted, include: recognizing those who provided input, clarifying some of the commercial landings data, requiring anyone importing oysters into Texas or stocking oysters into public waters to obtain prior Texas Parks and Wildlife approval; referencing the role of the Texas General Land Office in managing state submerged lands; and creating an Oyster Advisory Committee to advise the Texas Parks and Wildlife Department staff on the preparation and formulation of rules and regulations necessary to carry out the Oyster Plan. Copies of the Oyster Management Plan and Economic Impact Analysis as adopted by the Texas Parks and Wildlife Commission can be obtained from the Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744

The section as adopted is intended to prevent the depletion of oyster beds while achieving, on a continuing basis, the optimum yield for the oyster industry and Texas.

The section as adopted provides guidelines and policies to: prevent the depletion of oyster beds while achieving, on a continuing basis, the optimum yield for the oyster industry and Texas; provide measures based on the best scientific information available; provide measures to manage oysters; provide measures, where practicable, that will promote efficiency in utilizing oyster resources, except that economic allocation may not be the sole purpose of the measures; provide measures, where practicable, that will minimize cost and avoid unnecessary duplication in their administration; and provide measures which will enhance enforcement.

Comments made by the public, concerning the proposed section, were presented to the Texas Parks and Wildlife Commission in a summarized form from public hearings, letters, and telephone calls. On September 7, 1988, 12 public hearings were held statewide to obtain public comments on the Fishery Management Plan for Oysters in Texas and the Economic Impact Analysis; approximately 149 people attended these hearings. Comments were also received in the form of letters and phone calls from the public and elected officials. The primary comments re-

ceived were there was not sufficient opportunity for commenting on the plan and the plan is too general. Generally, some of the comments approved of the plan and/or parts of its contents, but some of the comments disapproved of the plan.

In addition to those who simply spoke for or against the proposed plan, some of the commenters said: the plan is too vague and more specific recommendations are needed; there was inadequate comment time or public hearing notice provided; any changes made to the present rules and laws should be done gradually; there was not enough input from the joint interim committee on the Texas Shrimp and Oyster Industry; the plan is only a method to obtain regulatory power; economics should play a greater role in management, and the economics of other resources should be compared to the oyster industry in the area; the data used to develop the plan were unbalanced or misleading; oysters cannot be overfished because environmental conditions play a greater role in their abundance than fishing; chemical and other pollution is the problem with oysters; allocation and limited entry should not be used to manage oysters; industry should have input in any limited entry or allocation program; increased emphasis on mariculture is needed; there should be greater interagency cooperation; Texas Parks and Wildlife Department monitoring programs need improvement; a public advisory group or committee is needed; optimum yield is not specified nor depletion defined; the plan will increase costs to oyster industry; and funds and fees from licenses and leases should be used for habitat maintenance and restoration and be appropriate compensation for the use of state owned lands. Numerous additional comments and suggestions dealing with means, manners, devices, places, times, closed areas, closed seasons, sizes, and leases for harvesting oysters were provided.

All public comments received are available for public inspection at the Texas Parks and Wildlife Department headquarters complex, 4200 Smith School Road, Austin, Texas 78744, telephone 1-800-792-1112, extension 4863 or 512-389-4863.

Four groups made comments for and against the section. The Texas Oyster Association agreed with the general objectives of the plan but disagreed with the plan because it was too vague, recommendations were not specific enough, the plan would increase costs to the oyster industry, oyster abundance is affected more by natural events than fishing, the present system is adequate, the Joint Interim Committee on the Shrimp and Oyster Industry was not adequately represented and suggested that an advisory committee be formed. Professional Involvement of Seafood Concerned Enterprises (PISCES), disagreed with the plan because it did not go far enough, the Joint Interim Committee on the Shrimp and Oyster Committee did not entertain public input and did not have input into final plan development. PISCES suggested a public advisory committee to help with plan implementation or a delay in adoption of the plan. Texas A&M University Agricultural Extension Service, Sea Grant Program, Marine Advisory Service, found the Oyster Management Plan deficient in its present form because it lacked thoroughness and the specificity needed to provide wise utilization of oyster resources and the promotion of an

economically healthy oyster industry. Texas A&M University agreed with portions of recommendations 1, 6-11, 13, and 18. The Texas General Land Office felt the plan should include that agency's role in managing state submerged lands and that portions of the plan lacked specificity.

The agency disagrees with the comments as follows (using the same numbering system as in Paragraph 4.) The specificity questions concerning the plan are due to differences in opinion on the objectives of the plan. The legislature directed the Texas Parks and Wildlife Department to prepare a plan to establish policies and guidelines to manage the oyster fishery. Specific rules to implement these policy provisions would follow adoption of the plan, and would be phased in to lessen disruption to the industry and to maximize public input during the rule making process. Copies of the proposed plan and analysis were furnished to the oyster industry and other interested parties including the governor and lieutenant governor of Texas, speaker of the Texas House of Representatives, state legislators from coastal counties, Shrimp and Oyster Industry Interim Committee, commercial oyster dredge license holders, sports oyster dredge license holders, oyster lease holders, certified oyster dealers, outdoor writers, Texas A&M University County Marine Extension Agents, and other interested persons in August 1988. The proposed section to adopt the Texas Oyster Fishery Management Plan and the Economic Impact Analysis was published in the September 2, 1988, issue of the *Texas Register* (13 TexReg 4371). On September 7, 1988, 12 public hearings were held throughout the state to solicit additional public comment on the proposed plan. The agency agrees. See recommendation 1, in the Oyster Management Plan. The Texas Parks and Wildlife Department staff has followed the legislature's guidance relating to involvement of the Interim Committee in the development of the plan and it was forwarded to all members of the committee for review and comment. The plan was mandated by the 69th Texas Legislature. The plan recommends management of the resource to achieve optimum yield which by definition includes biological, sociologic, and economic considerations. Inclusion of data concerning the economics of other industries was deemed unnecessary. The purpose of the plan was to profile the oyster industry, focusing on its current condition and future management objectives, as mandated by the 69th Legislature, the best available data were used to develop the plan. Oyster abundance is affected both by fishing and environmental conditions. However, fishing effort may be controlled while natural events cannot be controlled or predicted. Water quality, as it relates to oysters, is under the jurisdiction of the Texas Water Commission, Texas Department of Health and federal agencies with which this agency cooperates. It is proposed that the feasibility of a limited entry program for Texas be studied. Specific recommendations, may be proposed after further study and before any action is taken these proposals will go through the public input process mandated by law. Any proposed changes would go through the public hearing process and the plan includes an advisory committee on oysters. Recommendation 12 emphasizes the importance of mariculture of oysters; the agency agrees, see recommendation 2, in the

oyster management. Additionally, the Parks and Wildlife Department has reported its findings and has maintained communication through publications and continuous cooperative actions. Recommendations 14 and 15, in the Oyster Management Plan, propose to continue the present monitoring or enhance it to meet the legislative mandates and continue to determine fishery population and harvest trends. An oyster advisory committee was added to recommendation 2, in the proposed Oyster Management Plan. Current recommendations include the enhancement of monitoring and data collection to meet the legislative mandates, which require management to achieve optimum yield. The plan does not call for increased costs to the oyster industry. Evaluations of licensing, allocation, habitat improvement, and other measures may lead to increased costs to participants in the industry, however, implementation of programs which may increase cost will be evaluated thoroughly and go through the public hearing process. The use of fees derived from licenses and leases are appropriated by the legislature. Any proposed changes developed in the future which detail specific actions will be reviewed through the public hearing process and comments will be solicited before any rule changes are made. The Texas Oyster Fishery Management Plan and Economic Impact Analysis as adopted were based on the best available scientific information. The information upon which the plan and economic impact analysis were based, were collected through an extensive scientific inquiry and analysis. The materials collected during this process have been compiled into a source document that is part of the files of the Texas Parks and Wildlife Department, and is available upon request. Additional facts and information that form the factual basis of the Plan and Economic Impact Analysis were acquired through an intensive effort to get input from those interested in and knowledgeable of the Texas Oyster Industry.

The new section is adopted under the authority of Texas Parks and Wildlife Code Chapter 76, which provides the Texas Parks and Wildlife Commission with authority to approve and adopt an oyster fishery management plan and economic impact analysis before exercising its authority to manage oysters.

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 November 30, 1988.

TRD-8812230

Boyd M. Johnson
General Counsel
Texas Parks and Wildlife
Department

Effective date: December 21, 1988

Proposal publication date: September 2, 1988

For further information, please call: (512) 389-4863

Part III. Texas Air Control Board

Chapter 101. General Rules

• 31 TAC §101.1

The Texas Air Control Board (TACB) adopts an amendment to §101.1, with changes to the proposed text as published in the June 7, 1988, issue of the *Texas Register* (13 TexReg 2796).

The amendment to §101.1 defines various terms regarding the control of surface coating and graphic arts facilities. The amendment is adopted in conjunction with concurrently adopted amendments to Chapter 115, concerning control of air pollution from volatile organic compounds.

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

Six commenters, the Environmental Protection Agency (EPA), Sherwin-Williams Company (Sherwin-Williams), Glidden Company (Glidden), Caldwell Paint Manufacturing Company (Caldwell), Olympic Homecare Products Company (Olympic), and the National Paint and Coatings Association (NPCA), testified against the proposed amendment to §101.1, while no comments were received in favor of the proposal.

A summary of comments and a discussion of issues follows. Copies of the written testimony and of the hearing transcript are available for inspection at the TACB office, 6330 Highway 290 East, Austin, Texas 78723.

All commenters suggested specific changes or additions to the definitions associated with the proposed Regulation V revisions. Sherwin-Williams, Glidden, Caldwell, NPCA, and the EPA recommended new definitions for numerous categories of coatings which are not currently controlled by Regulation V. Definitions were also suggested for several terms which do appear in the regulations but which were not included in the proposal. The TACB staff recognizes the need to clearly and accurately define the specialized terms used in the surface coating field. We will be working closely with the EPA and industry representatives during subsequent rulemaking to address any remaining surface coating issues, including establishing appropriate definitions. However, the consideration of definitions for terms not included either in the regulation or in the current proposal is beyond the scope of these revisions.

Sherwin-Williams, Glidden, NPCA, and the EPA recommended the adoption of a definition of architectural coating similar to that currently used in California. The California definition is more inclusive than that currently in the TACB General Rules chapter and would result in a significant expansion in the types of coatings regulated, requiring an additional opportunity for public comment. However, changes to this definition can be made at this time to address other industry concerns regarding exemption of coatings sold in

containers of one quart or less, and of concentrated colorant used for custom paint blending at a sales outlet.

Sherwin-Williams, Glidden, and NPCA provided definitions for flat and non-flat coatings based on a specific analytical measure of gloss. While Glidden included examples of types of coatings in the definitions, the other two companies retained only the measurable criteria. The proposal included a definition for non-flat architectural coating which appears consistent with the recommendations but includes labeling criteria as well as the specified measure of gloss. Labeling information should be expected to accurately reflect the applicable gloss characteristics of the paint and must be included in the definition to facilitate effective field enforcement of these controls. A definition for flat coating was considered unnecessary since it would include only those coatings not covered by the definition for non-flat coating. However, the need for a definition of both terms will be examined during subsequent rulemaking.

Definitions for volatile organic compounds, prime coat, surface coat, automobile refinishing, and consumer-solvent products were also recommended by various commenters. These terms are already defined in the TACB General Rules chapter and appear consistent with the testimony received.

EPA recommended the addition of a definition for vapor processing system and suggested a revision to the existing definition of vapor recovery system which specifies a minimum 80% reduction effectiveness. EPA stated that the definition should not allow a 1.5 psia aggregate partial pressure exemption. A vapor processing system is currently included under the existing definition of vapor recovery system which has not been proposed for revision and, therefore, is beyond the scope of these hearings. However, the 1.5 psia limit included in the definition of vapor recovery system is a maximum. More stringent emissions limitations specified in Regulation V are always required when applicable. In fact, a requirement for 80% overall reduction may in some cases represent a relaxation of existing requirements.

The amendment is adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purpose of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§101.1. Definitions. Unless specifically defined in the Act or in the rules of the board, the terms used by the board have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by Texas Civil Statutes, Article 4477.5, the following words and terms, when used in this part (31 TAC Part III), shall have the following meanings unless the context clearly indicates otherwise.

Architectural coating—Any protective or decorative coating applied to the interior or exterior of a building or structure, including latex paint, alkyd paints, stains, lacquers, varnishes, and urethanes. Excluded from this definition are paints sold in containers of one quart or less;

paints used on roadways, pavement, swimming pools, and similar surfaces; aerosol spray products; and concentrated color additives.

Automotive primer or primer surfacers (used in automobile refinishing)—Any base coat, sealer, or intermediate coat which is applied prior to colorant or aesthetic coats. Excluded are sealants applied over bare metal solely for the prevention of flash rusting.

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

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

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

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

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

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

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

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

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

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

(A)-(K) (No change.)

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

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

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 November 30, 1988.

TRD-8812240

Allen Eli Bell
Executive Director
Texas Air Control Board

Effective date: December 21, 1988

Proposal publication date: June 7, 1988

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

Chapter 115. Control of Air Pollution from Volatile Organic Compounds

Facilities for Loading and Unloading of Volatile Organic Compounds

• 31 TAC §115.111, §115.113

The Texas Air Control Board (TACB) adopts amendments to §115.111 and §115.113. Section 115.111 is adopted with changes to the proposed text as published in the June 7, 1988, issue of the *Texas Register* (13 TexReg 2797). Section 115.113 is adopted without changes and will not be republished.

The amendments to §115.111, concerning throughput and control requirements, specify that for gasoline terminals in Dallas and Tarrant counties, inspections for liquid and vapor leaks must be performed during transfer operations and that annual leak testing be conducted on all tank trucks which use these facilities. The amendments also establish necessary test methods and recordkeeping requirements. The amendments to §115.113, concerning compliance schedules and counties, require affected gasoline terminals to begin maintaining records no later than August 31, 1990. Various additional changes to these sections clarify and simplify the enforcement of current requirements.

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

Four commenters, an individual commenter Exxon Company, U.S.A. (Exxon), Mobil Oil Corporation (Mobil), and the Environmental Protection Agency (EPA), testified against the proposed amendments to §115.111, while no comments were received in favor of the proposal. No comments were received regarding amendments to §115.113.

A summary of comments and a discussion of issues follows. Copies of the written testimony and of the hearing transcript are available for inspection at the TACB office, 6330 United States Highway 290 East, Austin, Texas 78723.

Mobil and Exxon objected to the recordkeeping as impractical, especially at automated facilities open 24 hours a day, and at terminals which serve common carriers. Both companies also objected to the requirement to ensure that annual leak testing is conducted on all tanktrucks serviced at an affected terminal. The specified

recordkeeping is necessary to document compliance with existing control requirements. These requirements prohibit anyone from allowing the transfer of gasoline into tanktrucks which have not been properly tested, therefore, terminals have a responsibility to restrict the access of unauthorized trucks to loading facilities.

The individual commenter suggested that leak inspections during loading operations should include testing for vapors, as well as liquid leaks. While the use of instruments to test for vapors is impractical, a visual inspection for visible fumes and significant odors is reasonable.

EPA stated that once a terminal exceeds the established throughput exemption level, it should always be subject to the controls unless throughput is limited by an enforceable restriction, such as a board order. Exemption conditions are enforceable regulatory limitations and notices of violation will be issued when any limitation is exceeded. Consistent with the enforcement policy for other control limits, additional controls are only required when a historical record of violations indicate modifications are necessary to ensure future compliance.

The amendments are adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purpose of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§115.111. Throughput and Control Requirements. No person shall permit the loading or unloading to or from any facility having 20,000 gallons (75,708 liters) or more throughput per day (averaged over any consecutive 30-day period) of volatile organic compounds with a true vapor pressure equal to or greater than 1.5 psia (10.3 kPa) under actual storage conditions, unless the following emission control requirements are met by the dates specified in §115.113 of this title (relating to Compliance Schedule and Counties).

(1) (No change.)

(2) Gasoline terminal size and additional emission control requirements are as follows:

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

(E) Volatile organic compound vapors from gasoline terminals located in Dallas and Tarrant Counties and having 100,000 gallons (378,541 liters) or more throughput per day (averaged over any consecutive 30-day period) shall be reduced to a level not to exceed 0.33 pounds of volatile organic compounds from the vapor recovery system vent per 1,000 gallons (40 mg/liter) of gasoline transferred.

(F) (No change.)

(3) (No change.)

(4) Vapor recovery systems and

loading equipment at gasoline terminals must be designed and operated to meet the following conditions.

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

(C) No avoidable liquid or gaseous leaks shall exist during loading and unloading operations. Inspection for visible liquid leaks, visible fumes, or significant odors resulting from gasoline dispensing operations shall be conducted by the owner or operator of the gasoline terminal or the owner or operator of the tank-truck. Gasoline loading or unloading through the affected transfer lines shall be discontinued immediately when a leak is observed and shall not be resumed until the observed leak is repaired.

(5) Gasoline tank-truck tanks being loaded in Dallas, El Paso, Harris, and Tarrant Counties must have been leak tested within one year, in accordance with the requirements of §§115.261-115.264 of this title (relating to Emission Control Requirements; Testing Requirements; Recording Requirements; and Compliance Schedule and Counties) as evidenced by prominently displayed certification, affixed near the DOT certification plate.

(6) Compliance with paragraph (2) of this section shall be determined by applying the following test methods, as appropriate:

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

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

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

(D) additional test procedures described in 40 Code of Federal Regulations 60.503c-f; or

(E) equivalent test methods approved by the executive director.

(7) The owner or operator of any gasoline terminal in Dallas or Tarrant County shall maintain the following information at the facility for at least two years and shall make such information available to representatives of the Texas Air Control Board or local air pollution control agency having jurisdiction in the area, upon request:

(A) a daily record of the total throughput of gasoline loaded at the facility; and

(B) for gasoline terminals having 20,000 gallons (75,708 liters) or more throughput per day (averaged over any consecutive 30-day period):

(i) a comprehensive record of all tanktrucks loaded, including the certification number of the delivery vessel and the date of the last leak testing required by paragraph (5) of this section;

(ii) a daily record of the certification number of all delivery vessels loaded at the affected terminal;

(iii) a daily record of the number of delivery vessels loaded at the terminal and the quantity of gasoline loaded to each delivery vessel; and

(iv) a record of the results of any testing conducted at the terminal in accordance with the provisions specified in paragraph (6) 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 November 30, 1988.

TRD-8812239

Allen Eli Bell
Executive Director
Texas Air Control Board

Effective date: December 21, 1988

Proposal publication date: June 7, 1988

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

Filling of Gasoline Storage Vessels (Stage I)

• 31 TAC §§115.131, 115.132, 115.134, 115.135

The Texas Air Control Board (TACB) adopts amendments to §§115.131, 115.132, 115.134, and 115.135. Section 115.132 is adopted with changes to the proposed text as published in the June 7, 1988, issue of the *Texas Register* (13 TexReg 2802). Sections 115.131, 115.134, and 115.135 are adopted without changes and will not be republished.

The amendments to §115.131, concerning control requirements, require annual tank-truck leak testing to be performed in accordance with §§115.261-115.264 of this title, concerning volatile organic compounds leaks from gasoline tank-trucks in Dallas, El Paso, Harris, and Tarrant counties. The amendments also specify necessary test methods and recordkeeping requirements. The amendments to §115.132, concerning approved vapor balance systems, require the performance of inspections and repairs of leaks during the transfer of gasoline from tank-trucks. The amendments to §115.134, concerning exemptions, delete the current ex-

emption for stationary containers less than 2,000 gallons installed prior to December 10, 1976. The amendments to §115.135, concerning compliance schedule and counties, require affected facilities to begin maintaining specified records no later than August 31, 1990. Various additional changes to these sections clarify and simplify the enforcement of current requirements.

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

Four commenters, an individual commenter, Exxon Company, U.S.A. (Exxon), Mobil Oil Corporation (Mobil), and Houston Lighting and Power (HL&P), testified against the proposed amendments to §115.131 and §115.132, while no comments were received in favor of the proposals. No comments were received regarding amendments to §115.134 and §115.135. A summary of comments and a discussion of issues follows. Copies of the written testimony and of the hearing transcript are available for inspection at the TACB office, 6330 Highway 290 East, Austin, Texas 78723.

Mobil and Exxon objected to the requirement to ensure that annual leak testing is conducted on all tank-trucks serviced at an affected dispensing facility. Existing control requirements prohibit anyone from allowing the transfer of gasoline from tank-trucks which have not been properly tested; therefore, gasoline dispensing facilities have a responsibility to restrict the access of unauthorized trucks.

HL&P and Mobil expressed concern that the proposed 0.8 psia emission limitation on gasoline dispensing facilities would require additional testing of vapor balance systems or installation of costly control equipment at individual stations. The limitation is based on the 90% control efficiency required by the federal guidance documents for Stage I controls and does not represent tightening of the control requirements. As clearly stated in §115.132, use of an acceptable vapor balance system will automatically be assumed to satisfy the limitation without further demonstration or control.

The individual commenter proposed that leak inspections include testing for vapors, as well as liquid leaks. While the use of instruments to test for vapor leaks during all gasoline transfers is impractical, a visual inspection for visible fumes and significant odors is reasonable.

The amendments are adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purpose of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§115.132. Approved Vapor Balance System. A vapor balance system will be assumed to comply with the specified emission limitation of §115.131(2) of this

title (relating to Control Requirements), if all other provisions of that section are satisfied and all of the following additional conditions are met:

(1) (No change.)

(2) no avoidable gasoline leaks exist anywhere in the liquid transfer or vapor balance systems. Inspection for liquid leaks, visible vapors, or significant odors resulting from gasoline transfer shall be conducted. Gasoline transfer shall be discontinued immediately when a leak is observed and shall not be resumed until the observed leak is repaired.

(3)-(7) (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 November 30, 1988.

TRD-8812238 Allen Eli Bell
Executive Director
Texas Air Control Board

Effective date: December 21, 1988

Proposal publication date: June 7, 1988

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

Water Separation

• 31 TAC §§115.141-115.144

The Texas Air Control Board (TACB) adopts an amendment to §§115.141-115.144, without changes to the proposed text as published in the June 7, 1988, issue of the *Texas Register* (13 TexReg 2805).

The amendments to §115.141, require all facilities other than petroleum refineries in Dallas and Tarrant counties to implement specified controls on any volatile organic compound (VOC) water separator which separates materials having a true vapor pressure of VOC equal to or greater than 0.5 psia regardless of daily throughput. The amendments to §115.142 require similar controls in separators located at petroleum refineries in Dallas and Tarrant counties. The amendments to §115.143 eliminate the exemption for VOC water separators in Dallas and Tarrant counties used exclusively in conjunction with crude oil and condensate production after August 31, 1990. The amendments also specify necessary recordkeeping requirements for all affected facilities. The amendments to §115.144 establish a final compliance date of August 31, 1990. Various additional changes to these sections clarify and simplify the enforcement of current requirements.

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

The Environmental Protection Agency (EPA) testified against the proposed amendments to §115.143, while Mobil Oil Corporation (Mobil) testified against the entire proposal. No comments were received in favor of the proposal.

A summary of comments and a discussion of issues follows. Copies of the written testimony and of the hearing transcript are available for inspection at the TACB office, 6330 Highway 290 East, Austin, Texas 78723.

Mobil objected to the proposal because it would essentially require all separators to be controlled regardless of size or throughput and stated that the term materials would include all substances passing through the separator. Control of a VOC water separator normally involves the addition of a simple cover to reduce evaporation. The cost of such a control does not appear prohibitive even for small sources, therefore, is considered reasonable. The regulation of materials passing through a separator is clearly based only on the vapor pressure of the VOC present.

EPA noted that no compliance date was provided for the proposed recordkeeping requirements associated with the exemptions in §115.143(c). Records necessary to demonstrate compliance with exemption criteria would be necessary at the same time compliance would be required of controlled sources. The specification of a separate and distinct compliance date appears unnecessary.

The amendments are adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purpose of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

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

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

Vent Gas Control

• 31 TAC §§115.162-115.164

The Texas Air Control Board (TACB) adopts amendments to §§115.162-115.164. Section 115.163 is adopted with changes to the proposed text as published in the June 7, 1988, issue of the *Texas Register* (13 TexReg 2808). Section 115.162 and §115.164 are adopted without changes and will not be republished.

The amendments to §115.162, concerning general vent gas streams, clarify that the exemption for vent gas streams with emissions exceeding 100 pounds per day of volatile organic compounds (VOC) are based on the concentration of VOC in the vent gas. Reference in the exemption to vents which exceed

250 pounds of VOC per hour is considered unnecessary and has been deleted. Similar changes were made in §115.164, concerning general vent gas streams in Dallas, Harris, and Tarrant counties. These amendments also specify necessary test methods and recordkeeping requirements for affected sources in Dallas and Tarrant counties. The amendments to §115.164, concerning compliance schedule and counties, require all affected sources to begin maintaining necessary records no later than August 31, 1990. Various additional amendments to these sections clarify and simplify the enforcement of current requirements.

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

Four commenters, an individual commenter, the Environmental Protection Agency (EPA), the City of Fort Worth Health Department (Fort Worth), and General Motors Corporation (GM), testified against the proposed amendments to §115.163, while no comments were received in favor of the proposal. No comments were received regarding amendments to §115.162 or §115.164.

A summary of comments and a discussion of issues follows. Copies of the written testimony and of the hearing transcript are available for inspection at the TACB office, 6330 Highway 290 East, Austin, Texas 78723.

The individual commenter recommended that incinerator effectiveness should be greater than 90% as proposed since many units can achieve a 98% or more efficiency. While this may be true for thermal incineration, the TACB has chosen to retain flexibility to allow the use of catalytic incineration and other devices where cost of thermal incineration may be unreasonable. Catalytic incineration efficiency can initially be comparable to thermal incineration, but gradually declines with extended use to approximately 90% when regeneration or replacement of the catalyst is necessary.

EPA stated that the 100 pound per day exemption for individual vent gas streams is acceptable only for sources which have overall emissions of less than 100 tons per year and that low volume, high concentration vents at major facilities should be combined and controlled. Examination of major sources in Dallas and Tarrant counties indicates that no uncontrolled vents exist with VOC concentrations above the current exemption limit. Establishing such a vent gas control requirement for all major sources might set a precedent that could affect other geographic areas without sufficient consideration of the control effectiveness and economic impact of complying with this policy. Any strategy developed for other areas which would require combining and controlling individual vents must consider the technical and economic feasibility of ducting together widely separated vents, concentrating very dilute streams, or adding numerous small incinerators.

Fort Worth and GM expressed concern re-

garding the resources which may be necessary to comply with the proposed recordkeeping requirements. GM objected to daily recordkeeping of vent parameters, stating that the proposal implied a requirement for continuous monitoring equipment. They recommended an alternative which would require exempt sources to comply with annual testing procedures to document continued applicability of the exemption. A daily record of calculated VOC emissions and concentration estimates may be sufficient. If it is not sufficient and continuous or daily monitoring is impractical, then alternate methods of determining continuous compliance with exemption criteria may be appropriate and will be considered on a case-by-case basis. Furthermore, recordkeeping and/or testing of extremely small or dilute vent gas streams which are demonstrated to be less than 50% of exemption limits appears unnecessary. Finally, controlled sources will be required to record information regarding control equipment operation and associated testing only, since information regarding total emission rates and concentrations is not applicable.

The amendments are adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purpose of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§115.163. General Vent Gas Streams in Dallas, Harris, and Tarrant Counties.

(a) Except for process vent gas streams affected by the provisions of §115.161 of this title (relating to Ethylene from Low-Density Polyethylene Production), no person may allow a vent gas stream to be submitted from any process vent located in Dallas, Harris, and Tarrant Counties containing volatile organic compounds unless the vent gas stream is burned properly at temperature equal to or greater than 1300 degrees Fahrenheit (704 degrees Celsius) in a smokeless flare or a direct-flame incinerator with a destruction efficiency of 90% or greater before it is allowed to enter the atmosphere; alternate means of control may be approved by the executive director in accordance with §115.401 of this title (relating to Procedure).

(b) The following vent gas streams are exempt from the requirements of this section:

- (1) (No change).
- (2) In Harris County:

(A) a vent gas stream from any air oxidation synthetic organic chemical manufacturing process with a true partial pressure of volatile organic compounds less than 0.009 psia (612 ppm);

(B) a vent gas stream from any liquid phase polypropylene manufacturing process, any liquid phase slurry high-density polyethylene manufacturing pro-

cess, and any continuous polystyrene manufacturing process with a true partial pressure of volatile organic compounds less than 0.006 psia (408 ppm);

(C) any other vent gas stream with a true partial pressure of volatile organic compounds less than 0.44 psia (30,000 ppm).

(3) in Dallas and Tarrant Counties, a vent gas stream with a true partial pressure of volatile organic compounds less than 0.009 psia (612 ppm).

(c) Compliance with this section shall be determined by applying the following test methods, as appropriate:

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

(2) additional control device requirements for flares described in 40 CFR 60.18;

(3) Test Methods 14 (40 Code of Federal Regulations 60, Appendix A) for determining flow rate, as necessary;

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

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

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

(7) equivalent test methods approved by the executive director.

(d) The owner or operator of any facility in Dallas or Tarrant Counties which emits volatile organic compounds through a stationary vent shall maintain records at the facility for at least two years and shall make such records available to representatives of the Texas Air Control Board or local air pollution control agency having jurisdiction in the area, upon request. These records shall include, but not be limited to, the following.

(1) Records for each vent required to satisfy the provisions of subsection (a) of this section shall be sufficient to demonstrate the proper functioning of applicable control equipment to design specifications, including:

(A) the exhaust gas temperature immediately downstream of a direct-flame incinerator, in degrees Celsius;

(B) the date and reason for any maintenance and repair of the required

control devices and the estimated quantity and duration of volatile organic compound emissions during such activities; and

(C) the results of any testing of any vent conducted at an affected facility in accordance with the provisions specified in subsection (c) of this section.

(2) Records for each vent exempted from control requirements in accordance with subsection (b) of this section shall be sufficient to demonstrate compliance with applicable exemption limits, including:

(A) the combined weight of volatile organic compounds of each vent gas stream on a daily basis;

(B) the true partial pressure of volatile organic compounds in each vent gas stream on a daily basis; and

(C) the results of any testing of any vent conducted at an affected facility in accordance with the provisions specified in subsection (c) of this section.

(3) Alternatively, records for each vent exempted from control requirements in accordance with subsection (b) of this section and having a volatile organic compound emission rate and concentration less than 50% of the applicable exemption limits at maximum actual operating conditions shall be sufficient to demonstrate continuous compliance with the applicable exemption limit, including:

(A) complete information from either test results or appropriate calculations which clearly documents emission characteristics at maximum actual operating conditions of less than 50% of the applicable exemption limits; and

(B) daily operating parameters which may affect volatile organic compound emissions from the vent sufficient to accurately compare actual daily operating conditions to the maximum actual operating conditions represented for the affected facility.

(e) Alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this section may be approved by the executive director.

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

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Specified Solvent-Using Processes

• 31 TAC §§115.171-115.176

The Texas Air Control Board (TACB) adopts amendments to §§115.171-115.176. Sections 115.172-115.175 are adopted with changes to the proposed text as published in the June 7, 1988, issue of the *Texas Register* (13 TexReg 2809). Section 115.171 and §115.176 are adopted without changes and will not be republished.

The amendment to §115.171, concerning cutback asphalt, require any state, municipal, or county agency which uses or specifies the use of cutback asphalt or asphalt emulsions to maintain records sufficient to document compliance with applicable requirements. The amendments to §115.172, concerning cold solvent cleaning, establish a minimum control efficiency of 65% for emissions capture and control systems. The amendments to §115.173, concerning open-top vapor degreasing operations, and §115.174, concerning conveyORIZED degreasing operations, establish a minimum control efficiency of 85% on refrigerated chillers or alternate capture and control systems. These amendments also specify the necessary test methods and recordkeeping requirements for all affected sources. The amendments to §115.175, concerning exemptions, eliminates any size exemption for degreasing operations in Dallas and Tarrant counties after August 31, 1990. The amendments to §115.176, concerning counties and compliance schedule, specify that all affected sources in Dallas and Tarrant counties must begin maintaining necessary records no later than August 31, 1990. Various additional amendments to these sections clarify and simplify the enforcement of current requirements.

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

Three commenters, an individual, General Dynamics (GD), and Texas Instruments (TI), testified against the proposed amendments to §§115.172-115.174, while no comments were received in favor of the proposals. One commenter, the Environmental Protection Agency (EPA), testified against the proposed amendments to §115.175, while no comments were received in favor of the proposal. No comments were received regarding §115.171 or §115.176. A summary of comments and a discussion of issues follows. Copies of the written testimony and of the hearing transcript are available for inspection at the TACB office, 6330 Highway 290 East, Austin, Texas 78723.

The individual commenter suggested that the proposed control efficiencies were not strin-

gent enough, while GD stated that controls should be verified under actual operating conditions. These controls were developed in conformance with the control technique guidelines (CTG) published by EPA which specify appropriate design efficiency criteria. No independent demonstrations to confirm design performance appears necessary.

TI objected to recordkeeping requirements for individual degreasers at facilities where numerous degreasers are utilized and recommended monthly solvent purchase and disposal records for the entire plant rather than for each degreaser. The regulation is applicable to each individual degreaser, necessitating some way of determining compliance for each unit. Records for an entire plant would not be sufficient to satisfy this condition. However, since the exemption for small degreasers has been eliminated in Dallas and Tarrant counties, no record of solvent purchase or disposal appears necessary. Information regarding maintenance and testing of control equipment will still be required.

GD advocated the development of non-volatile solvents for degreasers. Such activity is encouraged where the substitute solvent does not represent a public health risk due to its toxicity.

EPA stated that in order to demonstrate application of RACT to all CTG sources, the exemption level of three pounds per day must either be deleted for Dallas and Tarrant counties or must be shown to have an insignificant effect on overall emissions. Most cold solvent cleaning operations already appear to utilize vapor control technology which satisfies TACB requirements for economic reasons. Therefore, elimination of the current exemption for small degreasing operations is not expected to require most sources to install additional control equipment. However, the effective enforcement of controls on individual cold solvent cleaners is expected to prove difficult and impractical due to the very large numbers of such cleaners in use. Enforcement is expected to be accomplished whenever violations are observed in conjunction with another investigation or through routine surveillance as resources allow.

The amendments are adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purpose of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§115.172. Cold Solvent Cleaning.

(a) No person shall own or operate a system utilizing a volatile organic compound for the cold cleaning of objects without the following controls:

(1) A cover shall be provided for each cleaner which shall be kept closed whenever parts are not being handled in the cleaner. The cover shall be designed for easy one-handed operation if any one of the following exists:

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

(2) (No change.)

(3) A permanent label summarizing the operating requirements in subsection (b) of this section shall be attached to the cleaner in a conspicuous location near the operator.

(4) If a solvent spray is used, it must be a solid fluid stream (not a fine, atomized, or shower-type spray) and at an operating pressure of 10 psig or less as necessary to prevent splashing above the acceptable freeboard.

(5) One of the following controls is required if the solvent vapor pressure is greater than 0.6 psia (4.1 kPa), as measured at 100 degrees Fahrenheit (38 degrees Celsius), or if the solvent is heated above 120 degrees Fahrenheit (49 degrees Celsius):

(A) a freeboard that provides a ratio (the freeboard height divided by the degreaser width) equal to or greater than 0.7; or

(B) (No change.)

(6) Compliance with this subsection shall be determined by applying the following test methods, as applicable:

(A) ASTM Test Method D 323-82 for determining Reid Vapor Pressure, or

(B) Equivalent test methods and procedures approved by the executive director.

(7) An alternative capture and control system with a demonstrated overall volatile organic compound emission reduction efficiency of 65% or greater may be used in lieu of the requirements of paragraphs (1)-(6) of this subsection, if approved by the executive director.

(b) No person shall own or operate a system using a volatile organic compound for the cold cleaning of objects without complying with the following operating procedures:

(1) Waste solvent shall not be disposed of or transferred to another party such that the waste solvent can evaporate into the atmosphere. Waste solvents shall be stored only in covered containers.

(2) The degreaser cover shall be kept closed whenever parts are not being handled in the cleaner.

(3) (No change.)

§115.173. Open-Top Vapor Degreasing.

(a) No person shall own or operate a system utilizing a volatile organic compound for the open-top vapor cleaning of objects without the following controls.

(1) (No change.)

(2) The following devices which will automatically shut off the sump heat:

(A) a condenser coolant flow sensor and thermostat which will detect if the condenser coolant is not circulating or if the condenser coolant temperature exceeds the solvent manufacturer's recommendations;

(B) a solvent level sensor which will detect if the solvent level drops below acceptable design limits; and

(C) a vapor level sensor which will detect if the vapor level rises above acceptable design limits.

(3) (No change.)

(4) One of the following controls:

(A) a freeboard that provides a ratio (the distance from the top of the vapor level to the top edge of the degreasing tank divided by the degreaser width) equal to or greater than 0.75 and, if the degreaser opening is greater than 10 ft (1m), a powered cover;

(B) a properly sized refrigerated chiller capable of achieving 85% or greater control of volatile organic compound emissions;

(C)-(D) (No change.)

(E) an alternate capture and control system with a demonstrated overall volatile organic compound emission reduction efficiency of 85% or greater, if approved by the executive director.

(5) (No change.)

(6) Compliance with paragraphs (4)(D) and (4)(E) of this subsection shall be determined by applying the following test methods, as appropriate:

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

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

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

(D) Test Methods 25A or 25B (40 Code of Federal Regulations 60, Appendix A) for determining total gaseous

organic concentrations using flame ionization or nondispersive infrared analysis; or

(E) equivalent test methods and procedures approved by the executive director.

(b) No person shall own or operate a system using a volatile organic compound for the open-top vapor cleaning of objects without complying with the following operating procedures:

(1) (No change.)

(2) parts shall be positioned so that complete drainage is obtained.

(3) (No change.)

(4) The work load shall be retained in the vapor zone at least 30 seconds or until condensation ceases.

(5) Any pools of solvent on the cleaned parts shall be removed by tipping the part before withdrawing it from the vapor zone.

(6)-(9) (No change.)

(10) Solvent leaks shall be repaired immediately, or the degreaser shall be shut down until repairs are made.

(11) Waste solvent shall not be disposed of or transferred to another party such that the waste solvent will evaporate into the atmosphere. Waste solvent shall be stored only in covered containers.

(12)-(13) (No change.)

(c) The owner or operator of any open-top vapor degreasing operation in Dallas or Tarrant Counties shall maintain the following records at the facility for at least two years and shall make such records available to representatives of the Texas Air Control Board or the local air pollution control agency having jurisdiction in the area, upon request:

(1) a record of control equipment maintenance, such as replacement of the carbon in a carbon adsorption unit; and

(2) the results of all tests conducted at the facility in accordance with the requirements described in subsection (a)(6) of this section.

§115.174. Conveyorized Degreasing.

(a) No person shall own or operate a system utilizing a volatile organic compound for the conveyorized cleaning of objects without the following controls.

(1) One of the following major control devices is required:

(A) a properly sized refrigerated chiller capable of achieving 85% or greater control of volatile organic emissions; or

(B) a carbon adsorption system with ventilation equal to or greater than 50 cfm/ft² (15 m³/min/m²) of air/vapor area (when down-time covers are open) and exhausting less than 25 ppm of solvent by volume averaged over one complete adsorption cycle; or

(C) an alternative capture and control system with a demonstrated overall volatile organic compound emission reduction efficiency of 85% or greater, if approved by the executive director.

(2)-(6) (No change.)

(7) Down-time covers which close off the entrance and exit during non-operating hours.

(8) A permanent, conspicuous label near the operator summarizing the operating requirements in subsection (b) of this section.

(9) Compliance with paragraphs (1)(B) or (1)(C) of this subsection shall be determined by applying the following test methods, as appropriate:

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

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

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

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

(E) equivalent test methods and procedures approved by the executive director.

(b) No person shall own or operate a system utilizing a volatile organic compound for the conveyorized cleaning of objects without complying with the following operating procedures.

(1) (No change.)

(2) Parts shall be positioned so that complete drainage is obtained.

(3) (No change.)

(4) Waste solvent shall not be disposed of, or transferred to another party, such that the waste solvent can evaporate into the atmosphere. Waste solvent shall be stored only in covered containers.

(5) Leaks shall be repaired im-

mediately or the degreaser shall be shut down until repairs are made.

(6)-(7) (No change.)

(c) The owner or operator of any conveyORIZED degreasing operation in Dallas or Tarrant Counties shall maintain the following records at the facility for at least two years and shall make such records available to representatives of the Texas Air Control Board or the local air pollution control agency having jurisdiction in the area, upon request:

(1) a record of control equipment maintenance, such as replacement of the carbon in a carbon adsorption unit; and

(2) the results of all tests conducted at the facility in accordance with the requirements described in subsection (a)(9) of this section.

§115.175. Exceptions.

(a)-(d) (No change.)

(e) An owner or operator who operates a remote reservoir cold solvent cleaner which uses solvent with a volatility equal to or less than 0.6 psia (4.1 kPa) measured at 100 degrees Fahrenheit (38 degrees Centigrade) and which has a drain area less than 16 in (100 cm) and who properly disposes of waste solvent in enclosed containers is exempt from §115.172(a)-(b) of this title (relating to Cold Solvent Cleaning).

(f) After December 31, 1987, only those degreasing operations located on any property in Dallas and Tarrant Counties which, when combined, would emit, when uncontrolled, a combined weight of volatile organic compounds less than three pounds (1.4 kg) in any consecutive 24-hour period shall be exempt from the provisions of §115.172 of this title (relating to Cold Solvent Cleaning), §115.173 of this title (relating to Open-Top Vapor Degreasing), and §115.174 of this title (relating to ConveyORIZED Degreasing).

(g) After August 31, 1990, no degreasing operations located on any property in Dallas and Tarrant Counties shall be exempt from the provisions of §115.172 of this title (relating to Cold Solvent Cleaning), §115.173 of this title (relating to Open-Top vapor Degreasing), and §115.174 of this title (relating to ConveyORIZED Degreasing).

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

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Surface Coating Processes

• 31 TAC §§115.191-115.193

The Texas Air Control Board (TACB) adopts amendments to §§115.191-115.193. Section 115.191 and §115.193 are adopted with changes to the proposed text as published in the June 7, 1988, issue of the *Texas Register* (13 TexReg 2812) Section 115.192 is adopted without changes and will not be re-published

The amendments to §115.191, concerning emission limitations, delete the emission limitations expressed as pounds of volatile organic compounds (VOC) per gallon of solids for automobile refinishing and architectural coatings. Limitations expressed as pounds of VOC per gallon of coating (minus water and exempt solvents) are retained. However, the amendments clarify that emission calculations for surface coating operations to satisfy the conditions for approval of any demonstration of equivalency with specified limitations will be performed on a solids basis for all affected coatings. The amendments also clarify that emission limits are to be determined for coatings as delivered to the application system. The amendments specify that only those architectural coatings manufactured after December 31, 1988, will be required to satisfy the specified emission limitations but that the date of manufacture must be clearly marked on each coating container. The amendments also eliminate the architectural coating categories and associated limitations for volatile organic compounds exterior flat and interior flat latex paints and combine all flat and non-flat latex paints under a single limitation of 2.2 pounds per gallon of coating (minus water and exempt solvent). The amendments specify additional test procedures and necessary recordkeeping to be maintained at all affected coating facilities and sales outlets in Dallas and Tarrant counties.

The amendments to §115.192, concerning control techniques, specify test methods to determine compliance with applicable requirements for add-on controls and the necessary recordkeeping for affected surface coating facilities in Dallas and Tarrant counties.

The amendments to §115.193, concerning exemptions, establish the following three exemption levels for surface coating operations in Dallas and Tarrant counties: 1) exemption for all surface coating operations on a property which emits less than three pounds per hour or 15 pounds per day of VOC from the requirement to use low-solvent coatings or to install add-on control equipment; 2) exemption for all surface coating operations on a property which emits less than 100 pounds per day of VOC from the requirement to use low-solvent coatings if documentation is provided to demonstrate that necessary coating performance criteria cannot be achieved with coatings which satisfy applicable control limitations; and 3) exemption for all surface coating operations on a property which emit less than 100 pounds per day of VOC from the requirement to install add-on control equipment. Exempted facilities will be required to maintain records sufficient to document the applicability of the conditions of the exemption. Various additional amendments to these sections clarify and simplify the enforcement

of current requirements.

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

Eleven commenters, the Environmental Protection Agency (EPA), General Dynamics Corporation (GD), the City of Fort Worth Health Department (FW), Dupont Corporation (Dupont), BASF Corporation (BASF), Sherwin-Williams Company (Sherwin-Williams), Jones-Blair Company (Jones-Blair), Glidden Company (Glidden), Olympic Homecare Products Company (Olympic), Caldwell Paint Manufacturing Company (Caldwell), and the National Paint and Coatings Association (NPCA) testified against the proposed amendments to §115.191. Two commenters, an individual commenter and General Motors Corporation (GM), testified against the proposed amendments to §115.192. Eight commenters, EPA, the North Central Texas Council of Governments (NCTCOG), Sherwin-Williams, Jones-Blair, Glidden, Olympic, Caldwell, and NPCA, testified against the proposed amendments to §115.193. No comments were received in favor of the proposals.

A summary of comments and a discussion of issues follows. Copies of the written testimony and of the hearing transcript are available for inspection at the TACB office, 6330 Highway 290 East, Austin, Texas 78723.

The individual commenter recommended control efficiency requirements greater than the 80% proposed. This control efficiency is based on an assumed 90% efficiency of the control equipment and 90% efficiency of the vapor capture system. While control equipment may have efficiencies substantially greater than 90%, vapor capture systems at some facilities can not always be expected to achieve the assumed efficiency. The rule provides for a balance of the two points of control.

GM suggested that control efficiency should be based only on those emissions capable of being controlled by a specific exhaust stream and that the need for a specific control efficiency was unnecessary where identifiable emission limits were applicable. As stated earlier, capture efficiency must be considered in the calculation of overall efficiency of control of a specific surface coating operation. However, only those emissions from individual sources within a facility, such as spray booths or baking ovens, should be addressed in these calculations. Total plant-wide emissions may not need to be included. However, all control equipment, if required, should be expected to meet minimum performance criteria regardless of any specified reduction goal or equivalency requirement.

The EPA and the NCTCOG commented on the proposal to drop the current exemption of 100 lb/day (12.5 t/y at typical operating schedules) to 10 t/y. The EPA stated that a 10 t/y exemption level would be acceptable only if compliance with the exemption was evaluated based on an emission rate determined by multiplying the maximum hourly

emission rate by 8,760 hours per year (24 hours per day, 365 days per year) regardless of the actual operating schedule of the plant. If the actual plant operating schedule and emissions were used to determine compliance with the exemption, the EPA indicated an exemption level of three pounds per hour (lb/hr) and 15 lb/day must be used. NCTCOG recommended delaying adoption of any lower exemption level until a more complete assessment of the cost and identification of the affected sources can be performed. A maximum hourly emission rate of only 2.3 lb/hr would exceed the 10 t/y limit if an operating schedule of 8,760 hours per year is assumed, making that option even more restrictive than the three lb/hr EPA recommendation. At the more common operating schedule of 2080 hours per year for these types of operations, 10 t/y represents approximately 10 lb/hr. The TACB has performed an analysis of the potential cost of additional controls on a three lb/hr source if it were required to install an incinerator or other control device. At a typical operating schedule of 2080 per year such a source would emit three t/y. The economic analysis indicated a potential capital and operating cost of \$134,000 per year to reduce emissions by 1.5 t/y representing a cost effectiveness of \$88,000 per ton of VOC emission reduced. Based on this economic analysis performed by TACB staff, the EPA recommended exemption levels of three lb/hr and 15 lb/day may be considered reasonable only if equivalent coating performance can be achieved with compliant coatings rather than add-on controls. Sources with emissions less than 100 lb/day which cannot use compliant coatings cannot reasonably be required to install add-on controls. This approach is consistent with an EPA policy discussed in a February 9, 1988, letter to the TACB requiring low-solvent coating wherever feasible without requiring an unreasonable financial burden on small operations.

The EPA, FW, and GD addressed the recordkeeping requirements which were proposed as a condition for qualifying for an exemption. The EPA stated recordkeeping was required for exempt sources, while GD opposed daily recordkeeping. Fort Worth supported recordkeeping but expressed concern regarding the sources, expertise and resources to comply. Since the emission limitations are based on a daily weighted average and the ozone standard is based on a daily maximum, the EPA has insisted that compliance and, therefore, recordkeeping must be determined on a daily basis as well. The TACB staff is planning to develop and distribute information to affected sources and will be available to answer inquiries.

GD recommended a separate rule for aerospace coatings since the aerospace industry is currently covered under the provisions for "miscellaneous metal parts" with an overall limitation of 3.5 pounds per gallon (lb/gal). GD felt that a separate rule that would take into consideration the highly complex nature of aerospace coatings was needed. The TACB is working with the EPA and the aerospace industry regarding this issue and may consider future rulemaking.

The EPA recommended several changes to §115.191(a)(9)(A), regarding miscellaneous metal parts coatings, which expand the types of coating currently regulated and change the calculation methods used to determine com-

pliance with applicable limitations. The proposed revision was a clarification of an existing procedure and included no changes to actual control requirements. The changes indicated by the EPA would be significant, necessitating additional rulemaking.

Dupont suggested averaging the VOC content of color additives in calculating the total VOC content for a paint used in automobile refinishing. The use of a small amount of concentrated color additives to blend custom paints prior to distribution is not currently included in this regulation. However, blending of coatings at the automobile refinishing facility must still satisfy the limitations prior to delivery to the spray equipment. Averaging would require unreasonable recordkeeping requirements and would be unenforceable.

BASF Corporation, Inmont Division (BASF), suggested that while the prime coat limitation of 2.1 lb/gal for automobile refinishing was appropriate in most cases, a prime coat of at least 2.5 lb/gal is needed for base coat/clear coat application systems. The Sherwin-Williams Company (Sherwin-Williams) suggested that while a 6.2 lb/gal limitation on base coat for automobile refinishing was appropriate in most cases, a higher limitation of 6.5 lb/gal is needed to provide for a three-stage coating system now being applied to some new cars. TACB staff did not intend to preclude the use of any coating system when these limitations were developed in 1987. The limitations were based on the best information available at the time, and while different types of coating technologies may be subsequently developed, changes to specific limitations are not appropriate without careful consideration of associated control technologies and a detailed technical assessment of potential emission impacts. Therefore, the comments received will be evaluated and any necessary revisions to the prime coat and base coat limitations to address other coating systems will be considered in subsequent rulemaking.

Sherwin-Williams, the EPA, Jones-Blair Company (Jones-Blair), The Glidden Company (Glidden), The Olympic Homecare Products Company (Olympic), Caldwell Paint Manufacturing Company (Caldwell), and National Paint and Coatings Association (NPCA) provided extensive comment and documentation regarding the structure and content of the architectural rule. Primary suggestions included: (1) regulating on the basis of date of manufacture rather than the date of sale; (2) eliminating the unintentional effect of the existing regulation to discourage the use of latex paints by either providing an exemption or an overall limitation of 2.2 lb/gal for latex paints; (3) providing a small package exemption for sizes less than one quart; (4) including an exemption for color additives; (5) providing a format more consistent with other similar regulations in other parts of the country; and (6) defining and regulating a more comprehensive set of coating categories.

Prohibiting the sale of coatings manufactured after a specified date may reduce the economic impact on affected companies by reducing recalls. However, an additional requirement that the date of manufacture be clearly marked on cans must be included. The TACB did not intend to preclude the sale of any latex paint and, in fact, agrees that use of latex paint should be encouraged. Existing

limits (0.7 and 0.8 lb/gal) would apparently preclude the marketing of certain high quality latex paints in Dallas and Tarrant counties, and therefore may be counterproductive to the original goal of the regulation by encouraging use of higher solvent paints from other categories to achieve the desired characteristics. Exempting latex paints from control or covering all latex coatings under a single limitation of 2.2 lb/gal would provide for marketing of these high quality coatings without a change in the emission reduction credits associated with this control. While the current definitions of architectural coatings excludes pint containers, a quart or liter size exemption would not significantly reduce the benefits of the rule and may provide reasonable distribution of specialty coatings. Concentrated color additives are commonly used to blend custom paints at the sales outlet. The small amount of this material does not significantly alter the final VOC content of the paint as sold and was not intended to be regulated separately. Other changes to address national consistency and to provide more comprehensive categories will be considered in subsequent rulemaking in conjunction with Post-87 State Implementation Plan (SIP) revision development.

The amendments are adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purpose of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§115.191. Emission Limitations.

(a) No person may cause, suffer, allow, or permit volatile organic compound emissions from the surface coating processes (defined in §101.1 of this title (relating to Definitions)) affected by paragraphs (1)-(11) of this subsection to exceed the specified emission limits, which are based on the daily weighted average of all coatings delivered to the application systems, except for those in paragraph (10) of this subsection which are based on paneling surface area, and those in paragraph (11) of this subsection which are based on the volatile organic compound content of architectural coatings sold or offered for sale. Emission calculations for surface coating operations performed to satisfy the conditions of §101.23 of this title (relating to Alternate Emission Reduction ("Bubble") Policy), §115.401 of this title (relating to Alternate Means of Control), or other demonstrations of equivalency with the specified emission limits in this section shall be based on the pounds of volatile organic compounds per gallon of solids for all affected coatings. Exempt solvent, as used in this section, shall mean any solvent consisting of compounds excluded from the definition of volatile organic compound in §101.1 of this title (relating to Definitions).

(1)-(7) (No change.)

(8) Automobile and light-duty truck coating.

(A) The following volatile organic compound emission limits shall be achieved, on the basis of solvent content per gallon of coating (minus water) applied, as soon as practicable but no later than December 31, 1987:

| Operation (including applica- tion, flashoff, and oven areas) | VOC Emission Limitation | |
|--|-------------------------|--------------|
| | pounds per gallon | kg per liter |
| prime application (body and front-end sheet metal) | 1.2 | 0.15 |
| primer surfacer application | 2.8 | 0.34 |
| topcoat application | 2.8 | 0.34 |
| final repair application | 4.8 | 0.58 |

(B) Volatile organic compound emissions from the coatings or solvents used in automobile refinishing in Dallas and Tarrant counties shall be based on an assumed 30% transfer efficiency from an air spray applicator or equivalent, unless otherwise specified in an alternate means of control approved by the Executive Director in accordance with §115.401 (relating to Alternate Means of Control), and shall not exceed the following limits:

(i) 2.1 pounds per gallon (0.25 kg/liter) of coating (minus water and exempt solvent) delivered to application systems for primers or primer/surfacers;

(ii) 5.2 pounds per gallon (0.62 kg/liter) of coating (minus water and exempt solvent) delivered to application systems for acrylic enamel coatings;

(iii) 5.0 pounds per gallon (0.60 kg/liter) of coating (minus water and exempt solvent) delivered to application systems for alkyd enamel coatings;

(iv) 5.2 pounds per gallon (0.62 kg/liter) of coating (minus water and exempt solvent) delivered to application systems for clear coatings;

(v) 6.2 pounds per gallon (0.74 kg/liter) of coating (minus water and exempt solvent) delivered to application systems for base coatings;

(vi) 6.2 pounds per gallon (0.74 kg/liter) of coating (minus water and exempt solvent) delivered to application systems for lacquers; and

(vii) 1.4 pounds per gallon (0.17 kg/liter) of wipe-down solutions.

(C) Automobile refinishing operations in Dallas and Tarrant counties shall minimize volatile organic compound emissions during equipment cleanup by the following procedures:

(i)-(iii) (No change.)

(9) Miscellaneous metal parts and products coating.

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

(C) All VOC emissions from solvent washings shall be included in determination of compliance with the emission limitations in paragraph (9)(A) of this subsection unless the solvent is directed into containers that prevent evaporation into the atmosphere.

(10) (No change.)

(11) Architectural coating. The volatile organic compound content of any coating manufactured after December 31, 1988 and sold or offered for sale as an architectural coating in Dallas and Tarrant

counties shall have the date of manufacture clearly marked on each container and shall not exceed the following limits:

(A) 2.2 pounds per gallon (0.26 kg/liter) of coating (minus water and exempt solvent) for non-flat and flat latex paints;

(B) 3.5 pounds per gallon (0.42 kg/liter) of coating (minus water and exempt solvent) for interior alkyd paints;

(C) 4.0 pounds per gallon (0.48 kg/liter) of coating (minus water and exempt solvent) for exterior alkyd paints;

(D) 4.5 pounds per gallon (0.54 kg/liter) of coating (minus water and exempt solvent) for epoxy paints;

(E) 6.0 pounds per gallon (0.72 kg/liter) of coating (minus water and exempt solvent) for exterior stains;

(F) 7.0 pounds per gallon (0.84 kg/liter) of coating (minus water and exempt solvent) for interior stains;

(G) 4.5 pounds per gallon (0.54 kg/liter) of coating (minus water and exempt solvent) for urethane coatings;

(H) 4.5 pounds per gallon (0.54 kg/liter) of coating (minus water and exempt solvent) for alkyd varnishes; and

(I) 5.6 pounds per gallon (0.67 kg/liter) of coating (minus water and exempt solvent) for nitrocellulosebased lacquers.

(b) Compliance with subsection (a) of this section shall be determined by applying the following test methods, as appropriate:

(1) Test Method 24 (40 Code of Federal Regulations 60, Appendix A) with a one-hour bake;

(2) ASTM Test Methods D 1186-06.01, D 1200-06.01, D 3794-06.01, D 2832-69, D 1644-75, and D 3960-81;

(3) "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink, and Other Coatings" (EPA 450/3-84-01, December, 1984);

(4) additional test procedures described in 40 Code of Federal Regulations 60.446; or

(5) equivalent test method approved by the executive director.

(c) Any person in Dallas and Tarrant counties affected by this section shall satisfy the following recordkeeping re-

quirements.

(1) A material data sheet shall be maintained which documents the volatile organic compound content, composition, and other relevant information regarding each coating and solvent available for use in the affected surface coating processes sufficient to determine continuous compliance with applicable control limits.

(2) Records shall be maintained of the quantity and type of each coating and solvent consumed during the specified averaging period if any of the coatings, as delivered to the coating application system, exceed the applicable control limits. Such records shall be sufficient to calculate the applicable weighted average of volatile organic compounds for all coatings.

(3) Records shall be maintained of any testing conducted at an affected facility in accordance with the provisions specified in subsection (b) of this section.

(4) Records required by paragraphs (1)-(3) of this subsection shall be maintained for at least two years and shall be available for inspection by representatives of the Texas Air Control Board or local air pollution control agency.

§115.193. Exemptions.

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

(f) After August 31, 1990, the following exemptions shall apply to surface coating operations in Dallas and Tarrant counties, except for aircraft prime coating controlled by §115.191(a)(9)(H)(v) and automobile refinishing controlled by §115.191(a)(8)(B) and (C) of this title (relating to Emission Limitations). Records shall be maintained sufficient to document the applicability of the conditions of these exemptions.

(1) Surface coating operations on a property, which when uncontrolled, will emit a combined weight of volatile organic compounds of less than three pounds per hour and 15 pounds in any consecutive 24-hour period shall be exempt from the provisions of §115.191 of this title (relating to Emission Limitations) and §115.192 of this title (relating to Control Techniques).

(2) Surface coating operations on a property, which when uncontrolled, will emit a combined weight of volatile organic compounds of less than 100 pounds in any consecutive 24-hour period shall be exempt from the provisions of §115.191 of this title (relating to Emission Limitations) if documentation is provided to demonstrate that necessary coating performance criteria cannot be achieved with coatings which satisfy applicable control limitations.

(3) Surface coating operations on a property, which when uncontrolled, will emit a combined weight of volatile

organic compounds of less than 100 pounds in any consecutive 24-hour period shall be exempt from the provisions on §115.192 of this title (relating to Control Techniques).

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 November 30, 1988.

TRD-8812244

Allen Eli Bell
Executive Director
Texas Air Control Board

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Proposal publication date: June 7, 1988

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

◆ ◆ ◆
**Graphic Arts (Printing) by
Rotogravure and
Flexographic Processes**

◆ ◆ ◆
• 31 TAC §115.201, §115.203

The Texas Air Control Board (TACB) adopts amendments to §115.201 and §115.203. Section 115.201 is adopted with changes to the proposed text as published in the June 7, 1988, issue of the *Texas Register* (13 TexReg 2820). Section 115.203 is adopted without changes and will not be republished.

The amendments to §115.201, concerning control requirements, clarify that the emission limitations for low-solvent inks are to be calculated minus water and exempt solvents. The amendments also specify necessary test methods and recordkeeping requirements for affected facilities. The amendments to §115.203, concerning compliance schedule and counties, require final control plans submitted by affected facilities to include a commitment to conduct appropriate initial compliance testing no later than 90 days after the specified compliance deadline. Various additional proposed amendments to these sections clarify and simplify the enforcement of current requirements.

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

Two commenters, an individual commenter and the Environmental Protection Agency (EPA), testified against the proposed amendments to §115.201, while no comments were received in favor of this proposal. No comments were received regarding amendments to §115.203.

A summary of comments and a discussion of issues follows. Copies of the written testimony and of the hearing transcript are available for inspection at the TACB office, 6330 Highway 290 East, Austin, Texas 78723.

The individual commenter suggested that overall control effectiveness for add-on controls should be greater than 90%. The re-

quired effectiveness for various types of printing operations is established by CTGs published by the EPA to define RACT.

The EPA noted that §115.201(c), regarding recordkeeping, as written would apply to all counties as written. Since the current proposals were intended to include additional recordkeeping requirements for Dallas and Tarrant counties only, it is appropriate to limit this revision to these two counties.

The amendments are adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purpose of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§115.201. Control Requirements.

(a) No person shall operate or allow the operation of a packaging rotogravure, publication rotogravure, or flexographic printing facility that uses solvent-containing ink unless volatile organic compound emissions are limited by one of the following:

(1) application to the substrate of low solvent ink with a volatile fraction containing 25% by volume or less of volatile organic compound solvent and 75% by volume or more of water and exempt solvent;

(2) application to the substrate of high solids solvent-borne ink containing 60% by volume or more of nonvolatile material (minus water and exempt solvent); or

(3) operation of a carbon adsorption or incineration system to reduce the volatile organic compound emissions from an effective capture system by at least 90% by weight. The design and operation of the capture system must be consistent with good engineering practice and shall be required to provide for an overall reduction in volatile organic compound emissions, as demonstrated to the satisfaction of the executive director, upon request, of at least the following weight percentages: 75% for a publication rotogravure process; 65% for a packaging rotogravure process; and 60% for a flexographic printing process.

(b) Compliance with subsection (a) of this section in Dallas and Tarrant counties shall be determined upon request of the executive director by applying the following test methods, as appropriate:

(1) (No change.)

(2) Test Method 24 (40 Code of Federal Regulations 60, Appendix A) for determining the volatile organic compound content and density of printing inks and related coatings;

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

(4) Test Methods 25A or 25B (40 Code of Federal Regulations 60, Ap-

pendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis;

(5) United States Environmental Protection Agency guidelines series document *Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink, and Other Coatings*, EPA-450/3-84-011, as in effect December, 1984; or

(6) equivalent test methods and procedures approved by the executive director.

(c) The owner or operator of any graphic arts facility in Dallas and Tarrant counties subject to the control requirements of this section shall:

(1) maintain records of the volatile organic compound content of all inks as applied to the substrate. The composition of inks may be determined by the methods referenced in subsection (b) of this section or by examining the manufacturer's formulation data and the amount of dilution solvent added to adjust the viscosity of inks prior to application to the substrate;

(2) maintain daily records of the quantity of each ink and solvent used at a facility subject to the requirements of an alternate means of control approved by the executive director in accordance with §115.401 of this title (relating to Alternate Means of Control) which allows the application of inks exceeding the applicable control limits. Such records must be sufficient to demonstrate compliance with the applicable emission limitation on a daily weighted average;

(3) install and maintain monitors to accurately measure and record operational parameters of any emission control device installed to meet applicable control requirements. Such records must be sufficient to demonstrate proper functioning of those devices to design specifications, including:

(A) the exhaust gas temperature of direct-flame incinerators and/or the gas temperature immediately upstream and downstream of any catalyst bed, in degrees Celsius;

(B) the total amount of volatile organic compounds recovered by a carbon adsorption or other solvent recovery system during a calendar month; and

(C) the dates and reasons for any maintenance and repair of the required control devices and the estimated quantity and duration of volatile organic compound emissions during such activities.

(4) maintain the results of any testing conducted at an affected facility in accordance with the provisions specified in subsection (b) of this section;

(5) maintain all records at the affected facility for at least two years and make such records available to representatives of the Texas Air Control Board or the local air pollution agency having jurisdiction in the area, upon request.

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 November 30, 1988.

TRD-8812243 Allen Eli Bell
Executive Director
Texas Air Control Board

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

Perchloroethylene Dry Cleaning Systems

• 31 TAC §115.221

The Texas Air Control Board (TACB) adopts an amendment to §115.221, without changes to the proposed text as published in the June 7, 1988, issue of the *Texas Register* (13 TexReg 2821).

The amendment to §115.221, concerning testing requirements, require the storage of waste solvent material in vapor-tight containers and specify applicable test methods.

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

One individual commenter testified against the proposed amendment to §115.221, while no comments were received in favor of the proposal.

A summary of comments and a discussion of issues follows. Copies of the written testimony and of the hearing transcript are available for inspection at the TACB office, 6330 Highway 290 East, Austin, Texas 78723.

The individual commenter suggested that storage of waste in vaportight containers was not sufficient. Disposal of waste solvent is regulated by the Texas Water Commission (TWC). Control of vapor loss prior to the transfer of the material to a waste disposal company authorized by the TWC is sufficient to satisfy Environmental Protection Agency requirements.

The amendment is adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purpose of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

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 November 30, 1988.

TRD-8812242 Allen Eli Bell
Executive Director
Texas Air Control Board

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

Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks

• 31 TAC §115.262

The Texas Air Control Board (TACB) adopts an amendment to §115.262, without changes to the proposed text as published in the June 7, 1988, issue of the *Texas Register* (13 TexReg 2822).

The amendment to §115.262, concerning testing requirements, specify the test methods to be used to determine compliance with the applicable control requirements.

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

No comments were received regarding adoption of the amendment. Copies of the written testimony and of the hearing transcript are available for inspection at the TACB office, 6330 Highway 290 East, Austin, Texas 78723.

The amendment is adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purpose of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

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 November 30, 1988.

TRD-8812241 Allen Eli Bell
Executive Director
Texas Air Control Board

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Proposal publication date: June 7, 1988

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

TITLE 34. PUBLIC FINANCE

Part VII. State Property Tax Board

Chapter 155. Tax Record Requirements

• 34 TAC §155.15

The State Property Tax Board adopts an amendment to §155.15, without changes to the proposed text as published in the June 3, 1988, issue of the *Texas Register* (13 TexReg 2735).

The amendment changes the agency's model report of decreased value forms to reflect changes in legislation.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Property Tax Code, §5.03, which provides the State Property Tax Board with the authority to prescribe all forms necessary for use in appraisal offices.

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

Issued in Austin, Texas, on July 29, 1988.

TRD-8812309 Ron Patterson
Executive Director
State Property Tax Board

Effective date: December 22, 1988

Proposal publication date: June 3, 1988

For further information, please call: (512) 834-4802

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 17. Commercial Driver Training School Regulations

• 37 TAC §§17.1-17.4, 17.7-17.10, 17.12, 17.14-17.18, 17.20-17.25, 17.28-17.30

The Texas Department of Public Safety adopts amendments to §§17.1-17.4, 17.7-17.10, 17.12, 17.14-17.18, 17.20-17.25, and 17.28-17.30. Sections 17.2, 17.3, 17.7, 17.21, 17.25, and 17.30 are adopted with changes to the proposed text as published in the August 16, 1988, issue of the *Texas Register* (13 TexReg 4045). Sections 17.1, 17.4, 17.8-17.10, 17.12, 17.14-17.18, 17.20, 17.22-17.24, 17.28, and 17.29 are adopted without changes and will not be republished.

The adoption of the amendments will improve the program for commercial driver training schools providing driving safety courses, driver education for minors, and other traffic-related subjects. Administration of the program by this department will be simplified.

The following major amendments to the commercial driver training school regulations are adopted. The amendments add and delete language, clarify the driving safety course length of time, permit a branch office to be a classroom only if a main or branch office is located in the same city or county (where records are maintained), delete restrictions prohibiting schools from being conducted in certain facilities and add the prohibition of a classroom in a private residence, establish more severe prohibition against the use of alcohol or drugs by instructor or student, reduce minimum age from 15 years old to 14 years old for driver education students provided that the student will be 15 years old before the classroom instruction ends, and establish the criteria that a driving safety course certificate of course completion must meet in order to be approved by the department.

Other amendments to the commercial driver training school regulations revise and clarify language to comply with statutory changes such as the classified driver licensing program, adopt the statutory title Driving Safety Course for court referred drivers, add the statutory requirement for use of seat belts, and add the statutory requirement for certification of corporation franchise tax status and assumed name requirements.

Other minor amendments allow all-terrain two-wheeled, three-wheeled, and four-wheeled off-road vehicles to be used in Class 2 commercial driver training schools; adjust the introduction and close time for a driving safety course by adding five minutes to each; require department approval of driving safety courses every two years; require school and instructor applications to be prepared in four copies with one copy submitted to the local drivers license service supervisor; require schools to have rest room accommodations; authorize schools use of simulator trailers for driving instruction; require tables or desks for Class 1, 2, and 3 commercial school classrooms; authorize advertisements that a driving safety course is approved by the department; limit expert instructors to six hours in each 32-hour driver education course and prohibit expert instructors in Class 4 schools; require parent or guardian signature on contract of a minor; prohibit schools or instructors from collecting a fee or making any remittance to courts referring students to the Class 4 school; specify school application documents in counties less than 50,000 population; allow handicap students to receive instruction in their personal vehicles if special devices are required and the vehicle is so equipped.

The section also includes amendments increasing class size from 35 to 50 students in Class 4 schools; provides the procedures for commercial driver training schools to contract with public, parochial, or private schools to teach driver education; extends the time period for school and instructor license renewal from 40 days to two months; clarifies the definition of moral turpitude for commercial driver training school instructor applicants; requires use of licensed name and department approval of telephone directory listing or telephone advertisement of a commercial driver training school; allows Class 3 schools to enter into group contracts; establishes a ratio of five students to one instructor on school Class 1 and 3 driving

ranges; and provides for in-car instruction for driver education to be provided to only one student in certain circumstances.

The following sections are adopted with changes. Section 17.2(4)(B) deletes the word "Recommended" in the course content time column which will specify the minimum time for each topic, §17.2(4)(D) effective dates for course approval are extended to January 1, 1989, and submission of courses with renewal are extended to be renewed between October 1 and December 1, 1990, due to the delay in final adoption of these sections. Section 17.2(F)(vii) deletes the words "consecutive" and "own" relating to the certificate numbering system in order to provide the Commercial Driver Training Schools more flexibility in recordkeeping. Sections 17.3(a) and (b), 17.21(d), and 17.25 clarify the organizational unit as Vehicle Inspector/Driver Training Records Bureau for matters pertaining to Commercial Driver Training Schools.

Section 17.7(a)(9) is corrected by deleting the last sentence which referred to §15.81 which relates to Criteria for Driver Improvement Action. Section 17.34(b) revises the P.O. Box and zip code and adds and deletes language pertaining to ordering of material from general office services.

Comments regarding adoption of the amendments were received and a public hearing was held October 21, 1988. As a result, 10 comments were received supporting the department to adopt the proposed sections because they are reasonable, they are an improvement over the existing sections, and they are nondiscriminatory. There were five comments in opposition to the proposed amendments. Those comments dealt with requiring more stringent regulations for course content and approval, closer monitoring of course instruction by the department, establishment of additional licensing fees, creating a separate organizational unit within the department to oversee operations, offering of approved courses on a statewide basis, and disallowing private or company programs. A negative comment was received regarding prohibition of fees in contracts between schools and counties or municipalities.

Commenters in favor of the proposal were the Lone Star Driving School, Driving School of the Southwest, Spring Valley, Safeway Driving School, Driving School Association of Texas, Van T. Smith Driving School, North Texas Driving Agency, American Defensive Driving, Inc., Driver Training Associates, and Balcones Lions Club. Commenters against the proposal were the Texas Safety Association, Sears Driving School, National Corrective Training Institute, Austin Driving School, and Yellow Checker Cab Company.

The department believes that more stringent regulations for course content and approval would be too restrictive and could create a hardship for small commercial driver training schools. Necessary personnel to monitor course instruction, establishment of additional licensing fees, and appropriation of funds to create a separate organizational unit within the department requires enactment of legislation. The department believes that private or company programs should be approved if their courses meet established criteria. The department does not require commercial driver training schools to offer driving safety

courses statewide as we believe that this would be discriminatory and could eliminate small commercial driver training schools. The department does not believe it is ethical for a commercial driver training school to pay courts or judges for assigning students to their driving safety courses for traffic ticket dismissal.

The amendments are adopted under Texas Civil Statutes, Article 6701d, §143A, Articles 4413(29c), and 6687b, §§4, 12, 411.004(3), and 411.006(4), which provide the Texas Department of Public Safety with the authority to approve driving safety courses and the certificate of completion. The department may also promulgate rules to comply with legislative intent to license and supervise commercial driver training schools and instructors. The Public Safety Commission is authorized to adopt rules necessary for carrying out the department's work. The director, subject to the approval of the commission, shall have the authority to adopt rules necessary for the control of the department.

§17.2. Schools and Instructors License Categories. Schools and instructors may be licensed in one or more of the following categories for vehicles which shall include, but not be limited to passenger vehicles, commercial vehicles, and self-propelled two and three-wheeled vehicles. For each course offered there shall be approved and on file an instructional outline, course of study, syllabus, or teaching guide showing scope and sequence of subject matter. Department personnel may monitor all courses offered at any time.

(1) Class 1 school and instructor shall provide theoretical and/or practical instruction for the operation of passenger vehicles and other vehicles that may be operated with a Class C driver's license.

(2) Class 2 school and instructor shall provide theoretical and/or practical instruction for operation of two- or three-wheeled vehicles. All-terrain two-, three-, and four-wheeled off-road vehicles are included in this class.

(3) Class 3 school and instructor shall provide theoretical and/or practical instruction in operation of commercial tractors, trucks or buses, and other vehicles requiring a Class A or B driver's license for operation.

(4) Class 4 school and instructor shall provide driving safety courses for court-referred drivers and others seeking the course.

(A) Educational objectives. The educational objectives of driving safety courses shall include, but not be limited to promoting respect for and encouraging observance of traffic laws, reducing traffic violations, and motivating continuing development of traffic-related competencies.

(B) Minimum course content. A Class 4 school providing an ap

proved driving safety course shall treat, but
not be limited to the following topic matter:

Minimum Course Content

| Topic | Minimum Time |
|---|--------------|
| Course introduction | 20 minutes |
| Factors influencing driver behavior, attitudes, and feelings | 50 minutes |
| Traffic laws | 50 minutes |
| Driver environment | 30 minutes |
| Physical forces affecting vehicle | 30 minutes |
| Good seeing habits | 70 minutes |
| Defensive driving habits | 100 minutes |
| Mental preparation and driver impairments | 30 minutes |
| Course summation | 20 minutes |

Topic titles of subject matter are not required to be the same as mentioned in this subparagraph but topic content should address, and be allotted at least the minimum time indicated to the subject matter shown in this subparagraph. Class 4 school shall complete curriculum plan indicating course objectives and how the course meets minimum course content (plan must be state approved by department).

(C) Course structure. Approved driving safety courses will be presented in compliance with the following:

(i) a minimum of eight clock hours required;

(ii) sessions shall consist of not less than two hours;

(iii) a class hour shall not be less than 50 minutes;

(iv) administrative procedures, such as enrollment, shall not be included in class time;

(v) rest periods or breaks shall be held to a maximum of 15 minutes, including between class time;

(vi) all day classes must allow a minimum of 30 minutes but not more than 60 minutes for lunch;

(vii) relevant motion picture films, slides, videos, or tape recordings must be used for at least 80 minutes but cannot be used in excess of 200 minutes of an eight-hour course; and

(viii) in no event shall the course be completed in less than eight clock hours.

(D) Course approval. Driving safety courses conforming to the requirement of subparagraphs (B) and (C) must be submitted complete with lesson plans and approved by the Texas Department of Public Safety as meeting the requirements of Texas Civil Statutes, Article 6701d (143A), and this chapter if they are to be provided to court-referred drivers. Effective January 1, 1989, driving safety courses must be resubmitted each two years from the anniversary date of original approval for department approval. Courses approved prior to January 1, 1989, must be resubmitted for approval with commercial driver training school license renewal between October 1 and December 1, 1990, and each two-year period thereafter.

(E) Non-profit status. The Department of Public Safety will make the decision as to whether a driver training course is being conducted for consideration or tuition for such services. This decision will be based upon actual documented expenses incurred in presenting the course.

The receipt, directly or indirectly, of any form of compensation by any person engaged in or connected with the training will be evaluated as being a consideration or tuition. The purchase of or the payment of any fee for any material thing not used directly and solely for the training of students will also be evaluated as a consideration or tuition. However, expenses that may be claimed under the nonprofit status will include, but may not necessarily be limited to the following:

(i) actual vehicle operation and maintenance expense necessary to conduct the training;

(ii) personal expenses incurred in traveling to and from the training site such as meals, lodging when justified, and personal vehicle expense not to exceed the mileage rate established by law for state employees;

(iii) insurance premiums necessary to cover participants enrolled in the training program;

(iv) actual cost of forms and instructional material necessary to conduct the training.

(F) Certificate of course completion. A department approved certificate of course completion must be presented to court-referred drivers taking the driver safety course pursuant to the provisions of Texas Civil Statutes, Article 6701d, §143A. Commercial driver training schools that provide instruction of Department-approved Driving Safety Courses must submit their certificate of course completion to the department for approval. Certificates of course completion that have been approved by the department shall be the only certificate of course completion used for court-referred drivers after April 1, 1989. The certificate should be sent to the drivers license lieutenant in the school's area. The lieutenant will review the certificate for compliance and, if acceptable, forward through channels to the Austin headquarters. The commercial school will be advised in writing of the department's approval or nonapproval of the certificate. The certificate of course completion may contain information deemed necessary by the school; however, the form must contain the following:

(i) name of commercial school (name that is shown on school license);

(ii) name of department-approved driving safety course;

(iii) full name of student completing course (name as shown on driver's license) and his or her driver's license number;

(iv) instructor's signature;

(v) course completion

date;

(vi) city or town where course was taught;

(vii) a certificate number (each approved commercial school is responsible for assigning and maintaining a certificate numbering system for its certificates, to enable the department and the courts to properly audit such certificates, while allowing the commercial schools to have an accountable record keeping system);

(viii) name of sponsoring agency (if any); and

(ix) contain in prominent bold-faced type the statement "Course is Approved by the Department of Public Safety."

§173. Application Requirements for Commercial Driver Training Schools.

(a) Each original commercial driver training school license application shall consist of four parts: a general information section (DL-CDTS-3); a section containing personal history schedules of owner-operator or manager (DL-CDTS-4); a section containing a schedule of motor vehicles owned, leased, registered (DL-CDTS-5); certification of auto liability insurance (DL-CDTS-6); one DPS fingerprint card; and a current credit report from a reliable credit reporting agency (at school expense). All applications for original or renewal commercial driver training school or branch school license shall be completed in four copies. The original copy plus one copy of all forms shall be submitted with proper fee to Vehicle Inspection/Driver Training Records Bureau, Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0001 for department approval. One copy of the application plus a copy of all forms will be submitted to the local drivers license service lieutenant. The applicant shall retain one copy of all completed forms for school files.

(b) A supplementary motor vehicle fleet schedule must be filed with the Department of Public Safety, Vehicle Inspection/Driver Training Records Bureau within 10 days after any addition or deletion, and all supplementary schedules containing additions must be accompanied by a properly executed insurance certificate.

(c) The department must be notified in writing within 10 days of any changes in the owners, officers, directors, or managers of any school or branch office.

(d) Failure to inform the department of the above changes shall be grounds for suspension or revocation of the driving school's license.

(e) Class 4 schools are exempt from schedule of motor vehicles and certification of liability insurance listed in subsections

(a) and (b) of this section.

§17.7. Refusal, Suspension.

(a) The department may suspend, revoke, or refuse to renew a license to any commercial driver training school or branch school, supervisory instructor, or driver training instructor upon determining that:

(1) the applicant or licensee has been convicted under the laws of this state, another state, or the United States of any felony, or an offense involving moral turpitude, or an offense of criminally negligent homicide committed as a result of the person's operation of a motor vehicle, an offense involving driving while intoxicated or driving under the influence of drugs, or an offense involving tampering with a governmental record. These particular crimes relate to the licensing of instructors and schools because such persons and entities, as licensees of the department, are required to be of good moral character and to deal honestly with courts and members of the public. Driver training instruction involves supervision of inexperienced drivers on public highways, and accurate record keeping and reporting for purposes of driver licensing court documentation, and other purposes. In determining the present fitness of a person who has been convicted of a crime and in determining whether a criminal conviction directly relates to an occupation, the department shall consider those factors stated in Texas Civil Statutes, Articles 6252-13c and 6252-13d. The license of a school will be subject to revocation or refusal in the event the owner is convicted of such an offense. In the event that an instructor is convicted of such an offense the instructor's license will be subject to revocation or refusal. A conviction for an offense other than a felony will not be considered by the department under this paragraph, if a period of more than 10 years has elapsed since the date of the conviction or of the release of the person from the confinement or supervision imposed for that conviction, whichever is the later date. For the purposes of this paragraph, a person is convicted of an offense when an adjudication of guilt on an offense is entered against the person by a court of competent jurisdiction whether or not:

(A) the sentence is subsequently probated and the person is discharged from probation;

(B) the accusation, complaint, information, or indictment against the person is dismissed and the person is released from all penalties and disabilities resulting from the offense; or

(C) the person is pardoned for the offense, unless the pardon is expressly granted for subsequent proof of innocence.

(2) the applicant or licensee has knowingly presented to the department false or misleading information relating to licensing;

(3) the applicant, licensee, any instructor, or agent is addicted to the use of alcoholic beverages or drugs, or becomes incompetent to safely operate a motor vehicle or properly conduct classroom or behind-the-wheel instruction;

(4) the license was improperly or erroneously issued;

(5) the applicant or licensee fails to meet the requirements to receive or hold a license as required by Texas Civil Statutes, Article 4413(29c) or this chapter;

(6) the applicant or licensee permits fraud or engages in fraudulent practices with reference to the license application to the department, or induces or countenances fraud or fraudulent practices on the part of any applicant for a driver's license permit, or permits or engages in any other fraudulent practices in any action between the applicant or licensee and the public;

(7) the applicant or licensee fails to comply with the rules and regulations of the department regarding the instruction of drivers in this state or fails to comply with any section of Texas Civil Statutes, Article 4413(29c);

(8) the school or instructor failed to follow procedures as prescribed in this chapter of which the school or instructor has been notified by written notice; or

(9) the applicant or licensee has a personal driving record showing that the person has been the subject of driver improvement or corrective action during the past two years, or that such action is needed to protect the motoring public.

(b) Upon the revocation or suspension of any license, the licensee shall within five days surrender the license or licenses to the department; failure of a licensee to do so is a violation of law and upon conviction, he shall be subject to the penalties provided by statute. The department may restore a suspended license to the licensee upon full compliance with the law. No suspension invoked hereunder shall be for a period of less than 30 days nor longer than one year.

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

(a) Each supervisory and driver training instructor's application shall consist of two parts; a section pertaining to the personal history of the applicant and a section containing a medical examination report. The medical examination report may be on a form provided by the department or it may be a statement or physical examination report from a licensed physician made

within six months prior to application that the applicant does not have any contagious diseases.

(b) A person is qualified to receive a supervisory driver training instructor license who:

(1) is at least 18 years of age;

(2) is of good moral character;

(3) is a citizen of the United States;

(4) has no contagious diseases;

(5) holds a valid Texas driver's license required for the type vehicle being driven by the student;

(6) has successfully completed three semester hours in safety education and three semester hours in driver education or their equivalent;

(7) has passed an examination conducted by the department to determine his competency to obtain a license to practice as a supervisory driver training instructor;

(8) has two years satisfactory driving experience as approved by the department; and

(9) has a current Texas teacher's certificate issued by the Texas Education Agency that has been validated by passing the TECAT exam for those instructors who desire to teach applicants under the age of 18 years of age.

(c) A person is qualified to receive a driver training instructor's license who:

(1) is at least 18 years of age;

(2) is of good moral character;

(3) is a citizen of the United States;

(4) has no contagious diseases;

(5) holds a valid Texas driver's license required for the type vehicle being driven by the student;

(6) has successfully completed 40 clock hours in safety education and driver training under the supervision of a supervisory driver training instructor;

(7) has passed an examination conducted by the department to determine his competency to obtain a license to practice as a driver training instructor; and

(8) has two years satisfactory driving experience as approved by the department.

(d) A person applying for a supervisory or driver training instructor's license will submit to the Texas Department of Public Safety, Vehicle Inspection/Driver Training Records Bureau, P.O. Box 4087, Austin, Texas 78773-0001, the following:

(1) one original and one copy of a properly executed application;

(2) investigation fee (reference §17.5 of this title (relating to License Fees));

(3) physical examination report;

(4) one set of fingerprints; and

(5) documentation showing that the applicable educational requirements have been met.

(e) A person applying for a supervisory or driver training instructor's license will also submit to the local department representative, so a thorough background investigation can be conducted to determine eligibility for licensing the following:

(1) a duplicate copy of the properly executed application;

(2) a duplicate copy of documentation showing that the applicable educational requirements have been met;

(3) a duplicate copy of the physical examination report; and

(4) a duplicate copy of the properly executed application shall be retained by the applicant for his file.

(f) Upon receipt by the department of a properly executed application for a commercial driver training instructor license a department investigator will be assigned to conduct a thorough investigation to determine eligibility for licensing.

(g) Upon determining that the applicant is otherwise eligible for licensing, the applicant must pass the written examination required by the department for the type license applied for.

(1) Each applicant will be given a maximum of three opportunities to pass the commercial driver training instructor's examination. Individuals who have failed at their first attempt must wait at least three days before applying for a second examination. Individuals who have failed the second examination must wait two weeks before applying for a third examination. After a third failure to qualify, an applicant must wait at least one year to file a new application for licensing and must pay an additional \$50 investigation and examination fee. However, no applicant will be given a fourth examination unless proof is submitted to the department that the applicant has participated in a course of instruction designed to educate the applicant and prepare him for the commercial driver training instructor's examination.

(2) The written test shall consist of questions dealing with:

(A) the Texas Motor Vehicle Laws;

(B) *Texas Drivers Handbook* and/or *Texas Motorcycle Handbook Supplement*;

(C) safe driving procedures;

(D) physical forces affecting an automobile in motion;

(E) operation and maintenance of motor vehicles; and

(F) techniques of instruction.

(3) Questions on driving procedures and physical forces affecting an automobile in motion will be taken from manuals of the same names which are available for a fee from general services of the department. Questions on operation and maintenance of motor vehicles will be taken from information found in the following books: *Sportsmanlike Driving* by American Halsey, Scott Foreman and Company, Chicago; *Man and the Motor Car* by Center for Safety Education, New York University, Prentice Hall, Inc., New York.

(4) The statute (Texas Civil Statutes, Article 4413(29c)§6 and §7) requires instructors to successfully complete course(s) in safety education and driver education totaling six semester hours and/or their equivalent. For accreditation of equivalency training under Texas Civil Statutes, Article 4413(29c), §6, the following criteria will apply.

(A) Twenty clock hours formal training in safety or driver education will equal one semester hour.

(B) Six months experience as a driver training or driver education instructor or instructor aide will equal one hour semester credit.

(C) Other traffic safety-related work experience and/or training may be considered as accreditation when documented.

§17.25. *Notice.* Where notice is required to be given to the department by the provisions of this chapter on any matter relating to commercial driver training schools or supervisory or driver training instructors, the notice shall be addressed to the Department of Public Safety, Vehicle Inspection/Driver Training Records Bureau, P.O. Box 4087, Austin Texas 78773-0001.

§17.30. *Purchase of Department Materials.*

(a) The following department printed materials are available on a purchase basis by commercial schools:

(1) Texas motor vehicle laws;

(2) *Texas Drivers Handbook*;

(3) motorcycle supplement to the handbook;

(4) physical forces affecting an automobile in motion;

(5) driving procedures;

(6) *Texas Digest of Motor Vehicle Laws*;

(7) rules and regulations governing the licensing of commercial driver training schools and instructors;

(8) Form DL-14A (original application);

(9) Form DL-41A (driver education affidavit); and

(10) Form DL-42 (notice of cancellation for Drivers Education concurrent training programs).

(b) Orders for the materials listed in subsection (a) of this section should be directed to General Office Services, Texas Department of Public Safety, P.O. Box 15999, Austin, Texas 78761-5999. Proper remittance should accompany all orders.

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 November 28, 1988.

TRD-8812269

Joe E. Milner
Director
Texas Department of
Public Safety

Effective date: December 22, 1988

Proposal publication date: August 16, 1988

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



State Board of Insurance Exempt Filing

Notifications 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 Adminis-

trative 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 considered a filing by Insurance Service Offices, Inc. proposing a revised exposure base for rating gas, gasoline, and LPG dealers and distributors classification.

The new rating base will be gallons instead of gross sales.

The revision is approved to become effective March 1, 1988, under the following rule of application.

These changes are applicable to all policies effective on or after March 1, 1989. No policy effective prior to March 1, 1989, shall be endorsed or cancelled and 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 Procedure and Texas Register Act.

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

Issued in Austin, Texas on November 30, 1988.

TRD-8812255 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: March 1, 1989

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

The State Board of Insurance has adopted a filing by CUMIS Insurance Society, Inc. (CUMIS) of two new endorsements for use with the Credit Union Discovery Bond.

In accordance with the provisions of the Texas Insurance Code, Article 5.97, a text of the proposed filing has been filed in the office of the chief clerk of the State Board of Insurance. The proposed filing has been available for public inspection for 15 days and a public hearing was not requested by any party.

The endorsements submitted by CUMIS amend Insuring Clause A of the basic bond by including a definition of dishonesty. The endorsements will replace CDB-A112, 255-CDB-A417 and 255-CDB-A418, which are currently approved for the Credit Union Insurance Bond Program.

Endorsement 255-CDB-A476, will be used when an insured elects to purchase "Lack of Faithful Performance" coverage on its employees. This endorsement also amends Number 11, Definitions—"Faithfully Perform His Trust." Losses resulting from acts of simple negligence, mistakes, etc. or acts known to the insured's board of directors, are specifi-

cally excluded from coverage under the revised definition.

Endorsement 255-CDB-A476b, will be used when the insured elects to exclude the "Lack of Faithful Performance" coverage from the bond. The endorsement also revises Exclusion (b), of the basic bond, to coordinate coverage with the amended insuring agreement.

This filing becomes effective January 1, 1989, under the following rule of application.

These changes are applicable to all policies effective on or after January 1, 1989. No policy effective prior to January 1, 1989, shall be endorsed or cancelled and 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 made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

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

Issued in Austin, Texas on November 30, 1988.

TRD-8812254 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: January 1, 1989

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

The State Board of Insurance has considered a filing by The Aetna Casualty and Surety Company, Hartford, Connecticut, proposing an amendment to the Standard Pension and Welfare Fund Fiduciary Responsibility Insurance Policy. This revisions amends the program to conform to the Insurance Code, Article 21. 49-2A, regarding the rules of cancellation and non-renewal of certain liability policies.

This filing was approved to become effective January 1, 1989.

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

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

Issued in Austin, Texas on November 30, 1988.

TRD-8812253 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: January 1, 1989

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

The State Board of Insurance has adopted a filing by the Surety Association of America of a rate for the bingo license bond. In accord-

ance with the provisions of the Texas Insurance Code, Article 5.97, a text of the proposed filing has been filed in the office of the chief clerk of the State Board of Insurance since September 16, 1988. The proposed filing has been available for public inspection for 15 days and a public hearing was not requested by any party.

The Bingo Enabling Act (Texas Civil Statutes, Article 179d, §38), requires that each person licensed to conduct bingo games, furnish the Comptroller of Public Accounts with a bond or other security, to guarantee the payment of all taxes, including interest, penalties and costs, imposed under the Act. The penal amount of the bond is based on the amount of money that the comptroller has estimated will be owed by the licensee; not to exceed three times the amount of the licensee's average quarterly reports.

The State Board of Insurance has adopted a rate of \$10 per thousand per annum for this bond. The classification code is 475.

This rate filing becomes effective at 12:01 a.m. on the 15th day after notice of this action is published in the Texas Register.

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

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

Issued in Austin, Texas on November 30, 1988.

TRD-8812252 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: December 25, 1988

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

The State Board of Insurance has adopted a filing by the Surety Association of America, of three endorsements, intended for use with financial institution bond forms.

In accordance with the provisions of the Texas Insurance Code, Article 5.97, a text of the proposed filing has been filed in the office of the chief clerk of the State Board of Insurance since September 2, 1988. The proposed filing has been available for public inspection for 15 days and a public hearing was not requested by any party.

The endorsements, SR 5907a, SR 5804d, and SR 6183, will be used with Financial Institution Bonds #14, #24, and #25, respectively. Endorsement SR 5907a, revises an existing endorsement, used to add Insuring Agreement (G) to Form #14. Insuring Agreement (G) covers loss resulting from the use of a false, fraudulent, or unauthorized facsimile as a signature to an assignment or to a power of substitution. Part c of the endorsement has been revised to exclude, "any Certificated Securities which are Counterfeit." Certified securities is a defined term under the recently revised Form #14.

SR 5804d revises the Bank Money Order Issuer Rider, used with the Form #24. In the

revised endorsement, the language requiring an adjustment of premium on the bond's anniversary date has been deleted. Such language is inappropriate because the Form #24 is written for a one year, definite term.

SR 6183, is a new endorsement which addresses an oversight detected in the recently revised Form #25. Form #25 defines employee to include, "an attorney retained by the insured and an employee of such attorney while either is performing legal services for the insured" (Section 1(e)(2)). The Surety Association of America determined that this language includes two classes of attorneys which an insurer may not be willing to cover. The proposed endorsement specifically excludes these classes of attorneys from the broader definition of employee.

This filing becomes effective at 12:01 a.m. on the fifteenth day after notice of this action is published in the *Texas Register*.

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

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

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

Issued in Austin, Texas on November 30, 1988.

TRD-8812250

Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: December 25, 1988

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

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The State Board of Insurance has adopted a filing by the Surety Association of America, of an aggregate limit rider.

In accordance with the provisions of the Texas Insurance Code, Article 5.97, a text of the proposed filing has been filed in the office of the chief clerk of the State Board of Insurance. The proposed filing has been available; for public inspection for 15 days and a public hearing was not requested by any party.

The Aggregate Limit Rider, SR 6182, is applicable to the financial institution bonds written on an aggregate limit of liability basis. The

endorsement permits an insured to reinstate or increase the bond's aggregate limit, during the bond term. The endorsement also specifies that the revised limit applies only to losses discovered after the effective date of the endorsement.

The endorsement becomes effective at 12:01 a.m. on the 15 day after notice of this action is published in the *Texas Register*.

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

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

Issued in Austin, Texas on November 30, 1988.

TRD-8812251

Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: December 25, 1988

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

Monday, December 12, 1988, 10 a.m. The Texas Department of Agriculture will meet in the District Office, Expressway 83, two blocks west of Morningside Road, San Juan. According to the agenda, the department will conduct an administrative hearing to review the alleged violation of Texas Agriculture Code, §103.001 by Magnolia Fruit and Produce Company, Inc., Daniel J. Faour, Anthony J. Faour, Kenneth A. Faour, and Gary K. Faour, as petitioned by Sun Valley Produce, Inc.

Contact: Margo P. Wilton, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: December 2, 1988, 9:40 a.m.
TRD-8812323

Monday, December 12, 1988, 1 p.m. The Texas Department of Agriculture will meet in the District Office, Expressway 83, two blocks west of Morningside Road, San Juan. According to the agenda, the department will conduct an administrative hearing to review the alleged violation of Texas Agriculture Code, §103.001 by Magnolia Fruit and Produce Company, Inc., Daniel J. Faour, Anthony J. Faour, Kenneth A. Faour, and Gary K. Faour, as petitioned by Thomas Distributing Company.

Contact: Margo P. Wilton, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: December 2, 1988, 9:40 a.m.
TRD-881234

Tuesday, December 13, 1988, 1:30 p.m. The Texas Department of Agriculture will meet in the Ninth Floor Conference Room, SFA Building, 1700 North Congress Avenue, Austin. According to the agenda, the department will conduct an administrative hearing to review the alleged violation of Texas Agriculture Code, §61.007(b) by Cargil Hybrid Seeds.

Contact: Bruce Fant, P.O. Box 12847, Austin, Texas 78711, (512) 463-7585.

Filed: December 1, 1988, 3:58 p.m.
TRD-8812307

Tuesday, December 13, 1988, 3 p.m. The Texas Department of Agriculture will meet in the Ninth Floor Conference Room, SFA Building, 1700 North Congress Avenue, Austin. According to the agenda, the department will conduct an administrative hearing to review the alleged violation of Texas Agriculture Code, §§61.004, 61.008, 61.009, and 61.018 by Joe E. Clark, doing business as Clark's Plant Food, Inc.

Contact: Bruce Fant, P.O. Box 12847, Austin, Texas 78711, (512) 463-7585.

Filed: December 1, 1988, 3:58 p.m.
TRD-8812308

Wednesday, December 14, 1988. The Texas Department of Agriculture will meet in the District Office, 2935 Westhollow Drive, Houston. Times and agendas follow.

10 a.m. The department will hold an administrative hearing to review alleged violation of Texas Agriculture Code §103.001, et seq. by Magnolia Fruit and Produce Company, Inc., Daniel J. Faour, Anthony J. Faour, Kenneth A. Faour, and Gary K. Faour as petitioned by Kenneth Schultz.

Contact: Margo P. Wilton, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: December 5, 1988, 8:15 a.m.
TRD-88123895

1 p.m. The department will hold an administrative hearing to review alleged violation of Texas Agriculture Code §103.001, et seq. by Magnolia Fruit and Produce Company, Inc., Daniel J. Faour, Anthony J. Faour, Kenneth A. Faour, and Gary K. Faour as petitioned by Monterey Mushrooms.

Contact: Margo P. Wilton, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: December 5, 1988, 8:15 a.m.
TRD-88123896

Automated Information and Telecommunications Council

Friday, December 16, 1988, 9 a.m. The Open Council for Automated Information and Telecommunications Council will meet in Room 106, John H. Reagan Building, 105 West 15th Street, Austin. According to the agenda, the council will witness registration; approve minutes; hear executive directors report; telecommunications plan report; hear staff reports; procurements; discuss new business; and call for executive session.

Contact: Lynn B. Polson.
Filed: December 6, 1988, 8:36 a.m.

TRD-8812427

State Bar of Texas

Friday and Saturday, December 2 and 3, 1988, 9 a.m. The Board of Directors for the State Bar of Texas met in emergency session in Room 104, Texas Law Center, 1414 Colorado Street, Austin. According to the agenda, the board considered a request of the Supreme Court Unauthorized Practice Committee to sponsor amendment to §§81.033 and §81.103, Texas Government Code, to exempt UPL Committee records from Texas Civil Statutes, Article 6252-17a, and deleted certain language. The emergency status was necessary as the matter was unknown at the time of its original posting and required action.

Contact: Paula Welch, 1414 Colorado Street, Austin, Texas 78701, (512) 463-1451.

Filed: December 1, 1988, 3:23 p.m.
TRD-8812290

Consumer Credit Section of the Finance Commission

Friday, December 9, 1988, 9 a.m. The Consumer Credit Section of the Finance Commission will meet at 2601 North

Lamar, Austin. According to the agenda, the section will discuss agency operation, personnel, and legislation; and elect section chairperson.

Contact: Al Endsley, 2601 North Lamar, Austin, Texas, (512) 479-1280.

Filed: December 1, 1988, 1:19 p.m.

TRD-8812271

Texas Commission for the Deaf

Friday, December 9, 1988, 10 a.m. The Texas Commission for the Deaf will meet in the Basement Conference Room, 510 South Congress Avenue, Austin. According to the agenda summary, the commission will welcome and approve previous minutes; hear public comment; hear reports from director and staff, and from the board for evaluation of interpreters; discuss status of old van; discuss legislative session; hear chairperson's report; and meet in executive session (if needed).

Contact: Larry D. Evans, Suite 300, 510 South Congress Avenue, Austin, Texas 78704, (512) 469-9891.

Filed: December 2, 1988, 2:57 p.m.

TRD-8812369

State Employee Incentive Commission

Tuesday, December 13, 1988, 10 a.m. The State Employee Incentive Commission will meet in Room 104, John H. Reagan Building, Austin. According to the agenda, the commission will hear from members present; review meeting minutes for November 17, 1988; discuss legislative matters; hear report on administrative activities; and discuss new business.

Contact: Lora H. Williams, P.O. Box 12482, Austin, Texas 78711, (512) 463-1813.

Filed: December 2, 1988, 12:24 p.m.

TRD-8812352

State Finance Commission

Friday, December 9, 1988, 8 a.m. The Banking Section of the State Finance Commission will meet in the Texas Department of Banking, 2601 North Lamar Boulevard, Austin. According to the agenda summary, the section will review and approve minutes of the previous meeting; consider final adoption of proposed rule 3.92 relating to identification of bank facilities; consider legislative package for next legislative session; discuss banking department office space requirements; and meet in executive session to discuss contemplated and/or pending litigation and personnel matters, including update on trust company litigation and update on status of audit report.

Contact: Ann Graham, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Filed: December 1, 1988, 4:18 p.m.

TRD-8812294

Friday, December 9, 1988, 10 a.m. The State Finance Commission will meet in the Texas Department of Banking, 2601 North Lamar Boulevard, Austin. According to the agenda summary, the section will review and approve minutes of the previous meeting; discuss banking section; consider savings and loan section and consumer credit section; and meet in executive session to discuss supervisory, litigation, and personnel matters.

Contact: Ann Graham, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Filed: December 1, 1988, 4:18 p.m.

TRD-8812295

Texas Department of Health

Friday, December 9, 1988. Various committees for the Texas Board of Health, Texas Department of Health, will meet at 1100 West 49th Street, Austin. Times, room numbers, and agendas follow.

1:30 p.m. The Personnel Committee will meet in Room M-741 to discuss appointment of physician member to the advisory committee on nursing home affairs, appointment of nurse representative to the advisory committee for mental retardation facilities, appointments to the tuberculosis advisory committee, appointments to the medical radiologic technologist advisory board, and approval to appoint a dental technical advisory committee and to change the committee composition; and discuss advisory committee minutes.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: December 1, 1988, 4:21 p.m.

TRD-8812303

2:30 p.m. The Environmental Health Committee will meet in Room M-721 to discuss proposed approval of the Alamo Area Council of Government's regional solid waste management plan, final adoption of the amendments to the rules concerning hazard communication, final adoption of amendments to the rules concerning asbestos exposure abatement in public buildings, occupational health data systems, and environmental health on the border.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: December 1, 1988, 4:21 p.m.

TRD-8812304

3:30 p.m. The Alternate Care Committee will meet in Room M-741 to discuss adoption by federal mandate of rules concerning nurse aid training and registry, final adoption of amendments to the rules concerning professional counselor licensure, proposed rules concerning reporting obligation by the department of agency regulatory survey information to the board of nursing examiners, and discuss proposed rules concerning speech-language pathologists and audiologists.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: December 1, 1988, 4:21 p.m.

TRD-8812302

4 p.m. The Nursing Homes Committee will discuss proposed revision and repeal of the rules concerning minimum licensing standards for facilities serving the mentally retarded, final adoption of amendments to rules on minimum licensing standards for nursing homes concerning the right and privilege to maintain a supply of controlled drugs in the emergency aid kit, and final adoption of the rules concerning voluntary certification standards for long term care facilities caring for persons with alzheimer's disease and related disorders.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: December 1, 1988, 4:21 p.m.

TRD-8812301

4:45 p.m. The Hospitals Committee will meet in Room M-721 to discuss final adoption of the amendments to the hospitals licensing standards.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: December 1, 1988, 4:21 p.m.

TRD-8812300

Saturday, December 10, 1988. The Texas Board of Health of the Texas Department of Health will meet at 1100 West 49th Street, Austin. Times, rooms, and agendas follow.

7:30 a.m. The Executive Committee will meet in Room M-749 to discuss items of procedure for the upcoming board meeting.

Contact: Kris Lloyd, 1100, West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: December 2, 1988, 3 p.m.

TRD-8812373

8 a.m. The Chronically Ill and Disabled Children's Services and Maternal and Child Health Committee will meet in Room M-741 to discuss proposed amendments to the Lay Midwifery Act and five-year report of the Lay Midwifery Program, final adoption of the Chronically Ill and Disabled Children's Services Program rule concerning filing deadlines for claims payment, final adoption of the newborn screening rules relating to newborn screening and co-pay for services, proposed rule concerning memorandum of understanding for community interagency staffing of services for multiproblem children and youth, status of Maternal and Infant Health Improvement Act, and update on Chronically Ill and Disabled Children's Services.

Contact: Kris Lloyd, 1100, West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: December 2, 1988, 3 p.m.

TRD-8812374

9 a.m. The Legislative Committee will meet in Room M-721, to discuss approval of proposed legislation for the 71st legislative session.

Contact: Kris Lloyd, 1100, West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: December 2, 1988, 3 p.m.

TRD-8812372

10 a.m. The board will meet in Room M-739, to approve minutes of the previous meeting; hear commissioner's report; consider AIDS update; consider committee appointments and reports (alternate care, budget, chronically ill and disabled children's services and maternal and child health, disease control, emergency and disaster, personnel, environmental health, hospitals, nursing homes, legislative, and public health promotion; consider rules (nurse aides, professional counselors, agency regulatory survey information, speech-language pathology and audiology, law midwives, chronically ill and disabled children's services, newborn screening, multiproblem children and youth, Alamo Area COG regional solid waste management plan, hazard communication, asbestos, hospital licensing, facilities serving the mentally retarded, emergency drug kits in nursing homes, and alzheimer's disease; consider overview of WIC program; and hear announcements and comments.

Contact: Kris Lloyd, 1100, West 49th

Street, Austin, Texas 78756, (512) 458-7484.

Filed: December 2, 1988, 3 p.m.

TRD-8812375

Health and Human Services Coordinating Council

Friday, December 9, 1988, 1:30 p.m. The Technical Advisory Group for the Texas Department of Health and Human Services Coordinating Council will meet in emergency session in the Seventh Floor Conference Room, Sam Houston Building, 201 East 14th Street, Austin. According to the agenda, the group will approve minutes; report on the confidentiality work group; discuss formation of work groups and objectives; discuss administrative matters relevant to the computer node and client registry; and consider old and new business. The emergency status was necessary as the meeting was rescheduled less than eight days after the original date.

Contact: Gregg Olsson, 311-A East 14th Street, Austin, Texas 78701, (512) 463-2195.

Filed: December 6, 1988, 9:24 a.m.

TRD-8812428

Monday, December 12, 1988, 8 a.m. The Confidentiality Work Group Work Session for the Texas Health and Human Services Coordinating Council will meet in emergency session in the Third Floor Conference Room, Sam Houston Building, 201 East 14th Street, Austin. According to the agenda summary, the work group will approve minutes; review and discuss draft report; discuss objectives for the next meeting; and consider old and new business. The emergency status was necessary to finalize agenda.

Contact: Gregg Olsson, 311-A East 14th Street, Austin, Texas 78701, (512) 463-2195.

Filed: December 6, 1988, 9:24 a.m.

TRD-8812429

Wednesday, December 14, 1988, 11 a.m. The Restructuring Committee for the Health and Human Services Coordinating Council will meet in the Seventh Floor Conference Room, Sam Houston Building, Austin. According to the agenda summary, the committee will approve minutes; hear report of public comment; review final report; committee directions; and discuss work groups, old, and new business.

Contact: Patricia O. Thomas, 311-A East 14th Street, Austin, Texas, (512) 463-2191.

Filed: December 2, 1988, 4:26 p.m.

TRD-8812387

Wednesday, December 14, 1988, 2 p.m. The Council Meeting for the Health and

Human Services Coordinating Council will meet in the Texas Law Center, 15th and Colorado Streets, Austin. According to the agenda, the council will discuss minutes of the September 15, 1988, meeting; hear restructuring committee report; hear advisory group reports from Long Term Care Coordinating Council for the Elderly, Statewide Health Coordinating Council, and Council on Disabilities; hear Youth Committee and Immigration Committee reports; reference guide update; statewide needs assessment project (SNAP) update; maternal and infant health advisory committee membership; hear executive director's report; and discuss old and new business.

Contact: Patricia O. Thomas, 311-A East 14th Street, Austin, Texas, (512) 463-2191.

Filed: December 2, 1988, 4:26 p.m.

TRD-8812388

Texas Commission on Human Rights

Tuesday, December 13, 1988, 10 a.m. The Texas Commission on Human Rights will meet in Room 103, John H. Reagan Building, Austin. According to the agenda summary, the commission will discuss and vote on agenda items covered in executive session, welcome guests, approve minutes, hear administrative reports, consider 1988 audit, status of EEO training, personnel matters, hear report on Sunset Advisory Commission hearing, discuss rule for issuing expedited notices, status of 1988 annual report, legislative matters, commissioner issues, unfinished business, and discuss annual financial statements.

Contact: William M. Hale, P.O. Box 13493, Austin, Texas 78711, (512) 837-8534.

Filed: December 1, 1988, 4:04 p.m.

TRD-8812306

State Board of Insurance

The State Board of Insurance will meet at 1110 San Jacinto, Austin. Dates, rooms, times, and agendas follow.

Friday, December 9, 1988, 10 a.m. The State Board of Insurance will meet in Room 414, to consider emergency adoption of an amendment to a rules as 28 TAC §27.413(c)(8) concerning evidence of public liability insurance for licenses and permits for storage and sale of fireworks.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: December 1, 1988, 3:43 p.m.

TRD-8812291

Monday, December 12, 1988, 9 a.m. The

Commissioner's Hearing Section will meet in Room 353, to consider Docket 10174-Amendment to the Articles of Incorporation of Agricultural workers Life Insurance Company, Fort Worth.

Contact: Earl Corbitt, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: December 1, 1988, 3:04 p.m.

TRD-8812286

Monday, December 12, 1988, 9 a.m. The Commissioner's Hearing Section will meet in Room 443, to consider Docket 10177-Amendment to the Articles of Incorporation of White Life Insurance Company, Waco.

Contact: O.A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: December 1, 1988, 3:04 p.m.

TRD-8812287

Monday, December 12, 1988, 10:30 a.m. The Commissioner's Hearing Section will meet in Room 353, to consider Docket 10175-Application for amendments to the charter of Agricultural Workers Mutual Automobile Company, Fort Worth.

Contact: Earl Corbitt, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: December 1, 1988, 3:04 p.m.

TRD-8812288

Tuesday, December 13, 1988, 9 a.m. The Commissioner's Hearing Section will meet in Room 353 to consider Docket 10152-Application of Gilberto Hernandez, Jr., San Antonio, for a Group I, legal reserve life insurance agent's license.

Contact: Wendy Ingham, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6526.

Filed: December 5, 1988, 3:50 p.m.

TRD-8812414

Tuesday, December 13, 1988, 9 a.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 10159-Application of Joseph Parillo to acquire control of U.S. Annuity Life Insurance Company, Houston.

Contact: J.C. Thomas, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6526.

Filed: December 5, 1988, 3:50 p.m.

TRD-8812415

Tuesday, December 13, 1988, 9 a.m. The Commissioner's Hearing Section will meet in Room 443 to consider Docket 10188-Application of Sentinel Group, Inc. to acquire control of East Funeral Benefit Insurance Company, Texarkana.

Contact: O.A. Cassity, III, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6526.

Filed: December 5, 1988, 3:50 p.m.

TRD-8812416

Tuesday, December 13, 1988, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 342 to consider Docket 10163-Application for original charter for WFC Insurance Company, Austin.

Contact: Lisa Lyons, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6526.

Filed: December 5, 1988, 3:50 p.m.

TRD-8812417

Tuesday, December 13, 1988, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 353 to consider Docket 10172-Issuance of a certificate of authority for John Knox Villages of Lubbock, Inc., Lubbock.

Contact: Earl Corbitt, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6526.

Filed: December 5, 1988, 3:50 p.m.

TRD-8812418

Tuesday, December 13, 1988, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 443 to consider Docket 10189-Application of Sentinel Group, Inc., to acquire control of Trustee Life Insurance Company, Amarillo.

Contact: James W. Norman, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6526.

Filed: December 5, 1988, 3:50 p.m.

TRD-8812419

Interagency Council for Genetic Services

Monday, December 12, 1988, 1 p.m. The Interagency Council for Genetic Services will meet in Room T-604, Texas Department of Health, 1100 West 49th Street, Austin. According to the agenda summary, the council will adopt minutes of the October 31, 1988, meeting; consider reports on Sunset Commission Review; discuss Texas Genetics Network project, TEXGENE advisory committee meeting from subcommittee to review conflicts among genetic service providers; and discuss next meeting date.

Contact: Patti J. Patterson, M.D., 1100 West 49th Street, Austin, Texas 78756, (512) 458-7321.

Filed: December 1, 1988, 10:48 a.m.

TRD-8812264

Texas Department of Labor and Standards

Friday, December 16, 1988, 9 a.m. The Air Conditioning and Refrigeration Contractor Advisory Board Task Force on Electrical Connection for the Texas Department of Labor and Standards will meet on the

First Floor, Corpus Christi City Council Chamber, City Hall, 1201 Leopard Street, Corpus Christi. According to the agenda, the board will approve agenda; approve minutes of the July 21, 1988, meeting; review principals of agreement/rule 75.7, and suggested changes by the air conditioning and refrigeration contractor advisory board; and hold general discussion on municipal electrical requirements.

Contact: Steven M. Matthews, P.O. Box 12157, Austin, Texas 78711, (512) 463-2904.

Filed: December 2, 1988, 8:35 a.m.

TRD-8812313

Lamar University System, Board of Regents

Thursday, December 8, 1988, 9:30 a.m. The Committee Meetings for Lamar University System, Board of Regents were held in the Map Room, John Gray Institute, 855 Florida, Beaumont. According to the agenda summary, the building and grounds committee met at 9:30 a.m.; finance and audit committee at 10 a.m.; academic affairs committee at 10:15 a.m.; personnel committee at 10:45 a.m.; development and public relations committee at 11 a.m.; and executive session was held under provisions of Texas Civil Statutes, Article 6252-17, §2, paragraph 3e-legal, f-real estate, and g-personnel.

Contact: George McLaughlin, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: December 2, 1988, 2:12 p.m.

TRD-8812377

Thursday, December 8, 1988, 1 p.m. The Board of Regents Meeting for Lamar University System, Board of Regents was held in the Map Room, John Gray Institute, 855 Florida, Beaumont. According to the agenda summary, the board heard chairman and chancellor comments; considered approval of building and grounds, finance and audit, academic affairs, personnel, and development and public relations committees recommendations; met in executive session; and heard regents' comments and suggestions.

Contact: George McLaughlin, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: December 2, 1988, 2:12 p.m.

TRD-8812376

Texas Low-Level Radioactive Waste Disposal Authority

Tuesday, December 13, 1988, 9 a.m. The Board of Directors for the Texas Low Level Radioactive Waste Disposal Authority will

meet in Suite 300, 7703 North Lamar Boulevard, Austin. According to the agenda summary, the board will review and approve fiscal year 1989 operating budget adjustments.

Contact: L.R. Jacobi, Jr., 7703 North Lamar Boulevard, Austin, Texas.

Filed: December 5, 1988, 2:15 p.m.

TRD-8812408

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**Texas State Board of
Medical Examiners**

Monday-Thursday, December 5-8, 1988, at 8 a.m. daily. The Texas State Board of Medical Examiners met for an emergency agenda revision at 1101 Camino LaCosta, Austin. According to the agenda, the board added consideration of request by physician to the agenda. The emergency status was necessary as the information and request was just received, and merited attention of the board prior to next meeting.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: December 2, 1988, 2:06 p.m.

TRD-8812354

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**Texas Motor Vehicle
Commission**

Friday, December 16, 1988, 9:30 a.m. The Texas Motor Vehicle Commission will meet in Suite 302, Brazos Building, 815 Brazos Street, Austin. According to the agenda, the commission will adopt minutes of commission meeting of November 18, 1988; consider proposals for decision and other actions-license and other cases; consider motions for rehearing; proposals for decision-Lemon Law Cases set for oral argument and no argument or exceptions; agreed orders for approval and entry by the commission; settlement orders-consumer complaint cases; orders of dismissal-consumer complaint cases; and review of agency budget and financial status, and review of agency enforcement policy on advertising rules violations.

Contact: Russell Harding, 815 Brazos, Suite 300, Austin, Texas 78701, (512) 476-3587.

Filed: December 2, 1988, 4:58 p.m.

TRD-8812389

◆ ◆ ◆
**Texas Municipal League Risk
and Insurance
Management Services**

Sunday and Monday, December 11-12, 1988, 8:30 a.m. and 9:30 a.m., respectively. The Board of Trustees, TML Self-

Insurance Funds for the Texas Municipal League Risk and Insurance Management Services will meet at the Inn on the Park, Houston, on Sunday, and at Johnson and Higgins, Inc., Suite 1400, 333 Clay, Houston, on Monday. According to the agenda, the board will introduce new members, seat new officers, read Tillinghast Engagement Letter, hear report on status of claims reserve certification, hear reports from finance committee, workers' compensation underwriting committee, budget and audit committee, bylaw study committee, claims committee, service contractors, legislative committee, staff, and legal counsel reports; and interview applicants for executive director.

Contact: June Wiseman.

Filed: December 2, 1988, 2:38 p.m.

TRD-8812312

◆ ◆ ◆
**Board of Pardons and
Paroles**

Monday-Friday, December 12-16, 1988, 1:30 p.m. daily, except 11 a.m. on Friday. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, the board 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: Mike Roach, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2713.

Filed: December 2, 1988, 11:28 a.m.

TRD-8812328

Tuesday, December 13, 1988, 1:30 p.m. The Board of Pardons and Paroles will 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 sentences; and other reprieves, remissions, and executive clemency actions.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2749.

Filed: December 2, 1988, 11:27 p.m.

TRD-8812329

◆ ◆ ◆
State Pension Review Board

Monday, December 12, 1988, 10 a.m. The State Pension Review Board will meet in the Conference Room, Fourth Floor, ERS Building, 18th and Brazos Streets, Austin. According to the agenda summary, the board will consider and act on contract for

actuarial services for actuarial review of legislature during legislative session; brief legislative proposals concerning San Antonio firemen and policemen's pension fund-Carlos Resendez; present legislative budget board recommendations concerning retirement issues-Robert Norris (open discussion to follow); and elect officers for calendar year 1989.

Contact: Betty J. Allen, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736.

Filed: December 1, 1988, 12:32 p.m.

TRD-8812270

◆ ◆ ◆
State Property Tax Board

Wednesday, December 14, 1988, 9 a.m. The State Property Tax Board will meet in the Agency Conference Room, 9501 North IH 35, Austin. According to the agenda, the board will approve minutes; consider proposed amendment to Rules 155.35, 155.44, 161.6, 165.61, and 165.81; approve bylaws of the National Conference on Unit Valuation Standards; public comments on activities of the board; board policy manual; proposed Rule 163.6; amended Rule 165.73; change in schedules in general appraisal manual; relocation of offices; status of Sunset Commission report; report on staff activities; collections procedures manual; new staff; and meet in executive session to discuss personnel.

Contact: Ron Patterson, 9501 North IH 35, Austin, Texas, (512) 834-4800.

Filed: December 5, 1988, 1:27 p.m.

TRD-8812403

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**Texas State Board of Public
Accountancy**

Tuesday, December 13, 1988, 9:30 a.m. A panel hearing for the Texas State Board of Public Accountancy will be held in Suite 340, 1033 La Posada, Austin. According to the agenda summary, the panel will hear complaints 85-09-26L and 85-09-18L.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: December 5, 1988, 3:15 p.m.

TRD-8812411

Thursday, December 15, 1988, 9:30 a.m. A panel hearing for the Texas State Board of Public Accountancy will be held in Suite 340, 1033 La Posada, Austin. According to the agenda summary, the panel will hear complaints 86-01-10L and 86-01-11L.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: December 5, 1988, 3:15 p.m.

TRD-8812412

Texas Department of Public Safety

Thursday, December 15, 1988, 10 a.m. The Public Safety Commission for the Texas Department of Public Safety will meet in the Commission Room, DPS Headquarters, 5805 North Lamar, Austin. According to the agenda summary, the commission will approve minutes; consider budget matters, personnel matters, real estate matters; pending and contemplated litigation; miscellaneous and other unfinished business; and proposed rule changes for vehicle inspection.

Contact: Joe E. Milner, 5805 North Lamar, Austin, Texas, (512) 465-2000, ext. 3700.

Filed: December 5, 1988, 3:25 p.m.

TRD-8812413

Public Utility Commission of Texas

The Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Dates, times, and agendas follow.

Thursday, December 8, 1988, 9 a.m. The Hearings Division submitted an emergency revised agenda to consider Exxon's appeal of examiner's oral order rendered during the third prehearing conference on November 14, 1988, and appeal of the examiner's order rendered on November 29, 1988, denying Exxon's motion for reconsideration in Docket 8046-Complaint of Exxon Company, USA against Houston Lighting and Power Company. The emergency status was necessary because prompt commission action is necessary to preserve jurisdiction over subject matter.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 1, 1988, 1:57 p.m.

TRD-8812279

Monday, December 12, 1988, 2 p.m. The Hearings Division will consider Docket 8431-Petition of Houston Lighting and Power Company for a final reconciliation of fuel costs through September 30, 1988.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 5, 1988, 2:06 p.m.

TRD-8812404

Tuesday, December 13, 1988, 10 a.m. The Hearings Division will consider Docket 8425-Application of Houston Lighting and Power Company for authority to change rates.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757,

(512) 458-0100.

Filed: December 1, 1988, 1:58 p.m.

TRD-8812277

Tuesday, December 13, 1988, 10 a.m. The Hearings Division will consider Docket 8331-Application of Southwestern Bell Telephone Company for revision to its customer owned pay telephone service.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 2, 1988, 2:37 p.m.

TRD-8812358

Monday, December 13, 1988, 10 a.m. The Hearings Division will consider Docket 8384-Appeal of Central Texas Electric Co-operative, Inc. from Ordinance 4-083 of the City of Fredericksburg.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 1, 1988, 1:58 p.m.

TRD-8812278

Monday, December 19, 1988, 10 a.m. The Hearings Division will consider Docket 8434-Application of Tenaska III Texas Partners and Texas Utilities Electric Company for certification of cogeneration agreement.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 1, 1988, 1:57 p.m.

TRD-8812280

Thursday, January 5, 1989, 10 a.m. The Hearings Division consider Docket 7661-Application of the City of Fredericksburg to amend certificated service area boundaries within Gillespie County.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 2, 1988, 2:37 p.m.

TRD-8812359

Railroad Commission of Texas

Monday, December 12, 1988, 9 a.m. The Railroad Commission of Texas will meet in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. Agendas follow.

The Administrative Services Division will consider and act on the division director's report on division administration, budget, procedure, and personnel matters.

Contact: Roger Dillon, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-7257.

Filed: December 2, 1988, 11:19 a.m.

TRD-08812338

The Automatic Data Processing Division will consider and act on the division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

Contact: Bob Kmetz, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-7251.

Filed: December 2, 1988, 11:19 a.m.

TRD-08812339

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.

Contact: C. Tom Clowe, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-7274.

Filed: December 2, 1988, 11:19 a.m.

TRD-08812341

The Flight Division will consider and act on the division director's report on division administration, budget, procedures and personnel matters.

Contact: Ken Fossler, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-6787.

Filed: December 2, 1988, 11:19 a.m.

TRD-08812337

The Gas Utilities Division will consider various matters within the regulatory jurisdiction of the Railroad Commission of Texas. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in its entirety or for particular action at a future time or date.

Contact: Vicki Dimego, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-7009.

Filed: December 2, 1988, 11:19 a.m.

TRD-08812332

The Office of Information Services will consider and act on the Division Director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Drawer 12970, Austin, Texas 78753, (512) 463-6710.

Filed: December 2, 1988, 11:19 a.m.

TRD-08812345

The Investigation Division will consider and act on the division director's report on division administration, investigations, bud-

get, and personnel matters.

Contact: Mary Anne Wiley, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-6828.

Filed: December 2, 1988, 11:19 a.m.

TRD-08812342

The Legal Division will consider and act on the Legal Division's report on division administration, budget, procedures, and personnel matters; proposed and pending litigation, including but not limited to discussion and/or action on the following: consideration of proposal for public comment of new general rules of practice and procedure for the commission and simultaneous repeal of the current general rules of practice and procedure, 16 TAC §§1.1-1.36.

Contact: C. Tom Clowe, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-7274.

Filed: December 2, 1988, 11:19 a.m.

TRD-08812344

LP-Gas Division will consider and act on division director's report on division administration, budget, procedures, and personnel matters; consider administrative penalty orders concerning violation of commission regulations by Mission Petroleum Carriers, Inc., Dockets 670 and 671 and Empiregas, Inc., of Galveston, Docket 672.

Contact: Thomas D. Petru, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-6931.

Filed: December 2, 1988, 11:19 a.m.

TRD-08812343

The Oil and Gas Division will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in its entirety or for particular action at a future time of date.

Contact: Sonia O'Neal, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-6848.

Filed: December 2, 1988, 11:19 a.m.

TRD-08812333

The Oil and Gas Division will consider category determinations under the Natural Gas Policy Act of 1978, §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 123.

Contact: Margie L. Osborn, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-6755.

Filed: December 2, 1988, 11:19 a.m.

TRD-08812335

The Personnel Division will consider and act on the division director's report on divi-

sion administration, budget, procedures, and personnel matters.

Contact: Mark Bogan, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-6981.

Filed: December 2, 1988, 11:19 a.m.

TRD-08812336

The Office of Research and Statistical Analysis will consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

Contact: Gail Gemberling, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-6976.

Filed: December 2, 1988, 11:19 a.m.

TRD-08812340

The Surface Mining Division will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in its entirety or for particular action at a future time of date.

Contact: Jerry Hill, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-6900.

Filed: December 2, 1988, 11:19 a.m.

TRD-08812334

The Transportation Division will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in its entirety or for particular action at a future time or date.

Contact: Bob Biard, P.O. Drawer 12970, Austin, Texas 78711, (512) 463-7122.

Filed: December 2, 1988, 11:19 a.m.

TRD-08812331

Monday, December 12, 1988, 2:30 p.m. The Oil and Gas Division will meet in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the division will hear oral argument in Dockets 103,881, 103,899, 103,900, 103,901, 104,269, 104,270, 104, 271, 104,272-Phillips Petroleum Co., Bitler Lease, Well 82, 84, 86, 85, 83, 80, 81, and 87; Fullerton (San Andres) Field, Andrews County.

Contact: Don Walker, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6922.

Filed: December 2, 1988, 11:17 a.m.

TRD-8812346

Texas Real Estate Commission

Monday, December 12, 1988, 9:30 a.m.

The Texas Real Estate Commission will meet in the Conference Room, TREC Headquarters Office, 1101 Camino La Costa, Austin. According to the agenda, the commission will review minutes of the November 12, 1988, meeting; hear staff reports for the month of October, 1988; hear audit report; consider possible amendments to 22 TAC §§531.10-531.17, concerning minimum appraisal standards; consider proposed new 22 TAC §535.165, concerning disclosure of buyer or tenant representation and previously adopted 22 TAC §535.164, concerning disclosure of agency; consider proposed legislation; consider proposed amendment to 22 TAC §535.92, concerning investigations of complaints against applicant; meet in executive session to discuss pending litigation pursuant to Texas Civil Statutes, Article 6525-17, §2(c); consider claims against the real estate recovery fund; consider motions for rehearing and/or probation; and entry of orders in contested cases.

Contact: Camilla S. Shannon, P.O. Box 12188, Austin, Texas 78711, (512) 465-3900.

Filed: December 1, 1988, 4:15 p.m.

TRD-8812293

Texas Rehabilitation Commission

Friday, December 16, 1988, 9:30 a.m. The Texas Rehabilitation Commission will meet in Suite 302, Commission Conference Room, 118 East Riverside Drive, Austin. According to the agenda summary, the board will approve minutes of the August 26, 1988, meeting; present top employee-of-the-year award; recognize counselors; hear commissioner's comments; consider update on progress of new TRC building; hear fiscal report and end of year update; consider programs update, new VR counselor training-order of selection, and disability determination update; hear state auditor's report; consider update on management audit, videotapes-overview of governor's committee for disabled citizens, multidimensional support services project in Dallas, and respite care in San Antonio; and hear public comments from Betty Jo Gruehl and Sharon Sheldon. The board will also meet in executive session.

Contact: Charles Schiesser, 118 East Riverside Drive, Austin, Texas 78704.

Filed: December 5, 1988, 9:27 a.m.

TRD-8812392

Texas Savings and Loan Department

Tuesday, December 1, 1988, 9 a.m. The Texas Savings and Loan Department will meet in Suite 201, 2601 North Lamar Boulevard, Austin. According to the agenda, the department will accumulate a record of evidence in regard to the application of Horizon Savings Association, Austin, Travis County, to establish a loan office at 7330 San Pedro, San Antonio, Bexar County, from which record the commissioner will determine whether to grant or deny the application.

Contact: Laura M. Hale, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 479-1250.

Filed: December 1, 1988, 2:25 p.m.

TRD-8812283

Wednesday, December 14, 1988, 9 a.m. The Texas Savings and Loan Department will meet in Suite 201, 2601 North Lamar Boulevard, Austin. According to the agenda, the department will accumulate a record of evidence in regard to the application of First Savings and Loan Association, Borger, Hutchinson County, to establish a branch office at 6601 IH 40 West, Amarillo, Potter County, from which record the commissioner will determine whether to grant or deny the application.

Contact: Laura M. Hale, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 479-1250.

Filed: December 1, 1988, 2:25 p.m.

TRD-8812281

Thursday, December 15, 1988, 9 a.m. The Texas Savings and Loan Department will meet in Suite 201, 2601 North Lamar Boulevard, Austin. According to the agenda, the department will accumulate a record of evidence in regard to the application of Gibraltar Savings Association, Houston, Harris County, to relocate a loan office from 5750 Balcones Drive, Suite 106 to 8200 MoPac Expressway, Suite 195, Austin, Travis County, from which record the commissioner will determine whether to grant or deny the application.

Contact: Laura M. Hale, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 479-1250.

Filed: December 1, 1988, 2:25 p.m.

TRD-8812284

Friday, December 16, 1988, 9 a.m. The Texas Savings and Loan Department will meet in Suite 201, 2601 North Lamar Boulevard, Austin. According to the agenda, the department will accumulate a record of evidence in regard to the application of Guardian Savings and Loan Association, Houston, Harris County, to establish a branch office at 499 South Federal Highway, Boca Raton, Palm Beach, Florida from which record the

commissioner will determine whether to grant or deny the application.

Contact: Laura M. Hale, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 479-1250.

Filed: December 1, 1988, 2:25 p.m.

TRD-8812282

School Land Board

Tuesday, December 13, 1988, 10 a.m. The School Land Board will meet in Room 831, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the board will approve minutes of the previous board meeting; pooling applications; applications to lease highway right of way for oil and gas; ratify amendment to schedule and procedures for the April 4, 1989, oil, gas, and other minerals lease sale; consider proposed repeal of selected rules in Chapters 151 and 153 of TAC; coastal public lands, commercial lease applications, extensions, renewals, and renegotiations; easement applications and lease applications; commercial land acquisition in Calhoun County for aquaculture project; final approval of tracts, terms, conditions, and procedures for the March 7, 1989, sealed bid land sale; final approval of El Paso County acquisition/land trade; meet in executive session, briefing session on litigation, direct land sales; excess acreage applications; and good faith claimant applications.

Contact: Linda K. Fisher, Room 836, 1700 North Congress Avenue, Austin, Texas, (512) 463-5016.

Filed: December 5, 1988, 4:29 p.m.

TRD-8812421

Secretary of State

Monday, December 12, 1988, 10 a.m. The Elections Advisory Committee for the Secretary of State will meet in the Old Supreme Courtroom, Room 310, State Capitol, Austin. According to the agenda summary, the committee will recap the November 8, 1988, general election and discuss election night returns for future elections.

Contact: Tom Harrison, (512) 463-5650.

Filed: December 5, 1988, 4:51 p.m.

TRD-8812424

Texas Southern University

Monday, December 19, 1988, 4 p.m. The Finance Committee for Texas Southern University will meet in Room 117, Hannah Hall, Texas Southern University, 3100 Cleburne Avenue, Houston. According to the agenda summary, the committee will

consider matters relating to financial reports systems and budgets, hear fiscal reports from the administration, and discuss investments and informational items.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: December 1, 1988, 4:05 p.m.

TRD-8812305

Teacher Retirement System of Texas

Friday, December 9, 1988, 9 a.m. The Board of Trustees of the Teacher Retirement System of Texas will meet in Loew's Anatole Hotel, 2201 Stemmons Freeway, Dallas. According to the agenda summary, the board will approve minutes of the previous meeting; review investments for quarter and discuss and make recommendations at IAC meeting; consider appointment of TRS trustee to vote shares of TRST Eldridge, Inc. and TRST Congress Inc. at annual shareholder meeting; consider asset/liability study, Legislative Budget Board funding proposals, and proposed legislation affecting TRS; discuss Texas growth fund; consider use of a master trust custody arrangement; approve design for TRS seal; discuss building expansion construction project; consider membership in the Organization for the Preservation of the Public Employee Retirement Industry and Opposition to Social Security Expansion to Such Industry (OPPOSE), proposed plan design changes to the retired school employees group insurance program, and proposed amendments to rules and regulations for the retirement program and the retired school employees group insurance program; and hear report of general counsel and report of Member Benefits Division. The board will also meet in executive session to discuss personnel.

Contact: Mary Godzik, 1001 Trinity, Austin, Texas (512) 397-6400.

Filed: December 1, 1988, 3:38 p.m.

TRD-8812292

Texas State Technical Institute

Monday, December 5, 1988, 10 a.m. The TSTI Board of Regents for Texas State Technical Institute met in emergency session via conference call in the TSTI System Conference Room, TSTI, Waco. According to the agenda summary, the board considered selecting a new counselor for job vacancy. The emergency session was necessary to discuss matters pertaining to personnel.

Contact: Theodore A. Talbot, 3802 Campus Drive, Waco, Texas 76705, (817) 799-

3611, ext. 3910.

Filed: December 2, 1988, 9:52 a.m.

TRD-8812322

Texas Woman's University

Thursday, December 15, 1988. The Board of Regents for Texas Woman's University will meet on the 16th Floor, Administration and Conference Tower, Texas Woman's University, Denton. Times, committees, and agendas follow.

9 a.m. The Fund Raising/Public Relations Committee will consider approval of minutes of the meeting of August 31, 1988; hear report on alumnae relations, development, and public information activities of the Office of Institutional Advancement; and hear report of the chair.

Contact: Shirley S. Chater, TWU, Denton, Texas 76204, (817) 898-3201.

Filed: December 5, 1988, 11:17 a.m.

TRD-8812401

9:20 a.m. The Student Affairs Committee will approve minutes of the August 31, 1988, meeting; consider conversion of rooms to apartments in Reagan-Houston Hall, Faye Pannell Hall, and the Houston Center Hall; consider renovation of the Student Center basement; and hear report of the chair.

Contact: Shirley S. Chater, TWU, Denton, Texas 76204, (817) 898-3201.

Filed: December 5, 1988, 11:17 a.m.

TRD-8812400

10 a.m. The Academic Affairs Committee will approve minutes of August 31, 1988, meeting; approve radiation policy; approve small class report; approve faculty workload report; consider organizational structures for the TWU; consider role and scope statement for the TWU; and hear report of the chair.

Contact: Shirley S. Chater, TWU, Denton, Texas 76204, (817) 898-3201.

Filed: December 5, 1988, 11:17 a.m.

TRD-8812399

10:45 a.m. The Finance Committee will approve minutes of the August 31, 1988, meeting; personnel additions and changes; gifts and grants, agreements, and contracts, allocation of federal funds; sale of surplus property; insurance; certificates of substantial completion; change orders; transfer of designated funds to quasi-endowment funds, board of regents account; approve and ratify University Flex Plan; and hear report of chair.

Contact: Shirley S. Chater, TWU, Denton, Texas 76204, (817) 898-3201.

Filed: December 5, 1988, 11:17 a.m.

TRD-8812398

1:30 p.m. The board will meet in executive session; consider minutes of the August 31, 1988, meeting; personnel additions and changes; gifts and grants; agreements and contracts; allocation of federal funds; sale of surplus property insurance; certificates of substantial completion; change order; transfer of designated funds to quasi-endowment funds, board of regents account; approve and ratify University Flex Plan; report on activities of Office of Institutional Advancement; conversion of rooms to apartments-Reagan-Houston, Faye Pannell, and Houston Center Halls; renovate student center basement; approve radiation policy; small class report, faculty workload report, organizational structure for TWU, and role and scope statement for TWU; hear reports from finance, fund raising/public relations, student affairs, and academic affairs committees, and hear report from president.

Contact: Shirley S. Chater, TWU, Denton, Texas 76204, (817) 898-3201.

Filed: December 5, 1988, 11:17 a.m.

TRD-8812397

University of Texas System

Thursday, December 8, 1988, noon (executive session) and 1:30 p.m. (open session). The Board of Regents and Standing Committees for the University of Texas System met on the Ninth Floor, Regents' Meeting Room, Ashbel Smith Hall, 201 West Seventh Street, Austin. According to the agenda summary, the board and committees considered investment fee for endowments and trusts; amendments to RRR; chancellor's docket (submitted by system administration); new academic programs; appointments to endowed academic positions and development boards; affiliation agreements; buildings and grounds matters including approval for projects, preliminary and final plans; award of contracts; land and investment matters; acceptance of gifts, bequests, and estates; established endowed positions and funds; intellectual property matters; litigation; land acquisition and negotiated contracts; and personnel matters.

Contact: Arthur H. Dilly, P.O. Box N, U.T. Station, Austin, Texas 78713-7328, (512) 499-4402.

Filed: December 2, 1988, 1:56 p.m.

TRD-8812353

Texas Water Commission

The Texas Water Commission will meet in the Stephen F. Austin Building, 1700 North Congress Avenue, Austin, unless otherwise noted. Dates, times, rooms, and agendas follow.

Monday, December 12, 1988, 10 a.m. The

commission will meet in Room 118, to hear report of substantial noncompliance and order finding substantial noncompliance and requiring certain actions of the City of Bullard, (Permit 11787-01), report of substantial noncompliance and order finding substantial noncompliance and requiring certain actions of the City of San Augustine (Permit 10268-01); and hear preliminary report and petition for an order requiring certain actions of Bonny Corporation, Voluntary Purchasing Groups, Inc., Southern Pacific Transportation Company, H. Lee Cain and B.J. Cain in reference to the site known as the Hy-Yield Chemical Plant Site.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

Filed: December 2, 1988, 3:38 p.m.

TRD-8812380

Monday, December 12, 1988, 11 a.m. The commission will meet in Room 118, to hear preliminary report and petition for order assessing administrative penalties and requiring certain actions of Riverside/Terra Corporation (SWR 32019) and recommendation of the executive director concerning location of field operations' district offices in the Houston area.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161

Filed: December 2, 1988, 3:38 p.m.

TRD-8812379

Tuesday, December 13, 1988, 9 a.m. The commission will meet in Room 118, to consider unlimited tax bonds.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

Filed: December 2, 1988, 3:37 p.m.

TRD-8812382

Tuesday, December 13, 1988, 9 a.m. The commission will consider bonds, change order, rates, certificates of convenience and necessity, amendments, wastewater permit, an order terminating and agreed order, motion to amend a commission order, renewals, proposed permits, minor amendments, certificates of adjudication, extension of time, request to renew weather modification licenses for fiscal year 1989, contracts, rules, and appointments.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

Filed: December 2, 1988, 3:36 p.m.

TRD-8812378

Thursday, December 15, 1988, 9 a.m. The commission will meet in Room 1-111 to consider the application of Celanese Chemical Company, Pampa facility for the reissuance of an emergency order, and an enforcement order for Glen Neans.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

Filed: December 5, 1988, 4:31 p.m.

TRD-8812422

Thursday, December 15, 1988, 9 a.m. The commission will meet in Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the commission will hear preliminary enforcement report and petition for order assessing administrative penalties and requiring certain actions of Booker Custom Packing Company (Permit 02757) and application for a temporary order by Power Resources, Inc. and the revocation of Permit 13180-01 held by Doug Fike.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 463-7909.

Filed: December 2, 1988, 3:38 p.m.

TRD-8812381

Tuesday, January 31, 1989, 10 a.m. The commission will meet in Room 118, to consider joint presentation by the San Jacinto River Authority and the Sabine River Authority concerning the feasibility study of an interbasin transfer of water from the Sabine River Basin to the San Jacinto River Basin.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

Filed: December 2, 1988, 3:37 p.m.

TRD-8812383

Regional Meetings

Meetings Filed December 1, 1988

The Austin-Travis County Mental Health and Mental Retardation Center, ATCMHMR Board of Trustees, met in emergency session in Suite 500, 611 South Congress Avenue, Austin, on December 1 and 2, 1988, at 4 p.m. and 7 a.m., respectively. Information may be obtained from Sibyl McDade or Sharon Taylor, (512) 447-4141.

The Education Service Center, Region XVI, Board of Directors, will meet in the Boardroom, ESC, Region XVI, 1601 South Cleveland, Amarillo, on December 16, 1988, at 10:30 a.m. Information may be obtained from Kenneth M. Laycock, 1601 South Cleveland, Amarillo, Texas 79120, (806) 376-5521.

The Fisher County Appraisal District, Board of Directors, will meet in the Tax Appraisal Office, Roby, on December 13, 1988, at 7:30 p.m. Information may be obtained from Teddy Dral, Box 516, Roby, Texas 79543, (915) 776-2733.

The Garza County Appraisal District, Board of Directors, met in the Appraisal Office, Courthouse, Post, on December 8, 1988, at 9 a.m. Information may be obtained from Jean M. Westfall, P.O. Drawer F, Post, Texas 79356, (806) 495-3518.

The Gonzales County Appraisal District, Board of Directors, met at 928 St. Paul Street, Gonzales, on December 8, 1988, at 5 p.m. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (512) 672-2879.

The Grayson Appraisal District, Appraisal Review Board, will meet at 205 North Travis, Sherman, on December 16, 1988, at 9 a.m. Information may be obtained from Chris McDonald, 205 North Travis, Sherman, Texas 75090, (214) 893-9673.

The Nueces River Authority, Board of Directors, met at the Staghorn Inn, Three Rivers, on December 8, 1988, at 11 a.m. Information may be obtained from Con Mims, P.O. Box 349, Uvalde, Texas 78802, (512) 278-6810.

The Pecan Valley Mental Health and Mental Retardation Region, Board of Trustees, met at the Clinical Office, 104 Charles Street, Granbury, on December 7, 1988, at 8 a.m. Information may be obtained from Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401, (817) 965-7806.

The Sabine Valley Regional MHMR Center, Board of Trustees, will meet at the Holiday Inn, Estes Parkway at I-20, Longview, on December 15, 1988, at 7 p.m. Information may be obtained from Ron Cookston, P.O. Box 6800, Longview, Texas 75608, (214) 758-2471.

The Tyler County Appraisal District, Appraisal Review Board, will meet at 806 West Bluff, Woodville, on December 14, 1988, at 1 p.m. Information may be obtained from Mary F. Mann, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736.

TRD-8812263

Meetings Filed December 2, 1988

The Archer County Appraisal District, Board of Directors, will meet at the Appraisal District Office, 211 South Center, Archer City, on December 14, 1988, at 4:30 p.m. Information may be obtained from Edward Trigg, III, P.O. Box 1141, Archer City, Texas 76351, (817) 574-2172.

The Barton Springs/Edward Aquifer Conservation District, Board of Directors, worksession, was held in emergency session in Suite 1800, Bickerstaff, Heath, and Smiley, 98 San Jacinto, Austin, on December 5 and 6, 1988, at 11:30 a.m. The regular meeting for the Board of Directors was held at the same location and on the same date, at 7 p.m. Information may be obtained from

Bill Couch, 909 North Loop 4, Suite F, Buda, Texas 78610, (512) 282-8441 or (512) 295-3596.

The MHMR Authority of Brazos Valley, Board of Trustees, met at the Brazos Center, 3232 Briarcrest Drive, Bryan, on December 8, 1988, at 10 a.m. Information may be obtained from Leon Bawcom, (409) 822-6467.

The Bexar Appraisal District, Appraisal Review Board, will meet at 535 South Main, San Antonio, on December 13, 15, and 16, 1988, at 8:30 a.m. daily, and 9 a.m. on the 16th. Information may be obtained from Walter Stoneham, 535 South Main, San Antonio, Texas 78204, (512) 224-8511.

The Capital Area Rural Transportation System (CARTS), Executive Committee, met via conference call at 5111 East First Street, Austin, on December 7, 1988, at 2 p.m. Information may be obtained from Edna M. Burroughs, 5111 East First Street, Austin, Texas 78702, (512) 389-1011.

The Cherokee County Appraisal District, Board of Directors, met at 107 East Rusk Street, Rusk, on December 8, 1988, at 2:30 p.m. Information may be obtained from S.R. Danner, P.O. Box 494, Rusk, Texas 75785, (214) 683-2296.

The Dallas Area Rapid Transit, Intermediate Action Program Subcommittee, Minority Affairs Committee, Audit Committee, Planning and Development Committee, and Board of Directors, met in the Board Conference Room, 601 Pacific Avenue, Dallas, on December 6, 1988, at 1 p.m., 2 p.m., 3 p.m., 4 p.m., and 6:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Education Service Center, Region XV, Board of Directors, met in Conference Room 1, ESC Region XV Building, 612 South Irene Street, San Angelo, on December 8, 1988, at 1:30 p.m. Information may be obtained from Clyde Warren.

The Education Service Center, Region XX, Board of Directors, will meet at 1314 Hines Avenue, San Antonio, on December 14, 1988, at 2 p.m. Information may be obtained from Judy M. Castleberry, (512) 299-2400.

The Grayson Appraisal District, Board of Directors, will meet at 205 North Travis, Sherman, on December 14, 1988, at noon. Information may be obtained from Chris McDonald, 205 North Travis, Sherman, Texas 75090, (214) 893-9673.

The Hays County Appraisal District, Board of Directors, met in the Municipal Building, 632 "A" East Hopkins, San Marcos, on December 8, 1988, at 3:30 p.m. Information may be obtained from Lynnell Sedlar, 632 "A" East Hopkins, San Marcos, Texas 78666, (512) 754-7400.

The Hunt County Tax Appraisal District, Board of Directors, met in the Boardroom,

Tax Appraisal District, 4801 King Street, Greenville, on December 8, 1988, at 7 p.m. Information may be obtained from Joe Pat Davis or Linda S. Haynes, P.O. Box 1339, Greenville, Texas 75401, (214) 454-3510.

The Lamar County Appraisal District, Appraisal Review Board, will meet in the District Office, 1523 Lamar Avenue, Paris, on December 12, 1988, at 9 a.m. Information may be obtained from Betty Hanna, 1525 Lamar Avenue, Paris, Texas 75460, (214) 785-7822.

The Lavaca County Central Appraisal District, Board of Directors, will meet at the Appraisal District, 113 North Main, Hallettsville, on December 12, 1988, at 4 p.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396.

The Liberty County Central Appraisal, Board of Directors, will meet at 1820 Sam Houston, Liberty, on December 14, 1988, at 9:30 a.m. The Appraisal Review Board will meet at the same location on December 15, 1988, at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575.

The North Plains Water District, Board of Directors, will meet at the District Office, 603 East First Street, Dumas, on December 12, 1988, at 10 a.m. Information may be obtained from Richard S. Bower, Box 795, Dumas, Texas 79029, (806) 935-6401.

The Pecan Valley Mental Health Mental Retardation Region, Board of Trustees, met for an agenda revision at the Pecan Valley MHMR Region Clinical Office, 104 Charles Street, Granbury, on December 7, 1988, at 8 a.m. Information may be obtained from Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401, (817) 965-7806.

The Rusk County Appraisal District, Board of Directors, met in the Administrative Offices, 107 North Van Buren, Henderson, on December 8, 1988, at 1:30 p.m. Information may be obtained from Melvin R. Cooper, P.O. Box 7, Henderson, Texas 75653-0007, (214) 657-9698.

The Central Appraisal District of Taylor County, Board of Directors, met at 340 Hickory Street, Abilene, on December 7, 1988, at 3:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381.

TRD-8812312



Meetings Filed December 5, 1988

The Tax Appraisal District of Bell County, Board of Directors, will meet in the Tax Appraisal District Building, 411 East Central, Belton, on December 14, 1988, at 7 p.m. Information may be obtained from Mike Watson, P.O. Box 390, Belton, Texas 76513-0390, (817) 939-5841, ext. 29.

The Education Service Center, Region III, Board of Directors, will meet at 1905 Leary Lane, Victoria, on December 12, 1988, at 1 p.m. Information may be obtained from Julius D. Cano, 1905 Leary Lane, Victoria, Texas 77901.

The Education Service Center, Board of Directors, will meet in the Boardroom, ESC Region XVII, 1111 West Loop 289, Lubbock, on December 16, 1988, at 10 a.m. Information may be obtained from Weldon E. Day, 1111 West Loop 289, Lubbock, Texas 79416, (806) 792-4000.

The Ellis County Appraisal District, met at 406 Sycamore Street, Waxahachie, on December 8, 1988, at 7 p.m. Information may be obtained from Russell A. Garrison, P.O. Box 878, Waxahachie, Texas, (214) 937-3552.

The Gregg Appraisal District, Appraisal Review Board, will meet at 201 Gilmer Road, Longview, on December 15, 1988, at 9 a.m. Information may be obtained from William T. Carroll, P.O. Box 6700, Longview, Texas 75608, (214) 759-0015.

The Hockley County Appraisal District, Board of Directors, will meet at K'Bob's Steak House, 106 College, Levelland, on December 12, 1988, at 6 p.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654.

The Appraisal District of Jones County, Board of Directors, will meet at the District Office, 1137 East Court Plaza, Anson, on December 15, 1988, at 8 a.m. Information may be obtained from John Steele.

The Lower Neches Valley Authority, Insurance Committee, will meet at the LNVA Office Building, 7850 Eastex Highway, Beaumont, on December 13, 1988, at 1:30 p.m. The Finance Committee will meet at the same location, on the same date, at 2 p.m. Information may be obtained from A.T. Hebert, Jr., P.O. Drawer 3464, Beaumont, Texas 77704, (409) 892-4011.

The Palo Pinto Appraisal District, Board of Directors, will meet at the Courthouse, Palo Pinto, on December 14, 1988, at 3 p.m. Information may be obtained from Jack Samford, P.O. Box 250, Palo Pinto, Texas 76072.

The Sabine Valley Regional MHMR Center, Board of Trustees, met in emergency session in the Administration Building, 107 Woodbine Place, Longview, on December 5, 1988, at noon. Information may be obtained from Ron Cookston, P.O. Box 6800, Longview, Texas 75608, (214) 758-2471.

The San Antonio River Industrial Development Authority, Board of Directors, will meet at the SARA General Offices, 100 East Guenther Street, San Antonio, on December 14, 1988, at 11 a.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0028, (512) 227-1373.

The Tarrant Appraisal District, Board of Directors, will meet at 2301 Gravel Road, Fort Worth, on December 9, 1988, at 9 a.m. Information may be obtained from Olive Miller, (817) 595-6005.

The Texas Regional Planning Commissions' Employee Benefit Plan Agency, Board of Trustees, will meet at 702 Rio Grande, Austin, on December 13, 1988, at 1:30 p.m. Information may be obtained from Gloria C. Arriaga, 118 Broadway, Suite 400, San Antonio, Texas 78205, (512) 225-5201.

The Upshur County Appraisal District, Board of Directors, will meet at the District Office, Warren and Trinity Streets, Gilmer, on December 12, 1988, at 1 p.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644, (214) 843-3041.

The Upper Leon River Municipal Water District, Board of Directors, will meet at the General Office at the Filter Plant, Proctor Lake, on December 15, 1988, at 6:30 p.m. Information may be obtained from Gary Godfrey, Box 67, Comanche, Texas, (817) 879-2258.

The Wise County Appraisal District, Appraisal Review Board, will meet at 206 South State Street, Decatur, on December 14, 1988, at 9:30 a.m. Information may be obtained from Freddie Dempsey, 206 South State Street, Decatur, Texas 76234, (817) 627-3081.

TRD-8812390



Meetings Filed December 6, 1988

The Capitol Area Planning Council, General Assmebly Annual Meeting, will be held at the Austin South Plaza Hotel, Austin, on December 13, 1988, at 11 a.m. Information may be obtained from Richard G. Bean.

TRD-8812426





10

Name: Christine Kuykendall

Grade: 10

School: Burnet High, Burnet

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture Notice of Bid Opening

On Friday, December 9, 1988, at 9 a.m., the Texas Department of Agriculture, Family Farm and Ranch Security Program of the Marketing Division, will open sealed bids received on land located in Falls County in the Ninth Floor Conference Room, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. For further information contact Mike Miller, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711, (512) 463-7574.

Issued in Austin, Texas on December 1, 1988.

TRD-8812394 Dolores Alvarado Hibbs
Director of Hearings
Texas Department of Agriculture

Filed: December 5, 1988

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

Texas Department of Banking Notice of Applications

Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a state bank to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the commissioner.

On November 30, 1988, the banking commissioner received an application to acquire control of Continental Trust Company, Dallas, by Miles Production Company, Dallas.

Additional information may be obtained from: William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-4451.

Issued in Austin, Texas on November 30, 1988.

TRD-8812299 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: December 1, 1988

For further information, please call (512) 479-1200

Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a bank to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the commissioner.

On November 15, 1988, the banking commissioner received an application to acquire control of The First State Bank, Celina, by Jerry B. Willard, Celina.

On December 1, 1988, notice was given that the application would not be denied.

Additional information may be obtained from William F.

Aldridge, 2601 North Lamar, Austin, Texas 78705, (512) 479-1200

Issued in Austin, Texas on December 1, 1988.

TRD-8812347 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: December 2, 1988

For further information, please call (512) 479-1200

The hearing officer of the State Banking Board will conduct a hearing on Monday, January 9, 1989, at 9 a.m., at 2601 North Lamar Boulevard, Austin, on the change of domicile application for Central Bank of Houston, Houston.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas on November 28, 1988.

TRD-8812265 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: December 1, 1988

For further information, please call (512) 479-1200

Texas Department of Commerce Weekly Report on the 1988 Allocation of the State Ceiling on Certain Private Activity Bonds

The Tax Reform Act of 1986 (the Tax Act) imposes a volume ceiling on the aggregate principal amount of private activity bonds that may be issued within the State of Texas during any calendar year. The state ceiling for Texas, imposed by the Tax Act for calendar year 1988 is \$834,100,000.

State legislation, Senate Bill 1382, Chapter 1092, Acts of the 70th Legislature, (the Act), established the allocation process for the State of Texas. The Act specifies that prior to October 1, one-third of the state ceiling is to be made available to the Texas Housing Agency. One-fourth of the state ceiling is available to state-voted issues, and the balance of the state ceiling is available for all other issuers of bonds requiring an allocation. On and after October 1, that portion of the state ceiling available for reservations shall become available to any issuer for any bonds requiring an allocation.

Generally, the state ceiling is allocated on a first-come, first-served basis, with the Texas Department of Commerce (the department) administering the allocation system.

The information that follows is a weekly report of the

allocation activity for the period, November 21, 1988-November 25, 1988.

Weekly report on the 1988 allocation of the state ceiling on certain private activity bonds as pursuant to Senate Bill 1382.

Total amount of the \$834,100,000 state ceiling remaining unreserved as of November 25, 1988: \$0.

Comprehensive listing of bond issues which have received a reservation date pursuant to the Act from November 21, 1988-November 25, 1988: Sunbelt Industrial Development Corporation, Gohman Asphalt and Construction of Texas, Inc., Asphalt Manufacturer, \$1,500,115.

Comprehensive listing of bonds issued and delivered as pursuant to the Act from November 21, 1988-November 25, 1988: The Southeast Texas Housing Finance Corporation, Eligible Borrowers, Qualified Mortgage Bonds, \$39,999, 943; City of El Paso Industrial Development Authority, Inc., Isomedix Operations, Inc., Manufacturer (Radiation Sterilization of Medical Products, \$8,000,000).

Note: The Southeast Texas Housing Finance Corporation closed bonds at \$58 lower than the reserved amount of state ceiling.

Issued in Austin, Texas on November 29, 1988.

TRD-8812262 J. William Lauderback
Executive Director
Texas Department of Commerce

Filed: December 1, 1988

For further information, please call (512) 472-5059



Comptroller of Public Accounts Correction of Error

The Comptroller of Public Accounts submitted an emergency amendment which contained an error as published in the November 22, 1988, issue of the *Texas Register* (13 TexReg 5809).

In §3.292, old subparagraph (b)(1)(C) should be bracketed for deletion as follows: "[C) Persons in the business of selling tires, batteries, shock absorbers, and mufflers are not repairing property when these items are sold and installed, regardless of whether the work is performed pursuant to a lump-sum contract..."

The Comptroller of Public accounts also submitted an emergency amendment which contained an error as published in the November 25, 1988, issue of the *Texas Register* (13 TexReg 5872).

The expiration date for §3.548 should read: "Expiration date: March 16, 1989."



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).

| <u>Type of Rate Ceilings</u> | <u>Effective Period (Dates are Inclusive)</u> | <u>Consumer⁽³⁾/Agri- cultural/Commercial⁽⁴⁾ thru \$250,000</u> | <u>Commercial⁽⁴⁾ over \$250,000</u> |
|--|---|--|--|
| Indicated (Weekly) Rate - Art. 1.04(a)(1) | 12/05/88-12/11/88 | 18.00% | 18.00% |
| Monthly Rate Art. 1.04(c) ⁽¹⁾ | 12/01/88-12/31/88 | 18.00% | 18.00% |
| Standard Quarterly Rate - Art. 1.04(a)(2) | 01/01/89-03/31/89 | 18.00% | 18.00% |
| Retail Credit Card Quarterly Rate - Art. 1.11 ⁽³⁾ | 01/01/89-03/31/89 | 18.00% | N.A. |
| Lender Credit Card Quar- terly Rate - Art. 15.02(d) ⁽³⁾ | 01/01/89-03/31/89 | 15.17% | N.A. |
| Standard Annual Rate - Art. 1.04(a)(2) ⁽²⁾ | 01/01/89-03/31/89 | 18.00% | 18.00% |
| Retail Credit Card Annual Rate - Art. 1.11 ⁽³⁾ | 01/01/89-03/31/89 | 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: | 01/01/89-03/31/89 | 18.00% | N.A. |
| Judgment Rate - Art. 1.05, Section 2 | 12/01/88-12/31/88 | 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 November 28, 1988.

TRD-8812272 Al Endsley
Consumer Credit Commissioner

Filed: December 1, 1988

For further information, please call: (512) 479-1280

◆ ◆ ◆
Texas Department of Corrections
Request for Indication of Interest

The Texas Department of Corrections (TDC) hereby requests all interested parties desiring to supplement the existing TDC/University of Texas Medical Branch at Galveston (UTMB) health care delivery system to submit a proposal for delivery of contractual health care and medical services to sick and injured inmates of the TDC.

Within one or more entire geographical service areas, the contractor will be expected to provide or arrange a level of care that will meet or exceed the applicable standards of the National Commission on Correctional Health Care (NCCHC); shall ensure that hospital providers are certified under the Social Security Act, Title XVII (Medicare) as amended, and are accredited by the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) as a hospital; must document a formal affiliation with an accredited Texas School of medicine or osteopathic medicine; and provide required services to TDC inmates that will comply with federal constitutional standards and applicable court orders. Where there exist differences between the court requirements and the standards, the higher standard, as defined by the TDC, shall prevail.

The provider shall render professional services necessary for the care of inmate patients. These services may include any or all of the following as required by TDC:

1. level 3 emergency room care as defined by the JCAHO;

2. acute-care hospitalization, both emergency and elective, on a referral basis from TDC. Services provided will include all services routinely available to all inmate patients at the TDC Hospital at Galveston, to include those inmate patients with psychiatric illness who require hospitalization primarily for a coexistent medical or surgical problem rather than their psychiatric illness; and

specialty ambulatory consultative services routinely available at the UTMB provided either on-site at TDC units or at an acceptable ambulatory care facility in response to referrals from TDC.

For the purposes of submitting a proposal, the following geographical service areas (GSA) are defined.

1. Area 1: Texas planning regions 1, 2, 7, 8, 9, and 10 (Panhandle, South Plains, Permian Basin, West Texas, West Central Texas, and Concho Valley).

2. Area 2: Texas planning regions 3, 4, 5, 6, and 22 (East Texas, Nortex, Texoma, Ark-Tex, and North Central Texas).

3. Area 3: Texas planning regions 11, 12, 13, and 23 (Heart of Texas, Central Texas, Capital Area, and Brazos Valley).

4. Area 4: Texas planning regions 14, 15, 16, and 17 (Houston-Galveston, Southeast Texas, Deep East Texas, and Golden Crescent).

An informative conference for eligible and interested

parties will be held at 10 a.m., Monday, December 19, 1988, 815 11th Street, Room 103, Huntsville. Copies of the solicitation document may be obtained by writing to James Riley, Assistant Director for Health Services, Texas Department of Corrections, P.O. Box 99, Huntsville, Texas 77342-0099, attention: TDC Health Care Proposal.

Issued in Austin, Texas on November 30, 1988

TRD-8812386 Michael R. Davis
Assistant General Counsel
Texas Department of Corrections

Filed: December 2, 1988

For further information, please call (409) 294-6003

◆ ◆ ◆
Texas Department of Health
Intent to Revoke Radioactive Material Licenses

The Bureau of Radiation Control, Texas Department of Health, filed complaints against the following licensees for failure to pay fees pursuant to *Texas Regulations for Control of Radiation* (TRCR) 13.8:

(1) Tri-City Testing, Inc., Route 3, Box 167, Killeen, Texas 76541 Radioactive Material License Number 6-3718;

(2) Campbell Testing Services, Inc., 6142 South Loop East, Houston, Texas 77087, Radioactive Material License Number 11-3869;

(3) B. W. Henderson, 1023 Mound Street, Suite A, Nacogdoches, Texas 75961, Radioactive Material License Number 10-3519;

(4) Lee Memorial Hospital, 898 East Richmond, Giddings, Texas 78942 Radioactive Material License Number L03495;

(5) Nueces Inspection Company, P.O. Box 1176, Corpus Christi, Texas 78403, Radioactive Material License Number L03038;

(6) Southwest Imaging Center, Incorporated, 1501 Arizona, Building #9, El Paso, Texas 79902, Radioactive Material License Number 3-3453;

(7) Apache Services, Incorporated, P.O. Box 3347, Odessa, Texas 79769, Radioactive Material License Number L01754;

(8) Yellow Jacket Wireline, 7710 West University, Odessa, Texas 79762, Radioactive Material License Number 12-3369;

(9) International Testing Laboratories, ESCO Industries, Incorporated, 3401 Montana Avenue, El Paso, Texas 79925, Radioactive Material License Number 3-3279;

(10) Gerald Bauer Well Logging Company, P.O. Box 2096, Corsicana, Texas 75110, Radioactive Material License Number 5-3436;

(11) Espey, Huston and Associates, Inc., P.O. Box 519, Austin, Texas 78767, Radioactive Material License Number L02937;

(12) Able X-Ray, 16410 Sunshine Avenue, Houston, Texas 77049, Radioactive Material License Number 11-3265.

The agency intends to revoke the radioactive

material licenses, order the licensees to cease and desist use of 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 certificates 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 or if the fee is not paid, the certificates 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, from 8 a.m. to 5 p. m., Monday-Friday (except holidays).

Issued in Austin, Texas, on December 1, 1988.

TRD-8812275

Robert A. MacLean, M.D.
Deputy Commissioner for Professional
Services
Texas Department of Health

Filed: December 1, 1988

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:

| <u>Location</u> | <u>Name</u> | <u>License#</u> | <u>City</u> | <u>ment #</u> | <u>Action</u> |
|------------------|--------------------------------|-----------------|-----------------|---------------|---------------|
| College Station | O. I. Corporation | L04238 | College Station | 0 | 10/27/88 |
| El Paso | Probe Testing Laboratory, Inc. | L04241 | El Paso | 0 | 11/09/88 |
| Lubbock | Crisp Vineyards | L04207 | Lubbock | 0 | 10/27/88 |
| Throughout Texas | Western Waste Industries | L04230 | Conroe | 0 | 10/25/88 |

AMENDMENTS TO EXISTING LICENSES ISSUED:

| <u>Location</u> | <u>Name</u> | <u>License#</u> | <u>City</u> | <u>ment #</u> | <u>Action</u> |
|-----------------|--------------------------------------|-----------------|----------------|---------------|---------------|
| Abilene | Abilene Christian University | L01460 | Abilene | 13 | 10/28/88 |
| Abilene | Hendrick Medical Center | L02433 | Abilene | 21 | 10/28/88 |
| Alvin | Amoco Chemical Corporation | L01422 | Alvin | 38 | 11/08/88 |
| Austin | Radian Corporation | L01692 | Austin | 25 | 10/26/88 |
| Beaumont | Syncor International Corporation | L02987 | Beaumont | 16 | 11/07/88 |
| Bonham | Northeast Medical Center | L03331 | Bonham | 6 | 11/04/88 |
| Dallas | Texas Instruments, Inc. | L00946 | Dallas | 45 | 10/28/88 |
| Dallas | Humana Hospital Medical City Dallas | L01976 | Dallas | 51 | 10/28/88 |
| Dallas | Theratronics International Limited | L02623 | Dallas | 10 | 11/03/88 |
| Denison | Texoma Medical Center | L01624 | Denison | 25 | 11/09/88 |
| Denison | Texoma Medical Center | L01600 | Denison | 15 | 11/09/88 |
| Denton | Numed, Inc. | L02129 | Denton | 39 | 11/09/88 |
| Dinero | Everest Exploration, Inc. | L03068 | Corpus Christi | 13 | 11/04/88 |
| Fort Worth | X-Ray Equipment Company | L01485 | Fort Worth | 17 | 10/26/88 |
| Galena Park | Gulf Materials Recycling Corporation | L02734 | Galena Park | 7 | 11/02/88 |
| Hobson | Everest Exploration, Inc. | L03626 | Corpus Christi | 5 | 11/04/88 |
| Hobson | Everest Exploration, Inc. | L02663 | Corpus Christi | 14 | 11/04/88 |
| Houston | IMAGENTS, Inc. | L04107 | Houston | 5 | 10/26/88 |
| Houston | Lyondell Petrochemical Company | L00187 | Houston | 30 | 10/28/88 |
| Houston | Spring Branch Memorial Hospital | L02473 | Houston | 15 | 11/04/88 |
| Houston | Sun Belt Regional Medical Center | L03306 | Houston | 5 | 10/28/88 |
| Houston | The Methodist Hospital | L00457 | Houston | 57 | 11/03/88 |
| Houston | Baylor College of Medicine | L00680 | Houston | 30 | 11/07/88 |
| Houston | Interesin Corporation | L03982 | Houston | 2 | 11/07/88 |

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

| | | | | | |
|--------------|-------------------------|--------|--------------|----|----------|
| Houston | Memorial Care System | L00439 | Houston | 36 | 11/09/88 |
| Kingsville | URI, Inc. | L03653 | Dallas | 3 | 11/04/88 |
| Mont Belvieu | Exxon Chemical Americas | L03119 | Mont Belvieu | 11 | 10/27/88 |
| Orange | Polysar Gulf Coast Inc. | L00976 | Orange | 25 | 11/07/88 |

| | | | | | |
|------------------|---|--------|---------------|----|----------|
| Palestine | Trinity Valley Medical Center | L04137 | Palestine | 3 | 10/28/88 |
| Paris | Radiology Incorporated | L00458 | Paris | 39 | 11/04/88 |
| Paris | Radiology, Inc. | L00459 | Paris | 16 | 11/04/88 |
| Pasadena | Technical Welding Laboratory, Inc. | L02187 | Pasadena | 46 | 10/28/88 |
| Refugio | MIDA Electric Wireline, Inc. | L03145 | Refugio | 7 | 10/27/88 |
| Richmond | Cooper Industries, Inc. | L00312 | Richmond | 28 | 10/28/88 |
| Rockdale | Richards Memorial Hospital | L03218 | Rockdale | 7 | 11/07/88 |
| San Antonio | National Health Laboratories | L02112 | San Antonio | 8 | 11/03/88 |
| San Antonio | Village Oaks Regional Hospital | L03810 | San Antonio | 4 | 11/09/88 |
| Throughout Texas | BLX Testing Laboratories | L02143 | Baytown | 33 | 10/28/88 |
| Throughout Texas | GCT Inspection, Inc. | L02378 | South Houston | 19 | 10/28/88 |
| Throughout Texas | Sivalls, Inc. | L02298 | Odessa | 14 | 10/28/88 |
| Throughout Texas | Applied Standards Inspection, Inc. | L03072 | Beaumont | 16 | 10/28/88 |
| Throughout Texas | Houston Department of Health and Human Services | L00149 | Houston | 36 | 10/28/88 |
| Throughout Texas | Amber Well Completion Rentals Inc. | L03267 | Austin | 6 | 10/27/88 |
| Throughout Texas | NL Sperry-Sun, Inc. | L02603 | Houston | 25 | 10/31/88 |
| Throughout Texas | Core Laboratories, Inc. | L02975 | Houston | 15 | 10/27/88 |
| Throughout Texas | Roofing Survey Service | L03862 | San Antonio | 1 | 11/03/88 |
| Throughout Texas | Texas Department of Health | L01155 | Austin | 34 | 10/27/88 |
| Throughout Texas | Suntrac Services, Inc. | L03062 | Webster | 4 | 10/21/88 |
| Throughout Texas | Exploration Logging of U.S.A. Inc. | L03258 | Houston | 7 | 10/27/88 |
| Throughout Texas | Permian Non-Destructive Testing | L03683 | Odessa | 10 | 10/28/88 |
| Throughout Texas | McClelland Engineers, Inc. | L00058 | Houston | 29 | 10/28/88 |
| Throughout Texas | Midland Inspection Incorporated | L03724 | Midland | 12 | 11/08/88 |
| Throughout Texas | Southern Services, Inc. | L02683 | Lake Jackson | 19 | 11/08/88 |
| Throughout Texas | American Inspection Company, Inc. | L04073 | Beaumont | 3 | 11/08/88 |
| Throughout Texas | Baker Sand Control | L03272 | Liverpool | 5 | 11/07/88 |
| Throughout Texas | Pro-Log | L01828 | Denver City | 11 | 11/09/88 |
| Throughout Texas | Wood Group Wireline Products, Inc. | L00747 | Fort Worth | 43 | 11/08/88 |
| Throughout Texas | International Digital Modeling Corp. | L04113 | Pflugerville | 3 | 11/10/88 |
| Tyler | The University of Texas at Tyler | L02785 | Tyler | 4 | 11/04/88 |
| Victoria | Citizens Medical Center | L00283 | Victoria | 43 | 11/09/88 |
| Wadsworth | Houston Lighting and Power Company | L04222 | Wadsworth | 1 | 11/08/88 |

RENEWALS OF EXISTING LICENSES ISSUED:

| Location | Name | License# | City | ment # | Action |
|---------------|-------------------------------------|----------|------------------|--------|----------|
| Abilene | Abilene State School | L02797 | Abilene | 3 | 11/08/88 |
| Amarillo | Southwestern Public Service Company | L01981 | Amarillo | 22 | 10/26/88 |
| Columbus | Columbus Community Hospital | L03508 | Columbus | 4 | 11/04/88 |
| Cypress | Halliburton Company | L03489 | Duncan, Oklahoma | 7 | 10/25/88 |
| Dallas | Dallas Laboratories, Inc. | L01133 | Dallas | 8 | 10/25/88 |
| Deer Park | SGS Control Services, Inc. | L02901 | Deer Park | 3 | 10/27/88 |
| Harlingen | Valley Co-op Oil Mill | L02908 | Harlingen | 2 | 10/27/88 |
| Houston | Parkway Hospital | L01964 | Houston | 22 | 11/07/88 |
| New Braunfels | The McKenna Memorial Hospital | L02429 | New Braunfels | 12 | 11/04/88 |

RENEWALS OF EXISTING LICENSES ISSUED CONTINUED:

| | | | | | |
|------------------|-----------------------------------|--------|-------------|----|----------|
| Port Arthur | Fina Oil and Chemical Company | L03498 | Port Arthur | 5 | 10/25/88 |
| Throughout Texas | Richardson Associates | L02869 | Dallas | 7 | 10/27/88 |
| Throughout Texas | Superior Production Logging, Inc. | L01983 | Snyder | 27 | 10/27/88 |
| Throughout Texas | Cotton's Inspection Service, Inc. | L02869 | Odessa | 9 | 10/24/88 |

TERMINATIONS OF LICENSES ISSUED:

| <u>Location</u> | <u>Name</u> | <u>License#</u> | <u>City</u> | <u>ment #</u> | <u>Action</u> |
|------------------|------------------------------------|-----------------|-------------|---------------|---------------|
| Dallas | Gaston Episcopal Hospital | L03487 | Dallas | 2 | 11/04/88 |
| Houston | City of Jersey Village | L03441 | Houston | 1 | 10/28/88 |
| Texas City | Texas City Civil Defense | L02957 | Texas City | 3 | 10/28/88 |
| Throughout Texas | Guardian Inspection Services, Inc. | L02945 | Casper | 7 | 10/27/88 |

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 November 30, 1988.

TRD-8812266 Robert A. MacLean, M.D.
Deputy Commissioner, Professional
Services
Texas Department of Health

Filed: December 1, 1988

For further information, please call (512) 835-7000.

Notice of Impoundment

Notice is hereby given that V.W. Matlock individually or in any other capacity such as alias registrant or corporate stock holder and any of his agents, assignees, or servants was ordered to immediately surrender to the agency for impoundment all sources or radiation in its possession and such shielding devices as necessary to handle and transport those sources safely. The order was issued because V.W. Matlock had unlawful possession of several sources of radiation and an unspecified number of packages and/or vials containing or contaminated with 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 November 30, 1988.

TRD-8812370 Robert A. MacLean, M.D.
Deputy Commissioner, Professional
Services
Texas Department of Health

Filed: December 2, 1988

For further information, please call (512) 835-7000

Public Hearing

The department will conduct a public hearing on the following municipal solid waste disposal site.

The City of Muenster has filed Application 2124 with the Texas Department of Health for a permit to operate a proposed Type III municipal solid waste site to be located 3.6 miles north-northwest of Muenster, adjacent to and on the east side of County Road 425, 0.5 mile west of FM Road 373, and 0.75 mile north of the intersection of County Roads 425 and 424, in Cooke County.

The site consists of approximately 28.93 acres of land, and is to daily receive approximately 3.5 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 the Knights of Columbus Hall, 403 North Oak Street, Muenster, at 9 a.m. on Tuesday, January 3, 1989. The purpose of the hearing is to receive evidence for and against the issuance of a permit for the aforesaid application. 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 5 office located at 2561 Matlock Road, Arlington, Texas 76015, (817) 460-3032.

Issued in Austin, Texas on December 1, 1988.

TRD-8812273 Robert A. MacLean, M.D.
Deputy Commissioner for Professional
Services
Texas Department of Health

Filed: December 1, 1988

For further information, please call (512) 835-7000.

Request for Proposals

The Texas Department of Health requests proposals from minority community- based organizations and state minority organizations to conduct AIDS education/prevention

projects. Contracts will be awarded for projects that demonstrate effective minority-targeted education and prevention strategies to prevent infection with the Human Immunodeficiency Virus (HIV), the virus which causes Acquired Immune Deficiency Syndrome (AIDS).

Eligible applicants must be either minority community-based organizations or state minority organizations, as follows: (1) a minority community-based organization is a private nonprofit organization with an established record of community service within racial and ethnic minority communities. Such organizations must also show substantial minority input into policy making decisions and the daily execution of the organization's program activities; (2) a state minority organization is a private nonprofit organization with interests and activities that have a predominant minority focus, serve a predominantly minority constituency, and are statewide in scope.

Individuals are not eligible to apply. Also, organizations currently receiving federal funds from the department for AIDS education/prevention among ethnic/racial minorities are not eligible to apply. Organizations which limit prevention activities to the Houston city limits geographic area are not eligible to apply.

A target population is the population for whom the proposed project is directed. Proposals will be considered which address AIDS education/prevention activities for racial/ethnic minority populations which, for the purpose of this grant are defined as Asian Americans, Blacks, Hispanics, and Native Americans. All proposals, addressing AIDS education/prevention activities to the above mentioned racial/ethnic groups, will be considered. Note: Under this announcement, the Texas Department of Health especially encourages proposals targeting Hispanic migrant farmworkers, Asian Americans, native Americans, and minority lesbian/bisexual women.

Pending notification of the award from the Center for Disease Control, the Texas Department of Health intends to fund projects in the range of \$25,000 to \$40,000 per project for a 10-month period in 1989. The specific amount to be funded will depend on the merit and scope of the proposed project and the availability of funds. Under this announcement, it is anticipated that funds will be awarded on March 1, 1989.

Copies of the application kit may be obtained by writing the AIDS Division, Minority AIDS Prevention Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. The deadline for receipt of applications is 5 p.m. (central standard time) January 31, 1989. No proposal received after 5 p.m. January 31, 1989, will be considered for funding under this program. Information on the program content of the application may be obtained from Richard Jimenez, AIDS Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7304.

Issued in Austin, Texas on December 1, 1988.

TRD-8812274 Robert A. MacLean
Deputy Commissioner for Professional
Services
Texas Department of Health

Filed: December 1, 1988

For further information, please call (512) 458-7304.

Rescission of Order

Notice is hereby given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following

order:

Order of revocation issued June 14, 1988, to B. Sotoodeh, M.D., 105 East Laurel off Main, San Antonio, Texas 78212, holder of Radioactive Material License Number L00367.

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 November 30, 1988

TRD-8812371 Robert A. MacLean, M.D.
Deputy Commissioner, Professional
Services
Texas Department of Health

Filed: December 2, 1988

For further information, please call (512) 835-7000

Houston-Galveston Area Council Requests for Proposals

The purpose of this project is to collect and analyze data on residential and employment travel patterns for the North Channel Area of east Harris County. A copy of the detailed scope of work will be furnished upon request. Anyone wishing to submit a proposal must do so by noon, December 19, 1988, at the address listed below.

The proposed professional services contract would involve the development of survey instruments, extracting statistically significant survey instruments, extracting statistically significant survey samples, collecting the survey data, survey data coding and data entry, and selected survey data analysis. Funding for this project will be provided through a grant from the Urban Mass Transportation Administration.

The proposals will be evaluated on the following criteria: comprehension of project requirements and methodologies; qualifications of personnel assigned; demonstrated knowledge of the study area; cost proposal; and previous related work experience.

Further inquiries as to the scope of work should be directed to Janet Kennison, Chief Transportation Planner, Houston-Galveston Area Council, P.O. Box 22777, Houston, Texas 78227. Issued in Houston, Texas, on November 7, 1988.

Issued in Austin, Texas on November 30, 1988.

TRD-8812256 Jack Steele
Executive Director
Houston-Galveston Area Council

Filed: November 30, 1988

For further information, please call (713) 627-3200

Texas Department of Human Services Consultant Contract Award

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Human Services (DHS) announces the award of a consulting contract. The consultant proposal request for this contract was published in the October 21, 1988, issue of the *Texas Register* (13 TexReg 5408).

Description of Services. The purpose of this contract is to provide analysis and programming services to upgrade the current automated food services claims processing system. No reports will be issued.

Name and Address of Consultant. Science Management Corporation, 8300 Professional Place, Suite 300, Landover, Maryland 20785.

Term of Contract and Total Value. The contract period and performance of all services under the contract will be between December 1, 1988 and August 31, 1989. The total amount of this contract is \$4,520. The contract may be amended by mutual agreement of both parties to include tasks not defined, but directly related to claims processing. These tasks may extend beyond August 31, 1989. However, the cost of these tasks will not exceed the hourly rate established by the contract.

Public Comments. Comments or questions regarding this contract should be directed to Dale Peterson, Director, Special Support Section, Financial Systems Division, Texas Department of Human Services, 701 West 51st Street, P.O. Box 2960, Mail Code 815-C, Austin, Texas 78769, (512) 450-4394.

Issued in Austin, Texas on December 2, 1988.

TRD-8812321 Marlin W. Johnston
Commissioner
Texas Department of Human Services

Filed: December 2, 1988

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

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General Land Office

Correction of Error

The General Land Office submitted an adopted section which contained an error as published in the November 25, 1988, issue of the *Texas Register* (13 TexReg 5916).

In §3.11, subparagraph (a)(1)(B) should read: "(B) 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;"

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Texas Department of Public Safety

Consultant Proposal Request

The Texas Department of Public Safety (DPS), in accordance with the provisions of Texas Civil Statutes, Article 6252-11c, solicits to contract with a consultant to assist the DPS with the process of obtaining an automated fingerprint identification system (AFIS) for both central repository and latent applications within the Department of Public Safety and a network of fingerprint access terminals in other law enforcement agencies throughout the state. Similar consulting services critical to the AFIS project have previously been performed by Roland R. Sutfin, Information Systems Engineering, 9250 Wagner Creek Road, Talent, Oregon 97540. The DPS intends to award this contract to the same consultant unless a better offer is submitted.

Project Description. The contractor shall provide technical support throughout the process of obtaining funding for and procuring an AFIS for the State of Texas. In general, the contractor will be required to: assist with obtaining legislative and administrative approval of the AFIS project; support the AFIS proposal evaluation and selection

process; support the benchmark testing program; analyze each prospective vendor's technical proposal and determine the relative ranking for each prospective vendor; attend and participate in a two-day vendor presentation for each prospective vendor and prepare related documentation; provide technical advice to the DPS AFIS coordinator as required throughout the procurement activity including, but not limited to, contract negotiation.

Contact. The complete consultant proposal request may be obtained from H.A. Albert, Chief, Crime Records Division, Texas Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-4143, (512) 465-2077.

Due Date. Proposals will be opened in the Accounting and Budget Control Division of the Texas Department of Public Safety, 5805 North Lamar Boulevard, Austin at 2 p.m. on the 21st calendar day following the date of publication of this announcement. It is the responsibility of the consultant to have proposals in the above stated office at that time. Proposals received late for any reason will be returned unopened. Proposals must be submitted in an envelope furnished for this purpose by the Department of Public Safety.

Evaluation Criteria. Proposals will be evaluated by the Department of Public Safety and selection will be based on experience, cost considerations, and other qualifications as further described in the complete consultant proposal request.

The entity selected should be thoroughly familiar with existing AFIS technology and with AFIS systems currently in use by other law enforcement agencies.

Consultants must submit a resume setting out experience and qualifications along with the proposed bid. Consultants must also include a list of clients for which similar consultant services have been provided.

Issued in Austin, Texas on December 1, 1988.

TRD-8812289 Joe E. Minor
Director
Texas Department of Public Safety

Filed: December 1, 1988

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

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Notice of Amended Consultant Contract

The Texas Department of Public Safety (DPS), in accordance with provisions of Texas Civil Statutes, Article 6252-11c, files this notice of an amended consultant contract.

On March 23, 1988, Roland R. Sutfin, Information Systems Engineering, 9250 Wagner Creek Road, Talent, Oregon 97540, entered into a contract with the DPS to develop a comprehensive proposal for implementing an Automated Fingerprint Identification System (AFIS), for both central repository and latent applications within the DPS, and a network of fingerprint access terminals in other law enforcement agencies throughout the state. The consultant contract award was published in the April 5, 1988, issue of the *Texas Register* (13 TexReg 1619).

On June 21, 1988, the original contract was amended by extending the expiration date to December 5, 1988, and by increasing the total contract price by \$1,984. The amendment was based upon delays in providing information to the consultant and additional services to be provided by Roland R. Sutfin, Information Systems Engineering. The notice of amended consultant contract was published in the July 1, 1988, issue of the *Texas Register* (13 TexReg 3359).

Notice is given that the contract has been amended a second time by extending the expiration date to January 31, 1989, at no increase in total contract price. The amendment is based upon delays in providing information to the consultant and a requirement that the consultant modify the request for proposal (RFP) to reflect a different proposed location and physical layout of the AFIS central site operation.

Issued in Austin, Texas on December 5, 1988.

TRD-8812393 Joe E. Milner
Director
Texas Department of Public Safety

Filed: December 5, 1988

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

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Railroad Commission of Texas
Extension of Rulemaking Comment
Period

The Railroad Commission of Texas, Surface Mining and Reclamation Division, has proposed an amendment to 16 TAC §11.221, concerning self-bonding as regulated by the Coal Mining Regulations, §806.309.

The proposed rulemaking was announced in the August 30, 1988, issue of the *Texas Register* (13 TexReg 4290). The comment period on the proposed rulemaking is being extended until 5 p.m. on Friday, January 6, 1989.

Comments on the proposal may be submitted to Charles E. Evans, Hearings Examiner, Legal Division - Surface Mining, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6843.

Issued in Austin, Texas on December 2, 1988.

TRD-8812330 Ron Reeves
Assistant Director Legal Division - Surface
Mining
Railroad Commission of Texas

Filed: December 2, 1988

For further information, please call (512) 463-7187

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Texas Water Commission
Enforcement Orders

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to the City of Mason, Permit 10670-01, on November 22, 1988, imposing stipulated penalties.

Information concerning any aspect of this order may be obtained by contacting Carlene Lancaster, Enforcement Coordinator, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas on December 2, 1988.

TRD-8812382 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: December 2, 1988

For further information, please call (512) 463-7906

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to the City of Bells, Permit 10126-01, on November 22, 1988, imposing stipulated administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Wendall Corrigan, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas on December 2, 1988.

TRD-8812361 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: December 2, 1988

For further information, please call (512) 463-7906

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Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to the City of Whitehouse, Permit 11222-01, on November 22, 1988, imposing stipulated penalties.

Information concerning any aspect of this order may be obtained by contacting Robin Shaver, Enforcement Coordinator, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas on December 2, 1988

TRD-8812363 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: December 2, 1988

For further information, please call (512) 463-7906

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Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to the City of Seagoville, Permit 10370-01, on November 22, 1988, imposing stipulated administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mark Jordan, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-13087, (512) 463-8069.

Issued in Austin, Texas on December 2, 1988.

TRD-8812385 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: December 2, 1988

For further information, please call (512) 463-7906

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Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

tion is submitted.

An enforcement order was issued to El Paso Products Company, (Rexene Products Company), SWR 30142, on November 22, 1988, assessing \$4,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Andrew Barrett, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-13087, (512) 463-8069.

Issued in Austin, Texas on December 2, 1988.

TRD-8812365 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: December 2, 1988

For further information, please call (512) 463-7906



Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to ABC Asphalt, Inc., on November 22, 1988, imposing stipulated administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mark Jordan, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-13087, (512) 463-8069.

Issued in Austin, Texas on December 2, 1988.

TRD-8812365 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: December 2, 1988

For further information, please call (512) 463-7906



Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Avian Refinishing, on November 30, 1988, assessing \$1,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lisa Montgomery, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-13087, (512) 463-8069.

Issued in Austin, Texas on December 2, 1988.

TRD-8812365 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: December 2, 1988

For further information, please call (512) 463-7906



Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to MainTech International, Inc., SWR 31618, on December 1, 1988, assessing \$14,717 in administrative penalties - \$7,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Lisa Montgomery, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-13087, (512) 463-8069.

Issued in Austin, Texas on December 2, 1988.

TRD-8812365 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: December 2, 1988

For further information, please call (512) 463-7906



Notice of Application for Waste Disposal Permit

Attached are summaries of notices of applications for waste disposal permits issued during the period of November 21-November 23, 1988.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision of the application.

Starlite Village Hospital, Inc., Center Point; evapotranspiration/absorption beds; to be located south-southeast of Center Point, approximately 2,000 feet east of Elm Pass Road and 1 1/2 miles south-southeast of the intersection of State Highways 27 and 408, Kerr County; new; 13449-01.

Harris County Municipal Utility District Number 254, Houston; wastewater treatment facilities; located approximately 2,400 feet east of the intersection of FM Roads 1960 and 149, and 850 feet north of FM Road 1960 on the west side of the F.W.& D. Rock Island Railroad, Harris County; renewal; 12736-01.

William R. Collier, Houston; wastewater treatment facilities; located at 6901 Ramona, Harris County; renewal; 12573-01.

Peek Road Utilities, Inc., and Home Savings of America, Houston; wastewater treatment facilities; located approximately 1,500 feet upstream from the crossing of Loop 610 South and Buffalo Bayou, along the west bank of Buffalo Bayou, Harris County; renewal; 12633-01.

Caney Creek Utilities, Inc., Houston; wastewater treatment facilities; located on Hunters Point Road, on the west bank of Lake Conroe, approximately 3/4 mile north of FM Road 1097, Montgomery County; renewal; 12023-01.

Foundation for the Retarded, Houston; wastewater treatment facilities; to be located approximately four miles north of the intersection of Interstate Highway 10 and FM Road 1458, Waller County; new; 13466-01.

Amycel, Inc., Madisonville; wastewater treatment plant; located adjacent to and on the south side of United States Highway 75, approximately five miles south of the City of Madisonville, Madison County; new; 03045.

Pine Tree Estates, Number 2 Landowner Association, Inc., Keller; wastewater treatment facilities; located approximately 3,500 feet west-southwest of the intersection of United States Highway 377 and Keller-Hicks Road, Tarrant County; renewal; 12536-02.

United States Department of Justice, Federal Bureau of Prisons, (Three Rivers Facility), Three Rivers; treatment plant; located on Federal Bureau of Prisons land, approximately 2,000 feet south of State Highway 72 and eight miles west of the Town of Three Rivers, Live Oak County; new; 13461-01.

Sheffield Water Supply Corporation, Sheffield; treatment plant; located approximately 1,600 feet east of State Highway 349 and 1,600 feet south of United States Highway 290, southeast of the City of Sheffield, Pecos County; amendment; 10916-01.

City of Bells; wastewater treatment facility; located approximately 480 feet northwest of the intersection of United States Highway 69 and FM Road 1897, north of Bells, Grayson County; amendment; 10126-01.

Greens Parkway Municipal Utility District, Houston; wastewater treatment plant; located approximately 5,000 feet east of the intersection of Hardy Road and Greens Road, and 400 feet north of Greens Road, Harris County; amendment; 12754-01.

Jopata Industries, Inc. doing business as Woodloch Development Company, Houston; wastewater treatment plant; located approximately 3/4 mile south-southeast of the intersection of Hardy Road and Aldine Mail Road between Erwin Street and Collins Street, Harris County; amendment 11673-01.

City of Hitchcock; wastewater treatment plant; located approximately one mile south of the intersection of State Highway 6 and FM Road 519, Galveston County; amendment; 10690-01.

City of Point Comfort; wastewater treatment facilities; located at the intersection of Hamilton and Pease Streets and approximately 1/4 mile west of FM Road 1593, Calhoun County; renewal; 10599-01.

Texas Utilities Electric Company, Dallas; steam electric station; located adjacent to Eagle Mountain Lake, approximately 10 miles northwest (via FM Road 1220) of the City of Forth Worth, Tarrant County; renewal; 00550.

Harris County Municipal Utility District 238, Houston; wastewater treatment facilities; located approximately one mile north of the intersection of Saums road and Barker-Cypress Road, approximately 2.1 miles north-northwest of the intersection of Interstate Highway 10 and Barker-Cypress Road, Harris County; renewal; 12802-01.

Henderson County Municipal Water Authority, Chandler; wastewater treatment facilities; located on Old Noonday Road, approximately 6,000 feet southeast of the intersection of State Highway 31 and FM Road 315, Henderson County; renewal; 11012-01.

Sneaky Petes Restaurant and Club, Inc., Grapevine; extended aeration treatment plant; located at one Eagle Point Drive, which is approximately 3/4 mile north and 3/8 mile east of the intersection of Interstate Highway 35E and FM Road 407, north of the City of Lewisville, Denton County; new; 03036.

Chambo Inc. doing business as Brazos Construction Materials, Houston; sand and gravel plant; located adjacent to the Brazos River at River Mile 137.5 and approximately 3.5 miles northwest of the Town of Simonton, Fort Bend County; amendment; 02624.

International Paper Company, New Boston; lumber mill; located adjacent to and on the north side of United States Highway 82, on a 208 acre site approximately two miles east of the Town of New Boston, Bowie County; amendment; 02776.

Harris County Municipal Utility District 148, Houston; wastewater treatment facilities; located at 11750 Currin Forrest Drive, approximately 1,600 feet south-southeast of the intersection of North Lake Houston Parkway and Kings Lake Forest Drive, Harris County; renewal; 11818-01 (amended notice).

Sam L. Bishkin doing business as Eltex Chemical and Supply Company, Houston; facility which reclaims paint solvents; to be located at 4050 Hornestead Road in the City of Houston, Harris County; new; 03047.

Cominco American Incorporated, Borger; fertilizer plant; located on company property 788 feet south of the north line, and 947 feet west of the east line of Section 25, Block Y, of the Arnold and Barrett Survey Abstract Number 5, approximately two miles southwest of the City of Borger, Hutchinson County; (35 degrees 38'42" north latitude, 101 degrees 24'49" west longitude); new; WDW-274.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 130387, Austin, Texas 78711, (512) 463-7905.

Issued in Austin, Texas on November 30, 1988.

TRD-8812221 Gloria A. Vasquez
 Notices Coordinator
 Texas Water Commission

Filed: November 30, 1988

For further information, please call (512) 463-7906

