

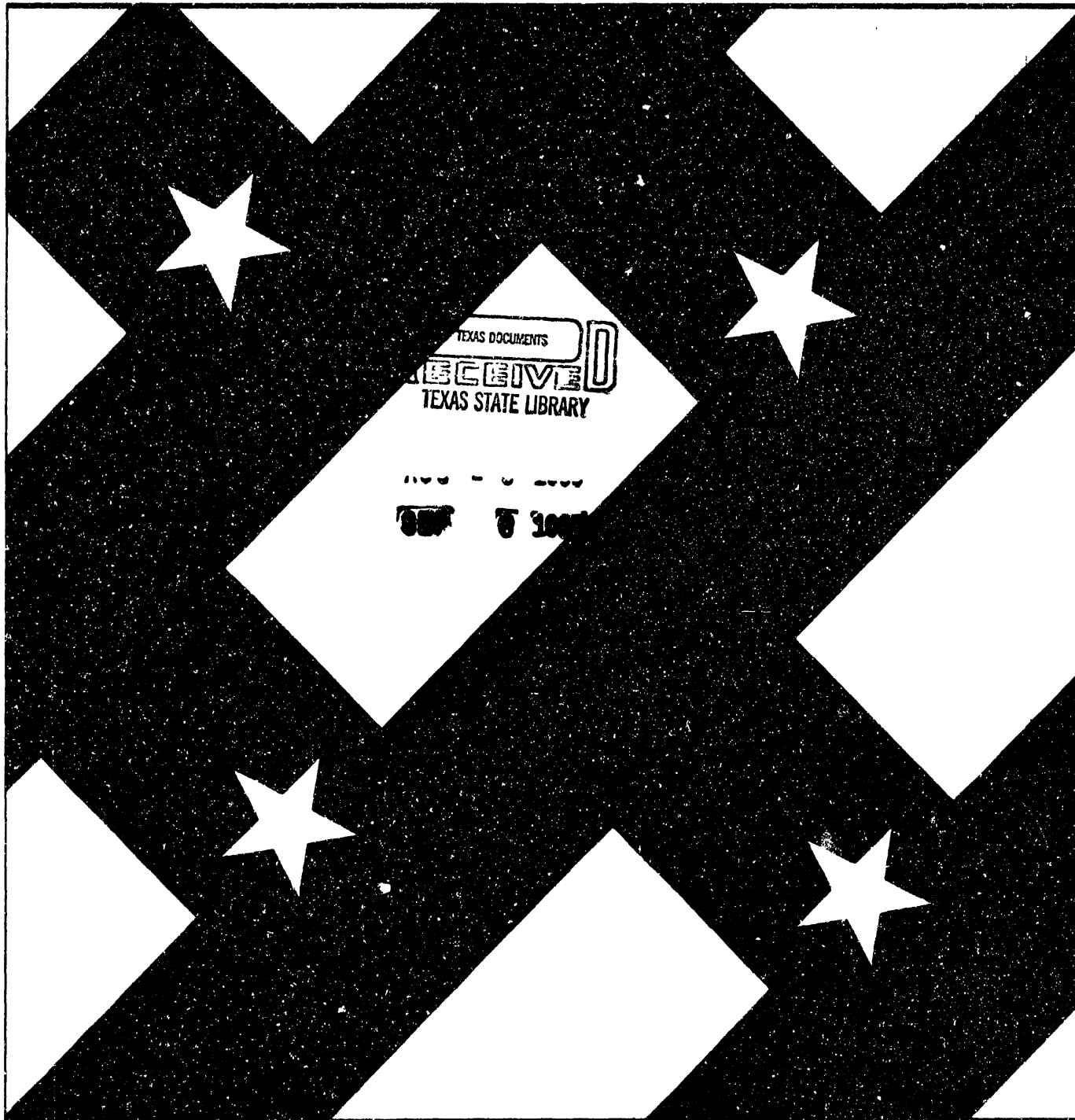
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Texas Register

Volume 10, Number 66, September 6, 1985

Pages 3343 - 3392



Highlights

The Texas Department of Health adopts an emergency new section concerning ambulatory surgical centers. Effective date - September 1.....page 3345

The Texas Department of Health adopts

an emergency new section concerning abortion facilities. Effective date - September 1.....page 3345

The Texas Air Control Board adopts with changes amendments to sections concerning volatile organic compounds. Effective date - September 18.....page 3373

Office of
the Secretary
of State

Texas Register

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Emergency

Rules

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

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

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 135. Ambulatory Surgical Centers

★ 25 TAC §135.1

The Texas Department of Health adopts on an emergency basis new §135.1, concerning fees. The section covers initial and renewal licensing fees for ambulatory surgical centers. The emergency status is necessary because House Bill 2091, Article 16, §3 and §5, 69th Legislature, 1985, requires the Texas Board of Health to establish these fees by rule effective September 1, 1985. Therefore, to have a fee rule in effect on September 1, 1985, the board is adopting this section on an emergency basis.

The section is adopted on an emergency basis under House Bill 2091, Article 16, §3 and §5, 69th Legislature, 1985, which authorizes the Texas Board of Health to set license fees and to adopt rules covering ambulatory surgical centers, and Article 6252-13a, §5(d), which authorizes the board to adopt emergency rules.

§135.1. Fees.

(a) The Texas Board of Health has established the following schedule of fees for licensure as an ambulatory surgical center:

- (1) initial license fee—\$1,000;
- (2) renewal license fee—\$1,000.

(b) The department will not consider an application as officially submitted until the applicant pays the application fee. The fee must accompany the application form.

(c) Fees paid to the department are not refundable.

(d) Any remittance submitted to the department in payment of a required fee must be in the form of a certified check or money order or personal check and made out to the Texas Department of Health.

(e) The board shall make periodic reviews of its fee schedule and make any adjustments necessary to provide funds to meet its expenses without creating an unnecessary surplus. Such adjustments shall be through section amendments.

Issued in Austin, Texas, on August 30, 1985.

TRD-857885

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Effective date: September 1, 1985
Expiration date: December 30, 1985
For further information, please call
(512) 458-7245.

★ ★ ★

Chapter 137. Birthing Centers

★ 25 TAC §137.1

The Texas Department of Health adopts on an emergency basis new §137.1, concerning fees. The section covers initial and renewal licensing fees for birthing centers. The emergency status is necessary because House Bill 2091, Article 17, §3 and §5, 69th Legislature, 1985, requires the Texas Board of Health to establish these fees by rule, effective September 1, 1985. Therefore, to have a fee rule in effect on September 1, 1985, the board is adopting this section on an emergency basis.

The new section is adopted on an emergency basis under House Bill 2091, Article 17, §3 and §5, 69th Legislature, 1985, which authorizes the Texas Board of Health to set license fees and to adopt rules covering birthing centers, and Article 6252-13a, §5(d), which authorizes the board to adopt emergency rules.

§137.1. Fees.

(a) The Texas Board of Health has established the following schedule of fees for licensure as a birthing center:

- (1) initial license fee—\$300;
- (2) renewal license fee—\$300.

(b) The department will not consider an application as officially submitted until the applicant pays the application fee. The fee must accompany the application form.

(c) Fees paid to the department are not refundable.

(d) Any remittance submitted to the department in payment of a required fee must be in the form of a certified check or money order or personal check and made out to the Texas Department of Health.

(e) The board shall make periodic reviews of its fee schedule and make any adjustments necessary to provide funds to meet its expenses without creating an unnecessary surplus. Such adjustments shall be through section amendments.

Issued in Austin, Texas, on August 30, 1985.

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Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

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Expiration date: December 30, 1985
For further information, please call
(512) 458-7245.

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Chapter 139. Abortion Facilities

★ 25 TAC §139.1

The Texas Department of Health adopts on an emergency basis new §139.1, concerning fees. The section covers initial and renewal licensing fees for abortion facilities. The emergency status is necessary because House Bill 2091, Article 20, §3 and §6, 69th Legislature, 1985, requires the Texas Board of Health to establish these fees by rule, effective September 1, 1985. Therefore, to have a fee rule in effect on September 1, 1985, the board is adopting this section on an emergency basis.

The new section is adopted on an emergency basis under House Bill 2091, Article 20, §3 and §6, 69th Legislature, 1985, which authorizes the Texas Board of Health to set license fees and to adopt rules covering abortion facilities, and Article 6252-13a, §5(d), which authorizes the board to adopt emergency rules.

§139.1. Fees.

(a) The Texas Board of Health has established the following schedule of fees for licensure as an abortion facility:

- (1) initial license fee—\$1,000;
- (2) renewal license fee—\$1,000.

(b) The department will not consider an application as officially submitted until the applicant pays the application fee. The fee must accompany the application form.

(c) Fees paid to the department are not refundable.

(d) Any remittance submitted to the department in payment of a required fee must be in the form of a certified check or money order or personal check and made out to the Texas Department of Health.

(e) The board shall make periodic reviews of its fee schedule and make any adjustments necessary to provide funds to meet its expenses without creating an unnecessary surplus. Such adjustments shall be through section amendments.

Issued in Austin, Texas, on August 30, 1985.

TRD-857800

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

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Expiration date: December 30, 1985
For further information, please call
(512) 458-7245.

★ ★ ★

Chapter 145. Long-Term Care Subchapter B. Minimum Standards for Nursing Homes

★ 25 TAC §145.13

The Texas Department of Health adopts on an emergency basis an amendment to §145.13, concerning general requirements for nursing homes. The amendment covers requirements for the facility to furnish to the department copies of certain records, requirements for facilities to notify residents when a facility is being closed, and requirements for facilities to post publicly certain information and to have other information available for public review.

The amendment is adopted on an emergency basis because House Bill 2091, Article 4, §§2, 5, and 7, 69th Legislature, 1985, requires the department to adopt rules covering inspections, notification of closure, and posting information in nursing homes and related facilities effective September 1, 1985. Therefore, to have rules in effect on September 1, 1985, the department is adopting this amendment on an emergency basis.

The amendment is adopted on an emergency basis under House Bill 2091, Article 4, §§2, 5, and 7, 69th Legislature, 1985, which authorizes the department to adopt rules concerning inspections, notification of closure, and posting information on nursing homes and related facilities; Texas Civil Statutes, Article 4442c, §7, which authorizes the department to adopt minimum licensing standards for nursing homes and related facilities; and Texas Civil Statutes, Article 6252-13a, §5(d), which authorizes the department to adopt emergency rules.

§145.13. General Requirements.

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

(g) Upon request the facility shall make available to the licensing agency representatives copies of any relevant facility documents or records which in the opinion of licensing agency representatives contain evidence of conditions that threaten the health and safety of residents.

(h) In the event any facility licensed under Texas Civil Statutes, Article 4442c, ceases operation, temporarily or permanently, voluntarily or involuntarily, notice shall be provided the residents and residents' relative or responsible party of closure. If the closure is voluntary, notice to residents' relative or responsible party shall be in writing, giving at least seven days' notice for relocation after receipt of notice. In voluntary closure actions, notices shall be provided as required within seven days of ownership's final decision to close. Written notice is waived for involuntary closure; however, the facility remains responsible for verbal notice immediately to patients, relatives or responsible party.

(i) Each licensed facility shall prominently and conspicuously post in one area in the main lobby in a manner that each of the following is directly visible at a single time:

(1) the facility license;

(2) a complaint sign provided by the licensing agency giving the number of the toll-free incoming telephone line and noting that the line is available for both registering complaints and obtaining information concerning the facility;

(3) a notice in a form prescribed by the licensing agency that inspection reports and related reports are available at the facility for public inspection;

(4) a concise summary in nontechnical language prepared by the licensing agency of the most recent inspection report;

(5) a notice in a form prescribed by the licensing agency stating that:

(A) a person has a cause of action against a facility, or the owner or employee of the facility, that suspends or terminates the employment of the person, or otherwise disciplines or discriminates against the person, for reporting the abuse or neglect of a facility patient to the person's supervisors, to the Texas Department of Health, or to a law enforcement agency, in accordance with Texas Civil Statutes, Article 4442c;

(B) a person making a bad faith, malicious or reckless report of abuse or neglect is subject to a criminal penalty, in accordance with Texas Civil Statutes, Article 4442c;

(C) the facility has available for public inspection the applicable section of Article 4442c pertaining to abuse and neglect.

(j) The inspection reports and related reports that are available at the facility for public inspection, as noted in subsection (i) of this section, shall include licensing in-

spection reports, deficiency sheets and plan of correction (HCFA Form 2567) of Medicare and Medicaid participating facilities, and summaries provided by the licensing agency of inspections and complaint investigations provided in accordance with §145.34 (a)(2) of this title (relating to Determinations and Actions Pursuant to Inspections, Surveys, and Visits). This material shall cover the most current 12 months. The material available for public inspection shall be available at the on-premises business office or administrator's office during normal facility office hours.

(k) The applicable section of Texas Civil Statutes, Article 4442c, referred to in subsection (i) of this section, shall be available for public reference at the on-premises business office or administrator's office during normal facility office hours.

(l) The summary prepared by the licensing agency, as described in subsection (i)(4) of this section, shall be made available to the public through the established licensing agency's public disclosure procedures.

Issued in Austin, Texas, on August 30, 1985.

TRD-857871

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Effective date: September 1, 1985
Expiration date: December 30, 1985
For further information, please call
(512) 458-7708.

★ ★ ★

Subchapter C. Minimum Standards for Custodial Care Homes

★ 25 TAC §145.33

The Texas Department of Health adopts on an emergency basis an amendment to §145.33, concerning general requirements for custodial care homes. The amendment covers requirements for the facility to furnish to the department copies of certain records, requirements for facilities to notify residents when a facility is being closed, and requirements for facilities to post publicly certain information and to have other information available for public review.

The amendment is adopted on an emergency basis because House Bill 2091, Article 4, §§2, 5, and 7, 69th Legislature, 1985, requires the department to adopt rules covering inspections, notification of closure, and posting information in nursing homes and related facilities, effective September 1, 1985. Therefore, to have rules in effect on September 1, 1985, the department is adopting the amendment on an emergency basis.

The amendment is adopted on an emergency basis under House Bill 2091, Article 4, §§2, 5, and 7, 69th Legislature, 1985,

which authorizes the department to adopt rules concerning inspections, notification of closure, and posting information on nursing homes and related facilities; Texas Civil Statutes, Article 4442c, §7, which authorize the department to adopt minimum licensing standards for nursing homes and related facilities; and Texas Civil Statutes, Article 6252-13a, §5(d), which authorize the department to adopt emergency rules.

§145.33. General Requirements.

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

(i) Upon request the facility shall make available to the licensing agency representatives copies of any relevant facility documents or records which in the opinion of licensing agency representatives contain evidence of conditions that threaten the health and safety of residents.

(j) In the event any facility licensed under Texas Civil Statutes, Article 4442c, ceases operation, temporarily or permanently, voluntarily or involuntarily, notice shall be provided the residents and residents' relative or responsible party of closure. If the closure is voluntary, notice to residents' relative or responsible party shall be in writing, giving at least seven days notice for relocation after receipt of notice. In voluntary closure actions, notices shall be provided as required within seven days of owner's final decision to close. Written notice is waived for involuntary closure; however, the facility remains responsible for verbal notice immediately to patients, relatives or responsible party.

(k) Each licensed facility shall prominently and conspicuously post in one area in the main lobby in a manner that each of the following is directly visible at a single time:

- (1) the facility license;
- (2) a complaint sign provided by the licensing agency giving the number of the toll-free incoming telephone line and noting that the line is available for both registering complaints and obtaining information concerning the facility;
- (3) a notice in a form prescribed by the licensing agency that inspection reports and related reports are available at the facility for public inspection;
- (4) a concise summary in nontechnical language prepared by the licensing agency of the most recent inspection report;
- (5) a notice in a form prescribed by the licensing agency stating that:

(A) a person has a cause of action against a facility, or the owner or employee of the facility, that suspends or terminates the employment of the person, or otherwise disciplines or discriminates against the person, for reporting the abuse or neglect of a facility patient to the person's supervisors, to the Texas Department of Health, or to a law enforcement agency, in accordance with Texas Civil Statutes, Article 4442c;

(B) a person making a bad faith, malicious, or reckless report of abuse or

neglect, is subject to a criminal penalty, in accordance with Texas Civil Statutes, Article 4442c;

(C) the facility has available for public inspection the applicable section of Article 4442c pertaining to abuse and neglect.

(i) The inspection reports and related reports that are available at the facility for public inspection, as noted in subsection (k) of this section, shall include licensing inspection reports, deficiency sheets and plan of correction (HCFA Form 2567) of Medicaid participating facilities, and summaries provided by the licensing agency of inspections and complaint investigations provided in accordance with §145.84(a)(2) of this title (relating to Determinations and Actions Pursuant to Inspections, Surveys, and Visits). This material shall cover the most current 12 months. The material available for public inspection shall be available at the on-premises business office or administrator's office during normal facility office hours.

(m) The applicable section of Texas Civil Statutes, Article 4442c, referred to in subsection (k) of this section, shall be available for public reference at the on-premises business office or administrator's office during normal facility office hours.

(n) The summary prepared by the licensing agency, as described in subsection (k)(4) of this section, shall be made available to the public through the established licensing agency's public disclosure procedures.

Issued in Austin, Texas, on August 30, 1985.

TRD-857873

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Effective date: September 1, 1985
Expiration date: December 30, 1985
For further information, please call
(512) 458-7706

★ ★ ★

Subchapter L. Minimum Licensing Standards for Personal Care Homes

★ 25 TAC §145.181

The Texas Department of Health adopts on an emergency basis an amendment to §145.181, concerning general requirements for personal care homes. The amendment covers requirements for the facility to furnish to the department copies of certain records, requirements for facilities to notify residents when a facility is being closed, and requirements for facilities to post publicly certain information and to have other information available for public review.

The amendment is adopted on an emergency basis because House Bill 2091, Ar-

ticle 4, §§2, 5, and 7, 69th Legislature, 1985, requires the department to adopt rules covering inspections, notification of closure, and posting information on nursing homes and related facilities, effective September 1, 1985. Therefore, to have rules in effect on September 1, 1985, the department is adopting the amendment on an emergency basis.

The amendment is adopted on an emergency basis under House Bill 2091, Article 4, §§2, 5, and 7, 69th Legislature, 1985, which authorizes the department to adopt rules concerning inspections, notification of closure, and posting information on nursing homes and related facilities; Texas Civil Statutes, Article 4442c, §7, which authorize the department to adopt minimum licensing standards for nursing homes and related facilities; and Texas Civil Statutes, Article 6252-13a, §5(d), which authorize the department to adopt emergency rules.

§145.181. General.

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

(f) General requirements.

(1)-(12) (No change.)

(13) Upon request the facility shall make available to the licensing agency representatives copies of any relevant facility documents or records which in the opinion of licensing agency representatives contain evidence of conditions that threaten the health and safety of residents.

(14) In the event any facility licensed under Texas Civil Statutes, Article 4442c, ceases operation, temporarily or permanently, voluntarily or involuntarily, notice shall be provided the residents and residents' relative or responsible party of closure. If the closure is voluntary, notice to residents' relative or responsible party shall be in writing, giving at least seven days' notice for relocation after receipt of notice. In voluntary closure actions, notices shall be provided as required within seven days of owner's final decision to close. Written notice is waived for involuntary closure; however, the facility remains responsible for verbal notice immediately to patients, relatives or responsible party.

(15) Each licensed facility shall prominently and conspicuously post in one area in the main lobby in a manner that each of the following is directly visible at a single time:

(A) the facility license;

(B) a complaint sign provided by the licensing agency giving the number of the toll-free incoming telephone line and noting that the line is available for both registering complaints and obtaining information concerning the facility;

(C) a notice in a form prescribed by the licensing agency that inspection reports and related reports are available at the facility for public inspection;

(D) a concise summary in nontechnical language prepared by the licensing agency of the most recent inspection report;

(E) a notice in a form prescribed by the licensing agency stating that:

(i) a person has a cause of action against a facility, or the owner or employee of the facility, that suspends or terminates the employment of the person, or otherwise disciplines or discriminates against the person, for reporting the abuse or neglect of a facility patient to the person's supervisors, to the Texas Department of Health, or to a law enforcement agency, in accordance with Texas Civil Statutes, Article 4442c;

(ii) a person making a bad faith, malicious or reckless report of abuse or neglect is subject to a criminal penalty, in accordance with Texas Civil Statutes, Article 4442c;

(iii) the facility has available for public inspection the applicable section of Article 4442c pertaining to abuse and neglect.

(16) The inspection reports and related reports that are available at the facility for public inspection, as noted in subsection (f)(15) of this section, shall include licensing inspection reports and summaries provided by the licensing agency of inspections and complaint investigations provided in accordance with §145.84(a)(2) of this title (relating to Determinations and Actions Pursuant to Inspections, Surveys, and Visits). This material shall cover the most current 12 months. The material available for public inspection shall be available at the on-premises business office or manager's office during normal facility office hours.

(17) The applicable section of Texas Civil Statutes, Article 4442c, referred to in subsection (f)(15) of this section, shall be available for public reference at the on-premises business office or manager's office during normal facility office hours.

(18) The summary prepared by the licensing agency, as described in subsection (f)(15)(D) of this section, shall be made available to the public through the established licensing agency's public disclosure procedures.

(g) (No change.)

Issued in Austin, Texas, on August 30, 1985.

TRD-857875

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Effective date: September 1, 1985
Expiration date: December 30, 1985
For further information, please call
(512) 458-7706.

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Subchapter N. Minimum Licensing Standards for Facilities Serving the Mentally Retarded Citizens of Texas

★ 25 TAC §145.211

The Texas Department of Health adopts on an emergency basis an amendment to §145.211, concerning the introduction to the standards for facilities serving the mentally retarded citizens of Texas. The amendment covers requirements for the facility to furnish to the department copies of certain records, requirements for facilities to notify residents when a facility is being closed, and requirements for facilities to post publicly certain information and to have other information available for public review.

The amendment is adopted on an emergency basis because House Bill 2091, Article 4, §§2, 5, and 7, 69th Legislature, 1985, requires the department to adopt rules covering inspections, notification of closure, and posting information in nursing homes and related facilities, effective September 1, 1985. Therefore, to have rules in effect on September 1, 1985, the department is adopting this amendment on an emergency basis.

This amendment is adopted on an emergency basis under House Bill 2091, Article 4, §§2, 5, and 7, 69th Legislature, 1985, which authorizes the department to adopt rules concerning inspections, notification of closure, and posting information on nursing homes and related facilities; Texas Civil Statutes, Article 4442c, §7, which authorize the department to adopt minimum licensing standards for nursing homes and related facilities; and Texas Civil Statutes, Article 6252-13a, §5(d), which authorize the department to adopt emergency rules.

§145.211. Introduction.

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

(e) General requirements.

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

(4) Upon request the facility shall make available to the licensing agency representatives copies of any relevant facility documents or records which in the opinion of the licensing agency representatives contain evidence of conditions that threaten the health and safety of residents.

(5) In the event any facility licensed under Article 4442c ceases operation, temporarily or permanently, voluntarily, or involuntarily, notice shall be provided the residents and residents' relative or responsible party of closure. If the closure is voluntary, notice to residents' relative or responsible party shall be in writing, giving at least seven days' notice for relocation after receipt of notice. In voluntary closure actions, notices shall be provided as required within seven days of ownership's final decision to close. Written notice is waived for

involuntary closure; however, the facility remains responsible for verbal notice immediately to patients, relatives, or responsible party.

(6) Each licensed facility shall prominently and conspicuously post in one area in the main lobby in a manner that each of the following is directly visible at a single time:

(A) the facility license;

(B) a complaint sign provided by the licensing agency giving the number of the toll-free incoming telephone line and noting that the line is available for both registering complaints and obtaining information concerning the facility;

(C) a notice in a form prescribed by the licensing agency that inspection reports and related reports are available at the facility for public inspection;

(D) a concise summary in non-technical language prepared by the licensing agency of the most recent inspection report;

(E) a notice in a form prescribed by the licensing agency stating that:

(i) a person has a cause of action against a facility, or the owner or employee of the facility, that suspends or terminates the employment of the person, or otherwise disciplines or discriminates against the person, for reporting the abuse or neglect of a facility patient to the person's supervisors, to the Texas Department of Health, or to a law enforcement agency, in accordance with Texas Civil Statutes, Article 4442c;

(ii) a person making a bad faith, malicious, or reckless report of abuse or neglect is subject to a criminal penalty, in accordance with Texas Civil Statutes, Article 4442c;

(iii) the facility has available for public inspection the applicable section of Article 4442c pertaining to abuse and neglect.

(7) The inspection reports and related reports that are available at the facility for public inspection, as noted in subsection (e)(6) of this section shall include licensing inspection reports, deficiency sheets and plan of correction (HCFA Form 2567) of Medicaid participating facilities, and summaries provided by the licensing agency of inspections and complaint investigations provided in accordance with §145.84(a)(2) of this title (relating to Determinations and Actions Pursuant to Inspections, Surveys, and Visits). This material shall cover the most current 12 months. The material available for public inspection shall be available at the on-premises business office or chief executive's office during normal facility office hours.

(8) The applicable section of Texas Civil Statutes, Article 4442c, referred to in subsection (e)(6) of this section, shall be available for public reference at the on-premises business office or chief executive's office during normal facility office hours.

(9) The summary prepared by the licensing agency, as described in subsection (e)(6)(D) of this section, shall be made available to the public through the established licensing agency's public disclosure procedures.

(f) (No change.)

Issued in Austin, Texas, on August 30, 1985.

TRD-857877

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Effective date: September 1, 1985
Expiration date: December 30, 1985
For further information, please call
(512) 468-7708.

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Chapter 157. Emergency Medical Care

Emergency Medical Services

★ 25 TAC §§157.63, 157.64, 157.66

The Texas Department of Health adopts on an emergency basis amendments to §§157.63, §157.64, and §157.66, concerning Medical Services (EMS) personnel, recertification of EMS personnel, and fees for EMS vehicle permits. The amendments cover fees for applications to take examinations for EMS personnel certification and recertification, and fees for EMS vehicle permits.

The emergency status is necessary because House Bill 1593, §47, 69th Legislature, 1985, contains certain fee

requirements to be effective on September 1, 1985. Therefore, for the department to implement this statutory mandate, the department is adopting the amendments on an emergency basis.

The amendments are adopted on an emergency basis under Texas Civil Statutes, Article 4447c, §3.04, and House Bill 1593, §47, 69th Legislature, 1985, which authorize the Texas Board of Health to adopt rules concerning fees for emergency medical services, and Texas Civil Statutes, Article 6252-13a, §5(d), which authorize the board to adopt rules on an emergency basis.

§157.63. Certification.

(a) A candidate shall:

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

(4) submit to the department the application and the applicable nonrefundable fee:

(A) SS-EMT and P-EMT—
\$18.75 [\$30];

(B) ECA and B-EMT—\$12.50
[\$20]; or

(C) (No change.)

(5)-(6) (No change.)

(b)-(e) (No change.)

§157.64. Recertification.

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

(c) A certificant shall meet the following requirements for recertification:

(1) (No change.)

(2) submit to the department the application for recertification and a nonrefundable fee:

(A) SS-EMT and P-EMT—
\$18.75 [\$30];

(B) ECA and B-EMT—\$12.50
[\$20]; or

(C) (No change.)

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

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

§157.66. General Requirements for Vehicle Permits.

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

(c) Fees.

(1) Fees shall be \$100 [\$25] for each EMS vehicle or a maximum of \$2,000 [\$500] for a fleet of EMS vehicles during the two-year registration period; except however, EMS volunteer provider vehicles are exempt from the fees.

(2) If a permit is issued for less than a two-year period under subsection (d)(4) of this section, the following fees shall apply:

(A) \$100 [\$25] if the permit is valid for 19-24 months;

(B) \$75 [\$18.75] if the permit is valid for 13-18 months;

(C) \$50 [\$12.50] if the permit is valid for 7-12 months; or

(D) \$25 [\$6.25] if the permit is valid for six months or less.

(3) If the EMS provider has met the maximum \$2,000 [\$500] fee for a fleet during a permit period, no fee shall be required for additional vehicles registered during the permit period.

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

Issued in Austin, Texas, on August 30, 1985.

TRD-857879

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Effective date: September 1, 1985
Expiration date: December 30, 1985
For further information, please call
(512) 468-2801.

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Proposed Rules

Before an agency may permanently adopt a new or amended rule, or repeal an existing rule, a proposal detailing the action must be published in the *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 rule. Also, in the case of substantive rules, 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 rule is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a rule.

TITLE 7. BANKING AND SECURITIES

Part I. State Finance

Commission

Chapter 3. Banking Section

Subchapter B. General

★7 TAC §3.21

The State Finance Commission proposes new §3.21, concerning the exemption from identification requirements of certain state-owned vehicles of the Banking Department of Texas. Public response to viewing a vehicle bearing the banking department inscription, parked at or near a state-chartered bank, occasionally results in deposits being withdrawn.

Rayford W. Walker has determined that for the first five-year period the section will be 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. Walker 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 is elimination of the identification inscription to allow the department to continue to fulfill its mandate to regulate and examine state-chartered banks without causing undue alarm to depositors. The integrity of the banking system and the interests of depositors, stockholders, and creditors could be protected better. 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 Rayford W. Walker, Director of Internal Affairs, Banking Department of Texas, 2801 North Lamar Boulevard, Austin, Texas 78705.

The new section is proposed under Texas Civil Statutes, Article 342-113, which provide the State Finance Commission with the authority to adopt rules not inconsistent with the constitution and statutes of the state, and under Texas Civil Statutes, Article 6701m-1, which provide the governing body of the Banking Department of Texas with the authority to adopt rules and regulations to exempt vehicles from identification.

§3.21. Exempting Vehicles Owned by the Banking Department of Texas from Requirements of Identification Inscriptions.

(a) Exempt vehicles. The State Finance Commission provides that certain state-owned vehicles of the Banking Department of Texas shall be exempt from the identification requirements of Texas Civil Statutes, Article 6701m-1.

(b) Uses of exempt vehicles. Vehicles exempted from identification inscription requirements will be used exclusively for the examination and regulatory activities authorized by the Texas Banking Code and the Texas Trust Act. This includes:

(1) activities incidental to examination and supervision of state-chartered banks and/or bank holding companies;

(2) activities directly related to examination and supervision of trust departments of banks or trust companies under the supervision of the banking department;

(3) activities directly related to examination and supervision of electronic data processing centers or services provided by or for banks;

(4) charter investigation incidental to the application for issuance of a state-bank charter; and

(5) administrative activities and training by and for examining personnel to whom the vehicles are assigned.

(c) Operation of department vehicles. All vehicles owned by the banking department, regardless of whether the inscription is displayed, will be operated in accordance with seat belt requirements, posted speed limits, and all other applicable requirements and laws. No vehicle exempted from the inscription requirement will be used by any person for any reason except as provided by this section. No employee will allow any vehicle owned by the banking department to be used by any person other than persons under the jurisdiction of the State Finance Commission. Failure to comply with this rule will be sufficient reason for disciplinary action or termination of the responsible employee.

(d) Notification requirement. Each employee operating a vehicle exempted from the identification inscription will be provided a copy of Texas Civil Statutes, Article 6701m-1, and will acknowledge receipt thereof.

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 July 30, 1985.

TRD-857839

Jorge A. Gutierrez
General Counsel
State Finance
Commission

Earliest possible date of adoption:

October 7, 1985

For further information, please call
(512) 475-4451.

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 135. Ambulatory Surgical Centers

★25 TAC §135.1

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

The Texas Department of Health proposes new §135.1, concerning fees. The new section will cover initial and renewal licensing fees for ambulatory surgical centers.

Stephen Seale, chief accountant III, has determined that there will be fiscal implications for state government as a result of enforcing or administering the section. The effect for the first five-year period the section will be in effect is an estimated additional cost of \$100,000 per year and an estimated increase in revenue of \$100,000 per year for 1985-1989. There will be no fiscal implication for local government or small businesses for the first five year period the section will be in effect.

Mr. Seale also has determined that for each year of the first five years the sec-

tion as proposed is in effect the public benefit anticipated as a result of enforcing the section as proposed will be the allowance of license fees for a measure of control in the quantity and quality of ambulatory surgical centers. There is no anticipated cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Juanita Carrell, R.N., Ed.D., Director, Medicare Certification Division, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7245. Comments will be received for 30 days from the date of publication of the proposed section.

The new section is proposed under House Bill 2091, Article 16, §3 and §5, 69th Legislature, 1985, which authorizes the Texas Board of Health to set license fees and to adopt rules covering ambulatory surgical centers.

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 August 30, 1985.

TRD-857866

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Proposed date of adoption:

October 19, 1985

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

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Chapter 137. Birthing Centers

★25 TAC §137.1

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

The Texas Department of Health proposes new §137.1, concerning fees. The new section will cover initial and renewal licensing fees for birthing centers.

Stephen Seale, chief accountant III, has determined that there will be fiscal implications for state government as a result of enforcing or administering the section. The effect for the first five-year period the section will be in effect is an estimated additional cost of \$3,000 per year and an estimated increase in revenue of \$3,000 per year for 1985-1989. There will be no fiscal implications for local government or small businesses for the first five-year period the section will be in effect.

Mr. Seale also has determined that for each year of the first five years the sec-

tion as proposed is in effect the public benefit anticipated as a result of enforcing the section as proposed will be the license fees which should allow a measure of control for compliance with standards and quality assurance of birthing centers. There is no anticipated cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Juanita Carrell, R.N., Ed.D., Director, Medicare Certification Division, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7245. Comments will be received for 30 days from the date of publication of the proposed section.

The new section is proposed under House Bill 2091, Article 17, §3 and §5, 69th Legislature, 1985, which authorizes the Texas Board of Health to set birthing centers license fees and to adopt rules covering birthing centers.

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 August 30, 1985.

TRD-857868

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Proposed date of adoption:

October 19, 1985

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

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Chapter 139. Abortion Facilities

★25 TAC §139.1

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

The Texas Department of Health proposes new §139.1, concerning fees. The new section will cover initial and renewal licensing fees for abortion facilities.

Stephen Seale, chief accountant III, has determined that there will be fiscal implications for state government as a result of enforcing or administering the section. The effect for the first five-year period the section will be in effect is an estimated additional cost of \$60,000 per year and an estimated increase in revenue of \$60,000 per year for 1985-1989. There will be no fiscal implications for local government or small businesses for the first five-year period the section will be in effect.

Mr. Seale also has determined that for each year of the first five years the sec-

tion as proposed is in effect the public benefit anticipated as a result of enforcing the section as proposed will be that the license fees should allow a measure of control for compliance with standards and annual reporting requirements. There is no anticipated cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Juanita Carrell, R.N., Ed.D., Director, Medicare Certification Division, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7245. Comments will be received for 30 days from the date of publication of the proposed sections.

The new section is proposed under House Bill 2091, Article 20, §3 and §6, 69th Legislature, 1985, which authorizes the Texas Board of Health to set license fees and to adopt rules covering abortion facilities.

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

Issued in Austin, Texas, on August 30, 1985.

TRD-857870

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Proposed date of adoption:

October 19, 1985

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

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Chapter 145. Long-Term Care Subchapter B. Minimum Standards for Nursing Homes

★25 TAC §145.13

(Editor's note: The Texas Department of Health proposes for permanent adoption the amendments it adopts on an emergency basis in this issue. The text of the amendments is published in the Emergency Rules section of this issue.)

The Texas Department of Health proposes an amendment to §145.13, concerning general requirements for nursing homes. The proposed amendment is the result of certain requirements enacted by the 59th Texas Legislature, 1985, affecting the department's regulation of nursing homes licensed under Texas Civil Statutes, Article 4442c. These proposed amendments specify that nursing homes shall make available to the department, as the licensing agency, copies of any relevant facility documents or records which in the opinion of licensing agency representatives contain evidence of conditions that threaten the health and safety of residents. The proposed amendments specify procedures a nursing

home must take in notifying residents and their relatives or responsible parties when the facility is closing. Also, the amendments define in detail the information and documents that must be conspicuously posted in the facility and the documents that the facility must have on file available for public inspection.

Stephen Seale, chief accountant III, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the section. The cost of compliance with the section for small businesses will be the same as for large businesses; any expense for providing copies is negligible.

Mr. Seale also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section as proposed will be an increase in the quality of care provided to residents of nursing homes, through facilities assisting the department to preserve inspection information, notifying residents of closure, and posting certain information for public reference. There is no anticipated cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Howard C. Allen, Chief, Bureau of Long Term Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Written comments will be received for 30 days from the date of publication of the proposed section in the *Texas Register*. There will also be a public hearing in the Texas Department of Health auditorium, 1100 West 49th Street, Austin, Texas on September 27, 1985 at 9:30 a.m.

The amendments are proposed under Texas Civil Statutes, Article 4442c, §7, which provide the Texas Board of Health with the authority to adopt minimum licensing standards for nursing homes and related facilities, and House Bill 2091, Article 4, §§2, 5, and 7, 69th Legislature, 1985, which covers inspections, notification of closure, and posting information in nursing homes and related facilities.

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

Issued in Austin, Texas, on August 30, 1985.

TRD-857872

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Proposed date of adoption:

October 19, 1985

For further information, please call
(512) 458-7706.

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Subchapter C. Minimum Standards for Custodial Care Homes

★ 25 TAC §145.33

(Editor's note: The Texas Department of Health proposes for permanent adoption the amendments it adopts on an emergency basis in this issue. The text of the amendments is published in the Emergency Rules section of this issue.)

The Texas Department of Health proposes an amendment to §145.32, concerning general requirements for custodial care homes. The proposed amendment is the result of certain requirements enacted by the 69th Texas Legislature, 1985, affecting the department's regulation of custodial care homes licensed under Texas Civil Statutes, Article 4442c.

The proposed amendment specifies that custodial care homes shall make available to the department, as the licensing agency, copies of any relevant facility documents or records which in the opinion of licensing agency representatives contain evidence of conditions that threaten the health and safety of residents. The proposed amendment specifies procedures a custodial care home must take in notifying residents and their relatives or responsible parties when the facility is closing. Also the amendment defines in detail the information and documents that must be conspicuously posted in the facility and the documents that the facility must have on file available for public inspection.

Stephen Seale, chief accountant III, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the section. The cost of compliance with the section for small businesses will be the same as for large businesses; any expense for providing copies is negligible.

Mr. Seale also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section as proposed will be an increase in the quality of care provided to residents of custodial care homes, through facilities assisting the department to preserve inspection information, notifying residents of closure, and posting certain information for public reference. There is no anticipated cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Howard C. Allen, Chief, Bureau of Long Term Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Written comments will be received for 30 days from the date of publication of the proposed section. There will also be a public hearing in the Texas Department of Health auditorium, 1100 West 49th Street, Austin, on September 27, 1985, at 9:30 a.m.

The amendment is proposed under Texas Civil Statutes, Article 4442c, §7, which provide the Texas Board of Health with the authority to adopt minimum licensing standards for custodial care homes and House Bill 2091, Article 4, §§2, 5, and 7, 69th Legislature, 1985, which covers inspections, notification of closure, and posting information in nursing homes and related facilities.

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

Issued in Austin, Texas, on August 30, 1985.

TRD-857874

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Proposed date of adoption:

October 19, 1985

For further information, please call
(512) 458-7706.

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Subchapter L. Minimum Licensing Standards for Personal Care Homes

★ 25 TAC §145.181

(Editor's note: The Texas Department of Health proposes for permanent adoption the amendment it adopts on an emergency basis in this issue. The text of the amendment is published in the Emergency Rules section of this issue.)

The Texas Department of Health proposes an amendment to §145.181, concerning general requirements for personal care homes. The proposed amendment is the result of certain requirements enacted by the 69th Texas Legislature, 1985, affecting the department's regulation of personal care homes licensed under Texas Civil Statutes, Article 4442c.

The proposed amendment specifies that personal care homes shall make available to the department, as the licensing agency, copies of any relevant facility documents or records which in the opinion of licensing agency representatives contain evidence of conditions that threaten the health and safety of residents. The proposed amendment specifies procedures a personal care home must take in notifying residents and their relatives or responsible parties when the facility is closing. Also the amendment defines in detail the information and documents that must be conspicuously posted in the facility and the documents that the facility must have on file available for public inspection.

Stephen Seale, chief accountant III, has determined that there will be no fiscal im-

plications for state or local governments as a result of enforcing or administering the section. The cost of compliance with the section for small businesses will be the same as for large businesses; any expense for providing copies is negligible.

Mr. Seale also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section as proposed will be an increase in the quality of care provided to residents of personal care homes, through facilities assisting the Texas Department of Health to preserve inspection information, notifying residents of closure, and posting certain information for public reference. There is no anticipated cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Howard C. Allen, Chief, Bureau of Long Term Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Written comments will be received for 30 days from the date of publication of the proposed section. There will also be a public hearing at the Texas Department of Health auditorium, 1100 West 49th Street, Austin, on September 27, 1985, at 9:30 a.m.

The amendment is proposed under House Bill 2091, Article 4, §§2, 5, and 7, 69th Legislature, 1985, which covers inspections, notification of closure, and posting information in nursing homes and related facilities; and Texas Civil Statutes, Article 4442c, §7, which provide the Texas Board of Health with the authority to adopt, amend, promulgate, publish and enforce minimum licensing standards for personal care homes.

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 August 30, 1985.

TRD-857878

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Proposed date of adoption:
October 16, 1985
For further information, please call
(512) 458-7706.

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Subchapter N. Minimum Licensing Standards for Facilities Serving the Mentally Retarded Citizens of Texas

★ 25 TAC §145.211

(Editor's note: The Texas Department of Health proposes for permanent adoption the amendment it adopts on an emergency basis in this issue. The text of the amendment is published in the Emergency Rules section of this issue.)

The Texas Department of Health proposes an amendment to §145.211, concerning the introduction to the standards for facilities serving the mentally retarded citizens of Texas. The proposed amendment is the result of certain requirements enacted by the 69th Texas Legislature, 1985, affecting the department's regulation of facilities caring for mentally retarded persons licensed under Texas Civil Statutes, Article 4442c. The proposed amendment specifies that facilities caring for mentally retarded persons shall make available to the department, as licensing agency, copies of any relevant facility documents or records which in the opinion of licensing agency representatives contain evidence of conditions that threaten the health and safety of residents. The proposed amendment specifies procedures a facility caring for mentally retarded persons must take in notifying residents and their relatives or responsible parties when the facility is closing. Also the amendment defines in detail the information and documents that must be conspicuously posted in the facility and the documents that the facility must have on file available for public inspection.

Stephen Seale, chief accountant III, has determined that there will be no fiscal implications as a result of enforcing or administering the section. There will be no effect on state or local government for the first five-year period the section will be in effect. The cost of compliance with the section for small businesses will be the same as for large businesses; any expense for providing copies is negligible.

Mr. Seale also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section as proposed will be an increase in the quality of care provided to residents of facilities caring for mentally retarded persons, through facilities assisting the Texas Department of Health to preserve inspection information, notifying residents of closure, and posting certain information for public reference. There is no anticipated cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Howard C. Allen, Chief, Bureau of Long Term Care, Texas Department of Health, 1100 West 49th Street, Austin,

Texas 78756. Written comments will be received for 30 days from the date of publication of the proposed section. There will also be a public hearing at the Texas Department of Health auditorium, 1100 West 49th Street, Austin, on September 27, 1985, at 9:30 a.m.

The amendment is proposed under Texas Civil Statutes, Article 4442c, §7, which provides the Texas Board of Health with the authority to adopt minimum licensing standards for facilities caring for mentally retarded persons, and House Bill 2091, Article 4, §§2, 5, and 7, 69th Legislature, 1985, which cover inspections, notification of closure, and posting information in nursing homes and related facilities.

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

Issued in Austin, Texas, on August 30, 1985.

TRD-857878

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Proposed date of adoption:
October 16, 1985
For further information, please call
(512) 458-7706.

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Chapter 157. Emergency Medical Care Emergency Medical Services

★ 25 TAC §§157.63, 157.64, 157.66-157.69

The Texas Department of Health proposes amendments to §§157.63, 157.64 and 157.66-157.69, concerning certification of Emergency Medical Services (EMS) personnel, recertification of EMS personnel, general requirements for vehicle permits, basic life support vehicle requirements for a permit, advanced life support vehicle requirements for a permit, and mobile intensive care unit (MICU) requirements for a permit.

The amendments concern fees for applications to take examinations for certification and recertification, fees for vehicle permits, inspections of EMS vehicles for permit purposes, required equipment for basic life support vehicles, and the requirement of a medical director as part of the staff for advanced life support vehicles and mobile intensive care units. The amendments to §§157.63, 157.64, and 157.66(c) also are being adopted on an emergency basis in this issue of the *Texas Register*.

Stephen Seale, chief accountant III, has determined that for each year of the first

five years the sections as proposed will be in effect there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections will be in effect will be an estimated loss in revenue of \$8,978 each year for 1988-1990. The effect on local government for the first five-year period the sections will be in effect will be an estimated additional cost of \$30,900 each year for 1988-1990. The cost of compliance with the sections for small businesses will be a two year registration for vehicle permits at \$100 each, with a maximum of \$2,000 for a fleet of vehicles. The cost for initial purchase of a carbon monoxide monitoring device could be \$50 to \$150 depending on the type of device selected by the business. The biennial cost per employee for most small businesses would be \$50, assuming two employees per vehicle. The cost per employee for large business would be \$33.33 under the same assumption.

Mr. Seale also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections as proposed will be the establishment of statewide minimum standards for vehicle design and safety and establishment of fees for EMS personnel and vehicles. The anticipated economic cost to individuals who are required to comply with the sections as proposed is the \$18.75 fee for a four-year certification or recertification for specially-skilled emergency medical technician or paramedic emergency medical technician. The fee for a four year certification or recertification for emergency care attendant or basic emergency medical technician is \$12.50. A two-year registration for vehicles is \$100 with a maximum of \$2,000 for a fleet of vehicles.

Comments on the proposal may be submitted to Gene Weatherall, Acting Chief, Bureau of Emergency Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Comments will be accepted for 90 days after publication of these sections in the *Texas Register*. In addition, a public hearing on these sections will be held at 10 a.m. on Thursday, October 10, 1985, in the auditorium, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

The amendments are proposed under Texas Civil Statutes, Article 4447a, §§3.02, 3.03, 3.04, which provide the Texas Board of Health with the authority to adopt rules to implement the Emergency Medical Services Act.

§157.63. Certification.

- (a) A candidate shall:
 - (1)-(3) (No change.)
 - (4) submit to the department the application and the applicable nonrefundable fee:

- (A) SS-EMT and P-EMT—\$18.75 [\$30];
- (B) ECA and B-EMT—\$12.50 [\$20]; or
- (C) (No change.)
- (5)-(6) (No change.)
- (b)-(e) (No change.)

§157.64. Recertification.

- (a)-(b) (No change.)
- (c) A certificant shall meet the following requirements for recertification:
 - (1) (No change.)
 - (2) submit to the department the application for recertification and a nonrefundable fee:
 - (A) SS-EMT and P-EMT—\$18.75 [\$30];
 - (B) ECA and B-EMT—\$12.50 [\$20]; or
 - (C) (No change.)
 - (3)-(4) (No change.)
 - (d)-(g) (No change.)

§157.66. General Requirements for Vehicle Permits.

- (a)-(b) (No change.)
- (c) Fees.
 - (1) Fees shall be \$100 [\$25] for each EMS vehicle or a maximum of \$2,000 [\$500] for a fleet of EMS vehicles during the two-year registration period; except however, EMS volunteer-provider vehicles are exempt from the fees.
 - (2) If a permit is issued for less than a two-year period under subsection (d)(4) of this section, the following fees shall apply:
 - (A) \$100 [\$25] if the permit is valid for 19-24 months;
 - (B) \$75 [\$18.75] if the permit is valid for 13-18 months;
 - (C) \$50 [\$12.50] if the permit is valid for 7-12 months; or
 - (D) \$25 [\$6.25] if the permit is valid for six months or less.
 - (3) If the EMS provider has met the maximum \$2,000 [\$500] fee for a fleet during a permit period, no fee shall be required for additional vehicles registered during the permit period.

(d) Inspections.

- (1) (No change.)
- (2) The inspection shall include:
 - (A)-(C) (No change.)
 - (D) visual inspection of vehicle design, as follows:

(i) patient compartment shall have two door openings in working condition; one door in the rear shall have a minimum opening of 56 inches and one door shall be curb side;

(ii) floor plan of patient compartment shall allow rear loading of one patient on a wheeled elevating stretcher capable of being securely mounted by a crash stable side or center mounting style stretcher fastener of the quick release type and shall have a provision for an additional supine patient capable of being secured to the vehicle;

(iii) all stretchers shall be loaded and secured to position the head(s) of the patient(s) forward in the vehicle;

(iv) a seat, which allows direct access to the primary patient, with safety belt shall be provided for the EMS personnel in the patient area; and

(v) all windows in the patient compartment shall be intact, in working condition, and free from defects.

(E) visual and mechanical inspection of vehicle physical dimensions, in addition to the vehicle type specifications in §§157.67-157.69 of this title (relating to Basic Life Support Vehicle Requirements for a Permit, Advanced Life Support Vehicle Requirements for a Permit, and Mobile Intensive Care Unit Requirements for a Permit), as follows:

(i) overall length of the vehicle shall not exceed 22 feet including bumper, but excluding rear step;

(ii) overall width of the vehicle with single rear wheels shall not exceed 86 inches or 96 inches for vehicles with dual rear wheels, excluding mirrors, spotlights, and running boards.

(iii) overall height of the vehicle shall not exceed 110 inches, including roof mounted equipment, but excluding two-way radio antenna(s);

(iv) lowest part of the vehicle when loaded to the gross vehicle weight (GVW) shall have a minimum of six inches of ground clearance. The vehicle's body components shall provide a minimum of eight inches of running clearance.

(F) confirmation of yearly carbon monoxide monitoring records maintained by the EMS provider, indicating no more than 50 parts/million; and in addition, the exhaust system shall:

(i) be free of any defects and leaks from any component in the exhaust system; and

(ii) discharge at the side(s) of the vehicle away from fuel tank filler pipe(s) and patient compartment door openings;

(G) visual inspection of safety equipment as follows:

(i) one five-pound ABC fire extinguisher with current inspection tag attached; accessible and securely mounted in the patient compartment and location clearly marked;

(ii) one "No Smoking" sign mounted in patient compartment which is easily visible from each entry way;

(iii) three 30-minute road flares; or three reflective triangle road signs; and

(iv) one functional flashlight (excluding penlight).

(H) tires, in addition to the requirements of paragraph (2)(B) of this subsection, shall be number and load range equal to or greater than manufacturer's recommended GVW capacity.

(3) A vehicle shall fail the inspection if the requirements in subsection (d)(2)

of this section are not met.

(A) (No change.)

(B) A temporary 30-day permit may [shall] be issued to a vehicle which is in substantial compliance with the requirements in subsection (d)(2) of this section [allow for compliance];

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

(4) (No change.)

(e)-(g) (No change.)

§157.67. Basic Life Support Vehicle Requirements for a Permit.

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

(d) Required equipment. The following BLS required equipment must be clean, in working order, and in sufficient quantity to provide safe transport for patients in the individual service areas:

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

(6) one portable medical grade oxygen unit with current inspection tag attached and adequate tubing and semi-open valveless, transparent masks in adult and child sizes;

(7)-(27) (No change.)

(e) (No change.)

§157.68. Advanced Life Support Vehicle Requirements for a Permit.

(a) Staffing requirements. The requirements for staffing an ALS vehicle shall be:

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

(3) a medical director is required.

(b) (No change.)

(c) Required equipment. ALS required equipment shall include all BLS equipment as provided in §157.67(d) [§157.67(c)] of §157.67 of this title (relating to Basic Life Support Vehicle Requirements for a Permit) plus the following, which shall be clean and in working order:

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

(d) (No change.)

§157.69. Mobile Intensive Care Unit Requirements for a Permit.

(a) Staffing requirements. The requirements for staffing a mobile intensive care unit (MICU) shall be:

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

(3) a medical director is required.

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

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

Issued in Austin, Texas, on August 30, 1985.

TRD-857880

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Proposed date of adoption:

October 19, 1985

For further information, please call
(512) 465-2801.

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TITLE 28. INSURANCE

Part I. State Board of Insurance

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

Subchapter V. Order of Benefit Determination for Insured Dependent Children in a Coordination of Benefits Provision

★ 28 TAC §3.3501

The State Board of Insurance proposes an amendment to §3.3501 (Rule 069.03.48 .001), concerning an order of benefit determination for insured dependent children in a coordination of benefits provision. The amendment is to set a different effective date than November 1, 1985, which originally was adopted by the board as an effective date for §3.3501 and §3.3502. The new effective date for the section is proposed to be January 1, 1987. In addition, all insurance plans delivered or issued for delivery within this state or which have an anniversary or renewal date on or after January 1, 1986, must contain a provision that the rules will become effective on January 1, 1987. This change is to coincide with a recommendation of the National Association of Insurance Commissioners (NAIC). The change promotes uniformity in nationwide regulation.

A. W. Pogue, deputy commissioner of Insurance, has determined that for the first five-year period the section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. The amendment embodies a standard procedure for determining the primacy of coverage. There could be an increase or decrease in the claims costs to small business insurers as a result of delaying the effective date, depending on the insurer's present practice in determining priority of coverage. There could also be a delay in increased costs if the amendment will cause an insurer to alter forms. There is no expected difference in costs between small and large businesses on a cost-per-hour-of-labor loss.

Mr. Pogue 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 is standardization of the effective date of the section on a nationwide basis. The anticipated economic cost to individuals who are required to comply with the section as proposed is a possible delay in any increase or decrease in claims costs, depending on the insurer's present practice in determining priority on coverage. There could also be a delay in increased costs if it will be necessary for an insurer to alter forms.

Comments on the proposal may be submitted to A. W. Pogue, State Board of Insurance, 1110 San Jacinto Street, Austin, Texas 78788.

The amendment is proposed under the Insurance Code, Article 3.42, §(1), pursuant to which the board may promulgate and enforce reasonable rules and regulations and order such provision as is necessary in the accomplishment of the purpose of the Insurance Code, Article 3.42, §(1).

§3.3501. Purpose, [and] Scope and Effective Dates. The purpose of these sections is to provide guidelines for a reasonable standardization defining an order of benefit determination for insured dependent children in a coordination of benefits provision. The sections apply to all policies, contracts, or certificates of accident or health insurance, group accident or health insurance, hospitalization insurance, group hospitalization insurance, medical or surgical insurance, and group medical or surgical insurance, containing a coordination of benefits provision filed for approval with the State Board of Insurance. These sections control such coordination of benefits provision notwithstanding the provisions of any other rule of the State Board of Insurance. These sections will take effect on January 1, 1987. All plans delivered or issued for delivery in this state on or after January 1, 1986, or which have an anniversary date or renewal date on or after January 1, 1986, must contain a provision stating that these rules become effective on January 1, 1987.

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

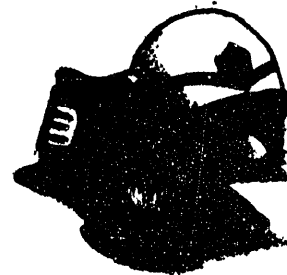
Issued in Austin, Texas, on August 29, 1985.

TRD-857886

James W. Norman
Chief Clerk
State Board of
Insurance

Earliest possible date of adoption:
October 7, 1985
For further information, please call
(512) 463-6327.

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Chapter 7. Corporate and Financial
Subchapter A. Examination and Corporate Custodian and Tax
★28 TAC §7.25, §7.26

The State Board of Insurance proposes new §7.25 and §7.26, concerning a procedure to be used by a domestic insurance company to give written notice to the commissioner of insurance of its intent to move all or any portion of its books, records, accounts, and offices outside the State of Texas under the Insurance Code, Article 1.28, enacted by the 69th Legislature, 1985.

The proposed sections adopt a form by reference, with instructions to provide a uniform and orderly method for the company to submit its notice of intent under the Insurance Code, Article 1.28, and for the commissioner and staff to handle notices received. The form and instructions are designed to elicit sufficient information from the domestic insurance company to enable the commissioner of insurance to make a determination whether or not to disapprove the company's intent to relocate. The form requires the company to identify the type of books, records, accounts, and/or offices to be maintained at various locations and to provide both mailing address and street address for each location. In addition, the company must certify that it complies with the prerequisites of the Insurance Code, Article 1.28, to be eligible to move outside the state.

J. W. Arendall, Corporate Custodian and Tax Division director, has determined that for the first five-year period the sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. The cost effect to small businesses will be the cost to small business insurers. That effect is discussed in relation to the cost to individuals generally required to comply with the sections. There is no expected difference in costs between small and large businesses on a cost-per-hour-of-labor loss.

Mr. Arendall 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 is increased administrative efficiency in dealing with domestic companies' notices of intent to move pursuant to the Insurance Code, Article 1.28. The sections also will aid the board in carrying out its regulatory duties, particularly in the area of examination of companies, thereby benefiting the public. The anticipated economic cost to individuals who are required to comply with the sections as proposed will be minimal and will depend on the practices of individual insurers. The sections possibly will provide a savings for a company intending to relocate, depending on the adequacy

of the information the company might have supplied in its notice of intent to the commissioner in absence of the proposed sections.

Comments on the proposal may be submitted to J. W. Arendall, Director, Corporate Custodian and Tax Division, State Board of Insurance, 1110 San Jacinto Street, Austin, Texas 78786.

The new sections are proposed under the Insurance Code, Articles 1.04, 1.10(9), 1.24, 1.28, 21.28-A, §11, and 21.49-1, §11; and Texas Civil Statutes, Article 6252-13a, §4. The Insurance Code, Article 1.04, places original jurisdiction for the adoption of rules in the board; Article 1.10(9) requires the board to furnish to companies required to report to the board statement blanks for the statements required; Article 1.24 authorizes the board to make inquiries of insurance companies; Article 1.28 authorizes certain domestic insurance companies to move all or any portion of their books, records, and accounts and offices outside the State of Texas upon giving 30 days' written notice of intent to the commissioner of insurance if the commissioner does not disapprove; Article 21.28-A, §11, empowers the board to adopt reasonable rules pertaining to the prevention of insurer delinquencies; and Article 21.49-1, §11, authorizes the board to issue rules consistent with and to carry out the provisions of the Insurance Holding Company Regulatory Act, and the proposed rules affect affiliates of an insurance holding company system who desire to relocate. Texas Civil Statutes, Article 6252-13a, §4, require and authorize the board to adopt rules of practice, setting forth the nature and requirements of all procedures available.

§7.25. Record Under the Insurance Code, Article 1.28. The State Board of Insurance adopts by reference a form with instructions to be used by a domestic insurance company as the exclusive means of giving written notice to the commissioner of insurance of its intent to move all or any portion of its books, records, accounts, and offices outside the State of Texas under the provisions of the Insurance Code, Article 1.28. The form is identified as "Form SBI/BR-85, Notice of Intent of Domestic Insurance Company to Move its Books, Records, Accounts, and/or Principal Office(s) outside the State of Texas." It is published by the State Board of Insurance and may be obtained from the Corporate Custodian and Tax Division of the State Board of Insurance, 1110 San Jacinto Street, Austin, Texas 78786.

§7.26. Commencement of 30-Day Review Period under the Insurance Code, Article 1.28. The 30-day period during which the commissioner of insurance may disapprove the domestic insurance company's intent shall commence on the date the Corporate Custodian and Tax Division of the State

Board of Insurance receives from the domestic insurance company Form SBI/BR-85 properly completed and with the required attachments.

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 August 29, 1985.

TRD-657883

James W. Numan
Chief Clerk
State Board of Insurance

Earliest possible date of adoption:

October 7, 1985

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION
Part III. Texas Air Control Board
Chapter 103. Procedural Rules Public Hearings—General

★31 TAC §103.11

The Texas Air Control Board (TACB) proposes an amendment to §103.11, concerning types of hearings. The proposed amendment will delete the paragraph describing a variance hearing, since the variance provisions of the Texas Clean Air Act (TCAA), §§3.21-3.26, were repealed by Senate Bill 725, 69th Legislature, 1985, and will renumber the remaining types of hearings listed. The paragraph describing a compliance hearing is being amended to reference new Chapter 105, concerning enforcement rules, being proposed for adoption in concurrent action. The amendment also will clarify the purpose and conditions under which compliance hearings may be called.

John Turney, general counsel, has determined that for the first five-year period the section will be 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.

Steve Spaw, P.E., Central Regulatory Operations Program director, 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 is improved clarity of the rules. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

A public hearing on this proposal is scheduled for 10 a.m. on September 23, 1985, in the auditorium, Texas Air Control Board, 6330 Highway 290 East, Austin.

Copies of the proposed section change are available from Lane Hartstock at the TACB central office and at all TACB regional offices. Public comment, both oral and written, on the proposed change is invited at the hearing. The TACB would appreciate receiving five copies of testimony prior to or at the hearing. Written testimony received by 4 p.m. on September 24, 1985, at the TACB central office will be included in the hearing record. Written comments should be submitted to the Regulation Development Division, Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

The amendment is proposed 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 purposes of the TCAA and to amend any rule or regulation the TACB makes.

§103.11. Types of Hearings. The Texas Air Control Board hearings are primarily of three [four] types:

(1) Variance hearing. This type shall be called by the board or the executive director pursuant to the Texas Clean Air Act (TCAA), §3.21 *et seq.*, as a result of the filing of a petition for variance. In accordance with the TCAA, §3.22(d), the board deems it advisable to hold a public hearing prior to the decision on any requested variance. Therefore, upon the filing of a proper petition, the executive director shall proceed to set a date for a hearing on the petition, which date shall not be more than 90 days after the date the petition is filed. Notice of the hearing shall be given as required by the TCAA, §3.17, and the Administrative Procedure and Texas Register Act, §13. A petition for variance shall be considered to be in proper form if it identifies the person seeking the variance; identifies the particular rule or provisions of the TCAA from which a variance is sought; identifies the source of air contaminants which is the subject of the petition, including information on the nature and amount of emissions from the source, if available, and the location of the source; and includes a short and plain statement of the grounds upon which the relief is sought. Forms to assist in the filing of a petition are available upon request but are not mandatory.]

(1)[2] Compliance hearing. This type may be called by the board or the executive director whenever it appears that any person has violated, is violating, or threatening to violate any provision of the Texas Clean Air Act or any rule [, regulation, determination,] or order of the board [is being violated or will be violated]. Chapter 105 of this title (relating to Enforcement Rules) should be consulted concerning the policies and procedures of the board with regard to this type of enforcement action. [A compliance hearing shall be called prior to the issuance of any agen-

cy orders with respect to the source pursuant to the Texas Clean Air Act, §§3.12, 3.13, and 3.20(b).] Notice of the hearing shall be given as required by the Texas Clean Air Act, §3.17, and the Administrative Procedure and Texas Register Act, §13.

(2)[(3)] Permit hearing. This type may be called by the board or the executive director when either deems it appropriate to examine into an application for permit to construct or operate filed pursuant to the Texas Clean Air Act, §3.27 or §3.28, prior to action on the application by the executive director or the board. Notice of the hearing shall be given as required by the Texas Clean Air Act, §3.17, and the Administrative Procedure and Texas Register Act, §13.

(3)[(4)] Regulation hearing. This type shall be called by the board or the executive director prior to adoption of any rule or regulation or amendment or repeal thereof except an emergency rule which may be adopted pursuant to §103.21 of this title (relating to Emergency Regulations). This type of hearing may be called prior to adoption, repeal, or amendment of the Texas implementation plan submitted to the federal Environmental Protection Agency. This type of hearing is solely for the purpose of allowing any interested person to comment on any proposed rule or regulation and plan change. Any interested person may submit testimony into the record of this type of hearing either orally or in writing. Since there are no parties in this type of hearing, a summary of all written and oral comments received at the hearing shall be reported to the board by an appropriate member of the staff. No hearing examiner's report shall be made. Notice of the hearing shall be given as required by the Texas Clean Air Act, §3.09, and the Administrative Procedure and Texas Register Act, §5.

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 August 28, 1985.

TRD-857812

Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Proposed date of adoption:

October 25, 1985

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

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Chapter 105. Enforcement Rules

★31 TAC §§105.1, 105.3, 150.11,
105.13, 105.15, 105.21, 105.23,
105.25, 105.31, 105.33, 105.35,
105.41, 105.43

The Texas Air Control Board (TACB) proposes new §105.1, concerning defini-

tions; §105.3, concerning delegation of authority; §105.11, concerning notice of violation; §105.13, concerning violations that materially affect human health and safety; §105.15, concerning violations that do not materially affect human health and safety; §105.21, concerning initiation of administrative proceedings; §105.23, concerning response to administrative proceedings; §105.25, concerning compliance hearing; §105.31, concerning payment of administrative penalties; §105.33, concerning disposition of administrative penalties; §105.35, concerning public notice of penalty assessments; §105.41, concerning appeal of compliance orders; and §105.43, concerning revocation of permits. These new sections comprise a proposed new Chapter 105, concerning enforcement rules, to Title 31 of the Texas Administrative Code.

The new chapter is being proposed in response to amendments to the Texas Clean Air Act (TCAA) adopted by the 69th Legislature, 1985. These amendments stipulate procedures and timetables for TACB enforcement actions subsequent to issuance of a notice of violation of TACB rules and regulations. The amendments also provide the TACB authority to levy administrative penalties for certain violations of the TACB rules and regulations. The new chapter incorporates into TACB rules these new procedures, timetables, and penalty provisions.

The new §105.1, concerning definitions, will provide specific meanings for terms used in the chapter. The new §105.3, concerning delegation of authority, describes the TACB intent that authority for enforcement actions be delegated to employees of the TACB. The new §105.11, concerning notice of violation, outlines the TACB procedures for notification and action when an apparent violation is detected. The new §105.13, concerning violations that materially affect human health and safety, specifies that an apparent violation of this type will be processed pursuant to the TCAA, §4.02. The new §105.15, concerning violations that do not materially affect human health and safety, outlines the procedures available for processing an apparent violation of this type.

The new §105.21, concerning initiation of administrative proceedings, describes the preliminary report to be prepared by the executive director of the TACB based on review of the facts of the apparent violation; the procedures that will be used by the executive director to establish the amount of any administrative penalty and the schedule for any compliance orders; and the notice of the preliminary report to be issued to the person charged. The new §105.23, concerning response to administrative proceedings, states the requirements for response by a person charged with an apparent violation and lists the options for that response. The new §105.25, concerning

compliance hearing, describes the hearing process available to a person charged with an apparent violation should the person choose to dispute the findings of the executive director regarding the matter of the violation.

The new §105.31, concerning payment of administrative penalty, states the requirement for payment of any administrative penalty assessed by the TACB and specifies the procedures to be followed. The new §105.33, concerning disposition of administrative penalties, states that all penalties collected by the TACB shall be deposited in the state General Revenue Fund. The new §105.35, concerning public notice of penalty assessments, states that notice of any penalty assessed by the TACB shall be published in the *Texas Register*.

The new §105.41, concerning appeal of compliance orders, specifies the procedures for judicial review of TACB orders or decisions and the TACB procedures for remittance of fees collected in excess of those assessed by the court after judicial review. The new §105.43, concerning revocation of permits, describes conditions under which the executive director may institute proceedings to revoke a construction or operating permit.

John Turney, general counsel, has determined that for the first five-year period the sections as proposed are in effect additional costs of \$123,039 per year will be incurred by the agency as a result of administering the sections. The basis for this determination consists of salaries, travel, and other expenses associated with 15 contested case hearings per year and the entering of 300 board orders per year. There will be no fiscal implications to local governments. Fiscal implications to small businesses are no greater than those which would be incurred by large businesses.

Steve Spaw, P.E., Central Regulatory Operations Program director, has determined that the public will benefit from increased revenue of approximately \$300,000 per year in the state General Revenue Fund as a result of administrative penalties paid by certain individuals found to be in violation of the TACB rules and regulations and from more effective and expeditious relief from any person violating or threatening to violate the TCAA or any rule or order of the board. Regulated persons who violate regulatory requirements, including small businesses, may be expected to incur collectively additional costs of \$900,000 per year. This estimate is based on anticipated legal and consultant fees, travel, and other expenses associated with additional contested case hearings and entry of board orders and the anticipated amount of administrative penalties to be collected during each year.

A public hearing on this proposal is scheduled for 10 a.m. on September 23,

1985, in the auditorium, Texas Air Control Board, 6330 Highway 290 East, Austin.

Copies of the proposed new sections are available from Lane Hartscock at the TACB central office and at all TACB regional offices. Public comment, both oral and written, on the proposed changes is invited at the hearing. The TACB would appreciate receiving five copies of testimony prior to or at the hearing. Written testimony received by 4 p.m. on September 24, 1985, at the TACB central office will be included in the hearing record. Written comments should be sent to the Regulation Development Division, Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

These new sections are proposed 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 purposes of the TCAA and to amend any rule or regulation the TACB makes.

§105.1. 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 these sections, shall have the following meanings, unless the context clearly indicates otherwise.

Act—The Texas Clean Air Act, Texas Civil Statutes, Article 4477-5.

Apparent violation—A determination that any person has violated, is violating, or threatening to violate any provision of the Act or any rule or order of the board.

Board—The Texas Air Control Board.

Continuing violation (or violation continues or is continued)—When an apparent violation which arises out of conditions reasonably connected to conditions under investigation at the time of a prior charge of apparent violation is thereafter repeated.

Enforcement action—Either a suit instituted for injunctive relief or civil penalties of not less than \$50 nor more than \$25,000 for each day of violation and for each act of violation or both injunctive relief and a civil penalty; or an administrative proceeding instituted for a board order of compliance and/or an administrative penalty of not more than \$10,000 a day for each violation.

File—The act of addressing to the executive director any document permitted or required by these rules and mailing or delivering the document to the central office of the Texas Air Control Board (TACB) located at 6330 Highway 290 East, Austin, Texas 78723.

Nonclerical requirement—Any provision of the Act or any rule or order of the

board which has the purpose and effect to limit, reduce, control, or prohibit the emission of one or more air contaminants into the atmosphere or requires measurement or monitoring of emissions.

Notice or notification—The act of notifying a person charged with a violation of the Act or any rule or order of the board. Notice shall be effective when delivered in person to the person charged or one authorized by law to receive notice, citation, or summons on behalf of the person charged or five days following delivery to the United States postal authorities for delivery by first class or higher class mail at the last known address of the person charged as shown by the records of the TACB. TACB records shall be *prima facie* evidence of the date of mailing.

Timely file or respond—When any document permitted or required by these rules to be mailed or delivered to the central office of the TACB is actually received at the central office on or prior to the deadline for filing the documents; or if sent by U.S. mail, certified or registered, postage prepaid, properly addressed and a postmark or other evidence satisfactorily demonstrates that the document was mailed at least one day prior to the deadline for filing the documents and the document was actually received within five days after the deadline for filing.

§105.3. Delegation of Authority. The executive director is charged with the duty to enforce the Act, the rules, and the orders of the board. In carrying out this duty, he is authorized to act through employees of the TACB.

§105.11. Notice of Violation. Whenever an employee of the TACB, acting on the authority of the executive director, finds an apparent violation, he shall within five days thereafter give notice in writing of same to the person charged. The notice shall be deemed to be the act of the executive director pursuant to the Act, §4.02(a).

(1) If the apparent violation would materially affect human health or safety, the notice shall so state and shall further state that the executive director will proceed immediately to institute suit for injunctive relief and civil penalties, if appropriate, pursuant to the Act, §4.02(a)(1).

(2) If the apparent violation will not materially affect human health or safety, the notice shall so state and shall further state that the executive director may proceed to institute an enforcement action as defined in §105.1 of this title (relating to Definitions) at any time after the effective date of the notice.

(A) In the case of a nonclerical violation, the notice shall state that in the event the violation continues more than 30 days after the effective date of the notice, the executive director shall, at a minimum, initiate administrative proceedings to seek a board order of compliance.

(B) In the case of an apparent violation of a board order, the notice shall state that if the violation continues beyond 180 days after the date of issuance of the original notice of violation which led to the issuance of the board order, the executive director shall:

(i) file a suit for civil penalties and injunctive relief and/or commence action to revoke a permit, special permit, or exemption; and/or

(ii) commence an action for administrative penalties.

(3) In the case of an apparent violation of a permit, special permit, or exemption, the notice shall state that if the violation is continued after 180 days following the effective date of the notice of violation, the executive director may initiate proceedings to revoke the permit.

§105.13. Violations That Materially Affect Human Health and Safety. Pursuant to the Act, §4.02(a)(3), if an apparent violation would materially affect human health and safety, the executive director shall institute suit pursuant to the Act, §4.02(a), immediately.

§105.15. Violations That Do Not Materially Affect Human Health and Safety. If the apparent violation would not materially affect human health and safety, the executive director shall proceed in an expeditious manner to obtain compliance and, if appropriate, to seek penalties. If the person charged satisfies the executive director that compliance can be and will be achieved within a reasonable time, he may forbear from initiating enforcement action pending negotiations for voluntary compliance. However, in the case of a nonclerical violation which continues more than 30 days after the effective date of the notice, he shall, at a minimum, institute administrative proceedings in accordance with the provisions of §105.21 of this title (relating to Initiation of Administrative Proceedings) to seek a board order of compliance. In all cases of apparent violation, the executive director shall have the discretion to institute an enforcement action as defined in §105.1 of this title (relating to Definitions) at any time after the required notice is given by an authorized employee.

§105.21. Initiation of Administrative Proceedings.

(a) Determination to institute administrative proceedings. If the executive director determines under §105.15 of this title (relating to Violations That Do Not Materially Affect Human Health and Safety) that it is appropriate to institute administrative proceedings, he shall first issue a preliminary report stating the facts on which he based the conclusion that an apparent violation exists and recommending the amount of a proposed penalty, if appropriate, to be assessed by the board and a proposed compliance schedule.

(b) Contents of preliminary report. The preliminary report shall include a brief summary of the apparent violation(s); a statement of the amount of any penalty recommended; a proposed compliance schedule; and a statement of the right of the person charged to a hearing on the occurrence of the violation, the proposed compliance schedule, the amount of the penalty, or on all such issues or any combination thereof.

(c) Amount of penalty.

(1) The penalty may be in an amount not to exceed \$10,000 a day for each violation. In the case of a continuing violation, the executive director shall recommend an amount of penalty for each day the violation continues up to the date of entry of a board order on the matter.

(2) In determining the amount of the penalty, the executive director shall consider:

(A) the seriousness of the violation, including but not limited to the nature, circumstances, extent, and gravity of the prohibited acts; and the hazard or potential hazard created to the health or safety of the public;

(B) the history of previous violations;

(C) the amount necessary to deter future violations;

(D) efforts to correct the violation; and

(E) any other matters that justice may require.

(d) Determination of compliance schedule.

(1) In determining a schedule for compliance, the executive director shall consider the following factors:

(A) the seriousness of the violation, including but not limited to the nature, circumstances, extent, and gravity of the prohibited acts and the hazard or potential hazard created to the health and safety of the public;

(B) good faith efforts made by the persons charged to comply;

(C) the history of previous violations; and

(D) any other matters that justice may require, including:

(i) the character and degree of injury to, or interference with the health and physical property of the people;

(ii) the social and economic value of the source;

(iii) the question of priority of location in the area involved; and

(iv) the technical practicability and economic reasonableness of reducing or eliminating emissions.

(2) A schedule of compliance set forth in a compliance order of the board shall not extend beyond 180 days following the giving of notice by an authorized employee of the TACB of an apparent violation as provided in §105.11 of this title (relating to Notice of Violation); except that if the board determines that good faith ef-

forts to correct the violation have been made and that the economic reasonableness and technical practicability of reducing or eliminating emissions require a longer period of time for compliance, the board may, in its discretion, provide for compliance beyond 180 days following the giving of said notice. Good faith effort shall be strictly interpreted by the board.

(e) Notice of preliminary report. Within 10 days after the report is issued, the executive director shall give written notice including a copy of the preliminary report to the person charged.

§105.23. Response to Administrative Proceedings.

(a) Response to preliminary report. Not later than the 20th day after the date on which notice given pursuant to §105.21 (e) of this title (relating to Initiation of Administrative Proceedings) is effective, the person charged must respond in writing to the notice. The person charged either may file with the executive director a written consent to the preliminary report of the executive director, including the recommended penalty and compliance schedule, or may file with the executive director a written request for a hearing. It is also permissible for the person charged to consent to one or more issues in the report and to file a written request for a hearing on the disputed issue or issues.

(b) Consent to penalty. If the person charged with the violation consents to the penalty recommended by the executive director in the preliminary report issued under §105.21 of this title (relating to Initiation of Administrative Proceedings) or fails to timely respond to the notice as required by subsection (a) of this section, the board by order shall either assess that penalty or order a hearing to be held on the recommendations in the preliminary report of the executive director. If the board assesses the penalty recommended by the report, the executive director shall give written notice to the person charged of its decision and the person charged shall pay the penalty.

(c) Consent to compliance schedule. If the person charged with the violation consents to the compliance schedule recommended by the executive director in the preliminary report issued under §105.21 of this title (relating to Initiation of Administrative Proceedings) or fails to timely respond to the notice as required by subsection (a) of this section, the board shall either order compliance as recommended by the report or order a hearing to be held on the recommendation in the preliminary report of the executive director. If the board orders compliance as recommended by the report, the executive director shall give written notice to the person charged of its decision and the person charged shall comply as ordered.

(d) Request for hearing. If the person charged with the violation requests or

the board orders pursuant to subsections (a)-(c) of this section, the executive director shall call a compliance hearing and give notice of the hearing as provided by the Act, §3.17.

§105.25. Compliance Hearing. Any compliance hearing called by the executive director pursuant to §105.23(d) of this title (relating to Response to Administrative Proceedings) shall be held by a hearing examiner in accordance with the requirements of Chapter 103 of this title (relating to Procedural Rules). The hearing examiner shall make findings of fact and promptly issue to the board a written decision as to the occurrence of the violation and a recommendation as to compliance and the amount of the proposed penalty if a penalty is warranted.

(1) Based on the findings of fact and recommendations of the hearing examiner, the board by order may find a violation has occurred and enter appropriate compliance orders and may assess an administrative penalty or may find that no violation has occurred.

(2) The executive director shall give notice of the board's decision to the person charged, and if the board finds that a violation occurred, the executive director shall give to the person charged written notice of its findings, of the amount of the penalty, if any, and its compliance order, and of his right to judicial review of the board's order in accordance with the requirements of §105.41 of this title (relating to Appeal of Compliance Orders).

(3) All proceedings under this section are subject to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

§105.31. Payment of Administrative Penalty.

(a) Within 30 days immediately following the day on which an order issued pursuant to §105.23(b) of this title (relating to Response to Administrative Proceedings) or §105.25 of this title (relating to Compliance Hearing) which assesses a penalty is final as provided by the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §16(c), the person charged with the penalty shall:

(1) pay the penalty in full; or

(2) file a petition for judicial review in accordance with the requirements of §105.41 of this title (relating to Appeal of Compliance Orders). If the person files a petition for judicial review of either the amount of the penalty or the fact of the violation or of both the fact of the violation and the amount of the penalty, the person charged with the penalty shall:

(A) timely file the amount of the penalty with the executive director for placement in an escrow account; or

(B) in lieu of payment into escrow, file with the executive director a *supersedeas* bond in a form approved by the

executive director for the amount of the penalty, the bond to be effective until all judicial review of the order or decision is final.

(b) Payment of any administrative penalty under subsection (a) of this section shall be full and complete satisfaction of the violation for which the administrative penalty is assessed and shall preclude any other civil or criminal penalty for the same violation.

(c) Failure to forward payment of the penalty to or to post the bond with the executive director within the time provided by subsection (a) of this section results in a waiver of all legal rights to judicial review of the fact of the violation or the amount of the penalty.

(d) If the person charged with the violation fails to forward the payment of the penalty or post the bond as required by subsection (a) of this section, the executive director may forward the matter to the attorney general for enforcement.

§105.33. Disposition of Administrative Penalties. A penalty collected under §105.31(a) of this title (relating to Payment of Administrative Penalty) shall be deposited in the state treasury to the credit of the General Revenue Fund.

§105.35. Public Notice of Penalty Assessments. If the board finds that a violation occurred and an administrative penalty has been assessed, the executive director shall also publish notice of the decision in the *Texas Register*, within 10 days. The failure to timely publish this notice shall in no way affect the validity of the penalty or the order of the board or the obligation of the person charged to comply therewith.

§105.41. Appeal of Compliance Orders.

(a) Judicial review of the order or decision of the board entered pursuant to §105.25 of this title (relating to Compliance Hearing) shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County within 30 days after its effective date in accordance with the requirements of the Act, §6.01.

(b) If a penalty is reduced or not assessed as a result of the judicial review provided for in subsection (a) of this section, the executive director shall remit to the person charged with the violation the penalty amount filed under §105.31(a) of this title (relating to Payment of Administrative Penalty) minus the penalty assessed by the court plus accrued interest if the penalty has been paid or shall execute a release of the bond if a *supersedeas* bond has been posted. The accrued interest on amounts remitted by the executive director under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank and shall be paid for the period beginning on the date the penalty is paid under §105.31(a)

of this title (relating to Payment of Administrative Penalty) and ending on the date the penalty is remitted.

§105.43. Revocation of Permits. If a violation continues beyond 180 days after notice of a finding by an authorized employee of the TACB of an apparent violation pursuant to §105.11 of this title (relating to Notice of Violation), the executive director may institute proceedings to revoke a construction or operating permit associated with the apparent violation.

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 August 28, 1985.

TRD-857813

Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Proposed date of adoption:

October 25, 1985

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

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Part IX. Texas Water Commission

Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste

Subchapter Y. Hazardous Waste Generation, Facility, and Disposal Fees System

★ 31 TAC §§335.751-335.762

The Texas Water Commission proposes new §§335.751-335.762, concerning the hazardous waste generation, facility, and disposal fees system. The Texas Water Commission is required under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §§11-14, as amended by Senate Bill 249 and House Bill 2359, 69th Legislature, 1985, to establish a hazardous waste generation, facility, and disposal fees program. The fees are to be collected on schedules established for each fee program and deposited, including interest and penalties for late payment, to the appropriate fund in the state treasury. The generation and facility fees are to be assessed annually and deposited in the hazardous waste generation and facility fees fund. The total amount of fees to be deposited in this fund cannot be less than \$3.5 million nor more than \$3.75 million in any fiscal year. The fund is to be used by the commission for the purpose of supplementing other funds appropriated by the legislature to pay for administration of the State Hazardous Waste Management Program. Fees collected under this fund may also be distributed to other state

agencies for the purposes set out in the Texas Solid Waste Disposal Act, §3. The disposal fee is to be assessed quarterly on owners and operators of land disposal facilities as defined in Texas Solid Waste Disposal Act, §12, and deposited in the hazardous waste disposal fee fund. The fund is to be used by the commission in supplementing the disposal facility response fund under the Texas Water Code, Subchapter H, Chapter 26; for necessary and appropriate remedial action at sites at which hazardous waste has been disposed; and if additional funds are needed to match federal funds for remedial action. Expenditures from the fund may not exceed \$10.75 million in the 1986-1987 biennium unless federal funds for remedial action become available as a result of reauthorization of the federal Comprehensive Environmental Response, Compensation, and Liability Act or additional funds are needed to match federal funds due to the failure of private parties to provide adequate funds for remedial action.

New §335.753, relating to hazardous waste generation fee assessment, establishes the annual hazardous waste generation fee rates to be imposed upon each generator of hazardous waste which generates hazardous waste on or after September 1, 1985. The Texas Solid Waste Disposal Act, §12, requires that an annual fee be imposed on each generator which generates hazardous waste at a rate of 100 kilograms or more per month during any part of the year. The commission has modified this requirement to that of basing the generation fee on an annual generation rate which will provide greater ease of administering the fee program with respect to infrequent and small quantity generators of hazardous waste and ease the burden of imposing additional reporting requirements on the regulated community since reporting of monthly generation rate data is not currently required. The amount of fee assessed to each generator is determined by the total amount of hazardous waste generated during the previous calendar year and is based upon reports made to the commission for that year under the requirements of §335.9 of this title, relating to shipping and reporting procedures applicable to generators, and §335.13 of this title, relating to record-keeping and reporting procedures applicable to generators of Class I industrial solid waste.

New §335.754, relating to facility fee assessment, establishes the facility fee schedule as required in Texas Solid Waste Disposal Act, §12, whereby the commission is authorized to develop and adopt a facility fee schedule for determining the amount of fee to be charged (see text for schedule). The annual facility fee is imposed on a facility which holds one or more permits or is operating

under interim status pending issuance of a permit for a solid waste facility for processing, storing, or disposing of hazardous waste. In developing the facility fee schedule the commission considered the permitted capacity of facilities and variations in the costs necessary to regulate different types of facilities. The annual facility fee to be assessed under this proposed schedule is the cumulative total of fees for all hazardous waste management units at the facility on September 1, 1985, and September 1 of each year thereafter. The minimum fee to be assessed a facility is not to be less than \$250 nor more than \$20,000 per year. The maximum fee for a facility that receives less than 1,000 kilograms per month of hazardous waste is not to exceed \$500 per year. The facility fee to be imposed under the proposed schedule has been set higher on land disposal facilities due to the greater costs incurred by the commission for performing inspections and compliance tracking as opposed to other types of facilities and due to the potential for greater environmental risks associated with these types of facilities.

New §335.755, relating to disposal fee assessment, establishes a rate of \$4.00 per dry weight ton to be assessed quarterly on the operator of a land disposal facility for each dry weight ton of hazardous waste disposed on or after September 1, 1985. Primary metals high volume, low hazard waste are to be assessed at a rate of 25% of the disposal fee. The cumulative amount of fees to be collected under the disposal fee fund cannot be less than \$10.75 million nor more than \$12 million over the 1986-1987 biennium. The commission may, on or before June 1, 1986, estimate the total amount of hazardous waste disposal fees that will be collected during the biennium. If the estimate indicates that the disposal fee fund will contain less than \$10.75 million at the conclusion of the biennium, the commission, by rule, will increase the fee for each dry weight ton of hazardous waste disposed through land disposal to an amount that the commission estimates will bring the fund within the cumulative amount prescribed in Texas Solid Waste Disposal Act, §12.

New §335.756, relating to dry weight determination, establishes the method of calculating the dry weight of each hazardous waste stream. It is the responsibility of each generator of hazardous waste to provide a certificate of computation to the operator of a land disposal facility concerning the dry weight of the hazardous waste to be disposed.

New §335.757, relating to alternate methods of dry weight determination, provides, as required in the Texas Solid Waste Disposal Act, §12, a method of determining or estimating the dry weight of small volumes of hazardous waste for which the costs of analyzing the waste

to determine dry weight are disproportionate. In addition, a procedure has been established in the rules for generators to petition the executive director for the use of an alternate method of determination other than those specified in the proposed rules.

New §335.758, relating to fees payment, establishes payment schedules for the hazardous waste generation, facility, and disposal fees. For fiscal year 1986, the annual hazardous waste generation fees will be payable by October 1, 1985, and facility fees will be payable by November 1, 1985. It is the intent of the commission to study the development of a method of staggered billing for these fees to be used in subsequent years to relieve the anticipated workload of administering the fee program from year to year.

New §335.759, relating to records and reports, requires all generators to keep records and report the amount of hazardous waste they generate and the dry weight amount of each hazardous waste which is to be disposed in a land disposal facility. This section also requires operators of land disposal facilities to keep records and report the dry weight amount of each hazardous waste disposed in their land disposal facilities. Generators and operators are to retain these records for a period of three years.

New §335.760, relating to cancellation, revocation, and transfer, addresses the responsibility and requirements for facility fee payments by operators of hazardous waste management facilities whose permit is canceled or revoked, or terminated interim status, whether by voluntary action or as a result of involuntary proceedings initiated by the commission. In addition, this section addresses the issue of liability for nonpayment of any of the fees when ownership of a facility occurs.

Mike Hodges, Fiscal Services Section chief, has determined that for the first five-year period the sections will be in effect there will be fiscal implications as a result of enforcing or administering the sections. The anticipated effect on state government is \$35,333 for administration, \$144,662 for program, \$179,995 for expenditure, \$7,725 million for revenue, and \$7,545,005 for a revenue gain or loss for fiscal years 1986 and 1987. For fiscal years 1988-1990, there will be \$33,137 for administration, \$135,673 for program, \$168,810 for expenditure, \$7.725 million for revenue, and \$7,556,190 for a revenue gain or loss. The effect on local government will be an estimated cost of \$7,725 each year in 1986-1990.

The effect on small businesses will be as follows. The following fee projections are based on the annual hazardous waste generation rates calculated from reported volumes of calendar year 1984.

GENERATION RATES	GENERATORS	RATE	COST
Equal to 1,200 kilograms but less than 12,000 kilograms per year	283	@ 50.00	= \$14,150.00
Equal to 12,000 kilogram but less than 120,000 kilogram per year	298	@ 500.00	= \$149,000.00
Equal to 120,000 kilograms but less than 12,000 kilograms per year	274	@2,500.00	= \$685,000.00
Equal to or greater than 12,000,000 kilograms per year	65	@5,000.00	= \$325,000.00

Total Cost to Generators of Fee Assessments \$1,173,150.00

The following hazardous waste facility fee projections for solid waste facilities are based on an average per facility fee derived through fee calculations of a representative sample of permit applications.

FACILITY CATEGORY	NO. OF FACILITIES	AVERAGE FEE PER FACILITY	COST PER FACILITY CATEGORY
Interim Status Facilities - Storage/Processing	102	@ \$2,152.00	= \$219,504.00
Interim Status Facilities - Land Disposal	185	@ \$11,968.00	= \$2,214,080.00
120-day Applicants - Storage/Processing	7	@ \$2,152.00	= \$15,064.00
120-day Applicants - Land Disposal	1	@ \$11,968.00	= \$11,968.00
Permitted Facilities Storage/Processing	26	@ \$2,152.00	= \$55,952.00
Permitted Facilities - Land Disposal	0	@ \$11,968.00	= -0-

Total Expected Costs to Facilities of Fee Assessments \$2,516,568.00

The commission is unable to project the fiscal implications on land disposal facilities due to the lack of any volumetric data based on dry weight determinations. Each will pay \$4.00 per dry weight ton disposed.

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

benefit anticipated as a result of enforcing the sections as proposed will be improved hazardous waste tracking, inspection of hazardous waste management facilities, and enhanced enforcement of provisions of the Texas Solid Waste Disposal Act, the rules of the Texas Water Commission and the provisions of hazardous waste processing, storage, and disposal permits issued by the Texas

Water Commission, to protect the quality of waters in the State; and the remediation of solid waste sites posing a threat to human health and the environment, under the provisions of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Public Law 96-510) and the Texas Solid Waste Disposal Act, as amended by House Bill 2358, 69th Legislature, 1985.

Comments on the proposal may be submitted to William G. Newchurch, Assistant Division Director, Hazardous and Solid Waste Division, Texas Water Commission, P.O. Box 13087, Austin, Texas, 78711, (512) 463-7875. A public hearing to consider data, views and arguments has been scheduled for 10 a.m. on September 18, 1985, in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin.

The new sections are proposed under Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, as amended by Senate Bill 249 and House Bill 2359, 68th Legislature), §§11-14, which provide the Texas Water Commission with the authority to adopt a hazardous waste generation, facility, and disposal fees system to establish a fund to supplement appropriations for administering hazardous waste programs by the commission and a second fund to supplement appropriate remedial and corrective action at sites at which hazardous waste have been disposed.

§335.751. Purpose.

(a) It is the purpose of these sections to establish a hazardous waste generation, facility, and disposal fees system. Under this program an annual fee is imposed on each hazardous waste generator and operator of a hazardous waste facility. In addition a quarterly fee shall be imposed on each dry weight ton of hazardous waste disposed in a land disposal facility.

(b) Hazardous waste generation and facility fees will be deposited in a hazardous waste generation and facility fees fund for the purpose of supplementing other funds appropriated by the legislature to pay for administration of the state hazardous waste management program. Distribution of these funds to other state agencies may be made for the purposes set out in Texas Solid Waste Disposal Act, §3.

(c) All disposal fees will be deposited in a hazardous waste disposal fee fund for the purpose of the following:

(1) supplementing the disposal facility response fund under the Texas Water Code, Chapter 26, Subchapter H;

(2) for necessary and appropriate remedial action at sites at which hazardous waste has been disposed if funds from a liable party, independent third party, or the federal government are not sufficient for the remedial action, and

(3) if additional funds are needed to match federal funds for remedial action.

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

Affidavit of exclusion—A sworn statement by a permit applicant in support of an exclusion or exemption from permitting pursuant to §335.2(c) of this title

(relating to Permit Required) or §335.43(b) of this title (relating to Permit Required).

Authorized hazardous waste management unit—A unit at a hazardous waste management facility which is authorized by permit or which is identified in an application submitted pursuant to and in accordance with §335.2(c) of this title (relating to Permit Required) or §335.43(b) of this title (relating to Permit Required).

Dry weight—The weight of all constituents other than water.

Generator of hazardous waste or generator—Any person whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation by the commission.

Hazardous waste—Those solid wastes not otherwise exempted which have been identified or listed as hazardous wastes by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, 42 United States Code §6901 *et seq.*, as amended, as of September 1, 1985.

Injection well—As provided in the Texas Water Code, §27.002(B).

Interim status—The status of any person who owns or operates a facility required to have a permit under this chapter, and has submitted an application for a permit pursuant to §335.2(c) of this title (relating to Permit Required) or §335.43(b) of this title (relating to Permit Required).

Land disposal facility—Any landfill, surface impoundment (excluding an impoundment treating, processing, or storing waste that is disposed pursuant to Texas Water Code, Chapter 26 or Chapter 27), waste pile, facility at which land farming or a land application process is used and an injection well. Land disposal does not include the normal application of agricultural chemicals or fertilizers, nor does it include disposal of hazardous waste retrieved or created due to remediation of an inactive hazardous waste disposal facility for which no federal or state permit was issued after September 1, 1985.

On-site land disposal facility—A hazardous waste unit which meets the definition of land disposal facility of this section and on-site disposal as defined in §335.42 of this title (relating to Definitions).

Primary metals high volume, low hazard waste—Hazardous waste from the extraction, beneficiation, and processing of ores, minerals, or scrap metal and whose constituents, which are subject to the criteria for the identification or listing as a hazardous waste pursuant to the Resource Conservation and Recovery Act, §3001(a), 42 United States Code §6901 *et seq.*, account for 10% or less of its total dry weight volume.

§335.753. Hazardous Waste Generation Fee Assessment.

(a) An annual hazardous waste generation fee is hereby assessed each generator which generates hazardous waste on or after

September 1, 1985. These fees shall be deposited in the hazardous waste generation and facility fee fund. The amount assessed each generator is determined by the annual hazardous waste generation rate calculated during the previous calendar year and is based upon total volume generated.

(b) Fees are assessed according to the following schedule:

(1) generation of hazardous waste equal to 1,200 kilograms but less than 12,000 kilograms per year—\$50;

(2) generation of hazardous waste equal to 12,000 kilograms but less than 120,000 kilograms per year—\$500;

(3) generation of hazardous waste equal to 120,000 kilograms but less than 12 million kilograms per year—\$2,500;

(4) generation of hazardous waste equal to or greater than 12 million kilograms per year—\$5,000.

§335.754. Facility Fee Assessment.

(a) An annual facility fee is hereby assessed on each permittee who holds one or more hazardous waste permits and each applicant who has submitted a permit application pursuant to §335.2(c) of this title (relating to Permit Required) or §335.43(b) of this title (relating to Permit Required) and is operating under interim status pending permit issuance. These fees shall be deposited in the hazardous waste generation and facility fees fund. The fee for each year is assessed on each facility for which a permit or interim status is in effect during any part of the fiscal year.

(b) An applicant who has, prior to September 1, 1985, submitted an affidavit of exclusion from permit requirements, shall not be subject to the annual facility fee, pending a decision by the commission on the affidavit of exclusion. If the commission determines that the facility is subject to the permit requirement, the applicant shall pay the fee within 30 days or is subject to the penalties for late payment established herein.

(c) An applicant who files an affidavit after September 1, 1985, shall be subject to the annual facility fee for the billing year in which the affidavit is filed. The applicant shall not be subject to the annual facility fee for the following year, pending a decision by the commission on the affidavit of exclusion. If the commission determines that the facility is subject to the permit requirement, the applicant shall pay the fee within 30 days or is subject to the penalties for late payment established herein.

(d) The annual facility fee assessed is the cumulative total of fees for all hazardous waste management units at the facility on September 1, 1985, and September 1 of each year thereafter. The minimum fee for each facility shall be \$250; the maximum fee for each facility shall be \$20,000. The maximum fee for a facility which never receives more than 1,000 kilograms per month shall be \$500. Fees shall be assessed as follows.

(1) Storage or processing in tanks and containers—\$250 for 0-10,000 gallons storage capacity and \$.01 per gallon for each additional gallon storage capacity in excess of 10,000 gallons, to a maximum fee of \$5,000 for storage at each facility. This fee shall not be assessed against the owner or operator of an elementary neutralization unit or wastewater treatment unit exempt from the requirement of a permit under §335.41(d) of this title (relating to Purpose, Scope and Applicability).

(2) Land treatment units—\$1,000 for 0-1 surface acre, \$500 for each additional acre to a maximum fee of \$5,000 for land treatment at each facility.

(3) Waste piles—\$1,000 for 0-1 surface acre, \$500 for each additional acre to a maximum fee of \$5,000 for waste piles at each facility.

(4) Storage or processing in surface impoundments—\$2,000 for 0-1 surface acre, \$1,000 for each additional acre to a maximum fee of \$10,000 for surface impoundments at each facility.

(5) Landfills—\$2,000 for 0-1 surface acre, \$1,000 for each additional acre to a maximum fee of \$10,000 for landfills at each facility.

(6) Injection wells—\$10,000 for each injection well authorized for the disposal of hazardous waste.

(7) Other units—\$500 for each incinerator, thermal processing unit and processing unit (other than those listed in paragraphs (1)-(6) of this subsection) used for waste reduction, recycling, and hazard reduction.

(8) Closed disposal units—\$500 for each facility which has one or more disposal units which received waste after January 26, 1983, and which have been closed pursuant to an approved closure plan and which are subject to the post-closure care permit requirements. Disposal units which are closed in a manner such that all hazardous wastes and hazardous constituents are removed pursuant to an approved closure plan are not subject to the fee.

§335.754. Disposal Fee Assessment.

(a) A quarterly disposal fee for each dry weight ton of hazardous waste disposed on or after September 1, 1985, is hereby assessed upon the operator of a land disposal facility for deposit in the hazardous waste disposal fee fund. The minimum fee assessed shall be \$4.00 per dry weight ton, except the fee assessed for land disposal of primary metals high volume, low hazard waste shall be assessed at a rate of 25% of the fee.

(b) For samples taken pursuant to the requirements of this section the following information shall be maintained by the generator and available for inspection pursuant to of the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §7:

(1) the exact place, date, time and method of sample collection;

(2) the date(s) the samples were analyzed;

(3) the person(s) who analyzed the samples;

(4) the analytical methods used in the analysis of the samples;

(5) the results of all analyses, and

(6) the results of adequate verification of equipment and instrument performance.

(c) All records and information resulting from the required analyses, shall be retained for a minimum of three years. The period of record retention is automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

§335.756. Dry Weight Determination.

(a) The method of calculating the dry weight of each hazardous waste stream shall be determined initially and at any time the waste stream undergoes a significant change in water content using the appropriate method(s) as specified in this section. Determinations shall be made from a representative sample collected by grab or composite. Collection methods and sample preservation shall be by methods to minimize volatilization.

(1) Hazardous wastes which contain suspended solids greater than or equal to 15% of the sample on a weight basis shall have the dry weight determination calculated using the method specified in Appendix I in §335.762 of this title (relating to Appendices I and II).

(2) Aqueous based hazardous wastes which contain suspended solids less than 15% of the sample by weight basis and which contain a single liquid phase shall have the dry weight determination calculated using *Standard Methods for the Examination of Water and Wastewater*, 15th Edition; Method 209A; pages 92-93 or equivalent method in later editions.

(3) Organic based hazardous wastes which contain suspended solids less than 15% of the sample by weight and which contain a single liquid phase shall have the dry weight determination calculated using:

(A) the 1981 *Annual Book of ASTM Standards*, Part 30; Method E203, pages 803-812 or equivalent method in later editions; or

(B) the method specified in Appendix II in §335.762 of this title (relating to Appendices I and II).

(4) Hazardous wastes which do not meet any of the criteria specified in paragraphs (1)-(3) of this subsection shall have the dry weight determination calculated using:

(A) the 1981 *Annual Book of ASTM Standards*, Part 23; Method D96, pages 64-81 or equivalent method in later editions; or

(B) the method specified in Appendix II in §335.762 of this title (relating to Appendices I and II); or

(C) the 1981 *Annual Book of ASTM Standard*, Part 23; Method D95, pages 59-63 or equivalent method in later editions. Method D96 determines the water and sediment content of the sample. The calculations shall be modified to determine only the water content.

(5) The method for calculating the dry weight shall be that method specified in Appendix I in §335.762 of this title (relating to Appendices I and II) or an alternate method selected by the generator pursuant to §335.757 of this title (relating to Alternate Methods of Dry Weight Determination), if the hazardous waste cannot be analyzed by one of the other required methods of this section due to interfering constituents. Documentation identifying the method of analysis and describing the interference shall be maintained by the generator.

(b) Hazardous wastes containing free liquids which are designated for disposal in a landfill and must be solidified prior to disposal shall have the dry weight determination made on the hazardous waste, prior to the addition of the solidification agent.

§335.757. Alternate Methods of Dry Weight Determination.

(a) Generators may select other test methods for the purpose of calculating the dry weight of their hazardous waste where one of the methods provided in §335.756 of this title (relating to Dry Weight Determination) is not applicable. Technical justification must be sent to the executive director, demonstrating that the proposed method will produce an accurate determination of the dry weight ratio of the waste unless the executive director has provided written approval for use of the alternate method. Use of an evaporation temperature above 75°C will be allowed only on demonstration that the waste stream contains appreciable volatile compounds that exhibit higher evaporation temperatures. Where practicable, results from the proposed test methods and the required method should be compared. Applicability of this item to such dry weight determinations is subject to review by the executive director.

(b) Generators may elect to declare the total wet weight of the hazardous waste as the dry weight volume when the costs of analyzing the waste to determine dry weight are disproportionate to the costs of disposal. Applicability of this item to such dry weight estimates is subject to review by the executive director.

§335.758. Fees Payment.

(a) Hazardous waste generation and facility fees are payable each year for all hazardous waste generators, permittees, and applicants. Fees must be paid by check, certified check or money order payable to the Hazardous Waste Generation and Facility Fees Fund. Annual facility fees are payable by permittees and applicants regardless of whether the facility is in actual operation.

All annual generation fees shall be due by October 1 and all facility fees shall be due by November 1.

(b) Quarterly disposal fees are payable for each operator of a land disposal facility. Fees must be paid by check, certified check, or money order to the Hazardous Waste Disposal Fee Fund, and shall be due in accordance with the following schedule:

Fiscal Quarter	Date Due
September 1 - November 30	February 1
December 1 - February 28	May 1
March 1 - May 31	August 1
June 1 - August 31	November 1

§335.759. Records and Reports.

(a) Generators of hazardous waste are required to keep records of the amount of hazardous waste they generate and the dry weight amount of each hazardous waste which is designated for land disposal. In addition, generators are required to provide each operator of a land disposal facility a certificate of computation of the dry weight to be disposed. For each off-site shipment, the dry weight amount of each hazardous waste is to be recorded in Item J of the uniform hazardous waste manifest in §335.16 of this title (relating to Appendix I). Generators are to submit the appropriate reports under §335.13(b) of this title (relating to Record Keeping and Reporting Procedures Applicable to Generators of Class I Industrial Solid Waste) on forms furnished or approved by the executive director.

(b) Operators of hazardous waste off-site or commercial land disposal facilities are required to keep records of the dry weight amount of each hazardous waste disposed in each hazardous waste land disposal unit at the facility and submit the appropriate reports required under §335.15(2) of this title (Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) and subsection (c)(3) of this section, for hazardous wastes generated at an off-site or commercial facility, on forms furnished or approved by the executive director.

(c) Operators of hazardous waste on-site land disposal facilities shall:

(1) keep records of the dry weight amount of each hazardous waste disposed in each hazardous waste land disposal unit at the facility. Records pertaining to on-site disposal of hazardous waste shall include, at a minimum, information regarding the waste character, classification and dry weight quantity, and the method as described in Appendix I, Table 2 "Handling Codes for Storage, Processing and Disposal Methods" in §335.48 of this title (relating to Appendices I-IV) and location of disposal;

(2) retain such records required by paragraph (1) of this subsection for a minimum of three years from the date of reporting in §335.753 of this title (relating to Hazardous Waste Generation Fee Assessment); and

(3) submit a monthly on-site land disposal summary on forms furnished or approved by the executive director containing such information for the month as is specified in paragraph (1) of this subsection to the Texas Water Commission on or before the 25th day of each month for disposal activity originating during the previous month. An operator must keep a copy of each summary for a period of at least three years from the due date of the summary. An operator required to comply with this subsection shall continue to prepare and submit monthly summaries, regardless of whether any disposal was made during a particular month, by preparing and submitting a monthly summary indicating that no disposal was made during that month.

(d) The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

§335.760. Cancellation, Revocation, and Transfer.

(a) Cancellation or revocation of a permit, or termination of interim status, whether by voluntary action on the part of the applicant or permittee or as a result of involuntary proceedings initiated by the commission, will not constitute grounds for refund, in whole or in part, of any annual

or quarterly fee paid by the permittee or applicant.

(b) Transfer of facility ownership will not entitle the transferring permittee, applicant, or generator to a refund, in whole or in part of any annual or quarterly fee already paid by the permittee, applicant, or generator. The transferring permittee, applicant, or generator remains liable for any unpaid portion of fee assessed which accrued during his ownership. Any permittee, applicant, or generator to whom facility ownership or a permit is transferred shall be liable for any of the annual and quarterly fees assessed after date of transfer. Payment by either the transferring permittee, applicant, or generator, or by the permittee, applicant, or generator to whom the ownership was transferred shall constitute full payment for any fees assessed.

(c) A generator who ceases generation of hazardous waste due to a change of process or closing of operations shall not be eligible for a refund, in whole or in part, of any annual fee paid.

§335.761. Failure to Make Payment or Report.

(a) Failure to make payment in accordance with this subchapter constitutes a violation of the Texas Solid Waste Disposal Act which is subject to enforcement pursuant to the Act, §8 and §8b.

(b) Generators and operators of a facility failing to make payment of the annual fees imposed under the Texas Solid Waste Disposal Act, §12, shall be assessed interest at an annual rate of 15% of the amount of the fee due accruing from the date on which the fee is due.

(c) Operators of land disposal facilities submitting late reports concerning the disposal of hazardous waste under the Texas Solid Waste Disposal Act, §13, are subject to a civil penalty of \$100 for each day the violation continues.

(d) Any interest or penalties collected by the commission shall be deposited in the appropriate fund.

§335.762. Appendices I and II. The following appendices will be used for the purposes of this subchapter.

**APPENDIX I
DRY WEIGHT DETERMINATION FOR SOLIDS
BASED HAZARDOUS WASTE**

The dry weight determination provisions of §335.755 of this title (relating to Dry Weight Determination) specify that the generator must determine the dry weight of each hazardous waste stream. This appendix outlines the method to be used by the generator.

1. Collect a representative sample by grab or composite. Collection methods and sample preservation shall be by methods to minimize volatilization.

2. An aliquot of about 100 grams or more shall be weighed in a tared evaporating dish, casserole or similar container. Record tare weight as "A": and container plus sample as "B".

3. This sample shall be evaporated at 73° to 75°C for two hours. Cool and weigh the sample plus container and record weight as "C".

4. Evaporate sample again in a drying oven at 103° to 105°C per "Standard Methods", 15th Edition, Method 209A. Cool and weigh sample plus container and record weight as "D".

All work should be done with all laboratory precautions necessary, including use of fume hoods and absence of ignition sources as appropriate.

Weight of Water	=	C-D
Weight of Water Free Waste	=	(B-A) - (C-D)
	=	Weight of original sample- weight of water
Dry Weight Ratio	=	$\frac{(B-A) - (C-D)}{(B-A)}$
	=	$\frac{\text{Weight of water free waste}}{\text{Weight of original sample}}$

APPENDIX II
DRY WEIGHT DETERMINATION FOR OIL
AND ORGANIC BASED HAZARDOUS WASTE

The dry weight determination provisions of §335.755 of this title (Dry Weight Determination) specify that the generator must determine the dry weight of each hazardous waste stream. This appendix outlines the method to be used by the generator.

1. Collect a representative sample by grab or composite. Collection methods and sample preservation shall be by methods to minimize volatilization.

2. An aliquot of about 25 grams or more shall be weighed to the nearest 0.1 mg in a tared evaporating dish or beaker. Record tare weight as "A" and container plus sample as "B".

3. Dilute sample with 100 ml of hexane. Filter sample through a crucible with a glass fiber filter (Whatman grade 934AH and 984H; Gelman Type A/E; millipore type AP40; or equivalent. Available in diameters of 2.2 cm to 4.7 cm.). Rinse evaporating dish or beaker with two 20 ml portions of hexane and filter through the crucible. Discard the solids and filter and save the filtrate.

4. Weigh approximately 25 grams of predried, anhydrous magnesium sulfate (MgSO_4) in a 400 ml beaker to the nearest 0.1 mg. Add the filtrate from Step 3 and stir for a few minutes with a glass rod. (Caution: Heat may be generated upon addition of filtrate.) Carefully decant the liquid portion in the beaker. Record the weight of the beaker and MgSO_4 as "C".

5. Dry the beaker at 73° - 75°C for one hour. Cool and weigh the beaker and record the weight as "D".

All work shall be done with all laboratory precautions necessary, including use of fume hoods and absence of ignition sources as appropriate.

Weight of Water	=	D-C
Weight of Water Free Waste	=	(B-A) - (D-C)
	=	Weight of original sample - weight of water
Day Weight Ratio	=	$\frac{(B-A) - (D-C)}{(B-A)}$
	=	$\frac{\text{Weight of water free waste}}{\text{Weight of original sample}}$

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 August 28, 1985.

TRD-857780

James K. Rourke, Jr.
General Counsel and
Chief Hearings
Examiner
Texas Water
Commission

Earliest possible date of adoption:
October 7, 1985
For further information, please call
(512) 463-8087.

★ ★ ★

Withdrawn

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 83. 24-Hour Care Licensing

Subchapter L. Standards for Residential Treatment Centers

★ 40 TAC §§83.801-83.829

The Texas Department of Human Services has withdrawn from consideration for permanent adoption the proposed repeal of §§83.801-83.829, concerning minimum standards for residential treatment centers. The proposed notice of repeal appeared in the April 30, 1985, issue of the *Texas Register* (10 TexReg 1351).

Issued in Austin, Texas, on August 30, 1985.

TRD-857861

Cathy Rossberg
Administrator
Texas Department of
Human Services

Filed: August 30, 1985

For further information, please call
(512) 450-3766.

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★ 40 TAC §§83.801-83.839

The Texas Department of Human Services has withdrawn from consideration for permanent adoption proposed new §§83.801-83.839, concerning minimum standards for residential treatment centers. The text of the new sections as proposed appeared in the April 30, 1985, issue of the *Texas Register* (10 TexReg 1352).

Issued in Austin, Texas, on August 30, 1985.

TRD-857862

Cathy Rossberg
Administrator
Texas Department of
Human Services

Filed: August 30, 1985

For further information, please call
(512) 450-3766.

★ ★ ★

tional guidelines for residents in 24-hour care facilities. The text of the amended section as proposed appeared in the April 30, 1985, issue of the *Texas Register* (10 TexReg 1361).

Issued in Austin, Texas, on August 30, 1985.

TRD-857863

Cathy Rossberg
Administrator
Texas Department of
Human Services

Filed: August 30, 1985

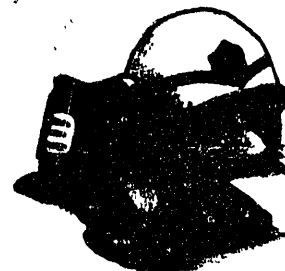
For further information, please call
(512) 450-3766.

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Subchapter XXXX. Support Documents

★ 40 TAC §83.9801

The Texas Department of Human Services has withdrawn from consideration for permanent adoption the proposed amendment to §8.9801, concerning nutri-



Adopted Rules

An agency may take final action on a rule 30 days after a proposal has been published in the *Texas Register*. The rule 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 rule 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 rule with changes to the proposed text, the proposal will be republished with the changes.

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

Chapter 114. Motor Vehicles

★31 TAC §§114.1, 114.3, 114.5

The Texas Air Control Board (TACB) adopts amendments to §114.1 and §114.5, with changes to the proposed text as published in the March 1, 1985, issue of the *Texas Register* (10 TexReg 726). Section 114.3 is adopted without changes and will not be republished.

The amendments to §114.1, concerning maintenance and operation of air pollution control systems or devices used to control emissions from motor vehicles, prohibit the offering for sale of any motor vehicle without appropriate emission control devices or systems in place and operating, and require the posting of signs at certain motor vehicle sales, service, and supply facilities and fuel dispensing facilities in Dallas, El Paso, Harris, and Tarrant Counties which describe the applicable provisions of Regulation IV and the potential penalties for violation of those rules. The amendments to §114.3, concerning inspection requirements, remove the requirement for the seller of a used vehicle to provide to the buyer in Harris County a written certification that all emission control systems and devices on the vehicle are present and operating to design specifications. The amendments to §114.5, concerning exclusions and exemptions, further clarify existing exemption conditions and establish a procedure for applying to the executive director for a waiver from §114.1(a) and (b) to allow the limited operation of a motor vehicle without specified pollution control equipment under certain hazardous or inappropriate conditions.

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 propo-

sal in its entirety is categorized as for the proposal.

Seventeen commenters (Brandt Mannchen, Texas Independent Automobile Dealers Association (including local chapters in Dallas, Houston, Fort Worth/Tarrant County, and El Paso), City of Dallas, William Canterbury, Greater Fort Worth Chapter of the Sierra Club, John Davis, U.S. Environmental Protection Agency (EPA), Gerald W. Jones, Paul P. Douglas, B. J. Wheless, Dr. Harry M. Walker, John Fafoutakis, D. T. Mosley), either suggested changes or expressed a general disagreement with the proposal and are categorized as against. One commenter, Texas Oil Marketers Association, was for the proposal.

Regarding the proposed amendments to §114.1, concerning maintenance and operation of air pollution control systems or devices used to control emissions from motor vehicles, Brandt Mannchen supported the proposal but argued that no vehicle regulation can be effective without a tail pipe emission inspection to determine compliance. The Texas Independent Automobile Dealers Association and each of the local chapters in Dallas, Houston, Fort Worth/Tarrant County, and El Paso suggested the provisions of §114.1 be limited to 1980 and later model year vehicles only. D. T. Mosley, a vehicle dealer in Houston, supported this suggestion. The City of Dallas suggested a clarification of the size of the used car dealers subject to the proposed sign posting requirements. They also recommended the sign posting requirements be extended statewide. William Canterbury questioned the authority of government to regulate business when equivalent regulation of individuals was impossible. The Greater Fort Worth Chapter of the Sierra Club supported the proposals but suggested more active public information activities and encouragement of nonfossil fuel burning vehicles. John Davis supported the proposals but recommended more stringent enforcement of existing regulations.

Regarding the proposed deletion of §114.3(b), concerning inspection requirements, EPA encouraged the TACB to retain the certification requirement at least at the buyer's request. The EPA also suggested expanding the provision to in-

clude Dallas, Tarrant, and El Paso Counties. The Texas Independent Automobile Dealers Association and the local chapters in Dallas, Houston, Fort Worth/Tarrant County, and El Paso all recommended that the regulations on vehicle sales by used vehicle dealers also apply to vehicle sales transactions between individuals. This included the requirement for written certification of conformance, if retained, and public notification of the regulatory prohibitions of Regulation IV. Gerald W. Jones supported this position.

Regarding the proposed amendments to §114.5, concerning exclusions and exemptions, Mr. Mannchen opposed any new waiver provisions or exemptions. EPA expressed concern that the provisions of the proposed new waiver procedures of §114.5(d) were too broad and requested additional information regarding the type and number of vehicles which may qualify for the waivers and the related air quality impacts. The EPA also recommended any conflicts with provisions of the Federal Clean Air Act (FCAA) be examined and resolved. Mr. Douglas and Mr. Wheless requested that provisions be added to the proposed waiver procedures to allow for temporary or seasonal waivers and/or to allow vehicles used only occasionally on a farm or ranch to receive an exemption. Dr. Harry M. Walker and Mr. Fafoutakis presented technical information and personal opinions regarding issues which were not directly related to the subject of these hearings. While they did not provide any objections or suggestions concerning any proposed amendment to Regulation IV, both indicated a general disagreement with the purpose and concept of the regulation.

Copies of the written comments and the transcripts of the hearings are available for inspection at the TACB office, 6330 U.S. Highway 290 East, Austin. The evaluation of testimony is organized into three sections to correspond to the three sections for which action was proposed in the *Texas Register*. Where appropriate, general issues have been discussed under certain specific issues.

The majority of testimony on the proposed revisions to TACB Regulation IV (31 TAC Chapter 114) addressed the amendments to §114.1, concerning main-

tenance and operation of air pollution control systems or devices used to control emissions from motor vehicles. These proposed amendments, in the case of §114.1 (c), would prohibit the offering for sale of any motor vehicle unless it is equipped with all required emission control systems or devices and would require commercial vehicle sales facilities in Dallas, El Paso, Harris, and Tarrant Counties to display signs describing the applicable prohibitions and potential penalties included in the regulation. In addition, the proposed amendments, in the case of §114.1(e) and (f), would require in Dallas, El Paso, Harris, and Tarrant Counties the posting of signs at all fuel dispensing facilities and motor vehicle service, supply, and repair facilities which also describe the prohibitions and potential penalties associated with the unauthorized use of leaded gasoline, the illegal sale of devices designed to circumvent vehicle pollution control equipment, and the removal or alteration of any pollution control system or device originally designed by the vehicle manufacturer.

Comments from affected vehicle dealer associations argued that only the sale of 1980 and newer model year vehicles which have been tampered with should be prohibited by §114.1(c). They asserted that this would minimize the adverse economic impacts on lower income buyers who cannot afford the price of new vehicles or the inflated price of older vehicles if repairs are required. No new controls were proposed which would increase the existing requirements regarding the sale of older vehicles. Regulation IV was amended in January 1972 to prohibit any person from selling a motor vehicle with any of its emission control systems or devices missing or inoperable. The current proposal would simply ensure that dealers inform their customers of these existing requirements.

The City of Dallas requested a clarification of the intent of the proposed amendments to §114.1(c), regarding the size of motor vehicle sales facilities required to post signs. The commenter expressed concern that individuals who sell more than three used vehicles per year may be required to post signs at a private residence. The proposed language has been altered to include any person who sells three or more vehicles per year at a commercial sales facility.

The City of Dallas also urged the TACB to require statewide posting of signs at fuel dispensing facilities (§114.1(e)) and at vehicle parts, supply, repair, and service facilities (§114.1(f)). The regulations affecting these facilities are currently applicable statewide, but the posting of signs at every facility in the state appears economically impractical without any direct impact on the air quality problems associated with urban nonattainment areas.

Affected automobile dealer associations encouraged the TACB to address the sale of vehicles by individuals as well as by dealers. Present certification procedures and proposed sign posting requirements impose no enforceable controls on transactions by individuals. The direct control of individual sales of used vehicles would be costly and difficult to administer and essentially impossible to enforce. The TACB lacks the administrative authority to require compliance with appropriate emission control provisions prior to vehicle registration, as suggested by one commenter. Increasing efforts to inform the general public of the legal requirements of the regulations, as well as the benefits of the proper maintenance of vehicle emission control systems, is possible and can be very effective in achieving compliance. Requiring individuals to complete a written certification of conformance with all applicable rules was attempted in Harris County and was determined to be impractical. Proposed amendments to §114.3 would delete that requirement and are discussed in the following section.

The EPA and several automobile dealer associations commented on the proposed deletion of §114.3(b) which requires the seller of a used 1980 and newer model year vehicle to provide to a buyer in Harris County a certification that all emission control systems are present and operating in accordance with manufacturer's specifications. The EPA advocated retaining the certification requirement, at least at the request of the buyer, to ensure adequate consumer protection. The four representatives of the automobile dealer associations did not expressly support the certification but implied that certification procedures should be retained and expanded if necessary to ensure equal control of vehicle sales transactions between individuals. The proposed deletion of §114.3(b) was in response to objections from the used vehicle dealers in Harris County that the certification procedures were awkward and time-consuming and were being ignored by the majority of small dealers and individuals. No effective procedures for collecting, compiling, or evaluating the certifications were established to provide assessment or enforcement of the rule. In addition, any consumer can require a written reassurance of conformance or a new inspection certificate prior to finalizing any sales transaction.

Three individuals commented on the proposed amendments to §114.5, concerning exclusions and exemptions, which would establish procedures for applying to the executive director for a waiver from §114.1(a) and (b) to allow the limited operation of a motor vehicle without specified pollution control equipment under certain hazardous or inappropriate conditions. While one individual objected to the adoption of any mechanism to al-

low waivers to existing vehicle regulations, two other individuals requested the addition of a provision to provide for waivers to allow the removal of the catalytic converter on vehicles used only occasionally or seasonally on a farm or ranch when danger of fire is present.

The proposed waiver provisions were intended to provide a method to allow an individual or firm to remove specific pollution control equipment from a vehicle when it can be demonstrated that the use of the equipment would pose a serious hazard or would be detrimental to the intended function of the vehicle. Primarily, this proposal is in response to the danger of fire resulting from the use of a catalytic converter under certain conditions. The TACB has already recognized the potential for this type of danger by adoption of §114.5(a), regarding exemption of farm and ranch vehicles. Provisions for seasonal or temporary waivers have been added for vehicles for which it can be demonstrated that normal precautions are inadequate to avoid potentially serious hazards during certain limited operations. Such a waiver will impose supplemental conditions such as a requirement to agree to and confirm scheduled reinstallation of necessary equipment at the end of the waiver period or to satisfy all applicable annual vehicle inspection requirements.

The EPA also expressed concern regarding the proposed waiver provisions of §114.5(d) and requested a more detailed description of the type and number of vehicles expected to be granted waivers, the air quality impact estimated to result, and the information required in the waiver application. The waiver provisions provide protection to a limited number of vehicles operated under conditions similar to farm and ranch vehicles exempted by §114.5(a). The TACB does not expect the number of vehicles affected by these waivers, especially in urban areas, to exceed several hundred per county, therefore, the impact on emission reductions or ambient air quality would be minute in areas with vehicle populations of hundreds of thousands of vehicles. Detailed information is required in the application for a waiver.

Finally, the EPA recommended that the TACB examine and resolve any potential conflicts with the vehicle control provisions of the FCAA. The proposed §114.5 (f) would have exempted vehicle service and repair facilities removing emission control equipment in accordance with approved waivers or general exemptions. The FCAA, however, prohibits any commercial facility or fleet operator from removing or disabling any vehicle emission control device. The TACB, while retaining the authority to regulate or exempt individuals regarding these requirements, recognizes the federal requirements for commercial facilities and has

withdrawn this part of the proposal from final adoption.

These 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.

§114.1. Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles.

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

(c) No person may sell or offer for sale in the State of Texas any motor vehicle which was originally equipped with a control system in accordance with federal requirements unless all of the following conditions are met:

(1) The motor vehicle shall be equipped with either the control systems or devices that were a part of the motor vehicle or motor vehicle engine when sold by the manufacturer in accordance with federal requirements or an alternate control system or device as designated in subsection (b) of this section.

(2) (No change.)

(3) A notice of the prohibition and requirements of this subsection shall be displayed at any commercial motor vehicle sales facility in Dallas, El Paso, Harris, and Tarrant Counties which sells or offers for sale more than three used vehicles per year. The notice shall be displayed in a conspicuous and prominent location near each customer entrance way and in each sales office. The notice shall read, "State law prohibits any person from selling or offering for sale any vehicle not equipped with all emission control systems or devices in good operable condition. Violators are subject to penalties under the Texas Clean Air Act of up to \$25,000 per violation." This notice shall be no smaller than eight inches by 10 inches (20.32 centimeters by 25.4 centimeters) and shall be clearly visible to all customers.

(d) (No change.)

(e) No person may introduce leaded gasoline into a motor vehicle certified by the Environmental Protection Agency for use of unleaded gasoline. A notice of the prohibitions and requirements of this subsection shall be prominently displayed at all facilities in Dallas, El Paso, Harris, and Tarrant Counties which dispense motor vehicle fuel. The notice shall be displayed in the immediate area of each gasoline pump island and shall be posted in a prominent and conspicuous location. The notice shall read, "State law prohibits any person from introducing any gasoline containing lead into any motor vehicle certified for use of 'unleaded gasoline only.' Violators are subject to a penalty of up to \$25,000 per violation." This notice shall be no smaller than eight inches by 10 inches (20.32 centimeters

by 25.4 centimeters) and shall be clearly visible from each refueling location.

(f) No person may sell, offer for sale, or use any system or device for the purpose of circumventing any system or device, or any part thereof, installed by a vehicle manufacturer to comply with the Federal Motor Vehicle Control Program. A notice of the prohibitions and requirements of this subsection shall be displayed at all motor vehicle parts, supply, repair, or service facilities in Dallas, El Paso, Harris, and Tarrant Counties which sell, offer for sale, install, or offer to install any vehicle emission control or exhaust system or device. The notice shall be displayed in a prominent and conspicuous location near each customer entrance way and service counter. The notice shall read, "State law prohibits any person from selling, offering for sale, or using any system or device for the purpose of circumventing any emission control device on a vehicle or vehicle engine. State law also prohibits any person from removing or disconnecting any part of the emission control system of a motor vehicle except to install replacement parts which are equally effective in reducing emissions. Violators are subject to penalties under the Texas Clean Air Act of up to \$25,000 per violation." This notice shall be no smaller than eight inches by 10 inches (20.32 centimeters by 25.4 centimeters) and shall be clearly visible to all customers.

114.5. Exclusions and Exceptions.

(a) This chapter does not apply to motor vehicles or motor vehicle engines which are registered as farm vehicles with the Motor Vehicle Division of the Texas Department of Highways and Public Transportation and are intended solely or primarily for use on a farm or ranch; or are intended solely or primarily for legally sanctioned motor competitions, for research and development uses, or for instruction in a bona-fide vocational training program where the use of a system or device would be detrimental to the purpose for which the vehicle or engine is intended to be used.

(b) Vehicles belonging to members of the U.S. Department of Defense (DOD) participating in the DOD Privately Owned Vehicle Import Program or other federal government employees being transferred overseas are exempt from the provisions of §114.1 of this title (relating to Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles) if the following conditions are met:

(1) Only the catalytic converter, oxygen sensor, and/or the fuel filler inlet restrictor are removed from the vehicle.

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

(c) (No change.)

(d) Any person owning or operating a motor vehicle or motor vehicle engine may apply to the executive director for a waiver from the provisions of §114.1(a)-(b) of this

title (relating to Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles). Such a waiver may be granted if the following conditions are met:

(1) The application shall include the applicant's full name, business address, and telephone number. A single vehicle and vehicle engine shall be specified in the application and must be identified by the unique vehicle identification number assigned to that vehicle by the manufacturer and by the manufacturer's engine family number.

(2) The air pollution control systems or devices on the vehicle or vehicle engine which would be covered by the waiver shall be specified in the application.

(3) A demonstration shall be made in the application that provides adequate justification for special consideration of the specified vehicle under the provisions of Regulation IV. This demonstration shall include, but shall not be limited to, the following information necessary to determine that the use of certain pollution control devices or systems on the vehicle to be covered by the waiver would result in a clear danger to persons or property or would be detrimental to the purpose for which the vehicle is intended to be used:

(A) proposed use of the vehicle and description of adverse circumstances;

(B) locations where the vehicle will primarily be operated;

(C) estimated length of time the vehicle is expected to be operated in adverse circumstances;

(D) estimated percentages of the time the vehicle will primarily be operated in adverse circumstances and on public roadways;

(E) history of problems related to the use of specified control devices or systems;

(F) evidence of the potential hazards and consequences of operating the vehicle for the intended use with the identified control devices or systems in place.

(4) The applicant shall agree and ensure that a copy of the waiver shall be kept with the vehicle at all times and shall be available for inspection by representatives of the Texas Air Control Board, the Texas Department of Public Safety, or any other law enforcement agency upon request. The approved waiver shall also be presented to the certified vehicle inspector before each annual vehicle safety inspection of the vehicle as administered by the Texas Department of Public Safety.

(5) The applicant shall agree and ensure that the waiver shall be void and all pollution control systems and devices replaced on the vehicle and/or engine covered by the waiver when the vehicle changes ownership or is no longer used for the purpose identified in the waiver application. The executive director shall be informed in writing prior to the change of ownership or usage.

(6) The applicant shall comply with all special provisions and conditions specified by the executive director in the waiver.

(e) A motor vehicle is exempt from §114.3 of this title (relating to Inspection Requirements) if the vehicle is registered with the Motor Vehicle Division of the Texas Department of Highways and Public Transportation as a farm vehicle or has been granted a waiver from the executive director in accordance with subsection (d) of this section.

(f) Municipalities selling abandoned vehicles are exempt from the provisions of §114.1(c) of this title (relating to Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles) if the following conditions are met:

(1) The inspection certificate must be removed from the vehicle and destroyed before the vehicle may be offered for sale or displayed for public examination.

(2) All potential buyers of the vehicle must be informed of all deficiencies in the vehicle pollution control systems on the vehicle and all liabilities to the buyer under §114.1 of this title (relating to Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles) and §114.3 of this title (relating to Inspection Requirements) of operating the vehicle prior to the adequate restoration of all pollution control systems or devices on the vehicle in compliance with federal motor vehicle rules.

(g) The owner of a motor vehicle which has been totally disabled by accident, age, or malfunction and which will no longer be operated is exempt from the provisions of §114.1(c) of this title (relating to Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles) if the inspection certificate is removed and destroyed before the vehicle is offered for sale or displayed for public examination.

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 August 28, 1985.

TRD-857810

Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Effective date: January 1, 1986
Proposal publication date: March 1, 1985
For further information, please call
(512) 461-5711, ext. 354.

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Chapter 115. Volatile Organic Compounds Facilities for Loading and Unloading of Volatile Organic Compounds in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties

★ 31 TAC §115.111, §115.113

The Texas Air Control Board (TACB) adopts amendments to §115.111 and §115.113, concerning facilities for loading and unloading of volatile organic compounds (VOC) in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties, with changes to the proposed text published in the March 1, 1985, issue of the *Texas Register* (10 TexReg 728).

The amendments to §115.111, concerning throughput and control requirements, add new subparagraph (E) to §115.111(2) which limits gasoline terminals in Dallas and Tarrant Counties having 100,000 gallons or more throughput per day to an emission limitation of 0.33 pounds of volatile organic compounds per 1,000 gallons of gasoline transferred. The amendments also add new subparagraph (F) to §115.111(2) to ensure that after December 31, 1982, but before December 31, 1987, gasoline terminals affected by new paragraph (2)(E) remain in compliance with paragraph (2)(A).

The amendments to §115.113, concerning compliance schedule and counties, add a final compliance date of December 31, 1987, and a final control plan submittal date of December 31, 1985, for new control requirements of §115.111(2)(E) and §115.111(2)(F) that apply to affected gasoline terminals in Dallas and Tarrant Counties.

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 suggests 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, Texas Mid-Continent Oil and Gas Association, Mobil Oil Corporation, and Phillips Petroleum Company, testified against the proposed amendments to §115.111. No commenter testified for the proposal. No comments were received regarding the amendments to §115.113.

A complete summary of comments and a discussion of issues will follow. Copies of the written testimony and of the hearing transcript are available for inspection at the TACB office, 8330 U.S. Highway 290 East, Austin, Texas 78723.

All three commenters objected to the proposed provisions of §115.111(2)(E) which required gasoline terminals in Dallas, El Paso, and Tarrant Counties with 100,000 gallons or more throughput per day to reduce emissions of VOC vapors to not more than 0.33 pounds per 1,000 gallons of gasoline transferred. They claimed the cost of redesigning and installing equipment to meet the 40 milligrams per liter limit was understated and that the requirement essentially represented application of a level of control equivalent to new source performance standards (NSPS) at existing sources. While EPA has determined that applying NSPS controls to all existing sources nationwide is impractical, implementation of similar controls to specific urban nonattainment areas may be considered reasonable when the resultant VOC reductions are necessary to demonstrate attainment or reasonable progress toward attainment. Compliance with the regulation can be accomplished by addition of supplemental control equipment ranging in cost from \$25,000 to \$80,000 which has been determined to be economically reasonable for the affected nonattainment areas. Since a demonstration of attainment is not possible for Dallas or Tarrant Counties, all reasonable control measures, including these vapor recovery requirements, must be adopted. In El Paso County, however, a demonstration of attainment can be accomplished without these controls and, therefore, they are not included in this adoption.

These 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 purposes 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

ery system vent per 1,000 gallons (40 milligrams per liter) of gasoline transferred.

(F) After December 31, 1982, but before December 31, 1987, gasoline terminals located in Dallas and Tarrant Coun-

ties and affected by paragraph (2)(E) of this section shall remain in compliance with paragraph (2)(A) of this section.

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

and for the facilities specified as follows shall be in compliance with the rule paragraphs specified as soon as practicable but no later than the date shown.

§115.113. *Compliance Schedule and Counties.* All affected persons in the counties

Rule Paragraphs	Affected Facility	Counties Where Rule Is Applicable	Final Compliance Date	Final Control Plan Submittal Date
Paragraphs (1) and (3) of §115.111 of this title (relating to Throughput and Control Requirements).	Volatile Organic Compound Loading Facilities	Brazoria, Dallas, El Paso, Galveston, Harris, Jefferson, Nueces, Orange, and Victoria. Tarrant	12/31/73 2/29/80	Previously Submitted Previously Submitted 12/31/79
Paragraphs (2)(A), (2)(C), and (3) of §115.111 of this title (relating to Throughput and Control Requirements).	Gasoline Terminals	Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria.	12/31/82	
Paragraph (4) of §115.111 of this title (relating to Throughput and Control Requirements).	Gasoline Terminals	Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria.	12/31/82	7/1/81
Paragraph (5) of §115.111 of this title	Gasoline Terminals	Harris	12/31/82	7/1/81

Rule Paragraphs	Affected Facility	Counties Where Rule Is Applicable	Final Compliance Date	Final Control Plan Submittal Date
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(relating to Throughput and Control Requirements).

Paragraphs (2)(B) and (2)(D) of §115.111 of this title (relating to Throughput and Control Requirements).	Gasoline Terminals 500,000 gal (1,892,706 L) Throughput per day	Harris	12/31/86	12/31/83
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Paragraphs (2)(E) and (2)(F) of §115.111 of this title (Relating to Throughput and Control Requirements).	Gasoline Terminals 100,000 gal (378,541 L) Throughput per day	Dallas, and Tarrant	12/31/87	12/31/85
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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 August 28, 1985.

TRD-857803

Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Effective date: September 18, 1985
Proposal publication date: March 1, 1985
For further information, please call
(512) 451-5711, ext. 354.

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Filling of Gasoline Storage Vessels (Storage I) for Motor Vehicle Fuel Dispensing Facilities in Brazoria, Dallas, Galveston, Harris, and Tarrant Counties

★ 31 TAC §§115.131, 115.132, 115.135

The Texas Air Control Board (TACB) adopts amendments to §§115.131, 115.132, and 115.135, concerning the filling of gasoline storage vessels (Stage I) for motor vehicle fuel dispensing facilities in Brazoria, Dallas, Galveston, Harris, and Tarrant Counties, without changes to the proposed text published in the March 1, 1985, issue of the *Texas Register* (10 TexReg 731).

The amendments add El Paso County to the requirements of the undesignated head. In addition, the amendments incorporate revisions to §115.131, concerning control requirements, and §115.132, concerning approved vapor balance system, consistent with the amendments proposed elsewhere to the undesignated head concerning control of volatile organic compound (VOC) leaks from gasoline tank trucks in Harris County for

Dallas, El Paso, and Tarrant Counties. In §115.135, concerning compliance schedule and counties, the amendments add a final compliance date of December 31, 1987, for new control requirements of §§115.131-115.134 that apply to affected motor vehicle dispensing facilities in Dallas, El Paso, and Tarrant Counties.

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.

Five commenters, Texas Mid-Continent Oil and Gas Association, Mobil Oil Corporation, Shell Oil Company, Texas Oil Marketers Association, and Brandt Mannchen testified against the proposed amendments to §115.131 and §115.132. No comments were received in favor of the proposals.

A complete summary of comments and a discussion of issues follows. Copies of the written testimony and of the hearing

ti script are available for inspection at the TACB office, 6330 U.S. Highway 290 East, Austin.

Three gasoline producers recommended changes to the proposed §115.132 which would allow for the use of alternate methods of satisfying the design criteria of an adequate vapor balance system. Section 115.132 describes a vapor balance system which may be assumed to provide adequate control during the transfer and transport of vapors to an off-site vapor recovery unit. The regulation does not preclude the use of another vapor balance system design if it can be demonstrated to be substantially equivalent. In addition, §115.401 also provides a procedure for obtaining the approval of the executive director for equivalent alternate methods to any control requirement of Regulation V.

Two industry commenters also suggested that Stage I vapor recovery requirements cannot be economically implemented in El Paso County. The effectiveness of Stage I controls is reduced in El Paso County because the City of El Paso enforces an ordinance restricting the operation of gasoline tank trucks or more than 1,500 gallons capacity within the city limits; the volatility of gasoline marketed in El Paso during the summer months is less than in other urban areas in Texas, and emissions from the neighboring city of Ciudad Juarez, Mexico, are uncontrolled and seriously impact any VOC control efforts in El Paso.

Stage I controls have been successfully implemented in several other counties in Texas since 1978. Board analysis, however, indicates an increase in the cost of implementing these controls in El Paso County of approximately \$112 per ton of VOC reduced relative to other areas of the state due to the lower gasoline volatility and the use of smaller tank trucks. Therefore, Stage I controls, while significantly more expensive, remain reasonable and cost effective for El Paso County at any estimated cost of \$257 per ton of VOC reduced. The effects of emissions from Juarez remain uncertain, but consideration of appropriate control measures must be limited to El Paso until international agreements concerning the improvement and protection of air resources are reached.

Brandt Mannchen objected to the provision in §115.132 which allows for gauging of tank trucks after delivery of gasoline to a dispensing facility is completed. The temporary loss of VOC vapors is necessary to determine the quantity of gasoline delivered and no practical alternative exists. Gauging losses are considered during computation of emission reductions from Stage I controls.

These 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.

Issued in Austin, Texas, on August 28, 1985.

TRD-857804

Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Effective date: September 18, 1985
Proposal publication date: March 1, 1985
For further information, please call
(512) 451-5711, ext. 354.

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Vent Gas Control in Brazoria, Dallas, El Paso, Galveston, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties

★31 TAC §§115.162-115.164

The Texas Air Control Board (TACB) adopts amendments to §§115.162-115.164, concerning vent gas control in Brazoria, Dallas, El Paso, Galveston, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties, without changes to the proposed text published in the March 1, 1985, issue of the *Texas Register* (10 Tex-Reg 732).

The amendments to §115.162, concerning general vent gas streams, change the reference to §115.163, concerning general vent gas streams in Harris County, to include the addition of Dallas and Tarrant Counties. The amendments to §115.163, add the more stringent vent gas control requirements currently applicable in Harris County to Dallas and Tarrant Counties.

The controls and exemptions in §115.163 are retained unchanged for facilities in Harris County. A more restrictive exemption for vent gas streams having a combined weight of volatile organic compounds (VOC) greater than 100 pounds in any consecutive 24-hour period, but less than 250 pounds per hour averaged over any consecutive 24-hour period, and having a true vapor pressure of less than 0.009 psia is added for facilities in Dallas and Tarrant Counties.

The amendments to §115.164, concerning compliance schedule and counties, add a final compliance date of December 31, 1987, and a final control plan submittal date of June 30, 1986, for the new control requirements of §115.163 that apply to affected facilities in Dallas and Tarrant Counties.

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, the City of Dallas, Gardere & Wynne, Printpack, Inc., and Miller Brewing Company, testified against the proposed amendments to §115.163. No comments were received in favor of the proposal. No testimony was received regarding the amendments to §115.162 or §115.164.

A complete 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 U.S. Highway 290 East, Austin, Texas 78723.

The City of Dallas and Gardere & Wynne objected to the provision of §115.163 which requires the incineration of certain vent gas streams with a true vapor pressure of VOC greater than or equal to 0.009 psia. The primary confusion apparently arises from the use of true vapor pressure to identify affected vent gas streams. The intent of the regulation is to ensure incineration of any VOC vent gas stream which does not require a significant amount of additional fuel to reach combustible limits. In the TACB general rules, true vapor pressure is defined as aggregate partial vapor pressure. Based on this definition, the vent gas streams with low VOC concentrations specified by the commenters would not be affected by this rule.

Gardere & Wynne also provided information which indicated that the estimated costs of vent gas control were too low. The capital costs provided by the TACB were estimated using a rate of \$13.50 per standard cubic foot per minute of vent gas to be incinerated. This figure is based on the capital cost of catalytic incineration included in the Environmental Protection Agency (EPA) *Control Technique Guidelines for Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks* adjusted to 1984 dollars. Operating costs were computed separately and determined to represent the largest portion of the total expected cost of control. Other alternatives to catalytic incineration, such as condensation, carbon absorption, or a combination of various methods may also be approved by the executive director under §115.401.

Printpack, Inc., and Miller Brewing Company claimed that the proposed vent gas controls would create a financial burden on them while providing insignificant emission reductions. In evaluating potential emission reductions, all reasonable control measures must be considered. Relatively small sources may be includ-

ed in several more general source categories, such as graphic arts or surface coating. The control of emissions from these combinations of sources may be very significant even though emissions from a single source may be insignificant. Since attainment cannot be demonstrated in Dallas and Tarrant Counties, all reasonable measures must be implemented to satisfy EPA requirements.

Printpack, Inc., also suggested that TACB was being inconsistent by requiring companies to comply with both general as well as industry-specific regulations. The TACB has always required companies to comply with all applicable regulations unless specifically exempted. Emissions from vent gas controls at graphic arts facilities were included in the emissions inventory and the projected emission reduction computations for each of the affected 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 purposes 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 August 28, 1985.

TRD-857805 Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Effective date: September 18, 1985
Proposal publication date: March 1, 1985
For further information, please call
(512) 451-5711, ext. 354.

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Specified Solvent-Using Processes in Bexar, Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties

★31 TAC §§115.171, 115.175, 115.176

The Texas Air Control Board (TACB) adopts amendments to §115.175 and §115.176, concerning specified solvent-using processes in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties, with changes to the proposed text published in the March 1, 1985, issue of the *Texas Register* (10 TexReg 733). Section 115.171 is adopted without changes and will not be republished.

The amendments to §115.171, concerning cutback asphalt, restructure the section and add subsection (b), which limits the

use of cutback asphalt in Dallas, El Paso, and Tarrant Counties to no more than 7.0% of the total annual volume, averaged over a two-year period. The amendment to §115.175, concerning exemptions, adds subsection (f) to reduce the exemption for volatile organic compound (VOC) emissions from degreasing operations in Dallas and Tarrant Counties from 550 pounds to three pounds in any consecutive 24-hour period after December 31, 1987. The amendments to §115.176, concerning counties and compliance schedule, add a final compliance date of December 31, 1987, and a final control plan submittal date of December 31, 1985, for new control requirements of §115.171(b) that apply to cutback asphalt operations in Dallas, El Paso, and Tarrant Counties and §115.175(f) that apply to degreasing operations in Dallas and Tarrant Counties.

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.

One commenter, the Environmental Protection Agency (EPA), testified against the proposed amendments to §115.171, and one commenter, the City of Dallas, testified against the proposed amendments to §115.175. No comments were received in favor of either proposal. No comments were received regarding amendments to §115.176.

A complete 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 U.S. Highway 290 East, Austin, Texas 78723.

The EPA expressed concern that the limitation on the use of cutback asphalt proposed in §115.171 was not practically enforceable. The periodic evaluation and enforcement of this regulation should be relatively simple. All state, municipal, and county agencies which use or specify the use of asphalt application maintain detailed records of related operations within their jurisdictions. Inspection of these records can be performed to determine compliance. While the use of cutback asphalt is expected to remain below the regulatory limit due to economic reasons, negotiations with affected agencies should be sufficient to correct any future problems.

The City of Dallas expressed a similar concern that the more restrictive controls on small degreasing operations resulting from the proposed amendments to §115.175 may also be difficult to enforce at existing sources. The commenter recommended increasing the exemption lev-

el for open top vapor degreasing operations from three pounds per day to 60 pounds per day. The proposed section should not require extensive changes to operating equipment or procedures at most existing small facilities. Many of the procedures outlined in the section have already been implemented by some of these businesses for economic reasons, and the economic advantage of following prescribed procedures should make routine inspections unnecessary. Since an attainment demonstration is not possible for Dallas and Tarrant Counties, all reasonable control measures, including solvent-use control, must be implemented to satisfy EPA requirements. In El Paso County, however, while these controls remain economically reasonable, they are not required to demonstrate attainment, and the proposed degreasing controls are not included in this adoption.

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 purposes of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§115.175. Exemptions.

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

(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).

§115.176. Counties and Compliance Schedule.

(a) The provisions of §115.171 of this title (relating to Cutback Asphalt) shall apply only within Brazoria, Dallas, El Paso, Jefferson, Galveston, Harris, Nueces, Orange, and Tarrant Counties. All persons affected by §115.171(a) shall submit a final control plan to the Texas Air Control Board no later than December 31, 1980, and shall be in compliance with the rule as soon as practicable but no later than December 31, 1982. All persons affected by §115.171(b) shall also submit a supplemental final control plan to the Texas Air Control Board no later than December 31, 1985, and shall be in compliance with the rule as soon as practicable but no later than December 31, 1987.

(b) (No change.)

(c) The provisions of §115.175(f) of this title (relating to Exemptions) shall supercede and delete the provisions of §115.175(a) in Dallas and Tarrant Counties

after December 31, 1987. All persons in Dallas and Tarrant Counties affected by §115.175(f) shall submit a final control plan for compliance by December 31, 1985, and shall be in compliance as soon as practicable but no later than December 31, 1987.

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 August 28, 1985.

TRD-857806

Bill Stewart, P.E.
Executive Director
Texas Air Control Board

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Proposal publication date: March 1, 1985
For further information, please call
(512) 461-5711, ext. 354.

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Surface Coating Processes in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties

★31 TAC §§115.191, 115.193, 115.194

The Texas Air Control Board (TACB) adopts amendments to §§115.191, 115.193, and 115.194, concerning surface coating processes in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties, with changes to the proposed text published in the March 1, 1985, issue of the *Texas Register* (10 TexReg 734).

The amendment to §115.191, concerning emission limitations, adds a clause (v) to paragraph (9)(A) which limits the volatile organic compound (VOC) content of coatings applied as a prime coat to the exterior of aircraft to 3.5 pounds per gallon (minus water) in Dallas and Tarrant Counties.

Consistent with the amendment to §115.191, one of the amendments to §115.193, concerning exemptions, revises the list of exemptions under subsection (c) for coating the exterior of aircraft and clarifies the exemption for customized top coatings of automobiles and trucks to indicate that the word "customized" means the addition of decorative detail on top of the top coat. Another amendment to §115.193 adds a new subsection (e) to reduce the exemption limit for surface coating operations located in Dallas and Tarrant Counties from 550 pounds to 100 pounds in any consecutive 24-hour period.

The amendment to §115.194, concerning compliance schedule and counties, adds subsection (e) to require compliance with §115.191(9)(A)(v) no later than December 31, 1987, and to submit a control plan by December 31, 1985.

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 for the proposal.

Eight commenters, General Dynamics, the City of Dallas, Arco Chemical Company, Phillips Petroleum Company, LTV Aerospace and Defense Company, DeSoto Inc., Environmental Protection Agency (EPA), and Bell Helicopter Textron, testified against the proposed amendments to §115.191. No comments were received in favor of the proposal. No comments were received regarding the amendments to §115.193 and §115.194.

A complete 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 U.S. Highway 290 East, Austin, Texas 78723.

The LTV Aerospace and Defense Company and Phillips Petroleum Company questioned the technical feasibility of complying with the VOC limitations proposed in §115.191(9)(A)(v) for prime coats on the exterior of aircraft in Dallas and Tarrant Counties. Primary concerns included adhesion of top coat; resistance to hydraulic fluids and engine oils; cracking associated with use of chlorinated solvents; loss of structural strength due to pitting; and potential health hazards of using alternate solvents or additives.

General Dynamics, the City of Dallas, and DeSoto, Inc., also expressed concerns that compliant prime coats would not satisfy some military specifications. Compliant prime coatings have been tested and approved for use on civilian and military aircraft, and at least one manufacturer is currently marketing a suitable product. No documentation of problems regarding adhesion, resistance to hydraulic fluids or oils, pitting or cracking, or workplace health hazards was submitted. Compliant primers have been authorized by the military and are currently being tested and used on military aircraft at various locations. The section requires each affected facility to submit a control plan by December 31, 1985, but does not require final compliance until December 31, 1987. This provides two years to address any technical difficulties, obtain necessary military approvals, and renegotiate existing contracts. In addition, two years is available for the manufacturer to increase production and, if necessary, for other manufacturers to enter the market.

General Dynamics also objected to the use of low VOC prime coatings at its facility in Tarrant County since it would result in a reduction of only two tons of

VOC per year. The three sources in Tarrant County affected by these amendments reported emissions which would be reduced by 37 tons per year by 1987. If subsequent changes have occurred in the operation and equipment at the facilities to reduce the VOC content of prime coatings, then the cost of complying with the sections should be correspondingly reduced.

The City of Dallas, commenting on the proposed amendment to §115.191(8)(C), stated that the three pounds per gallon emission limitation for automobile refinishing in Dallas, Tarrant, and El Paso Counties is unreasonable and recommended an alternate limitation of 100 pounds per day. In assessing the advisability of this approach, various coating manufacturers were consulted. Additional information was received indicating that control of automobile refinishing is technically and economically impractical, because low VOC coatings are not currently available to small businesses which would be affected. Alternative coatings do not have many of the necessary physical properties and cannot be used without sophisticated application systems which are too expensive for most auto refinishing operations. Therefore, the proposed amendment to §115.191 (8) has been deleted from the final adoption.

The EPA commented that most provisions of §115.191 do not provide for "appropriate averaging timeframes." The first paragraph of §115.191, however, requires all emission limits to be based on daily weighted averages except where otherwise specified.

These 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 intent and purpose of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§115.191. Emission Limitations. 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)-(10) of this section to exceed the specified emission limits, which are based on a daily weighted average, except for those in paragraph (8) of this section, as detailed, and for those in paragraph (10) of this section which are based on paneling surface area.

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

(8) Automobile and light-duty truck coating.

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

(9) Miscellaneous metal parts and products coating.

(A) Volatile organic compound emissions from the coating (prime and top-coat, or single coat) of miscellaneous metal parts and products shall not exceed the following limits for each surface coating type:

- (i)-(ii) (No change.)
 (iii) 3.5 pounds per gallon (0.42 kg/liter) of coating (minus water) applied as an extreme performance coating;
 b(iv) 3.0 pounds per gallon (0.36 kg/liter) of coating (minus water) applied for all other coating applications that pertain to miscellaneous metal parts and products; and
 (v) 3.5 pounds per gallon (0.42 kg/liter) of coating (minus water) applied as a prime coat for the exterior of aircraft in Dallas and Tarrant Counties.
 (B)-(C) (No change.)
 (10) (No change.)

§115.193. Exemptions.

- (a)-(b) (No change.)
 (c) The following coating operations are exempt from the application of §115.191 (9) of this title (relating to Emission Limitations):
 (1) exterior of aircraft except as required by §115.191(9)(A)(v) of this title (relating to Emission Limitations);
 (2) automobile refinishing;
 (3) customized (decorative) top coating of automobiles and trucks, if production is less than 35 vehicles per day;
 (4)-(6) (No change.)
 (d) (No change.)
 (e) After December 31, 1987, in Dallas and Tarrant Counties, only those surface coating operations, which when uncontrolled will emit a combined weight of volatile organic compounds less than 100 pounds (45.4 kg) in any consecutive 24-hour period, except aircraft exterior prime coating controlled by §115.191(9)(A)(v), shall be exempt from the provisions of §115.191 of this title (relating to Emission Limitations).

§115.194. Compliance Schedule and Counties.

- (a) All affected persons within Brazoria, Dallas, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties shall be in compliance with §§115.191-115.194 of this title (relating to Surface Coating Processes in Brazoria, Dallas, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties), except for §115.191 (7)(B), (8)(B), and (9)(A)(v) of this title (relating to Emission Limitations), as soon as practicable but no later than December 31, 1982, and shall submit to the Texas Air Control Board a final control plan for compliance no later than December 31, 1979.
 (b)-(d) (No change.)
 (e) All affected persons in Dallas, El Paso, and Tarrant Counties shall be in compliance with §115.191(9)(A)(v) of this title (relating to Emission Limitations) as soon as practicable but no later than December 31, 1987, and shall submit to the Texas Air Control Board a final control plan for compliance no later than December 31, 1985.
 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 August 28, 1985.

TRD-857807

Bill Stewart, P.E.
 Executive Director
 Texas Air Control Board

Effective date: September 18, 1985
 Proposal publication date: March 1, 1985
 For further information, please call (512) 451-5711, ext. 354.

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Perchloroethylene Dry Cleaning Systems in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties

★ 31 TAC §115.223

The Texas Air Control Board (TACB) adopts an amendment to §115.223, concerning perchloroethylene dry cleaning systems in Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties, with changes to the proposed text published in the March 1, 1985, issue of the *Texas Register* (10 TexReg 735).

The amendment to §115.223, concerning compliance schedule and counties, restructures the section and adds subsection (b) which eliminates the current exemption specified in §115.223(c), concerning exemptions, for any perchloroethylene dry cleaning facility located in Dallas and Tarrant Counties. The subsection requires affected persons to submit a control plan for compliance with §115.221, concerning control requirements, by December 31, 1985, and to be in compliance with the section no later than December 31, 1987.

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 suggests any changes in the proposal, while a commenter who agreed with the proposal in its entirety is categorized as being for the proposal.

Two commenters, the City of Dallas and Brandt Mannchen, testified against the proposed amendments to §115.223. No comments were received in favor of the proposal.

A complete summary 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 U.S. Highway 290 East, Austin, Texas 78723.

The City of Dallas stated that proposed removal of the exemption for perchloroethylene dry cleaners which emit less than 550 pounds of volatile organic compounds (VOC) in 24 hours is impractical. The commenter stated that the emission reductions from the additional controls on these small businesses do not warrant the resources necessary to ensure compliance and recommended an alternate exemption limit of 60 pounds per day of VOC emissions. Controls on sources with emission of as little as 5.7 pounds per day are considered reasonable. The TACB, however, is not aware of any perchloroethylene dry cleaners at this level of emissions. In addition, these smaller operations may qualify for other exemptions in this section regarding space limitations and steam capacity. Since attainment cannot be demonstrated in Dallas and Tarrant Counties, all reasonable measures, including perchloroethylene dry cleaning controls, must be implemented to satisfy Environmental Protection Agency (EPA) requirements. In El Paso, attainment can be demonstrated without these additional controls, and they are not included in this adoption.

Brandt Mannchen questioned the need for any exemption limit on dry cleaning facilities. The amendments will remove the exemption from Dallas and Tarrant Counties. Removal of this exemption in other counties cannot be included in this adoption, since it was not included in the original proposal.

These 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 intent and purpose of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§115.223. Compliance Schedule and Counties.

(a) The provisions of §115.221 of this title (relating to Control Requirements) shall apply only within Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties. All affected persons shall submit to the Texas Air Control Board a control plan for compliance with these provisions no later than December 31, 1980, and shall be in compliance as soon as practicable, but no later than December 31, 1982.

(b) After December 31, 1987, §115.223(C) of this title (relating to Exemptions) shall no longer apply in Dallas and Tarrant Counties. All affected persons shall submit a control plan for compliance with the provisions of §115.221 of this title (relating to Control Requirements) no later than December 31, 1985, and shall be in compliance as soon as practicable, but no later than December 31, 1987.

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 August 28, 1985.

TRD-857808

Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Effective date: September 18, 1985
Proposal publication date: March 1, 1985
For further information, please call
(512) 451-5711, ext. 354.

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Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks in Harris County

★ 31 TAC §§115.261, 115.262, 115.264

The Texas Air Control Board (TACB) adopts amendments to §§115.261, 115.262, and 115.264, concerning control of volatile organic compound (VOC) leaks from gasoline tank trucks in Harris County, without changes to the proposed text published in the March 1, 1985, issue of the *Texas Register* (10 TexReg 736).

The amendments extend the provisions of §115.261, concerning emission control requirements, and §115.262, concerning testing requirements, to Dallas, Tarrant, and El Paso Counties. The amendments to §115.264, concerning compliance schedule and counties, requires affected persons to be in compliance no later than December 31, 1987, with final control plan submittal no later than December 31, 1985.

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 agreed with the proposal in its entirety is categorized as being for the proposal.

Two commenters, the Texas Mid-Continent Oil and Gas Association (TMOGA) and the Texas Oil Marketers Association (TOMA), testified against the proposed amendments. No comments were received for the proposal.

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

The TMOGA suggested that the emission reductions from implementation of mandatory vapor tightness testing of gasoline tank trucks will be less than estimated, because most companies already require similar testing to maximize the benefits from vapor recovery units at terminals and bulk plants. However, since testing is voluntary and may not be performed uniformly for all companies, assessing effectiveness and ensuring compliance is difficult. Base inventories do not reflect emission reductions from these voluntary programs so the relative change in controlled emissions will remain as originally estimated. In addition, emission reductions from required controls will no longer be available as alternate emission reductions (offsets) for new construction or modifications.

The TOMA recommended an exemption for tank trucks with a nominal capacity

of less than 4,000 gallons. A separate analysis was performed to determine the cost of vapor tightness testing on these smaller tank trucks in El Paso. This analysis indicated an annual cost of \$224 per ton of VOC reduced as opposed to \$107 per ton for larger tank trucks. Since attainment cannot be demonstrated in Dallas or Tarrant Counties, all reasonable control measures must be implemented to satisfy Environmental Protection Agency requirements. In El Paso, while implementation of vapor tightness testing is not required to demonstrate attainment, the controls significantly complement the effectiveness of Stage I vapor recovery at gasoline dispensing facilities.

These 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.

Issued in Austin, Texas, on August 28, 1985.

TRD-857809

Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Effective date: September 18, 1985
Proposal publication date: March 1, 1985
For further information, please call
(512) 451-5711, ext. 354.

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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 *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 agendas than what is published in the *Register*.

Texas Department on Aging

Thursday, September 19, 1985, 10 a.m. The Texas Board on Aging of the Texas Department on Aging will meet in the conference room, third floor, 1949 IH 35 South, Austin. According to the agenda, the board will consider approval of the minutes to the joint meeting of the board and the Citizens Advisory Council on July 10, 1985; the fiscal report for fiscal year 1985; the proposed budget for fiscal year 1986; area agency two-year plans; program review of area agencies; WATS line usage; a legislative report; and aging phone listings.

Contact: Daniel N. Stewart, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: August 30, 1985, 10:25 a.m.
TRD-857900

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Texas Department of Agriculture

Thursday, September 26, 1985. The Texas Department of Agriculture will meet at its district office, Expressway 83, two blocks west of Morningside Drive, San Juan. According to the agenda, the department will conduct administrative hearings to review possible violations of the Texas Agriculture Code. Times and alleged violations follow.

10 a.m. Possible violation of the Code, §102.013, by Eduardo Flores, holder of commission merchant license.

11 a.m. Possible violation of the Code, §101.013, by Gilberto L. Guerra, Jr., doing business as Gilo's Produce, holder of commission merchant license.

1 p.m. Possible violation of the Code, §76.116(1) and (2), by Hershel White, doing business as Norman & White Aero.

Contact: Deborah Brown, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: September 3, 1985, 9:14 a.m.
TRD-857974-857976

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Texas Employment Commission

Tuesday, September 10, 1985, 8:30 a.m. The Texas Employment Commission (TEC) will meet in Room 644, TEC Building, 101 East 15th Street, Austin. Items on the agenda include prior meeting notes, internal procedures of commission appeals, consideration and action on tax liability cases and higher level appeals in unemployment compensation cases on commission Docket 37, and setting the date of the next meeting.

Contact: Courtenay Browning, TEC Building, Room 608, 101 East 15th Street, Austin, Texas, (512) 463-2226.

Filed: August 30, 1985, 3:02 p.m.
TRD-857959

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Texas Department of Health

Friday, September 13, 1985, 10 a.m. The Home Health Services Advisory Council of the Texas Department of Health will meet in conference room G-204, 1100 West 49th Street, Austin. According to the agenda summary, the council will review the minutes of the last meeting; elect a chairperson, vice-chairperson, and recording secretary; consider regulations for the amendment to the Home Health Licensure Act; a report of the Health Care Financing Administration's interpretation of branch office super-

vision; and announcements and comments requiring no agency action.

Contact: Juanita Carrell, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7245.

Filed: August 30, 1985, 10:42 a.m.
TRD-857954

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Texas Health and Human Services Coordinating Council

Tuesday, September 10, 1985, 10 a.m. The Administration Committee of the Texas Health and Human Services Coordinating Council will meet in the conference room, seventh floor, Sam Houston Building, 201 East 14th Street, Austin. According to the agenda, the committee will consider the minutes of the last meeting, committee structure, advisory committees, the council foundation, and new business.

Contact: Lynn Leverty, P.O. Box 12428, Austin, Texas 78711, (512) 475-1306.

Filed: August 30, 1985, 2:35 p.m.
TRD-857946

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State Board of Insurance

Tuesday, September 3, 1985, 10 a.m. The State Board of Insurance made an emergency revision to the agenda for a meeting held in Room 414, 1110 San Jacinto Street, Austin. According to the revised agenda summary, the board considered a presentation of a wellness incentive program for board employees. The emergency status was necessary because a decision needed to be made as soon as possible.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

Filed: August 30, 1985, 3:09 p.m.
TRD-857964

The Commissioner's Hearing Section of the State Board of Insurance will conduct public hearings at 1110 San Jacinto Street, Austin. Days, times, rooms, and agendas follow.

Tuesday, September 10, 1985, 9 a.m. In Room 342, the section will consider Docket 8098—whether disciplinary action should be taken against Jerry D. Hering, Austin, who holds a Group I legal reserve life insurance agent's license.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, (512) 463-6524.

Filed: August 30, 1985, 10:03 a.m.
TRD-857884

Tuesday, September 10, 1985, 1:30 p.m. In Room 342, the section will consider Docket 9064—application of USLIFE Title Insurance Company of Dallas, Dallas, for approval of revaluation of home office property.

Contact: John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 463-6525.

Filed: August 30, 1985, 10:03 a.m.
TRD-857885

Wednesday, September 11, 1985, 9 a.m. In Room 342, the section will consider Docket 9071—whether disciplinary action should be taken against Edward Drummond Weston, Quinlan, who holds a Group I legal reserve life insurance agent's license, Group II insurance agent's license, and local recording agent's license.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, (512) 463-6524.

Filed: August 30, 1985, 10:03 a.m.
TRD-857886

Thursday, September 12, 1985, 9 a.m. In Room 342, the section will consider Docket 9073—whether disciplinary action should be taken against Cecil Franklin Hart, doing business as the Hart Insurance Agency, Wichita Falls, who holds a Group II insurance agent's license and local recording agent's license.

Contact: Staci Copelin, 1110 San Jacinto Street, Austin, Texas 78786, (512) 463-6498.

Filed: August 30, 1985, 10:03 a.m.
TRD-857887

Friday, September 13, 1985, 9 a.m. In Room 353, the section will consider Docket 9079—application of Whittaker Health Services of Austin, Inc., for a certificate of authority to operate a health maintenance organization.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, (512) 463-6524.

Filed: August 30, 1985, 10:03 a.m.
TRD-857888

Friday, September 13, 1985, 9 a.m. In Room 342, the section will consider Docket 9074—whether disciplinary action should be

taken against Terry Gene Woodall, Dallas, who holds a Group I legal reserve life insurance agent's license and a Group II insurance agent's license.

Contact: Staci Copelin, 1110 San Jacinto Street, Austin, Texas 78786, (512) 463-6498.

Filed: August 30, 1985, 10:04 a.m.
TRD-857889

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Texas Department of Labor and Standards

Thursday, September 12, 1985, 9 a.m. The Manufactured Housing Division of the Texas Department of Labor and Standards will meet in Room 4005, G. J. Sutton Building, 321 Center Street, San Antonio. According to the agenda, the division will conduct informal hearings of various consumer complaints in regard to manufactured homes which do not comply with Texas Civil Statutes, Article 5221f.

Contact: Sharon Choate, P.O. Box 12157, Austin, Texas 78711, (512) 475-5712.

Filed: August 29, 1985, 12:16 p.m.
TRD-857844

Tuesday, September 17, 1985, 9 a.m. The Manufactured Housing Division of the Texas Department of Labor and Standards will meet in Suite 109, 810 North Dixie, Odessa. According to the agenda, the division will conduct informal hearings of various consumer complaints in regard to manufactured homes which do not comply with Texas Civil Statutes, Article 5221f.

Contact: Sharon Choate, P.O. Box 12157, Austin, Texas 78711, (512) 475-5712.

Filed: August 29, 1985, 12:15 p.m.
TRD-857845

Tuesday, September 17, 1985, 9 a.m. The Manufactured Housing Division of the Texas Department of Labor and Standards will meet in Suite 209, 4615 North Freeway, Houston. According to the agenda, the division will conduct informal hearings of various consumer complaints in regard to manufactured homes which do not comply with Texas Civil Statutes, Article 5221f.

Contact: Sharon Choate, P.O. Box 12157, Austin, Texas 78711, (512) 475-5712.

Filed: August 29, 1985, 12:15 p.m.
TRD-857846

Thursday, September 19, 1985, 9 a.m. The Manufactured Housing Division of the Texas Department of Labor and Standards will meet in Suite 3322-B, Commerce Square, South Southwest Loop 323, Tyler. According to the agenda, the division will conduct informal hearings of various consumer complaints in regard to manufactured homes which do not comply with Texas Civil Statutes, Article 5221f.

Contact: Sharon Choate, P.O. Box 12157, Austin, Texas 78711, (512) 475-5712.

Filed: August 29, 1985, 12:15 p.m.
TRD-857847

Friday, September 20, 1985, 9 a.m. The Manufactured Housing Division of the Texas Department of Labor and Standards will meet in Suite 313, 5353 Maple Avenue, Dallas. According to the agenda, the division will conduct informal hearings of various consumer complaints in regard to manufactured homes which do not comply with Texas Civil Statutes, Article 5221f.

Contact: Sharon Choate, P.O. Box 12157, Austin, Texas 78711, (512) 475-5712.

Filed: August 29, 1985, 12:16 p.m.
TRD-857848

Tuesday, September 24, 1985, 9 a.m. The Manufactured Housing Division of the Texas Department of Labor and Standards will meet in Room 105, E. O. Thompson Building, 920 Colorado Street, Austin. According to the agenda, the division will consider license registration, suspensions, and alleged violations of various rules and regulations of the department.

Contact: Orlando S. Mata, P.O. Box 12157, Austin, Texas 78711, (512) 475-0155.

Filed: August 29, 1985, 12:16 p.m.
TRD-857849

Monday, September 30, 1985, 9 a.m. The Manufactured Housing Division of the Texas Department of Labor and Standards will meet in Room 105, E. O. Thompson Building, 920 Colorado, Austin. According to the agenda, the division will consider license and registration, suspensions and alleged violations of various rules and regulations of the department.

Contact: Orlando S. Mata, P.O. Box 12157, Austin, Texas 78711, (512) 475-5712.

Filed: August 29, 1985, 12:16 p.m.
TRD-857850

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Texas Motor Vehicle Commission

Thursday, September 12, 1985, 9 a.m. The Texas Motor Vehicle Commission will meet in Suite 302, 815 Brazos Street, Austin. According to the agenda summary, the commission will adopt minutes of the June 27, 1985, meeting; hear proposals for decision, hearing reports, and final orders; consider agreed orders for approval and entry; orders of dismissal; elect a chairman and vice

chairman for fiscal year 1986; the financial report for fiscal year 1985; and the proposed budget for fiscal year 1986.

Contact: Russell Harding, 815 Brazos Street, Suite 301, Austin, Texas 78711, (512) 476-3587.

Filed: August 29, 1985, 1:52 p.m.
TRD-857854

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Texas Municipal Retirement System

Saturday, September 21, 1985, 9 a.m. The Board of Trustees of the Texas Municipal Retirement System will meet at 1200 IH 35, Austin. According to the agenda summary, the board will hear and approve the June 8, 1985, minutes; review and approve service retirements, disability retirements, supplemental death benefits payments; review and act on financial statements, investment reports, and other reports of the director, actuary and legal counsel; consider a resolution adopting updated service credit for the employees of the system; consider a resolution designating authorized depositories for 1985 and 1986; and a report by the investment advisors by Robert D. Milne, president of Duff and Phelps Investment Management Company.

Contact: Jimmie L. Mormon, P. O. Box 2225, Austin, Texas 78768, (512) 476-7577.

Filed: August 30, 1985, 9:03 a.m.
TRD-857864

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Texas Parks and Wildlife Department

Friday, August 30, 1985, 9 a.m. The Texas Parks and Wildlife Commission of the Texas Parks and Wildlife Department made an emergency addition to the agenda for a meeting held at 4200 Smith School Road, Austin. The addition concerned the Martin Creek Lake state recreation area Phase II development in Rusk County. The emergency status was necessary because it was in the economic best interest of the state and because of the need to satisfy the recreational needs of the public.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744, (512) 479-4802.

Filed: August 29, 1985, 2:13 p.m.
TRD-857855

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Board of Pardons and Parolees

Wednesday, September 4, 1985, 10 a.m. The Board of Pardons and Paroles met in emergency session at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board considered and acted on board policy regarding contracts; Open, Inc., proposal; NIC grant; a request for proposal concerning a halfway house; and a personnel matter. The emergency status was necessary because board members could not adjust their schedules to meet at any other reasonable time.

Contact: Gladys Sommers, 8610 Shoal Creek Boulevard, Austin, Texas 78711, (512) 459-2704.

Filed: August 30, 1985, 10:35 a.m.
TRD-857920

Monday-Friday, September 9-13, 1985, 1:30 p.m. daily Monday-Thursday and 11 a.m. Friday. A three-member panel of the Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, the panel will receive, review, and consider information and reports concerning prisoners and 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, (512) 459-2713.

Filed: August 30, 1985, 10:35 a.m.
TRD-857921

Tuesday, September 10, 1985, 1:30 p.m. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board will consider executive clemency recommendations and related actions, other than out-of-country conditional pardons, including full pardons and restoration of civil rights of citizenship; emergency medical reprieves; commutations of sentence; and other reprieves, remissions, and executive clemency actions.

Contact: Gladys Sommers, 8610 Shoal Creek Boulevard, Austin, Texas, (512) 459-2704.

Filed: August 30, 1985, 10:36 a.m.
TRD-857922

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Texas State Board of Public Accountancy

Wednesday, September 11, 1985, 10 a.m. The Entry and Reentry Screening Committee of the Texas State Board of Public Accountancy will meet in Suite 1700, 2121 San Jacinto, Dallas. Items on the agenda summary include review of reinstatement applications; applications under §§12-14; nonroutine applications; hearings and re-

view of conviction reports; discussion regarding reciprocal applications and fee for replacement certificates; review of the ethics examination and licensing statistics; review of plans for the November swearing-in ceremony; and other business as appropriate.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78735, (512) 451-0241.

Filed: September 3, 1985, 9:14 a.m.
TRD-857973

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Texas Public Building Authority

Tuesday, September 3, 1985, 4 p.m. The Texas Public Building Authority met in emergency session via conference call originating in Room 907, Sam Houston Building, 201 East 14th Street, Austin. According to the agenda, the authority held a price discussion of a bond issue. The emergency status was necessary because market conditions demanded an immediate pricing and sale of the bonds.

Contact: M. Gayle Colby, Room 907, Sam Houston Building, 201 East 14th Street, Austin, Texas 78701, (512) 475-0290.

Filed: August 30, 1985, 4:01 p.m.
TRD-857966

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Public Utility Commission of Texas

Thursday, September 12, 1985, 2 p.m. The Hearings Division of the Public Utility Commission of Texas rescheduled a meeting to be held in Suite 150N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the division will conduct a prehearing conference in Docket 6424—application of Pecan Shadows Water Company for a certificate of convenience and necessity to provide water service within Matagorda County. The hearing originally was scheduled for September 3, 1985, at 1:30 p.m.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 29, 1985, 2:51 p.m.
TRD-857857

Friday, September 13, 1985, 2 p.m. The Hearings Division of the Public Utility Commission of Texas will meet in the conference room, 10th floor, city hall, 2 Civic Center Plaza, El Paso. According to the agenda, the commissioners will hear a presentation by Touche Ross and Company of the management audit of El Paso Electric Company.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 30, 1985, 2:55 p.m.
TRD-857955

The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Days, times, and dockets follow.

Wednesday, September 18, 1985, 10 a.m. A prehearing conference in Docket 6451—inquiry into alleged violations of a protective order issued in Docket 6200.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 29, 1985, 2:52 p.m.
TRD-857858

Friday, September 27, 1985, 10 a.m. A hearing on the merits in Docket 6146—application of Southwestern Bell Telephone Company to obsolete Centrex Services and Implement ESSX-400

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 29, 1985, 1:55 p.m.
TRD-857853

Tuesday, October 1, 1985, 10 a.m. An evidentiary hearing in Docket 6451—inquiry into alleged violations of a protective order issued in Docket 6200.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 29, 1985, 2:52 p.m.
TRD-857859

Friday, November 8, 1985, 10 a.m. A hearing on the merits in Docket 6398—petition of Jonestown Improvement Corporation for authority to terminate water utility service.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 30, 1985, 2:55 p.m.
TRD-857956

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Railroad Commission of Texas

Monday, September 9, 1985, 9 a.m. The Railroad Commission of Texas will meet in the William B. Travis Building, 1701 North Congress, Austin. Rooms and division agendas follow.

In the first floor auditorium east, the Administrative Services Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7257.

Filed: August 30, 1985, 10:18 a.m.
TRD-857905

In the first floor auditorium east, the Automatic Data Processing Division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

Contact: Bob Kmetz, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1204.

Filed: August 30, 1985, 10:51 a.m.
TRD-857944

In the first floor auditorium east, the Flight Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Ken Fossler, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-7149.

Filed: August 30, 1985, 10:22 a.m.
TRD-857906

Various matters falling within the Gas Utilities Division's regulatory jurisdiction.

Contact: Lucia Sturdevant, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7008.

Filed: August 30, 1985, 10:19 a.m.
TRD-857907

In the first floor auditorium east, the Office of Information Services director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Drawer 12967, Austin, Texas 78711, 463-6710.

Filed: August 30, 1985, 10:20 a.m.
TRD-857908

In the 12th floor auditorium, the LP-Gas Division director's report on division administration, budget, procedures, and personnel matters; and the signing of final orders in LP-gas Docket 359—Texas Camper Corral, Docket 393—Enerli Trucking Company, Docket 395—Carburetion Equipment, Inc., Docket 396—Shaver Plumbing Service, Docket 397—Wayne's Kwik Stop, Docket 398—Waller Sheet Metal/Roofing Co., Inc., Docket 400—Gulf Gate, Inc., Docket 401—K-B Transport, Inc., Docket 402—Boots Furniture & Grocery, Inc., Docket 403—Williams Plumbing, Heating, and Air Conditioning, Docket 405—Propane Carburetion Co., Inc., and Docket 406—Elliott's Air Conditioning & Electrical, Inc.

Contact: Thomas D. Petru, P.O. Drawer 12967, Austin, Texas 78711, 463-6931.

Filed: August 30, 1985, 10:22 a.m.
TRD-857909

In the first floor auditorium east, various matters falling within the Oil and Gas Division's regulatory jurisdiction.

Contact: Timothy A. Poe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6713.

Filed: August 30, 1985, 10:18 a.m.
TRD-857910

Addition to the previous agenda:

In the first floor auditorium east, consideration of category determinations under the Natural Gas Policy Act of 1978, §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108.

Contact: Margie L. Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755.

Filed: August 30, 1985, 10:19 a.m.
TRD-857911

In the first floor auditorium east, consideration of Celeron Oil and Gas Company's application for rule making and a motion for rehearing of commission letter orders of July 8, 1985, dealing with proposed statewide rules and field rules for the Panhandle fields and a commission letter to operators in the Panhandle fields and various other requests for rule making with regard to the Panhandle fields.

Contact: Susan Cory, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6923.

Filed: August 30, 1985, 10:19 a.m.
TRD-857912

In the first floor auditorium east, consideration of a motion for interim order in oil and gas Docket 8-85,334—application of Monarch Corporation to inject fluid into a reservoir productive of oil or gas in the Tunstill Field, Loving County.

Contact: Bob Rago, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6919.

Filed: August 30, 1985, 10:19 a.m.
TRD-857913

In the first floor auditorium east, revision of Agenda Item 40, Docket 20-85,546—whether to adopt statewide Rule 80, 16 TAC §3.74.

Contact: Kimberly Kiplin, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6919.

Filed: August 30, 1985, 2:25 p.m.
TRD-857947

In the first floor auditorium east, the Personnel Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Mark K. Bogan, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6981.

Filed: August 30, 1985, 10:21 a.m.
TRD-857914

In the first floor auditorium east, the Office of Research and Statistical Analysis director's report on division administration, budget, procedures, and personnel matters.

Contact: Gail Gemberling, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6976.

Filed: August 30, 1985, 10:20 a.m.
TRD-857915

In the first floor auditorium east, the Office of the Special Counsel director's report relating to pending litigation, state and federal legislation, and other budget, administrative, and personnel matters.

Contact: Walter Earl Lilie, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-7149.

Filed: August 30, 1985, 10:22 a.m.
TRD-857916

In the first floor auditorium east, the Surface Mining and Reclamation Division director's report on division administration, budget, procedures, and personnel matters, and consideration of acceptance of a rider to an existing bond required for a 44.4 acre incidental boundary revision at ALCOA's Sandow Mine, Permit 1; and acceptance of a rider to an existing bond required for a 51-acre incidental boundary revision at ALCOA's Sandow Mine, Permit 1.

Contact: J. Randel (Jerry) Hill, 1701 North Congress Avenue, Austin, Texas, (512) 463-7149.

Filed: August 30, 1985, 10:18 a.m.
TRD-857917

In the first floor auditorium east, various matters falling within the Transportation Division's regulatory jurisdiction.

Contact: Mike A. James, P.O. Drawer 12967, Austin, Texas 78704, (512) 463-7122.

Filed: August 30, 1985, 10:22 a.m.
TRD-857918

Addition to the previous agenda:

In the first floor auditorium east, consideration of Docket 05.37A1N—final adoption of new 16 TAC §5.37, concerning armored contract carriers.

Contact: Mike James, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7122.

Filed: August 30, 1985, 10:22 a.m.
TRD-857919

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Texas Real Estate Commission

Monday, September 9, 1985, 9:30 a.m. The Texas Real Estate Commission will meet in the conference room, 1101 Camino La Costa, Austin. Items on the agenda summary include the minutes of the August 19, 1985, meeting; staff reports for the month of July 1985; consideration of motions for rehearing and/or probation; consideration of complaint information concerning Ronal Franklin Stillwell, Rebecca Kelly Stillwell, and Raymond Kennedy; education matters; consideration of emergency rules 22 TAC §§543.1-543.6, relating to timeshare regula-

tion and §535.202, relating to the licensing of real estate inspectors. The commission also will meet in executive session to discuss pending litigation pursuant to Texas Civil Statutes, Article 6252-17, §2(c).

Contact: Camilla S. Shannon, P.O. Box 12188, Austin, Texas 78711, (512) 465-3900.

Filed: August 30, 1985, 10:43 a.m.
TRD-857953

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Texas Rehabilitation Commission

Thursday, September 5, 1985, 9:30 a.m. The Executive Committee of the Texas Planning Council for Developmental Disabilities of the Texas Rehabilitation Commission met in emergency session in the boardroom, Austin South Plaza Hotel, 3401 IH 35 South, Austin. According to the agenda, the committee met in executive session to review personnel practices involving the Texas Planning Council for Developmental Disabilities pursuant to Texas Civil Statutes, Article 6252-17, §2(g). The emergency status was necessary because personnel issues needed to be discussed prior to the council meeting held at 10 a.m. on September 5, 1985.

Contact: Joellen Simmons, 118 East Riverside Drive, Austin, Texas 78704, (512) 445-8867.

Filed: August 30, 1985, 10:43 a.m.
TRD-857952

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Texas Sesquicentennial Commission

Tuesday, September 10, 1985, 10 a.m. The Texas Sesquicentennial Commission will meet on the ground floor, 510 South Congress, Austin. According to the agenda, the commission will approve minutes of the August 27, 1985, Executive Committee meeting; approve operating policy and program guidelines; approve a lease agreement; and consider other business. The commission also may meet in executive session if necessary.

Contact: Patrick Terry, P.O. Box 1986, Austin, Texas 78767.

Filed: August 30, 1985, 4:55 p.m.
TRD-857967

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Teacher Retirement System of Texas

The Board of Trustees and the Retirees Advisory Committee of the Teacher Retirement System of Texas will meet in the boardroom, 1001 Trinity Street, Austin. Days, times, and agendas follow.

Friday, September 13, 1985, 10 a.m. The Board of Trustees will approve minutes, review investments for the quarter and year ending August 31, 1985; review the discussion and recommendations at the Investment Advisory Committee (IAC) meeting; consideration of appointments to the IAC; reports of the Audit Committee and Building Committee; approval of an amendment to the nominee name partnership agreement; consideration of a request from Gerald Nolan; consideration of a proposed amendment to rules and regulations; a report of the general counsel; a report of the Retiree Insurance Program; and report of the Member Benefits Division. The board also will meet in executive session to discuss personnel.

Contact: Mary Godzik, 1001 Trinity Street, Austin, Texas 78701, (512) 397-6400.

Filed: August 30, 1985, 10:04 a.m.
TRD-857890

Friday, September 13, 1985, 3 p.m. The Retirees Advisory Committee will consider the executive secretary's report; legislative background and program timetable; a presentation on the Ohio Retired Teacher Insurance Program; and the committee meeting schedule and procedures.

Contact: Lanny Hall, 1001 Trinity Street, Austin, Texas 78701, (512) 397-6400.

Filed: August 30, 1985, 10:05 a.m.
TRD-857891

Saturday, September 14, 1985, 9 a.m. The Retirees Advisory Committee will consider a presentation by representatives of the Wyatt Company; a presentation on Medicare benefits; a presentation by E. L. Galyean, executive director of the Texas Retired Teachers Association; a presentation on the Texas Employees Uniform Group Insurance Program; and testimony from the general public.

Contact: Lanny Hall, 1001 Trinity Street, Austin, Texas 78701, (512) 397-6400.

Filed: August 30, 1985, 10:05 a.m.
TRD-857892

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Texas Water Commission

The Texas Water Commission will meet in the Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Days, times, rooms, and agendas follow.

Tuesday, September 10, 1985, 10 a.m. In Room 118, the commission will consider water district bond issues, release from escrow, use of surplus funds, water quality proposed permits, amendments, and renewals, water use permits, and issuance of corrected certificates of adjudication.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: August 30, 1985, 2:04 p.m.
TRD-857948

Wednesday, September 11, 1985, 2 p.m. In Room 118, the commission will consider the application of Cameron County Fresh Water Supply District 1 for an amendment to Certificate of Adjudication 23-464, Hidalgo County, Rio Grande Basin.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: August 30, 1985, 2:04 p.m.
TRD-857949

Wednesday, September 18, 1985, 10 a.m. In Room 118, the commission will consider Application 4566 of Jerry P. Bordelon and Joyce G. Bordelon for a Texas Water Code, §11.121, permit to authorize the diversion and use of 194 acre-feet of water per year from the Pedernales River, tributary of the Colorado River, Colorado River Basin, for irrigation purposes in Blanco County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: August 30, 1985, 2:04 p.m.
TRD-857950

Thursday, October 3, 1985, 10 a.m. In Room 618, the commission will conduct a preliminary hearing in the matter of the water rate controversy between the City of Pasadena and the City of Houston.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: August 30, 1985, 2:05 p.m.
TRD-857951

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Texas Department of Water Resources

Monday, September 16, 1985, 10 a.m. The Texas Department of Water Resources will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the department will conduct a public hearing to consider the proposed hazardous waste generation, facility, and disposal fees system for the State Hazardous Waste Management Program.

Contact: William G. Newchurch, P.O. Box 13087, Austin, Texas 78711, (512) 463-7847.

Filed: August 29, 1985, 10:50 a.m.
TRD-857843

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Regional Agencies Meetings Filed August 29

The Fisher County Appraisal District, Board of Directors, will meet at the Fisher County Tax/Appraisal Office, Fisher County Courthouse, Roby, on September 8, 1985, at 7:30 p.m. Information may be obtained from Teddy Kral, P.O. Box 516, Roby, Texas 79543.

The Lamb County Appraisal District, Board of Directors, will meet at 318 Phelps Avenue, Littlefield, on September 12, 1985, at 8:30 p.m. Information may be obtained from Jack Samford, P.O. Box 552, Littlefield, Texas 79339, (806) 385-6474.

The Scurry County Appraisal District, Board of Directors, met at 2612 College Avenue, Snyder, on September 3, 1985, at 8 p.m. Information may be obtained from L.R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549.

The West Central Texas Municipal Water District, Board of Directors, met in Suite 300, 401 Cypress Street, Abilene, on September 5, 1985, at 9 a.m. Information may be obtained from Virginia Duncan, P.O. Box 2362, Abilene, Texas 79604, (915) 673-8254.

TRD-857852

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Meetings Filed August 30

The Bexar-Medina-Atascosa Counties Water Control and Improvement District 1 Board of Directors, will meet at the district office, Highway 81, Natalia, on September 9, 1985, at 8 a.m. Information may be obtained from C. A. Mueller, P.O. Box 170, Natalia, Texas 78059, (512) 663-2132.

The Brown County Appraisal District, Board of Directors, will meet at 403 Fisk Avenue, on September 9, 1985, at 7 p.m. Information may be obtained from Alvis Sewalt, 403 Fisk Avenue, Brownwood, Texas 76801, (915) 643-5676.

The Coryell County Appraisal District, Board of Directors, met at 105 North Seventh Street, Gatesville, on September 5, 1985, at 7 p.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76528, (817) 865-6593.

The Dallas County Appraisal District, Board of Directors, met at 2601 Live Oak, Dallas, on September 4, 1985, at 7:30 p.m. The Appraisal Review Board will meet, on September 13, 1985, at 10 a.m., at the same location. Information may be obtained from Rick L. Kuehler, 2601 Live Oak, Dallas, Texas 75204, (214) 826-0030.

The Dewitt County Appraisal District, Board of Directors, will meet at 103 Bailey Street, Cuero, on September 12, 1985, at 7 p.m. Information may be obtained from Wayne K. Woolsey, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753.

The Lee County Appraisal District, Board of Directors, met at 218 East Richmond Street, Giddings, on September 4, 1985, at 9 a.m. Information may be obtained from James L. Dunham, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618.

TRD-857945

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Meetings Filed September 3

The Lee County Appraisal District, Appraisal Review Board, will meet at 218 East Richmond Street, Giddings, on September 12, 1985, at 9 a.m. Information may be obtained from Delores Shaw, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618.

The Lubbock Regional Mental Health and Mental Retardation Center, Board of Trustees, met in emergency session at 3800 Avenue H, Lubbock, on September 3, 1985, at 4:30 p.m. Information may be obtained from Gene Merefec, 1210 Texas Avenue, Lubbock, Texas 79401, (806) 763-4213.

The Panhandle Regional Planning Commission, Board of Directors, will meet in the Amarillo Room, Fifth Season Inn, 6801 I-40 West, Amarillo, on September 12, 1985, at 5:15 p.m. Information may be obtained from Polly Jennings, P.O. Box 9257, Amarillo, Texas 79105, (806) 372-3381.

The San Patricio County Appraisal District, Appraisal Review Board, will meet in Room 226, Courthouse Annex, Sinton, on September 10, 1985, at 9 a.m. The Board of Directors will meet at the same location on September 12, 1985, at 9:30 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402.

TRD-857972

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In Addition

The *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.

State Banking Board Amended Hearing Date

The date of the hearing for the charter application of Devine State Bank, Devine, previously scheduled for October 8, 1985, has been rescheduled for 9 a.m. on October 29, 1985, at the Banking Department of Texas, 2601 North Lamar Boulevard, Austin.

The rescheduling of the hearing in this matter shall not alter the deadline for the filing of a petition in intervention by any party under State Banking Board rules. Any such petition shall be considered timely filed if received by September 27, 1985.

Issued in Austin, Texas, on August 28, 1985.

TRD-857842 William F. Aldridge
Director of Corporate Activity
State Banking Board

Filed: August 28, 1985
For further information, please call (512) 475-4451.

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Public Hearings

The hearing officer of the State Banking Board will conduct a hearing at 9 a.m. on Thursday, October 3, 1985, at 2601 North Lamar Boulevard, Austin, on the change of domicile application of MBank Greenway, Houston.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, Banking Department of Texas, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-4451.

Issued in Austin, Texas, on August 26, 1985.

TRD-857838 William F. Aldridge
Director of Corporate Activities
State Banking Board

Filed: August 28, 1985
For further information, please call (512) 475-4451.

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The hearing officer of the State Banking Board will conduct a hearing at 9 a.m. on Monday, October 28, 1985, at 2601 North Lamar Boulevard, Austin, on the change of domicile application of MBank Northwest, Austin, Travis County.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, Banking Department of Texas, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-4451.

Issued in Austin, Texas, on August 28, 1985.

TRD-857837 William F. Aldridge
Director of Corporate Activities
State Banking Board

Filed: August 28, 1985
For further information, please call (512) 475-4451.

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The hearing officer of the State Banking Board will conduct a hearing at 9 a.m. on Friday, October 4, 1985, at 2601 North Lamar Boulevard, Austin, on the change of domicile application of First Bank and Trust, Bryan.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, Banking Department of Texas, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-4451.

Issued in Austin, Texas, on August 27, 1985.

TRD-857836 William F. Aldridge
Director of Corporate Activities
State Banking Board

Filed: August 28, 1985
For further information, please call (512) 475-4451.

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Banking Department of Texas Public Hearing

The hearing officer of the Banking Department of Texas will conduct a hearing at 9 a.m. on September 13, 1985, at 2601 North Lamar Boulevard, Austin, on the Jones-Cato Funeral Home, Inc., Burleson.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, Banking Department of Texas, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-4451.

Issued in Austin, Texas, on August 28, 1985.

TRD-857841 William F. Aldridge
Director of Corporate Activities
Banking Department of Texas

Filed: August 29, 1985
For further information, please call (512) 475-4451.

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Employees Retirement System of Texas Certificate of Internal Revenue Service

The executive director of the Employees Retirement System of Texas certifies that the Internal Revenue Service (IRS) has determined that the Judicial Retirement System of Texas, Plan Two, is a qualified plan under the Federal Internal Revenue Code, §401(a). A copy of the IRS determination letter is on file with the secretary of state and is available at the office of the *Texas Register*.

The effect of filing this notice under Senate Bill 105, §28, 69th Legislature, 1985, is that all provisions of that bill will be effective on September 1, 1985.

Issued in Austin, Texas, on August 29, 1985.

TRD-857851 Clayton T. Garrison
Executive Director
Employees Retirement System of
Texas

Filed: August 29, 1985

For further information, please call (512) 478-6431, ext. 212.

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Texas Department of Health Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions with regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Dallas/Houston	General Electric Company	99-3819	Cleveland, OH	0	07/24/85
Denton	Denton Dialysis, Inc.	05-3793	Denton	0	07/24/85
El Paso	Seatt Corporation	99-3815	Dowaters Grove, IL	0	07/31/85
Garland	E-Systems, Inc.	05-3814	Dallas	0	07/30/85
Humble	The Nuclear Imaging Center	11-3758	Humble	0	07/16/85
San Antonio	Southwest Immunodiagnostics, Inc.	09-3796	San Antonio	0	07/09/85
Throughout Texas	Hunter Wireline, Inc.	06-3821	Gease	0	07/15/85
Throughout Texas	Traceco	05-3783	Fort Worth	0	07/19/85
Throughout Texas	Cargill Drilling and Reclamation, Inc.	07-3782	Longview	0	07/30/85
Throughout Texas	Kenneth F. Faulkner	06-3798	Fulton	0	07/31/85
Throughout Texas	Independent Testing Laboratories	11-3795	Searcy, AR	0	07/31/85

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Abilene	Radiology Associates	04-399	Abilene	46	07/12/85
Arlington	Metroplex Hematology/Oncology Associates	05-3211	Arlington	14	07/26/85

Austin	Scientific Measurement Systems, Inc.	06-2896	Austin	13	07/24/85
Austin	Austin Diagnostic Clinic	06-868	Austin	26	07/16/85
Baytown	Chevron Chemical Company	11-962	Baytown	19	07/31/85
Brenham	Saint Jude Hospital	06-3419	Brenham	4	07/23/85
Brownsville	Lee Works, M.D.	08-176	Brownsville	9	07/26/85
Canyon	West Texas State University	01-583	Canyon	18	07/18/85
Center	Health Group of Center, Inc.	10-3608	Center	1	07/23/85
College Station	Texas A&M University	06-448	College Station	56	07/23/85
Columbus	Columbus Eye Associates	11-915	Columbus	8	07/16/85
Dallas	Metropolitan Hospital	05-2263	Dallas	11	07/12/85
Dallas	Presbyterian Hospital of Dallas	05-1586	Dallas	40	07/18/85
Dallas	National Health Laboratories, Inc.	05-1716	Dallas	9	07/23/85
DeLeon	DeLeon Hospital	04-3233	DeLeon	2	07/16/85
Deer Park	Flint Oil and Chemical Company	11-302	Deer Park	21	07/18/85
Denison	The Pillsbury Company	05-3727	Denison	3	07/30/85
Edna	Edna Hospital	08-2902	Edna	5	07/18/85
Fort Worth	Talem, Inc.	05-2886	Fort Worth	3	07/18/85
Fort Worth	Texas Utilities Generating Company	05-2961	Fort Worth	2	07/19/85
Freeport	Rhone-Poulenc, Inc.	11-2807	Freeport	11	07/23/85
Hebbronville	Calhoun Mining Corporation	08-2922	Hebbronville	3	07/26/85
Hobson	Everest Minerals Corporation	08-2663	Corpus Christi	11	07/23/85
Houston	City of Houston Health Department	11-149	Houston	27	07/16/85
Houston	Texas Tower Partnership	11-3747	Houston	2	07/23/85
Lancaster	Midway Park General Hospital	05-3342	Lancaster	4	07/16/85
Longview	Texas Eastman Company	07-301	Longview	52	07/24/85
Odessa	Odessa Diagnostic Imaging Center, Ltd.	12-3687	Odessa	3	07/16/85
Pasadena	Celanese Chemical Company, Inc.	11-1130	Houston	23	07/30/85
Pasadena	Champion Papers	11-906	Pasadena	19	07/31/85
Plainsview	Central Plains Regional Hospital	02-2493	Plainsview	6	07/26/85
Port Arthur	Texaco, Inc.	10-67	Port Arthur	17	07/30/85
Port Arthur	Saint Mary Hospital of Port Arthur	10-1212	Port Arthur	30	07/16/85
Ranger	Ranger General Hospital	04-3308	Ranger	2	07/18/85
Rockdale	Aluminum Company of America	06-2609	Rockdale	11	07/18/85
San Antonio	Southwest Texas Methodist Hospital	09-594	San Antonio	70	07/23/85
Snyder	Cogdell Memorial Hospital	04-2409	Snyder	8	07/12/85
Sweetwater	LaGum Measurements, Inc.	04-1963	Sweetwater	30	07/24/85
Texarkana	Jarrell Myrick, M.D.	07-3773	Texarkana	1	07/09/85
Texas City	Tex Tin Corporation	11-1270	Texas City	20	07/26/85
The Highlands	Guardian Inspection Services, Inc.	11-2945	The Highlands	4	07/30/85
Throughout Texas	Amarillo Testing and Engineering, Inc.	01-2658	Amarillo	5	07/18/85
Throughout Texas	Tracer Service, Inc.	07-3526	Kilgore	6	07/18/85
Throughout Texas	City of Dallas	05-2700	Dallas	3	07/18/85
Throughout Texas	Patterson Inspection Services, Inc.	11-3148	Lafayette, LA	7	07/18/85

Throughout Texas	Lightfoot Wireline Service Co.	12-3478	Andrews	1	07/17/85
Throughout Texas	Halliburton Services	07-1835	Tyler	27	07/12/85
Throughout Texas	Allied Medical Systems, Inc.	05-3784	Arlington	1	07/18/85
Throughout Texas	Southwestern Laboratories	05-1994	Dallas	8	07/18/85
Throughout Texas	Pledger, Schulze and Associates	06-3733	Brenham	1	07/18/85
Throughout Texas	W.H. Heinen Industries, Inc.	05-967	Arlington	13	07/18/85
Throughout Texas	Texas Department of Health	06-1155	Austin	22	07/19/85
Throughout Texas	Carlisle Property Company	05-3025	Dallas	2	07/19/85
Throughout Texas	SEE, Inc.	05-747	Fort Worth	37	07/19/85
Throughout Texas	Herzog Contracting Corporation	12-3809	Saint Joseph, MO	1	07/24/85
Throughout Texas	Gearhart Industries, Inc.	05-2113	Fort Worth	39	07/24/85
Throughout Texas	East Texas Testing Laboratory	07-1423	Tyler	15	07/24/85
Throughout Texas	Cotton's Inspection of Houston, Inc.	11-3797	Houston	1	07/24/85
Throughout Texas	Sivalls, Inc.	12-2298	Odessa	12	07/29/85
Throughout Texas	Four Seasons Industrial X-Ray Service	08-2855	Beaville	6	07/29/85
Throughout Texas	B-F Inspection Services	12-3546	Odessa	2	07/29/85
Throughout Texas	The Sabine Mining Company	07-3422	Hallsville	3	07/19/85
Throughout Texas	Advanced Tubular Services, Inc.	11-3673	Houston	1	07/30/85
Throughout Texas	Fire Protection Service, Inc.	11-2974	Houston	1	07/30/85
Throughout Texas	Southwest Research Institute	09-775	San Antonio	30	07/30/85
Throughout Texas	Fluor Engineers & Construction, Inc.	11-2643	Irvine, CA	3	07/30/85
Throughout Texas	International Pipe Insulators Association	11-3736	Houston	1	07/30/85
Throughout Texas	Allied Medical Systems Inc	05-3784	Arlington	2	07/30/85
Throughout Texas	K & N Perforators	08-2360	Victoria	13	07/31/85
Throughout Texas	Austin Testing Engineers, Inc.	06-1763	Austin	15	07/31/85
Throughout Texas	Nuclear Sources and Services, Inc.	11-2991	Houston	9	07/31/85
Throughout Texas	BJ Titan Services Company	11-2684	Houston	10	07/17/85
Wichita Falls	Bethania Hospital	04-1844	Wichita Falls	21	07/10/85
Wichita Falls	Bethania Hospital	04-1844	Wichita Falls	22	07/23/85

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Austin	Clinical Pathology Laboratories Medical Association	06-884	Austin	7	07/08/85
Austin	TARGA, Inc.	06-3022	Austin	1	07/30/85
Brady	The Eastern Pacesetter Company	04-3359	Brady	1	07/30/85
El Paso	Motel Dieu Hospital	05-2345	El Paso	3	07/16/85
Throughout Texas	Petro Log, Inc.	02-3543	Brownfield	1	07/30/85
Throughout Texas	Donis P. Melton	04-2294	San Angelo	2	07/30/85

LICENSES REVOKED:

Location	Name	License #	City	Amendment #	Date of Action
Throughout Texas	Wildfire Inspection Services	12-3194	Midland	2	07/18/85
Throughout Texas	Beard Energy Group, Inc.	09-3437	Pearall	2	07/18/85
Throughout Texas	Carl F. Gullodge	05-3294	Lewisville	1	07/18/85

In issuing new licenses and amending and renewing existing licenses, the 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. Lackey, Chief, Bureau of Radiation Control (Director, Texas Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756.

Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

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 through Friday (except holidays).

Issued in Austin, Texas, on August 30, 1985.

TRD-857881

Robert A. MacLean, M.D.
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: August 30, 1985

For further information, please call (512) 836-7000.

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Texas Department of Human Services Order Amending Controlled Substances Schedules

The Texas Controlled Substances Act, Texas Revised Civil Statutes, Article 4476-15, contains schedules of controlled substances, i.e., lists of drugs and chemical entities which have potential for addiction or abuse. The Act authorizes the Texas commissioner of health to modify the schedules by adding or deleting substances. The Act also requires the commissioner, whenever he makes a change to the schedules, to file a notice of this change with the Texas Secretary of State's Office (notice goes to the attention of the Statutory Filings Division). For the public to be

informed of these changes, the commissioner files notice of the changes in the In Addition section of the *Texas Register*.

The most recent change was made by the commissioner on August 6, 1985, when he ordered that Schedule I, §2.03, paragraph (f), be amended by adding subparagraph (2). Paragraph (f), as changed, will read:

(f) Temporary listing of substances subject to emergency scheduling by the Federal Drug Enforcement Administration. Any material, compound, mixture or preparation which contains any quantity of the following substances:

(1) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide), its optical and geometric isomers, salts, and salts of isomers.

(2) 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional, and geometric isomers, salts and salts of isomers.

Copies of the revised schedule are filed in the Division of Food and Drugs, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and are available for public review during regular working hours.

Issued in Austin, Texas, on August 30, 1985.

TRD-857882

Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: August 30, 1985

For further information, please call (512) 458-7248.

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State Board of Insurance Public Hearing

The State Board of Insurance will hold a hearing at 9 a.m. on September 9, 1985, in the hearing room, of the DeWitt Greer Building (State Department of Highways and Public Transportation Building), 11th and Brazos Streets, Austin, on the following matters.

Item 85-1. The Texas Automobile Insurance Service Office proposes that the *Texas Automobile Manual* be amended in the following respects:

(1) Rule 108, page 64—add a new §B, subsection c, providing rating adjustment factors for collision coverage for fire department vehicles exceeding \$115,000 original cost new;

(2) Rule 110, page 65—add a new §C, subsection 3, providing rating adjustment factors for collision coverage for ambulance vehicles exceeding \$115,000 original cost new.

Proponents explanation: (a. and b.)—Many new fire department vehicles and specialized ambulance units now exceed \$115,000 original cost new. The present commercial collision table stops at \$115,000 original cost new. The present rating procedure produces the same premium for collision coverage for vehicles with original cost new of \$200,000 as vehicles with original cost new of \$115,001.

(3) Rule 26, page 14 and endorsement supplement—amend the premium discount tables in Rule 26 to show a minimum standard premium entry level of \$5,000 instead of \$1,000 and adjust all succeeding premium levels and discount ratios. Amend Endorsement 25c in the en-

dorsement supplement to reflect the new premium discount levels and discount ratio and redesignate the endorsement as 25d.

Proponents explanation—This proposed change is consistent with changes the State Board of Insurance has made or approved in workers compensation and general liability insurance.

Item 85-2. The Texas Automobile Insurance Service Office proposes that the *Texas Automobile Manual*, standard provisions for automobile policies (October 1, 1974, edition) and standard provisions for automobile policies (June 1, 1981, edition) be amended in the following respects:

(1) amend the transportation expenses limits under Part D—coverage for damage to your auto—personal auto policy—standard provisions for automobile policies (June 1, 1981, edition) page 12, to read \$20 per day and a maximum of \$600, in lieu of \$15 and \$450 respectively;

(2) amend the endorsement supplement—*Texas Automobile Manual* to include a new endorsement to be designated as 574. Texas personal automobile policy—amendatory endorsement (coverage for damage to your auto). This endorsement amends the transportation expenses limits of the personal automobile policy to those set out in item (a) and is to be used by companies on a temporary basis until such time as their actual personal auto policies are reprinted to reflect the new limits;

(3) amend TX-10-91—amendatory endorsement—physical damage supplementary payments as it appears in the endorsement supplement of the *Texas Automobile Manual* and the standard provisions for automobile policies (October 1, 1974, edition) to reflect transportation expense limits of \$20 per day and \$600 total, in lieu of \$15 and \$450 respectively. The endorsement should be redesignated as TX-10-91A.

Proponents explanation—(1), (2), and (3)—The proposed changes to increase the coverage for transportation expenses will conform to previous action of the State Board of Insurance increasing the rental reimbursement limits to \$20 per day and \$600 maximum.

Item 85-3. The Texas Automobile Insurance Service Office proposes that the Texas automobile liability experience rating plan and Rule 27 of the *Texas Automobile Manual* be amended in the following respects:

(1) amend §II, subsection 1, of the Texas automobile liability experience rating plan to delete subsections (a), (b), and (c) and replace said subsections with one paragraph setting out a single revised premium eligibility standard;

(2) amend Rule 27—*Texas Automobile Manual*, page 16, to delete 1, 2, and 3, §A and replace said subsections with one paragraph setting out a single revised premium eligibility standard.

Proponents explanation: (1) and (2)—The proposed amendments to the Texas automobile liability experience rating plan and Rule 27 of the *Texas Automobile Manual* amending the eligibility requirements for a risk to be subject to experience rating under the plan to a single premium level test not related to the number of insured units and type of business of the insured is necessary to prevent risks not suitable for experience rating from being subject to the terms of the plan. In addition, the previous premium limit of \$2,500 and limitations on number of insured units and business of the insured are no longer the appropriate guidelines to determine the type of risks to which experience rating is appropriate. The use of a single premium level test will more adequately insure that

risks suitable for experience rating will be subject to the plan

Item 85-4. Colonial Penn Insurance Company proposes that the automobile medical payment rate tables A and B on page 120 of the *Texas Automobile Manual* be expanded to include additional limits of \$15,000 and \$25,000.

Proponents explanation—The company indicates that many of their senior citizen clients would like to purchase higher automobile medical payments limits to complement the increasing medicare deductibles and coinsurance conditions.

Item 85-5. The Independent Insurance Agents of Texas proposes that the board appoint an industry study committee to study the rating of pickups, vans, and panel trucks used in business.

Proponents explanation—The independent insurance agents of Texas have furnished the following explanation. Rule 35.A.2.b. of the automobile manual states the 'A motor vehicle that is a pickup, panel truck, or an shall be considered a private passenger auto, if not customarily used in the occupation, profession or business of the insured, other than farming or ranching.'

As a result of this rule, if the insured owns a station wagon used in business, he is eligible for private passenger rating and coverage on the personal auto policy. However, if he owns a pickup and uses the vehicle in the same manner, he must insure it on a commercial policy at a significantly higher premium. This situation has been aggravated by the introduction of such vehicles as Ford Bronco, Jeep Wagoneer, Suburban Wagons, Dodge Caravan, and Chevrolet Blazer, which do not clearly fall into any rating class.

If personally owned vehicles are used to transport personnel, tools, and equipment, they present a greater exposure than is contemplated by the personal auto policy. However, in many cases, these vehicles are used in a manner that presents no greater exposure than any other private vehicle or station wagon type vehicle. As an example, an insured, who is in sales, previously owned a Dodge

Colt 4-door station wagon and was classed as a Class 3 business use on his personal auto policy. He purchases a Chevrolet Blazer and is now forced to purchase a separate policy.

The Chevrolet Blazer must be insured under a comprehensive or basic auto policy and the vehicle is classed as a service commercial vehicle Class 011990 at a much higher premium, yet the use is exactly the same.

Insureds also face the possible problem of obtaining the commercial policy because of the current market situation and company underwriters use of minimum premium size in determining acceptance of a policy.

This problem has been discussed on many occasions involving both the Texas Automobile Insurance Service Office (TAISO) and the State Board of Insurance (SBI) auto staff. Yet, no solution has been found. The independent insurance agents encourage the board to establish a formal study committee to focus on this problem and explore solutions. Under present rules the agents are discriminating against insureds based on the type of vehicle they purchase instead of the manner in which the vehicle is used.

Proponents' petition for such rating plan or manual rule change, along with justification data, has been filed with James W. Norman, chief clerk, State Board of Insurance. Such petition and data may be reviewed for specificity in the office of the chief clerk or by contacting D. E. O'Brien, Director, Automobile and Miscellaneous Lines Section, Casualty Division, State Insurance Building, 1110 San Jacinto, Austin, Texas 78786.

Issued in Austin, Texas, on August 29, 1985.

TRD-857860

James W. Norman
Chief Clerk
State Board of Insurance

Filed: August 29, 1985

For further information, please call (512) 463-8326.

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